EXHIBIT A

133 S.Ct. 2612
Supreme Court of the United States

SHELBY COUNTY, ALABAMA, Petitioner
v.
Eric H. HOLDER, Jr., Attorney General, et al.

No. 12–96.
|
Argued Feb. 27, 2013.
|
Decided June 25, 2013.

Synopsis

Background: County brought declaratory judgment action against United States Attorney General, seeking determination that Voting Rights Act's coverage formula and preclearance requirement, under which covered jurisdictions were required to demonstrate that proposed voting law changes were not discriminatory, was unconstitutional. United States and civil rights organization intervened. After intervenors' motion for additional discovery was denied, 270 F.R.D. 16, parties cross-moved for summary judgment. The United States District Court for the District of Columbia, John D. Bates, J., 811 F.Supp.2d 424, entered summary judgment for Attorney General. County appealed. The United States Court of Appeals for the District of Columbia Circuit, Tatel, Circuit Judge, 679 F.3d 848, affirmed. Certiorari was granted.

The Supreme Court, Chief Justice Roberts, held that Voting Rights Act provision setting forth coverage formula was unconstitutional.

Reversed.

Justice Thomas filed concurring opinion.

Justice Ginsburg filed dissenting opinion in which Justices Breyer, Sotomayor, and Kagan joined.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Codenotes

Held Unconstitutional
42 U.S.C.A. § 1973b(b), transferred to 52 U.S.C.A. § 10303

****2615** *Syllabus* [*]

***529** The Voting Rights Act of 1965 was enacted to address entrenched racial discrimination in voting, "an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution." *South Carolina v. Katzenbach,* 383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769. Section 2 of the Act, which bans any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen ... to vote on account

of race or color," 42 U.S.C. § 1973(a), applies nationwide, is permanent, and is not at issue in this case. Other sections apply only to some parts of the country. Section 4 of the Act provides the "coverage formula," defining the " covered jurisdictions" as States or political subdivisions that maintained tests or devices as prerequisites to voting, and had low voter registration or turnout, in the 1960s and early 1970s. § 1973b(b). In those covered jurisdictions, § 5 of the Act provides that no change in voting procedures can take effect until approved by specified federal authorities in Washington, D.C. § 1973c(a). Such approval is known as "preclearance."

The coverage formula and preclearance requirement were initially set to expire after five years, but the Act has been reauthorized several times. In 2006, the Act was reauthorized for an additional 25 years, but the coverage formula was not changed. Coverage still turned on whether a jurisdiction had a voting test in the 1960s or 1970s, and had low voter registration or turnout at that time. Shortly after the 2006 reauthorization, a Texas utility district sought to bail out from the Act's coverage and, in the alternative, challenged the Act's constitutionality. This Court resolved the challenge on statutory grounds, but expressed serious doubts about the Act's continued constitutionality. See *Northwest Austin Municipal Util. Dist. No. One v. Holder,* 557 U.S. 193, 129 S.Ct. 2504, 174 L.Ed.2d 140.

Petitioner Shelby County, in the covered jurisdiction of Alabama, sued the Attorney General in Federal District Court in Washington, D.C., seeking a declaratory judgment that sections 4(b) and 5 are facially unconstitutional, as well as a permanent injunction against their enforcement. The District Court upheld the Act, finding that the evidence before Congress in 2006 was sufficient to justify reauthorizing § 5 and continuing ***530** § 4(b)'s coverage formula. The D.C. Circuit affirmed. After surveying the evidence in the record, that court accepted Congress's conclusion that § 2 litigation remained inadequate in the covered jurisdictions to protect the rights of minority voters, that § 5 was therefore still necessary, and that the coverage formula continued to pass constitutional muster.

Held : Section 4 of the Voting Rights Act is unconstitutional; its formula can no longer be used as a basis for subjecting jurisdictions to preclearance. Pp. 2622 – 2628.

(a) In *Northwest Austin*, this Court noted that the Voting Rights Act "imposes current burdens and must be justified by current needs" and concluded that "a departure ****2616** from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets." 557 U.S., at 203, 129 S.Ct. 2504. These basic principles guide review of the question presented here. Pp. 2622 – 2627.

(1) State legislation may not contravene federal law. States retain broad autonomy, however, in structuring their governments and pursuing legislative objectives. Indeed, the Tenth Amendment reserves to the States all powers not specifically granted to the Federal Government, including "the power to regulate elections." *Gregory v. Ashcroft,* 501 U.S. 452, 461–462, 111 S.Ct. 2395, 115 L.Ed.2d 410. There is also a "fundamental principle of equal sovereignty" among the States, which is highly pertinent in assessing disparate treatment of States. *Northwest Austin, supra,* at 203, 129 S.Ct. 2504.

The Voting Rights Act sharply departs from these basic principles. It requires States to beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own. And despite the tradition of equal sovereignty, the Act applies to only nine States (and additional counties). That is why, in 1966, this Court described the Act as "stringent" and "potent," *Katzenbach,* 383 U.S., at 308, 315, 337, 86 S.Ct. 803. The Court nonetheless upheld the Act, concluding that such an "uncommon exercise of congressional power" could be justified by "exceptional conditions." *Id.,* at 334, 86 S.Ct. 803. Pp. 2622 – 2625.

(2) In 1966, these departures were justified by the "blight of racial discrimination in voting" that had "infected the electoral process in parts of our country for nearly a century," *Katzenbach,* 383 U.S., at 308, 86 S.Ct. 803. At the time, the coverage formula—the means of linking the exercise of the unprecedented authority with the problem that warranted it—made sense.

The Act was limited to areas where Congress found "evidence of actual voting discrimination," and the covered jurisdictions shared two characteristics: "the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points ***531** below the national average." *Id.,* at 330, 86 S.Ct. 803. The Court explained that "[t]ests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." *Ibid.* The Court therefore concluded that "the coverage formula [was] rational in both practice and theory." *Ibid*. Pp. 2624 – 2625.

(3) Nearly 50 years later, things have changed dramatically. Largely because of the Voting Rights Act, "[v]oter turnout and registration rates" in covered jurisdictions "now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Northwest Austin, supra,* at 202, 129 S.Ct. 2504. The tests and devices that blocked ballot access have been forbidden nationwide for over 40 years**.** Yet the Act has not eased § 5's restrictions or narrowed the scope of § 4's coverage formula along the way. Instead those extraordinary and unprecedented features have been reauthorized as if nothing has changed, and they have grown even stronger. Because § 5 applies only to those jurisdictions singled out by § 4, the Court turns to consider that provision. Pp. 2625 – 2627.

(b) Section 4's formula is unconstitutional in light of current conditions. Pp. 2627 – 2631.

****2617** (1) In 1966, the coverage formula was "rational in both practice and theory." *Katzenbach, supra,* at 330, 86 S.Ct. 803. It looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both. By 2009, however, the "coverage formula raise[d] serious constitutional questions." *Northwest Austin, supra,* at 204, 129 S.Ct. 2504. Coverage today is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s. But such tests have been banned for over 40 years. And voter registration and turnout numbers in covered States have risen dramatically. In 1965, the States could be divided into those with a recent history of voting tests and low voter registration and turnout and those without those characteristics. Congress based its coverage formula on that distinction. Today the Nation is no longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were. Pp. 2627 – 2628.

(2) The Government attempts to defend the formula on grounds that it is "reverse-engineered"—Congress identified the jurisdictions to be covered and *then* came up with criteria to describe them. *Katzenbach* did not sanction such an approach, reasoning instead that the coverage formula was rational because the "formula ... was relevant to the problem." 383 U.S., at 329, 330, 86 S.Ct. 803. The Government has a fallback ***532** argument—because the formula was relevant in 1965, its continued use is permissible so long as any discrimination remains in the States identified in 1965. But this does not look to "current political conditions," *Northwest Austin, supra,* at 203, 129 S.Ct. 2504, instead relying on a comparison between the States in 1965. But history did not end in 1965. In assessing the "current need[ ]" for a preclearance system treating States differently from one another today, history since 1965 cannot be ignored. The Fifteenth Amendment is not designed to punish for the past; its purpose is to ensure a better future. To serve that purpose, Congress—if it is to divide the States—must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. Pp. 2627 – 2629.

(3) Respondents also rely heavily on data from the record compiled by Congress before reauthorizing the Act. Regardless of how one looks at that record, no one can fairly say that it shows anything approaching the "pervasive," "flagrant," "widespread," and "rampant" discrimination that clearly distinguished the covered jurisdictions from the rest of the Nation in 1965. *Katzenbach, supra,* at 308, 315, 331, 86 S.Ct. 803. But a more fundamental problem remains: Congress did not use that record to fashion a coverage formula grounded in current conditions. It instead re-enacted a formula based on 40–year–old facts having no logical relation to the present day. Pp. 2629 – 2630.

679 F.3d 848, reversed.

ROBERTS, C.J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. THOMAS, J., filed a concurring opinion. GINSBURG, J., filed a dissenting opinion, in which BREYER, SOTOMAYOR, and KAGAN, JJ., joined.

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Opinion

Chief Justice ROBERTS delivered the opinion of the Court.

***534** The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem. Section 5 ***535** of the Act required States to obtain federal permission before enacting any law related to voting—a drastic departure from basic principles of federalism. And § 4 of the Act applied that requirement only to some States—an equally dramatic departure from the principle that all States enjoy equal sovereignty. This was strong medicine, but Congress determined it was needed to address entrenched racial discrimination in voting, "an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution." *South Carolina v. Katzenbach,* 383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). As we explained in upholding the law, "exceptional conditions can justify legislative measures not otherwise appropriate." *Id.,* at 334, 86 S.Ct. 803. Reflecting the unprecedented nature of these measures, they were scheduled to expire after five years. See Voting Rights Act of 1965, § 4(a), 79 Stat. 438.

Nearly 50 years later, they are still in effect; indeed, they have been made more stringent, and are now scheduled to last until 2031. There is no denying, however, that the conditions that originally justified these measures no longer characterize voting in

the covered jurisdictions. By 2009, "the racial gap in voter registration and turnout [was] lower in the States originally ****2619** covered by § 5 than it [was] nationwide." *Northwest Austin Municipal Util. Dist. No. One v. Holder,* 557 U.S. 193, 203–204, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009). Since that time, Census Bureau data indicate that African–American voter turnout has come to exceed white voter turnout in five of the six States originally covered by § 5, with a gap in the sixth State of less than one half of one percent. See Dept. of Commerce, Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Nov. 2012) (Table 4b).

***536** At the same time, voting discrimination still exists; no one doubts that. The question is whether the Act's extraordinary measures, including its disparate treatment of the States, continue to satisfy constitutional requirements. As we put it a short time ago, "the Act imposes current burdens and must be justified by current needs." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504.

I

A

The Fifteenth Amendment was ratified in 1870, in the wake of the Civil War. It provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," and it gives Congress the "power to enforce this article by appropriate legislation."

"The first century of congressional enforcement of the Amendment, however, can only be regarded as a failure." *Id.,* at 197, 129 S.Ct. 2504. In the 1890s, Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia began to enact literacy tests for voter registration and to employ other methods designed to prevent African–Americans from voting. *Katzenbach,* 383 U.S., at 310, 86 S.Ct. 803. Congress passed statutes outlawing some of these practices and facilitating litigation against them, but litigation remained slow and expensive, and the States came up with new ways to discriminate as soon as existing ones were struck down. Voter registration of African–Americans barely improved. *Id.,* at 313–314, 86 S.Ct. 803.

Inspired to action by the civil rights movement, Congress responded in 1965 with the Voting Rights Act. Section 2 was enacted to forbid, in all 50 States, any "standard, practice, or procedure ... imposed or applied ... to deny or abridge the right of any citizen of the United States to vote on account of race or color." 79 Stat. 437. The current ***537** version forbids any " standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973(a). Both the Federal Government and individuals have sued to enforce § 2, see, *e.g., Johnson v. De Grandy,* 512 U.S. 997, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994), and injunctive relief is available in appropriate cases to block voting laws from going into effect, see 42 U.S.C. § 1973j(d). Section 2 is permanent, applies nationwide, and is not at issue in this case.

Other sections targeted only some parts of the country. At the time of the Act's passage, these "covered" jurisdictions were those States or political subdivisions that had maintained a test or device as a prerequisite to voting as of November 1, 1964, and had less than 50 percent voter registration or turnout in the 1964 Presidential election. § 4(b), 79 Stat. 438. Such tests or devices included literacy and knowledge tests, good moral character requirements, the need for vouchers from registered voters, and the like. § 4(c), *id*., at 438–439. A ****2620** covered jurisdiction could "bail out" of coverage if it had not used a test or device in the preceding five years "for the purpose or with the effect of denying or abridging the right to vote on account of race or color." § 4(a), *id.,* at 438. In 1965, the covered States included Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. The additional covered subdivisions included 39 counties in North Carolina and one in Arizona. See 28 C.F.R. pt. 51, App. (2012).

In those jurisdictions, § 4 of the Act banned all such tests or devices. § 4(a), 79 Stat. 438. Section 5 provided that no change in voting procedures could take effect until it was approved by federal authorities in Washington, D.C.—either the Attorney General or a court of three judges. *Id.,* at 439. A jurisdiction could obtain such "preclearance" only by proving that the change had neither "the purpose [nor] the effect of denying or abridging the right to vote on account of race or color." *Ibid*.

***538** Sections 4 and 5 were intended to be temporary; they were set to expire after five years. See § 4(a), *id.,* at 438; *Northwest Austin, supra,* at 199, 129 S.Ct. 2504. In *South Carolina v. Katzenbach,* we upheld the 1965 Act against constitutional challenge, explaining that it was justified to address "voting discrimination where it persists on a pervasive scale." 383 U.S., at 308, 86 S.Ct. 803.

In 1970, Congress reauthorized the Act for another five years, and extended the coverage formula in § 4(b) to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1968. Voting Rights Act Amendments of 1970, §§ 3–4, 84 Stat. 315. That swept in several counties in California, New Hampshire, and New York. See 28 C.F.R. pt. 51, App. Congress also extended the ban in § 4(a) on tests and devices nationwide. § 6, 84 Stat. 315.

In 1975, Congress reauthorized the Act for seven more years, and extended its coverage to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1972. Voting Rights Act Amendments of 1975, §§ 101, 202, 89 Stat. 400, 401. Congress also amended the definition of "test or device" to include the practice of providing English-only voting materials in places where over five percent of voting-age citizens spoke a single language other than English. § 203, *id.,* at 401–402. As a result of these amendments, the States of Alaska, Arizona, and Texas, as well as several counties in California, Florida, Michigan, New York, North Carolina, and South Dakota, became covered jurisdictions. See 28 C.F.R. pt. 51, App. Congress correspondingly amended sections 2 and 5 to forbid voting discrimination on the basis of membership in a language minority group, in addition to discrimination on the basis of race or color. §§ 203, 206, 89 Stat. 401, 402. Finally, Congress made the nationwide ban on tests and devices permanent. § 102, *id*., at 400.

In 1982, Congress reauthorized the Act for 25 years, but did not alter its coverage formula. See Voting Rights Act ***539** Amendments, 96 Stat. 131. Congress did, however, amend the bailout provisions, allowing political subdivisions of covered jurisdictions to bail out. Among other prerequisites for bailout, jurisdictions and their subdivisions must not have used a forbidden test or device, failed to receive preclearance, or lost a § 2 suit, in the ten years prior to seeking bailout. § 2, *id.,* at 131–133.

We upheld each of these reauthorizations against constitutional challenge. See *Georgia v. United States,* 411 U.S. 526, 93 S.Ct. 1702, 36 L.Ed.2d 472 (1973); *City of* ****2621** *Rome v. United States,* 446 U.S. 156, 100 S.Ct. 1548, 64 L.Ed.2d 119 (1980); *Lopez v. Monterey County,* 525 U.S. 266, 119 S.Ct. 693, 142 L.Ed.2d 728 (1999).

In 2006, Congress again reauthorized the Voting Rights Act for 25 years, again without change to its coverage formula. Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act, 120 Stat. 577. Congress also amended § 5 to prohibit more conduct than before. § 5, *id.,* at 580–581; see *Reno v. Bossier Parish School Bd.,* 528 U.S. 320, 341, 120 S.Ct. 866, 145 L.Ed.2d 845 (2000) (*Bossier II*); *Georgia v. Ashcroft,* 539 U.S. 461, 479, 123 S.Ct. 2498, 156 L.Ed.2d 428 (2003). Section 5 now forbids voting changes with "any discriminatory purpose" as well as voting changes that diminish the ability of citizens, on account of race, color, or language minority status, "to elect their preferred candidates of choice." 42 U.S.C. §§ 1973c(b)-(d).

Shortly after this reauthorization, a Texas utility district brought suit, seeking to bail out from the Act's coverage and, in the alternative, challenging the Act's constitutionality. See *Northwest Austin,* 557 U.S., at 200–201, 129 S.Ct. 2504. A three-judge District Court explained that only a State or political subdivision was eligible to seek bailout under the statute, and concluded

that the utility district was not a political subdivision, a term that encompassed only "counties, parishes, and voter-registering subunits." *Northwest Austin Municipal Util. Dist. No. One v. Mukasey,* 573 F.Supp.2d 221, 232 (D.D.C.2008). The District Court also rejected the constitutional challenge. *Id.,* at 283.

***540** We reversed. We explained that " 'normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case.' " *Northwest Austin, supra,* at 205, 129 S.Ct. 2504 (quoting *Escambia County v. McMillan,* 466 U.S. 48, 51, 104 S.Ct. 1577, 80 L.Ed.2d 36 (1984) (*per curiam*)). Concluding that "underlying constitutional concerns," among other things, "compel[led] a broader reading of the bailout provision," we construed the statute to allow the utility district to seek bailout. *Northwest Austin,* 557 U.S., at 207, 129 S.Ct. 2504. In doing so we expressed serious doubts about the Act's continued constitutionality.

We explained that § 5 "imposes substantial federalism costs" and "differentiates between the States, despite our historic tradition that all the States enjoy equal sovereignty." *Id.,* at 202, 203, 129 S.Ct. 2504 (internal quotation marks omitted). We also noted that "[t]hings have changed in the South. Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Id.,* at 202, 129 S.Ct. 2504. Finally, we questioned whether the problems that § 5 meant to address were still "concentrated in the jurisdictions singled out for preclearance." *Id.,* at 203, 129 S.Ct. 2504.

Eight Members of the Court subscribed to these views, and the remaining Member would have held the Act unconstitutional. Ultimately, however, the Court's construction of the bailout provision left the constitutional issues for another day.

B

Shelby County is located in Alabama, a covered jurisdiction. It has not sought bailout, as the Attorney General has recently objected to voting changes proposed from within the county. See App. 87a–92a. Instead, in 2010, the county sued the Attorney General in Federal District Court in Washington, D.C., seeking a declaratory judgment that sections 4(b) and 5 ****2622** of the Voting Rights Act are facially unconstitutional, as well as a permanent injunction against their ***541** enforcement. The District Court ruled against the county and upheld the Act. 811 F.Supp.2d 424, 508 (2011). The court found that the evidence before Congress in 2006 was sufficient to justify reauthorizing § 5 and continuing the § 4(b) coverage formula.

The Court of Appeals for the D.C. Circuit affirmed. In assessing § 5, the D.C. Circuit considered six primary categories of evidence: Attorney General objections to voting changes, Attorney General requests for more information regarding voting changes, successful § 2 suits in covered jurisdictions, the dispatching of federal observers to monitor elections in covered jurisdictions, § 5 preclearance suits involving covered jurisdictions, and the deterrent effect of § 5. See 679 F.3d 848, 862–863 (2012). After extensive analysis of the record, the court accepted Congress's conclusion that § 2 litigation remained inadequate in the covered jurisdictions to protect the rights of minority voters, and that § 5 was therefore still necessary. *Id.,* at 873.

Turning to § 4, the D.C. Circuit noted that the evidence for singling out the covered jurisdictions was "less robust" and that the issue presented "a close question." *Id.,* at 879. But the court looked to data comparing the number of successful § 2 suits in the different parts of the country. Coupling that evidence with the deterrent effect of § 5, the court concluded that the statute continued "to single out the jurisdictions in which discrimination is concentrated," and thus held that the coverage formula passed constitutional muster. *Id.,* at 883.

Judge Williams dissented. He found "no positive correlation between inclusion in § 4(b)'s coverage formula and low black registration or turnout." *Id.,* at 891. Rather, to the extent there was any correlation, it actually went the other way: "condemnation

under § 4(b) is a marker of *higher* black registration and turnout." *Ibid.* (emphasis added). Judge Williams also found that "[c]overed jurisdictions have *far more* black officeholders as a proportion of the black ***542** population than do uncovered ones." *Id.,* at 892. As to the evidence of successful § 2 suits, Judge Williams disaggregated the reported cases by State, and concluded that "[t]he five worst uncovered jurisdictions ... have worse records than eight of the covered jurisdictions." *Id.,* at 897. He also noted that two covered jurisdictions—Arizona and Alaska—had not had any successful reported § 2 suit brought against them during the entire 24 years covered by the data. *Ibid.* Judge Williams would have held the coverage formula of § 4(b) "irrational" and unconstitutional. *Id.,* at 885.

We granted certiorari. 568 U.S. ——, 133 S.Ct. 594, 184 L.Ed.2d 389 (2012).

II

In *Northwest Austin,* we stated that "the Act imposes current burdens and must be justified by current needs." 557 U.S., at 203, 129 S.Ct. 2504. And we concluded that "a departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets." *Ibid.* These basic principles guide our review of the question before us. [1]

****2623** A

The Constitution and laws of the United States are "the supreme Law of the Land." U.S. Const., Art. VI, cl. 2. State legislation may not contravene federal law. The Federal Government does not, however, have a general right to review and veto state enactments before they go into effect. A proposal to grant such authority to "negative" state laws was considered at the Constitutional Convention, but rejected in favor of allowing state laws to take effect, subject to later challenge under the Supremacy Clause. See 1 ***543** Records of the Federal Convention of 1787, pp. 21, 164–168 (M. Farrand ed. 1911); 2 *id.,* at 27–29, 390–392.

Outside the strictures of the Supremacy Clause, States retain broad autonomy in structuring their governments and pursuing legislative objectives. Indeed, the Constitution provides that all powers not specifically granted to the Federal Government are reserved to the States or citizens. Amdt. 10. This "allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States." *Bond v. United States,* 564 U.S. ——, ——, 131 S.Ct. 2355, 2364, 180 L.Ed.2d 269 (2011). But the federal balance "is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power." *Ibid.* (internal quotation marks omitted).

More specifically, " 'the Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections.' " *Gregory v. Ashcroft,* 501 U.S. 452, 461–462, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991) (quoting *Sugarman v. Dougall,* 413 U.S. 634, 647, 93 S.Ct. 2842, 37 L.Ed.2d 853 (1973); some internal quotation marks omitted). Of course, the Federal Government retains significant control over federal elections. For instance, the Constitution authorizes Congress to establish the time and manner for electing Senators and Representatives. Art. I, § 4, cl. 1; see also *Arizona v. Inter Tribal Council of Ariz., Inc.,* —— U.S., at —— – ——, 133 S.Ct., at 2253 – 2254. But States have "broad powers to determine the conditions under which the right of suffrage may be exercised." *Carrington v. Rash,* 380 U.S. 89, 91, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965) (internal quotation marks omitted); see also *Arizona, ante,* at —— U.S., at —— – ——, 133 S.Ct., at 2257 – 2259. And "[e]ach State has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen." *Boyd v. Nebraska ex rel. Thayer,* 143 U.S. 135, 161, 12 S.Ct. 375, 36 L.Ed. 103 (1892). Drawing lines for

congressional districts is likewise "primarily the duty and responsibility of the State." *Perry v. Perez,* 565 U.S. ——, ——, 132 S.Ct. 934, 940, 181 L.Ed.2d 900 (2012) (*per curiam*) (internal quotation marks omitted).

***544** Not only do States retain sovereignty under the Constitution, there is also a "fundamental principle of *equal* sovereignty" among the States. *Northwest Austin, supra,* at 203, 129 S.Ct. 2504 (citing *United States v. Louisiana,* 363 U.S. 1, 16, 80 S.Ct. 961, 4 L.Ed.2d 1025 (1960); *Lessee of Pollard v. Hagan,* 3 How. 212, 223, 11 L.Ed. 565 (1845); and *Texas v. White,* 7 Wall. 700, 725–726, 19 L.Ed. 227 (1869); emphasis added). Over a hundred years ago, this Court explained that our Nation "was and is a union of States, equal in power, dignity and authority." *Coyle v. Smith,* 221 U.S. 559, 567, 31 S.Ct. 688, 55 L.Ed. 853 (1911). Indeed, "the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized." *Id.,* at 580, 31 S.Ct. 688. *Coyle* concerned the admission of new States, and *Katzenbach* rejected the notion that the principle ****2624** operated as a *bar* on differential treatment outside that context. 383 U.S., at 328–329, 86 S.Ct. 803. At the same time, as we made clear in *Northwest Austin,* the fundamental principle of equal sovereignty remains highly pertinent in assessing subsequent disparate treatment of States. 557 U.S., at 203, 129 S.Ct. 2504.

The Voting Rights Act sharply departs from these basic principles. It suspends "*all* changes to state election law—however innocuous—until they have been precleared by federal authorities in Washington, D.C." *Id.,* at 202, 129 S.Ct. 2504. States must beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own, subject of course to any injunction in a § 2 action. The Attorney General has 60 days to object to a preclearance request, longer if he requests more information. See 28 C.F.R. §§ 51.9, 51.37. If a State seeks preclearance from a three-judge court, the process can take years.

And despite the tradition of equal sovereignty, the Act applies to only nine States (and several additional counties). While one State waits months or years and expends funds to implement a validly enacted law, its neighbor can typically put the same law into effect immediately, through the normal ***545** legislative process. Even if a noncovered jurisdiction is sued, there are important differences between those proceedings and preclearance proceedings; the preclearance proceeding "not only switches the burden of proof to the supplicant jurisdiction, but also applies substantive standards quite different from those governing the rest of the nation." 679 F.3d, at 884 (Williams, J., dissenting) (case below).

All this explains why, when we first upheld the Act in 1966, we described it as "stringent" and "potent." *Katzenbach,* 383 U.S., at 308, 315, 337, 86 S.Ct. 803. We recognized that it "may have been an uncommon exercise of congressional power," but concluded that "legislative measures not otherwise appropriate" could be justified by "exceptional conditions." *Id.,* at 334, 86 S.Ct. 803. We have since noted that the Act "authorizes federal intrusion into sensitive areas of state and local policymaking," *Lopez,* 525 U.S., at 282, 119 S.Ct. 693, and represents an "extraordinary departure from the traditional course of relations between the States and the Federal Government," *Presley v. Etowah County Comm'n,* 502 U.S. 491, 500–501, 112 S.Ct. 820, 117 L.Ed.2d 51 (1992). As we reiterated in *Northwest Austin,* the Act constitutes "extraordinary legislation otherwise unfamiliar to our federal system." 557 U.S., at 211, 129 S.Ct. 2504.

B

In 1966, we found these departures from the basic features of our system of government justified. The "blight of racial discrimination in voting" had "infected the electoral process in parts of our country for nearly a century." *Katzenbach,* 383 U.S., at 308, 86 S.Ct. 803. Several States had enacted a variety of requirements and tests "specifically designed to prevent" African–Americans from voting. *Id.,* at 310, 86 S.Ct. 803. Case-by-case litigation had proved inadequate to prevent such racial discrimination in voting, in part because States "merely switched to discriminatory devices not covered by the federal decrees," "enacted difficult new tests," or simply "defied and evaded court orders." *Id.,* at 314, 86 S.Ct. 803. Shortly before ***546**

enactment of the Voting Rights Act, only 19.4 percent of African–Americans of voting age were registered to vote in Alabama, only 31.8 percent in Louisiana, and only 6.4 percent in Mississippi. *Id.,* at 313, 86 S.Ct. 803. Those figures were roughly ****2625** 50 percentage points or more below the figures for whites. *Ibid.*

In short, we concluded that "[u]nder the compulsion of these unique circumstances, Congress responded in a permissibly decisive manner." *Id.,* at 334, 335, 86 S.Ct. 803. We also noted then and have emphasized since that this extraordinary legislation was intended to be temporary, set to expire after five years. *Id.,* at 333, 86 S.Ct. 803; *Northwest Austin, supra,* at 199, 129 S.Ct. 2504.

At the time, the coverage formula—the means of linking the exercise of the unprecedented authority with the problem that warranted it—made sense. We found that "Congress chose to limit its attention to the geographic areas where immediate action seemed necessary." *Katzenbach,* 383 U.S., at 328, 86 S.Ct. 803. The areas where Congress found "evidence of actual voting discrimination" shared two characteristics: "the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points below the national average." *Id.,* at 330, 86 S.Ct. 803. We explained that "[t]ests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." *Ibid.* We therefore concluded that "the coverage formula [was] rational in both practice and theory." *Ibid.* It accurately reflected those jurisdictions uniquely characterized by voting discrimination "on a pervasive scale," linking coverage to the devices used to effectuate discrimination and to the resulting disenfranchisement. *Id.,* at 308, 86 S.Ct. 803. The formula ensured that the "stringent remedies [were] aimed at areas where voting discrimination ha[d] been most flagrant." *Id.,* at 315, 86 S.Ct. 803.

***547** C

Nearly 50 years later, things have changed dramatically. Shelby County contends that the preclearance requirement, even without regard to its disparate coverage, is now unconstitutional. Its arguments have a good deal of force. In the covered jurisdictions, "[v]oter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Northwest Austin,* 557 U.S., at 202, 129 S.Ct. 2504. The tests and devices that blocked access to the ballot have been forbidden nationwide for over 40 years. See § 6, 84 Stat. 315; § 102, 89 Stat. 400.

Those conclusions are not ours alone. Congress said the same when it reauthorized the Act in 2006, writing that "[s]ignificant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices." § 2(b)(1), 120 Stat. 577. The House Report elaborated that "the number of African–Americans who are registered and who turn out to cast ballots has increased significantly over the last 40 years, particularly since 1982," and noted that "[i]n some circumstances, minorities register to vote and cast ballots at levels that surpass those of white voters." H.R.Rep. 109–478, at 12 (2006), 2006 U.S.C.C.A.N. 618, 627. That Report also explained that there have been "significant increases in the number of African–Americans serving in elected offices"; more specifically, there has been approximately a 1,000 percent increase since 1965 in the number of African–American elected officials in the six States originally covered by the Voting Rights Act. *Id.,* at 18.

****2626** The following chart, compiled from the Senate and House Reports, compares voter registration numbers from 1965 to those from 2004 in the six originally covered States. These ***548** are the numbers that were before Congress when it reauthorized the Act in 2006:

	1965			2004		
	White	Black	Gap	White	Black	Gap
Alabama	69.2	19.3	49.9	73.8	72.9	0.9
Georgia	62.[6]	27.4	35.2	63.5	64.2	-0.7
Louisiana	80.5	31.6	48.9	75.1	71.1	4.0
Mississippi	69.9	6.7	63.2	72.3	76.1	-3.8
South Carolina	75.7	37.3	38.4	74.4	71.1	3.3
Virginia	61.1	38.3	22.8	68.2	57.4	10.8

See S.Rep. No. 109–295, p. 11 (2006); H.R.Rep. No. 109–478, at 12. The 2004 figures come from the Census Bureau. Census Bureau data from the most recent election indicate that African–American voter turnout exceeded white voter turnout in five of the six States originally covered by § 5, with a gap in the sixth State of less than one half of one percent. See Dept. of Commerce, Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Table 4b). The preclearance statistics are also illuminating. In the first decade after enactment of § 5, the Attorney General objected to 14.2 percent of proposed voting changes. H. R Rep. No. 109–478, at 22. In the last decade before reenactment, the Attorney General objected to a mere 0.16 percent. S.Rep. No. 109–295, at 13.

There is no doubt that these improvements are in large part *because of* the Voting Rights Act. The Act has proved immensely successful at redressing racial discrimination and integrating the voting process. See § 2(b)(1), 120 Stat. 577. During the "Freedom Summer" of 1964, in Philadelphia, Mississippi, three men were murdered while working in the area to register African–American voters. See *United States v. Price,* 383 U.S. 787, 790, 86 S.Ct. 1152, 16 L.Ed.2d 267 (1966). On "Bloody Sunday" in 1965, in Selma, Alabama, police beat and used tear gas against hundreds marching in support of African–American enfranchisement. See *Northwest Austin, supra,* at 220, n. 3, 129 S.Ct. 2504 (THOMAS, J., concurring in judgment in part and dissenting in part). Today both of those towns are governed by African–American mayors. Problems remain in these States and others, but there is no denying that, due to the Voting Rights Act, our Nation has made great strides.

Yet the Act has not eased the restrictions in § 5 or narrowed the scope of the coverage formula in § 4(b) along the way. Those extraordinary and unprecedented features were reauthorized—as if nothing had changed. In fact, the Act's unusual remedies have grown even stronger. When Congress reauthorized the Act in 2006, it did so for another 25 years on top of the previous 40—a far cry from the initial five-year period. See 42 U.S.C. § 1973b(a)(8). Congress also expanded the prohibitions in § 5. We had previously interpreted § 5 to prohibit only those redistricting plans that would have the purpose or effect of worsening the position of minority groups. See *Bossier II,* 528 U.S., at 324, 335–336, 120 S.Ct. 866. In 2006, Congress amended § 5 to prohibit laws that could have favored such groups ****2627** but did not do so because of a discriminatory purpose, see 42 U.S.C. § 1973c(c), even though we had stated that such broadening of § 5 coverage would "exacerbate the substantial federalism costs that the preclearance procedure already exacts, perhaps to the extent of raising concerns about § 5's constitutionality," *Bossier II, supra,* at 336, 120 S.Ct. 866 (citation and internal quotation marks omitted). In addition, Congress expanded § 5 to prohibit any voting law "that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States," on account of race, color, or language minority status, "to elect their preferred candidates of choice." § 1973c(b). In light of those two amendments, the bar that covered jurisdictions ***550** must clear has been raised even as the conditions justifying that requirement have dramatically improved.

We have also previously highlighted the concern that "the preclearance requirements in one State [might] be unconstitutional in another." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504; see *Georgia v. Ashcroft,* 539 U.S., at 491, 123 S.Ct. 2498 (KENNEDY, J., concurring) ("considerations of race that would doom a redistricting plan under the Fourteenth Amendment or § 2 [of the Voting Rights Act] seem to be what save it under § 5"). Nothing has happened since to alleviate this troubling concern about the current application of § 5.

Respondents do not deny that there have been improvements on the ground, but argue that much of this can be attributed to the deterrent effect of § 5, which dissuades covered jurisdictions from engaging in discrimination that they would resume should § 5 be struck down. Under this theory, however, § 5 would be effectively immune from scrutiny; no matter how "clean" the record of covered jurisdictions, the argument could always be made that it was deterrence that accounted for the good behavior.

The provisions of § 5 apply only to those jurisdictions singled out by § 4. We now consider whether that coverage formula is constitutional in light of current conditions.

III

A

When upholding the constitutionality of the coverage formula in 1966, we concluded that it was "rational in both practice and theory." *Katzenbach,* 383 U.S., at 330, 86 S.Ct. 803. The formula looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both.

By 2009, however, we concluded that the "coverage formula raise[d] serious constitutional questions." *Northwest Austin,* 557 U.S., at 204, 129 S.Ct. 2504. As we explained, a statute's "current burdens" must be justified by "current needs," and ***551** any "disparate geographic coverage" must be " sufficiently related to the problem that it targets." *Id.,* at 203, 129 S.Ct. 2504. The coverage formula met that test in 1965, but no longer does so.

Coverage today is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s. But such tests have been banned nationwide for over 40 years. § 6, 84 Stat. 315; § 102, 89 Stat. 400. And voter registration and turnout numbers in the covered States have risen dramatically in the years since. H.R.Rep. No. 109–478, at 12. Racial disparity in those numbers was compelling evidence justifying the preclearance remedy and the coverage formula. See, *e.g.,* ****2628** *Katzenbach, supra,* at 313, 329–330, 86 S.Ct. 803. There is no longer such a disparity.

In 1965, the States could be divided into two groups: those with a recent history of voting tests and low voter registration and turnout, and those without those characteristics. Congress based its coverage formula on that distinction. Today the Nation is no longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were.

B

The Government's defense of the formula is limited. First, the Government contends that the formula is "reverse-engineered": Congress identified the jurisdictions to be covered and *then* came up with criteria to describe them. Brief for Federal Respondent 48–49. Under that reasoning, there need not be any logical relationship between the criteria in the formula and the reason for coverage; all that is necessary is that the formula happen to capture the jurisdictions Congress wanted to single out.

The Government suggests that *Katzenbach* sanctioned such an approach, but the analysis in *Katzenbach* was quite different. *Katzenbach* reasoned that the coverage formula was rational because the "formula ... was relevant to the ***552** problem": "Tests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting

rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." 383 U.S., at 329, 330, 86 S.Ct. 803.

Here, by contrast, the Government's reverse-engineering argument does not even attempt to demonstrate the continued relevance of the formula to the problem it targets. And in the context of a decision as significant as this one—subjecting a disfavored subset of States to "extraordinary legislation otherwise unfamiliar to our federal system," *Northwest Austin, supra,* at 211, 129 S.Ct. 2504—that failure to establish even relevance is fatal.

The Government falls back to the argument that because the formula was relevant in 1965, its continued use is permissible so long as any discrimination remains in the States Congress identified back then—regardless of how that discrimination compares to discrimination in States unburdened by coverage. Brief for Federal Respondent 49–50. This argument does not look to "current political conditions," *Northwest Austin, supra,* at 203, 129 S.Ct. 2504, but instead relies on a comparison between the States in 1965. That comparison reflected the different histories of the North and South. It was in the South that slavery was upheld by law until uprooted by the Civil War, that the reign of Jim Crow denied African–Americans the most basic freedoms, and that state and local governments worked tirelessly to disenfranchise citizens on the basis of race. The Court invoked that history—rightly so—in sustaining the disparate coverage of the Voting Rights Act in 1966. See *Katzenbach, supra,* at 308, 86 S.Ct. 803 ("The constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects.").

But history did not end in 1965. By the time the Act was reauthorized in 2006, there had been 40 more years of it. In assessing the "current need [ ]" for a preclearance system ***553** that treats States differently from one another today, that history cannot be ignored. During that time, largely because of the Voting Rights Act, voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African–Americans attained political office in record numbers. And yet the coverage formula that Congress ****2629** reauthorized in 2006 ignores these developments, keeping the focus on decades-old data relevant to decades-old problems, rather than current data reflecting current needs.

The Fifteenth Amendment commands that the right to vote shall not be denied or abridged on account of race or color, and it gives Congress the power to enforce that command. The Amendment is not designed to punish for the past; its purpose is to ensure a better future. See *Rice v. Cayetano,* 528 U.S. 495, 512, 120 S.Ct. 1044, 145 L.Ed.2d 1007 (2000) ("Consistent with the design of the Constitution, the [Fifteenth] Amendment is cast in fundamental terms, terms transcending the particular controversy which was the immediate impetus for its enactment."). To serve that purpose, Congress—if it is to divide the States—must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. It cannot rely simply on the past. We made that clear in *Northwest Austin,* and we make it clear again today.

C

In defending the coverage formula, the Government, the intervenors, and the dissent also rely heavily on data from the record that they claim justify disparate coverage. Congress compiled thousands of pages of evidence before reauthorizing the Voting Rights Act. The court below and the parties have debated what that record shows—they have gone back and forth about whether to compare covered to noncovered jurisdictions as blocks, how to disaggregate the data State by State, how to weigh § 2 cases as evidence of ongoing discrimination, and whether to consider evidence not before Congress, among other issues. Compare, *e.g.,* ***554** 679 F.3d, at 873–883 (case below), with *id.,* at 889–902 (Williams, J., dissenting). Regardless of how to look at the record, however, no one can fairly say that it shows anything approaching the "pervasive," "flagrant," "widespread," and "rampant" discrimination that faced Congress in 1965, and that clearly distinguished the covered jurisdictions from the rest of the Nation at that time. *Katzenbach, supra,* at 308, 315, 331, 86 S.Ct. 803; *Northwest Austin,* 557 U.S., at 201, 129 S.Ct. 2504.

But a more fundamental problem remains: Congress did not use the record it compiled to shape a coverage formula grounded in current conditions. It instead reenacted a formula based on 40–year–old facts having no logical relation to the present day. The dissent relies on "second-generation barriers," which are not impediments to the casting of ballots, but rather electoral arrangements that affect the weight of minority votes. That does not cure the problem. Viewing the preclearance requirements as targeting such efforts simply highlights the irrationality of continued reliance on the § 4 coverage formula, which is based on voting tests and access to the ballot, not vote dilution. We cannot pretend that we are reviewing an updated statute, or try our hand at updating the statute ourselves, based on the new record compiled by Congress. Contrary to the dissent's contention, see *post,* at 2644, we are not ignoring the record; we are simply recognizing that it played no role in shaping the statutory formula before us today.

The dissent also turns to the record to argue that, in light of voting discrimination in Shelby County, the county cannot complain about the provisions that subject it to preclearance. *Post,* at 2644 – 2648. But that is like saying that a driver pulled over pursuant to a policy of stopping all redheads cannot complain about that policy, if it turns out his license has expired. Shelby ****2630** County's claim is that the coverage formula here is unconstitutional in all its applications, because of how it selects the jurisdictions subjected to preclearance. The ***555** county was selected based on that formula, and may challenge it in court.

D

The dissent proceeds from a flawed premise. It quotes the famous sentence from *McCulloch v. Maryland,* 4 Wheat. 316, 421, 4 L.Ed. 579 (1819), with the following emphasis: "Let the end be legitimate, let it be within the scope of the constitution, and *all means which are appropriate, which are plainly adapted to that end,* which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *Post,* at 2637 (emphasis in dissent). But this case is about a part of the sentence that the dissent does not emphasize—the part that asks whether a legislative means is "consist[ent] with the letter and spirit of the constitution." The dissent states that "[i]t cannot tenably be maintained" that this is an issue with regard to the Voting Rights Act, *post,* at 2637, but four years ago, in an opinion joined by two of today's dissenters, the Court expressly stated that "[t]he Act's preclearance requirement and its coverage formula raise serious constitutional questions." *Northwest Austin, supra,* at 204, 129 S.Ct. 2504. The dissent does not explain how those "serious constitutional questions" became untenable in four short years.

The dissent treats the Act as if it were just like any other piece of legislation, but this Court has made clear from the beginning that the Voting Rights Act is far from ordinary. At the risk of repetition, *Katzenbach* indicated that the Act was "uncommon" and "not otherwise appropriate," but was justified by "exceptional" and "unique" conditions. 383 U.S., at 334, 335, 86 S.Ct. 803. Multiple decisions since have reaffirmed the Act's "extraordinary" nature. See, *e.g., Northwest Austin, supra,* at 211, 129 S.Ct. 2504. Yet the dissent goes so far as to suggest instead that the preclearance requirement and disparate treatment of the States should be upheld into the future "unless there [is] no or almost no evidence of unconstitutional action by States." *Post,* at 2650.

***556** In other ways as well, the dissent analyzes the question presented as if our decision in *Northwest Austin* never happened. For example, the dissent refuses to consider the principle of equal sovereignty, despite *Northwest Austin* 's emphasis on its significance. *Northwest Austin* also emphasized the "dramatic" progress since 1965, 557 U.S., at 201, 129 S.Ct. 2504, but the dissent describes current levels of discrimination as " flagrant," "widespread," and "pervasive," *post,* at 2636, 2641 (internal quotation marks omitted). Despite the fact that *Northwest Austin* requires an Act's "disparate geographic coverage" to be "sufficiently related" to its targeted problems, 557 U.S., at 203, 129 S.Ct. 2504, the dissent maintains that an Act's limited coverage actually eases Congress's burdens, and suggests that a fortuitous relationship should suffice. Although *Northwest Austin* stated definitively that "current burdens" must be justified by "current needs," *ibid.*, the dissent argues that the coverage

formula can be justified by history, and that the required showing can be weaker on reenactment than when the law was first passed.

There is no valid reason to insulate the coverage formula from review merely because it was previously enacted 40 years ago. If Congress had started from scratch in 2006, it plainly could not have enacted the present coverage formula. It would have been irrational for Congress to distinguish ****2631** between States in such a fundamental way based on 40–year–old data, when today's statistics tell an entirely different story. And it would have been irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time. But that is exactly what Congress has done.

* * *

Striking down an Act of Congress "is the gravest and most delicate duty that this Court is called on to perform." *Blodgett v. Holden,* 275 U.S. 142, 148, 48 S.Ct. 105, 72 L.Ed. 206 (1927) (Holmes, J., concurring). We do not do so lightly. That is why, in 2009, we took care to avoid ruling on the constitutionality of the ***557** Voting Rights Act when asked to do so, and instead resolved the case then before us on statutory grounds. But in issuing that decision, we expressed our broader concerns about the constitutionality of the Act. Congress could have updated the coverage formula at that time, but did not do so. Its failure to act leaves us today with no choice but to declare § 4(b) unconstitutional. The formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance.

Our decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in § 2. We issue no holding on § 5 itself, only on the coverage formula. Congress may draft another formula based on current conditions. Such a formula is an initial prerequisite to a determination that exceptional conditions still exist justifying such an "extraordinary departure from the traditional course of relations between the States and the Federal Government." *Presley,* 502 U.S., at 500–501, 112 S.Ct. 820. Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.

The judgment of the Court of Appeals is reversed.

It is so ordered.

Justice THOMAS, concurring.
I join the Court's opinion in full but write separately to explain that I would find § 5 of the Voting Rights Act unconstitutional as well. The Court's opinion sets forth the reasons.

"The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem." *Ante,* at 2618. In the face of "unremitting and ingenious defiance" of citizens' constitutionally protected right to vote, § 5 was necessary to give effect to the Fifteenth Amendment in particular regions of the country. *South Carolina v. Katzenbach,* 383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). Though § 5's preclearance ***558** requirement represented a "shar[p] depart[ure]" from "basic principles" of federalism and the equal sovereignty of the States, *ante,* at 2622, 2623, the Court upheld the measure against early constitutional challenges because it was necessary at the time to address "voting discrimination where it persist[ed] on a pervasive scale." *Katzenbach, supra,* at 308, 86 S.Ct. 803.

Today, our Nation has changed. "[T]he conditions that originally justified [§ 5] no longer characterize voting in the covered jurisdictions." *Ante,* at 2618. As the Court explains: " '[V]oter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels.' " *Ante,* at

2625 (quoting ****2632** *Northwest Austin Municipal Util. Dist. No. One v. Holder,* 557 U.S. 193, 202, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009)).

In spite of these improvements, however, Congress *increased* the already significant burdens of § 5. Following its reenactment in 2006, the Voting Rights Act was amended to "prohibit more conduct than before." *Ante,* at 2621. "Section 5 now forbids voting changes with 'any discriminatory purpose' as well as voting changes that diminish the ability of citizens, on account of race, color, or language minority status, 'to elect their preferred candidates of choice.' " *Ante,* at 2621. While the pre–2006 version of the Act went well beyond protection guaranteed under the Constitution, see *Reno v. Bossier Parish School Bd.,* 520 U.S. 471, 480–482, 117 S.Ct. 1491, 137 L.Ed.2d 730 (1997), it now goes even further.

It is, thus, quite fitting that the Court repeatedly points out that this legislation is "extraordinary" and "unprecedented" and recognizes the significant constitutional problems created by Congress' decision to raise "the bar that covered jurisdictions must clear," even as "the conditions justifying that requirement have dramatically improved." *Ante,* at 2627. However one aggregates the data compiled by Congress, it cannot justify the considerable burdens created by § 5. As the Court aptly notes: "[N]o one can fairly say that [the record] shows anything approaching the 'pervasive,' 'flagrant,' 'widespread,' and 'rampant' discrimination ***559** that faced Congress in 1965, and that clearly distinguished the covered jurisdictions from the rest of the Nation at that time." *Ante,* at 2629. Indeed, circumstances in the covered jurisdictions can no longer be characterized as "exceptional" or "unique." "The extensive pattern of discrimination that led the Court to previously uphold § 5 as enforcing the Fifteenth Amendment no longer exists." *Northwest Austin, supra,* at 226, 129 S.Ct. 2504 (THOMAS, J., concurring in judgment in part and dissenting in part). Section 5 is, thus, unconstitutional.

While the Court claims to "issue no holding on § 5 itself," *ante,* at 2631, its own opinion compellingly demonstrates that Congress has failed to justify " 'current burdens' " with a record demonstrating " 'current needs.' " See *ante,* at 2622 (quoting *Northwest Austin, supra,* at 203, 129 S.Ct. 2504). By leaving the inevitable conclusion unstated, the Court needlessly prolongs the demise of that provision. For the reasons stated in the Court's opinion, I would find § 5 unconstitutional.

Justice GINSBURG, with whom Justice BREYER, Justice SOTOMAYOR, and Justice KAGAN join, dissenting.

In the Court's view, the very success of § 5 of the Voting Rights Act demands its dormancy. Congress was of another mind. Recognizing that large progress has been made, Congress determined, based on a voluminous record, that the scourge of discrimination was not yet extirpated. The question this case presents is who decides whether, as currently operative, § 5 remains justifiable, [1] this Court, or a Congress charged with the obligation to enforce the post-Civil War Amendments "by appropriate legislation." With overwhelming support in both Houses, Congress concluded that, for two prime reasons, § 5 should continue in force, unabated. First, continuance would facilitate completion of the impressive gains thus far made; and second, continuance would ***560** guard against backsliding. Those assessments were well within Congress' province to make and ****2633** should elicit this Court's unstinting approbation.

I

"[V]oting discrimination still exists; no one doubts that." *Ante,* at 2619. But the Court today terminates the remedy that proved to be best suited to block that discrimination. The Voting Rights Act of 1965 (VRA) has worked to combat voting discrimination where other remedies had been tried and failed. Particularly effective is the VRA's requirement of federal preclearance for all changes to voting laws in the regions of the country with the most aggravated records of rank discrimination against minority voting rights.

A century after the Fourteenth and Fifteenth Amendments guaranteed citizens the right to vote free of discrimination on the basis of race, the "blight of racial discrimination in voting" continued to "infec[t] the electoral process in parts of our country." *South Carolina v. Katzenbach,* 383 U.S. 301, 308, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). Early attempts to cope with this vile infection resembled battling the Hydra. Whenever one form of voting discrimination was identified and prohibited, others sprang up in its place. This Court repeatedly encountered the remarkable "variety and persistence" of laws disenfranchising minority citizens. *Id.,* at 311, 86 S.Ct. 803. To take just one example, the Court, in 1927, held unconstitutional a Texas law barring black voters from participating in primary elections, *Nixon v. Herndon,* 273 U.S. 536, 541, 47 S.Ct. 446, 71 L.Ed. 759; in 1944, the Court struck down a "reenacted" and slightly altered version of the same law, *Smith v. Allwright,* 321 U.S. 649, 658, 64 S.Ct. 757, 88 L.Ed. 987; and in 1953, the Court once again confronted an attempt by Texas to "circumven[t]" the Fifteenth Amendment by adopting yet another variant of the all-white primary, *Terry v. Adams,* 345 U.S. 461, 469, 73 S.Ct. 809, 97 L.Ed. 1152.

***561** During this era, the Court recognized that discrimination against minority voters was a quintessentially political problem requiring a political solution. As Justice Holmes explained: If "the great mass of the white population intends to keep the blacks from voting," "relief from [that] great political wrong, if done, as alleged, by the people of a State and the State itself, must be given by them or by the legislative and political department of the government of the United States." *Giles v. Harris,* 189 U.S. 475, 488, 23 S.Ct. 639, 47 L.Ed. 909 (1903).

Congress learned from experience that laws targeting particular electoral practices or enabling case-by-case litigation were inadequate to the task. In the Civil Rights Acts of 1957, 1960, and 1964, Congress authorized and then expanded the power of "the Attorney General to seek injunctions against public and private interference with the right to vote on racial grounds." *Katzenbach,* 383 U.S., at 313, 86 S.Ct. 803. But circumstances reduced the ameliorative potential of these legislative Acts:

> "Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. Alternatively, certain local officials have defied ****2634** and evaded court orders or have simply closed their registration offices to freeze the voting rolls." *Id.,* at 314, 86 S.Ct. 803 (footnote omitted).

Patently, a new approach was needed.

***562** Answering that need, the Voting Rights Act became one of the most consequential, efficacious, and amply justified exercises of federal legislative power in our Nation's history. Requiring federal preclearance of changes in voting laws in the covered jurisdictions—those States and localities where opposition to the Constitution's commands were most virulent—the VRA provided a fit solution for minority voters as well as for States. Under the preclearance regime established by § 5 of the VRA, covered jurisdictions must submit proposed changes in voting laws or procedures to the Department of Justice (DOJ), which has 60 days to respond to the changes. 79 Stat. 439, codified at 42 U.S.C. § 1973c(a). A change will be approved unless DOJ finds it has "the purpose [or] ... the effect of denying or abridging the right to vote on account of race or color." *Ibid.* In the alternative, the covered jurisdiction may seek approval by a three-judge District Court in the District of Columbia.

After a century's failure to fulfill the promise of the Fourteenth and Fifteenth Amendments, passage of the VRA finally led to signal improvement on this front. "The Justice Department estimated that in the five years after [the VRA's] passage, almost as many blacks registered [to vote] in Alabama, Mississippi, Georgia, Louisiana, North Carolina, and South Carolina as in the entire century before 1965." Davidson, The Voting Rights Act: A Brief History, in Controversies in Minority Voting 7, 21 (B. Grofman & C. Davidson eds. 1992). And in assessing the overall effects of the VRA in 2006, Congress found that "[s]ignificant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of

registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices. This progress is the direct result of the Voting Rights Act of 1965." Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and ***563** Amendments Act of 2006 (hereinafter 2006 Reauthorization), § 2(b) (1), 120 Stat. 577. On that matter of cause and effects there can be no genuine doubt.

Although the VRA wrought dramatic changes in the realization of minority voting rights, the Act, to date, surely has not eliminated all vestiges of discrimination against the exercise of the franchise by minority citizens. Jurisdictions covered by the preclearance requirement continued to submit, in large numbers, proposed changes to voting laws that the Attorney General declined to approve, auguring that barriers to minority voting would quickly resurface were the preclearance remedy eliminated. *City of Rome v. United States,* 446 U.S. 156, 181, 100 S.Ct. 1548, 64 L.Ed.2d 119 (1980). Congress also found that as "registration and voting of minority citizens increas[ed], other measures may be resorted to which would dilute increasing minority voting strength." *Ibid.* (quoting H.R.Rep. No. 94–196, p. 10 (1975)). See also *Shaw v. Reno,* 509 U.S. 630, 640, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993) ("[I]t soon became apparent that guaranteeing equal access to the polls would not suffice to root out other racially discriminatory voting practices" such as voting dilution). Efforts to reduce the impact of minority votes, in contrast to direct attempts to block access to the ballot, are aptly described as "second-generation barriers" to minority voting.

****2635** Second-generation barriers come in various forms. One of the blockages is racial gerrymandering, the redrawing of legislative districts in an "effort to segregate the races for purposes of voting." *Id.,* at 642, 113 S.Ct. 2816. Another is adoption of a system of at-large voting in lieu of district-by-district voting in a city with a sizable black minority. By switching to at-large voting, the overall majority could control the election of each city council member, effectively eliminating the potency of the minority's votes. Grofman & Davidson, The Effect of Municipal Election Structure on Black Representation in Eight Southern States, in Quiet Revolution in the ***564** South 301, 319 (C. Davidson & B. Grofman eds. 1994) (hereinafter Quiet Revolution). A similar effect could be achieved if the city engaged in discriminatory annexation by incorporating majority-white areas into city limits, thereby decreasing the effect of VRA-occasioned increases in black voting. Whatever the device employed, this Court has long recognized that vote dilution, when adopted with a discriminatory purpose, cuts down the right to vote as certainly as denial of access to the ballot. *Shaw,* 509 U.S., at 640–641, 113 S.Ct. 2816; *Allen v. State Bd. of Elections,* 393 U.S. 544, 569, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969); *Reynolds v. Sims,* 377 U.S. 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). See also H.R.Rep. No. 109–478, p. 6 (2006) (although "[d]iscrimination today is more subtle than the visible methods used in 1965," "the effect and results are the same, namely a diminishing of the minority community's ability to fully participate in the electoral process and to elect their preferred candidates").

In response to evidence of these substituted barriers, Congress reauthorized the VRA for five years in 1970, for seven years in 1975, and for 25 years in 1982. *Ante,* at 2620 – 2621. Each time, this Court upheld the reauthorization as a valid exercise of congressional power. *Ante,* at 2620. As the 1982 reauthorization approached its 2007 expiration date, Congress again considered whether the VRA's preclearance mechanism remained an appropriate response to the problem of voting discrimination in covered jurisdictions.

Congress did not take this task lightly. Quite the opposite. The 109th Congress that took responsibility for the renewal started early and conscientiously. In October 2005, the House began extensive hearings, which continued into November and resumed in March 2006. S.Rep. No. 109–295, p. 2 (2006). In April 2006, the Senate followed suit, with hearings of its own. *Ibid.* In May 2006, the bills that became the VRA's reauthorization were introduced in both Houses. *Ibid.* The House held further hearings of considerable length, as did the Senate, which continued to hold hearings into June and July. H.R. Rep. 109–478, at 5; ***565** S. Rep. 109–295, at 3–4. In mid-July, the House considered and rejected four amendments, then passed the reauthorization by a vote of 390 yeas to 33 nays. 152 Cong. Rec. H5207 (July 13, 2006); Persily, The Promise and Pitfalls of the New Voting Rights Act, 117 Yale L.J. 174, 182–183 (2007) (hereinafter Persily). The bill was read and debated in the Senate, where it passed by a vote of 98 to 0. 152 Cong. Rec. S8012 (July 20, 2006). President Bush signed it a week later, on July 27, 2006, recognizing the need for "further work ... in the fight against injustice," and calling the reauthorization "an example of our

continued commitment to a united America where every person is valued and treated with dignity and respect." 152 Cong. Rec. S8781 (Aug. 3, 2006).

In the long course of the legislative process, Congress "amassed a sizable record." **2636 *Northwest Austin Municipal Util. Dist. No. One v. Holder,* 557 U.S. 193, 205, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009). See also 679 F.3d 848, 865–873 (C.A.D.C.2012) (describing the "extensive record" supporting Congress' determination that "serious and widespread intentional discrimination persisted in covered jurisdictions"). The House and Senate Judiciary Committees held 21 hearings, heard from scores of witnesses, received a number of investigative reports and other written documentation of continuing discrimination in covered jurisdictions. In all, the legislative record Congress compiled filled more than 15,000 pages. H.R. Rep. 109–478, at 5, 11–12; S. Rep. 109–295, at 2–4, 15. The compilation presents countless "examples of flagrant racial discrimination" since the last reauthorization; Congress also brought to light systematic evidence that "intentional racial discrimination in voting remains so serious and widespread in covered jurisdictions that section 5 preclearance is still needed." 679 F.3d, at 866.

After considering the full legislative record, Congress made the following findings: The VRA has directly caused significant progress in eliminating first-generation barriers to ballot access, leading to a marked increase in minority *566 voter registration and turnout and the number of minority elected officials. 2006 Reauthorization § 2(b)(1). But despite this progress, "second generation barriers constructed to prevent minority voters from fully participating in the electoral process" continued to exist, as well as racially polarized voting in the covered jurisdictions, which increased the political vulnerability of racial and language minorities in those jurisdictions. §§ 2(b)(2)-(3), 120 Stat. 577. Extensive "[e]vidence of continued discrimination," Congress concluded, "clearly show[ed] the continued need for Federal oversight" in covered jurisdictions. §§ 2(b)(4)-(5), *id.,* at 577–578. The overall record demonstrated to the federal lawmakers that, "without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years." § 2(b)(9), *id.,* at 578.

Based on these findings, Congress reauthorized preclearance for another 25 years, while also undertaking to reconsider the extension after 15 years to ensure that the provision was still necessary and effective. 42 U.S.C. § 1973b(a)(7), (8) (2006 ed., Supp. V). The question before the Court is whether Congress had the authority under the Constitution to act as it did.

II

In answering this question, the Court does not write on a clean slate. It is well established that Congress' judgment regarding exercise of its power to enforce the Fourteenth and Fifteenth Amendments warrants substantial deference. The VRA addresses the combination of race discrimination and the right to vote, which is "preservative of all rights." *Yick Wo v. Hopkins,* 118 U.S. 356, 370, 6 S.Ct. 1064, 30 L.Ed. 220 (1886). When confronting the most constitutionally invidious form of discrimination, and the most fundamental right in our democratic system, Congress' power to act is at its height.

*567 The basis for this deference is firmly rooted in both constitutional text and precedent. The Fifteenth Amendment, which targets precisely and only racial discrimination in voting rights, states that, in this domain, "Congress shall have power to enforce this article by appropriate legislation." [2] In choosing this language, the **2637 Amendment's framers invoked Chief Justice Marshall's formulation of the scope of Congress' powers under the Necessary and Proper Clause:

> "Let the end be legitimate, let it be within the scope of the constitution, and *all means which are appropriate, which are plainly adapted to that end,* which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *McCulloch v. Maryland,* 4 Wheat. 316, 421, 4 L.Ed. 579 (1819) (emphasis added).

It cannot tenably be maintained that the VRA, an Act of Congress adopted to shield the right to vote from racial discrimination, is inconsistent with the letter or spirit of the Fifteenth Amendment, or any provision of the Constitution read in light of the Civil War Amendments. Nowhere in today's opinion, or in *Northwest Austin,* [3] is there clear recognition of the transformative effect the Fifteenth Amendment aimed to achieve. Notably, "the Founders' first successful amendment told Congress that it could 'make no law' over a ***568** certain domain"; in contrast, the Civil War Amendments used " language [that] authorized transformative new federal statutes to uproot all vestiges of unfreedom and inequality" and provided "sweeping enforcement powers ... to enact 'appropriate' legislation targeting state abuses." A. Amar, America's Constitution: A Biography 361, 363, 399 (2005). See also McConnell, Institutions and Interpretation: A Critique of *City of Boerne v. Flores,* 111 Harv. L.Rev. 153, 182 (1997) (quoting Civil War-era framer that "the remedy for the violation of the fourteenth and fifteenth amendments was expressly not left to the courts. The remedy was legislative.").

The stated purpose of the Civil War Amendments was to arm Congress with the power and authority to protect all persons within the Nation from violations of their rights by the States. In exercising that power, then, Congress may use "all means which are appropriate, which are plainly adapted" to the constitutional ends declared by these Amendments. *McCulloch,* 4 Wheat., at 421. So when Congress acts to enforce the right to vote free from racial discrimination, we ask not whether Congress has chosen the means most wise, but whether Congress has rationally selected means appropriate to a legitimate end. "It is not for us to review the congressional resolution of [the need for its chosen remedy]. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did." *Katzenbach v. Morgan,* 384 U.S. 641, 653, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966).

Until today, in considering the constitutionality of the VRA, the Court has accorded Congress the full measure of respect its ****2638** judgments in this domain should garner. *South Carolina v. Katzenbach* supplies the standard of review: "As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting." 383 U.S., at 324, 86 S.Ct. 803. Faced with subsequent reauthorizations of the VRA, the ***569** Court has reaffirmed this standard. *E.g., City of Rome,* 446 U.S., at 178, 100 S.Ct. 1548. Today's Court does not purport to alter settled precedent establishing that the dispositive question is whether Congress has employed "rational means."

For three reasons, legislation *re*authorizing an existing statute is especially likely to satisfy the minimal requirements of the rational-basis test. First, when reauthorization is at issue, Congress has already assembled a legislative record justifying the initial legislation. Congress is entitled to consider that preexisting record as well as the record before it at the time of the vote on reauthorization. This is especially true where, as here, the Court has repeatedly affirmed the statute's constitutionality and Congress has adhered to the very model the Court has upheld. See *id.,* at 174, 100 S.Ct. 1548 ("The appellants are asking us to do nothing less than overrule our decision in *South Carolina v. Katzenbach* ..., in which we upheld the constitutionality of the Act."); *Lopez v. Monterey County,* 525 U.S. 266, 283, 119 S.Ct. 693, 142 L.Ed.2d 728 (1999) (similar).

Second, the very fact that reauthorization is necessary arises because Congress has built a temporal limitation into the Act. It has pledged to review, after a span of years (first 15, then 25) and in light of contemporary evidence, the continued need for the VRA. Cf. *Grutter v. Bollinger,* 539 U.S. 306, 343, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003) (anticipating, but not guaranteeing, that, in 25 years, "the use of racial preferences [in higher education] will no longer be necessary").

Third, a reviewing court should expect the record supporting reauthorization to be less stark than the record originally made. Demand for a record of violations equivalent to the one earlier made would expose Congress to a catch–22. If the statute was working, there would be less evidence of discrimination, so opponents might argue that Congress should not be allowed to renew the statute. In contrast, if the statute was not working, there would be plenty of evidence of discrimination, but scant reason to renew a failed regulatory regime. See Persily 193–194.

***570** This is not to suggest that congressional power in this area is limitless. It is this Court's responsibility to ensure that Congress has used appropriate means. The question meet for judicial review is whether the chosen means are "adapted to carry out the objects the amendments have in view." *Ex parte Virginia,* 100 U.S. 339, 346, 25 L.Ed. 676 (1880). The Court's role, then, is not to substitute its judgment for that of Congress, but to determine whether the legislative record sufficed to show that "Congress could rationally have determined that [its chosen] provisions were appropriate methods." *City of Rome,* 446 U.S., at 176–177, 100 S.Ct. 1548.

In summary, the Constitution vests broad power in Congress to protect the right to vote, and in particular to combat racial discrimination in voting. This Court has repeatedly reaffirmed Congress' prerogative to use any rational means in exercise of its power in this area. And both precedent and logic dictate that the rational-means test should be easier to satisfy, and the burden on the statute's challenger should be higher, when what is at issue is the reauthorization of a remedy that the Court has previously affirmed, and that Congress found, from contemporary evidence, ****2639** to be working to advance the legislature's legitimate objective.

III

The 2006 reauthorization of the Voting Rights Act fully satisfies the standard stated in *McCulloch,* 4 Wheat., at 421: Congress may choose any means "appropriate" and "plainly adapted to" a legitimate constitutional end. As we shall see, it is implausible to suggest otherwise.

A

I begin with the evidence on which Congress based its decision to continue the preclearance remedy. The surest way to evaluate whether that remedy remains in order is to see if preclearance is still effectively preventing discriminatory changes to voting laws. See *City of Rome,* 446 U.S., at 181, 100 S.Ct. 1548 (identifying "information on the number and types of ***571** submissions made by covered jurisdictions and the number and nature of objections interposed by the Attorney General" as a primary basis for upholding the 1975 reauthorization). On that score, the record before Congress was huge. In fact, Congress found there were *more* DOJ objections between 1982 and 2004 (626) than there were between 1965 and the 1982 reauthorization (490). 1 Voting Rights Act: Evidence of Continued Need, Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 2d Sess., p. 172 (2006) (hereinafter Evidence of Continued Need).

All told, between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory. H.R.Rep. No. 109–478, at 21. Congress found that the majority of DOJ objections included findings of discriminatory intent, see 679 F.3d, at 867, and that the changes blocked by preclearance were "calculated decisions to keep minority voters from fully participating in the political process." H.R. Rep. 109–478, at 21 (2006), 2006 U.S.C.C.A.N. 618, 631. On top of that, over the same time period the DOJ and private plaintiffs succeeded in more than 100 actions to enforce the § 5 preclearance requirements. 1 Evidence of Continued Need 186, 250.

In addition to blocking proposed voting changes through preclearance, DOJ may request more information from a jurisdiction proposing a change. In turn, the jurisdiction may modify or withdraw the proposed change. The number of such modifications or withdrawals provides an indication of how many discriminatory proposals are deterred without need for formal objection. Congress received evidence that more than 800 proposed changes were altered or withdrawn since the last reauthorization in 1982. H.R.Rep. No. 109–478, at 40–41.[4] Congress also received empirical studies ***572** finding that DOJ's requests for more

information had a significant effect on the degree to which covered ****2640** jurisdictions "compl[ied] with their obligatio[n]" to protect minority voting rights. 2 Evidence of Continued Need 2555.

Congress also received evidence that litigation under § 2 of the VRA was an inadequate substitute for preclearance in the covered jurisdictions. Litigation occurs only after the fact, when the illegal voting scheme has already been put in place and individuals have been elected pursuant to it, thereby gaining the advantages of incumbency. 1 Evidence of Continued Need 97. An illegal scheme might be in place for several election cycles before a § 2 plaintiff can gather sufficient evidence to challenge it. 1 Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose: Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 1st Sess., p. 92 (2005) (hereinafter Section 5 Hearing). And litigation places a heavy financial burden on minority voters. See *id.,* at 84. Congress also received evidence that preclearance lessened the litigation burden on covered jurisdictions themselves, because the preclearance process is far less costly than defending against a § 2 claim, and clearance by DOJ substantially reduces the likelihood that a § 2 claim will be mounted. Reauthorizing the Voting Rights Act's Temporary Provisions: Policy Perspectives and Views From the Field: Hearing before the Subcommittee on the Constitution, Civil Rights and Property Rights of the Senate Committee on the Judiciary, 109th Cong., 2d Sess., ***573** pp. 13, 120–121 (2006). See also Brief for States of New York, California, Mississippi, and North Carolina as *Amici Curiae* 8–9 (Section 5 "reduc[es] the likelihood that a jurisdiction will face costly and protracted Section 2 litigation").

The number of discriminatory changes blocked or deterred by the preclearance requirement suggests that the state of voting rights in the covered jurisdictions would have been significantly different absent this remedy. Surveying the type of changes stopped by the preclearance procedure conveys a sense of the extent to which § 5 continues to protect minority voting rights. Set out below are characteristic examples of changes blocked in the years leading up to the 2006 reauthorization:

- In 1995, Mississippi sought to reenact a dual voter registration system, "which was initially enacted in 1892 to disenfranchise Black voters," and for that reason, was struck down by a federal court in 1987. H.R.Rep. No. 109–478, at 39.

- Following the 2000 census, the City of Albany, Georgia, proposed a redistricting plan that DOJ found to be "designed with the purpose to limit and retrogress the increased black voting strength ... in the city as a whole." *Id.,* at 37 (internal quotation marks omitted).

- In 2001, the mayor and all-white five-member Board of Aldermen of Kilmichael, Mississippi, abruptly canceled the town's election after "an unprecedented number" of African–American candidates announced they were running for office. DOJ required an election, and the town elected its first black mayor and three black aldermen. *Id.,* at 36–37.

- In 2006, this Court found that Texas' attempt to redraw a congressional district to reduce the strength of Latino voters bore "the mark of intentional discrimination that could give rise to an equal protection violation," and ordered the district redrawn in compliance with the VRA. ***574** *League of United Latin American Citizens v. Perry,* 548 U.S. 399, 440 [126 S.Ct. 2594, 165 L.Ed.2d 609] (2006). In response, ****2641** Texas sought to undermine this Court's order by curtailing early voting in the district, but was blocked by an action to enforce the § 5 preclearance requirement. See Order in *League of United Latin American Citizens v. Texas,* No. 06–cv–1046 (WD Tex.), Doc. 8.

- In 2003, after African–Americans won a majority of the seats on the school board for the first time in history, Charleston County, South Carolina, proposed an at-large voting mechanism for the board. The proposal, made without consulting any of the African–American members of the school board, was found to be an " 'exact replica' " of an earlier voting scheme that, a federal court had determined, violated the VRA. 811 F.Supp.2d 424, 483 (D.D.C.2011). See also S.Rep. No. 109–295, at 309. DOJ invoked § 5 to block the proposal.

- In 1993, the City of Millen, Georgia, proposed to delay the election in a majority-black district by two years, leaving that district without representation on the city council while the neighboring majority-white district would have three

representatives. 1 Section 5 Hearing 744. DOJ blocked the proposal. The county then sought to move a polling place from a predominantly black neighborhood in the city to an inaccessible location in a predominantly white neighborhood outside city limits. *Id.,* at 816.

- In 2004, Waller County, Texas, threatened to prosecute two black students after they announced their intention to run for office. The county then attempted to reduce the availability of early voting in that election at polling places near a historically black university. 679 F.3d, at 865–866.

- In 1990, Dallas County, Alabama, whose county seat is the City of Selma, sought to purge its voter rolls of many black voters. DOJ rejected the purge as discriminatory, ***575** noting that it would have disqualified many citizens from voting "simply because they failed to pick up or return a voter update form, when there was no valid requirement that they do so." 1 Section 5 Hearing 356.

These examples, and scores more like them, fill the pages of the legislative record. The evidence was indeed sufficient to support Congress' conclusion that "racial discrimination in voting in covered jurisdictions [remained] serious and pervasive." 679 F.3d, at 865. [5]

Congress further received evidence indicating that formal requests of the kind set out above represented only the tip of the iceberg. There was what one commentator described as an "avalanche of case studies of voting rights violations in the covered jurisdictions," ranging from "outright intimidation and violence against minority voters" to "more subtle forms of voting rights deprivations." Persily 202 ****2642** (footnote omitted). This evidence gave Congress ever more reason to conclude that the time had not yet come for relaxed vigilance against the scourge of race discrimination in voting.

True, conditions in the South have impressively improved since passage of the Voting Rights Act. Congress noted this improvement and found that the VRA was the driving force behind it. 2006 Reauthorization § 2(b)(1). But Congress also found that voting discrimination had evolved into ***576** subtler second-generation barriers, and that eliminating preclearance would risk loss of the gains that had been made. §§ 2(b)(2), (9). Concerns of this order, the Court previously found, gave Congress adequate cause to reauthorize the VRA. *City of Rome,* 446 U.S., at 180–182, 100 S.Ct. 1548 (congressional reauthorization of the preclearance requirement was justified based on "the number and nature of objections interposed by the Attorney General" since the prior reauthorization; extension was "necessary to preserve the limited and fragile achievements of the Act and to promote further amelioration of voting discrimination") (internal quotation marks omitted). Facing such evidence then, the Court expressly rejected the argument that disparities in voter turnout and number of elected officials were the only metrics capable of justifying reauthorization of the VRA. *Ibid.*

B

I turn next to the evidence on which Congress based its decision to reauthorize the coverage formula in § 4(b). Because Congress did not alter the coverage formula, the same jurisdictions previously subject to preclearance continue to be covered by this remedy. The evidence just described, of preclearance's continuing efficacy in blocking constitutional violations in the covered jurisdictions, itself grounded Congress' conclusion that the remedy should be retained for those jurisdictions.

There is no question, moreover, that the covered jurisdictions have a unique history of problems with racial discrimination in voting. *Ante,* at 2624 – 2625. Consideration of this long history, still in living memory, was altogether appropriate. The Court criticizes Congress for failing to recognize that "history did not end in 1965." *Ante,* at 2628. But the Court ignores that "what's past is prologue." W. Shakespeare, The Tempest, act 2, sc. 1. And "[t]hose who cannot remember the past are condemned to

repeat it." 1 G. Santayana, The Life of Reason 284 (1905). Congress was ***577** especially mindful of the need to reinforce the gains already made and to prevent backsliding. 2006 Reauthorization § 2(b)(9).

Of particular importance, even after 40 years and thousands of discriminatory changes blocked by preclearance, conditions in the covered jurisdictions demonstrated that the formula was still justified by "current needs." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504.

Congress learned of these conditions through a report, known as the Katz study, that looked at § 2 suits between 1982 and 2004. To Examine the Impact and Effectiveness of the Voting Rights Act: Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 1st Sess., pp. 964–1124 (2005) (hereinafter Impact and Effectiveness). Because the private right of action authorized by § 2 of the VRA applies nationwide, a comparison of § 2 lawsuits in covered and noncovered jurisdictions provides an appropriate yardstick for measuring differences between covered and noncovered jurisdictions. If differences in the risk of voting discrimination between covered and noncovered jurisdictions had disappeared, one would ****2643** expect that the rate of successful § 2 lawsuits would be roughly the same in both areas.[6] The study's findings, however, indicated that racial discrimination in voting remains "concentrated in the jurisdictions singled out for preclearance." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504.

Although covered jurisdictions account for less than 25 percent of the country's population, the Katz study revealed that they accounted for 56 percent of successful § 2 litigation since 1982. Impact and Effectiveness 974. Controlling for population, there were nearly *four* times as many successful § 2 cases in covered jurisdictions as there were in noncovered ***578** jurisdictions. 679 F.3d, at 874. The Katz study further found that § 2 lawsuits are more likely to succeed when they are filed in covered jurisdictions than in noncovered jurisdictions. Impact and Effectiveness 974. From these findings—ignored by the Court—Congress reasonably concluded that the coverage formula continues to identify the jurisdictions of greatest concern.

The evidence before Congress, furthermore, indicated that voting in the covered jurisdictions was more racially polarized than elsewhere in the country. H.R.Rep. No. 109–478, at 34–35. While racially polarized voting alone does not signal a constitutional violation, it is a factor that increases the vulnerability of racial minorities to discriminatory changes in voting law. The reason is twofold. First, racial polarization means that racial minorities are at risk of being systematically outvoted and having their interests underrepresented in legislatures. Second, "when political preferences fall along racial lines, the natural inclinations of incumbents and ruling parties to entrench themselves have predictable racial effects. Under circumstances of severe racial polarization, efforts to gain political advantage translate into race-specific disadvantages." Ansolabehere, Persily, & Stewart, Regional Differences in Racial Polarization in the 2012 Presidential Election: Implications for the Constitutionality of Section 5 of the Voting Rights Act, 126 Harv. L.Rev. Forum 205, 209 (2013).

In other words, a governing political coalition has an incentive to prevent changes in the existing balance of voting power. When voting is racially polarized, efforts by the ruling party to pursue that incentive "will inevitably discriminate against a racial group." *Ibid.* Just as buildings in California have a greater need to be earthquake-proofed, places where there is greater racial polarization in voting have a greater need for prophylactic measures to prevent purposeful race discrimination. This point was understood by Congress and is well recognized in the academic ***579** literature. See 2006 Reauthorization § 2(b)(3), 120 Stat. 577 ("The continued evidence of racially polarized voting in each of the jurisdictions covered by the [preclearance requirement] demonstrates that racial and language minorities remain politically vulnerable"); H.R.Rep. No. 109–478, at 35 (2006), 2006 U.S.C.C.A.N. 618; Davidson, The Recent Evolution of Voting Rights Law Affecting Racial and Language Minorities, in Quiet Revolution 21, 22.

The case for retaining a coverage formula that met needs on the ground was therefore solid. Congress might have been charged with rigidity had it afforded covered ****2644** jurisdictions no way out or ignored jurisdictions that needed superintendence.

Congress, however, responded to this concern. Critical components of the congressional design are the statutory provisions allowing jurisdictions to "bail out" of preclearance, and for court-ordered "bail ins." See *Northwest Austin,* 557 U.S., at 199, 129 S.Ct. 2504. The VRA permits a jurisdiction to bail out by showing that it has complied with the Act for ten years, and has engaged in efforts to eliminate intimidation and harassment of voters. 42 U.S.C. § 1973b(a) (2006 ed. and Supp. V). It also authorizes a court to subject a noncovered jurisdiction to federal preclearance upon finding that violations of the Fourteenth and Fifteenth Amendments have occurred there. § 1973a(c) (2006 ed.).

Congress was satisfied that the VRA's bailout mechanism provided an effective means of adjusting the VRA's coverage over time. H.R.Rep. No. 109–478, at 25 (the success of bailout "illustrates that: (1) covered status is neither permanent nor over-broad; and (2) covered status has been and continues to be within the control of the jurisdiction such that those jurisdictions that have a genuinely clean record and want to terminate coverage have the ability to do so"). Nearly 200 jurisdictions have successfully bailed out of the preclearance requirement, and DOJ has consented to every bailout application filed by an eligible jurisdiction since the current bailout procedure became effective in 1984. Brief for Federal Respondent 54. The bail-in mechanism has also ***580** worked. Several jurisdictions have been subject to federal preclearance by court orders, including the States of New Mexico and Arkansas. App. to Brief for Federal Respondent 1a–3a.

This experience exposes the inaccuracy of the Court's portrayal of the Act as static, unchanged since 1965. Congress designed the VRA to be a dynamic statute, capable of adjusting to changing conditions. True, many covered jurisdictions have not been able to bail out due to recent acts of noncompliance with the VRA, but that truth reinforces the congressional judgment that these jurisdictions were rightfully subject to preclearance, and ought to remain under that regime.

IV

Congress approached the 2006 reauthorization of the VRA with great care and seriousness. The same cannot be said of the Court's opinion today. The Court makes no genuine attempt to engage with the massive legislative record that Congress assembled. Instead, it relies on increases in voter registration and turnout as if that were the whole story. See *supra,* at 2641 – 2642. Without even identifying a standard of review, the Court dismissively brushes off arguments based on "data from the record," and declines to enter the "debat [e about] what [the] record shows." *Ante,* at 2629. One would expect more from an opinion striking at the heart of the Nation's signal piece of civil-rights legislation.

I note the most disturbing lapses. First, by what right, given its usual restraint, does the Court even address Shelby County's facial challenge to the VRA? Second, the Court veers away from controlling precedent regarding the "equal sovereignty" doctrine without even acknowledging that it is doing so. Third, hardly showing the respect ordinarily paid when Congress acts to implement the Civil War Amendments, and as just stressed, the Court does not even deign to grapple with the legislative record.

***581** A

Shelby County launched a purely facial challenge to the VRA's 2006 reauthorization. ****2645** "A facial challenge to a legislative Act," the Court has other times said, "is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno,* 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987).

"[U]nder our constitutional system[,] courts are not roving commissions assigned to pass judgment on the validity of the Nation's laws." *Broadrick v. Oklahoma,* 413 U.S. 601, 610–611, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). Instead, the "judicial Power"

is limited to deciding particular "Cases" and "Controversies." U.S. Const., Art. III, § 2. "Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court." *Broadrick,* 413 U.S., at 610, 93 S.Ct. 2908. Yet the Court's opinion in this case contains not a word explaining why Congress lacks the power to subject to preclearance the particular plaintiff that initiated this lawsuit—Shelby County, Alabama. The reason for the Court's silence is apparent, for as applied to Shelby County, the VRA's preclearance requirement is hardly contestable.

Alabama is home to Selma, site of the "Bloody Sunday" beatings of civil-rights demonstrators that served as the catalyst for the VRA's enactment. Following those events, Martin Luther King, Jr., led a march from Selma to Montgomery, Alabama's capital, where he called for passage of the VRA. If the Act passed, he foresaw, progress could be made even in Alabama, but there had to be a steadfast national commitment to see the task through to completion. In King's words, "the arc of the moral universe is long, but it bends toward justice." G. May, Bending Toward Justice: ***582** The Voting Rights Act and the Transformation of American Democracy 144 (2013).

History has proved King right. Although circumstances in Alabama have changed, serious concerns remain. Between 1982 and 2005, Alabama had one of the highest rates of successful § 2 suits, second only to its VRA-covered neighbor Mississippi. 679 F.3d, at 897 (Williams, J., dissenting). In other words, even while subject to the restraining effect of § 5, Alabama was found to have "deni[ed] or abridge[d]" voting rights "on account of race or color" more frequently than nearly all other States in the Union. 42 U.S.C. § 1973(a). This fact prompted the dissenting judge below to concede that "a more narrowly tailored coverage formula" capturing Alabama and a handful of other jurisdictions with an established track record of racial discrimination in voting "might be defensible." 679 F.3d, at 897 (opinion of Williams, J.). That is an understatement. Alabama's sorry history of § 2 violations alone provides sufficient justification for Congress' determination in 2006 that the State should remain subject to § 5's preclearance requirement. [7]

****2646** A few examples suffice to demonstrate that, at least in Alabama, the "current burdens" imposed by § 5's preclearance requirement are "justified by current needs." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504. In the interim between the VRA's 1982 and 2006 reauthorizations, this Court twice confronted purposeful racial discrimination in Alabama. In *Pleasant Grove v. United States,* 479 U.S. 462, 107 S.Ct. 794, 93 L.Ed.2d 866 (1987), the Court held that Pleasant Grove—a city in Jefferson County, Shelby County's neighbor—engaged in purposeful ***583** discrimination by annexing all-white areas while rejecting the annexation request of an adjacent black neighborhood. The city had "shown unambiguous opposition to racial integration, both before and after the passage of the federal civil rights laws," and its strategic annexations appeared to be an attempt "to provide for the growth of a monolithic white voting block" for "the impermissible purpose of minimizing future black voting strength." *Id.,* at 465, 471–472, 107 S.Ct. 794.

Two years before *Pleasant Grove,* the Court in *Hunter v. Underwood,* 471 U.S. 222, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985), struck down a provision of the Alabama Constitution that prohibited individuals convicted of misdemeanor offenses "involving moral turpitude" from voting. *Id.,* at 223, 105 S.Ct. 1916 (internal quotation marks omitted). The provision violated the Fourteenth Amendment's Equal Protection Clause, the Court unanimously concluded, because "its original enactment was motivated by a desire to discriminate against blacks on account of race[,] and the [provision] continues to this day to have that effect." *Id.,* at 233, 105 S.Ct. 1916.

Pleasant Grove and *Hunter* were not anomalies. In 1986, a Federal District Judge concluded that the at-large election systems in several Alabama counties violated § 2. *Dillard v. Crenshaw Cty.,* 640 F.Supp. 1347, 1354–1363 (M.D.Ala.1986). Summarizing its findings, the court stated that "[f]rom the late 1800's through the present, [Alabama] has consistently erected barriers to keep black persons from full and equal participation in the social, economic, and political life of the state." *Id.,* at 1360.

The *Dillard* litigation ultimately expanded to include 183 cities, counties, and school boards employing discriminatory at-large election systems. *Dillard v. Baldwin Cty. Bd. of Ed.,* 686 F.Supp. 1459, 1461 (M.D.Ala.1988). One of those defendants was Shelby County, which eventually signed a consent decree to resolve the claims against it. See *Dillard v. Crenshaw Cty.,* 748 F.Supp. 819 (M.D.Ala.1990).

Although the *Dillard* litigation resulted in overhauls of numerous electoral systems tainted by racial discrimination, concerns about backsliding persist. In 2008, for example, ***584** the city of Calera, located in Shelby County, requested preclearance of a redistricting plan that "would have eliminated the city's sole majority-black district, which had been created pursuant to the consent decree in *Dillard*." 811 F.Supp.2d 424, 443 (D.D.C.2011). Although DOJ objected to the plan, Calera forged ahead with elections based on the unprecleared voting changes, resulting in the defeat of the incumbent African–American councilman who represented the former majority-black district. *Ibid.* The city's defiance required DOJ to bring a § 5 enforcement action that ultimately yielded appropriate redress, including restoration of the majority-black district. *Ibid.*; Brief for Respondent–Intervenors Earl Cunningham et al. 20.

A recent FBI investigation provides a further window into the persistence of racial discrimination in state politics. See ****2647** *United States v. McGregor,* 824 F.Supp.2d 1339, 1344–1348 (M.D.Ala.2011). Recording devices worn by state legislators cooperating with the FBI's investigation captured conversations between members of the state legislature and their political allies. The recorded conversations are shocking. Members of the state Senate derisively refer to African–Americans as "Aborigines" and talk openly of their aim to quash a particular gambling-related referendum because the referendum, if placed on the ballot, might increase African–American voter turnout. *Id.,* at 1345–1346 (internal quotation marks omitted). See also *id.,* at 1345 (legislators and their allies expressed concern that if the referendum were placed on the ballot, " '[e]very black, every illiterate' would be 'bused [to the polls] on HUD financed buses' "). These conversations occurred not in the 1870's, or even in the 1960's, they took place in 2010. *Id.,* at 1344–1345. The District Judge presiding over the criminal trial at which the recorded conversations were introduced commented that the "recordings represent compelling evidence that political exclusion through racism remains a real and enduring problem" in Alabama. ***585** *Id.,* at 1347. Racist sentiments, the judge observed, "remain regrettably entrenched in the high echelons of state government." *Ibid.*

These recent episodes forcefully demonstrate that § 5's preclearance requirement is constitutional as applied to Alabama and its political subdivisions. [8] And under our case law, that conclusion should suffice to resolve this case. See *United States v. Raines,* 362 U.S. 17, 24–25, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960) ("[I]f the complaint here called for an application of the statute clearly constitutional under the Fifteenth Amendment, that should have been an end to the question of constitutionality."). See also *Nevada Dept. of Human Resources v. Hibbs,* 538 U.S. 721, 743, 123 S.Ct. 1972, 155 L.Ed.2d 953 (2003) (SCALIA, J., dissenting) (where, as here, a state or local government raises a facial challenge to a federal statute on the ground that it exceeds Congress' enforcement powers under the Civil War Amendments, the challenge fails if the opposing party is able to show that the statute "could constitutionally be applied to *some* jurisdictions").

This Court has consistently rejected constitutional challenges to legislation enacted pursuant to Congress' enforcement powers under the Civil War Amendments upon finding that the legislation was constitutional as applied to the particular set of circumstances before the Court. See *United States v. Georgia,* 546 U.S. 151, 159, 126 S.Ct. 877, 163 L.Ed.2d 650 (2006) (Title II of the Americans with Disabilities Act of 1990 (ADA) validly abrogates state sovereign immunity "insofar as [it] creates a private cause of action ... for conduct that *actually* violates the Fourteenth Amendment"); *Tennessee v. Lane,* 541 U.S. 509, 530–534, 124 S.Ct. 1978, 158 L.Ed.2d 820 (2004) (Title II of the ADA is constitutional "as it applies to the class of cases implicating the fundamental right of access to the courts"); ***586** *Raines,* 362 U.S., at 24–26, 80 S.Ct. 519 (federal statute proscribing deprivations of the right to vote based on race was constitutional as applied to the state officials before the Court, even if it could not constitutionally be applied to other parties). A similar approach is warranted here. [9]

**2648 The VRA's exceptionally broad severability provision makes it particularly inappropriate for the Court to allow Shelby County to mount a facial challenge to §§ 4(b) and 5 of the VRA, even though application of those provisions to the county falls well within the bounds of Congress' legislative authority. The severability provision states:

> "If any provision of [this Act] or the application thereof to any person or circumstances is held invalid, the remainder of [the Act] and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby." 42 U.S.C. § 1973p.

In other words, even if the VRA could not constitutionally be applied to certain States—*e.g.,* Arizona and Alaska, see *ante,* at 2622 —§ 1973p calls for those unconstitutional applications to be severed, leaving the Act in place for juris-dictions as to which its application does not transgress constitutional limits.

Nevertheless, the Court suggests that limiting the jurisdictional scope of the VRA in an appropriate case would be "to try our hand at updating the statute." *Ante,* at 2629. *587 Just last Term, however, the Court rejected this very argument when addressing a materially identical severability provision, explaining that such a provision is "Congress' explicit textual instruction to leave unaffected the remainder of [the Act]" if any particular " application is unconstitutional." *National Federation of Independent Business v. Sebelius,* 567 U.S. ——, ——, 132 S.Ct. 2566, 2639, 183 L.Ed.2d 450 (2012) (plurality opinion) (internal quotation marks omitted); *id.,* at ——, 132 S.Ct., at 2641–2642 (GINSBURG, J., concurring in part, concurring in judgment in part, and dissenting in part) (slip op., at 60) (agreeing with the plurality's severability analysis). See also *Raines,* 362 U.S., at 23, 80 S.Ct. 519 (a statute capable of some constitutional applications may nonetheless be susceptible to a facial challenge only in "that rarest of cases where this Court can justifiably think itself able confidently to discern that Congress would not have desired its legislation to stand at all unless it could validly stand in its every application"). Leaping to resolve Shelby County's facial challenge without considering whether application of the VRA to Shelby County is constitutional, or even addressing the VRA's severability provision, the Court's opinion can hardly be described as an exemplar of restrained and moderate decisionmaking. Quite the opposite. Hubris is a fit word for today's demolition of the VRA.

B

The Court stops any application of § 5 by holding that § 4(b)'s coverage formula is unconstitutional. It pins this result, in large measure, to "the fundamental principle of equal sovereignty." *Ante,* at 2623 – 2624, 2630. In *Katzenbach,* however, the Court held, in no uncertain terms, that the principle "*applies only to the terms upon which States are admitted to the Union,* and not to the remedies for local evils which have subsequently appeared." 383 U.S., at 328–329, 86 S.Ct. 803 (emphasis added).

**2649 *Katzenbach,* the Court acknowledges, "rejected the notion that the [equal sovereignty] principle operate[s] as a bar on *588 differential treatment outside [the] context [of the admission of new States]." *Ante,* at 2623 – 2624 (citing 383 U.S., at 328–329, 86 S.Ct. 803) (emphasis omitted). But the Court clouds that once clear understanding by citing dictum from *Northwest Austin* to convey that the principle of equal sovereignty "remains highly pertinent in assessing subsequent disparate treatment of States." *Ante,* at 2624 (citing 557 U.S., at 203, 129 S.Ct. 2504). See also *ante,* at 2630 (relying on *Northwest Austin* 's "emphasis on [the] significance" of the equal-sovereignty principle). If the Court is suggesting that dictum in *Northwest Austin* silently overruled *Katzenbach* 's limitation of the equal sovereignty doctrine to "the admission of new States," the suggestion is untenable. *Northwest Austin* cited *Katzenbach* 's holding in the course of *declining to decide* whether the VRA was constitutional or even what standard of review applied to the question. 557 U.S., at 203–204, 129 S.Ct. 2504. In today's decision, the Court ratchets up what was pure dictum in *Northwest Austin,* attributing breadth to the equal sovereignty principle in flat contradiction of *Katzenbach*. The Court does so with nary an explanation of why it finds *Katzenbach* wrong, let alone

any discussion of whether *stare decisis* nonetheless counsels adherence to *Katzenbach* 's ruling on the limited "significance" of the equal sovereignty principle.

Today's unprecedented extension of the equal sovereignty principle outside its proper domain—the admission of new States—is capable of much mischief. Federal statutes that treat States disparately are hardly novelties. See, *e.g.,* 28 U.S.C. § 3704 (no State may operate or permit a sports-related gambling scheme, unless that State conducted such a scheme "at any time during the period beginning January 1, 1976, and ending August 31, 1990"); 26 U.S.C. § 142(*l*) (EPA required to locate green building project in a State meeting specified population criteria); 42 U.S.C. § 3796bb (at least 50 percent of rural drug enforcement assistance funding must be allocated to States with "a population density of fifty-two or fewer persons per ***589** square mile or a State in which the largest county has fewer than one hundred and fifty thousand people, based on the decennial census of 1990 through fiscal year 1997"); §§ 13925, 13971 (similar population criteria for funding to combat rural domestic violence); § 10136 (specifying rules applicable to Nevada's Yucca Mountain nuclear waste site, and providing that " [n]o State, other than the State of Nevada, may receive financial assistance under this subsection after December 22, 1987"). Do such provisions remain safe given the Court's expansion of equal sovereignty's sway?

Of gravest concern, Congress relied on our pathmarking *Katzenbach* decision in each reauthorization of the VRA. It had every reason to believe that the Act's limited geographical scope would weigh in favor of, not against, the Act's constitutionality. See, *e.g., United States v. Morrison,* 529 U.S. 598, 626–627, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000) (confining preclearance regime to States with a record of discrimination bolstered the VRA's constitutionality). Congress could hardly have foreseen that the VRA's limited geographic reach would render the Act constitutionally suspect. See Persily 195 ("[S]upporters of the Act sought to develop an evidentiary record for the principal purpose of explaining why the covered jurisdictions should remain covered, rather than justifying the coverage of certain jurisdictions but not others.").

In the Court's conception, it appears, defenders of the VRA could not prevail ****2650** upon showing what the record overwhelmingly bears out, *i.e.,* that there is a need for continuing the preclearance regime in covered States. In addition, the defenders would have to disprove the existence of a comparable need elsewhere. See Tr. of Oral Arg. 61–62 (suggesting that proof of egregious episodes of racial discrimination in covered jurisdictions would not suffice to carry the day for the VRA, unless such episodes are shown to be absent elsewhere). I am aware of no precedent for imposing such a double burden on defenders of legislation.

***590** C

The Court has time and again declined to upset legislation of this genre unless there was no or almost no evidence of unconstitutional action by States. See, *e.g., City of Boerne v. Flores,* 521 U.S. 507, 530, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997) (legislative record "mention[ed] no episodes [of the kind the legislation aimed to check] occurring in the past 40 years"). No such claim can be made about the congressional record for the 2006 VRA reauthorization. Given a record replete with examples of denial or abridgment of a paramount federal right, the Court should have left the matter where it belongs: in Congress' bailiwick.

Instead, the Court strikes § 4(b)'s coverage provision because, in its view, the provision is not based on "current conditions." *Ante,* at 2627. It discounts, however, that one such condition was the preclearance remedy in place in the covered jurisdictions, a remedy Congress designed both to catch discrimination before it causes harm, and to guard against return to old ways. 2006 Reauthorization § 2(b)(3), (9). Volumes of evidence supported Congress' determination that the prospect of retrogression was real. Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.

But, the Court insists, the coverage formula is no good; it is based on "decades-old data and eradicated practices." *Ante,* at 2627. Even if the legislative record shows, as engaging with it would reveal, that the formula accurately identifies the jurisdictions with the worst conditions of voting discrimination, that is of no moment, as the Court sees it. Congress, the Court decrees, must "star[t] from scratch." *Ante,* at 2630. I do not see why that should be so.

Congress' chore was different in 1965 than it was in 2006. In 1965, there were a "small number of States ... which in most instances were familiar to Congress by name," on which Congress fixed its attention. ***591** *Katzenbach,* 383 U.S., at 328, 86 S.Ct. 803. In drafting the coverage formula, " Congress began work with reliable evidence of actual voting discrimination in a great majority of the States" it sought to target. *Id.,* at 329, 86 S.Ct. 803. "The formula [Congress] eventually evolved to describe these areas" also captured a few States that had not been the subject of congressional factfinding. *Ibid.* Nevertheless, the Court upheld the formula in its entirety, finding it fair "to infer a significant danger of the evil" in all places the formula covered. *Ibid.*

The situation Congress faced in 2006, when it took up *re* authorization of the coverage formula, was not the same. By then, the formula had been in effect for many years, and *all* of the jurisdictions covered by it were "familiar to Congress by name." *Id.,* at 328, 86 S.Ct. 803. The question before Congress: Was there still a sufficient basis to support continued application of the preclearance remedy in each of those already-identified places? There was at that point no chance that the ****2651** formula might inadvertently sweep in new areas that were not the subject of congressional findings. And Congress could determine from the record whether the jurisdictions captured by the coverage formula still belonged under the preclearance regime. If they did, there was no need to alter the formula. That is why the Court, in addressing prior reauthorizations of the VRA, did not question the continuing "relevance" of the formula.

Consider once again the components of the record before Congress in 2006. The coverage provision identified a known list of places with an undisputed history of serious problems with racial discrimination in voting. Recent evidence relating to Alabama and its counties was there for all to see. Multiple Supreme Court decisions had upheld the coverage provision, most recently in 1999. There was extensive evidence that, due to the preclearance mechanism, conditions in the covered jurisdictions had notably improved. And there was evidence that preclearance was still having a substantial real-world effect, having stopped hundreds of ***592** discriminatory voting changes in the covered jurisdictions since the last reauthorization. In addition, there was evidence that racial polarization in voting was higher in covered jurisdictions than elsewhere, increasing the vulnerability of minority citizens in those jurisdictions. And countless witnesses, reports, and case studies documented continuing problems with voting discrimination in those jurisdictions. In light of this record, Congress had more than a reasonable basis to conclude that the existing coverage formula was not out of sync with conditions on the ground in covered areas. And certainly Shelby County was no candidate for release through the mechanism Congress provided. See *supra,* at 2643 – 2645, 2646 – 2647.

The Court holds § 4(b) invalid on the ground that it is "irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time." *Ante,* at 2631. But the Court disregards what Congress set about to do in enacting the VRA. That extraordinary legislation scarcely stopped at the particular tests and devices that happened to exist in 1965. The grand aim of the Act is to secure to all in our polity equal citizenship stature, a voice in our democracy undiluted by race. As the record for the 2006 reauthorization makes abundantly clear, second-generation barriers to minority voting rights have emerged in the covered jurisdictions as attempted *substitutes* for the first-generation barriers that originally triggered preclearance in those jurisdictions. See *supra,* at 2634 – 2635, 2636, 2640 – 2641.

The sad irony of today's decision lies in its utter failure to grasp why the VRA has proven effective. The Court appears to believe that the VRA's success in eliminating the specific devices extant in 1965 means that preclearance is no longer needed. *Ante,* at 2629 – 2630, 2630 – 2631. With that belief, and the argument derived from it, history repeats itself. The same assumption—that the problem could be solved when particular methods of voting discrimination are ***593** identified and eliminated—was indulged and proved wrong repeatedly prior to the VRA's enactment. Unlike prior statutes, which singled out particular tests or devices, the VRA is grounded in Congress' recognition of the "variety and persistence" of measures designed to impair minority

voting rights. *Katzenbach,* 383 U.S., at 311, 86 S.Ct. 803; *supra,* at 2633. In truth, the evolution of voting discrimination into more subtle second-generation barriers is powerful evidence that a remedy as effective as preclearance remains vital to protect minority voting rights and prevent backsliding.

Beyond question, the VRA is no ordinary legislation. It is extraordinary because ****2652** Congress embarked on a mission long delayed and of extraordinary importance: to realize the purpose and promise of the Fifteenth Amendment. For a half century, a concerted effort has been made to end racial discrimination in voting. Thanks to the Voting Rights Act, progress once the subject of a dream has been achieved and continues to be made.

The record supporting the 2006 reauthorization of the VRA is also extraordinary. It was described by the Chairman of the House Judiciary Committee as "one of the most extensive considerations of any piece of legislation that the United States Congress has dealt with in the 27 & half; years" he had served in the House. 152 Cong. Rec. H5143 (July 13, 2006) (statement of Rep. Sensenbrenner). After exhaustive evidence-gathering and deliberative process, Congress reauthorized the VRA, including the coverage provision, with overwhelming bipartisan support. It was the judgment of Congress that "40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution." 2006 Reauthorization § 2(b)(7), 120 Stat. 577. That determination of the body empowered to enforce the Civil War Amendments "by appropriate legislation" merits this Court's ***594** utmost respect. In my judgment, the Court errs egregiously by overriding Congress' decision.

* * *

For the reasons stated, I would affirm the judgment of the Court of Appeals.

All Citations

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Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 Both the Fourteenth and Fifteenth Amendments were at issue in *Northwest Austin,* see Juris. Statement i, and Brief for Federal Appellee 29–30, in *Northwest Austin Municipal Util. Dist. No. One v. Holder,* O.T. 2008, No. 08–322, and accordingly *Northwest Austin* guides our review under both Amendments in this case.

1 The Court purports to declare unconstitutional only the coverage formula set out in § 4(b). See *ante,* at 2631. But without that formula, § 5 is immobilized.

2 The Constitution uses the words "right to vote" in five separate places: the Fourteenth, Fifteenth, Nineteenth, Twenty–Fourth, and Twenty–Sixth Amendments. Each of these Amendments contains the same broad empowerment of Congress to enact "appropriate legislation" to enforce the protected right. The implication is unmistakable: Under our constitutional structure, Congress holds the lead rein in making the right to vote equally real for all U.S. citizens. These Amendments are in line with the special role assigned to Congress in protecting the integrity of the democratic process in federal elections. U.S. Const., Art. I, § 4 ("[T]he Congress may at any time by Law make or alter" regulations concerning the "Times, Places and Manner of holding Elections for Senators and Representatives."); *Arizona v. Inter Tribal Council of Ariz., Inc.,* ── U.S., ——, —— – ——, 133 S.Ct. 2247, —— – ——, 186L.Ed.2d 239 (2013).

3 Acknowledging the existence of "serious constitutional questions," see *ante,* at 2630 (internal quotation marks omitted), does not suggest how those questions should be answered.

4 This number includes only changes actually proposed. Congress also received evidence that many covered jurisdictions engaged in an "informal consultation process" with DOJ before formally submitting a proposal, so that the deterrent effect of preclearance was far broader than the formal submissions alone suggest. The Continuing Need for Section 5 Pre–Clearance: Hearing before the Senate Committee on the Judiciary, 109th Cong., 2d Sess., pp. 53–54 (2006). All agree that an unsupported assertion about "deterrence" would not be sufficient to justify keeping a remedy in place in perpetuity. See *ante,* at 2627. But it was certainly reasonable for Congress to consider the testimony of witnesses who had worked with officials in covered jurisdictions and observed a real-world deterrent effect.

5 For an illustration postdating the 2006 reauthorization, see *South Carolina v. United States,* 898 F.Supp.2d 30 (D.D.C.2012), which involved a South Carolina voter-identification law enacted in 2011. Concerned that the law would burden minority voters, DOJ brought a § 5 enforcement action to block the law's implementation. In the course of the litigation, South Carolina officials agreed to binding interpretations that made it "far easier than some might have expected or feared" for South Carolina citizens to vote. *Id.,* at 37. A three-judge panel precleared the law after adopting both interpretations as an express "condition of preclearance." *Id.,* at 37–38. Two of the judges commented that the case demonstrated "the continuing utility of Section 5 of the Voting Rights Act in deterring problematic, and hence encouraging non-discriminatory, changes in state and local voting laws." *Id.,* at 54 (opinion of Bates, J.).

6 Because preclearance occurs only in covered jurisdictions and can be expected to stop the most obviously objectionable measures, one would expect a *lower* rate of successful § 2 lawsuits in those jurisdictions if the risk of voting discrimination there were the same as elsewhere in the country.

7 This lawsuit was filed by Shelby County, a political subdivision of Alabama, rather than by the State itself. Nevertheless, it is appropriate to judge Shelby County's constitutional challenge in light of instances of discrimination statewide because Shelby County is subject to § 5's preclearance requirement by virtue of *Alabama's* designation as a covered jurisdiction under § 4(b) of the VRA. See *ante,* at 2621 – 2622. In any event, Shelby County's recent record of employing an at-large electoral system tainted by intentional racial discrimination is by itself sufficient to justify subjecting the county to § 5's preclearance mandate. See *infra,* at 2646.

8 Congress continued preclearance over Alabama, including Shelby County, *after* considering evidence of current barriers there to minority voting clout. Shelby County, thus, is no "redhead" caught up in an arbitrary scheme. See *ante,* at 2629.

9 The Court does not contest that Alabama's history of racial discrimination provides a sufficient basis for Congress to require Alabama and its political subdivisions to preclear electoral changes. Nevertheless, the Court asserts that Shelby County may prevail on its facial challenge to § 4's coverage formula because it is subject to § 5's preclearance requirement by virtue of that formula. See *ante,* at 2630 ("The county was selected [for preclearance] based on th[e] [coverage] formula."). This misses the reality that Congress decided to subject Alabama to preclearance based on evidence of continuing constitutional violations in that State. See *supra,* at 2647, n. 8.

INTRODUCTION TO FEDERAL VOTING RIGHTS LAWS

The Effect of the Voting Rights Act

Soon after passage of the Voting Rights Act, federal examiners were conducting voter registration, and black voter registration began a sharp increase. The cumulative effect of the Supreme Court's decisions, Congress' enactment of voting rights legislation, and the ongoing efforts of concerned private citizens and the Department of Justice, has been to restore the right to vote guaranteed by the 14th and 15th Amendments. The Voting Rights Act itself has been called the single most effective piece of civil rights legislation ever passed by Congress.

Last Revised - June 19, 2009

>

Updated August 6, 2015

HISTORY OF FEDERAL VOTING RIGHTS LAWS

THE VOTING RIGHTS ACT OF 1965

The 1965 Enactment

By 1965 concerted efforts to break the grip of state disfranchisement had been under way for some time, but had achieved only modest success overall and in some areas had proved almost entirely ineffectual. The murder of voting-rights activists in Philadelphia, Mississippi, gained national attention, along with numerous other acts of violence and terrorism. Finally, the unprovoked attack on March 7, 1965, by state troopers on peaceful marchers crossing the Edmund Pettus Bridge in Selma, Alabama, en route to the state capitol in Montgomery, persuaded the President and Congress to overcome Southern legislators' resistance to effective voting rights legislation. President Johnson issued a call for a strong voting rights law and hearings began soon thereafter on the bill that would become the Voting Rights Act.

Congress determined that the existing federal anti-discrimination laws were not sufficient to overcome the resistance by state officials to enforcement of the 15th Amendment. The legislative hearings showed that the Department of Justice's efforts to eliminate discriminatory election practices by litigation on a case-by-case basis had been unsuccessful in opening up the registration process; as soon as one discriminatory practice or procedure was proven to be unconstitutional and enjoined, a new one would be substituted in its place and litigation would have to commence anew.

President Johnson signed the resulting legislation into law on August 6, 1965. Section 2 of the Act, which closely followed the language of the 15th amendment, applied a nationwide prohibition against the denial or abridgment of the right to vote on the literacy tests on a nationwide basis. Among its other provisions, the Act contained special enforcement provisions targeted at those areas of the country where Congress believed the potential for discrimination to be the greatest. Under Section 5, jurisdictions covered by these special provisions could not implement any change affecting voting until the Attorney General or the United States District Court for the District of Columbia determined that the change did not have a discriminatory purpose and would not have a discriminatory effect. In addition, the Attorney General could designate a county covered by these special provisions for the appointment of a federal examiner to review the qualifications of persons who wanted to register to vote. Further, in those counties where a federal examiner was serving, the Attorney General could request that federal observers monitor activities within the county's polling place.

The Voting Rights Act had not included a provision prohibiting poll taxes, but had directed the Attorney General to challenge its use. In *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663 (1966), the Supreme Court held Virginia's poll tax to be unconstitutional under the 14th Amendment. Between 1965 and 1969 the Supreme Court also issued several key decisions upholding the constitutionality of Section 5 and affirming the broad range of voting practices that required Section 5 review. As the Supreme Court put it in its 1966 decision upholding the constitutionality of the Act:

> Congress had found that case-by-case litigation was inadequate to combat wide-spread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims.

South Carolina v. *Katzenbach*, 383 U.S. 301, 327-28 (1966).

The 1970 and 1975 Amendments

Congress extended Section 5 for five years in 1970 and for seven years in 1975. With these extensions Congress validated the Supreme Court's broad interpretation of the scope of Section 5. During the hearings on these extensions Congress heard extensive testimony concerning the ways in which voting electorates were manipulated through gerrymandering, annexations, adoption of at-large elections, and other structural changes to prevent newly-registered black voters from effectively using the ballot. Congress also heard extensive testimony about voting discrimination that had been suffered by Hispanic, Asian and Native American citizens, and the 1975 amendments added protections from voting discrimination for language minority citizens.

In 1973, the Supreme Court held certain legislative multi-member districts unconstitutional under the 14th Amendment on the ground that they systematically diluted the voting strength of minority citizens in Bexar County, Texas. This decision in *White* v. *Regester*, 412 U.S. 755 (1973), strongly shaped litigation through the 1970s against at-large systems and gerrymandered redistricting plans. In *Mobile* v. *Bolden*, 446 U.S. 55 (1980), however, the Supreme Court required that any constitutional claim of minority vote dilution must include proof of a racially discriminatory purpose, a requirement that was widely seen as making such claims far more difficult to prove.

The 1982 Amendments

Congress renewed in 1982 the special provisions of the Act, triggered by coverage under Section 4 for twenty-five years. Congress also adopted a new standard, which went into effect in 1985, providing how jurisdictions could terminate (or "bail out" from) coverage under the provisions of Section 4. Furthermore, after extensive hearings, Congress amended Section 2 to provide that a plaintiff could establish a violation of the Section without having to prove discriminatory purpose.

The 2006 Amendments

Congress renewed the special provisions of the Act in 2006 as part of the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, Cesar E. Chavez, Barbara Jordan, William Velazquez and Dr. Hector Garcia Voting Rights Act Reauthorization and Amendments Act. The 2006 legislation eliminated the provision for voting examiners.

Updated July 28, 2017

UNITED STATES SENATE

Roll Call Vote 109th Congress - 2nd Session

Vote Summary

XML

Question: On Passage of the Bill (H.R.9)

Vote Number: 212 **Vote Date:** July 20, 2006, 04:28 PM

Required For Majority: 1/2 **Vote Result:** Bill Passed

Measure Number: H.R. 9 (Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006)

Measure Title: A bill to amend the Voting Rights Act of 1965.

Vote Counts: YEAs 98
NAYs 0
Not Voting 2

*Information compiled through Senate LIS by the Senate bill clerk under the direction of the secretary of the Senate

Vote Summary By Senator Name By Vote Position
By Home State

Alphabetical by Senator Name

Akaka (D-HI), **Yea**
Alexander (R-TN), **Yea**
Allard (R-CO), **Yea**
Allen (R-VA), **Yea**
Baucus (D-MT), **Yea**
Bayh (D-IN), **Yea**
Bennett (R-UT), **Yea**
Biden (D-DE), **Yea**
Bingaman (D-NM), **Yea**
Bond (R-MO), **Yea**
Boxer (D-CA), **Yea**
Brownback (R-KS), **Yea**
Bunning (R-KY), **Yea**
Burns (R-MT), **Yea**
Burr (R-NC), **Yea**
Byrd (D-WV), **Yea**
Cantwell (D-WA), **Yea**
Carper (D-DE), **Yea**
Chafee (R-RI), **Yea**
Chambliss (R-GA), **Yea**
Clinton (D-NY), **Yea**
Coburn (R-OK), **Yea**
Cochran (R-MS), **Yea**
Coleman (R-MN), **Yea**
Collins (R-ME), **Yea**
Conrad (D-ND), **Yea**
Cornyn (R-TX), **Yea**
Craig (R-ID), **Yea**
Crapo (R-ID), **Not Voting**
Dayton (D-MN), **Yea**
DeMint (R-SC), **Yea**
DeWine (R-OH), **Yea**
Dodd (D-CT), **Yea**
Dole (R-NC), **Yea**
Domenici (R-NM), **Yea**
Dorgan (D-ND), **Yea**
Durbin (D-IL), **Yea**
Ensign (R-NV), **Yea**
Enzi (R-WY), **Not Voting**
Feingold (D-WI), **Yea**
Feinstein (D-CA), **Yea**
Frist (R-TN), **Yea**
Graham (R-SC), **Yea**
Grassley (R-IA), **Yea**
Gregg (R-NH), **Yea**
Hagel (R-NE), **Yea**
Harkin (D-IA), **Yea**
Hatch (R-UT), **Yea**
Hutchison (R-TX), **Yea**
Inhofe (R-OK), **Yea**
Inouye (D-HI), **Yea**
Isakson (R-GA), **Yea**
Jeffords (I-VT), **Yea**
Johnson (D-SD), **Yea**

Kennedy (D-MA), **Yea**
Kerry (D-MA), **Yea**
Kohl (D-WI), **Yea**
Kyl (R-AZ), **Yea**
Landrieu (D-LA), **Yea**
Lautenberg (D-NJ), **Yea**
Leahy (D-VT), **Yea**
Levin (D-MI), **Yea**
Lieberman (D-CT), **Yea**
Lincoln (D-AR), **Yea**
Lott (R-MS), **Yea**
Lugar (R-IN), **Yea**
Martinez (R-FL), **Yea**
McCain (R-AZ), **Yea**
McConnell (R-KY), **Yea**
Menendez (D-NJ), **Yea**
Mikulski (D-MD), **Yea**
Murkowski (R-AK), **Yea**
Murray (D-WA), **Yea**
Nelson (D-FL), **Yea**
Nelson (D-NE), **Yea**
Obama (D-IL), **Yea**
Pryor (D-AR), **Yea**
Reed (D-RI), **Yea**
Reid (D-NV), **Yea**
Roberts (R-KS), **Yea**
Rockefeller (D-WV), **Yea**
Salazar (D-CO), **Yea**
Santorum (R-PA), **Yea**
Sarbanes (D-MD), **Yea**
Schumer (D-NY), **Yea**
Sessions (R-AL), **Yea**
Shelby (R-AL), **Yea**
Smith (R-OR), **Yea**
Snowe (R-ME), **Yea**
Specter (R-PA), **Yea**
Stabenow (D-MI), **Yea**
Stevens (R-AK), **Yea**
Sununu (R-NH), **Yea**
Talent (R-MO), **Yea**
Thomas (R-WY), **Yea**
Thune (R-SD), **Yea**
Vitter (R-LA), **Yea**
Voinovich (R-OH), **Yea**
Warner (R-VA), **Yea**
Wyden (D-OR), **Yea**

Vote Summary By Senator Name By Vote Position
By Home State

Grouped By Vote Position

YEAs ---98

Akaka (D-HI)
Alexander (R-TN)
Allard (R-CO)
Allen (R-VA)
Baucus (D-MT)
Bayh (D-IN)
Bennett (R-UT)
Biden (D-DE)
Bingaman (D-NM)
Bond (R-MO)
Boxer (D-CA)
Brownback (R-KS)
Bunning (R-KY)
Burns (R-MT)
Burr (R-NC)
Byrd (D-WV)
Cantwell (D-WA)
Carper (D-DE)
Chafee (R-RI)
Chambliss (R-GA)
Clinton (D-NY)
Coburn (R-OK)
Cochran (R-MS)
Coleman (R-MN)
Collins (R-ME)
Conrad (D-ND)
Cornyn (R-TX)
Craig (R-ID)
Dayton (D-MN)
DeMint (R-SC)
DeWine (R-OH)
Dodd (D-CT)
Dole (R-NC)
Domenici (R-NM)
Dorgan (D-ND)
Durbin (D-IL)
Ensign (R-NV)
Feingold (D-WI)
Feinstein (D-CA)
Frist (R-TN)
Graham (R-SC)
Grassley (R-IA)
Gregg (R-NH)
Hagel (R-NE)
Harkin (D-IA)
Hatch (R-UT)
Hutchison (R-TX)
Inhofe (R-OK)
Inouye (D-HI)
Isakson (R-GA)
Jeffords (I-VT)
Johnson (D-SD)
Kennedy (D-MA)
Kerry (D-MA)
Kohl (D-WI)
Kyl (R-AZ)
Landrieu (D-LA)
Lautenberg (D-NJ)
Leahy (D-VT)
Levin (D-MI)
Lieberman (D-CT)
Lincoln (D-AR)
Lott (R-MS)
Lugar (R-IN)
Martinez (R-FL)
McCain (R-AZ)
McConnell (R-KY)
Menendez (D-NJ)
Mikulski (D-MD)
Murkowski (R-AK)
Murray (D-WA)
Nelson (D-FL)
Nelson (D-NE)
Obama (D-IL)
Pryor (D-AR)

Reed (D-RI)
Reid (D-NV)
Roberts (R-KS)
Rockefeller (D-WV)
Salazar (D-CO)
Santorum (R-PA)
Sarbanes (D-MD)
Schumer (D-NY)
Sessions (R-AL)
Shelby (R-AL)
Smith (R-OR)
Snowe (R-ME)
Specter (R-PA)
Stabenow (D-MI)
Stevens (R-AK)
Sununu (R-NH)
Talent (R-MO)
Thomas (R-WY)
Thune (R-SD)
Vitter (R-LA)
Voinovich (R-OH)
Warner (R-VA)
Wyden (D-OR)

Not Voting - 2

Crapo (R-ID)
Enzi (R-WY)

Vote Summary By Senator Name By Vote Position
By Home State

Grouped by Home State

Alabama:
Sessions (R-AL), **Yea**
Shelby (R-AL), **Yea**

Alaska:
Murkowski (R-AK), **Yea**
Stevens (R-AK), **Yea**

Arizona:
Kyl (R-AZ), **Yea**
McCain (R-AZ), **Yea**

Arkansas:
Lincoln (D-AR), **Yea**
Pryor (D-AR), **Yea**

California:
Boxer (D-CA), **Yea**
Feinstein (D-CA), **Yea**

Colorado:
Allard (R-CO), **Yea**
Salazar (D-CO), **Yea**

Connecticut:
Dodd (D-CT), **Yea**
Lieberman (D-CT), **Yea**

Delaware:
Biden (D-DE), **Yea**
Carper (D-DE), **Yea**

Florida:
Martinez (R-FL), **Yea**
Nelson (D-FL), **Yea**

Georgia:
Chambliss (R-GA), **Yea**
Isakson (R-GA), **Yea**

Hawaii:
Akaka (D-HI), **Yea**
Inouye (D-HI), **Yea**

Idaho:
Craig (R-ID), **Yea**
Crapo (R-ID), **Not Voting**

Illinois:
Durbin (D-IL), **Yea**
Obama (D-IL), **Yea**

Indiana:
Bayh (D-IN), **Yea**
Lugar (R-IN), **Yea**

Iowa:
Grassley (R-IA), **Yea**
Harkin (D-IA), **Yea**

Kansas:

Brownback (R-KS), **Yea**	Roberts (R-KS), **Yea**
Kentucky:	
Bunning (R-KY), **Yea**	McConnell (R-KY), **Yea**
Louisiana:	
Landrieu (D-LA), **Yea**	Vitter (R-LA), **Yea**
Maine:	
Collins (R-ME), **Yea**	Snowe (R-ME), **Yea**
Maryland:	
Mikulski (D-MD), **Yea**	Sarbanes (D-MD), **Yea**
Massachusetts:	
Kennedy (D-MA), **Yea**	Kerry (D-MA), **Yea**
Michigan:	
Levin (D-MI), **Yea**	Stabenow (D-MI), **Yea**
Minnesota:	
Coleman (R-MN), **Yea**	Dayton (D-MN), **Yea**
Mississippi:	
Cochran (R-MS), **Yea**	Lott (R-MS), **Yea**
Missouri:	
Bond (R-MO), **Yea**	Talent (R-MO), **Yea**
Montana:	
Baucus (D-MT), **Yea**	Burns (R-MT), **Yea**
Nebraska:	
Hagel (R-NE), **Yea**	Nelson (D-NE), **Yea**
Nevada:	
Ensign (R-NV), **Yea**	Reid (D-NV), **Yea**
New Hampshire:	
Gregg (R-NH), **Yea**	Sununu (R-NH), **Yea**
New Jersey:	
Lautenberg (D-NJ), **Yea**	Menendez (D-NJ), **Yea**
New Mexico:	
Bingaman (D-NM), **Yea**	Domenici (R-NM), **Yea**
New York:	
Clinton (D-NY), **Yea**	Schumer (D-NY), **Yea**
North Carolina:	
Burr (R-NC), **Yea**	Dole (R-NC), **Yea**
North Dakota:	
Conrad (D-ND), **Yea**	Dorgan (D-ND), **Yea**
Ohio:	
DeWine (R-OH), **Yea**	Voinovich (R-OH), **Yea**
Oklahoma:	
Coburn (R-OK), **Yea**	Inhofe (R-OK), **Yea**
Oregon:	
Smith (R-OR), **Yea**	Wyden (D-OR), **Yea**
Pennsylvania:	
Santorum (R-PA), **Yea**	Specter (R-PA), **Yea**
Rhode Island:	
Chafee (R-RI), **Yea**	Reed (D-RI), **Yea**

South Carolina:

DeMint (R-SC), **Yea** Graham (R-SC), **Yea**

South Dakota:

Johnson (D-SD), **Yea** Thune (R-SD), **Yea**

Tennessee:

Alexander (R-TN), **Yea** Frist (R-TN), **Yea**

Texas:

Cornyn (R-TX), **Yea** Hutchison (R-TX), **Yea**

Utah:

Bennett (R-UT), **Yea** Hatch (R-UT), **Yea**

Vermont:

Jeffords (I-VT), **Yea** Leahy (D-VT), **Yea**

Virginia:

Allen (R-VA), **Yea** Warner (R-VA), **Yea**

Washington:

Cantwell (D-WA), **Yea** Murray (D-WA), **Yea**

West Virginia:

Byrd (D-WV), **Yea** Rockefeller (D-WV), **Yea**

Wisconsin:

Feingold (D-WI), **Yea** Kohl (D-WI), **Yea**

Wyoming:

Enzi (R-WY), **Not Voting** Thomas (R-WY), **Yea**

Vote Summary By Senator Name By Vote Position
By Home State

FINAL VOTE RESULTS FOR ROLL CALL 374

(Republicans in roman; Democrats in *italic*; Independents underlined)

H R 9 RECORDED VOTE 13-Jul-2006 5:38 PM
QUESTION: On Passage
BILL TITLE: Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act

	AYES	NOES	PRES	NV
REPUBLICAN	192	33		5
DEMOCRATIC	197			4
INDEPENDENT	1			
TOTALS	**390**	**33**		**9**

---- AYES 390 ---

Abercrombie	Goodlatte	Nussle
Ackerman	*Gordon*	*Oberstar*
Aderholt	Granger	*Obey*
Akin	Green (WI)	*Olver*
Alexander	*Green, Al*	*Ortiz*
Allen	*Green, Gene*	Osborne
Andrews	*Grijalva*	Otter
Baca	*Gutierrez*	*Owens*
Bachus	Gutknecht	Oxley
Baird	Hall	*Pallone*
Baldwin	*Harman*	*Pascrell*
Barrow	Harris	*Pastor*
Bass	Hart	*Payne*
Bean	*Hastings (FL)*	Pearce
Beauprez	Hastings (WA)	*Pelosi*
Becerra	Hayes	Pence
Berkley	Hayworth	*Peterson (MN)*
Berman	*Herseth*	Peterson (PA)
Berry	*Higgins*	Petri
Biggert	*Hinchey*	Pickering
Bilbray	*Hinojosa*	Pitts
Bilirakis	Hobson	Platts
Bishop (GA)	Hoekstra	Poe
Bishop (NY)	*Holden*	Pombo
Bishop (UT)	*Holt*	*Pomeroy*
Blackburn	*Honda*	Porter
Blumenauer	*Hooley*	*Price (NC)*
Blunt	Hostettler	Pryce (OH)
Boehlert	*Hoyer*	Putnam
Boehner	Hulshof	Radanovich
Bonilla	Hunter	*Rahall*
Bono	Hyde	Ramstad
Boozman	Inglis (SC)	*Rangel*

Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Butterfield
Buyer
Calvert
Camp (MI)
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Clyburn
Coble
Cole (OK)
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Tom
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schmidt
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
Strickland
Stupak

DeFazio	Marchant	Sullivan
DeGette	*Markey*	Sweeney
Delahunt	*Marshall*	*Tanner*
DeLauro	*Matheson*	*Tauscher*
Dent	*Matsui*	*Taylor (MS)*
Diaz-Balart, L.	*McCarthy*	Taylor (NC)
Diaz-Balart, M.	McCaul (TX)	Terry
Dicks	*McCollum (MN)*	Thomas
Dingell	McCotter	*Thompson (CA)*
Doggett	McCrery	*Thompson (MS)*
Doyle	*McDermott*	Tiberi
Drake	*McGovern*	*Tierney*
Dreier	McHugh	*Towns*
Edwards	*McIntyre*	Turner
Ehlers	McKeon	*Udall (CO)*
Emanuel	*McKinney*	*Udall (NM)*
Emerson	McMorris	Upton
Engel	*Meehan*	*Van Hollen*
English (PA)	*Meek (FL)*	*Velázquez*
Eshoo	*Meeks (NY)*	*Visclosky*
Etheridge	*Melancon*	Walden (OR)
Farr	Mica	Walsh
Fattah	*Michaud*	Wamp
Feeney	*Millender-McDonald*	*Wasserman Schultz*
Ferguson	Miller (FL)	*Waters*
Filner	Miller (MI)	*Watson*
Fitzpatrick (PA)	*Miller (NC)*	*Watt*
Flake	*Miller, George*	*Waxman*
Foley	*Mollohan*	*Weiner*
Forbes	*Moore (KS)*	Weldon (FL)
Ford	*Moore (WI)*	Weldon (PA)
Fortenberry	Moran (KS)	Weller
Fossella	*Moran (VA)*	*Wexler*
Frank (MA)	Murphy	Whitfield
Frelinghuysen	*Murtha*	Wicker
Gallegly	Musgrave	Wilson (NM)
Gerlach	Myrick	Wilson (SC)
Gibbons	*Nadler*	Wolf
Gilchrest	*Napolitano*	*Woolsey*
Gillmor	*Neal (MA)*	*Wu*
Gohmert	Neugebauer	*Wynn*
Gonzalez	Ney	Young (AK)
Goode	Nunes	Young (FL)

---- NOES 33 ---

Baker	Everett	McHenry
Barrett (SC)	Foxx	Miller, Gary
Bartlett (MD)	Franks (AZ)	Norwood
Barton (TX)	Garrett (NJ)	Paul
Bonner	Gingrey	Price (GA)
Burton (IN)	Hefley	Rohrabacher
Campbell (CA)	Hensarling	Royce

Conaway	Herger	Shadegg
Deal (GA)	Johnson, Sam	Tancredo
Doolittle	King (IA)	Thornberry
Duncan	Linder	Westmoreland

---- NOT VOTING 9 ---

Carson	Graves	Sessions
Davis, Jo Ann	*McNulty*	*Slaughter*
Evans	Northup	Tiahrt

THE WHITE HOUSE
PRESIDENT
GEORGE W. BUSH

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For Immediate Release
Office of the Press Secretary
July 27, 2006

Fact Sheet: Voting Rights Act Reauthorization and Amendments Act of 2006

President Bush Signs Voting Rights Act Reauthorization and Amendments Act of 2006

Today, The President Signed Into Law The Fannie Lou Hamer, Rosa Parks, And Coretta Scott King Voting Rights Act Reauthorization And Amendments Act Of 2006. The Voting Rights Act of 1965 (VRA) was designed to restore the birthright of every American - the right to choose our leaders. It has been vital to guaranteeing the right to vote for generations of Americans and has helped millions of our citizens enjoy the full promise of freedom.

- **In Signing This Bill, President Bush Honored The Memory Of Three Women Who Devoted Their Lives To The Struggle For Civil Rights - Fannie Lou Hamer, Rosa Parks, And Coretta Scott King.** The Voting Rights Act Reauthorization and Amendments Act of 2006 was named in honor of these three American heroes.

The Voting Rights Act Reauthorization And Amendments Act Of 2006 Reaffirms A Commitment To Enforce The Right To Vote For All Americans

The Voting Rights Act Reauthorization And Amendments Act Of 2006 Extends The VRA For 25 Years, Extending:

- The prohibition against the use of tests or devices to deny the right to vote in any Federal, State, or local election; and
- The requirement for certain States and local governments to provide voting materials in multiple languages.

The New Law Also Amends The VRA With Regard To:

- The use of election examiners and observers;
- Voting qualifications or standards intended to diminish, or with the effect of diminishing, the ability of U.S. citizens on account of race or color to elect preferred candidates; and
- Award of attorney fees in enforcement proceedings to include expert fees and other reasonable costs of litigation.

The President Has Committed His Administration To Vigorously Enforce The Provisions Of This Law And To Defend It In Court. The President will also continue to work with Congress to ensure that our country lives up to our guiding principle that all men and women are created equal.

The Administration Will Continue To Build On The Legacy Of The Civil Rights Movement To Help Ensure That Every Child Enjoys The Opportunities America Offers. These opportunities include the right to a decent education in a good school, the chance to own a home or small business, and the hope that comes from knowing you can rise in our society through hard work and using your talents.

History Of The Voting Rights Act Of 1965

- **In March 1965, African Americans Marched Across The Edmund Pettus Bridge In Selma, Alabama, To Protest The Unfair And Racist Practices That Kept Them Off The Voter Rolls.**
- **When The Marchers Reached The Far Side Of The Bridge, They Were Met By State Troopers And A Civilian Posse Bearing Tear Gas, Billy Clubs, And Whips.** This group brutally attacked the peacefully protesting men, women, and children.
- **One Week After The Selma Incident, President Johnson Announced That He Planned To Submit Legislation That Would Bring African Americans Into The Civic Life Of Our Nation.**
- **Five Months After Selma, President Johnson Signed The Voting Rights Act Into Law.** For some parts of our country, the Voting Rights Act marked the first appearance of African Americans on the voting rolls since Reconstruction following the Civil War.

# # #

Return to this article at:
/news/releases/2006/07/20060727-1.html

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EXHIBIT B

BRENNAN CENTER FOR JUSTICE

at New York University School of Law

PROTECT THE VOTE

The State of Voting 2018

by Wendy Weiser and Max Feldman

Introduction

This fall, voters will head to the polls for the first time since our presidential election was decided by a margin of just 80,000 votes across three states. Clearly, every vote counts.

Nevertheless, on November 6, voters will face serious challenges to making their voices heard at the ballot box. These obstacles include voter ID laws and curbs on early voting. Extremely gerrymandered electoral maps and unresolved concerns regarding foreign interference in our elections also undermine the free and fair vote that is essential to our democracy.

As in previous election years, the Brennan Center has been tracking not just the laws but the political forces that may impact this year's midterms.

In 2018, voters in at least eight states will face more stringent voting laws than they did in the last federal election. These restrictions are a continuation of a trend, beginning in 2011, of states passing laws making it harder to vote. Overall, voters in 23 states will face tougher restrictions than they did in 2010. Lawsuits and legal campaigns have in some cases mitigated a number of the most pernicious new laws, and future court decisions could still impact the voting landscape before November. Regardless, *more* voters in *more* states will face unnecessary hurdles to casting a ballot this fall.

Restrictive laws, however, are not the only challenges to the vote.

The electoral landscape is still highly skewed by gerrymandering. Earlier in the decade, partisan legislatures drew extremely gerrymandered legislative maps, using modern data and technology to manipulate electoral lines for political advantage. The resulting maps have tilted electoral outcomes, producing dramatic incongruities between what voters want and what they get out of their elections and making it difficult to hold representatives accountable. Despite recent legal victories against political and racial gerrymanders, most of those flawed maps will still be in place in November.

In addition, nearly three-quarters of Americans are **worried about foreign interference** in our elections — worries that could create a **crisis** of legitimacy. The story is by now well-known: Agents connected to the Russian government targeted election systems in 18 states in 2016, and the threat hasn't dissipated. State actors and even rogue hackers continue to have our election systems in their sights.

Still, there is reason for optimism. Voters and their allies have taken to the courts to throw out unfair laws. Lawsuits challenging skewed legislative maps have recently resulted in a wave of victories, and for the first time in decades, the Supreme Court is set to rule in a case that could put real limits on partisan gerrymandering. Lawmakers and government officials are waking up to the fact that our election systems are vulnerable and that they can and *must* be repaired.

The electoral pressure-cooker has spurred many Americans to action. This November, citizens will be able to vote on ballot measures to end partisan gerrymandering in Michigan, to end lifetime felony disenfranchisement in Florida, and to adopt automatic voter registration in Nevada. Even amid the highly partisan battle over the franchise, bills to expand voting have been moving through state legislatures with broad bipartisan support — far more than bills to restrict access. We are at an inflection point.

In this piece we take stock of the state of voting in 2018, plotting where we are in the fight over voting rights and fair maps and evaluating and offering context for key issues that will affect not only the November election but also our democracy going forward. The most significant takeaways are:

- This is the first election where there is widespread awareness of the risk of foreign hacking of our election systems. In 2016, Russian agents manipulated our electoral process and attempted to interfere with our voting systems. While there is no evidence that they succeeded in tampering with our systems, the threat is significant going into 2018. There is a race to spur states to upgrade the security of their systems, but millions of Americans will vote this November using vulnerable voting systems.

- Many voters' voices will be unfairly muted this November because numerous jurisdictions, several of which are critical to the control of Congress and statehouses, are extremely gerrymandered. The Supreme Court could soon find that these districts are not only unfair but also unconstitutional. A decision striking down extreme partisan gerrymandering would be a win for voters in the longer term, but it will change little for voters this November.

- The decade-long battle over restrictions to the franchise continues, with neither side yielding significant ground. But more than a dozen lawsuits challenging these restrictions are ongoing. This fight will likely remain at an impasse — with states implementing restrictions, courts blocking some of them in whole or in part, and states responding with new restrictions — until there is a more definitive consensus in the courts.

- There is new public energy for positive change in voting. This is the first election where many voters will benefit from automatic voter registration: Seven states and the District of Columbia will have AVR in place by November. (Only Oregonians were able to take advantage of AVR in a significant way prior to the 2016 election.) In addition, a broad swath of states will have significant voting referendums on the ballot this November, many put there by citizens themselves.

Election Security

In the lead-up to the 2016 election, Russia launched an unprecedented attack on our election infrastructure. According to the recent **report** issued by the Senate Select Committee on Intelligence, Russian agents targeted election systems in 18 states, conducted malicious access attempts on voting-related websites in at least six states, and gained access to voter registration databases in a small number of states. While there is no evidence that the attempt to tamper with our voting systems was successful (unlike the attempt to manipulate the election discourse), the incident laid bare the serious security vulnerabilities of our nation's voting machines and voter registration databases. Intelligence officials **unanimously conclude** that Russia and other hostile foreign powers will continue to try to interfere in American elections, using what they have learned to hone more sophisticated and effective techniques.

Since 2016, states and the federal government have taken some important steps to increase election system security. But unfortunately, very little progress has been made in two critical areas: (1) few states or localities have replaced the voting machines most vulnerable to hacking; and (2) few states have mandated manual post-election audits, which use the paper records of votes to check voting machine software totals, thereby enabling officials to discover and recover from cyberattacks. In addition, while we have not fully assessed how many states have upgraded their voter registration systems since last year, progress on that front appears insufficient as well. As a result, we are approaching the 2018 elections with many voting systems vulnerable to attack.

Here is the current overview of the largest threats related to voting machines:

- **Thirteen states** still use paperless Direct Recording Electronic (DRE) voting machines — which do not provide a record that can be reliably audited after an election — as their primary voting equipment in some or all polling places. (Those states are Arkansas, Delaware, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, New Jersey, Pennsylvania, South Carolina, Tennessee, and Texas.) Five of those states use paperless DREs statewide, while eight use them in at least some of their counties.

- Forty-three states will be using voting machines that are no longer manufactured. Officials in 33 states say they must replace their machines by 2020. In most cases, elections officials do not yet have adequate funds to do so.

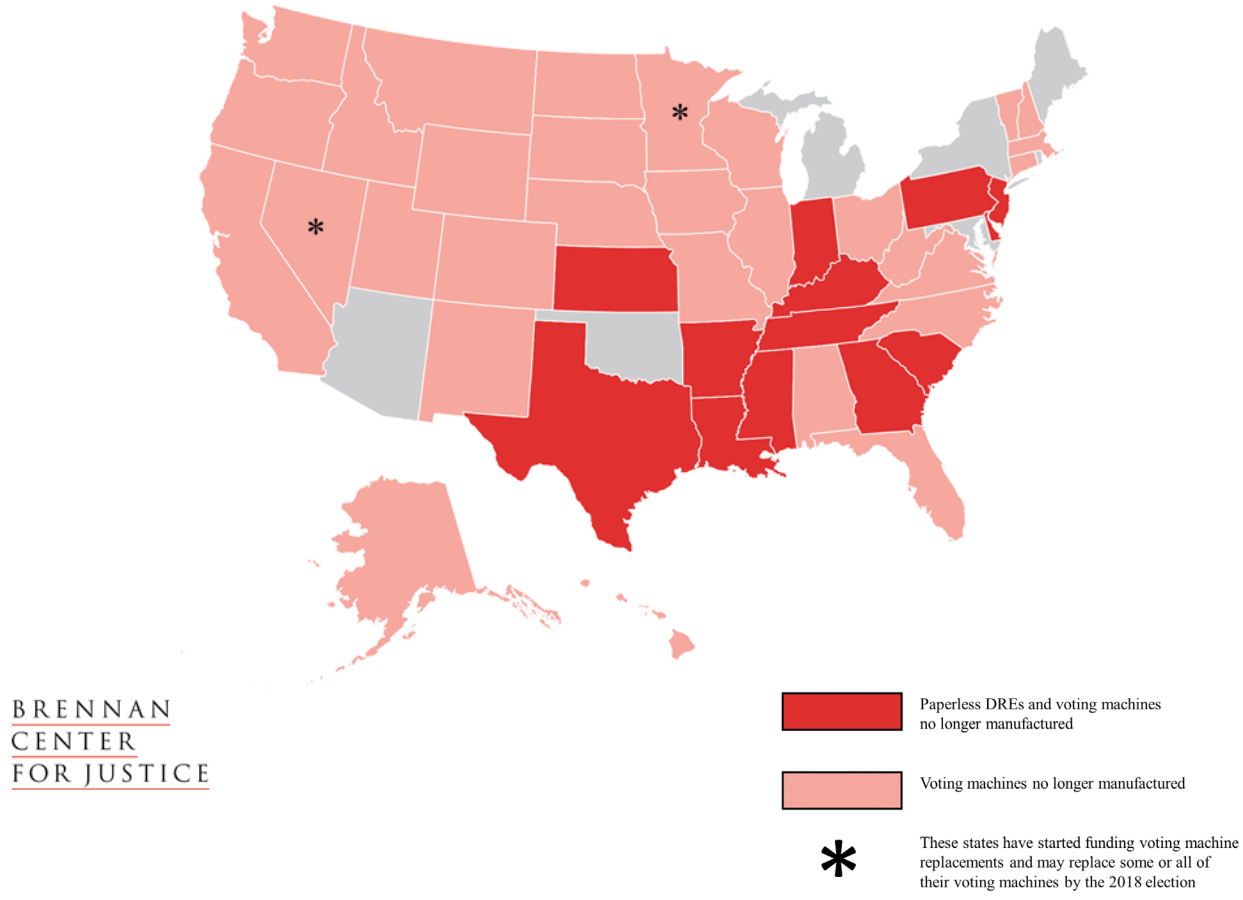
- Only one state — Colorado — will mandate "risk-limiting" audits, which are post-election audits designed to provide a high level of statistical confidence that a software hack or bug could not have produced the wrong outcome.

A number of states that are likely to have closely watched competitive midterm elections have vulnerable voting systems. Of the states that are likely to have a competitive **House**, **Senate** or **gubernatorial** election, according to Cook Political Report, or a contest for control of **the state legislature**, according to Ballotpedia:

- Six with House, Senate, or gubernatorial toss-up races or close races for state legislative control still use paperless DREs (Delaware, Indiana, New Jersey, Pennsylvania, Tennessee, Texas), as do three with somewhat less competitive races (Georgia, Kansas, Kentucky); and

- Three states with toss-up races have voter-verifiable paper trails but do not mandate *any* post-election audit, risk-limiting or otherwise (Maine, Michigan, and North Dakota), as do two states with somewhat less competitive races (Nebraska and New Hampshire).

States with Vulnerable Voting Systems



Voter registration systems are also still at risk:

- As of June 2017, 41 states were still using voter registration databases that were initially created a decade ago or longer. These outdated systems were not designed to withstand current cybersecurity threats. A number of those states have since taken steps to upgrade their registration systems. While we have not yet assessed the full extent of progress, Michigan and New Jersey expect to complete upgrades before November's election, Virginia is completing the first phase of a three-year upgrade plan, and North Carolina and Washington have at least started an upgrade process. Additional states may soon join this list, using new federal funds to bolster registration list security before November. In Minnesota, however, Gov. Mark Dayton **vetoed** the budget bill that was needed to authorize the secretary of state to use new federal funds for this purpose, even though the secretary said that it was the state election system's highest security need.

Unless significant steps are taken to bolster the security of our election infrastructure over the remaining months, there is a serious risk of additional successful attacks that will erode the public's confidence in the legitimacy of our elections. Attacks by cybercriminals or nation states could take down election websites with important information — including polling location information, voter registration status, and unofficial election results — or even potentially change the software-generated vote totals on individual voting machines. Worse, existing vulnerabilities leave open the possibility that control of our federal government could be determined by voting machines that are hackable and provide no auditable paper trail. While unlikely, this scenario is certainly possible. Virginia narrowly avoided this nightmare in 2017 when control of the state House was determined after a recount of paper ballots in a city that had decertified its paperless DREs right before the election.

Progress So Far

Although there has not been sufficient movement to upgrade our nation's voting equipment in advance of the 2018 elections, there has been some progress in addressing election security issues. Specifically:

- At the federal level, Congress recently appropriated **$380 million** to help states upgrade their voting systems — the first significant step at the federal level on election security and the most significant investment in election security since 2002. Unfortunately, this money came too late for states to be able to use the money to upgrade systems by the 2018 elections. In addition, two **major** pieces of bipartisan legislation were introduced in Congress to ensure vital election security reforms: the Senate's **Secure Elections Act** (S. 2261), co-sponsored by Sens. James Lankford (R-Okla.) and Amy Klobuchar (D-Minn.), and the House's bipartisan **PAPER Act** (H.R. 3751), co-sponsored by Reps. Mark Meadows (R-N.C.) and James Langevin (D-R.I.). While these bills are critically important, their passage at this point would not impact election security in 2018.

- The **U.S. Election Assistance Commission** (EAC) and the **Belfer Center** at Harvard University have provided cybersecurity training to hundreds of state and local election officials, while the Department of Homeland Security, the EAC, and state and local officials have established a coordinating council to allow them to share threat information and pool security resources.

- At the state level, since the 2016 election, **only** Virginia has stopped using its paperless DREs. In Pennsylvania — a critical battleground state — Gov. Thomas Wolf has ordered all counties to select new voting systems by the end of 2019, but this order obviously will not halt the use of paperless DREs in time for the 2018 elections. Only four states have enacted laws improving their post-election audit systems since 2016. No states have taken significant action to upgrade their outdated voter registration systems. Legislation to improve election security was **introduced** in at least 26 states, but most of those bills did not advance during this legislative cycle.

What Can Be Done Before November?

Although the 2018 elections will almost certainly move forward with aging, vulnerable voting equipment, it is not too late to significantly reduce election security risks. Here is what needs to happen between now and November to bolster election security:

- While unlikely, it is still possible for enterprising states to replace their antiquated voting machines with new, auditable voting systems before November. In 2017, Virginia decertified and replaced its DRE machines only two months before its statewide elections. There is a chance that this could happen in New Jersey, too: New Jersey lawmakers recently introduced a **bill** that would halt the use of DREs in certain counties this November. States that do not replace paperless DREs before November should still move expeditiously this year so that

they can upgrade their voting equipment before the 2020 elections.

- States that do not replace paperless DREs should take several basic steps to secure their voting machines for 2018, including adding strong passwords and two-factor password authentication, engaging in rigorous systems testing, ensuring that all PC and server operating systems and software have the latest security patches, and providing cybersecurity training. Similar defenses are needed for voter registration systems.

- Where possible, states should implement effective post-election audits. Legislatures can still mandate such audits, and in many states, elections administrators have the authority to audit vote tallies after an election even if they are not required to do so by state law. They should do so.

- State elections officials should engage in detailed contingency planning in case of a system breach or failure, including preparing backup paper ballots and paper voter registration lists.

At this point, there is reason for optimism that many states will, in fact, take at least some of these interim steps to secure their voting systems. At least 17 states have formally requested that the Department of Homeland Security (DHS) conduct risk assessments of their election systems. In each state, DHS should be able to identify cybersecurity risks and best practices for securing election systems ahead of this November's election. In the coming months, many more states plan to request this DHS review or will use private vendors to do so. These assessments will almost certainly result in the application of additional security patches and the revamping of contingency plans. In addition, election officials in several counties and states are working with outside experts to develop new post-election audit protocols.

Restrictive Voting Laws

Over the past decade, states **enacted** a **wave** of laws restricting access to voting. This fall, voters in at least eight states will face more stringent voting laws than they did in the last federal election cycle in 2016. Voters in 23 states will face tougher restrictions than they did in 2010. The most common restrictions involve voter ID laws, but they also include additional burdens on registration, cutbacks to early voting and absentee voting, and reduced voting access for people with past criminal convictions. If these laws remain in effect, they have the potential to make it harder for millions of Americans to vote. Even with an expected wave of enthusiasm this November, a growing body of research shows these laws reduce participation, particularly among communities of color, low-income voters, young people, older citizens, and people with disabilities.

These laws are part of a broader trend: Following the 2010 wave election, there were two shifts that continued to distort our electoral system. First, as discussed at length below, state legislatures drew extremely gerrymandered maps following the 2010 Census. Second, states started to enact a series of laws that made it markedly more difficult for some of their citizens to register and vote. Lawsuits and legal campaigns helped block or mitigate most of the harshest new restrictions prior to the 2012 election. But the Supreme Court's 2013 *Shelby County v. Holder* ruling, which neutered the strongest legal protection against voting discrimination, changed the landscape. A flood of new barriers to voting that would have otherwise been blocked were implemented at once, and newly unfettered legislatures were incentivized to press forward with additional restrictions. The new laws were again met with legal challenges, and voters experienced a seesaw effect as new voting rules were imposed, blocked by courts, and then reinstated in modified form, only to be challenged again. Throughout, thousands upon thousands of would-be voters were thwarted at the ballot box over the course of multiple elections.

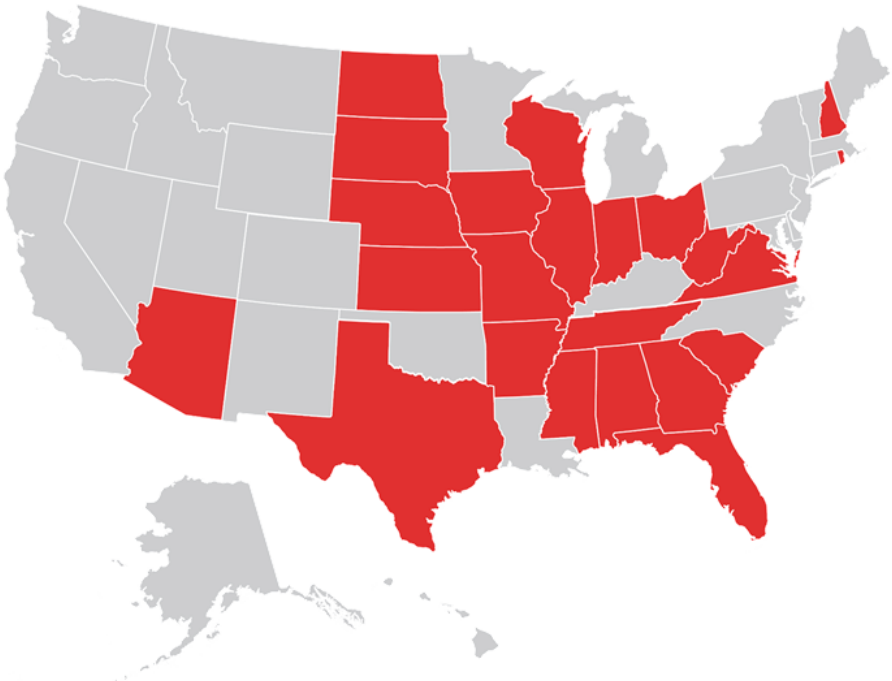
Here is where things stand now:

Changes in Voting Restrictions Since 2016

Since 2016, at least **eight** states have enacted new voting restrictions. Four of those states — Arkansas, Iowa, Missouri, and North Dakota — enacted new voter ID laws (but as noted below, a court has partially halted the North Dakota law for now). Texas also passed a new voter ID law, though its earlier strict voter ID law was partially in effect in 2016. Georgia, Indiana, Iowa, and New Hampshire imposed new burdens on voter registration. And Iowa cut back on early and absentee voting. In addition to these new laws, there have also been new lawsuits that may impact which restrictive voting laws are in effect in 2018. These are discussed in the next section, below.

Looking ahead, it is not clear whether state legislatures will continue their almost decade-long trend of passing restrictive voting laws, at least in the face of a steady stream of courtroom wins for voting rights. Indeed, **this year**, states have not enacted any significant new voting restrictions — at least not yet. That could change if legislators sense that courts are growing less vigilant in protecting voting rights.

Restrictive Voting Laws Since 2011



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Overview of Restrictive Laws Since 2011

Going into the 2018 elections, voters in **23 states** — nearly half the country — will face additional restrictions on voting as compared to 2010, the year before state legislative efforts to cut back on voting access first mushroomed. These 23 states are in red on the map above.

Strict voter ID requirements are the most common type of new restriction. Overall, 13 states have harsher voter ID laws than they did in 2010, and 15 states have toughened their laws since 2006. Before 2006, **no state** had a strict photo ID requirement in effect.

List of New Voting Restrictions

Below is the complete list of new voting restrictions since 2010, taking into account changes as a result of successful lawsuits, ballot initiatives, and legislative efforts. An asterisk (*) denotes a voting requirement that will be in place for the first time in a federal election this November.

Potential Impact

If these laws remain in effect, they will make it harder for millions of Americans to vote. The cumulative effect of a decade of voting restrictions could be substantial, but their depressive effect may be masked this November by a spike in electoral enthusiasm and new candidates bringing voters to the polls. Still, the new laws will likely thwart many.

As stated above, a growing body of **research**, although still nascent, finds that voting restrictions reduce participation, especially among communities of color, low-income voters, youth, older voters, and voters with disabilities. In 2016, for instance, Wisconsin's voter ID law disenfranchised about 17,000 registered voters, according to one **study**. Overall, roughly 300,000 eligible Wisconsonites lacked IDs that could be used for voting that year, according to a federal **court's findings**. Another **analysis** found that local cutbacks to early voting in North Carolina depressed African-American turnout in 2016 even though a federal court had blocked statewide cutbacks as discriminatory. The U.S. Government Accountability Office

State	Voting Restrictions
Alabama	• Strict voter ID requirement (2011 law) • Documentary proof of citizenship (2011 law; not yet implemented)
Arizona	• Documentary proof of citizenship to register (2004 ballot initiative; currently blocked for registrations using federal form) • Polling place consolidation (2016 law) • Limitations on mail-in ballot collection (2016 law)
Arkansas	• Voter ID requirement (2017 law) *
Florida	• Reduced early voting period (2011 law, mitigated by 2012 court ruling and by subsequent 2013 statute restoring some early voting days) • Curbed voter registration drives (2011 law, mitigated by court decisions) • Reduced access to rights restoration for those with past criminal convictions (2011 gubernatorial action)
Georgia	• "No match, no vote" limit on access to voter registration (2017 law) * • Reduced early voting period (2010 law) • Documentary proof of citizenship to register (2009 law) • Strict voter ID requirement (2006 law)
Illinois	• Curbed voter registration drives (2011 law)
Indiana	• Aggressive voter purge requirements (2017 law) * • Documentary proof of citizenship for certain individuals (2013 law) • Strict voter ID requirement (2006 law)
Iowa	• Voter ID requirement (2017 law; will be partially implemented in 2018) * • Restrictions on voter registration drives (2017 law) * • Limited access to election-day registration (2017 law) * • Limited early and absentee voting (2017 law) * • Stricter voting rights restoration policy for the formerly incarcerated (2011 reversed executive action)
Kansas	• Strict voter ID requirement (2011 law) • Documentary proof of citizenship (2011 law; currently blocked for registrations at motor vehicle offices and those using federal voter registration forms)
Mississippi	• Strict voter ID requirement (2011 ballot initiative)
Missouri	• Voter ID requirement (2016 law and ballot initiative) *
Nebraska	• Reduced early voting period (2013 law)
New Hampshire	• Restricted student voting and registration (2017 law) * • Voter ID requested, but not required (2017 law)
North Dakota	• Voter ID requirement (2017 law, partially halted by court, and less restrictive than earlier law struck down by court) *
Ohio	• Reduced early voting period and abolished same-day registration period (2014 law) • Restricted absentee and provisional ballot rules (2014 law)
Rhode Island	• Voter ID requirement (2011 law)
South Carolina	• Voter ID requirement (2011 law, mitigated after lawsuit)
South Dakota	• Stricter voting rights restoration policy for the formerly incarcerated (2012 law)
Tennessee	• Strict voter ID requirement (2011 law) • Reduced early voting period (2011 law) • Proof of citizenship required for certain individuals (2011 law)
Texas	• Voter ID requirement (2017 law, which is less restrictive than 2011 law struck down by court but more restrictive than the temporary ID requirement in place in 2016) * • Curbed voter registration drives (2011 law)
Virginia	• Strict voter ID requirement (2012 law) • Restricted third-party voter registration (2012 law)
West Virginia	• Reduced early voting period (2011 law)
Wisconsin	• Voter ID requirement (2012 law, implemented for the first time in 2016) • Added longer residency requirement before a person could register to vote (2012)

found that new voter ID laws depressed turnout by about 2 to 3 percent in Kansas and Tennessee in 2012.

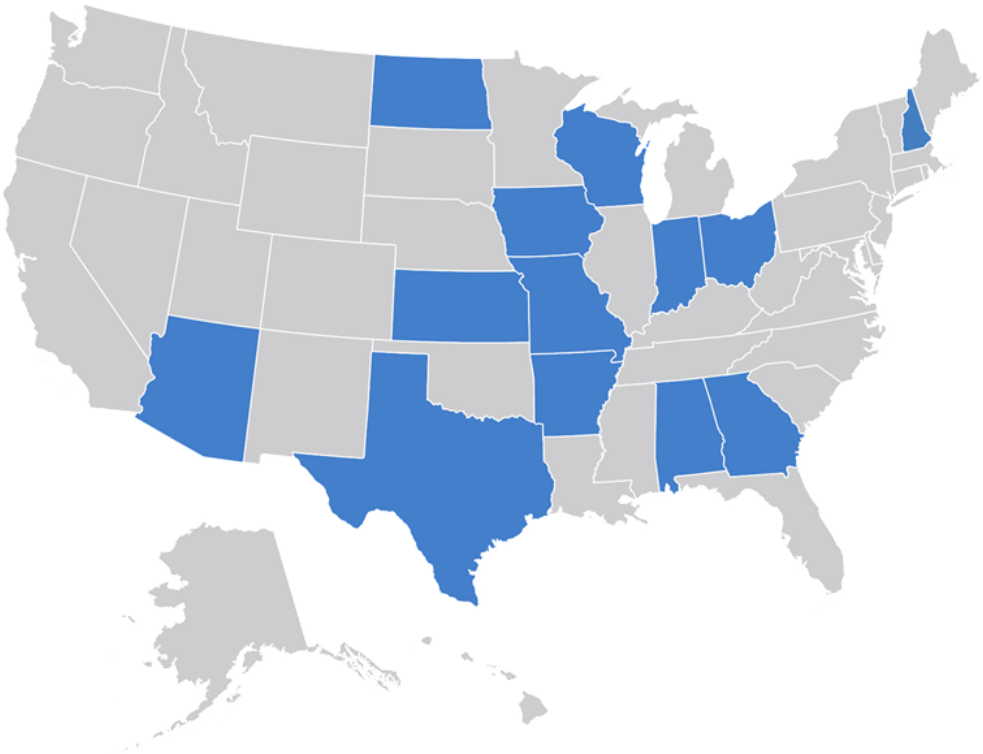
The impact of new laws will likely be especially pronounced in states with highly competitive elections. Missouri, for example, enacted a voter ID law last year and soon will hold a closely watched U.S. Senate election. A court rejected a challenge to the measure earlier this year, and absent a victory on appeal, the law will be in place this November. North Dakota will also hold a very competitive Senate election with a new voter ID law. A court has temporarily blocked part of that law, but its order has been appealed. Indiana will hold a very competitive Senate election, and unless a court strikes down the state's new aggressive voter purge law, many eligible voters could show up to the polls to vote only to find that they have been mistakenly removed from the rolls. And Iowa will administer a broad new set of voter restrictions in November, coinciding with a highly competitive election for U.S. Congress.

Voting problems will likely be compounded because many of the restrictions will be in place for the first time this November. Overall, voters in eight states will face more onerous voting hurdles for the first time this year. Major changes to voting rules often cause voter confusion and errors by poll workers and election officials when they are first implemented, exacerbating their negative effect.

What Can Be Done Before November?

The most effective way to prevent a restrictive voting law from marring an election is to obtain a judicial order stopping it from going into effect. As discussed in the next section, courts in a number of states could issue decisions in pending lawsuits that could impact voting in November. Additional cases may be filed. Where voting restrictions cannot be limited or eliminated by courts, voter education and mobilization are a necessary line of defense to ameliorate the disenfranchising effects of these laws. Voters must be made aware of new voting requirements, election officials must be trained to implement the restrictions fairly and lawfully, and state and non-state actors should assist eligible voters in overcoming the restrictions on or before election day.

Ongoing Litigation Against Voting Restrictions



Litigation That Could Impact Voting Access

Over the past few years, the voting rights landscape has been shaped by both victories and losses in cases challenging new voting barriers. Particularly since 2013, when the Supreme Court's *Shelby County v. Holder* decision effectively eliminated the U.S. Department of Justice's oversight of state voting regulations, the courts have been the primary venue for reversing or limiting the effects of burdensome and discriminatory voting laws. This year, the courts continue to play a critical role in shaping Americans' access to the franchise.

Ongoing Litigation Against Voting Restrictions

Major litigation against restrictive voting laws is currently ongoing in at least 13 states (pictured in blue on the map above), and other lawsuits against state election administration practices could impact voting as well. There are active cases challenging voter ID laws in Alabama, Arkansas, Iowa, Missouri, North Dakota, Texas, and Wisconsin; voter registration restrictions in Alabama, Arizona, Georgia, Kansas, and New Hampshire; early voting restrictions in Wisconsin; and voter purge practices in Indiana and Ohio. The most common claims are that new laws are discriminatory, in violation of the federal Voting Rights Act or the Constitution; that they impermissibly burden the right to vote in violation of the federal or state constitutions; and that they violate voter protections under the National Voter Registration Act. The fate of these laws could substantially affect the voting landscape and the composition of the electorate in 2018.

Here are some key cases to watch:

- **U.S. Supreme Court/Ohio:** A case **challenging** Ohio's voter list maintenance practices awaits decision by the U.S. Supreme Court. Specifically, Ohio is using a voter's failure to vote over a two-year period, by itself, as a basis to start a process of removing that voter from the rolls. The plaintiffs argue that this practice, which has resulted in thousands of eligible voters being removed from the rolls, violates the National Voter Registration Act of 1993. While the case's outcome could impact how states conduct voter purges and whether there are sufficient protections against improper purges, the legal issues involved are distinct and will not directly impact the vast majority of legal challenges to new voting laws.

- **Alabama:** The federal Court of Appeals for the Eleventh Circuit expedited an appeal from a decision rejecting a challenge to Alabama's voter ID law and has tentatively scheduled oral argument for the end of July. A decision may be issued before the election. Unless the appellate court reverses the district court's decision before the election, Alabamans will be required to show photo ID to vote again this November. In 2014, Alabama's Secretary of State estimated that roughly 280,000 Alabama voters lacked the requisite ID, according to the plaintiffs' **complaint** in this case.

- **Arizona:** Plaintiffs are **challenging** the state's "dual registration" system, which it put in place following a Supreme Court decision that prevented it from requiring documentary proof of citizenship in connection with the federal voter registration form. The system requires documentary proof of citizenship in order to vote in state elections.

- **Arkansas:** A state trial court issued an order halting enforcement of the state's voter ID law. But the state Supreme Court **stopped** the trial court's order from going into effect for the May 22 primary election, even though the high court had struck down a previous iteration of the voter ID law as inconsistent with the state Constitution. Unless the state Supreme Court upholds the trial court's order on appeal, Arkansas voters will face a photo ID requirement for the first time in a federal election this November. In addition, perhaps to hedge its bets, the Arkansas Legislature has put a ballot initiative amending the state Constitution to require voter ID on the November ballot.

- **Indiana:** A federal court will likely soon issue a **decision** on whether to freeze a new state purge program. Under a new Indiana law, election officials must purge voters from the rolls if their records are flagged by the controversial "Crosscheck" data repository. A recent study estimated that up to 99.5 percent of Crosscheck flags for double-voting in a sample of 800,000 were inaccurate. While the state has agreed to hold off on these purges before July 1, if the law is not blocked before then, a major purge of the voter rolls could occur prior to this year's election.

- **Iowa:** Voter groups filed a **lawsuit** on May 30 challenging the state's new restrictive voting law, including its voter ID, absentee ballot counting, and early voting provisions.

- **Kansas:** There are at least two court cases challenging the state's documentary proof of citizenship requirement for voting awaiting decision. A federal district court in Kansas held a **trial** in March on the state's requirement that individuals registering at the department of motor vehicles must present proof of citizenship. And a federal court in the District of

Columbia heard arguments before the 2016 election in a case challenging the decision by a federal agency to apply Kansas's documentary proof of citizenship requirement to applicants using the federal voter registration form. (This case also applies to **Alabama** and **Georgia** applicants.) In both cases, the courts have temporarily blocked the state's requirements as applied to relevant applicants. If either court reverses course before November, it could have a major impact: When the proof of citizenship requirement was in place from 2013 through 2015, it prevented more than 35,000 Kansans from registering.

- In **Missouri**, a trial court dismissed a challenge to the state's new voter ID law, but that decision has been appealed, and a decision in the appeal is expected prior to the election.

- In **New Hampshire**, there is a bench trial on a restrictive voter registration law scheduled for August. If that schedule holds (and there is currently some jockeying over whether the judge in the case will recuse himself), then a decision could be issued before November. Critics claim that the law was designed to prevent students from voting in a state where the 2016 Senate election was decided by roughly 1,000 votes.

- In **North Dakota**, a federal district court has issued an order temporarily halting the state from enforcing parts of its voter ID law that could disenfranchise significant numbers of Native Americans. The state has appealed that decision and is seeking a stay of the district court's order, pending resolution of the appeal. If the order is reversed, thousands of Native Americans could be disenfranchised, according to the court.

- **Texas:** The Fifth Circuit Court of Appeals recently issued a decision permitting Texas's new photo ID law to go into effect. Texas has been applying that law since the beginning of the year, and even if there is a further appeal of the Fifth Circuit's decision, the law will likely govern this November's elections.

- **Wisconsin:** The Seventh Circuit Court of Appeals heard oral argument well over a year ago in two challenges to various aspects of Wisconsin's election law, including voter ID and early voting restrictions enacted earlier this decade. The court is likely to decide these appeals before November. (For context, the appeals were noticed nearly two years ago — the median time from the filing of a notice of appeal to a decision in the Seventh Circuit is about eight months.) Most of the restrictions have been temporarily halted by a court order, although the voter ID law is largely in place.

Groups have also challenged administrative decisions that disenfranchise voters. Earlier this year, a district court judge in Florida struck down the state's cumbersome process of restoring voting rights to individuals convicted of felonies, although that decision is on appeal. In May, a lawsuit was filed challenging Florida's decision to block state university campuses from hosting early voting sites.

With some notable exceptions, voters have fared reasonably well in lawsuits challenging the most onerous new voting laws over the past decade. A litigation scorecard, tracking the outcomes of the decade's major cases against voting restrictions, is included in the appendix.

Look Ahead: The U.S. Supreme Court

Looking ahead, the Supreme Court is poised to take up a major voting rights case. The Court's last effort to consider the legality of a state voting restriction — a decade ago in *Crawford v. Marion County Election Board* — left key questions unresolved. The issue of discrimination was raised in the case, and so the Court did not clarify the contours of laws protecting against voting discrimination. Nor did the Court definitively address the scope of constitutional protections for voting. When the Court does take up a new voting case, it will likely determine the strength of voting rights protections for years to come.

Over the past few years, the Court has sent strong signals that it is inclined to take up such a case. It took the unusual step of weighing in on orders from two separate lower courts (involving challenges to North Carolina's major voting restriction law and Wisconsin's voter ID law) — something the Court typically does only if there is a "reasonable probability" it will take the case. And while the Court ultimately refused to hear both cases (twice in the North Carolina case), Chief Justice Roberts took the unusual step of issuing a special statement explaining that the Court's refusal to hear the North Carolina case did not reflect an opinion on the merits of the case.

A number of major cases that appeared to be barreling toward the high court over the past two years did not or have not yet reached it. In Texas, a challenge to the state's voter ID law appeared to be first in line for Supreme Court review, but the state Legislature amended the law in 2017, changing the course of the litigation against the state's original law. (The Brennan Center represents a group of plaintiffs in the Texas case.) A widely watched challenge to a package of North Carolina voting restrictions also appeared to be teed up for Supreme Court review, but the Court denied review, after a newly elected governor tried to withdraw the state's petition seeking review. In addition, challenges to a set of restrictions

passed in Wisconsin were also expected to be in the mix for Supreme Court review, but the federal court of appeals has not yet issued a decision that the Court could review.

The only case the Court took up this year is the case challenging Ohio's voter list maintenance practices, discussed above. While the case could impact state practices for purging voter rolls, it will not address the main legal questions at issue in typical cases against new voting restrictions. We will likely know by the end of the year whether next year's docket will include a blockbuster voting case.

Expansive Voting Laws

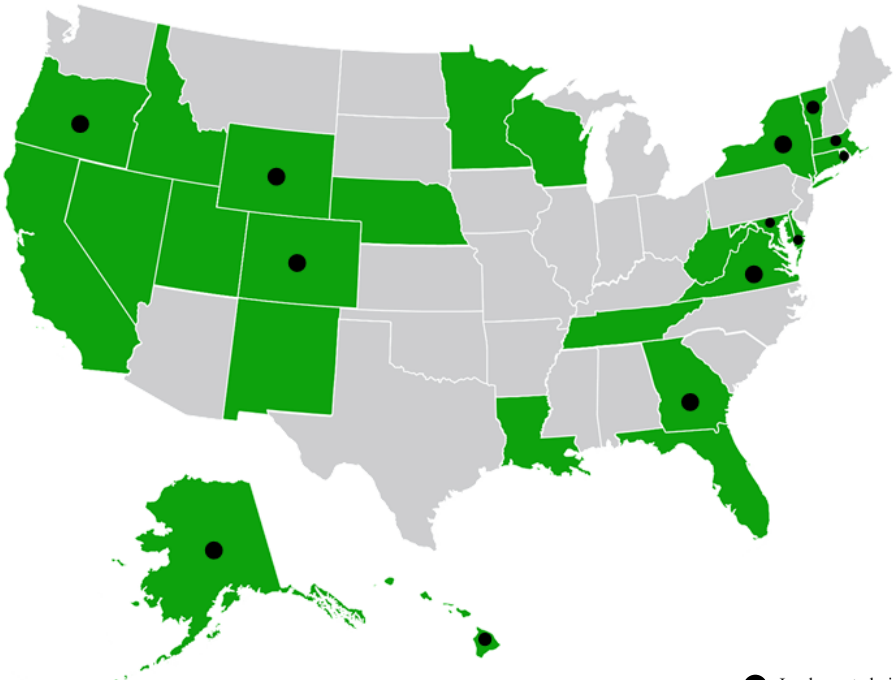
While many states have moved to restrict their citizens' access to the ballot in the past decade, others have expanded access to their voting process. These recent pro-voter victories form an important part of the overall voting landscape going into 2018. Most significantly, new automatic voter registration (AVR) systems will be in place in seven states and the District of Columbia this year, five of them for the first time.

New Laws in Place

- This year, five states — Alaska, California, Colorado, Rhode Island, and Vermont — and the District of Columbia will have **automatic voter registration** (AVR) in place for the first time in the lead-up to a federal election. In total, seven states and the District of Columbia will have up-and-running AVR systems prior to the 2018 elections, including Georgia and Oregon, which implemented AVR in advance of the 2016 elections. (Two additional states are scheduled to, but may not have, AVR in place by the 2018 elections, and three states will not implement the reform until after the election.) AVR is transformative, yet simple: When eligible citizens visit a government office, such as a state's department of motor vehicles, they are automatically registered to vote unless they decline.

    - So far this year, three more states have enacted AVR laws: Maryland, New Jersey, and Washington. That brings the total number of states that

Major Expansions to Voting Access Since 2013



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● Implemented significant voting reforms, including AVR, election-day registration, early voting, or rights restoration

have adopted AVR to 12 plus the District of Columbia.

- AVR could significantly increase the number of people who register and vote in these states this November. In **Oregon**, which adopted AVR in 2016, the rate of new registrations at the department of motor vehicles quadrupled, and the overall registration rate jumped by nearly 10 percent after it was implemented. Many of these new registrants turned out to vote. While Oregon had no competitive statewide races, its voter turnout **increased** by 4 percent in 2016, which was 2.5 percentage points **higher** than the national average.

- AVR is a rare voting reform to have garnered broad bipartisan support. For example, West Virginia's largely Republican Legislature passed an AVR bill, and its Democratic governor signed it into law; conversely, Illinois's Democratic-majority Legislature passed AVR with unanimous support, and its Republican governor signed it into law. Alaskans passed AVR via ballot initiative with nearly 65 percent of the vote in 2016, the same year they gave Donald Trump a 15-point victory over Hillary Clinton.

- Also this year, thousands of New Yorkers who had previously lost their voting rights because of a criminal conviction could newly be eligible to vote as a result of an executive order that Gov. Andrew Cuomo issued in April, indicating he will restore voting rights to certain New Yorkers on parole. As of May 2018, approximately **24,000 New Yorkers** have had their voting rights restored, and there are plans to restore voting rights on a monthly basis going forward.

  - In Louisiana, Gov. John Bel Edwards recently signed a law restoring voting rights to individuals on probation and parole if they have been out of prison at least 5 years. According to state officials, this reform could enfranchise roughly 2,000 citizens of Louisiana, but it will not take effect until 2019.

  - Since the 2016 elections, three other states have also expanded the right to vote for the formerly incarcerated. In **Virginia**, right before the last election, voting rights were restored with great fanfare to more than 61,000 citizens, but not until after the voter registration deadline had passed for the 2016 election. This will be the first federal election in which those citizens can vote. In Alabama, the Legislature passed clarifying legislation that had the effect of reducing the number of crimes for which citizens can be disenfranchised. And in **Nevada**, the governor signed a law restoring voting rights to those who committed certain crimes and previously would have been permanently disenfranchised; that law will not go into effect until January 2019.

  - Florida is seriously considering a significant reform that could add to that total. Its citizens, as explained below, have collected enough signatures to qualify a referendum for the ballot that would end the state's lifetime ban on voting for individuals with criminal convictions. This reform will not affect the composition of the electorate in November.

- More broadly, compared to the 2016 election, at least 16 states will have implemented significant new laws that will make it easier to register or vote this year. This count includes states that passed laws before November 2016 but did not put them into effect for the 2016 election. (Since we started tracking legislation expanding voting access in 2013, 25 states and the District of Columbia have implemented significant reforms expanding access, and four states have eased their ID requirements for voting or registration.) In addition to the AVR and rights restoration laws discussed above, these reforms include same-day and election-day registration, online voter registration, and expanded early voting opportunities. Online registration is among the most common reforms implemented in the past two years — five states implemented online registration, bringing the total number of states with **online** registration to 37 plus the District of Columbia (Oklahoma has enacted online registration, but does not expect to implement it until **2020**.) This reform, which was a major innovation last decade and early into this one, is now the norm. Beyond the states that have implemented reforms, other states, like **Washington**, have enacted pro-voter reforms that will not be in effect this year.

Other Voting Issues to Watch

Voter Roll Purges

This year, there is a heightened **risk** that elections officials will mistakenly remove large numbers of eligible voters from the rolls. Properly done, efforts by election officials to clean up the voter rolls by removing names that should not be there promotes election integrity and efficiency. But when done hastily or incorrectly, the resulting

"purges" can sweep in and disenfranchise large numbers of eligible voters. An upcoming Brennan Center report finds that states are now purging many more people than they did a decade ago, without marked improvements in their techniques, and with fewer legal protections for voters. There are two main dangers to watch this year.

First, watch for whether local elections officials capitulate to a threat campaign launched by private groups promoting aggressive — and reckless — removals of voters from the rolls. This past September, a group called the Public Interest Legal Foundation threatened or filed lawsuits against 248 jurisdictions, claiming their list maintenance practices were inadequate. Other groups, including the American Civil Rights Union and Judicial Watch, have similar lawsuits pending in three states. (Voter advocacy groups, including the Brennan Center, have **pushed back** against this effort by providing guidance to jurisdictions about how to properly comply with their list maintenance obligations under federal law and by intervening in their lawsuits.)

Second, watch for whether the U.S. Department of Justice tries to force states to remove voters from the rolls. In June 2017, the Department of Justice took the unusual step of sending letters to 44 states demanding that they provide detailed information on their list maintenance practices. **Some** have understood this as a possible prelude to legal action and recalls **efforts** undertaken by the George W. Bush administration in the mid-2000s to pressure U.S. attorneys to sue states for failing to purge their voter rolls aggressively enough.

Ballot Security Operations

There is also a risk of improper ballot security and vote suppression efforts at the polls this November. "Ballot security" is a term used to describe a set of practices by private groups, candidates, or political parties with the stated goal of preventing voter fraud. These practices include efforts to identify improperly registered voters, often using unreliable methods; efforts to formally challenge the eligibility of individual or groups of voters; and efforts to discourage voters from committing fraud. In the heated environment of political campaigns, there is a high **risk** that these kinds of operations will lead to voter intimidation or deception.

There is reason to worry about an increase of these types of efforts this year. This election may be the first in more than 30 years that the Republican National Committee (RNC) is not bound by a **consent decree** requiring it to get approval from federal court before conducting any ballot security operations. Before the consent decree effectively stopped it, the RNC was the nation's premier organizer of these suppressive efforts. Smaller organizations have tried to mobilize ballot security efforts in recent years, but they lacked the RNC's reach and resources. If the RNC gets back into the ballot security game, we may see a revival of these vote suppression efforts at the polls. Indeed, the party's standard-bearer, President Trump, has personally championed ballot security measures. As a candidate in 2016, he encouraged vigilante monitoring of polling places, and since then he has continued to fan unfounded fears of widespread voter fraud. In addition, the Department of Justice, which is our nation's leading bulwark against voter intimidation, has signaled a broad retreat from enforcing voting rights. The consent decree is not dead yet, though — the Democratic National Committee has appealed the court's decision to dissolve it.

Redistricting and Gerrymandering

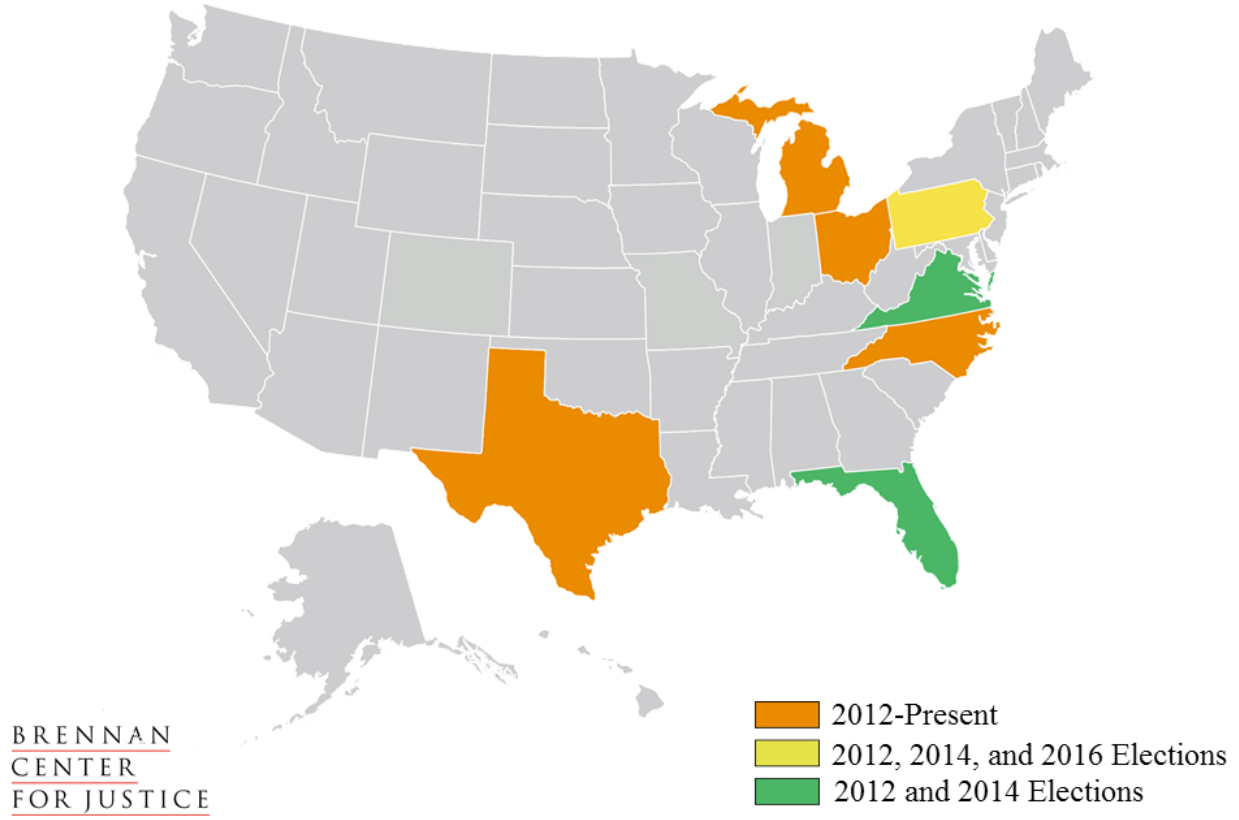
Historically, midterm elections have offered the chance for American voters to change course in the country's political path. But because of the pervasive gerrymandering that took place after the 2010 Census, the impact of the 2018 midterms could prove to be far more muted.

A Brennan Center **study** found that extreme partisan gerrymandering in half a dozen key states provides Republicans with an **advantage** of up to 16 or 17 seats in the current House of Representatives — a significant share of the 24-seat majority that Republicans held at the start of this Congress. That advantage will decrease somewhat after the 2018 midterm election because of a court-ordered redrawing of Pennsylvania's congressional map in February. But even with a new Pennsylvania map, Democrats face significant structural barriers to winning their first House majority since maps were redrawn in 2011.

According to the Brennan Center's estimates, Democrats would have to win the national popular vote by **10.6 percentage points**, or benefit from extraordinary shifts in partisan enthusiasm, in order to win a majority in the next House. While **some** have estimated Democrats' structural disadvantage to be somewhat smaller, the consensus is that even a historically large popular vote win will yield far fewer House seats than similarly sized, or even smaller, past popular vote wins. There is a real **risk** that Democrats will win the national popular vote but will not win a majority of House seats — something that also happened in 2012. In other words, biased maps could be determinative in the outcome of November's elections for control of the U.S. House of Representatives, as well as of **several** state legislatures.

The problem of gerrymandering is not new this year; indeed, many Americans will vote this November in the

Extremely Gerrymandered Congressional Maps



fourth election in a row under severely gerrymandered maps. This is both because the gerrymanders of this decade have been much more extreme and durable than those of the past and because in most of the country there has been no judicial or other mechanism to rein them in. That could change this summer. While there will likely be few changes to any maps before November, there are some important stories to watch over the course of the summer and fall.

A New Map in Pennsylvania, but Not in North Carolina

- In Pennsylvania, voters will go to the polls this November using a new congressional map as the result of a **decision** of the Pennsylvania Supreme Court in January that found that the state's original map was a partisan gerrymander in violation of the Pennsylvania Constitution. That ruling resulted in the replacement of a map that locked in a 13-to-5 Republican advantage — in a state that is roughly evenly divided between Democrats and Republicans — with a new map drawn by a court-appointed special master. The new map is substantially more responsive to electoral shifts, making Pennsylvania a central 2018 battleground and potentially the key to control of the House. According to a Brennan Center estimate, Democrats and Republicans each have the opportunity to win between **7 and 11** seats, and the respected Cook Political Report currently includes eight Pennsylvania congressional districts on its **list** of competitive races (the second highest number of competitive races of any state after much larger California).

- By contrast, voters in North Carolina will go to the polls for the second election in a row using a map drawn in 2016 to replace an earlier map found by courts to be an unconstitutional racial gerrymander. Like the original map, the replacement map, which lawmakers described as a "**political gerrymander**," locks in a 10-to-3 Republican advantage in a state where there is robust competition between the parties at the statewide level. Although a three-judge panel **struck down** the replacement map in January as a partisan gerrymander, the Supreme Court put the

drawing of a new map on hold while it considers North Carolina lawmakers' appeal (likely to be heard in the fall of 2018 — see below).

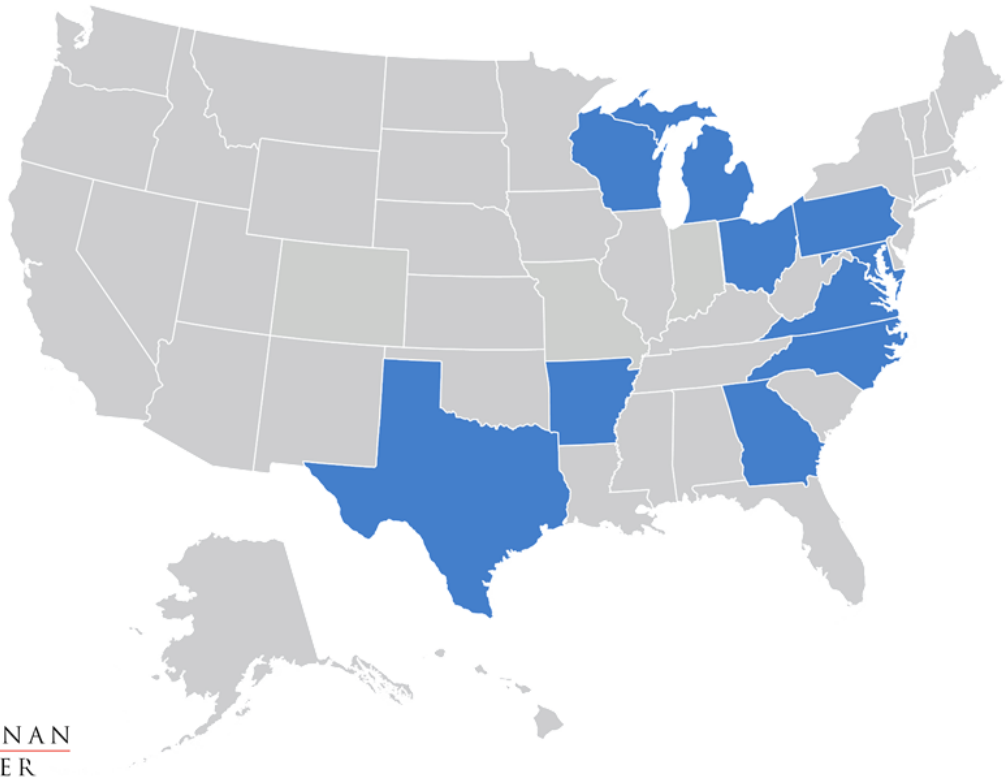
Redistricting Cases at the Supreme Court

- While decisions will likely come too late to affect the 2018 midterms, the U.S. Supreme Court could set the stage for further redrawing of the nation's electoral maps this summer when it is expected to rule in closely watched partisan gerrymandering cases from **Wisconsin** and **Maryland**. The former challenges a Republican gerrymander of Wisconsin's state assembly map and the latter a Democratic gerrymander of Maryland's 6th Congressional District. The two decisions will be the Supreme Court's first partisan gerrymandering opinions since it badly deadlocked on the question of the constitutionality of partisan gerrymandering in the mid-2000s in *Vieth v. Jubelirer* and *LULAC v. Perry*. Together, the Wisconsin and Maryland decisions will give the high court an opportunity to finally establish a standard for gauging when a map is unconstitutional.

  If the court does rule that there are constitutional limits to partisan gerrymandering, the impact would be significant both in the near and long term. Not only would the rulings result in changes to maps used in the 2020 elections, they, more importantly, would radically change the legal framework in place for the next round of redistricting in 2021.

- The Supreme Court also will rule this summer in a **Texas redistricting case** that could result in several congressional and state house districts being redrawn for the 2020 elections because of unconstitutional racial gerrymandering and/or violations of the Voting Rights Act. This case is significant because it also could set the stage for Texas to be placed back under preclearance coverage using the "bail in" provisions of section 3 of the Voting Rights Act. If this happens, Texas would once again be required to get certain election-related laws preapproved before putting them into effect — something it has not had to do since the Supreme Court's 2013 decision in *Shelby County v. Holder*.

Ongoing Redistricting Litigation



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May 2018

- The Supreme Court also is expected to decide before the end of June whether it will hear North Carolina's appeal of a lower-court decision striking down that state's 2016 congressional map as a partisan gerrymander. Most observers expect the high court to set the case for argument in the Supreme Court term that starts October 2. However, the court also could decide the case without oral argument (as requested by the plaintiffs) or send the case back to the trial court for consideration in light of the Supreme Court's decisions in the Wisconsin and Maryland cases.

Other Noteworthy Redistricting Cases

- In addition to the Wisconsin, Maryland, and North Carolina partisan gerrymandering cases at the Supreme Court, partisan gerrymandering challenges are in their early stages in federal district court in **Ohio**, challenging the state's congressional map, and in **Michigan**, challenging both congressional and legislative maps. Rulings could be possible this fall in either or both cases.

- In Virginia, a decision could come from a three-judge panel this spring or summer in a **racial gerrymandering challenge** to 11 of the state's house of delegates districts. The panel previously rejected the challenge, but the Supreme Court reversed, ruling that the panel had used the wrong standard in assessing the claims.

- Also in Virginia, on May 31, the state Supreme Court rejected a challenge to the state's legislative maps under the Virginia Constitution, terminating hopes that the maps would be redrawn in advance of the 2019 state elections.

Redistricting Reform Efforts

There also is significant momentum toward redistricting reform in the states. As discussed below, voters in four states have succeeded in putting initiatives on their state ballots to reform the redistricting process, either by creating an independent redistricting commission to draw political boundaries or by constraining map drawers. In May (during the primary election), Ohio voters, by a 3-to-1 margin, passed a referendum reforming the redistricting process for congressional seats. Starting in 2021, new congressional maps will require either support of a supermajority in the Ohio Legislature, as well as a minimum level of support from the minority party in each chamber, or compliance with strict new rules, including a prohibition on maps that unduly favor a political party.

November Ballot Measures That Could Impact Voting Access

November's election is also remarkable for the sheer number of ballot initiatives that address voting issues — far more such ballot initiatives than in any election in recent memory. Voters in nine states will have the opportunity this year to vote on ballot initiatives to change voting and redistricting processes. Initiatives in Arkansas and Montana would make it more difficult for citizens to vote. Initiatives in Florida, Maryland, and Nevada would substantially expand access to the franchise. And initiatives in Colorado, Michigan, Missouri, and Utah would improve the redistricting process. Voters' decisions on these ballot measures could have a major impact on voting for years to come. Here is an overview of those measures:

Initiatives restricting voting access

- In **Arkansas**, voters will decide whether to enshrine a strict voter ID requirement in their state constitution, on top of the voter ID law enacted by the state Legislature last year. The Arkansas Supreme Court struck down the state's previous strict voter ID law as unconstitutional in 2014.

- In **Montana**, voters will vote on a measure that prevents civic groups and individuals from helping others vote absentee by collecting and delivering their voted ballots. Opponents claim that the measure will create **unnecessary** barriers to voting and could impact **student** voters in particular.

Initiatives expanding voting access

- In **Florida**, voters will vote on a citizen-initiated ballot measure to automatically **restore** the voting rights of individuals who have been convicted of felonies (other than murder and sexual offenses) when they complete all terms of their sentences. If the referendum passes, it has the potential to transform Florida's electorate: 1.4 million Floridians would regain their eligibility to vote. Florida's law currently disenfranchises, by far, the **most people** in the country. It is also an outlier in terms of its punitiveness. Florida is currently one of only three states that disenfranchises all people with felony convictions for life. If the Florida law is amended, only Iowa and Kentucky will have lifetime voting bans.

- In **Maryland**, voters will cast their ballot on a proposed constitutional amendment authorizing the Legislature to permit election-day voter registration. Maryland already allows same-day registration during its early voting period. This would make Maryland

the 19th state (plus the District of Columbia) to enact election-day registration, according to the National Conference of State **Legislatures**. Experts believe that this reform increases turnout by 5 to 7 **percent**.

- In **Nevada**, voters will **weigh in** on whether to adopt automatic voter registration. This reform could be particularly transformative in a state that has a history of scandals over voter registration drives as well as one of the lowest voter registration **rates** in the nation. AVR was first put before the state Legislature by a citizen-initiated **petition** supported by tens of thousands of **Nevadans**. The bill was passed by the state Legislature with substantial bipartisan support. Nevertheless, Gov. Brian Sandoval vetoed it, setting up this year's ballot initiative. If enacted, AVR could help to get many of the more than 770,000 eligible citizens who are not registered onto the rolls.

- In **Michigan**, a coalition is collecting signatures to put a constitutional amendment on the ballot that would include a variety of pro-voter reforms, including AVR at the secretary of state's office, election-day registration, and no-excuse absentee voting, as well as requiring post-election audits. This suite of reforms could transform voting in Michigan, improving the way people register and vote and how their votes are counted.

Initiatives improving redistricting

- In **Colorado**, two amendments on the ballot this November would put a 12-member commission in charge of drawing the state's congressional and legislative districts. (Congressional districts are currently drawn by the state Legislature and legislative districts are drawn by a commission of political appointees.) The commission would have an equal number of Democrats, Republicans, and unaffiliated members. A majority of eight commission members, including at least two unaffiliated members, would be required to approve a map. The commission would be required to hold at least three public hearings in each congressional district before approving a redistricting map. The proposals also establish new substantially stronger criteria for map drawing, including provisions barring partisan gerrymandering and rules favoring competitive districts. If adopted, the amendments would guarantee unaffiliated voters a role in the redistricting process for the first time.

- In **Michigan**, a grassroots ballot initiative that began with a single Facebook post in November 2016 would create a 13-member citizens' redistricting commission, consisting of four Democrats, four Republicans, and five members not affiliated with a major party, to draw both the state's congressional and legislative boundaries. (Both congressional and legislative districts are currently drawn by the state Legislature.) A majority vote of the commission would be required to approve a plan, which must include at least two commissioners affiliated with each major political party, and two commissioners affiliated with neither party. Any map approved by the commission would be subject to new rules, including a requirement that the map not unduly favor a political party as determined by accepted measures of partisan fairness.

- In **Missouri**, a citizen-proposed constitutional amendment will be on the 2018 ballot that would give a nonpartisan state demographer primary responsibility for drawing state legislative lines for consideration by the state's existing legislative apportionment commissions (one for the state House and one for the state Senate). Although the legislative apportionment commissions can modify the demographer's maps, any changes will require a supermajority of the commission. If voters approve the measure, Missouri would be one of the first states in the nation to require that proposed maps be tested using a specific statistical measure of partisan fairness.

- In **Utah**, voters will weigh in this November on a citizen-led ballot initiative that would create a seven-member advisory redistricting commission to propose redistricting plans for consideration by Utah lawmakers, starting in 2021. (Congressional and legislative districts are currently drawn by the state Legislature.) The commissioners, who would be appointed by the governor and legislative leaders, would be required to follow ranked-order criteria to draw the state's congressional and legislative districts, which would include preserving local communities of interest and traditional neighborhoods. The proposal also would prohibit the commission and the Legislature from considering partisan political data unless necessary to comply with other redistricting criteria. To ensure that maps are not gerrymandered, the amendment requires map drawers to use best available scientific and statistical methods, including measures of partisan bias, to test maps. Uniquely among states that use advisory commissions, the Utah amendment would require the Legislature to issue a written report if it rejects a commission-drawn map. The report would have to explain both why the Legislature rejected the commission's proposed map and why the map adopted by the Legislature better satisfies the amendment's map-drawing criteria.

Appendix: Voting Litigation Scorecard

Here is a summary of the outcomes of major lawsuits challenging new voting restrictions over the past decade. They are mostly federal cases, except where otherwise indicated:

LITIGATION VICTORIES

State	Year of Key Ruling	Law Blocked/Mitigated	Outcome
Alabama, Georgia, Kansas	2016	Documentary proof of citizenship for registration	Blocked for use on federal voter registration form.
Georgia	2016	"No match, no vote" purge practice	State agreed to suspend the practice before a hearing was held. New "no match, no vote" bill subsequently enacted in 2017.
Kansas	2014, 2016	Documentary proof of citizenship for registration	Documentation requirement for the DMV voter registration form, the state voter registration form (challenged in state court), and the federal registration form all blocked.
North Carolina	2016	Single legislative package of restrictions: strict voter ID; cutbacks to early voting; elimination of same-day registration, preregistration, and out-of-precinct voting	Struck down
Texas	2012, 2016	Strict voter ID	Struck down, both before and after the *Shelby* ruling. Legislature subsequently passed an amended voter ID law in 2017.
Wisconsin	2016	Strict voter ID; early voting, residency, absentee ballot distribution, and student voting restrictions	Process for obtaining free voter ID modified and restrictions on use of certain types of ID struck down. Other challenged restrictions struck down.
Arizona	2013, 2014	Documentary proof of citizenship for registration	Blocked for state and federal voter registration form
Arkansas	2014	Voter ID	Struck down by state court. New voter ID law subsequently enacted in 2017.
Pennsylvania	2014	Strict voter ID	Struck down by state court
Florida	2006, 2007, 2008, 2012	Cutbacks to early voting; restrictions on voter registration drives; restrictions on processing voter registration forms	Cutbacks to early voting struck down in part. Restrictions on registration drives and form processing blocked.
South Carolina	2012	Voter ID	Blocked for 2012 election, and most harmful effects mitigated for future elections
Georgia	2005, 2006	Strict voter ID	Blocked for 2006 elections by state and federal courts, but an amended version of the law was subsequently upheld
Missouri	2006	Strict voter ID	Struck down by state court
Ohio	2006	Documentary proof of citizenship for naturalized citizens at the polls	Struck down

UNSUCCESSFUL LITIGATION

State	Year of Key Ruling	Law Challenged
Ohio	2016	Cutbacks to early voting
Ohio	2016	Hurdles to counting provisional and absentee ballots
Virginia	2016	Strict voter ID
Tennessee	2015	Strict voter ID
Wisconsin	2014	Strict voter ID (challenged in both state and federal court)
Texas	2012	Third-party voter registration restrictions
Indiana	2008, 2010	Strict voter ID (challenged in both state and federal court)

Voters have also been successful in challenging state administrative decisions. A pair of lawsuits brought in 2016 **successfully challenged** election officials' decision to reduce the number of polling sites in Maricopa County, Arizona. And in 2013, a state court in Colorado **rejected** the secretary of state's incorrect interpretation of the state's vote-by-mail statute, which would have obstructed thousands of Coloradans from voting.

New Voting Restrictions in America

After the 2010 election, state lawmakers nationwide started introducing hundreds of harsh measures making it harder to vote. The new laws range from strict photo ID requirements to early voting cutbacks to registration restrictions.

Overall, 25 states have put in place new restrictions since then — 15 states have more restrictive voter ID laws in place (including six states with strict photo ID requirements), 12 have laws making it harder for citizens to register (and stay registered), ten made it more difficult to vote early or absentee, and three took action to make it harder to restore voting rights for people with past criminal convictions.

In 2016, 14 states had new voting restrictions in place for the first time in a presidential election. Those 14 states were: Alabama, Arizona, Indiana, Kansas, Mississippi, Nebraska, New Hampshire, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Wisconsin.

In 2017, legislatures in Arkansas and in North Dakota passed voter ID bills, which governors in each state signed, and Missouri implemented a restrictive law that was passed by ballot initiative in 2016. (Texas also passed a new voter ID law, though its earlier strict voter ID law was partially in effect in 2016.) Georgia, Iowa, Indiana, and New Hampshire also enacted restrictions last year, in addition to laws that were on the books for previous elections.

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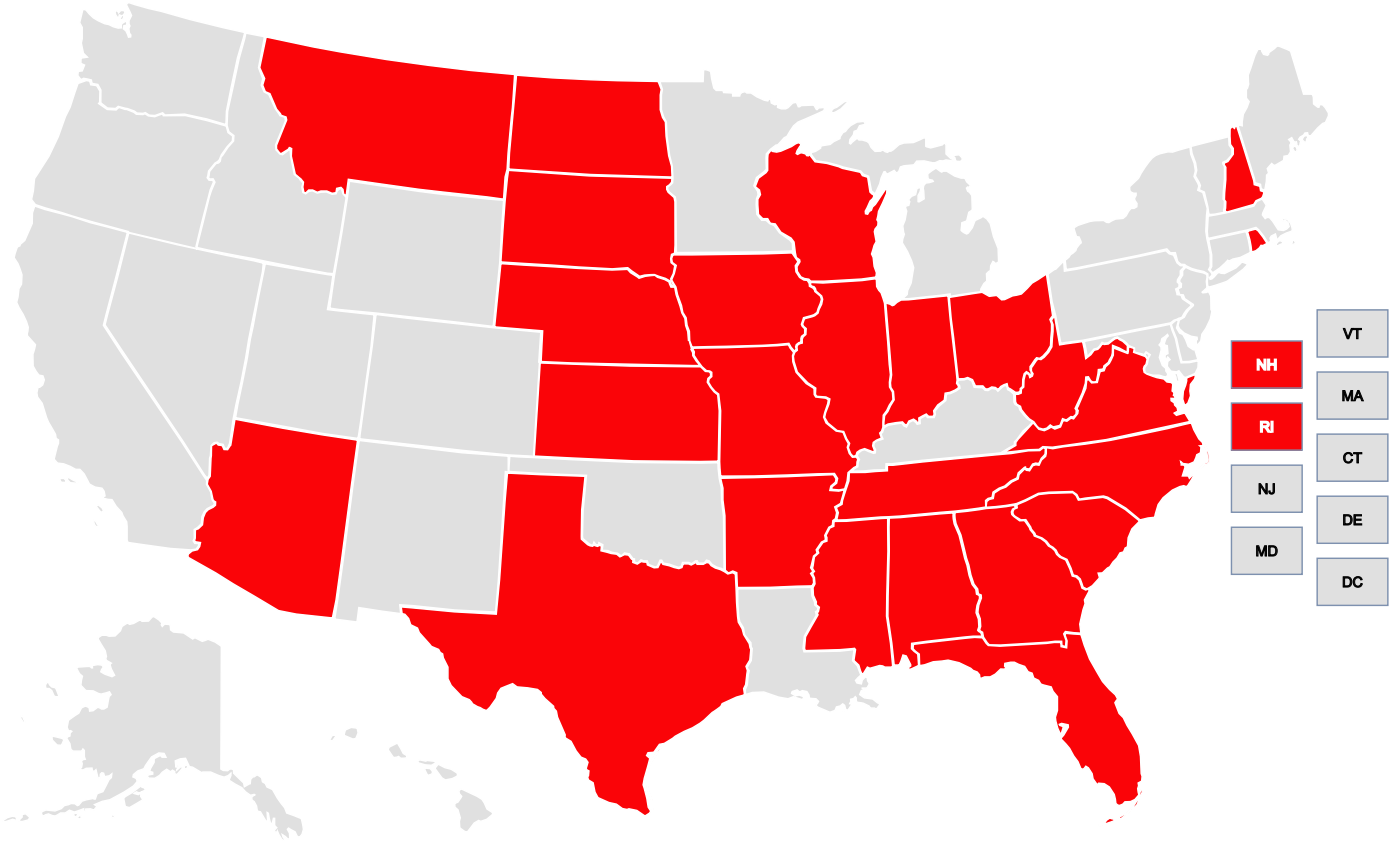
In 2019, Arizona and Tennessee have enacted new restrictions.

This page details the new restrictive voting requirements put in place over the last several years.

Significant Voting Restrictions in America Since 2010 Election



Last updated: July 3, 2019.

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Status Key:

RESTRICTIONS ON VOTING SINCE THE 2010 ELECTION

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Voting Laws Roundup 2017

In 2017, changes to voting laws are again poised to play a major role in state legislative agendas.

In Their Own Words: Officials Refuting False Claims of Voter Fraud

President Trump recently revived his false claim of widespread voter fraud in the 2016 election, and called for an investigation into the issue. Elected officials, election administrators, experts, and leaders from across the political spectrum have spoken out against these untrue allegations.

BRENNAN CENTER FOR JUSTICE

New Voting Restrictions in America

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Click here for an interactive version of this page.

Updated as of July 3, 2019.

Alabama

New restriction(s) in place in the first time in 2016: Photo ID required to vote.

Click here to see the types of ID required under Alabama's law.

Background: Passed in 2011 by a Republican-controlled legislature and signed by a GOP governor, the photo ID law initially required pre-clearance under Section 5 of the Voting Rights Act. But the measure was allowed to go into effect after the U.S. Supreme Court gutted that provision in 2013.

Alabama also passed a law in 2011 requiring voters to provide documentary proof of citizenship when registering to vote. That requirement had been on hold, but in January 2016, the Election Assistance Commission's Executive Director announced that documentary proof of citizenship would be added to the national voter registration form instructions for Alabama. A federal appeals court blocked the registration requirement on September 9, 2016. It is subject to ongoing litigation.

Arizona

New restrictions enacted in 2019: Restrictions on access to emergency early and absentee voting and extension of voter ID requirements to early voting.

New restriction(s) in place for the first time in 2016: Limitations on mail-in ballot collection.

Background: In 2016, a Republican-controlled legislature passed a bill limiting collection of mail-in ballots and making it a felony to knowingly collect and turn in another voter's completed ballot, even with that voter's permission (the law has exceptions for direct family members, caregivers, and postal-service employees). Gov. Doug Ducey (R) signed the bill, which went into effect in the summer of 2016.

Other restrictions in play: In 2004, voters approved a referendum requiring documentary proof of citizenship to register to vote. In June 2013, the U.S. Supreme Court invalidated this measure as it applied to the federal voter registration form. And in 2018, as part of the settlement of a lawsuit, the state agreed to register applicants to vote in federal elections, without documentary proof of citizenship, regardless of whether the state or federal form was used.

Arkansas

New law enacted in 2018: Arkansas voters enacted a constitutional amendment, via ballot initiative, that enshrined a photo ID requirement for voting in the state constitution.

New law in place in 2018: Requires that voters show one of a limited set of IDs.

Click here to see the types of ID required under Arkansas's law.

Background: Passed in 2017 by a GOP-controlled state legislature.

Florida

New law enacted in 2019: Cut back on the expansive changes made by Amendment 4 – a constitutional amendment that restores voting rights to many Floridians with a felony conviction and that was passed overwhelmingly by Florida voters in November 2018.

Restriction(s) in place for the first time in 2012: Cut early voting, curbed voter registration drives, and made it harder to restore voting rights to people with past criminal convictions.

Original effective date: 2011

Background: In 2011, Florida's Republican-controlled legislature passed a series of laws, signed by Gov. Rick Scott (R), making it harder to vote. First, lawmakers reduced the early voting period, which contributed to long lines in the 2012 election. The legislature responded in 2013 by restoring some of the early voting days, but there are still fewer early balloting opportunities today than before the 2011 cutbacks. Second, Florida passed new restrictions on voter registration drives. With the help of the Brennan Center, the most onerous aspects of this law were enjoined by a federal court in August 2012. Finally, Gov. Scott reversed a prior executive action that had made it easier to restore voting rights to people with past criminal convictions.

Georgia

New restriction(s) in place for the first time in 2018: The state legislature passed and the governor signed a bill that would make voter registration more difficult. It imposes a requirement that voter registration forms match exactly with other state records — a burdensome process known as "no match, no vote." Only months earlier, the secretary of state agreed in a court settlement to stop a similar procedure that had prevented tens of thousands from registering.

Restriction(s) in place for the first time in 2012: Reduced early voting period from 45 to 21 days and cut early voting the weekend before Election Day.

Background: In 2009, a Republican-controlled legislature passed a law requiring voters to provide documentary proof of citizenship when registering to vote. That requirement had been on hold, but in January 2016, the Election Assistance Commission's Executive Director announced that that documentary proof of citizenship would be added to the national voter registration form instructions. A federal appeals court blocked the registration requirement on September 9, 2016. It is subject to ongoing litigation. In 2011, a Republican-controlled legislature also reduced early voting. Both laws were signed by a GOP governor.

Illinois

Restriction(s) in place for the first time in 2012: Curbed voter registration drives.

Original effective date: 2011

Background: Passed in 2011 by a Democratic-controlled legislature and signed by a Democratic governor, the measure changed the allotted time for returning voter registration forms. The previous law allowed seven days to return the forms. The amended law requires completed registration materials to be returned by first-class mail within two business days, or by personal delivery within seven days. This rule is not nearly as harmful as others, like one in Texas, because the reduction does not apply to groups only using the national mail-in voter registration form.

Indiana

New laws enacted in 2019: Cut deadline for submitting an absentee ballot application for most voters from eight days to 12 days prior to the election and restricted state court lawsuits to extend polling place hours.

New restriction enacted in 2017 and 2018: In 2017, the state enacted a law to implement a flawed voter purge process. The law provides for use of the error-prone Crosscheck Program to remove voters without the notice and waiting period required by the National Voter Registration Act. (The law was amended in 2018, but the state failed to fix the law's failure to require notice to voters prior to purging them as mandated by federal law.) Civil rights groups sued the Secretary of State over the law in August 2017, and a court entered a preliminary injunction against the state in June 2018, meaning the law is currently not in effect.

New restriction(s) in place for the first time in 2016: Allows additional party-nominated election officers to demand voters provide proof of identification.*

Background: Passed in 2013 by a Republican-controlled state legislature and signed by a GOP governor.

* This law subjects voters to an additional and duplicative voter identification requirement that did not exist before the law was enacted. If, however, precinct election officials always enforce the voter ID requirement in a uniform manner, this law may not have a restrictive effect.

Iowa

New law (partially) in place in 2018: Iowa's governor signed a broad-based law that will require voter ID (starting after the 2018 election), restrict voter registration efforts, and impose new burdens on Election Day registration and early and absentee voting. Although not as restrictive as a North Carolina law that passed in 2013 (and was blocked by a federal court), Iowa's law similarly restricts voting in a number of different ways.

In August 2018, the Iowa Supreme Court blocked parts of the law that made it more difficult to apply for an absentee ballot and also enjoined the state from advertising that voters will be asked for ID, without making clear that such ID is not required in 2018.

Restriction(s) in place for the first time in 2012: Made it harder to restore voting rights to people with past criminal convictions.

Original effective date: 2011

Background: In 2011, Gov. Terry Branstad (R) reversed a prior executive action that had made it easier to restore voting rights to people with past criminal convictions. In effect, the state now permanently disenfranchises most citizens with past felony convictions.

Kansas

Update since 2016: In 2018, a federal district court struck down the state's documentary proof of citizenship law. That decision is on appeal.

New restriction(s) in place for the first time in 2016: Documentary proof of citizenship required to register using the state registration form. But, by court order, certain individuals who registered without showing documentary proof must be permitted to vote.

Restriction(s) in place for the first time in 2012: Photo ID required to vote.

Click here to see the types of ID required under Kansas's law.

Background: The documentary proof of citizenship requirement has been the subject of multiple lawsuits. A 2014 federal court ruling had found the requirement unenforceable on the federal mail-in voter registration form. But in January 2016, the Election Assistance Commission's Executive Director announced that documentary proof of citizenship would be added to the national voter registration form instructions for Kansas, as well as Alabama and Georgia. A federal appeals court blocked the registration requirement for the national from on September 9, 2016. That action is the subject of an ongoing lawsuit.

A Republican-controlled legislature passed both the photo ID and documentary proof of citizenship requirements in 2011, and they were signed by a GOP governor.

Mississippi

New restriction(s) in place for the first time in 2016: Photo ID required to vote.

Click here to see the types of ID required under Mississippi's law.

Background: Passed in 2011 by a voter referendum, the ID law initially required preclearance under Section 5 of the Voting Rights Act. But the measure was allowed to go into effect after the U.S. Supreme Court gutted that provision in 2013.

Missouri

New law (partially) in place in 2018: Missouri passed a new law that requires photo ID in order to vote, but permits voters to vote a regular ballot by presenting non-photo ID and signing an affidavit indicating that they do not possess photo ID. The voter ID requirement was challenged in federal court and was altered in part in October 2018: the court prohibited the state from requiring otherwise-qualified voters that lacked photo ID to execute the affidavit required by statute in order to vote.

Background: Passed by ballot initiative in 2016

Montana

New law enacted in 2018: Montana voters enacted a new law, via ballot initiative, that will prevent civic groups and individuals (with certain exceptions) from helping others vote absentee by collecting and delivering their voted ballots.

Nebraska

New restriction(s) in place for the first time in 2016: Reduced early voting period.

Background: In 2013, state lawmakers reduced the early voting period from a minimum of 35 days to no more than 30 days. Nebraska's unicameral legislature is technically nonpartisan, but generally is controlled by Republicans. The measure was signed by a GOP governor.

New Hampshire

New laws (partially) in place in 2018: In 2017, the state enacted a law that would make it more difficult for students and others to register to vote, but that law was partially enjoined prior to the 2018 election. In 2018, the state enacted another law that would make it more difficult for students and others to vote, but it takes effect in 2019.

New restriction(s) in place for the first time in 2016: Photo ID requested to vote. The law requires voters without acceptable ID to get photographed at the polls, and the photograph will be affixed to an affidavit.

Click here to see the types of ID requested under New Hampshire's law.

Background: Passed in 2012, a Republican-controlled legislature overrode a veto from Gov. John Lynch (D) to enact the voter ID law. The state previously required no form of ID to vote. Prior to September 2015, the law included an affidavit alternative.

North Carolina

New law enacted in 2018: North Carolina voters enacted a constitutional amendment, via ballot initiative, that enshrined a photo ID requirement for voting in the state constitution. The state legislature subsequently enacted implementing legislation, over the governor's veto.

New law (partially) in place in 2018: In 2018, the state enacted a law that requires uniform hours at early voting sites. The law has had the effect of reducing the number of early voting locations available to voters. The law also cuts the last Saturday of early voting before the election, but that change will not take place until after the 2018 election.

The law was passed by a GOP-controlled legislature, which overrode a gubernatorial veto.

North Dakota

New law (partially) in place in 2018: The state's governor signed a bill on April 25, 2017 that would restore a strict voter ID requirement in the state. That law was challenged in federal court, and it will be altered in part for the 2018 election. Specifically, the federal district court required the state to accept certain tribal identification not included in the law as voting ID.

Click here to see the types of ID required under North Dakota's law.

Background: Passed in 2017 by a Republican-controlled state legislature and signed by a GOP governor.

In 2016, a federal court partially blocked a previous ID law that accepted a narrow range of identification documents and did not provide any meaningful voting opportunities for voters without the accepted ID. The new law slightly expands options to use for ID, but eliminates the process the court imposed, which allowed voters without IDs to cast a ballot that counts on Election Day, and instead included a more burdensome process.

Ohio

New restriction(s) in place for the first time in 2016: Cut early voting and changed absentee and provisional ballot rules.

Background: In 2014, lawmakers cut six days of early voting — eliminating "Golden Week," during which voters could register and cast a ballot all in one trip — and changed absentee and provisional ballot rules.

In 2014, Secretary of State Jon Husted (R) also issued a directive reducing early voting on weekday evenings and weekends. In 2015, state officials and voting rights advocates settled a separate ongoing lawsuit over the early voting hours, which restored one day of Sunday voting and added early voting hours on weekday evenings. The settlement is in place through 2018.

A Republican-controlled state legislature passed the series of voting restrictions, which were signed by a GOP governor.

Rhode Island

New restriction(s) in place for the first time in 2016: Photo ID requested to vote. There is an affidavit alternative for voters without a photo ID.

Click here to see the types of ID requested under Rhode Island's law.

Background: Passed through a Democratic-controlled legislature and signed by an independent governor in 2011, the measure is significantly less restrictive than other ID laws because it accepts a broad range of IDs with a voter's name and photograph. A previous version of the law allowed non-photo IDs.

South Carolina

New restriction(s) in place for the first time in 2016: Photo ID required if a voter has one, but an alternative is available for those who have a reasonable impediment to obtaining ID.

Click here to see the types of ID required under South Carolina's law.

Background: The law was passed in 2011 by a Republican-controlled state legislature and signed by a GOP governor, but it was put on hold by a federal court until after the 2012 election. During the course of that litigation, the state interpreted the law in a way that makes it less restrictive than other ID requirements. A voter with a reasonable impediment or obstacle to obtaining one of the accepted photo IDs can sign an affidavit at the polls and then vote a provisional ballot.

South Dakota

Restriction(s) in place for the first time in 2012: Made it harder to restore voting rights to people with past criminal convictions.

Background: Passed in 2012 by a Republican-controlled legislature and signed by a GOP governor.

Tennessee

New restrictions enacted in 2019: Restrictions on third-party voter registration.

New restriction(s) in place for the first time in 2016: Photo ID required to vote.

Click here to see the types of ID required under Tennessee's law.

Restriction(s) in place for the first time in 2012 : Reduced early voting period and proof of citizenship required to register.

Background: In 2011, a Republican-controlled legislature passed the three voting restrictions, which were signed by a GOP governor. Tennessee's proof of citizenship requirement applies only to individuals flagged by state officials as potential non-citizens based on a database check. In 2013, lawmakers made the photo ID law, which was in place for the 2012 election, even more restrictive by limiting acceptable IDs to those issued by the state or federal government.

Texas

New law enacted in 2019: Cut back use of mobile early voting sites.

New restriction in place since 2016 election: Photo ID required if a voter has one, but an alternative will be available for those who present a non-photo ID from a preset list and execute an affidavit claiming to have certain, enumerated reasonable impediments to obtaining photo ID. Reasonable impediment alternative is more restrictive than the alternative in place in 2016.

Click here to see the types of ID required under Texas's law.

New restriction(s) in place for the first time in 2016: Photo ID required if a voter has one, but an alternative will be available for those who have a reasonable impediment to obtaining ID.

Restriction(s) in place for the first time in 2012: Curbed voter registration drives.

Background: In 2012, a federal court blocked the 2011 photo ID law under Section 5 of the Voting Rights Act. The state then implemented the requirement after the U.S. Supreme Court gutted Section 5 in 2013, and a photo ID was required to vote for the first time in a federal election in 2014.

In July 2016, the full Fifth Circuit Court of Appeals ruled that the strict photo ID law discriminates against minority voters, and therefore cannot be enforced against those who lack ID. In August 2016, a federal court approved an agreement that will allow voters with an obstacle to obtaining photo ID to cast a regular ballot in November 2016 after showing one of a much larger number of IDs and signing a declaration. In June 2017, in response to the litigation, Texas enacted a new voter ID law that is currently in place.

A Republican-controlled legislature passed the restriction on voter registration drives and the strict photo ID law in 2011, and both were signed by a GOP governor.

Virginia

New restriction(s) in place for the first time in 2016: Photo ID required to vote and limits on third-party voter registration.

Click here to see the types of ID required under Virginia's law.

Background: The restriction on third-party voter registration requires groups receiving 25 or more registration forms to register with the state and reduces the amount of time from 15 to 10 days to deliver the applications. The state Senate was evenly divided among Democrats and Republicans when the photo ID law was enacted, but the GOP lieutenant governor cast the tie-breaking vote on the photo ID law. The state House was controlled by Republicans. Both measures were signed by a GOP governor in 2013.

In 2015, a Republican-controlled legislature passed a bill to amend the photo ID law to add student IDs issued by private schools to the list of acceptable IDs (the law currently allows public school IDs). The bill was signed by a Democratic governor and takes effect in 2016.

West Virginia

Restriction(s) in place for the first time in 2012: Reduced early voting period from 17 to 10 days.

Original effective date: 2011

Background: Passed in 2011 by a Democratic-controlled state legislature and signed by a Democratic governor.

Wisconsin

New restrictions enacted in 2018: In 2018, the state passed a law limiting the early voting period and codifying certain administrative practices related to voter IDs—despite a Court order halting the state's 2011 and 2014 attempts to limit early voting. A federal district court has blocked these new provisions, however.

New restriction(s) in place for the first time in 2016: Photo ID required to vote.

Click here to see the types of ID required under Wisconsin's law.

Background: In 2011, state lawmakers passed a restriction on individual voter registration and a law requiring photo ID to vote.

In 2014, the legislature also reduced early voting hours on weekdays and eliminated them entirely on weekends. These cuts were in effect for the first time in 2014. They are currently on hold after a July 2016 trial court decision finding the restrictions were intentionally racially discriminatory. That decision also ruled voters could obtain a free photo ID by showing up at a state DMV office.

Read more on the ongoing litigation over the photo ID and early voting restrictions, which were passed by a Republican-controlled legislature in 2011 and 2014, and signed by a GOP governor a restriction on individual voter registration and a law requiring photo ID to vote.

Other Notable Voting Law Changes

- **Arkansas** – A Republican-controlled legislature passed a photo ID law in 2013, overriding a veto from Gov. Mike Beebe (D). On October 15, 2014, the Arkansas Supreme Court unanimously struck down the photo ID requirement, ruling it violated the state constitution by imposing an additional "qualification" to voting.

- **Montana** – A Republican-controlled legislature approved a referendum measure to repeal Election Day registration, which voters rejected in November 2014. Gov. Steve Bullock (D) had vetoed a previous effort to repeal Election Day registration.

- **North Carolina** – A Republican-controlled state legislature passed a series of voting restrictions in 2013, which were signed by a GOP governor. Lawmakers eliminated same-day registration, reduced the early voting period, ended pre-registration for 16- and 17-year-olds, and instituted a strict photo ID requirement, among a number of other restrictive changes. The measures were in effect for the first time in 2014 (except for the ID requirement, which was slated to go into effect in 2016). In June 2015, lawmakers softened the photo ID requirement, creating an option for voters to attest to a reasonable impediment to obtaining an ID, and vote a provisional ballot that will be counted unless there is a problem with the attestation. In July 2016, the Fourth Circuit Court of Appeals struck down the state's voting restrictions, ruling that they were passed with racially discriminatory intent. It also ruled that the "reasonable impediment" exception was not a sufficient remedy for the ID law's harm.

- **North Dakota** – In 2015, a Republican-controlled legislature passed a bill, signed by a GOP governor, making the state's voter ID law — already in effect in the 2014 election — more restrictive by providing that only four types of IDs would be accepted to vote, either in-person or absentee: a current North Dakota driver's license or non-driver photo ID, a tribal ID, or a long-term care certificate. On August 1, 2016, a federal trial court issued a preliminary injunction, ordering North Dakota to provide a "fail-safe" option for voters without photo ID if the state intends to enforce the law. The state indicated it will not appeal the ruling, and will allow a broad range of IDs to cast a ballot in the 2016 election.

BRENNAN CENTER FOR JUSTICE at New York University School of Law

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Voting Laws Roundup 2019

With most legislatures closed, major positive reforms were enacted, but a handful of states made it more difficult to vote.

July 10, 2019

Last updated: July 10, 2019

At this point in the year, 42 state legislatures have concluded their last regular legislative session in the leadup to a presidential election year. Looking back at this session, three new, Democratic trifectas – New York, Nevada, and Colorado – were responsible for an outsize portion of the most impactful expansive voting laws enacted so far this year.[i]

At the same time, a late-session surge in legislation cutting back voting access was successful in creating new restrictions in five states. Most significantly, in Florida, a new restriction cuts back on the gains made by Amendment 4. This new restriction could dramatically curtail the number of people who get their voting rights back under Amendment 4 and it flies in the face of the voters' decision last November to expand voting access. In addition, in Tennessee, lawmakers added new burdens on voter registration drives. And in Texas, lawmakers pushed through a new restriction on early voting, but it

could have been even worse, if a powerful coalition had not come together to stop an even more restrictive bill that was moving toward passage.

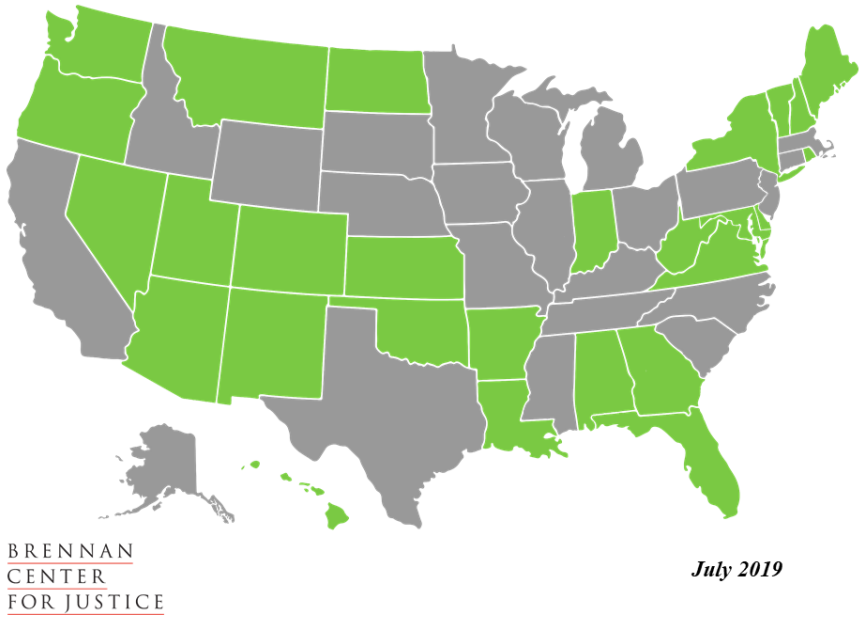
Overall, since the start of the session, 46 states have introduced or carried over 688 bills expanding access compared to 29 states have introduced or carried over at least 87 bills restricting voting access. In addition, 33 states have introduced or carried over at least 108 bills related to election security.

Expansive Voting Bills

The massive burst of pro-voter bills introduced this session – 688 bills in 46 states – translated into significant reform across the country. As a group, states with new, Democratic trifectas led the way in terms of expansive laws this year – and, within that group, New York, Colorado, and Nevada enacted multiple, high-impact reforms. In addition, Delaware and Virginia enacted early in person voting. And a number of other states – under Democratic, GOP, and mixed control – enacted reforms that are either more incremental or alleviate past voter suppression.

(Click here [2] for a list of expansive bills that have passed at least one house and are still alive – as we are now deep into the legislative calendar, bills that have seen significant movement are generally the ones to watch for passage.)

Expansive Bills Enacted in 2019



A couple of other trends emerged as well. States enacted a number of bills providing notice and cure opportunities for absentee ballots and voter registrations. In addition, despite Florida's decision to cut back on Amendment 4, rights restoration continues to gain momentum. See below for more details:

- **New Democratic Trifectas.** Following the 2018 election, Democrats newly obtained [3] trifecta control of state government in six states. At the start of 2019, U.S. House Democrats made democracy reform a central part of the party's agenda, by introducing (and then passing) a democracy reform bill as H.R.1 – the first bill in the new House. Each of the six states with new Democratic trifectas states has enacted (or is shortly expected to enact) major pro-voter reforms.
  - **New York** passed the most significant reforms this year, enacting into law a package of voting reforms at the start of the legislative session, including: **early voting** (SB 1102), **pre-**

registration for 16- and 17-year-olds (AB 774), and **portability** of registration records (AB 775), as well as a law that consolidated the dates for state and federal primaries and required ballots to be distributed to military voters farther in advance of elections (AB 779). The legislature also passed constitutional amendments to permit **same-day registration** (SB 1048) and **no-excuse absentee voting** (SB 1049), which will need to be passed again and then ratified by the voters.
  - **Colorado** enacted a law **restoring voting rights** to individuals on release from incarceration (HB 19-1266) and a law expanding **AVR** and writing that reform into the statute books (it had previously been put in place as an administrative measure by election and DMV officials) (HB 19-235). In addition, the state enacted a law improving voting access for voters with disabilities (SB 19-202) and a law with several additional reforms, including new standards for vote centers and improvements to the registration process for voters living on Indian reservations (HB 19-1278).
  - The **Illinois** legislature sent Governor Pritzker a bill that would enhance voting access for eligible voters confined in jails (SB 2090).
  - **Maine** enacted **AVR** (HB 1463).
  - **Nevada** enacted a law providing immediate **rights restoration** to people on release from incarceration (AB 431) and a law that authorizes **same day registration,** improves the provisional ballot process and extends early or absentee voting deadlines, among other reforms (AB 345).
  - **New Mexico** enacted same day voter registration (SB 672).

- **Additional Notable Reforms.** Several states passed additional expansive reforms through their legislative process. Both red and blue states took steps to expand access this year – continuing a trend we have seen throughout the decade. While GOP-controlled states passed a wide variety of pro-voter measures, the most common were reforms to enhance absentee voting and access for voters with disabilities. Reforms include:
  - **Delaware** enacted **early in-person voting** (HB 38).
  - **Georgia** enacted into law reforms addressing a variety of problems with its voting systems (and the lawsuits that challenged them), including improvements to its “no match, no vote” policy, voter purges, absentee voting, provisional voting, voting for people with disabilities (HB 316).
  - **Virginia** enacted **no-excuse early in-person voting** (SB 1026/HB 2790).
  - **Washington** enacted a Native American voting rights act (SB 5079).

- **Notice/Cure Process.** States’ processes for determining the validity of voting materials like absentee ballots or registration applications are critically important but can result in improper disenfranchisement. For example, some states require elections officials to compare the voter’s signature on an absentee ballot with the signature they have on file and to reject the ballot if the signatures do not match. In some cases, though, states offer inadequate guidance to officials to make the comparison and inadequate recourse to voters whose ballots have been rejected.

This year, several states enacted laws that require election officials to notify and/or permit voters to cure deficiencies in absentee ballots, absentee ballot applications, or voter registration applications (or

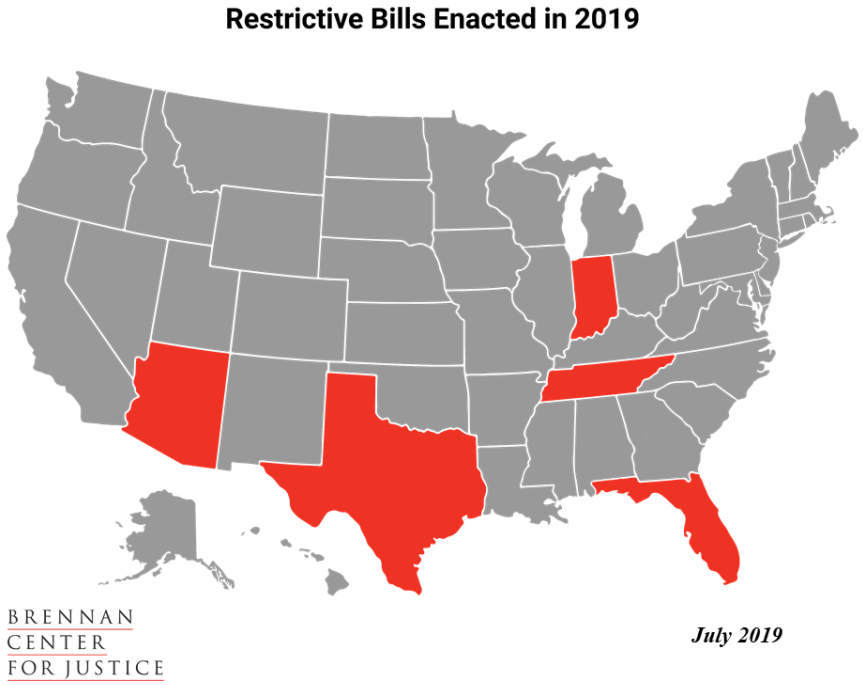
improve their existing processes), including: Arizona (SB 1054), Florida (SB 7066), Georgia (HB 316), Kansas (SB 130), and Virginia (HB 1042).

- **Rights Restoration Momentum Continues**. Last year, Florida voters enacted the paradigm-shifting Amendment 4, and New York and Louisiana also made major improvements to their rights restoration laws. This year, while Florida lawmakers cut back on Amendment 4, lawmakers in other states pushed forward.
  - As noted above, **Colorado** and **Nevada** enacted rights restoration laws. In addition, **Arizona** enacted a law that would eliminate the obligation for people with only one felony conviction to pay certain types of legal financial obligations before having their voting rights restored (HB 2080). People are still required, however, to pay any outstanding restitution.
  - **California** (AB 646) and **New Jersey** (SB 2100) continue to consider rights restoration legislation.
  - Moreover, even though efforts in Iowa (HJR 14) and Tennessee came up short this year, the seriousness of those efforts, in states with extremely restrictive rights restoration regimes, is a further indication of the momentum behind this critical reform.

Restrictive Voting Bills

While some states are expanding voting access, others are cutting it back. At least seven restrictive bills in five states have been signed into law. All of the five states with new restrictions are under Republican trifecta control, and all of them had already passed restrictions making it more difficult to vote previously since we started systematically tracking anti-voter legislation in 2011.

(Click here [4] for a list of restrictive bills that have passed at least one house in states with open sessions.)



The most noteworthy restrictions that passed this year are in Florida, where lawmakers cut back on Amendment 4, and Tennessee, which enacted new restrictions on voter registration drives. Arizona,

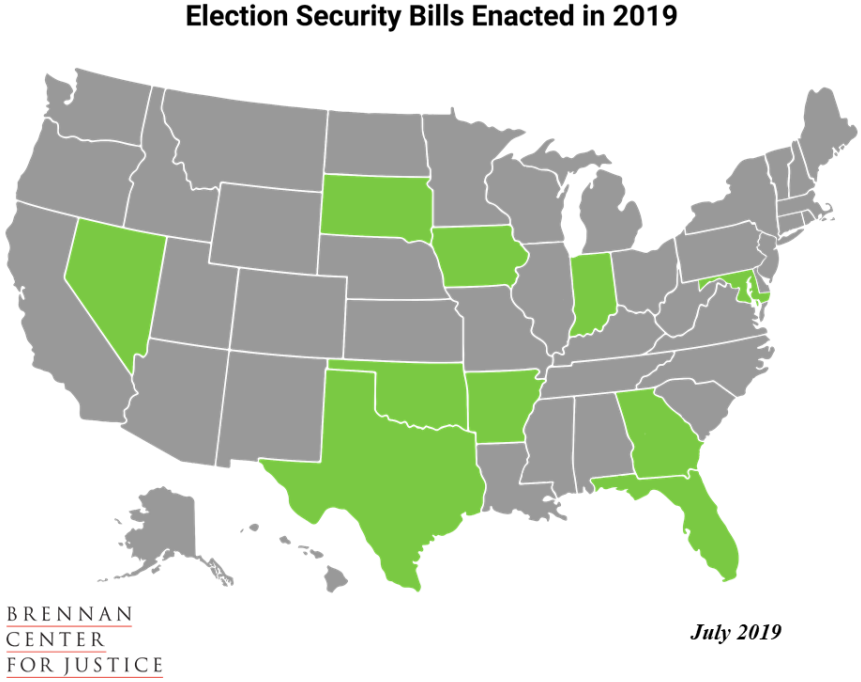
Indiana, and Texas also signed new restrictions into law. Opponents, however, were able to stop a major additional piece of legislation in Texas.

- **Florida** enacted a law that **cuts back** on the **historic changes to the state's felony disenfranchisement laws** that voters passed overwhelmingly in November 2018 (SB 7066). Voting rights advocates, including the Brennan Center, have filed a lawsuit challenging the law.
- **Tennessee** enacted into law wide-ranging **new restrictions on third-party voter registration** (HB 1079 and SB 971). The initial version of the bill imposed new registration and training requirements on third-party registration groups, as well as civil and criminal penalties for, among other things, submitting too many "deficient" voter registration forms. The amended version improves on this by carving out volunteers and organizations that only use volunteers from the new requirements. Voting rights groups have filed lawsuits challenging these new restrictions.
- **Arizona** enacted laws that **extend voter ID requirements to early voting** (SB 1072) and **restrict access to emergency early/absentee voting** (SB 1090). These bills appear to be a GOP reaction [5] to the use of emergency vote centers in Maricopa County during the 2018 Senate election.
- **Indiana** enacted a law **cutting the deadline** for submitting an **absentee ballot application** for most voters from eight days to 12 days prior to the election (HB 1311) and a law **restricting state court lawsuits to extend polling place hours** (SB 560).
- **Texas** enacted a law **restricting mobile early voting** sites (HB 1888). Voters and voting rights advocates joined in a powerful coalition, however, to halt another highly restrictive bill that was moving towards passage. SB 9 would have significantly increased penalties and risk of prosecution for election code violations by voters; permitted poll watchers to inspect voter ID; and imposed new restrictions on people assisting voters with physical limitations or who cannot read the ballot, among other measures.

Election Security Bills

In advance of the 2020 elections, state legislatures showed renewed interest in shoring up election infrastructure and implementing election integrity measures. Ten states have signed into law 14 election security bills thus far this year, and another three states have passed bills through their legislature.

(Click here [6] for a list of election security bills that have passed at least one house in states with open sessions.)



Several states have recognized the critical importance of post-election audits to verify vote totals. The urgency of adopting these audits has only increased in light of the foreign interference in the 2016 election – and the likelihood that foreign powers will attempt to interfere in next year's election. Still, more work remains in order for states to be ready for 2020.

The following bills have been enacted into law or passed through the legislature:

- **Arkansas** enacted a law that requires post-election audits (SB 524).
- The **California** legislature passed a bill authorizing the Secretary of State to require data security training as a condition of receiving voter registration information.
- The **Delaware** legislature passed a bill that makes the paper ballot is the legal ballot of record, enhances pre-election voting machine inspection requirements, and requires post-election audits (SB 121).
- **Florida** enacted a law requiring the Secretary of State to promulgate security standards addressing chain of custody of ballots, transport of ballots, and ballot security (SB 7066). (Note that this bill also cuts back on Amendment 4, as explained above.)
- **Georgia** enacted a law that requires voting machines to produce a paper record and authorizes a risk-limiting audit pilot program (HB 316),[ii] as well as a law that requires the Secretary of State to establish security protocols to protect voter registration information (HB 392).
- **Indiana** enacted a law requiring two-factor authentication to access the computerized voter registration list as well as requiring election vendors to disclose foreign ownership (SB 558); a law authorizing a risk-limiting audit pilot program (SB 405); a law prohibiting the acquisition and, eventually, the use of direct recording electronic voting machines ("DREs"), and imposing new security measures for e-pollbooks, among other measures (SB 570); and a law mandating annual cybersecurity training for county elections officials (SB 560).
- **Iowa** enacted a law directing state and local election officials to adopt new election cybersecurity measures (HF 692).
- **Maryland** enacted a law requiring vendors to disclose foreign ownership (SB 743).

- **Nevada** enacted a law that would mandate risk-limiting audits starting in 2022 (and a pilot risk-limiting audit program for the 2020 election) and establish a cybersecurity training requirements for local elections officials (SB 123).
- **Oklahoma** enacted a law: authorizing the State Board of Elections to order post-election audits, requiring county election officials to undertake new cyber-security measures. and authorizing the State Board to declare an election emergency in response to security threats or interference (SB 261).
- The **Oregon** legislature has passed a bill authorizing risk-limiting audits (SB 944).
- **South Dakota** enacted a law that requires vote centers and counties that use e-pollbooks to have printed paper copes of the registration list.
- **Texas** enacted a law that would direct the Secretary of State to establish new cybersecurity rules for protecting elections data, among other reforms (HB 1421).

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[i] This document tracks certain voting legislation making it easier or harder to register or vote, as well as certain legislation related to election security. Evaluating which laws to include requires exercising judgment and is not susceptible to precise quantification. Note that there are several types of election- and voting-related legislation that we do not track, including: redistricting, ballot design, enfranchisement of people under 18 or non-citizens, or public or individual notice requirements. The document also does not track administrative changes that could expand or restrict access.

[ii] The bill, however, is highly controversial: It does not require the use of hand-marked paper ballots and critics are concerned that it would result in the state purchasing voting systems that only use ballot-marking devices.

Voting Rights & Elections [7]

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BRENNAN
CENTER
FOR JUSTICE

VOTING LAW CHANGES IN 2012

Wendy R. Weiser and Lawrence Norden

Brennan Center for Justice *at New York University School of Law*

ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. Our work ranges from voting rights to campaign finance reform, from racial justice in criminal law to presidential power in the fight against terrorism. A singular institution—part think tank, part public interest law firm, part advocacy group—the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measurable change in the public sector.

About the Brennan Center's Democracy Program

The Brennan Center's Democracy Program works to repair the broken systems of American democracy. We encourage broad citizen participation by promoting voting and campaign reform. We work to secure fair courts and to advance a First Amendment jurisprudence that puts the right of citizens—not special interests—at the center of our democracy. We collaborate with grassroots groups, advocacy organizations, and government officials to eliminate the obstacles to an effective democracy.

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She has authored a number of nationally-recognized publications and articles on voting rights and election reform; litigated ground-breaking voting rights lawsuits; testified before both houses of Congress and in a variety of state legislatures; and provided policy and legislative drafting assistance to federal and state legislators and administrators across the country. She is a frequent public speaker and media contributor on democracy issues.

Lawrence Norden is Deputy Director of the Brennan Center's Democracy Program. He has authored several nationally recognized reports and articles related to voting rights, voting systems and election administration.

In April 2009, Mr. Norden completed his duties as Chair of the Ohio Secretary of State's bipartisan Election Summit and Conference, authoring a report that recommended several changes to Ohio's election administration practices and laws; the report was endorsed by most of the State's voting rights groups, as well as the bipartisan Ohio Association of Election Officials. In June 2009, he received the Usability Professional Association's Usability In Civic Life Award for his "pioneering work to improve elections." Mr. Norden is the lead author of the book *The Machinery of Democracy: Protecting Elections in an Electronic World* (Academy Chicago Press) and a contributor to the *Encyclopedia of American Civil Liberties* (Routledge 2007).

Mr. Norden is an Adjunct Professor at the NYU School of Law, where he teaches the Brennan Center Public Policy Advocacy Clinic.

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EXECUTIVE SUMMARY

Over the past century, our nation expanded the franchise and knocked down myriad barriers to full electoral participation. In 2011, however, that momentum abruptly shifted.

State governments across the country enacted an array of new laws making it harder to register or to vote. Some states require voters to show government-issued photo identification, often of a type that as many as one in ten voters do not have. Other states have cut back on early voting, a hugely popular innovation used by millions of Americans. Two states reversed earlier reforms and once again disenfranchised millions who have past criminal convictions but who are now taxpaying members of the community. Still others made it much more difficult for citizens to register to vote, a prerequisite for voting.

These new restrictions fall most heavily on young, minority, and low-income voters, as well as on voters with disabilities. This wave of changes may sharply tilt the political terrain for the 2012 election. Based on the Brennan Center's analysis of the 19 laws and two executive actions that passed in 14 states, it is clear that:

- These new laws could make it significantly harder for more than five million eligible voters to cast ballots in 2012.[1]

- The states that have already cut back on voting rights will provide 171 electoral votes in 2012–63 percent of the 270 needed to win the presidency.

- Of the 12 likely battleground states, as assessed by an August *Los Angeles Times* analysis of Gallup polling, five have already cut back on voting rights (and may pass additional restrictive legislation), and two more are currently considering new restrictions.[2]

States have changed their laws so rapidly that no single analysis has assessed the overall impact of such moves. Although it is too early to quantify how the changes will impact voter turnout, they will be a hindrance to many voters at a time when the United States continues to turn out less than two thirds of its eligible citizens in presidential elections and less than half in midterm elections.

This study is the first comprehensive roundup of all state legislative action thus far in 2011 on voting rights, focusing on new laws as well as state legislation that has not yet passed or that failed. This snapshot may soon be incomplete: the second halves of some state legislative sessions have begun.

INTRODUCTION

Legislators introduced and passed a record number of bills restricting access to voting this year. New laws ranged from those requiring government-issued photo identification or documentary proof of citizenship to vote, to those reducing access to early and absentee voting, to those making it more difficult to register to vote. In total, at least nineteen laws and two executive actions making it more difficult to vote passed across the country, at least forty-two bills are still pending, and at least sixty-eight more were introduced but failed.

As detailed in this report, the extent to which states have made voting more difficult is unprecedented in the last several decades, and comes after a dramatic shift in political power following the 2010 election. The battles over these laws were—and, in states where they are not yet over, continue to be—extremely partisan and among the most contentious in this year's legislative session. Proponents of the laws have offered several reasons for their passage: to prevent fraud, to ease administrative burden, to save money. Opponents have focused on the fact that the new laws will make it much more difficult for eligible citizens to vote and to ensure that their votes are counted. In particular, they have pointed out that many of these laws will disproportionately impact low-income and minority citizens, renters, and students—eligible voters who already face the biggest hurdles to voting.

This report provides the first comprehensive overview of the state legislative action on voting rights so far in 2011. It summarizes the legislation introduced and passed this legislative session, provides political and legal context, and details the contentious political battles surrounding these bills.

Overall, legislators introduced and passed the following measures:

- **Photo ID laws.** At least thirty-four states introduced legislation that would require voters to show photo identification in order to vote. Photo ID bills were signed into law in seven states: Alabama, Kansas, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin. By contrast, before the 2011 legislative session, only two states had ever imposed strict photo ID requirements. The number of states with laws requiring voters to show government-issued photo identification has quadrupled in 2011. To put this into context, 11% of American citizens do not possess a government-issued photo ID; that is over 21 million citizens.

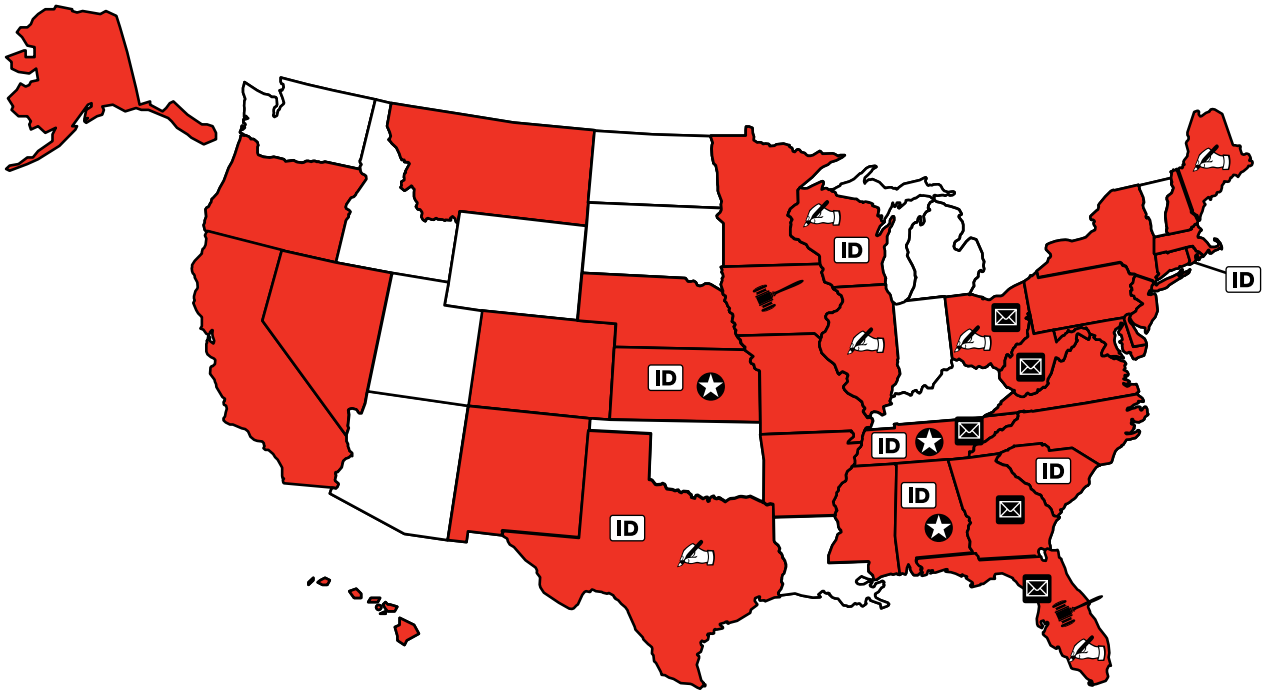
- **Proof of citizenship laws.** At least twelve states introduced legislation that would require proof of citizenship, such as a birth certificate, to register or vote. Proof of citizenship laws passed in Alabama, Kansas, and Tennessee. Previously, only two states had passed proof of citizenship laws, and only one had put such a requirement in effect. The number of states with such a requirement has more than doubled.

- **Making voter registration harder.** At least thirteen states introduced bills to end highly popular Election Day and same-day voter registration, limit voter registration mobilization efforts, and reduce other registration opportunities. Maine passed a law eliminating Election Day registration, and Ohio ended its weeklong period of same-day voter registration. Florida,

Illinois, and Texas passed laws restricting voter registration drives, and Florida and Wisconsin passed laws making it more difficult for people who move to stay registered and vote.

- **Reducing early and absentee days.** At least nine states introduced bills to reduce their early voting periods, and four tried to reduce absentee voting opportunities. Florida, Georgia, Ohio, Tennessee, and West Virginia succeeded in enacting bills reducing early voting.

- **Making it harder to restore voting rights.** Two states—Florida and Iowa—reversed prior executive actions that made it easier for citizens with past felony convictions to restore their voting rights, affecting hundreds of thousands of voters. In effect, both states now permanently disenfranchise most citizens with past felony convictions.



Legislation introduced

Photo ID requirements passed

Proof of citizenship passed

Restrictions on voter registration passed

Restrictions on early/absentee voting passed

Executive action making it harder to restore voting rights

I. VOTER IDENTIFICATION

A. Background

By far the most widespread legislative development this session involved bills to impose stricter documentary identification requirements on voters. Voter ID laws—especially those that require voters to show one of a small number of government-issued photo IDs to vote—have been the subject of intense debate over the past few election cycles, and the debate heated up this year.

Proponents of strict voter ID laws maintain that they are reasonable measures to prevent fraud by persons improperly casting ballots in the names of other registered citizens, real or imagined. They dispute that such laws will discourage voting by any group, claiming that photo IDs are needed for many aspects of modern life, including boarding an airplane or entering certain government buildings.[3] Opponents maintain that photo ID laws exclude large swaths of the electorate, since 11% of citizens—and an even greater percentage of low-income, minority, young, and older citizens—do not have state-issued photo IDs.[4] They argue that photo ID requirements are similar to a poll tax, whether or not the IDs are offered for free, because to obtain the necessary IDs citizens must produce documents that cost money, like passports and birth certificates.[5] Opponents also claim that impersonation voter fraud—the only type of fraud prevented by voter ID laws—almost never happens since our laws adequately protect against and punish such fraud.[6] Although the best available study found that strict voter ID laws reduce turnout, neither side can definitively demonstrate the extent of the effect on voter turnout, since such laws have not been in effect long enough to permit accurate study.[7] Each side also questions the other's motives.

Voter ID is nothing new—indeed, federal law requires every new voter who registers by mail to show ID before voting,[8] and a variety of states have additional common-sense ID requirements.[9] What is new, however, is the degree to which the voter ID bills that were proposed and passed this session were restrictive, excluding many common forms of photo and non-photo IDs, such as student IDs and Social Security cards, and offering no alternative mechanisms for eligible citizens without the selected IDs to cast ballots that will count. What also is new is the extent to which such restrictive bills passed this session.

Prior to the 2006 elections, *no* state required its voters to show government-issued photo ID at the polls (or elsewhere) in order to vote. In 2006, Indiana became the first state in the nation to do so. Although Georgia and Missouri passed photo ID laws at around the same time, both states' laws were blocked by courts on the ground that they interfered with the right of eligible citizens to vote—under the U.S. Constitution in Georgia's case and the Missouri State Constitution in Missouri's case.[10] In 2008, the U.S. Supreme Court upheld Indiana's voter ID law against a constitutional attack.[11] After lengthy litigation in response to which Georgia amended its voter ID law several times, Georgia's law was eventually upheld as well.[12] That law first went into effect in late 2007, making Georgia the second state in the nation to require its citizens to show photo ID at the polls.

Thus, as of the start of this legislative session, only two states had ever imposed strict photo ID requirements on voters, and only for a short period of time. Several other states—Florida, Hawaii, Idaho, Louisiana, Michigan, and South Dakota—also requested, and still request, photo ID from their voters at the polls, but if a voter in those states does not have photo ID, she can still cast a ballot that

will count after an alternative verification procedure, like a signature match or a sworn affidavit. The remainder of the states had more flexible voting identification requirements.[13]

B. Roundup of Legislative Developments

This year, at least thirty-four states introduced a record number of bills to require photo ID to vote.[14] As Jenny Bowser, senior fellow at the National Conference of State Legislatures, observed, "It's remarkable … I very rarely see one single issue come up in so many state legislatures in a single session."[15]

Photo ID bills passed and were signed into law in seven states to date: Alabama, Kansas, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin.[16] (The Alabama, South Carolina, and Texas laws cannot go into effect unless and until they are pre-cleared by either the U.S. Department of Justice or a federal court under the Voting Rights Act.) Bills also passed but were vetoed in five additional states: Minnesota, Missouri, Montana, New Hampshire, and North Carolina.[17] A number of additional states—including Pennsylvania[18]—still have active photo ID bills pending in ongoing legislative sessions. In New Hampshire, legislators failed to override the Governor's veto,[19] and in North Carolina, legislators could attempt to push a new voter ID bill despite the Governor's veto.[20]

In addition, Missouri legislators passed a ballot measure to amend the state constitution to allow the state to impose photo ID requirements on voters; the measure will appear on the state ballot in November 2012.[21] (If the measure passes, legislators will have to enact further legislation before a photo ID requirement could be imposed.) Supporters of strict voter ID in Mississippi similarly introduced a ballot initiative that will appear on the November 2011 ballot.[22]

C. What the Bills Say

In general, the photo ID bills that were introduced this session are more restrictive than those in prior sessions, including fewer forms of acceptable IDs, fewer exemptions, or fewer alternative mechanisms for eligible voters without the specified IDs to vote.

Those laws that have passed this session vary in several respects, including: (1) the types of photo ID that voters are permitted to show for voting; (2) whether the requirement to provide ID applies only to in-person voters or to those who vote by mail as well; (3) whether there are any exemptions from the requirement to provide ID; and, most importantly, (4) whether there is an alternative way for a voter who does not have an accepted form of photo ID to cast a ballot that counts. Detailed descriptions of each bill are included in the appendix to this report.

The types of ID permitted. With the exception of Rhode Island, each of the states that passed voter ID bills require voters to show government-issued photo IDs, though the list of acceptable IDs differs from state to state. All seven states accept an unexpired driver's license, non-driver's ID issued by a motor vehicle department, U.S. passport, or U.S. military photo ID. All states except for Kansas and South Carolina also accept U.S. naturalization documents bearing a photo. Alabama, Rhode Island, and Tennessee broadly accept any photo ID issued by state and federal governments, though Tennessee expressly excludes student IDs from consideration. Only Alabama, Kansas, and Rhode Island accept

student photo IDs issued by state institutions of higher education. Wisconsin purports to accept certain state-issued student IDs, but the state's new law imposes criteria for such IDs that few if any state schools' IDs meet. Kansas and Texas expressly allow concealed handgun licenses, and Alabama, Rhode Island and Tennessee accept such IDs as well. Only Alabama and Wisconsin accept a tribal ID card with a photo. Rhode Island is the only state that accepts non-governmental photo IDs for voting; indeed, any current ID with a voter's name and photograph suffices.

Who must show photo ID. All seven states require individuals appearing to vote in person at a polling place to show photo ID. Only Alabama and Kansas require all persons who vote absentee to submit a copy of their photo IDs with their mail-in ballots. Those states are now the first two states in the nation ever to require photo ID with absentee ballots. Wisconsin requires permanent absentee voters to submit a copy of their photo IDs, but only the first time they vote absentee. As a practical matter, all absentee voters in Wisconsin will have to provide a copy of their photo IDs when the law first goes into full effect in 2012.

Exemptions. Several states exclude certain categories of voters from the requirement to show photo ID for voting. Alabama exempts individuals who are entitled to vote absentee under federal laws protecting certain military and overseas voters and certain elderly and disabled voters. Wisconsin also exempts military and overseas voters, as well as voters designated as "confidential," such as police officers or domestic violence victims. It does not exempt elderly or disabled voters other than those indefinitely confined to certain care facilities. Tennessee exempts voters who are either hospitalized or in nursing homes. Texas exempts certain voters with disabilities who can produce a statement that they have been determined to be disabled by specified government agencies and do not have the required ID. And Kansas exempts only permanently disabled and absent military voters from its law, but allows persons over sixty-five to show expired photo IDs.

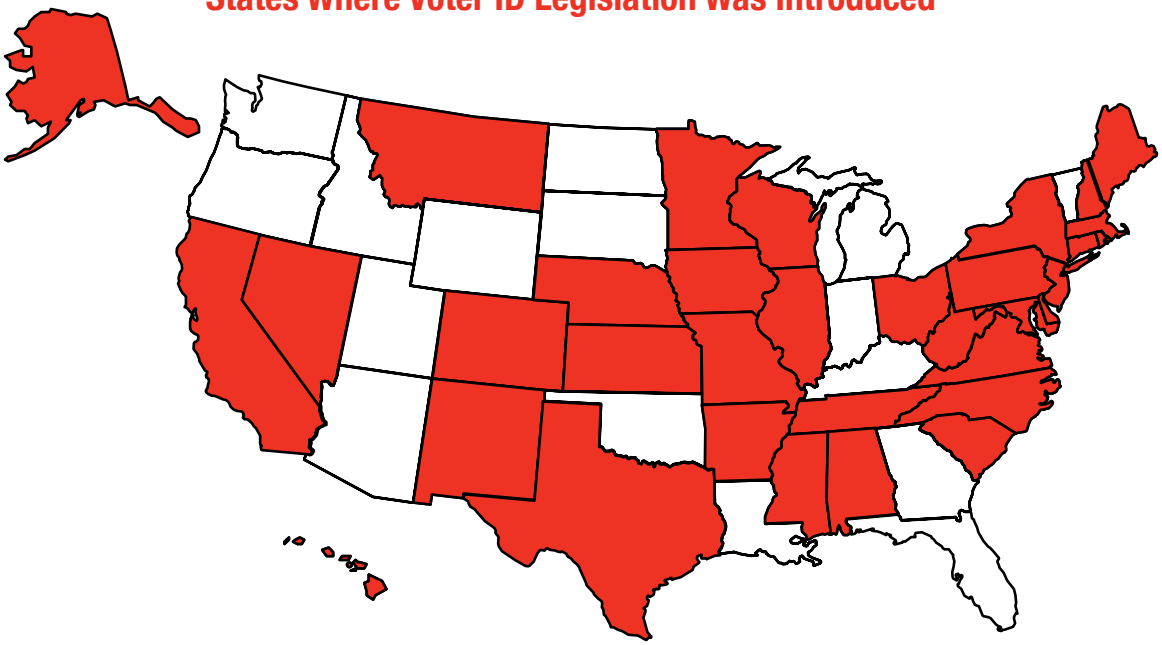
Alternative voting procedure. Three states—Rhode Island, South Carolina, and Tennessee—offer an alternative way for all or many voters who are unable to produce photo ID to vote and have their votes count. In Rhode Island, citizens who do not have photo ID must vote by provisional ballot, and election officials are directed to count all such ballots so long as the signature on the provisional ballot envelope matches the signature on the voter's registration. In South Carolina, persons who have a "reasonable impediment" to obtaining a photo ID or a religious objection to being photographed may cast a provisional ballot along with an affidavit explaining why they do not have ID. Election officials are directed to count those ballots unless there are grounds to believe the affidavit is false. In Tennessee, persons who cannot afford a photo ID or who have a religious objection to being photographed can swear an affidavit of identity and vote a regular ballot. These alternative means of demonstrating one's identity and voting without a photo ID separate these states' laws from the much stricter laws of Alabama, Kansas, Texas, and Wisconsin.[23]

Free IDs. The U.S. Supreme Court has made it clear that states that require their voters to present government-issued photo IDs for voting must make such IDs available to voters free of charge.[24] And indeed, each of the seven state laws provides a mechanism for free IDs for persons who need them for voting. Kansas and Tennessee specify that free IDs will be available only to those who swear an affidavit saying they need the ID for voting purposes and do not have other qualifying photo ID. It is not clear

whether those states or the others will sufficiently advertise their free ID offers so that eligible but indigent voters can obtain such IDs. For example, it appears that Wisconsin officials have taken the position that prospective voters must expressly request free IDs before one is offered; according to a key transportation official, "the statutory language specifically puts the onus on the customer for getting the ID for free for voting."[25] DMV officials reportedly turned away a Madison, Wisconsin voter when she did not have enough money to renew her photo ID because she did not specifically request a free ID for voting.[26] And a former state employee claimed that he was fired because he sent an e-mail to coworkers urging them to inform people that the free IDs had to be specifically requested.[27] It is unclear under the case law whether and under what circumstances states may be required to defray the costs of the documents voters need in order to obtain photo IDs—most notably birth certificates, which typically cost between $15 and $25.[28] Currently, only Kansas's law allows voters born in the state to obtain a birth certificate free of charge if needed to obtain ID for voting.

Effective Dates. The ID provisions for all of the new ID laws have effective dates on or before 2012, with two exceptions. The photo ID requirements in Alabama will not go into effect until 2014, if they are pre-cleared under the Voting Rights Act. The Rhode Island law goes into effect in 2012, but only partially; it allows either photo or non-photo ID (including, but not limited to, social security cards and government-issued medical cards) prior to 2014. Beginning in 2014, Rhode Island will allow only photo IDs at the polls.

States Where Voter ID Legislation Was Introduced



Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

Making it Harder for Students to Vote

A fair amount of attention has been paid this year to the impact of voter ID laws on students. Three of the seven photo ID bills to have passed—South Carolina's, Texas's, and Tennessee's—expressly do not allow students to use photo IDs issued by state educational institutions to vote, and Wisconsin's bill effectively excludes most student IDs as well.

When **Wisconsin**'s photo ID bill was first introduced, it too excluded all student IDs.[29] After substantial public debate and controversy,[30] the bill was amended to permit student IDs that meet certain criteria. The problem is that the student IDs currently issued by the University of Wisconsin system and various other schools do not meet those criteria. The University of Wisconsin would have to spend an estimated $1.1 million to issue new ID cards to students for its photo IDs to be accepted for voting purposes.[31]

Many question the fairness of voter ID laws that exclude government-issued photo IDs held by such a large segment of the population. This is especially the case with laws like Texas's, which does not allow voters to use student IDs but does allow them to use concealed weapon licenses for voting.[32] Some read into the fact that these bills exclude student IDs as a partisan motive to exclude certain groups of voters more likely to Democratic.[33]

The legislative targeting of students this session was not limited to voter ID laws. In **New Hampshire**, for example, Republican lawmakers introduced highly controversial legislation that would have prevented students and members of the military who previously lived elsewhere from acquiring voting residency in the state.[34] No other state singles out students or any other group for special voting residency requirements—and for good reason; as the Brennan Center pointed out, such a discriminatory rule clearly violates the U.S. Constitution.[35] The Speaker of the State House was notoriously caught on tape telling a Tea Party group that he supported the bill because students tend to vote Democratic. He said, "the kids [are] coming out of the school and basically doing what I did when I was a kid. Voting as a liberal. You know, that's what kids do. They don't have life experience and they just vote their feelings."[36] After strong public pressure, including opposition from both College Democrats and College Republicans, the bill failed on the House floor.[37]

The targeting of student voters has also gone beyond legislation. The newly-elected Secretary of State of **Maine** recently announced he was forwarding a list of 206 students who were registered to vote in the state but paid out-of-state tuition to law enforcement for voter fraud investigations.[38] But under Maine law, like in other states, the rules for tuition are very different from those for voting; many students meet the legal voting residency requirements while still being ineligible for in-state tuition.[39]

D. Legislative Battles

The voter ID battles this session differed from the past not only because the proposed laws were more restrictive but also because those pushing the bills prioritized them far more than their predecessors and commanded far greater legislative support. Another new feature of the legislative landscape was the reported involvement of the American Legislative Exchange Council (ALEC), a conservative group made up of state legislators and business and other interests. As in past sessions, voter ID bills were hotly contested along partisan lines, with Republicans largely supporting and Democrats largely opposing stricter ID requirements.

1. A High Priority After Years Without Success

State legislators across the country have been pushing strict photo ID requirements for almost a decade now, with little success before this year. In recent legislative sessions, a majority of states—though fewer than this year—saw the introduction of stricter voter ID bills.[40]

Although most voter ID bills did not advance very far in those years, there was a strong push in some states, especially where ID laws passed this year. Wisconsin's new voter ID law passed a decade after then-legislator and now-Governor Scott Walker first authored a photo ID bill; former Governor Jim Doyle vetoed the bill three times between 2002 and 2005.[41] In Kansas, legislators were successful in passing a voter ID bill in 2008, but it was vetoed by then-Governor Kathleen Sebelius. In Texas, strict voter ID bills came close to passage in both 2007 and 2009, but were blocked under a state procedure akin to the filibuster.[42] In 2009, legislators in the South Carolina House passed a photo ID bill over angry resistance from their Democratic colleagues,[43] inciting them to storm out of the session in protest.[44] In Tennessee in 2009, a voter ID bill passed the Senate, but died in the House.[45] In Mississippi in 2009, legislators fought so hard for a restrictive voter ID bill that they killed a compromise proposal to require photo ID because it was not strict enough—and the bill would have also permitted early voting.[46] In Alabama, a photo ID bill was part of the Republican Party's legislative agenda for more than a decade, with recent bills introduced in 2007, 2009, and 2010.[47] Following a failed bill in 2007,[48] Rhode Island's House passed a voter ID bill in 2009, but a Senate version stalled.[49]

In most states, however, strict voter ID bills did not advance very far before this year. Indeed, previously only two states (Indiana and Georgia) had ever implemented a photo ID requirement for voters. Between 2006 and 2011, no state passed a photo ID law. This year, in contrast, strict voter ID bills met with far greater success, passing twelve state legislatures—though ultimately vetoed in five—and passing one legislative chamber in at least six more.[50]

a. Change in Partisan Control

There are at least two major reasons for this change. The first is the stark shift in the partisan makeup of state legislatures after 2010. As noted, there is typically a sharp partisan divide over the issue of strict voter ID requirements, with Republicans generally pushing more restrictive measures and Democrats generally opposing them. This year, in every case but one, strict voter ID bills were introduced by Republican legislators. Newly elected legislators introduced about a quarter of these bills.[51]

As a result of Republican electoral success in state houses across the country in 2010, proponents of strict voter ID bills were able to garner much greater legislative support than in the past. In the 2010

elections, Republicans picked up at least 675 state legislative seats across the country.[52] Republicans therefore controlled both legislative chambers in twenty-six states, up from fourteen earlier in 2010.[53] In Wisconsin, for example, both houses switched to Republican control for the first time since 1998; Republicans gained fourteen seats in the Assembly and four in the Senate.[54] Similarly, in Alabama, Republicans won overwhelming majorities in both legislative chambers in 2010, and they made voter ID a priority.[55] With the exception of Rhode Island, every state that enacted stricter voter ID requirements this session had both houses and the governor's office controlled by Republicans.

Focus: Rhode Island and Ohio—Exceptions That Prove the Rule. As noted above, support and opposition to voter ID laws in state legislatures in 2011 fell almost entirely along partisan lines, with Republicans largely supporting and Democrats largely opposing stricter ID requirements. There were two notable exceptions.

In Rhode Island the photo ID bill that eventually became law was introduced by a Democratic legislator, passed two legislative chambers controlled by Democrats, and was signed by an independent governor. Senate sponsor Harold Metts said, "[I]n this day and age, very few adults lack one of the forms of identification that will be accepted, and the rare person who does can get a free voter ID card from the Secretary of State. While I'm sensitive to the concerns raised, at this point I am more interested in doing the right thing and stopping voter fraud."[56] But Rhode Island's bill is significantly less restrictive and differs substantially from the others that passed this session, in two major respects. First, unlike the other states that provide a narrow list of acceptable photo IDs, Rhode Island broadly accepts any ID with a voter's name and photograph.[57] Second, although Rhode Island now requires that all voters present photo ID before receiving a ballot in person, a voter without photo ID may sign an affidavit that she does not have a photo ID and cast a provisional ballot that will count if the signature on the ballot matches the voter's registration signature. In other words, a voter without photo ID can still cast a ballot that will count.

In Ohio the usual pattern was broken in a different way: a very restrictive photo ID bill was introduced by a Republican state legislator and uniformly opposed by Democrats, but it was ultimately defeated because of opposition from several prominent Republicans, including the Secretary of State.[58] In rejecting a proposal from the Ohio House that would only have allowed voters to present one of four types of government issued ID, Secretary Husted stated:

> I want to be perfectly clear, when I began working with the General Assembly to improve Ohio's elections system it was never my intent to reject valid votes. I would rather have no bill than one with a rigid photo identification provision that does little to protect against fraud and excludes legally registered voters' ballots from counting.[59]

The reaction of Husted and some of his fellow Republicans in the state senate may have something to do with the fact that Ohio is several years ahead of most of the country when it comes to acrimonious partisan fighting over election administration. In particular, the passage of a voter ID bill in 2005 by a Republican-controlled legislature, in a partisan battle typical of this year's fights, led to years of costly litigation and negative publicity about the new law.[60] That battle ultimately ended in a court-ordered settlement in 2009.[61] In the meantime, the new requirements received exceptionally harsh coverage from commentators and editorial boards across the state,[62] while election officials of both major parties complained that the

law was far too complicated and difficult to administer.[63] Given this history, it is perhaps not surprising that there were elected officials of both political parties who preferred to stay away from a proposal that would have imposed an even more restrictive set of ID requirements on Ohio voters.

b. Heightened Priority

The second reason for the greater success of photo ID bills this year is that legislators made them more of a priority than they had been in the past. Many of the Republican legislators and election administrators swept into office in 2010 made voter ID a significant campaign issue as well as a major legislative priority. Previously, it was rare for voter ID to become a campaign issue; in 2010, in contrast, newly elected Secretaries of State Matt Schultz of Iowa, Kris Kobach of Kansas, Scott Gessler of Colorado, and Dianna Duran of New Mexico all made voter ID a prominent part of their campaign platforms.[64] Newly-elected Wisconsin Governor Scott Walker similarly made voter ID a campaign issue in 2010.[65] Even before the legislative sessions began, state lawmakers had already pre-filed voter ID bills in a number of states.[66]

Focus: Texas. The Texas example is illustrative. After Republicans gained twenty-six seats in the State House, Texas State Representative Debbie Riddle camped out overnight in the State Legislature to be the first to pre-file voter ID legislation.[67] (As it turns out, her proposed bill was not the legislation that eventually passed.) Eager lawmakers introduced so many voter ID bills—at least fourteen—that a new "House Select Committee on Voter ID and Voter Fraud" was established to review the legislation. To ensure that more stringent voter ID rules would pass quickly, Texas Governor Rick Perry used emergency powers to alter the usual legislative process, declaring voter ID an "emergency item," allowing legislators to begin deliberation on voter ID bills immediately instead of waiting until after the first sixty days of the session, as is customary.

This rush came after at least six years of contentious and partisan debate in Texas on voter ID.[68] Democrats successfully blocked voter ID bills in the last three legislative sessions, under dramatic circumstances. In 2007, a Democratic senator on sick leave left his bed and rushed to the State Capitol to block a vote on proposed voter ID legislation. After casting the deciding vote to prevent debate, he went to the lounge and vomited.[69] That same session, another state senator rallied to block proposed legislation, despite the fact that he was suffering complications from a recent liver transplant and needed a hospital bed to be kept about one hundred feet from the Senate floor.[70] Two years later, in 2009, sparring[71] over a new voter ID proposal drove marathon hearings running for twenty-three hours straight.[72]

c. Support by Conservative ALEC

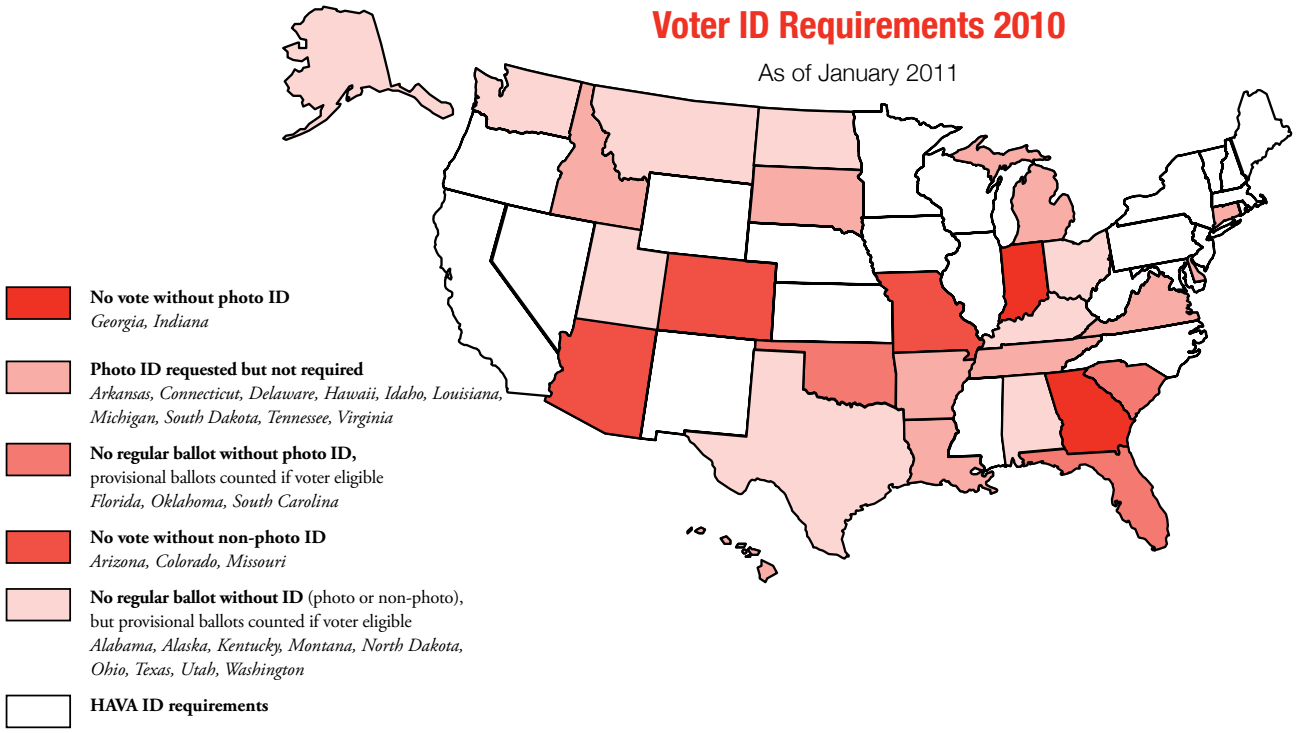
A third possible reason for the success of voter ID bills this year is the reported involvement of the American Legislative Exchange Council (ALEC), a powerful conservative group that brings together state legislators and private interests to develop and support state legislation and policy. According to the *New York Times*, "[m]any of [this session's voter ID] bills were inspired by the American Legislative Exchange Council, a business-backed conservative group, which has circulated voter ID proposals in scores of state legislatures."[73] In 2009, according to other media reports, not long after ALEC featured a cover story called "Preventing Election Fraud" in its member magazine, the organization adopted

model voter ID legislation and circulated it to its members across the country.[74] The voter ID bills that were eventually introduced and passed in the states this session all bear some resemblance to ALEC's model legislation. Although the extent of ALEC's involvement in voter ID legislation is unknown, the organization boasts that each year more than 1,000 bills based on its models are introduced in state legislatures, and that approximately 17% of those bills become law.[75] In addition to developing model bills, ALEC typically provides a range of support services to help advance the policies it supports, including trainings and seminars, studies, talking points, strategic plans, and action alerts.[76]

2. The Debate

As in previous legislative sessions, with the exception of Rhode Island, the debates over photo ID bills were highly charged and divided along partisan lines.

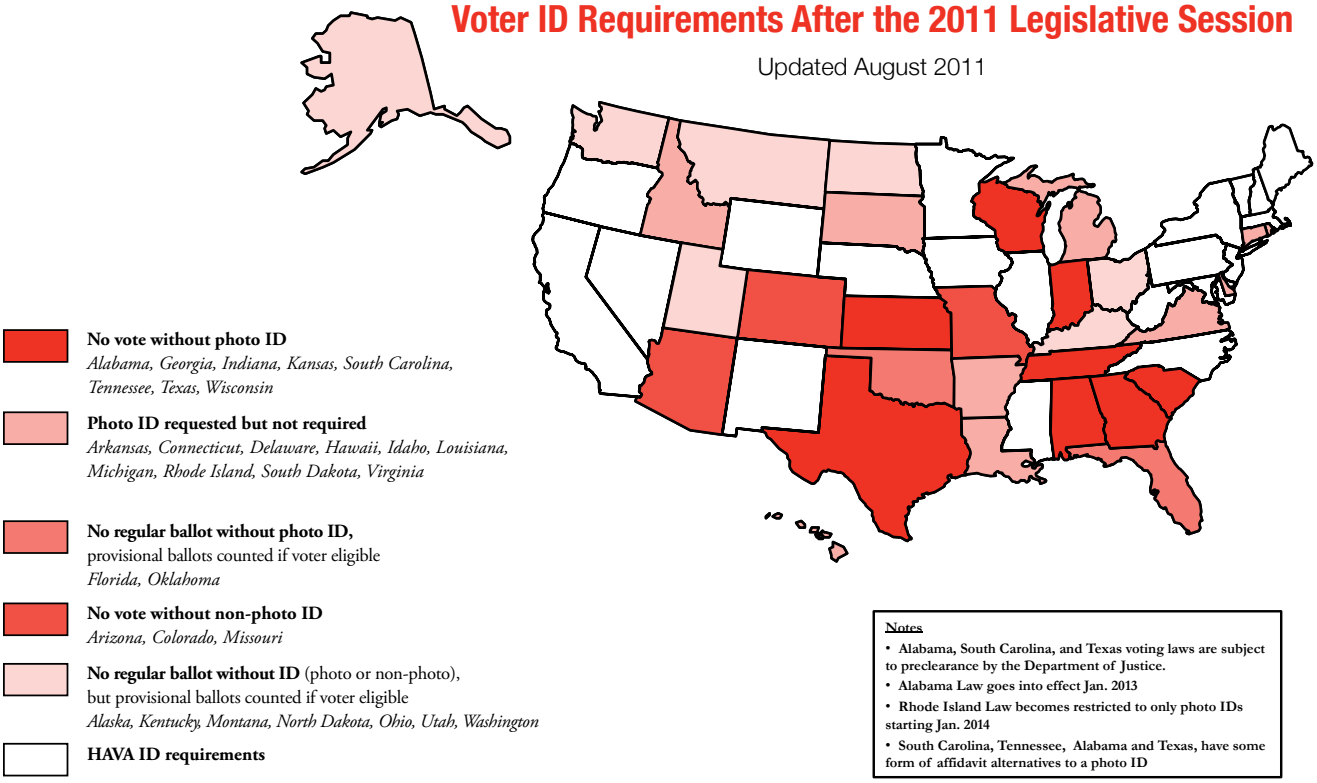
Nowhere was the debate more heated than in **Wisconsin**. There, Republican legislators considered passing the hotly contested photo ID bill while the Democrats were absent, boycotting the legislature to block the bill that eliminated collective bargaining rights for public employees.[77] Because the photo ID bill entailed significant costs for the state, state legislative rules prevented Republicans from proceeding unilaterally without a quorum. But the drama did not stop there. Once the Democrats returned, the State Senate passed the voter ID bill in a hasty and boisterous vote, denying opponents the opportunity to debate or speak out against the bill. Senate President Mike Ellis cut off the most senior member of the chamber, State Senator Fred Risser, to call a vote. Democratic members sought to stop the roll call, but President Ellis declared the bill passed once it had received enough votes. Some Democratic senators did not vote out of protest or confusion, and reportedly could not add their votes after the commotion was over.[78] Similarly, in **Alabama**, Senate leadership limited debate on the voter ID bill to twenty minutes.[79]



The debates were also characterized by a high level of mistrust between both sides. Opponents of voter ID accused proponents of attempting to shrink the electorate for partisan gain. Former President Bill Clinton, for example, asserted that voter ID laws are intended to specifically hurt Democratic voters, and that proponents "are trying to make the 2012 electorate look more like the 2010 electorate than the 2008 electorate."[80] Columnist E.J. Dionne wrote that "[s]ometimes the partisan motivation" behind these efforts "is so clear."[81] Proponents, on the other hand, accused proponents of trying to ignore or even foster voter fraud. According to one columnist, the Democrats' "rhetoric is over the top, probably because voter ID does get at the problem of voter fraud which—for some Democrats—is not so much a theory as a turn out model, a key to winning close elections."[82]

The content of the debate on voter ID bills was noteworthy for its consistency across the country. Proponents of photo ID bills consistently cited allegedly rampant voter fraud in their states and the need for greater ballot security to justify legislation. For example, in support of voter ID legislation, Kansas Secretary of State Kris Kobach relied upon 221 reported instances of voter fraud in Kansas between 1997 and 2010.[83] Similar claims were made by proponents of voter ID in other states.[84] Many also argued that voting is a "privilege" for which it is reasonable to require voters to expend effort.[85]

Opponents, on the other hand, argued that photo ID requirements will disenfranchise thousands of eligible Americans—especially low-income citizens, minorities, students, and older Americans.[86] They also pointed out that the kind of fraud addressed by ID requirements hardly ever occurs in American elections.[87] For opponents, voting is a fundamental right rather than a privilege. Thus, in explaining his veto of a photo ID bill, New Hampshire Governor John Lynch said, "[t]he right to vote is a



fundamental right … [The voter ID bill] creates a real risk that New Hampshire voters will be denied their right to vote."[88] And, as discussed below, opponents focused on the high costs of voter ID laws.

As voter ID laws were being considered across the country, members of Congress began weighing in on the issue, with a strong partisan divide. Upon achieving their new majority, House Republicans announced concerns about election administration and called for additional measures to "better protect the electoral process."[89] Congressional Democrats, on the other hand, decried the new push toward restrictive voter ID requirements. Representative John Lewis (D-GA) said, "this year's Republican-backed wave of voting restrictions has demonstrated that the fundamental right to vote is still subject to partisan manipulation."[90] Some congressional Democrats took to the house floor to denounce the new legislative efforts on voter ID, raising questions about the motives underlying those efforts. Congresswoman Marcia Fudge (D-OH), a leading opposition voice, charged that "these efforts have an all-too familiar stench of the Jim Crow era."[91] Representative G.K. Butterfield (D-NC) charged that the voter ID push "is a cynical and malicious Republican attempt to suppress minority and elderly voters who turned out in historical numbers for the '08 elections."[92] One hundred and fifteen Democratic House members signed a letter to Attorney General Eric Holder asking him to oppose the new voter ID provisions.[93] Voter ID was a prominent topic in a September 8, 2011 hearing before a Senate Subcommittee chaired by Senator Dick Durbin examining the rash of new state voting laws that threaten to suppress voter turnout across the country.[94]

3. When All Else Fails: Ballot Measures

Lawmakers who were unsuccessful in passing strict voter ID laws or whose laws were blocked by the courts have begun trying a new route: passing ballot measures to amend their state constitutions, as **Oklahoma** did in 2010. Oklahomans passed voter ID as a ballot measure in 2010, after a voter ID bill was vetoed by then-Governor Brad Henry. The new law—which is not nearly as restrictive as other measures introduced this year[108]—was implemented on July 1, 2011.

Though **Missouri** Governor Jay Nixon vetoed a photo ID bill this year, the Legislature passed a voter ID ballot measure, which cannot be vetoed, and which will be on the Missouri ballot in November 2012. The ballot measure would amend the State Constitution to allow the Legislature to impose stricter photo ID requirements on voters. This constitutional amendment effort comes five years after the Missouri State Supreme Court ruled a highly controversial voter ID law unconstitutional, noting that it would burden voters.[109] No state photo ID requirement can be imposed on Missouri voters unless the State Constitution is amended to overturn that decision. And even if the ballot measure passes, voters will not be required to show photo ID unless the Legislature passes and the Governor signs additional legislation.

Supporters of stricter voter ID have been pushing ballot measures in other states as well. A ballot measure requiring photo ID to vote will appear on the **Mississippi** ballot in November 2011.[110] In **Minnesota**, legislators in the House introduced a ballot measure to amend the State Constitution to require voter ID to counter this year's veto; the measure has not yet been introduced in the Senate.[111]

The Costs of Voter ID

The high cost of implementing voter ID laws was a big issue this session, when states were facing serious fiscal crises. States that pass voter ID laws must, according to court decisions, incur a range of costs, including the costs of providing free photo IDs to voters who do not have them, ensuring that IDs are reasonably accessible to all voters, and educating the public and election officials.[95] Although there was widespread agreement that voter ID laws entail necessary costs, there were disputes over what those costs would be, with bill opponents accusing proponents of dramatically understating the costs.[96]

The high cost of voter ID requirements caused local and county election officials in some states—including Iowa, Pennsylvania, and Wisconsin—to oppose new voter ID laws.[97] They also deterred legislators in Nebraska and Iowa, two states that considered, but did not pass, voter ID legislation this year.

Nebraska. The fiscal note attached to Nebraska's photo ID bill (L.B. 239), estimated negligible costs associated with its implementation, assuming that only voters who could prove they were indigent would be provided with free IDs.[98] Opponents argued that forcing voters to prove indigence before they could be provided with a photo ID could subject the bill to constitutional challenge, and argued that all IDs should be free.[99] The original sponsor of the bill, Senator Charlie Janssen, proposed an amendment the bill that would have added non-photo ID and voter registration confirmation cards to the list of acceptable forms of voting identification.[100] This drew a rebuke from Larry Dix, director of the Nebraska Association of County Officials, who said the amendment would increase costs for the counties without providing any extra security. "I don't see that the [proposed amendment] solves the problem at all," he said, "there's no security in that."[101] Ultimately, the bill failed to leave committee and therefore died when the legislative session ended.[102]

Iowa. The Iowa State Association of County Auditors (ISACA)—a bipartisan organization representing county auditors, who are responsible for administering elections at the county level—opposed the voter ID bill proposed in their state.[103] ISACA conducted an independent study of the impact of voter ID measures in Indiana, and found that the proposed Iowa bill would impose too high a cost and burden on local election jurisdictions to justify its adoption.[104] As one county auditor put it, the legislation would be an "unfunded mandate" on counties, who would have to bear the brunt of meeting the obligation of "educating the public and the voter [about the bill's requirements]."[105] As a result, the Association voted to officially oppose H.F. 95.[106] Both Democratic and Republican representatives in ISACA opposed the measure, with not one person voting to support it and with 16 of 60 county representatives choosing to remain neutral. According to Mike Gronstal, the Senate majority leader, the opposition from ISACA was one of the main reasons the bill ultimately failed.[107]

II. DOCUMENTARY PROOF OF CITIZENSHIP TO REGISTER OR VOTE

A. Background

In general, except for certain local elections, a person must be a U.S. citizen over eighteen years old to be eligible to participate in American elections. A voter typically establishes her eligibility by swearing an affidavit, under penalty of perjury, that she is a U.S. citizen of voting age and meets all the other eligibility requirements of her state (such as residency and lack of disqualifying criminal convictions).[112] A non-citizen or other ineligible person who falsely claims eligibility and either registers to vote or votes is subject to serious criminal penalties—including five years in prison and $10,000 in fines under federal law[113]—and also deportation.

Until recently, no state has ever required any voter to produce documentary proof of citizenship—or age or any other component of eligibility—to participate in elections. In 2004, however, as part of a broad-ranging ballot initiative, called Proposition 200, regulating the treatment of immigrants, Arizona for the first time passed a law requiring prospective voters to present documentary proof of citizenship in order to register to vote.[114] The Arizona law, which went into effect before the 2006 elections, specifically directs election officials to reject voter registration applications that are not accompanied by one of several specified citizenship documents,[115] thus denying those individuals the ability to vote. Until this year, this Arizona law was an outlier, unique in the country.

As of the start of this legislative session, only two states had ever sought to require documentary proof of citizenship for voter registration or voting.

Arizona's proof of citizenship law sparked significant controversy from the outset. In March 2006, the U.S. Election Assistance Commission, a bipartisan federal agency charged with regulating certain election administration matters, voted to reject Arizona's request to amend the federal voter registration application form to reflect the state's new rules.[116] Shortly afterward, the law was challenged in federal court;[117] it has been wrapped up in litigation ever since. In the most recent ruling in that case, a panel of the U.S. Court of Appeals for the Ninth Circuit held that the proof of citizenship requirement conflicts with federal law—specifically, the National Voter Registration Act of 1993.[118] The Ninth Circuit agreed to rehear that case *en banc*, and oral argument was held before a larger panel on June 21, 2011. The court has not yet issued its decision.

Georgia became the second state to pass a proof of citizenship law in 2009, requiring prospective voters to provide documentary proof of citizenship in order to register to vote.[119] This came after the Department of Justice blocked implementation of an earlier Georgia policy for checking the citizenship of registered voters as unreliable and discriminatory.[120] The Department of Justice ultimately approved of Georgia's proof of citizenship law in April 2011,[121] but the state has not yet put the law into effect.

Thus, as of the start of this legislative session, only two states had ever sought to require documentary proof of citizenship for voter registration or voting, only one had implemented such a requirement, and the legality of the requirement had not yet been resolved (and still is not resolved) in the courts.

The push for proof of citizenship requirements should also be considered in the context of the bills targeting immigrants that swept the states this year. Alabama, Arizona, Georgia, Indiana, South Carolina, and Utah are among the states that passed laws supposedly designed to restrict benefits for, and crack down on, undocumented immigrants.[122] As with Proposition 200, Arizona was the national leader in this effort, with its highly controversial H.B. 1070.

B. Roundup of Legislative Developments

This session, at least twelve states introduced legislation that would require documentary proof of citizenship to register or vote: Alabama,[123] Colorado,[124] Connecticut,[125] Kansas,[126] Maine,[127] Massachusetts,[128] New Hampshire,[129] Nevada,[130] Oregon,[131] South Carolina,[132] Tennessee,[133] and Texas.[134] Washington State introduced a resolution to request that any federal voting mandates make funding contingent upon the adoption of photo ID and proof of citizenship requirements.[135] Three proof of citizenship bills passed: in Alabama, Kansas, and Tennessee.[136] The new Kansas and Tennessee laws go into effect immediately; the Alabama law must await approval by the U.S. Department of Justice or a federal court under the Voting Rights Act.[137] To date, Alabama has not yet submitted the law for preclearance.[138]

C. What the Bills Say

The new Alabama and Kansas proof of citizenship laws are virtually identical. Like the 2004 Arizona law, both laws require prospective voters to provide documentary evidence of U.S. citizenship with their voter registration applicants, and election officials to deny registration to any applicant who does not provide satisfactory documentation.[139] Acceptable documents include: any driver's or non-driver's ID that includes a notation that the person submitted proof of U.S. citizenship, a U.S. birth certificate, a U.S. passport or U.S. naturalization documents, certain tribal IDs, and other rare documents.[140] The Alabama and Kansas laws apply only to new registrants; they specifically exempt all people already registered in the state, even those who move and must update their voter registration records.[141] Neither law includes any exceptions for prospective voters who were not previously registered. Both laws specify that applicants whose registrations are denied because they failed to include satisfactory proof of citizenship may challenge election officials' determination in court.[142] The bills that did not pass this session similarly would have required documentary proof of citizenship to register to vote.

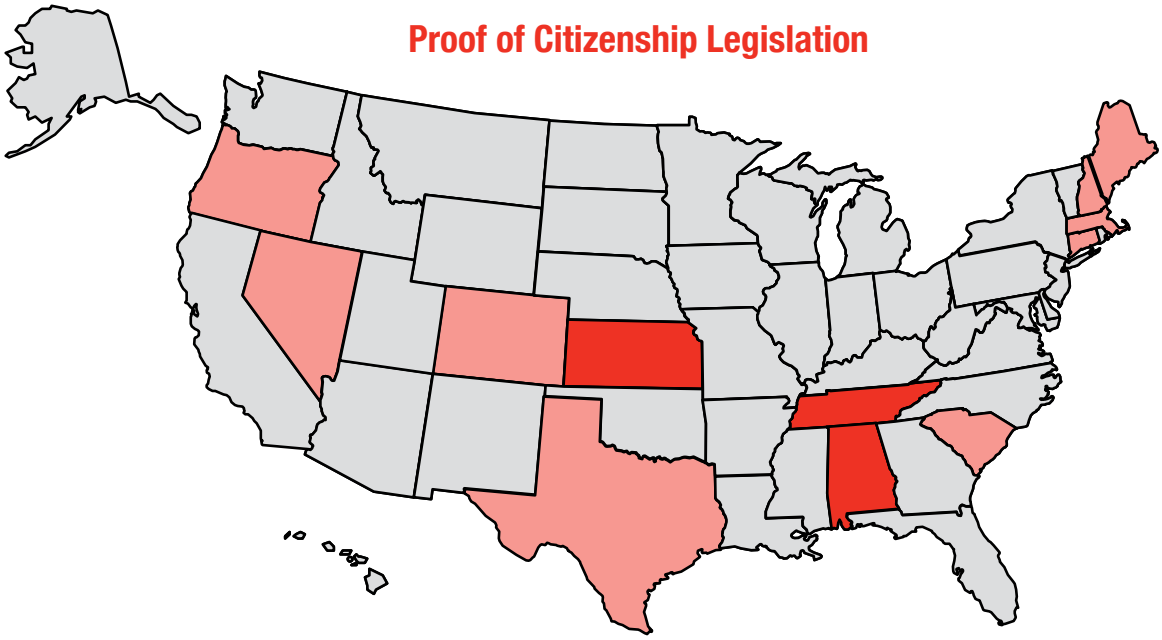
Unlike the Alabama and Kansas laws, the Tennessee law applies only to individuals flagged by state officials as potential non-citizens based on a database check. The Tennessee law therefore applies to a smaller number of prospective voters.

D. Legislative Battles

Legislative debate over proof of citizenship bills was at times rancorous. For example, in Colorado, Democratic legislators and others pressed Republican Secretary of State Scott Gessler on his claims of widespread voter fraud by non-citizens. One Colorado Democratic representative demanded that Mr.

Gessler turn over evidence of actual instances of non-citizens voting.[143] Another representative insisted that Mr. Gessler prosecute actual instances of voter fraud of which he was aware, suggesting that Mr. Gessler did not actually have any cases that could be prosecuted.[144] County clerks also demanded that Gessler turn over evidence of voter fraud, insisting that they were not aware of any such instances.[145]
The legislative debates over proof of citizenship mirrored those over voter ID. Proponents claimed that proof of citizenship requirements are needed to prevent non-citizens from illegally voting in elections. In several states, proponents claimed to have uncovered evidence of such illegal voting. Colorado Secretary of State Scott Gessler, for example, claimed that up to 11,805 non-citizens were registered to vote in Colorado,[146] while Kansas Secretary of State Kris Kobach claimed to have found 67 non-citizens illegally registered to vote in Kansas.[147] These claims were hotly disputed, and they have since been debunked.[148] Nonetheless, Representative Gregg Harper (R-MS) called the finding "shocking," and at a hearing he chaired on the topic, said, "[w]e simply cannot have an electoral system that allows thousands of non-citizens to violate the law and vote in our elections … [w]e must do more to protect the integrity of our electoral processes."[149]

Opponents, on the other hand, claimed that proof of citizenship requirements exclude large numbers of eligible voters, pointing out that millions of eligible Americans—at least 7% according to a leading study by the Brennan Center[150]— do not have ready access to the documents needed to prove citizenship. As Tennessee State Senator Thelma Harper said, "[i]t hampers people who want to be a part of the system."[151] Opponents further disputed the claim that there is a problem of non-citizen voting in American elections, pointing out that only a miniscule number of non-citizens have been found to have voted illegally, and that it is already easy to catch non-citizen voters since they leave a clear paper trail.[152]



Introduced (Colorado, Connecticut, Maine, Massachusetts, New Hampshire, Nevada, Oregon, South Carolina, and Texas.)

Passed (Alabama, Kansas, and Tennessee.)

III. MAKING VOTER REGISTRATION HARDER

In every state but one, citizens must be registered in order to vote. Voter registration facilitates election administration by enabling election officials to more easily plan for elections, process voters, and prevent fraud. But registration requirements can also function as a barrier to many eligible voters, preventing them from participating because of technical hurdles or missed deadlines.[153]

Experts have long pointed out that the nation's outdated registration system is among the most significant barriers to voting, resulting in the disenfranchisement of millions of Americans during every federal election.[154] In 2001, the Carter-Ford National Task Force on Election Reform found that "[t]he registration laws in force throughout the United States are among the world's most demanding … [and are] one reason why voter turnout in the United States is near the bottom of the developed world."[155] This impact has not abated: around 3 million Americans tried to vote in the 2008 Presidential election but could not, due to voter registration problems.[156]

The general thrust of the law over the past few decades has been to ease registration requirements to make it easier for eligible citizens to get on the voter rolls. The most significant advance was the National Voter Registration Act of 1993, also known as the "Motor Voter" law, which made voter registration opportunities widely available across the country.[157] More recently, states have taken the lead in modernizing their voter registration systems so that more voters are getting on the rolls and the rolls are getting more accurate.[158]

This year, the tide reversed. Instead of efforts to increase voter registration, this year new registration requirements have been instated that will make it more challenging for eligible citizens to ensure that they are registered to vote on Election Day. Voter registration regulations range from restrictions on individuals and groups who help register voters, to efforts to scale back Election Day and same-day registration, to new rules making it harder for voters to stay registered after they move.

Part 1: Voter Registration Drive Regulations

A. Background

Voter registration rates in the United States are routinely lower than they are in other democracies around the world: more than a quarter of voting-age Americans are not registered and thus cannot vote.[159] This is in part because, unlike in other democracies, U.S. state governments do not assume the responsibility of getting voters onto the rolls; instead, we rely on individual voters to ensure that they are registered. Community-based voter registration drives play an important role in encouraging and assisting other citizens to register to vote. Restrictions on voter registration drive activity have a direct impact on who has access to voter registration and who gets registered to vote.

Although community-based voter registration drives have been around in some form for decades, Congress helped expand such voter registration activity by passing the National Voter Registration Act of 1993 (NVRA).[160] Among other things, the NVRA greatly simplified voter registration application

forms, required states to follow uniform rules for accepting those forms, and required them to make blank forms generally available "with particular emphasis on making them available for organized voter registration programs."[161] As a result, civic groups were easily able to obtain and circulate voter registration forms to potential voters who might not otherwise register or become engaged in the electoral process.

Voter registration drives have become an increasingly important registration method in the past decade, especially for low-income citizens, students, members of racial and ethnic minority groups, and people with disabilities. For example, in the 2004 general election, large-scale voter registration drives report assisting almost 10 million citizens to register to vote, contributing to a surge in new registrations and increased turnout in that election. In one county in Florida alone, voter registration organizations were responsible for registering 62.7% of all newly registered voters.[162] Nationally, Census data show that Hispanic and African-American voters are approximately twice as likely to register to vote through a voter registration drive as white voters.[163]

Voting rights advocates point to increased voter registration rates, especially among minority, low-income, and younger citizens, as a positive effect of voter registration drives and a reason to expand them. They also cite recent falling voter registration rates as a reason to encourage voter registration drives. The 2010 election saw a plunge in new voter registrations, as new voter registrations in 2010 were down almost 17% from the 2006 cycle.[164] This was accompanied by a dramatic decrease in voter registration drive activity, for the first time in years. But voter registration drives have unfortunately become an increasingly controversial political topic.

Over the past few years, there has been a growing effort to push back against voter registration drives. Opponents have argued that voter registration drives are susceptible to fraud, citing allegations of fraud related to ACORN, a defunct organization that focused on registering low-income voters.[165] Presidential candidate John McCain cited allegedly fraudulent registration cards submitted by ACORN as "one of the greatest frauds in voter history in this country, maybe destroying the fabric of democracy."[166] Other opponents have argued that voter registration should be made more difficult to reflect the importance of the right to vote.[167] At the extreme end of the spectrum, some have argued that by specifically empowering low-income voters to register, voter registration drives are "antisocial and un-American."[168]

Recently, a number of state legislatures have pushed legislation to regulate and restrict community-based voter registration drives. This extensive regulation of voter registration drive activity is a unique government regulation of private political activity. These regulations have serious consequences for citizens' ability to organize and conduct voter registration drives; for example, the recent Florida law imposing a set of new restrictions on third-party voter registration activity (discussed at length below) has resulted in the volunteer-based League of Women Voters placing a moratorium on all voter registration work because the law imposes too great a burden on voter registration. The type and extent of laws governing voter registration have a direct impact on who gets to participate in the process, and who is permitted to assist them in doing so.

B. Roundup of Legislative Developments

Bills placing new restrictions on voter registration groups have been proposed in at least seven states—California (passed in both houses; awaiting governor's action), Florida, Illinois (pending), Mississippi (failed), Nevada (restrictions removed by amendment), New Mexico (failed), North Carolina (pending), and Texas.

These bills have been signed into law in Florida and Texas. Florida and Texas stand out as two states that have long histories of restricting voter registration drives, and the new laws passed in this session will make both states further outliers in limiting this activity. Neither state had reported cases of registration fraud linked to voter registration drives in the past election cycle, nor any other apparent precipitating cause for the further regulations imposed by these bills.

C. What the Bills Say

Although the bills seeking to regulate voter registration drives vary in their content, there are several recurring elements. Almost universally, these bills would require citizen registration groups to register with the state before undertaking a voter registration drive.[169] They may also require special training for volunteers; the use of special forms, disclosure, and reporting systems; or short deadlines for the submission of voter registration forms. Violation of these rules, or registering voters outside the mandated system, usually carries criminal or civil penalties. The legislation that succeeded this year is described below.

Florida. Florida's House Bill 1355, a mammoth 158-page omnibus bill, was signed by Governor Rick Scott on May 19th.[170] The new law requires voter registration groups to pre-register with the state before engaging in any voter registration activity, requires every volunteer or employee to sign a sworn affidavit under penalty of perjury listing all criminal penalties for false registration, and mandates that every registration form collected by a voter registration group be physically received by county officials within 48 hours of signature or face strict civil penalties and fines. In order to comply with this tight turnaround time, groups must write the precise date and time when an individual completes a voter registration form on each registration form. The law also requires voter registration groups to place their government-issued organizational code on each form they obtain from elections officials or receive from a voter, to track the precise numbers of both state and federal voter registration forms that each group obtains or collects, and to submit those figures in monthly electronic reports to the state.

Texas. Texas introduced a series of bills that would limit the ability of persons to register others to vote, two of which were signed into law (H.B. 1570 and H.B. 2194).[171] H.B. 1570 requires that anyone who registers voters first be deputized and attend a mandatory training; the law delegates the development of the training to the Secretary of State, and explicitly permits an "exam" at the end of the training.[172] H.B. 2194 requires anyone registering others to be a Texas resident and qualified voter, and prohibits performance-based compensation for anyone who is paid to register voters.[173]

D. Legislative Battles

The two bills signed into law in 2011 that restrict voter registration drive activity were uniformly supported by Republican legislators. In Florida, the law passed along straight party lines in the House of Representatives, with all Democrats opposing. Democrats were joined by two Republicans voting against the bill in the State Senate.[174] In Texas, which passed two companion bills restricting third-party voter registration, one bill passed unanimously,[175] while its companion bill passed only the Senate unanimously,[176] with seven House members, all Democrats of color, voting against the bill.[177]

Florida History

Florida has a history of implementing restrictive rules for voter registration drives—rules that have been successfully challenged before. (The Brennan Center for Justice has litigated twice in the past on behalf of Florida civic groups to challenge these restrictions.[178])

The first major imposition of restrictions on voter registration drives occurred in 2005, a year after ACORN's community organizing work resulted in enough signatures to place a citizen initiative on the ballot to increase Florida's minimum wage. The law required third-party voter registration groups to meet a new ten-day deadline to submit registration forms to election officials, no matter how far away the registration deadline, and imposed hefty and potentially unlimited fines for each form submitted after that time under a strict liability scheme. The law specifically excluded political parties from its new restrictions.

On May 18, 2006, the League of Women Voters of Florida and other voter registration groups and filed a lawsuit in federal court challenging as unconstitutional the 2005 Florida law regulating voter registration drives.[179] On August 28, 2006, a federal court in Miami blocked enforcement of the Florida law.[180]

After the state appealed that ruling, the Florida state legislature went back and reenacted a similar law with some changes in 2007, which the League and others also challenged.[181] During the lawsuit, the Secretary of State agreed not to implement the law before an administrative rulemaking process was completed. Civic groups were therefore able to resume their regular registration activities leading up to the 2008 election. In early 2009, the Florida Division of Elections proposed a final rule implementing the challenged statute in a way that reduced the negative impact on voter registration groups. The parties agreed to settle the lawsuit, and on June 17, 2009, the case was dismissed. The 2007 law has since been in effect.

2011 Debate in Florida

Between 2009 and 2011, there was no controversy in Florida involving voter registration and indeed nothing to suggest why the state legislature again took up the subject of restricting voter registration drives. Proponents of H.B. 1355, the omnibus voting bill that included new restrictions on voter

registration drives, merely claimed that they sought to reduce fraud. They also made it very clear that they wanted to make voting harder. The bill's sponsor, Florida State Senator Mike Bennett (R-Bradenton), was quoted as saying "But I have to tell you, I don't have a problem making it harder. I want people in Florida to want to vote as bad as that person in Africa who walks 200 miles across the desert. This should not be easy. This should be something you should do with a passion."[182] Florida State Senator Ellen Bogdanoff agreed: "Democracy should not be a convenience," she said.[183]

The new Florida law garnered broad opposition from civic and minority rights groups and prompted tens of thousands of emails to Governor Rick Scott urging him to veto the bill. Nonetheless, the law quickly passed on straight party lines and was signed into law, over strong opposition and condemnation by the Democratic Party. Shortly after its enactment, the all-volunteer Florida League of Women Voters and a variety of other voter registration groups announced they would discontinue their voter registration activities in the state. The League explained that the new law "imposes an undue burden on groups such as ours that work to register voters," [184] and that "we cannot and will not place thousands of volunteers at risk, subjecting them to a process in which one late form could result in their facing financial and civil penalties."[185]

The Florida law is currently being considered by a federal court for "preclearance," federal approval required for jurisdictions covered under Section 5 of the Voting Rights Act because of a history of discrimination. Section 5 requires covered jurisdictions to supply evidence that changes to a state's election laws will not harm minority voters before those changes may go into effect. Five of Florida's sixty-seven counties are covered jurisdictions, where H.B. 1355 remains on hold awaiting preclearance; Secretary of State Browning has ordered election supervisors in the sixty-two non-covered counties to implement the law. Voting rights advocates have submitted evidence to both the Department of Justice and the federal court arguing that the new restrictions on voter registration drives, as well as the bill's other provisions reducing early voting days and eliminating cross-county address changes at the polls, will disproportionately impact Florida's minority voters.

Impact of New Voting Laws on Minority Voters

Opponents of the bills and laws detailed in this report frequently point to their negative impact on the ability of African American and Latino citizens to vote, and with good reason: there is substantial evidence that these laws will make it far more difficult for minorities than whites to vote.

For instance, **Florida's** new law—which places so many new burdens on voter registration drive activity that most groups have discontinued their voter registration activities in the state—will almost certainly hit African American and Hispanic voters hardest. In Florida, U.S. Census Bureau data from the 2004 and 2008 election cycles show that both African-Americans and Hispanics rely more heavily than white voters on community-based voter registration drives; in fact, African-American and Hispanic citizens in Florida are more than twice as likely to register to vote through such drives as white voters.[186]

Similarly, the most restrictive voter ID laws, which only allow a small number of specified government issued photo IDs to vote, seem certain to create more burdens for minority citizens. According to one study, as many as 25% of African-American voters do not possess a current and valid form of government issued photo ID, compared to 11% of voters of all races.[187] And the kinds of government issued IDs that are permitted in the various state laws often put minorities at an even greater disadvantage. For instance, as noted above, the new **Texas** voter ID law, permits voters to use a concealed handgun license as proof of identity, but precludes voters from using a student ID, even if the student ID was issued by a state university. As the Texas Department of Public Safety recently noted, African Americans are significantly underrepresented among the state's handgun license holders. Of the more than 100,000 concealed handgun licenses issued in Texas last year, only 7.69% were issued to African Americans, even though African Americans constitute 12.1% of the state's voting age population. In contrast, African Americans are more likely to attend a public university in Texas than whites. According to the 2009 American Community Survey, 8.0% of voting-age African Americans in Texas attended a public university compared with only 5.8% of voting age whites.[188]

New restrictions on early voting will also have their biggest impact on people of color. Opponents of these restrictions have been particularly angered by the efforts to eliminate Sunday early voting, which they see as explicitly targeting African-American voters. **Florida** eliminated early voting on the last Sunday before Election Day, and **Ohio** has eliminated early voting on Sundays entirely. There is substantial statistical and anecdotal evidence that African Americans (and to a lesser extent Hispanics) vote on Sundays in proportionately far greater numbers than whites.[189] For instance, in the 2008 general election in Florida, 33.2% of those who voted early on the last Sunday before Election Day were African American and 23.6% were Hispanic, whereas African Americans constituted just 22.7% of all early voters for all early voting days, and Hispanics just 11.6%.[190]

Part 2: Eliminating Same-Day Registration

A. Background

Prior to 2011, eight states—Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin, Wyoming—allowed for Election Day registration ("EDR"), meaning that citizens could register and vote at their local polling place on Election Day.[191] Maine was the first state to adopt EDR, in 1973; Iowa was the most recent, in 2008.[192] In 2007, North Carolina adopted same day registration for the early voting period, but not on Election Day.[193] Beginning in 2008, Ohio allowed same day registration for the first week of early voting.[194] (Other states provide for EDR in certain circumstances; for instance, in Connecticut and Rhode Island, voters who register on Election Day may vote for presidential candidates only.)

Voting rights advocates have long praised EDR.[195] Because it has existed in some states for nearly forty years, there is a substantial record of its benefits. States with EDR have consistently had higher turnout than states without, and the top five states for voter turnout in 2008 were all EDR states.[196] There is also evidence that EDR specifically increases turnout among young voters.[197]

Proponents of EDR point out that it greatly reduces the use of provisional ballots[198] (under federal law, provisional ballots are provided to voters when there is a question about the voter's eligibility, very often related to whether they are properly registered). Most voting rights advocates prefer the use of regular ballots to provisional ballots where possible, because a significant percentage of provisional ballots go uncounted in every election.[199]

The most common objection to EDR is that it "invites" voter fraud.[200] This has been the main public explanation provided by supporters of bills to end same day registration, though some have also argued that same day registration imposes administrative burdens on those running the polls on Election Day.[201]

Bills to eliminate same day registration in 2011 were uniformly sponsored by Republicans. The bills that passed the Montana and Ohio legislatures were unanimously opposed by Democratic legislators in the legislative chambers that voted on them.[202]

The partisan split over Election Day Registration has not always existed. When Maine became the first state to adopt EDR in 1973, the Republicans controlled both houses of the Legislature, and the proposal passed unanimously.[203]

B. Roundup of Legislative Developments

Bills to eliminate EDR or same day registration were introduced in five states: Maine, Montana, New Hampshire, North Carolina and Ohio. The bills in Maine and Ohio have been enacted, though both bills may be overturned in the coming months by ballot initiative processes currently underway in each state. The bill in Montana passed the legislature, but was vetoed by Governor Brian Schweitzer on March 4, 2011.[204] The bill in North Carolina is still pending.

C. What the Bills Say

Maine. On June 21, Governor Paul LePage signed a bill to repeal Maine's 38-year old law allowing same-day voter registration.[205] It was the oldest EDR law in the country. The Montana bill that was vetoed similarly would have eliminated EDR in that state.

Ohio. Beginning in 2008, the state of Ohio adopted what effectively became same day registration during the first week of early voting.[206] In both 2008 and 2010, the first week of early voting overlapped with the final week before the registration deadline, and meant that citizens were able to register and vote on the same day.[207] An omnibus election reform bill, signed by Governor John Kasich on July 1, substantially reduced the early voting period, thereby eliminating "Golden Week," and Ohio's *de facto* same day registration period.

North Carolina. Current law in North Carolina allows eligible voters to register to vote or update their registration information during the early voting period. A bill currently under consideration in the North Carolina Senate would eliminate same day registration (it would also reduce the early voting period, as discussed below) and the ability of voters to update their registration information during early voting.[208]

The Special Case of Ohio's Referendum

Ohio is no stranger to partisan fights over election law. With Republicans in control of both the Legislature and the executive branch this year, it is not particularly surprising that the state passed a new omnibus election law dramatically altering the state's election code. It was signed by Governor Kasich on July 1 and passed along party lines—without a single Democratic vote.[209] The bill, supported by the current Republican secretary of state of Ohio, impacted many areas of election administration.[210] Among the most significant changes relevant to this report, it cut the in-person early voting period by two thirds, eliminated early voting on Sundays, eliminated the state's *de facto* "same day registration" week during the early voting period, and forbade county boards of election from mailing out return-paid absentee ballot applications or absentee ballots.[211] Democrats argued that the bill would suppress votes, particularly votes of groups that traditionally favor Democrats, like African-Americans.[212]

Unlike minority parties in most other states, Democrats had a weapon that allowed them to fight changes to the election code even after they were passed into law: the Ohio referendum. Under the unique rules of that state, if opponents of the bill get enough signatures, all of the new provisions will be stayed until the referendum vote in November 2012.[213] Former Democratic Secretary of State Jennifer Brunner has led a petition drive to do just that.[214] If organizers gather enough signatures by September 29 to qualify for the referendum in November 2012, none of the bill's provisions will go into effect before the referendum.[215] That would mean, among other things, that Ohio would continue to operate under its old rules for early and absentee voting in 2012.

D. Legislative Battles

Efforts to repeal same day registration fell almost entirely along partisan lines. In states where repeal proposals received votes, most or all Republican legislators supported the repeal, and all Democratic legislators opposed it.[216]

A primary argument of those seeking repeal was that same day registration increased the possibility of fraud. "When you're able to register and vote on the same day, there's simply not the time to go and make sure that the registration is proper," argued Ohio State Senator Mark Wagoner.[217] Legislators seeking repeal also frequently emphasized the responsibility of the voter to ensure she could vote on Election Day. Maine Senate Republican Nichi Farnham stated "If it is something that's so important, our right to vote, then why would it be a problem to plan ahead to register?"[218]

In contrast to other states, proponents of the EDR repeal in Maine often placed more emphasis on the administrative burden of EDR than fraud, perhaps because of EDR's long history there, and the absence of evidence of voter fraud during that time.[219] Republican Secretary of State Charles E. Summers, Jr. wrote in an op-ed that "I have never argued that this is a measure necessary to prevent voter fraud … In fact, I have stressed repeatedly that this bill has been designed to relieve some of the stress on the system."[220] Proponents of EDR in Maine have responded to this argument by pointing out that elimination of EDR means the state must adopt a system for provisional ballots,[221] which comes with its own additional costs and administrative burdens.[222]

"The notion that same day voter registration leads to voter fraud is a myth . . . This is a solution in search of a problem."

—Maine Rep. Mark Dion

Not surprisingly, opponents of repeal were unanimous in disputing claims that same day registration invited fraud. Montana Representative Bryce Bennett pointed to the fact that the current Secretary of State and two of her predecessors all argued that EDR had not led to any fraud.[223] Maine Representative Mark Dion made similar comments about EDR in his state. "The notion that same day voter registration leads to voter fraud is a myth . . . This is a solution in search of a problem."[224]

Opponents of repeal also pointed to the benefits of EDR, including increased registration among the young and those who moved shortly before Election Day, greater voter turnout, and greater convenience for voters. Montana Secretary of State Linda McColloch argued that since its passage in 2006, 19,000 people registered to vote on Election Day in Montana, and that the repeal attempt ran "counter to the core freedoms of our democracy … [i]f you support freedom, and you support democracy, you cannot support a bill that will turn your neighbors away at the polls."[225]

Focus: Maine and the People's Veto

Because Maine has a referendum process known as "the People's Veto," which allows Maine citizens to reverse a legislative decision, it is not clear that the repeal of EDR will be in effect on Election Day. On

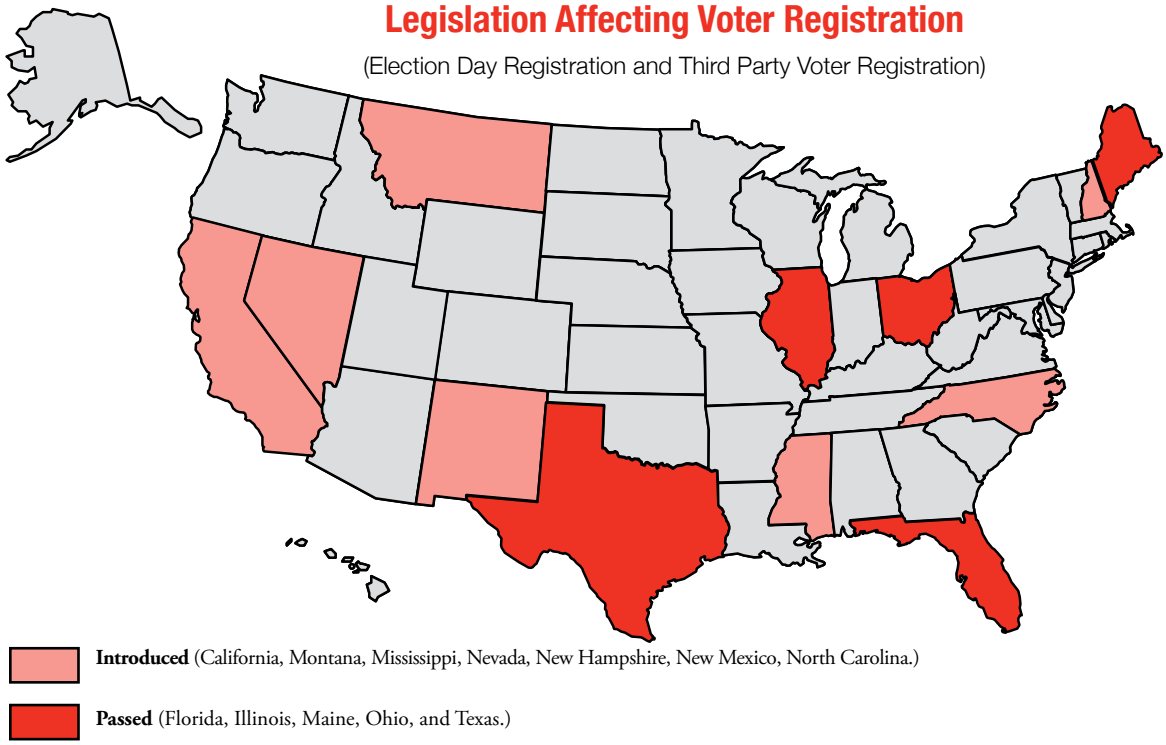
June 21, the same day that Governor Paul LePage signed the bill to repeal EDR, a coalition led by the League of Women Voters of Maine filed papers to launch a People's Veto campaign. They have gathered enough signatures to get the question on the November 2011 ballot.[226] It will appear as question number one on the ballot.[227]

Part 3: Other Restrictions on Voter Registration

While attempts to limit voter registration drives and same day registration were the most widespread efforts to restrict voter registration this year, there have been additional, state-specific efforts that will make it more difficult for voters to ensure that they are registered and able to vote at their current addresses on Election Day. We provide two examples of these new limitations below.

Florida. Though Florida does not have Election Day registration, it does have a longstanding policy permitting voters who changed their address before an election to update their new address at the polls on Election Day, where the voters' existing registrations were cross-checked in a state database before the voters were given a ballot. The Florida omnibus bill eliminated that right. This has the potential to disenfranchise a significant number of voters in Florida, especially those who move and are unaware of the change in law or who move within the state after the registration deadline.

Wisconsin. Wisconsin also worked to limit voter registration possibilities. Though commonly known for its voter ID provisions, there are other voter registration restrictions in the new Wisconsin election law, including extending the length of residency period before an eligible person may register to vote from ten to twenty-eight days.



IV. MAKING VOTING HARDER: RESTRICTING EARLY IN-PERSON AND MAIL-IN ABSENTEE VOTING

A. Background

For years, the growth of early voting—through in-person early voting sites and no-fault absentee voting by mail—has been dramatic, and seemed unstoppable. 2011 marks the first year that inexorable progress may have stalled. Early in-person and absentee voting have come under attack by legislatures around the country; these attacks have been particularly successful against early in-person voting.

The numbers tell the story of early voting's growth in just the last decade. In 2000, an overwhelming majority of Americans still voted at their local polling places on Election Day; less than 4% voted at early voting sites, and only 10% voted by mail. By 2008, more than a third of American voters voted early. The percentage of Americans voting at early voting sites had increased nearly five-fold, to 18%, and the percentage voting by mail nearly doubled to 19%.[228]

The primary benefit of early voting is convenience. Voters are provided more options and days during which they can vote.[229] While there is little evidence that early and absentee voting increase turnout,[230] there is strong anecdotal evidence that it makes election administration easier, reducing the crush of voters at the polling place on a single day.[231] In the past, that Election Day crush has led to hours-long lines, and resulted in the *de facto* disenfranchisement of tens of thousands of voters.[232]

Through much of its growth, early voting has had strong support from both Democrats and Republicans.[233] In 2011, most, though not all, of the new restrictions on early voting have been proposed by Republicans and adopted by Republican-controlled legislatures.

As discussed below, the reasons most often provided for restricting early voting were cost and administrative burden, though they sometimes also included arguments that the restrictions would reduce fraud.[234] Opponents of the new restrictions frequently disputed the alleged savings,[235] and many argued that the changes were really a response to the success in 2008 of Barack Obama's campaign to get the candidate's supporters—and in particular black voters—to vote before Election Day.[236]

B. Roundup of Legislative Developments

At least nine states—Florida, Georgia, Maryland, Nevada, New Mexico, North Carolina, Ohio, Tennessee, West Virginia—all considered bills to reduce their respective early voting periods this year.[237] At least four states—Georgia, New Jersey, Ohio, and Wisconsin—saw the introduction of bills to change or add new restrictions on absentee voting.[238]

Texas introduced a law that would omit early voting locations from official notices of a general or special election, but the measure did not pass.[239] In Wisconsin, a provision to eliminate no-excuse absentee voting was later removed from the state's voter ID bill.[240]

Ultimately, laws reducing early voting were passed and signed into law in five states: Florida, Georgia, Ohio, Tennessee, and West Virginia. Pending bills remain in North Carolina, Georgia, and New Jersey.

C. What the Bills Say

Ohio. As already discussed, Governor Kasich of Ohio signed into law an omnibus election reform bill on July 1. Among other things, this new law also substantially reduced early in-person voting and access to vote by mail. Under the new law, the in-person voting period was cut by more than two thirds, from thirty-five days to eleven.[241] Early voting on Saturday afternoon and Sunday was eliminated entirely.[242]

Controversially, the new law also prohibited county boards from mailing absentee ballot applications to all voters, or prepaying postage on absent voter's ballot applications.[243] Both practices were employed by Franklin (Columbus) and Cuyahoga (Cleveland) counties in past elections, and were credited by some voting rights advocates and election officials with reducing congestion at the polls on Election Day, and eliminating equity issues associated with requiring voters to pay to mail in their ballots.[244] Proponents of this ban, including Secretary of State Jon Husted, supported it on the grounds that all counties should adopt the same practices with regards to absentee ballots, and some counties could not afford to mail absentee ballot applications to all voters or prepay postage on those applications.[245] The impact of this law may have been largely thwarted by the Cuyahoga County Council, which voted to have its public works department oversee mailings of absentee ballot applications to all voters (the ban only applied to elections boards). As a result, Secretary Husted—arguing that uniformity in county practices was of paramount concern—decided that the State will mail absentee ballot request forms to voters in *all* counties ahead of the 2012 presidential election.[246]

Florida. The same Florida law that led the League of Women Voters to discontinue its voter registration operations also reduces the early voting period from two weeks to one. Florida also eliminated the Sunday before Election Day as an early voting day.[247]

Other states with new laws. In **Georgia**, on May 13, Governor Nathan Deal signed H.B. 92 into law, which reduces the early voting period from forty-five to twenty-one days.[248] In **Tennessee**, in June, Governor Bill Haslam signed S.B. 923[249] which shortens the early voting period by two days. In **West Virginia**, on March 18, Governor Earl Ray Tomblin signed S.B. 581, which reduces early voting by five days, but allows early voting on Saturdays for the first time.[250]

Pending bills. In **Georgia**, H.B. 138 would limit when in-person absentee ballots may be cast by requiring that when an absentee ballot is requested in person during the early voting period, the absentee ballot must be cast within the registrar's office at that same time.[251] In **New Jersey**, S.B.1596 would end no-excuse absentee voting.[252] In **North Carolina**, S.B. 657 would cut down the early voting period by one week and eliminate Sunday voting.[253] Another election law bill, S.B. 47, also originally contained a provision that would eliminate Sunday early voting. That provision, however, has since been removed from the bill. [254]

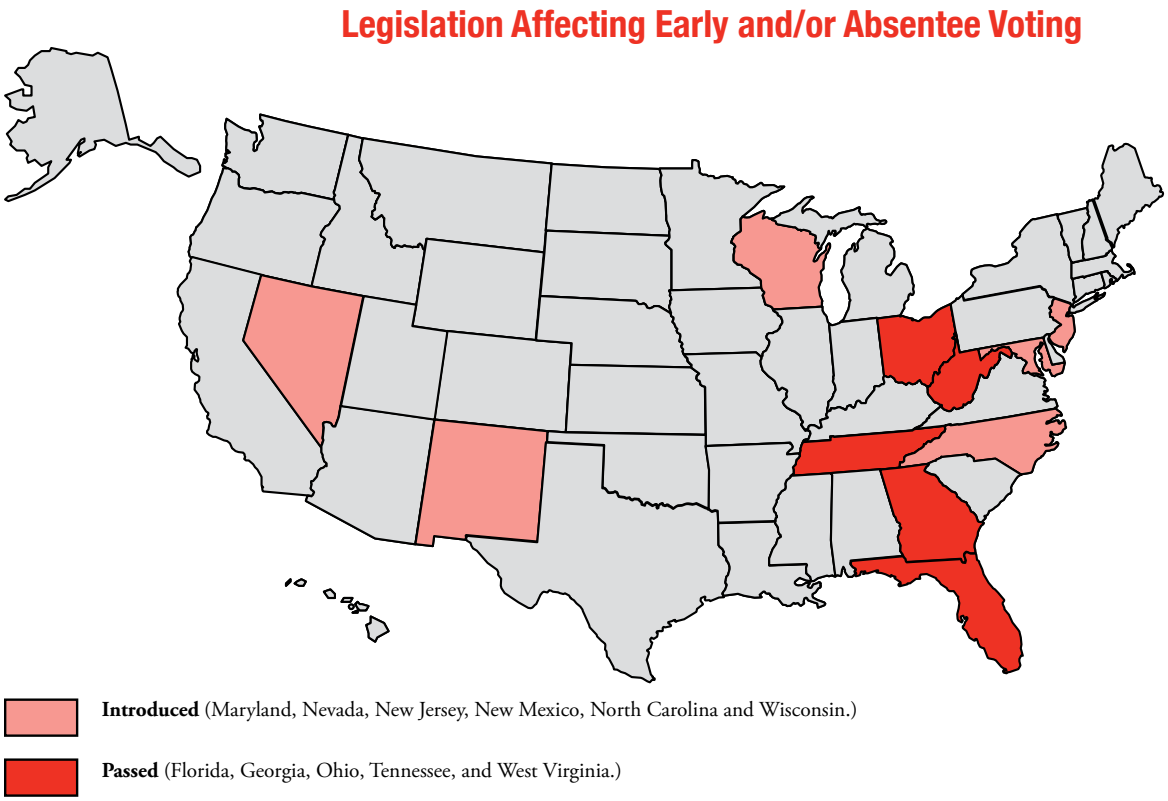
D. Legislative Battles

This year saw a substantial push in several states to reduce or, in some cases, eliminate these programs, and substantial resistance to those efforts. Of the five states that reduced early voting, four—Florida, Georgia, Ohio and Tennessee—saw sharp partisan divisions over those reductions. In all four cases, Republicans had uniform control over the legislative and executive branches, and passed the reductions over frequently vociferous objection by Democrats.[255] In the fifth state, West Virginia, the law reducing the early voting period also added early voting on Saturdays for the first time. It received bipartisan support.[256]

Until this year, the expansion of early voting seemed unstoppable. In 1972, just two states allowed no-fault absentee voting and five allowed early in-person voting. By 2010, thirty-two states and the District of Columbia allowed no-fault absentee voting, while thirty states and the District of Columbia allowed in-person early voting.[257]

The Debate

While some of the bills that reduced in-person early voting also put new restrictions on absentee voting by mail, it was the reduction of in-person early voting that received the most attention, and was the source



of the most bitter disagreements between the political parties. Proponents of such reductions usually praised the convenience of early voting, while arguing that it needed to be limited to reduce costs and administrative burdens on election officials. In Georgia, Republican Representative Bill Hembree stated that "We need to maintain early voting, which is very popular, [but] we also need to keep in mind that cities and counties are having economic problems. This bill still allows people to vote early, but saves money."[258] Supporters of a bill to reduce early voting in North Carolina made similar points. The *Herald Sun* editorialized "this is not a black and white issue, as some who want to inject race into everything are trying to say. This is a green and white issue ... as in saving the taxpayers a few greenbacks."[259]

Democrats and others who opposed these measures were less sure of the motives behind the bills and disputed the cost savings. In Georgia, Democratic State Senator Donzella James said, "We must provide every way possible for people to vote. It's not costing that much. The staff is already there and the facilities are available."[260] In North Carolina, George Gilbert, Director of Elections for Guilford County, argued that a reduction of early voting would not bring any savings. "If early voting begins later, a crush of voters will require more early voting sites to accommodate the crowds. There won't be any cost savings."

Some Democrats and editorial boards argued that the real motivation for reducing early voting was the success of the Obama campaign in using early voting in 2008. Morgan Jackson, a Democratic consultant stated, "This is pure partisanship … they see the numbers that Obama rolled up in early voting (and) they want to eliminate it."[261] A *New York Times* editorial made a similar argument. "Early voting skyrocketed to a third of the vote in 2008, rising particularly in the South and among black voters supporting Barack Obama," the *Times* wrote, adding "and that, of course, is why Republican lawmakers in the South are trying desperately to cut it back."[262] The suspicion that partisanship, rather than cost savings, was the main motivation for new early voting restrictions was particularly strong for proposals that eliminated or significantly reduced early voting on Sundays, thought to be a day of high turnout for black voters.[263]

Early Voting on Sunday and the Black Vote

Among the most controversial early voting reductions has been the partial or full eliminations of early voting on Sunday. Ohio has eliminated in-person early voting on Sundays entirely,[264] Florida has eliminated it on the last Sunday before Election Day,[265] and a North Carolina bill, proposes to eliminate all in-person early voting on Sundays.[266] Critics have cried foul, arguing that these measures are "aimed squarely at reducing African-American turnout."[267] In particular, these critics charge, it is common for Black voters to go to the polls in large groups on Sundays, after church,[268] and for some African-American churches to organize "Souls to the Polls" voting drives.[269] In Florida, a local Democratic club leader noted that "Churches had either hired buses, or used their buses to take people to the polls, or even suspending [sic] the service on the Sunday before."[270] The Palm Beach Post stated that "[m]ore than half of the black voters in the [November 2008] election voted before Election Day and many of them went on [the] final Sunday."[271] In Ohio, WilliAnn Moore, coordinator of the northwest Ohio district of the NAACP, labeled Ohio's new legislation "voter-suppression legislation," taking specific aim at the part of the law that eliminated Sunday early voting, noting that it had become a regular practice in the black community for voters to "pile into vans after church to cast their ballots."[272]

Where available, the evidence supports the contention that black (and to a lesser extent Hispanic) voters used Sunday early voting in numbers proportionally greater than other groups. For instance, in the 2008 general election in Florida, 33.2% of those who voted early on the last Sunday before election day were black and 23.6% were Hispanic, whereas blacks constituted 22.7% of all early voters statewide (for all early voting days) and Hispanics constituted 11.6%.[273]

Among those who supported these laws, which reduced early voting in additional ways, there was little public explanation of why Sunday was specifically targeted, other than the general argument that the elimination was needed to reduce costs and administrative burden. In North Carolina, Senator Jim Davis, the sponsor of his state's bill, opined that "We were just trying to minimize the time early voting polls were open ... so the expense is not so great for local election boards ... [e]verybody who wants to vote still can vote." One of his colleagues, Senate Leader Phil Berger, got closer to the issue of eliminating Sunday voting stating, "It's my understanding that there are some folks who feel that Sundays should not be mixed politics and religion, that it's probably better to have a day that folks take a day off from politics. That's one of the comments that I've heard."[274]

V. MAKING IT HARDER TO RESTORE VOTING RIGHTS

A. Background

Disenfranchisement after criminal conviction remains the single most significant barrier to voting rights in the United States. Nationally, 5.3 million American citizens are not allowed to vote because of a criminal conviction; of those, 4 million have completed their sentences and live, work, and raise families in their communities.[275] This disenfranchisement disproportionally impacts African-American men. Nationwide, 13% of African-American men have lost the right to vote, a rate that is seven times the national average.[276] Given current rates of incarceration, three in ten of the next generation of African-American men across the country can expect to lose the right to vote at some point in their lifetime.[277]

These voting bans are exceptional among democratic nations. The United States is one of only two countries that disenfranchise large numbers of persons for lengthy or indefinite periods after they have completed their time in prison.[278]

While the history of felon disenfranchisement laws in the United States dates to the nation's earliest days,[279] its greatest growth came in the decades after the Civil War. By 1900, thirty-eight states had some type of criminal voting restriction, most of which disenfranchised convicted individuals until they received a pardon.[280]

The last decade and a half saw a striking reversal of these restrictions. Since 1997, twenty-three states either restored voting rights or eased the restoration process; nine of these states repealed or amended lifetime disenfranchisement laws.[281] These changes occurred under both Republican and Democratic governors.[282]

Iowa and Florida saw the most recent dramatic restoration of voting rights. In Iowa, in 2005, Democratic Governor Tom Vilsack issued an executive Order ending the state's permanent disenfranchisement policy (at the time, Iowa was one of only three states with such a broad restriction on voting) and restoring voting rights to 80,000 Iowans.[283]

Like Iowa, Florida also had a notoriously severe law modified by executive action. Prior to 2007, nearly one million Floridians were permanently disenfranchised in the state; almost a quarter of them were African-American. In 2007, Republican Governor Charlie Crist amended the State's clemency rules in an attempt to streamline the restoration process for some individuals with non-violent convictions. Since restoration rules were streamlined, the voting rights of at least 150,000 Floridians were restored.[284]

B. Roundup of Legislation and Executive Actions

Last year marked the end of fifteen years of progress restoring the right to vote to formerly incarcerated persons. Specifically, the dramatic changes in Iowa and Florida were reversed. By executive action, the Governors Terry Branstad of Iowa and Rick Scott of Florida, both Republicans, returned their state

policies to *de facto* permanent disenfranchisement for all citizens convicted of felonies. In Florida, this has meant that 87,000 persons who were in the "backlog" of cases waiting for restoration under Governor Crist's new rules will not get their voting rights restored.

Also in 2011, Nevada Governor Brian Sandoval, also a Republican, vetoed a bill that would have automatically restored voting rights to anyone who honorably completed a felony sentence of imprisonment, probation, or parole. The bill had received bipartisan support in the Legislature.

Five states saw bills further restricting the ability of people with criminal convictions to participate in the political process: Alabama, Maryland, South Carolina, Washington, and West Virginia. None of these bills have passed.[285]

C. Content of Executive Actions

Florida. Governor Scott changed Florida's clemency rules, and the change denies the right to vote to hundreds of thousands, maybe as many as a million, Florida citizens. These changes make Florida the most punitive state in the country when it comes to disenfranchising people with criminal convictions in their past.

The Florida Constitution denies the right to vote for life to anyone with a felony conviction, unless he is granted clemency by the governor. It essentially gives the governor, an elected official, the power to decide who will (or will not) be allowed to vote in the next election.

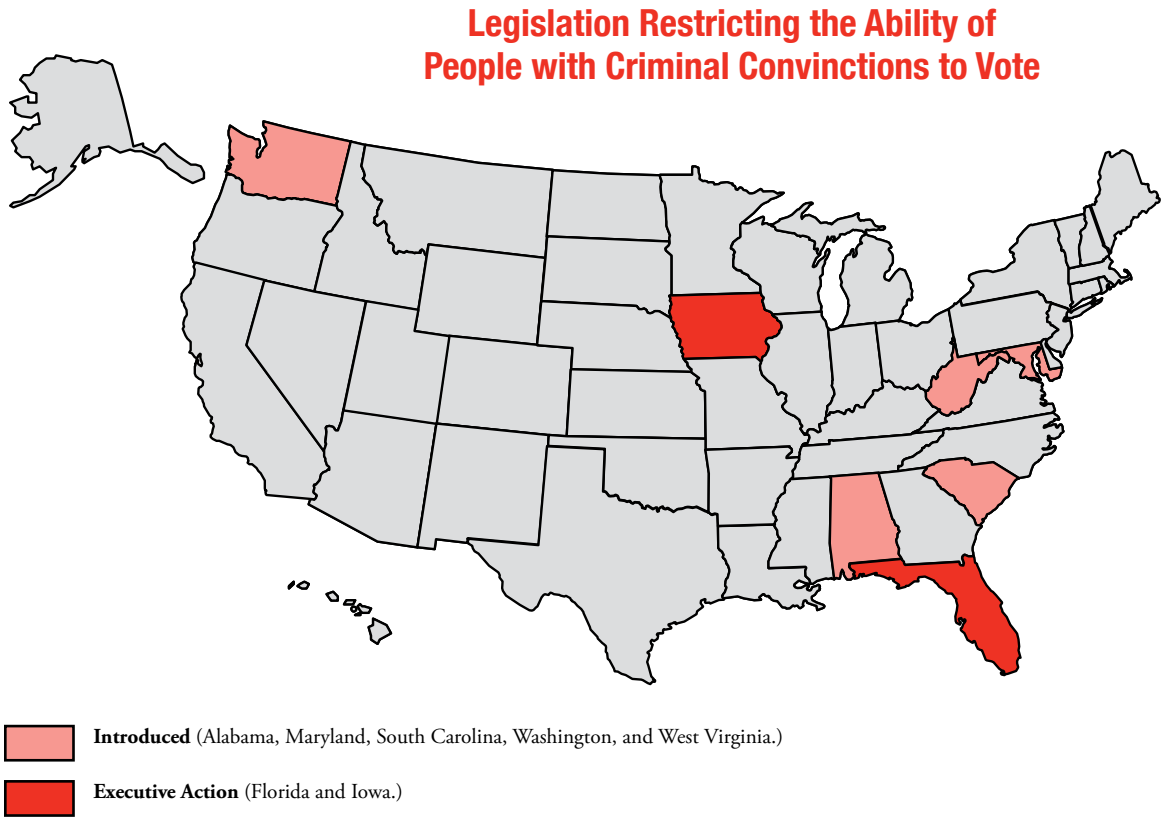
The new clemency rules[286] not only roll back reforms[287] passed by former Governor Charlie Crist, but they are far more restrictive than those in place under former Governor Jeb Bush. Under the new rules, people with even nonviolent convictions must wait five years after they complete all terms of their sentence before even being allowed to apply for restoration of civil rights. The clock resets if an individual is arrested for even a misdemeanor during that five-year period, even if no charges are ever filed. Some people must wait seven years before being able to apply, and must appear for a hearing before the clemency board. A provision allowing people to apply for a waiver of the rules, in place under Governors Bush and Crist, is eliminated. Everyone applying for clemency must provide various documents with their application—Bush and Crist had made an exception for those applying for restoration of civil rights. Florida's law is now the most restrictive in the country.[288]

Iowa. Governor Branstad, almost immediately after taking office, revoked Executive Order 42, a policy signed in 2005 by former Governor Tom Vilsack, which automatically restored voting rights to individuals with criminal convictions once they had completed their sentences.[289] Under the new policy, Iowa has become one of just four states that permanently disenfranchise all citizens after a criminal conviction. Prior to Executive Order 42, Iowa disenfranchised adults at a rate twice the national average, and had the nation's highest rate of African-American disenfranchisement.[290]

Nevada. Governor Sandoval vetoed Assembly Bill 301, a bill passed with bipartisan support in the State Legislature. The bill would have streamlined and simplified Nevada's complicated laws governing the restoration of voting rights after a criminal sentence, and would have automatically restored voting rights to anyone who honorably completed a felony sentence of imprisonment, probation, or parole.

D. The Debate

Governor Scott's and Governor Branstad's actions actions to reverse recent voting rights gains for persons with felony convictions were the subject of considerable publicity and debate in their states. The debate in Florida and Iowa mirrored the debate nationally about restoring the voting rights of formerly incarcerated persons. Those favoring further restrictions argued that persons convicted of felonies needed to "earn" the right to vote again,[291] while those opposed to harsher restrictions argued that preventing these citizens from voting was counter-productive and anti-democratic,[292] further penalizing those who had already completed their prison sentence,[293] and undermining the state's interest in re-integrating such citizens into society and reducing recidivism.[294]



ENDNOTES

1. This estimate is derived as follows: (1) New photo ID laws for voting will be in effect for the 2012 election in five states (Kansas, South Carolina, Tennessee, Texas, Wisconsin), which have a combined citizen voting age population of just under 29 million. 3.2 million (10.3%) of those potential voters do not have state-issued photo ID. Although Rhode Island's law will be in effect in 2012, the requirements are less onerous than those in the other states and so it was excluded. (2) New proof of citizenship laws will be in effect in three states (Alabama, Kansas, Tennessee), two of which will also have new photo ID laws. Assuming conservatively that those without proof of citizenship overlap substantially with those without state-issued photo ID, we excluded those two states. The citizen voting age population in the remaining state (Alabama) is 3.43 million. Of those potential voters, 240,000 (7%) do not have documentary proof of citizenship. (3) Two states (Florida and Texas) passed laws restricting voter registration drives, causing all or most of those drives to stop. In 2008, 2.13 million voters registered in Florida and, very conservatively, at least 8.24% or 176,000 of them did so through drives. At least 501,000 voters registered in Texas, and at least 5.13% or 26,000 of them did so via drives. (4) Maine abolished Election Day registration. In 2008, 60,000 Maine citizens registered and voted on Election Day. (5) The early voting period was cut by half or more in three states (Florida, Georgia and Ohio). In 2008, nearly 8 million Americans voted early in these states. An estimated 1 to 2 million voted on days eliminated by these new laws. (6) Two states (Florida and Iowa) made it substantially more difficult or impossible for people with past felony convictions to get their voting rights restored. Up to one million people in Florida could have benefited from the prior practice; based on the rates of restoration in Florida under the prior policy, 100,000 citizens likely would have gotten their rights restored by 2012. Other voting restrictions passed this year that are not included in this estimate.

2. The 12 states identified as "swing states" are Arizona, Colorado, Florida, Georgia, Iowa, Nevada, North Carolina, New Mexico, Ohio, Oregon, Pennsylvania and Virginia. David Lauter, *Obama's Gallup Numbers Show 12 States in Play in 2012,* L.A. Times, Aug. 15, 2011, http://articles.latimes.com/2011/aug/15/news/la-pn-inside-gallup-20110815. The five of those states that cut back on voting rights are Florida, Georgia, Iowa, Nevada, and Ohio. The four of those states with pending legislation are Georgia, Iowa, North Carolina, and Pennsylvania.

3. Kris W. Kobach, Op-Ed. *The Case for Voter ID,* Wall St. J., May 23, 2011, http://online.wsj.com/article/SB10001424052748704816604576333650886790480.html; *New State Voting Laws,* The Diane Rehm Show (NPR radio broadcast, June 21, 2011), *available at* http://thedianerehmshow.org/shows/2011-06-21/new-state-voting-laws/transcript.

4. Opponents of strict voter ID laws argue that the impersonation of registered voters at the polls—the only type of voter fraud that voter ID bills have the potential to address—rarely occurs. They note that while there is no credible evidence that impersonation fraud occurs, reliable evidence proves that photo ID and proof of citizenship bills erect hurdles that prevent real citizens from voting. The citizens affected are predominantly elderly and indigent voters, and citizens from minority communities. Brennan Center for Justice, Citizens Without Proof (2006), *available at* http://www.brennancenter.org/content/resource/citizens _without_proof_a_survey_of_americans_possession_of_documentary_proo.

5. John Lewis, Op-Ed, *A Poll Tax by Another Name,* N.Y. Times, Aug. 26, 2011, *available at* http://www.nytimes.com/2011/08/27/opinion/a-poll-tax-by-another-name.html.

6. Justin Levitt, The Truth About Voter Fraud, Brennan Center for Justice (2007), *available at* http://www.brennancenter.org/content/resource/truthaboutvoterfraud/.

7. The most rigorous study on voter ID and turnout to date, recently published in the leading political science methodology journal, found that stricter voter ID requirements depress turnout, particularly among less educated and lower income populations. See R. Michael Alvarez et al., An Empirical Bayes Approach to Estimating Ordinal Treatment Effects 26-30 (2010), *available at* http://brennan.3cdn.net/a5782740e4185414a8_snm6bhfwg.pdf. Some studies suggest that voter ID laws have only a small or no effect on turnout. See Jason Mycoff et al., *The Empirical Effects of Voter-ID Laws: Present or Absent?,* 42 PS: Pol. Sci. and Pol. 121 (2009), *available at* http://journals.cambridge.org/action/displayFulltext?type=1&fid=3260872&jid=PSC&volumeId=42&issueId=01&aid=3260864&bodyId=&membershipNumber=&societyETOCSession=#. But unlike the Alvarez study, these studies use aggregate data, which cannot provide any meaningful insight into how specific inputs–like voter ID–affect the behavior of individuals within a large group. For a comprehensive list of studies on voter ID, see *Research and Publications on Voter ID,* Brennan Center for Justice, http://www.brennancenter.org/content/resource/research_on_voter_id/ (last visited July 15, 2011).

[8] *See* 42 U.S.C. § 15483(b) (2010).

[9] *See generally* Voter Identification Requirements, Nat'l Conference of State Legislatures (NCSL), http://www.ncsl.org/default.aspx?tabid=16602 (last updated July 13, 2011).

[10] Common Cause/Ga. v. Billups, 406 F. Supp. 2d 1326, 1369-70 (N.D. Ga. 2005); Weinschenk v. Missouri, 203 S.W.3d 201 (Mo. 2006).

[11] The Court upheld Indiana's law on the ground that the "evidence in the record [was] not sufficient" to justify striking down the whole statute. Crawford v. Marion Cnty. Election Bd., 553 U.S. 181, 200-203 (2008). The Court expressly left open the possibility of future constitutional challenges to Indiana's law and other voter ID laws.

[12] Common Cause/Ga. v. Billups, 544 F.3d 1340 (11th Cir. 2009); Democratic Party of Ga. v. Perdue, 707 S.E.2d 67 (Ga. 2011) (upholding Georgia's voter ID law against a challenge under the state constitution) Georgia's initial voter ID law was previously blocked by a federal court in October 2005. Common Cause/Ga. v. Billups, 406 F. Supp. 2d 1326 (N.D. Ga. 2005). The court blocked an amended version of that law in July 2006 and again in September 2006. *See* Common Cause/Ga. v. Billups, 544 F.3d 1340, 1347-48 (11th Cir. 2009) (discussing injunctions in 2006). A state trial court had also blocked enforcement of the 2006 version of Georgia's voter ID law; this decision was later overturned by the Georgia Supreme Court due to the plaintiff's lack of standing. Perdue v. Lake, 647 S.E.2d 6 (Ga. 2007).

[13] *See* Brennan Center for Justice, ID Requirements Discourage Voters (Jan. 1, 2011) (map of state voter ID laws prior to the 2011 legislative session), *available at* http://www.brennancenter.org/page/-/Democracy/Voter%20ID%20 2010%20States.pdf; *Voter Identification Requirements,* NCSL, http://www.ncsl.org/default.aspx?tabid=16602 (last updated July 13, 2011) (information on previous and existing voter ID statutes).

[14] These states are: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. *See generally* Nhu-Y Ngo & Keesha Gaskins, Brennan Center for Justice, Voter ID Legislation in the States, http://www.brennancenter.org/content/resource/voter_id_legislation_in_the_states/, (last updated July 6, 2011).

[15] Fredreka Schouten, *More States Require ID to Vote,* USA Today (June 20, 2011), http://www.usatoday.com/news/nation/2011-06-19-states-require-voter-ID_n.htm.

[16] H.B. 19, 2011 Gen. Assemb., Reg. Sess., Act No. 2011-673 (Ala. 2011), *available at* http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011RS/Printfiles//HB19-enr.pdf.; H.B. 2067, 2011 Leg., Reg. Sess. (Kan. 2011), *available at* http://kslegislature.org/li/b2011_12/year1/measures/documents/hb2067_enrolled.pdf; S.B. 400 Sub. A, 2011 Leg., Jan. Sess. (R.I. 2011), *available at* http://www.rilin.state.ri.us//BillText11/SenateText11/S0400A.pdf; H. 3003, 119th Gen. Assemb., Reg. Sess. (S.C. 2011), *available at* http://www.scstatehouse.gov/sess119_2011-2012/prever/3003_20110511.htm; S.B. 16, 107th Gen. Assemb., 2011 Reg. Sess. (Tenn. 2011), *available at* http://www.capitol.tn.gov/Bills/107/Bill/SB0016.pdf; S.B 14, 82d Leg., Reg. Sess. (Tex. 2011), *available at* http://www.capitol.state.tx.us/tlodocs/82R/billtext/pdf/SB00014F.pdf#navpanes=0; Assemb. B. 7, 2011 Leg., Reg. Sess. (Wis. 2011), *available at* http://legis.wisconsin.gov/2011/data/acts/11Act23.pdf.

[17] S.F. 509, 87th Leg., Reg. Sess. (Minn. 2011), *available at* https://www.revisor.mn.gov/bin/bldbill.php?bill=S0509.6.html&session=ls87; S.B. 3, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011), *available at* http://www.senate.mo.gov/11info/pdf-bill/tat/SB3.pdf; H.B. 152, 62d Leg., Reg. Sess. (Mont. 2011), *available at* http://data.opi.mt.gov/bills/2011/billpdf/HB0152.pdf; S.B. 129, 2011 Gen. Ct., 2011 Reg. Sess. (N.H. 2011), *available at* http://www.gencourt.state.nh.us/legislation/2011/SB0129.html; H.B. 351, 2011 Gen. Assemb., Reg. Sess. (N.C. 2011), *available at* http://www.ncga.state.nc.us/Sessions/2011/Bills/House/PDF/H351v6.pdf.

[18] H.B. 934, Reg. Sess. 2011-12 (Pa. 2011), *available at* http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2011&sind=0&body=H&type=B&BN=0934. Other states with pending bills that are less likely to succeed include Illinois, Massachusetts, New Jersey, New York, and Ohio. S.B. 2035, 97th Gen. Assemb. (Ill. 2011), *available at* http://www.ilga.gov/legislation/billstatus.asp?DocNum=2035&GAID=11&GA=97&DocTypeID=SB&LegID=58180&SessionID=84; H.B. 3058, 97th Gen. Assemb. (Ill. 2011), *available at* http://www.ilga.gov/legislation/billstatus.asp?DocNum=3058

&GAID=11&GA=97&DocTypeID=HB&LegID=60409&SessionID=84; H.B. 1113, 187th Gen. Ct. (Mass. 2011), *available at* http://www.malegislature.gov/Bills/187/House/H01113; H.B. 1115, 187th Gen. Ct. (Mass. 2011), *available at* http://www.malegislature.gov/Bills/187/House/H01115; H.B. 2731, 187th Gen. Ct. (Mass. 2011), *available at* http://www.malegislature.gov/Bills/187/House/H02731; S.B. 316, 187th Gen. Ct. (Mass. 2011), *available at* http://www.malegislature.gov/Bills/187/Senate/S00316; S.B. 318, 187th Gen. Ct. (Mass. 2011), *available at* http://www.malegislature.gov/Bills/187/Senate/S00318; S. 2996, 214th Leg. (N.J. 2011), *available at* http://www.njleg.state.nj.us/2010/Bills/S3000/2996_I1.PDF; A.B. 3373, 2011-12 Reg. Sess. (N.Y. 2011), *available at* http://assembly.state.ny.us/leg/?default_fld=&bn=A03373&term=&Summary=Y&Actions=Y&Votes=Y&Text=Y; H.B. 159, 129th Gen. Assemb. (Ohio 2011), *available at* http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_159.

19. State Senate Kills Voter ID Bill, WMUR N.H. (Sept. 7, 2011), http://www.wmur.com/r/29108560/detail.html; Kevin Landrigan, *Senate Veto Vote on Tap This Week,* Nashua Telegraph, Sept. 4, 2011, http://www.nashuatelegraph.com/news-statenewengland/931511-227/senate-veto-vote-on-tap-this-week.html. New Hampshire's bill is still pending for the next legislative session.

20. Mike Raley & David Horn, *Voter ID Bill Still Has Life,* N.C. News Network, Sept. 6, 2011, http://www.ncnn.com/edit-news/7232-voter-id-bill-still-has-life.

21. S.J.R. 2, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011), http://www.senate.mo.gov/11info/pdf-bill/tat/SJR2.pdf.

22. *Initiative Measure No. 27,* Mo. Sec'y of State, http://www.sos.ms.gov/page.aspx?s=7&s1=1&s2=51 (last visited July 15, 2011).

23. Alabama allows voters without photo ID to vote if identified by two election officials at a polling place, Ala. Code § 17-9-30(e) (2011), but it is unlikely that many voters will be able to take advantage of that procedure. Texas also has a very limited exception for voters who either have religious objections to being photographed or who lost their IDs in a federal or state-declared natural emergency within forty-five days of an election, allowing them to execute an affidavit and cast a provisional ballot in order to have their vote counted. *Bill Information for SB 14,* Tex. Leg. Online, http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=SB14 (last visited Sept. 7, 2011).

24. Crawford v. Marion Cnty. Election Bd., 553 U.S. 181, 198 (2008).

25. Shawn Doherty & Jessica Vanegeren, *Top DOT Official Tells Staff Not to Mention Free Voter ID Cards to the Public, Unless They Ask,* Madison.com (Sept. 7, 2011), http://host.madison.com/ct/news/local/govt-and-politics/capitol-report/article_335f59fa-d8fe-11e0-8a23-001cc4c03286.html; Brad Friedman, *Video: WI Citizen Jumps Through DMV Hoops to Get Photo ID in Order to Cast Legal Vote,* Brad Blog (July 26, 2011, 5:58 PM), http://www.bradblog.com/?p=8626.

26. She eventually returned and received a free card after learning of the option from someone outside the DMV. Doug Erickson, *Need a Free Photo ID to Vote? Be Prepared to Wait,* Wis. St. J., July 2, 2011, http://host.madison.com/wsj/news/local/govt-and-politics/article_e1412868-a434-11e0-bc0c-001cc4c002e0.html.

27. Patrick Marley, *State Employee Fired After Telling Co-Workers About Photo ID Policy,* Milwaukee J.-Sentinel, Sept. 8, 2011, http://www.jsonline.com/blogs/news/129469023.html.

28. *Texas Vital Statistics – Birth Certificates,* Tx. Dep't of State Health Servs. http://www.dshs.state.tx.us/vs/reqproc/certified_copy.shtm (last visited July 18, 2011) ($22); *Ordering Birth Certificates,* Kas. Dep't of Health and Env't, http://www.kdheks.gov/vital/birth_howto.html (last visited July 18, 2011) ($15); *Vital Records,* Ga. Dep't of Pub. Health, http://health.state.ga.us/programs/vitalrecords/birth.asp (last visited July 18, 2011) ($25).

29. A.B. 7, 2011 Leg., Reg. Sess. (as introduced, Wis. 2011), *available at* https://docs.legis.wisconsin.gov/2011/related/proposals/ab7.pdf.

30. Alison Bauter, *Wisconsin Students Take Aim at Voter ID Bill,* Isthmus, Feb. 17, 2011, http://www.isthmus.com/isthmus/article.php?article=32291; Andrew Averill, *After Months in Limbo, Voter ID Bill Will Include University Cards,* Badger Herald, May 1, 2011, http://www.badgerherald.com/news/2011/05/01/after_months_in_limb.php.

31. Memorandum from the Wis. Legislative Fiscal Bureau to the Members of the Joint Comm. On Fin. (May 9, 2011), *available at* http://legis.wisconsin.gov/lfb/2011-13Bills/2011_05_09JFC_AB7.pdf.

[32] S.B 14, 82d Leg., Reg. Sess. (Tex. 2011), *available at* http://www.capitol.state.tx.us/tlodocs/82R/billtext/pdf/SB00014F.pdf#navpanes=0.

[33] *See*, e.g., Molly Redden, *As 2012 Elections Loom, Partisans on Both Sides Argue the Effect of Voter-ID Laws on Students,* Chron. of Higher Educ., July 11, 2011, http://chronicle.com/article/As-2012-Elections-Loom/128189/?key=Sm8hIFA2MXwabCllZWxKYDpUPXY8Nxh1YnBOOHArbltSEg%3D%3D; Peter Wallsten, *In States, Parties Clash over Voting Laws That Would Affect College Students, Others,* Wash. Post, Mar. 8, 2011, http://www.washingtonpost.com/wp-dyn/content/article/2011/03/06/AR2011030602662.html.

[34] *Bill Status System: HB 176,* N.H. Gen. Court, http://www.gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=717&sy=2011&sortoption=&txtsessionyear=2011&txtbillnumber=hb176&q=1 (last visited Sept. 7, 2011).

[35] *An Act Relative to Eligibility to Vote: Hearing on H.B. 176, Before Election Law Comm.,* N.H. H.R. (Feb. 24, 2011) (written testimony of Lee Rowland, Counsel, Brennan Center for Justice & Peter Couto, Law Student Intern, Brennan Center for Justice), http://www.brennancenter.org/page/-/Democracy/NH%20HB%20176%20Testimony%202.23.11.pdf.

[36] Peter Wallsten, *"Foolish" College Kids "Just Vote Their Feelings," New Hampshire Speaker Says,* Wash. Post: Pols. & Pol'y Blog (Mar. 8, 2011, 10:06 AM), http://voices.washingtonpost.com/44/2011/03/video-foolish-college-kids-jus.html.

[37] *Bill Status System: HB 176,* N.H. Gen. Court, http://www.gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=717&sy=2011&sortoption=&txtsessionyear=2011&q=1 (last visited September 7, 2011); Gavin Huang, *Student voting bill denied in N.H. House,* The Dartmouth (Mar. 9, 2011), http://thedartmouth.com/2011/03/09/news/bill.

[38] Press Release, Me. Sec'y of State, Secretary of State Charles E. Summers, Jr.'s Remarks Concerning Possible Voter and Identity Fraud (July 28, 2011), http://maine.gov/sos/news/2011/possible-voter-fraud-.html.

[39] Letter from Lee Rowland, Counsel, Brennan Center for Justice, to Charles E. Summers, Jr., Me. Sec'y of State (Aug. 16, 2011), http://brennan.3cdn.net/208a6341e17c03ad3c_o3m6y9xyu.pdf. The state Republican Party, which had devised and forwarded the list of students, followed up this investigation with a widely-publicized announcement that it had "uncovered" 19 voters who had registered on Election Day with the same Holiday Inn residence. *See* Press Release, Me. Republican Party, Maine GOP Uncovers 19 Election Day Registrations From One Maine Hotel (Sept. 9, 2011), http://campaign.r20.constantcontact.com/render?llr=szrdsybab&v=001w9ieBxA0tWs05BvXMg11UnmBYspIv9iWprj5ziiCqyfzTbbTKGVeTjR8dMOcCCqN0DK6seD9VQ2O_XsGsPI8cyPHMUkqVlREuT2u50DyQo0%3D. Calls to the hotel made by the state Democratic Party confirmed that these voters were a group of students – legally eligible to vote in Maine – who were temporarily housed at the hotel after their dorm had been destroyed by a hurricane. *See* Press Release, Me. Democratic Party, Charlie Webster Continues Campaign of Voter Intimidation (Sept. 9, 2011), http://mainedems.org/571.html.

[40] *See*, e.g., Brennan Center for Justice, Cast Out: New Voter Suppression Strategies 2006 and Beyond 23 (2006), *available at* http://brennan.3cdn.net/1d92eeaf94232a9031_zdm6b6okf.pdf; *see also* Ian Urbina, *Fraudulent Voting Re-Emerges as a Partisan Issue,* N.Y. Times, Oct. 26, 2010, at A17, *available at* http://www.nytimes.com/2010/10/27/us/politics/27fraud.html?ref=ianurbina.

[41] *State Senate Passes Voter ID Bill,* Channel 3000 (May 20, 2011, 8:32 AM), http://www.channel3000.com/politics/27948966/detail.html.

[42] See *Texas House Democrats Stop Voter ID Bill,* KBTX (May 27, 2009, 9:00 PM), http://www.kbtx.com/home/headlines/46232967.html; Gary Scharrer, *Lawmaker risks health to stop voter ID bill,* Hous. Chron., May 22, 2007, http://www.chron.com/disp/story.mpl/special/07/legislature/4824361.html.

[43] Editorial, *No Need for Photo ID Bill,* Rock Hill Herald, Mar. 5, 2009, http://www.mcclatchydc.com/337/story/63347.html.

[44] Gina Smith, *Voter ID Wins Key Approval: House Democrats Walk out in Protest,* The State, Feb. 27, 2009, *available at* http://www.freerepublic.com/focus/f-news/2195258/posts.

[45] S.B. 150, 106th Leg., Reg. Sess. (Tenn. 2009), *available at* http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=SB0150&ga=106.

[46] Maggie Baron, *No Compromise on Voter ID,* Brennan Center for Justice (Mar. 6 2009), http://www.brennancenter.org/blog/archives/no_compromise_on_voter_id/.

[47] H.B. 381, 2007 Leg., Reg. Sess, (Ala. 2007), *available at* http://alisondb.legislature.state.al.us/acas/searchableinstruments/2007rs/bills/hb381.htm; H.B. 400, 2009 Leg., Reg. Sess., (Ala. 2009), *available at* http://alisondb.legislature.state.al.us/acas/searchableinstruments/2009rs/bills/hb400.htm; H.B. 227, 2010 Leg., Reg. Sess. (Ala. 2010), *available at* http://alisondb.legislature.state.al.us/acas/searchableinstruments/2010rs/bills/hb227.htm.

[48] Michael P. McKinney, *Voter ID Bill Splits Panel,* Providence J., Mar. 29, 2007, http://www.projo.com/news/content/Election29_03-29-07_GI526P3.33b24fe.html.

[49] Cynthia Needham, *R.I. House Approves 'Voter ID' bill; Senate Version Stalled,* Providence J.: Politics Blog (May 28, 2009, 8:10 PM), http://politicsblog.projo.com/2009/05/house-approves.html.

[50] Those states are Arkansas, Colorado, Iowa, Ohio, Pennsylvania, and Virginia.

[51] Kerry Rich (Alabama H.B. 19 and H.B. 63), Gerald Allen (Alabama S.B. 86), Mike Morrell (California A.B. 663), Gene Ward (Hawaii H.B. 1359), Bill Anderson (Iowa S.F. 142), Kathy Afzali (Maryland H.B. 288), Shaunna O'Connell (Massachusetts H. 1113), Richard Ross (Massachusetts S. 316), Michael Rush (Massachusetts S. 318), Mike Benson (Minnesota H.F. 89), Roger Chamberlain (Minnesota S.F. 354), John Howe (Minnesota S.F. 479), Ira Hansen (Nevada A.B. 431), Cresent Hardy (Nevada A.B. 434), Mark Sherwood (Nevada A.B. 435), Michael Roberson (S.B. 373), Jim Belanger (New Hampshire H.B. 515), Cathrynn Brown (New Mexico H.B. 577), Wesley Meredith (North Carolina S.B. 352), Stacey Campfield (Tennessee S.B. 133), Charles Perry (Texas H.B. 186), Charles Anderson (Texas H.B. 539), Jason Isaac (Texas H.B. 1596), Van Taylor (Texas H.B. 4160). *See generally* Nhu-Y Ngo & Keesha Gaskins, Voter ID Legislation in the States, Brennan Center for Justice, http://www.brennancenter.org/content/resource/voter_id_legislation_in_the_states/ (last updated July 6, 2011).

[52] *Map of 2010 Post-Election Party Control of State Legislatures,* NCSL, http://www.ncsl.org/tabid/21253/default.aspx (last visited July 19, 2011).

[53] Fredreka Schouten, *More States Require ID to Vote,* USA Today, June 20, 2011, http://www.usatoday.com/news/nation/2011-06-19-states-require-voter-ID_n.htm. Notably, Republicans gained control of the Minnesota Senate and House for the first time since the legislature switched back to partisan elections in 1974. *See* Tim Storey, *Updated – GOP Gains in Legislature are Historic,* Thicket (Nov. 4, 2010, 1:21 PM), http://ncsl.typepad.com/the_thicket/2010/11/by-tim-storey-updated-at-thursday-nov-4-1115am-mdt-republicans-have-added-over-675-seats-to-their-ranks-in-this-elec.html. Republicans also won control in Alabama, which had not been in GOP control since Reconstruction, and the North Carolina Senate, which had not been Republican since 1870. *See Pre-Election Party Control of State Legislatures,* NCSL, http://www.ncsl.org/?tabid=21314 (last visited July 19, 2011).

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South Carolina: "The state estimate is 'purely wishful thinking,' said Barbara Zia, president of the state's League of Women Voters. 'It will send us, the taxpayers spiraling down a fiscal rabbit hole.'" Seanna Adcox, *Opponents Call S.C. Voter ID Bill too Costly for Taxpayers*, Sun News, Mar. 30, 2011, http://www.thesunnews.com/2011/03/30/2069077/opponents-call-sc-voter-id-bill.html.

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[107] Andrew J. Nelson, *Iowa Vote ID Plan Stymied*, Omaha World-Herald, Apr. 2, 2011, http://www.omaha.com/article/20110402/NEWS01/704029858/1009.

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[109] Weinschenk v. State, 203 S.W.3d 201 (Mo. 2006).

[110] Mississippi Voter Identification Petition, Ballotpedia, http://ballotpedia.org/wiki/index.php/Mississippi_Voter_Identification_Petition_%282011%29 (last visited July 19, 2011); Initiative Measure No. 27, Mo. Sec'y of State, http://www.sos.ms.gov/page.aspx?s=7&s1=1&s2=51 (last visited July 19, 2011).

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[113] *See* 18 U.S.C. § 1973i(c).

[114] Ariz. Rev. Stat. §§ 16-152(A)(23), 16-166 (2011).

[115] *Id.* § 16-166.

[116] Letter from Thomas R. Wilkey, Exec. Director, U.S. Election Assistance Comm'n, to Jan Brewer, Ariz. Sec'y of State (Mar. 6, 2006), *available at* http://www.eac.gov/assets/1/Page/EAC%20Letter%20to%20Arizona%20Secretary%20of%20State%20Jan%20Brewer%20March%206%202006.pdf.

[117] *See* Gonzalez v. Arizona, 435 F. Supp. 2d 997 (2006), *rev'd in part,* 624 F.3d 1162 (9th Cir. 2010), *reh'g en banc granted*, 2011 U.S. App. LEXIS 8573 (9th Cir. Apr. 27, 2011).

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[119] 2009 Ga. Laws 712 (Ga. 2009) (codified at Ga. Code Ann. § 21-2-216(g) (2011)), *available at* http://www1.legis.ga.gov/legis/2009_10/fulltext/sb86.htm.

[120] After extensive negotiations and modifications, the Department of Justice eventually approved Georgia's citizenship verification program. *See* Letter from T. Christian Herren, Chief, Voting Section, U.S. Dep't of Justice, to Ann W. Lewis, Esq. (Aug. 18, 2010); *see also* Joint Motion to Dismiss, Georgia v. Holder, 748 F. Supp. 2d 16 (D.D.C. 2010), *available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/Georgia-Motion-8-20-10.pdf.

[121] *See* Bill Rankin, *DOJ Approves Proof of Citizenship Requirement for Voter Registration*, Atlanta J.-Const., Apr. 4, 2011, http://www.ajc.com/news/georgia-politics-elections/doj-approves-proof-of-898132.html.

[122] Nat'l Conference of State Legislatures, 2011 Immigration-Related Laws and Resolutions in the States (2011), *available at* http://www.ncsl.org/documents/statefed/IMMIG_REPORT_FINALAUG9.pdf.

[123] S.B. 256, 2011 Gen. Assemb., Reg. Sess. (Ala. 2011), *available at* http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011RS/Printfiles/SB256-int.pdf.

[124] S.B. 11-018, 68th Gen. Assemb., 1st Reg. Sess. (Colo. 2011), *available at* http://www.leg.state.co.us/clics/clics2011a/csl.nsf/fsbillcont3/BAED7B3078F4007E8725781500271318?open&file=018_01.pdf.

[125] H.B. 5231, Sess. Year 2011 (Conn. 2011), *available at* http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB05231&which_year=2011.

[126] H.B. 2067, 2011 Sess. (Kan. 2011), *available at* http://www.kslegislature.org/li/b2011_12/year1/measures/hb2067/.

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[128] H. 194, 187th Gen. Court (Mass. 2011), *available at* http://www.malegislature.gov/Bills/187/House/H00194.

[129] H.B. 515-FN, 2011 Sess. (N.H. 2011), *available at* http://www.gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=326&sy=2011&sortoption=&txtsessionyear=2011&txtbillnumber=hb515&q=1,

[130] S.B. 178, 76th Sess. (Nev. 2011), *available at* http://www.leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=428.

[131] H.B. 2804, 76th Leg. Assemb. (Or. 2011), *available at* http://www.leg.state.or.us/11reg/measures/hb2800.dir/hb2804.intro.html.

[132] S. 304, Sess. 119 (S.C. 2011), *available at* http://www.scstatehouse.gov/cgi-bin/web_bh10.exe?bill1=304&session=119&summary=T.

[133] S.B. 352, 107th Gen. Assemb., 2011 Sess. (Tenn. 2011), *available at* http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB0352.

[134] H.B. 1338, 82d Leg. Sess. (Tex. 2011), *available at* http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=HB1338.

[135] S.J. Memorial 8001, 62d Leg., 2011 Sess. (Wash. 2011), *available at* http://apps.leg.wa.gov/billinfo/summary.aspx?bill=8001&year=2011.

[136] S.B. 256, 2011 Gen. Assemb., Reg. Sess. (Ala. 2011), *available at* http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011RS/Printfiles/SB256-int.pdf ; H.B. 2067, 2011 Sess. (Kan. 2011), *available at* http://www.kslegislature.org/li/b2011_12/year1/measures/hb2067/.

S.P. 241, 125th Me. Leg., 1st Reg. Sess. (Me. 2011), *available at* http://www.mainelegislature.org/legis/bills/display_ps.asp?snum=125&paper=SP0241&PID=1456; S.B. 352, 107th Gen. Assemb., 2011 Sess. (Tenn. 2011), *available at* http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB0352.

H.B. 1338, 82d Leg. Sess. (Tex. 2011), *available at* http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=HB1338.

[137] 42 U.S.C. § 1973c.

[138] As of this drafting, the entire law has been temporarily enjoined by a federal court and cannot be implemented until the court lifts the injunction. Hispanic Interest Coal. of Ala. v. Bentley, No. 5:11-cv-02484 (N.D. Ala. Aug. 29, 2011) (order granting preliminary injunction) (consolidated with Parsley. v. Bentley, No. 5:11-cv-2736 (N.D. Ala.) and United States v. Alabama et al., No. 2:11-cv-2746 (N.D. Ala.)).

[139] H.B. 56, § 29(c), 2011 Gen. Assemb., Reg. Sess. (Ala. 2011), *available at* http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011RS/Printfiles/HB56-enr.pdf; H.B. 2067, § 8(l), 2011 Sess. (Kan. 2011), *available at* http://www.kslegislature.org/li/b2011_12/year1/measures/hb2067/.

[140] H.B. 56, § 29(k) (Ala. 2011); H.B. 2067, § 8(m) (Kan. 2011).

[141] H.B. 56, §§ 29(d) and (f) (Ala. 2011); H.B. 2067, § 8(n) and (p) (Kan. 2011).

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[145] Nancy Lofholm, *County Clerks Want Illegal-Voting Proof,* Denver Post, Apr. 13, 2011.

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Voting Laws Roundup 2013

Election 2012 was marred by problems for voters nationwide. One year later, an encouraging number of states have taken steps to provide voters more access to the ballot box, but others have still tried to restrict access.

December 19, 2013

Also see our roundup of voting law changes in 2012 [2] and 2014 [3].

Election 2012 was marred by problems for voters nationwide. The northeast was beset by Superstorm Sandy, displacing hundreds of thousands of registered voters on Election Day. Across the country, millions of Americans stood in long lines at crowded polling stations to exercise their right to vote.

One year later, an encouraging number of states have taken steps to provide voters more access to the ballot box. At least 237 bills were introduced in 46 states to increase access. Unfortunately, others have restricted access — 33 states introduced 92 restrictive bills — and the Supreme Court has made it easier for some of them to do so by striking down a key provision of the Voting Rights Act. While 10 states passed 13 bills in 2013 to expand voting opportunities, eight states passed nine restrictive laws.

We will continue to monitor voting changes in the lead up to the 2014 legislative session. Already, four states have pre-filed election bills we will be watching with interest next year — including three measures to restrict voting, and six to expand it.

Numbers Overview

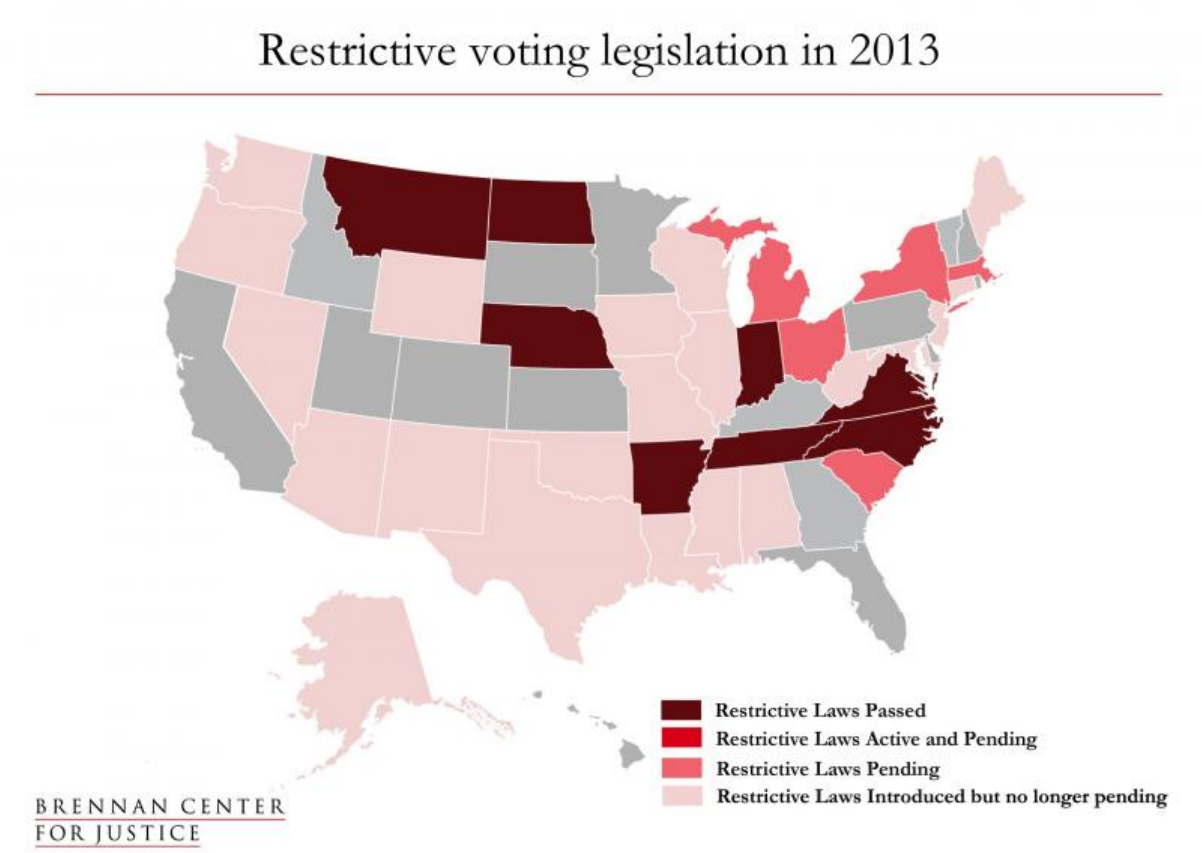
Since the beginning of 2013, and as of December 18, 2013, restrictive voting bills have been introduced in more than half the states:

- At least **92 restrictive bills** were introduced in **33 states**.
- Of those, **13 restrictive bills** are still pending in **5 states**.
- Of those, **5 restrictive bills** are currently active in **2 states**, [1] in that there has been legislative activity beyond introduction and referral to committee (such as hearings, committee activity, or votes).
- **8 states** have already passed **9 restrictive bills** this session.

At the same time, across the country, politicians from both sides of the aisle have introduced and supported bills that expand access to registration and voting.

- At least **237 expansive bills** that would expand access to voting were introduced in **46 states**.
- Of those, **73 expansive bills** are still pending in **7 states**.
- Of those, **17 expansive bills** are currently active in **4 states**,[2] in that there has been legislative activity beyond introduction and referral to committee (such as hearings, committee activity, or votes).
- **10 states** have passed **13 bills that expand opportunities** for eligible citizens to register and to vote.

Voting Restrictions



Note: In the cases where more than one piece of restrictive legislation has been introduced in a state, the map reflects the state's passed, active, or pending status based on its most active piece of legislation.

Restrictions Passed in 2013

Arkansas:

- Photo ID required to vote (legislature overrode gubernatorial veto).

Indiana

- Authorizes challengers to demand proof of identification.

Montana

- Referendum to repeal Election Day Registration, placed on the ballot for 2014.

Nebraska

- Reduces the early voting period.

North Carolina

- Photo ID required to vote, eliminates same-day registration, eliminates pre-registration for 16- and 17-year-old citizens, reduces the early voting period.

North Dakota

- Photo ID required to vote.

Tennessee

- More restrictive Photo ID requirement.

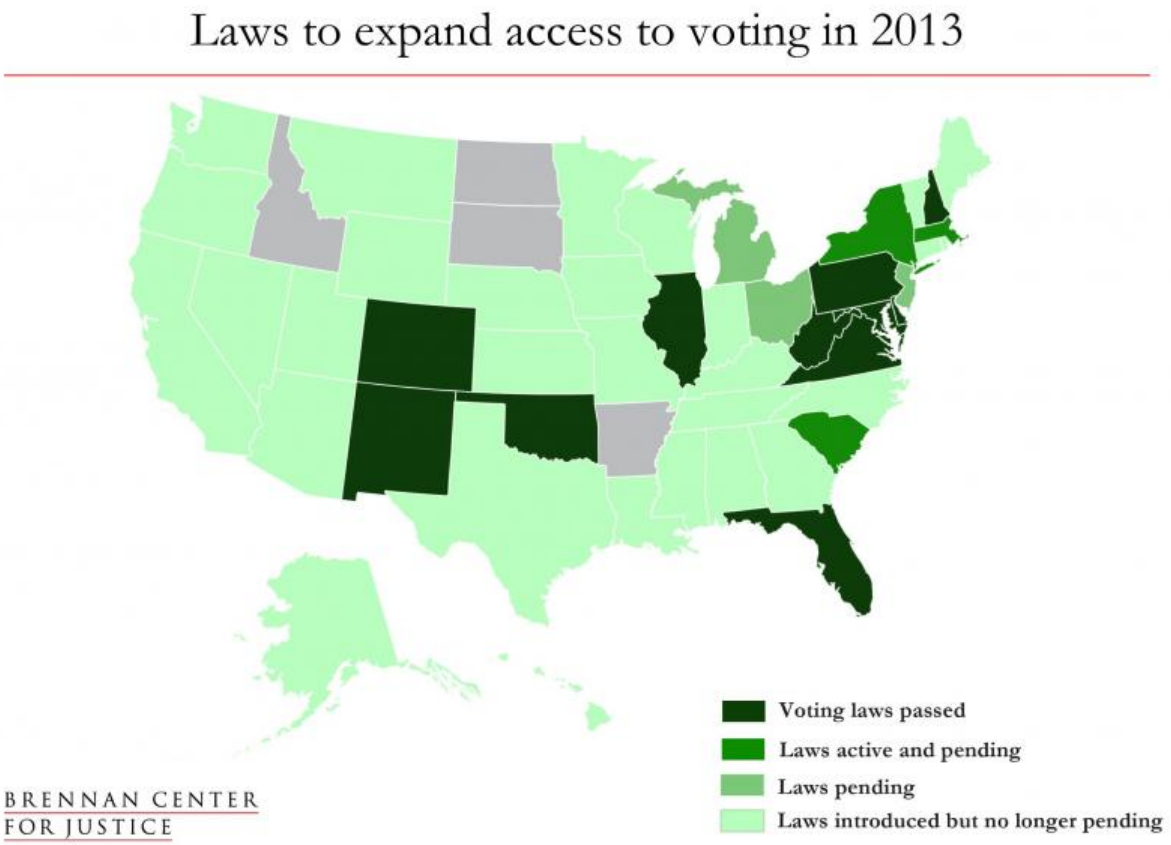
Virginia:

- Photo ID required to vote.
- Restrictions on third party registration.

Summary of Introduced and Pending Restrictive Voting Legislation (see a detailed summary [4] of passed and pending laws)

- **Identification laws**
  - **Photo ID laws.** At least 25 states introduced legislation either requiring voters to show photo ID at the polls or making existing photo ID laws more restrictive.[3]
  - **Proof of citizenship laws.** At least eight states introduced legislation requiring proof of citizenship, such as a birth certificate, to register or vote.[4]
- **Making voter registration harder.** At least eight states introduced bills to end Election Day or same-day voter registration, limit voter registration mobilization efforts, and reduce other registration opportunities.[5]
- **Reducing early voting opportunities.** At least eight states introduced bills that limit existing opportunities to vote early in person.[6]
- **Making it harder to restore voting rights.** At least two states introduced legislation that would further restrict the right to vote to persons with criminal convictions.[7]
- **Making it harder for students to vote.** At least two states proposed legislation that would make it harder for students to register and vote.[8]

Enhancing Voter Access



Note: In the cases where more than one piece of expansive legislation has been introduced in a state, the map reflects the state's passed, active, or pending status based on its most active piece of legislation.

A new influx of bills to enhance voter access drew support on both sides of the aisle.

Expansive Voting Laws Passed in 2013

Colorado

- Broad-based modernization of voter registration process, including, among other elements, Election Day registration and portable registration. More information is available here. [5]
- Preregistration of eligible 16- and 17-year-old citizens.

Delaware:

- Constitutional amendment expanding opportunities for people with criminal convictions to regain their right to vote.

Florida

- Expansion of early voting opportunities.

Illinois

- Online voter registration.

Maryland:

- Expansion of early voting, same-day registration during early voting, study methods to reduce long lines at the polls.

New Hampshire:

- Existing photo ID law made less restrictive.[9]

New Mexico:

- Automation of voter registration at the DMV office.

Oklahoma:

- Existing photo ID law made less restrictive.

Virginia:

- Online voter registration.

West Virginia:

- Online voter registration.

Summary of Introduced and Pending Legislation to Expand Access to Voting

- **Identification Laws.** At least 11 states[10] introduced bills that would relax existing voter ID or proof of citizenship laws.
- **Modernizing Voter Registration.** At least 26 states[11] introduced bills that would modernize the voter registration system, in whole or in part, and make it easier for eligible citizens to register.
  - **Broad-based modernization.** At least four states[12] introduced wide-ranging legislation to modernize the voter registration process using a combination of technology and fail-safe protections. Both houses of Congress introduced comprehensive bills to modernize voter registration.
  - **Automation.** At least six states[13] introduced legislation that would introduce or expand automation of the voter registration process at government agencies.
  - **Online registration.** At least 13 states[14] introduced bills that would establish or enhance the use of online registration systems.
  - **Same day registration.** At least 19 states[15] introduced bills that would allow voters to register on the same day they vote. Same day registration (SDR) bills can vary in that some allow same day registration on Election Day only (EDR), some allow it during an early voting period only, and some may allow both options.
  - **Portability.** At least four states[16] introduced bills that would allow a voter's registration to move with her when she moves to a new address in the state.
- **More early voting opportunities.** At least 20 states[17] introduced bills that would newly introduce, or expand, opportunities for early in person voting. While New Jersey passed a bill to introduce early voting in the state, Governor Christie vetoed it on May 9, 2013.
- **Restoring voting rights.** At least 14 states[18] introduced bills that would expand opportunities for those with criminal convictions to regain their right to vote. In Virginia, Governor Robert McDonnell issued an executive order automatically restoring the right to vote upon completion of sentence for those with past non-violent criminal convictions.
- **Pre-registering students to vote.** At least 13 states[19] introduced bills that would allow students under the age of 18 to pre-register, so that upon turning 18 they are registered to vote.
- **Reducing long lines.** At least four states[20] introduced bills that aim to reduce waiting times by requiring, or assessing, the implementation of minimum standards for efficient polling place administration.

Looking to 2014

States are already beginning to file bills in preparation for the 2014 legislative session. At least four states have introduced voting laws we will be watching. In Missouri, three bills have been pre-filed that would require voters to show photo ID at the polls. In Kentucky, three bills have been pre-filed that would restore voting rights to persons with past criminal convictions. A bill that would restore voting rights was also pre-filed in Virginia. In Florida, two bills have been introduced that would make it easier for eligible citizens to register to vote. Check back here for regular updates on what we can expect in the next session.

[1] [6] Massachusetts, Ohio.

[2] [6] Massachusetts, New York, Pennsylvania, South Carolina.

[3] [7] Alaska, Arkansas, Connecticut, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Tennessee, Virginia, Washington, West Virginia, Wyoming.

[4] [8] Massachusetts, Missouri, Nevada, Oklahoma, Oregon, South Carolina, Texas, Virginia.

[5] [9] Alabama, Montana, Nebraska, New Mexico, North Carolina, Ohio, Texas, Virginia.

[6] [10] Arizona, Indiana, Nebraska, North Carolina, Ohio, Tennessee, Texas, Wisconsin. As of December 18, 2013, a bill is still active in Ohio.

[7] [11] Maine, North Carolina.

[8] [12] North Carolina, Ohio.

[9] [13] Although the New Hampshire bill is not expansive with respect to current law, it eases certain requirements that had not yet been implemented, but would have gone into effect September 2013 under a restrictive photo voter ID law passed by the legislature in 2011.

[10] [14] Alabama, Indiana, Kansas, New Hampshire, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Wisconsin.

[11] [15] Alabama, Alaska, Arizona, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Montana, Nevada, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia. As of December 18, 2013, bills remain active in Massachusetts.

[12] [16] Colorado, Massachusetts, Nevada, New York. As of December 18, 2013, a bill remains active in Massachusetts.

[13] [17] Florida, Hawaii, New Mexico, Oregon, Texas, West Virginia.

[14] [18] Florida, Illinois, Massachusetts, Michigan, Montana, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Virginia, West Virginia. As of December 18, 2013, bills are still active in Massachusetts and Pennsylvania.

[15] [19] Alabama, Alaska, Arizona, Delaware, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Mexico, New York, North Carolina, Pennsylvania, Tennessee, Texas, Utah, Vermont, Virginia. As of December 18, 2013, a bill remains active in Massachusetts.

[16] [20] Florida, Massachusetts, New York, Oregon. As of December 18, 2013, a bill remains active in Massachusetts.

[17] [21] Connecticut, Florida, Georgia, Illinois, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia. As of December 18, 2013, bills remain active in Massachusetts, New York, and South Carolina.

[18] [22] California, Delaware, Florida, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, New Jersey, New Mexico, New York, Tennessee, Virginia, Wyoming.

[19] [23] California, Colorado, Connecticut, Hawaii, Iowa, Massachusetts, Michigan, Nebraska, New York, Ohio, Oregon, Texas, Washington. As of December 18, 2013, bills remain active in Massachusetts and New York.

[20] [24] Arizona, Connecticut, Maryland, Virginia.

Voting Rights & Elections [25], Voting Reform Agenda [26], Voter Registration Modernization [27], Restricting the Vote [28]

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[4] http://www.brennancenter.org/sites/default/files/analysis/Passed_Pending_Legislation.pdf
[5] http://www.brennancenter.org/press-release/colorado-governor-sign-bill-modernizing-elections
[6] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref1
[7] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref2
[8] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref3
[9] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref4
[10] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref5
[11] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref6
[12] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref7
[13] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref8
[14] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref9
[15] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref10
[16] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref11
[17] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref12
[18] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref13
[19] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref14
[20] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref15
[21] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref16
[22] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref17
[23] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref18
[24] http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#_ftnref19
[25] https://www.brennancenter.org/issues/voting-rights-elections
[26] https://www.brennancenter.org/issues/voting-reform-agenda
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Voting Laws Roundup 2016

For the fourth year in a row, bills that would expand voters' access to the ballot box have outpaced those that would restrict voting, in terms of both introduction and passage.

April 18, 2016

The 2016 election season is already in full swing. As voters in a number of states face new restrictions for the first time in a presidential election, we've already seen problems in primaries across the country. A new photo ID requirement led to long lines in Wisconsin. A reduction in polling places forced some to wait five hours to vote in Arizona. New rules created confusion in North Carolina. This could be an early glimpse of problems in November — as voters face the first presidential election in 50 years without the full protections of the Voting Rights Act, which was designed to prevent discrimination in voting.

Against this backdrop, legislators are considering a variety of changes to their states' voting laws. At the beginning of the 2016 legislative session, and as of March 25, 2016, at least **422 bills** to enhance voting access were introduced or carried over in **41 states** plus the District of Columbia. Meanwhile, at least **77 bills** to restrict access to registration and voting have been introduced or carried over from the prior session in **28 states**.

Thus far, two key trends have emerged in 2016:

1. **Automatic voter registration has taken off across the country**. Legislators in West Virginia [2] and Vermont [3] both passed groundbreaking bills with strong bipartisan support — West Virginia's has already been enacted, and Vermont's awaits the governor's signature. This progress comes as Oregon, which passed [4] automatic voter registration in 2015, has reported substantial early success [5] with its new system. After just a few months, registration rates have increased nearly fourfold. California also passed a bill in late 2015, and supporters are looking forward to full implementation next year.

2. **States are passing fewer voting restrictions, but nonetheless, restrictions in 14 states will be on the books for the first time in a presidential election in 2016.** Overall, states are passing fewer laws to restrict voting rights — and voter ID bills are once again the most common type of restriction — but this may be due to states already having restrictive voting laws in place. In 2016, **14 states** [6] will have restrictive voting laws in effect for the first time in a presidential election. Restrictions in most of these 14 were passed before this year. *(Note: This paragraph was updated September 23, 2016 to change the number of states with new restrictions, reflecting recent court victories.)*

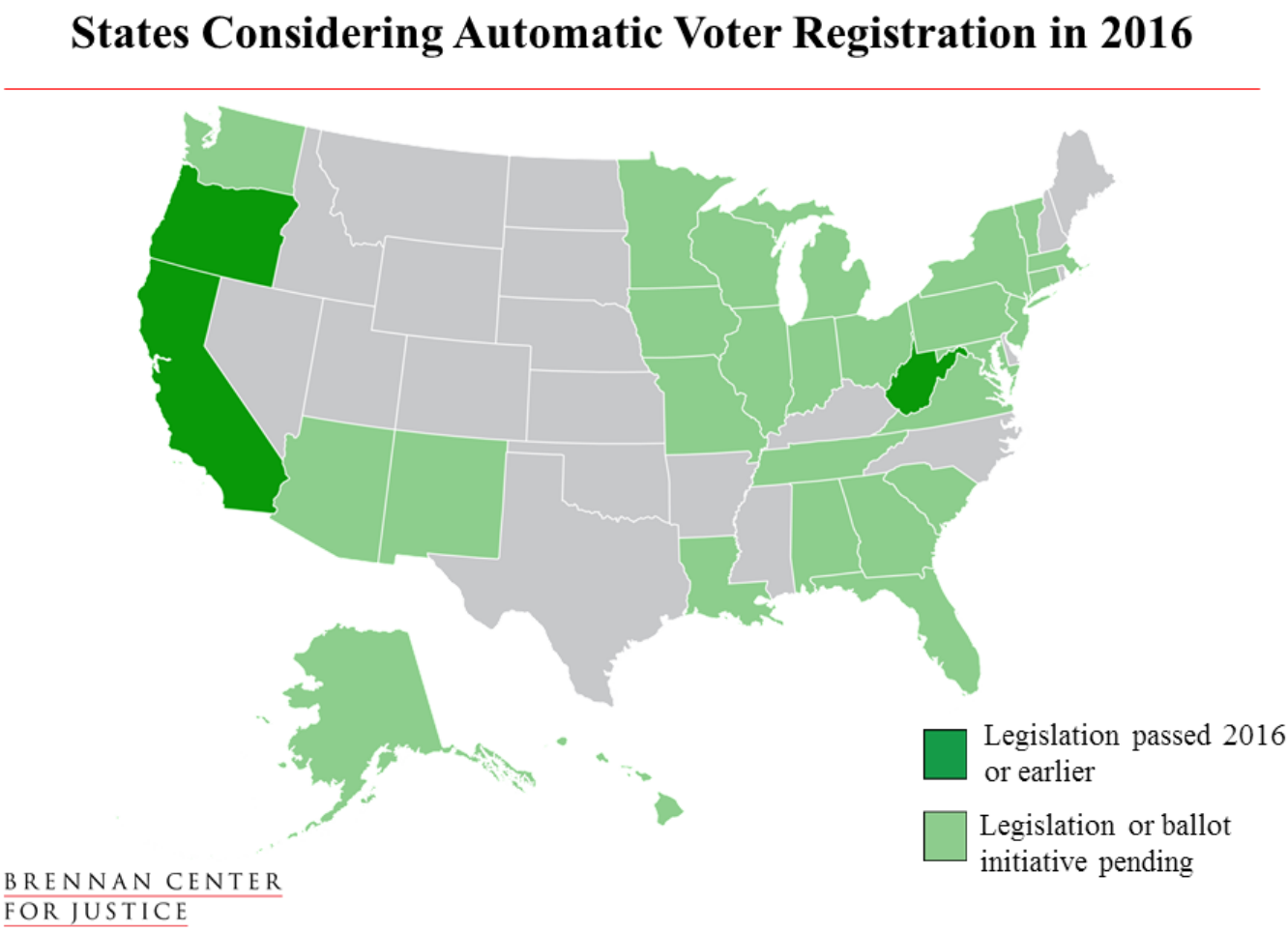
For the fourth year in a row, bills that would expand voters' access to the ballot box have outpaced those that would restrict voting, in terms of both introduction and passage. These bills, a number of which have bipartisan support, included efforts to modernize voter registration systems and restore voting rights to eligible citizens with past criminal convictions.

Expansive Legislation

Automatic voter registration is picking up speed and bipartisan support. The 2016 session saw more automatic voter registration bills introduced than any other kind of voting legislation. Under automatic registration, the government automatically and securely registers every eligible citizen who interacts with designated government offices unless the person declines to register.

- **West Virginia** passed an automatic voter registration bill, the first with significant bipartisan support, making it the third state after Oregon and California to adopt this reform.
- In **Vermont**, the final version of the bill passed nearly unanimously, and observers expect the measure to be signed into law soon. It is the second state to pass automatic registration with strong bipartisan support.
- **Illinois** may also still pass legislation in the current session. Illinois' bill is exciting because it provides for automatic registration not only at DMVs but also at other agencies, like social service and disability offices, expanding the breadth of this reform to reach a wider array of eligible citizens.
- Although **Maryland** did not pass automatic voter registration, the state's legislature passed [7] a broad voting reform bill, requiring all of the state's voter registration agencies to transfer voter information electronically to state election officials. Doing so would add a key building block for future automatic registration in the state. The governor is expected to sign the bill, which enjoyed strong bipartisan support, into law.

All in all, **28 states and the District of Columbia** [8] have considered automatic registration this year (including legislation carried over from 2015 sessions). In addition, groups in several states, like **Alaska** [9], are pursuing ballot initiatives to adopt automatic registration.



[8]

Online voter registration continues to advance in the states. At least **15 states** considered online registration legislation. **Idaho, Rhode Island**, and **Wisconsin** (which also included restrictive elements discussed below) adopted the reform, and **Tennessee** [10] is also poised to pass it this session. Most states now offer some form of online voter registration [11].

Rights restoration remains a popular reform. Restoration of voting rights to those with past criminal convictions was the second most popular type of reform this session after efforts to modernize registration, with **27 bills** introduced in **15 states**. **Maryland's** [12] legislature overrode a gubernatorial veto to restore the rights of 40,000 Marylanders. And in **Kentucky** [13], a dispute continues over Gov. Matt Bevin's suspension of an executive order restoring voting rights to those convicted of certain crimes. Legislation that would amend Kentucky's constitution to automatically restore voting rights passed the state House by a wide margin and received substantial bipartisan support, but has stalled in the state Senate.

Restrictive Legislation

States are passing fewer laws that restrict voting rights overall, but voter ID bills are still the most common type of restriction being introduced. The pace of states' adoption of restrictive voting legislation continues to slow, perhaps because many states already have them on the books.

Although voter ID bills are the most common form of restrictive legislation that has been introduced, other types of restrictions have gained traction.

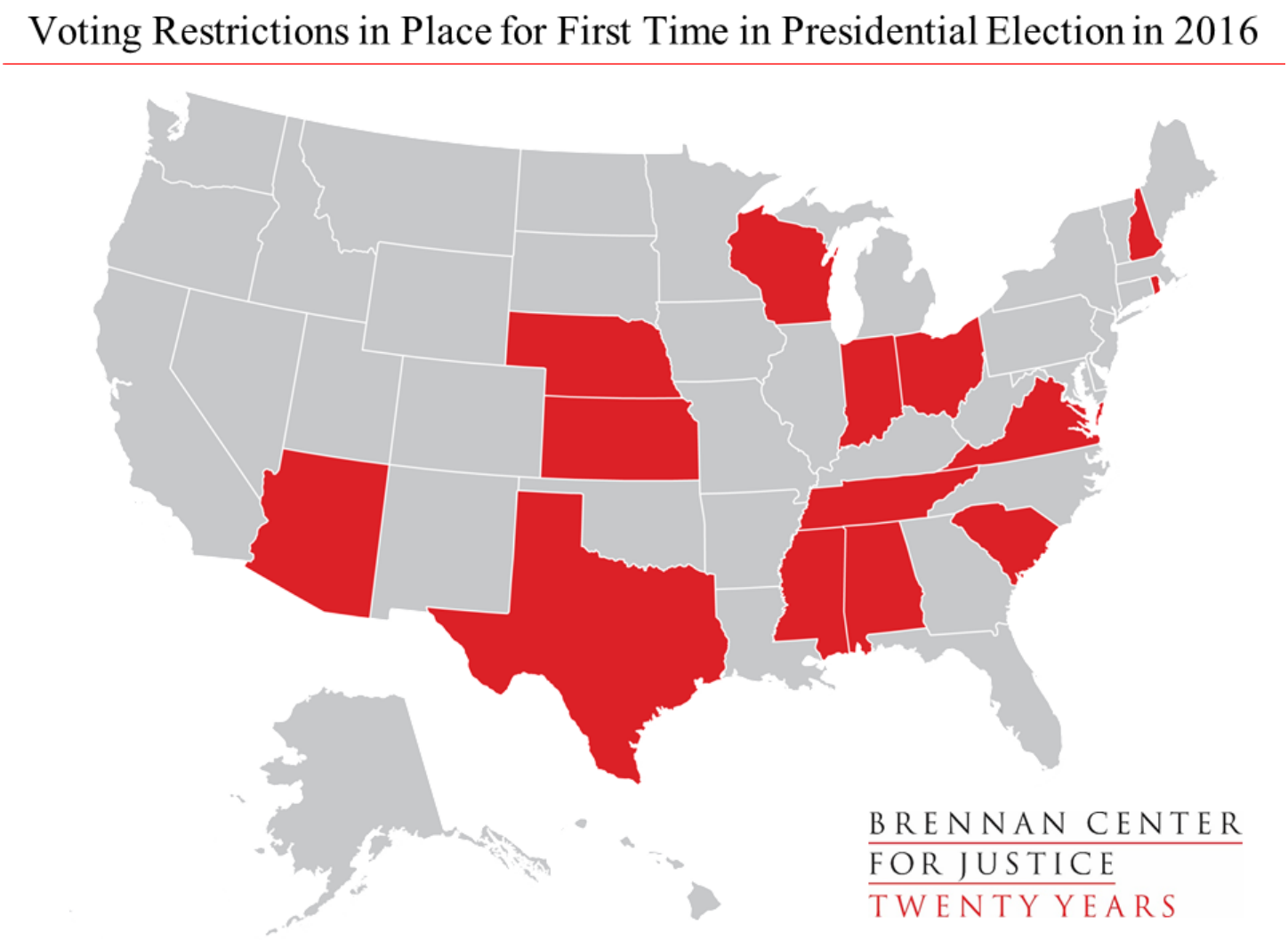
19 states saw **37 voter ID bills** introduced or carried over into the 2016 session. Legislators in **Missouri** [14] introduced a photo ID requirement, though it will require voter approval through a state constitutional amendment. The bill passed the state House and awaits a vote in the Senate. **West Virginia** passed a less restrictive voter ID requirement, but as part of legislation that included automatic registration, described above.

On the brighter side, **Florida** made its law less restrictive, adding veterans' health IDs, concealed-carry licenses, and government employee IDs to its list of photo ID forms accepted for voting, as long as those IDs were unexpired and contained the voter's name and photograph.

Two states passed laws that may limit voter mobilization. **Arizona** made it a felony for anyone other than a family/household member or caregiver of the voter to collect and submit the voter's absentee ballot. In prior years, several states prescribed rules to limit third-party collection and delivery of absentee ballots. Arizona's would be among the strictest, and may create significant barriers for minority or elderly communities, who historically have relied on absentee ballots and assistance from civic groups to cast their votes. In **Wisconsin**, the state eliminated "special registration deputies" — volunteers who were previously permitted to verify voters' residency when they collected or submitted voter registration applications. The law threatens [15] the ability to civic groups to conduct voter registration drives in the state.

New voting restrictions in place in 2016. Aside from new restrictions *considered* in 2016, there are **14 states** [6] with voting restrictions *in place* for the first time in a presidential election this year. The new measures range from strict photo ID requirements to early voting cutbacks to registration restrictions.

Those 14 states are: Alabama, Arizona, Indiana, Kansas, Mississippi, Nebraska, New Hampshire, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Wisconsin. See the following map:



[16]

This is part of a broader movement to curtail voting rights, which began after the 2010 election, when state lawmakers nationwide started introducing hundreds of harsh measures making it harder to vote. Overall, 20 states have new restrictions in effect since the 2010 midterm election.

(Note: The restrictive laws section was updated September 23, 2016 to change the number of states with new restrictions, reflecting recent court victories.)

Voting Rights & Elections [17], Voting Reform Agenda [18], Voter Registration Modernization [19], Restricting the Vote [20], Restoring Voting Rights [21]

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[1] https://www.brennancenter.org/print/15403
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[3] https://www.brennancenter.org/blog/vermont-house-votes-%E2%80%98yes%E2%80%99-automatic-registration-137-times
[4] https://www.brennancenter.org/blog/how-oregons-new-law-can-change-voter-registration
[5] http://www.brennancenter.org/blog/automatic-voter-registration-oregon-huge-success
[6] https://www.brennancenter.org/voting-restrictions-first-time-2016
[7] https://www.brennancenter.org/analysis/vrm-states-maryland
[8] https://www.brennancenter.org/analysis/automatic-voter-registration
[9] http://www.elections.alaska.gov/pbi_ini_status_list.php#15pfvr
[10] https://legiscan.com/TN/drafts/HB1742/2015
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[12] https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-maryland
[13] https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-kentucky
[14] https://legiscan.com/MO/text/HB1631/id/1341418
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[16] http://www.brennancenter.org/voting-restrictions-first-time-2016
[17] https://www.brennancenter.org/issues/voting-rights-elections
[18] https://www.brennancenter.org/issues/voting-reform-agenda
[19] https://www.brennancenter.org/issues/voter-registration-modernization
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Voting Laws Roundup 2017

In 2017, changes to voting laws are again poised to play a major role in state legislative agendas.

May 10, 2017

(Note: This updates the Roundup previously published on March 27, 2017.)

At this point in the year, every state's legislature is either in session or has completed its 2017 calendar. As has been the case all decade, legislators across the country are trying to reshape state voting laws. In several places, this means it will soon be harder to vote: **Five states** have already enacted bills to cut back on voting access, and **one more** is on the verge of doing so. By comparison, three states enacted voting restrictions in 2015 [2] and 2016 [3] combined. Overall, however, more bills to expand access to voting were introduced this year than bills that would restrict voting access. Still, of the legislation making the most substantial impact on voting access, more legislation to limit participation is advancing toward passage. Moreover, governors in Nebraska and Nevada have vetoed the bills that would expand access to the franchise.

Overview of Legislation to Restrict Voting Access

Overall, at least **99 bills** to restrict access to registration and voting have been introduced in **31 states**. **Thirty-five** such bills saw significant legislative action (meaning they have at least been approved at the committee level or beyond) in **17 states**.

Several states will soon implement major new voting restrictions

Five states have already enacted laws making it harder to register or vote, one more is on the verge of doing so, and more states could act later this year:

- **Iowa's** governor signed a broad-based law that will require voter ID, restrict voter registration efforts, and impose new burdens on Election Day registration and early and absentee voting. Although not as restrictive as a North Carolina law that passed in 2013 (and was blocked [4] by a federal court), Iowa's law similarly restricts voting in a number of different ways.
- **Arkansas** passed two bills to bring back voter ID to the state after a court struck down an earlier law.
- **North Dakota** also enacted legislation to re-impose an identification requirement after a court blocked a strict ID law in 2016.
- **Indiana** enacted a law that will implement a purge of registered voters from the rolls. The program will remove voters in a manner similar to purges in other states that have been criticized for being error-prone and inadequately protective of eligible voters.
- **Montana's** house and senate passed a bill that will prevent civic groups and individuals from helping others vote absentee by collecting and delivering their voted ballots. The bill now goes to voters as a November 2018 ballot measure.
- **Georgia's** legislature sent bill that would make voter registration more difficult to the Governor, and he signed it on May 9.

Voter ID bills are still the most common form of voting restriction moving in state legislatures

Since 2010, ten states have passed more burdensome voter ID requirements [5]. As in previous years, voter ID is the most common type of legislation to restrict voting access this year. Overall, **39 bills** imposing harsher voter ID requirements were introduced in **22 states**. As noted above, **three states** — Arkansas, Iowa, and North Dakota have already enacted voter ID laws.

Legislation pending in other states poses risks to voting access. For example, **Oklahoma**'s Senate passed a bill that would add a voter ID requirement to the state constitution. The bill passed with a wide margin [6] in the Senate, setting up a likely house vote. Meanwhile, **Texas's** senate has passed a voter ID bill, discussed in further detail below, that would put in place a voter ID provision less voter-friendly than the current, court-ordered provision.

Restrictions on voter registration are a close second

After voter ID, making the voter registration process more burdensome is the most popular subject of bills to cut back on voting access. Overall, **33** bills to make the voter registration process more burdensome have been introduced in **22** states. Bills have at least been considered and approved by a legislative committee in Connecticut, Iowa, Kansas, Maryland, New Hampshire, Rhode Island, Texas, Virginia. Of these, **New Hampshire**'s has the most momentum: a bill to make registration more difficult for students, supported by the Secretary of State, has passed the Senate [7].

The majority of states acting to restrict voting are legislating on topics where courts previously acted to protect voters

Most of the states that have already enacted or on the verge of enacting new voting restrictions are passing legislation of the same subject on which courts have recently acted to protect voters from past voting restrictions.

- **Arkansas** has passed two harmful voter ID bills. One, which restores a statutory requirement that voters show one of a limited set of ID, has been enacted. The other, which would amend the state constitution to require voter ID, must be approved by the voters in the form of a ballot initiative before taking effect. A state court blocked a previous ID law in 2014.
- **Georgia** enacted a law imposing a requirement that information on voter registration forms match exactly with other state records — a burdensome process known as "no match, no vote." Only months earlier, the secretary of state agreed in a court settlement [8] to stop a similar procedure that had prevented tens of thousands from registering.
- **Iowa** enacted an omnibus voting bill, described in further detail above, on May 5. The bill includes a requirement that suspected non-citizens be deleted from the voter rolls. Such removals programs, if conducted without safeguards to adequately ensure those being removed are actually ineligible, can sweep in thousands of eligible voters, as has happened in Colorado and Florida. In 2014, a state court blocked [9] former Secretary of State Matt Schultz from purging suspected noncitizens because he lacked authority to carry out the program in the manner he intended.
- **North Dakota**'s Governor signed a bill on April 25 that would restore a strict voter ID requirement in the state. In 2016, a federal court partially blocked a previous ID law that accepted a narrow range of identification documents and did not provide any meaningful voting opportunities for voters without the accepted ID. The new bill slightly expands options to use for ID, but eliminates the process the court imposed, which allows voters without IDs to cast a ballot that counts on Election Day, and instead included a more burdensome process. One legislator argued that that the bill does not pass constitutional muster [10].
- **Texas**'s legislature is considering a voter ID bill that that is on the verge of being passed a house committee has already approved the legislation and it has already passed the senate. The state attorney general has described [11] the bill as a response to a court's blocking of the state's previous strict voter ID law. Critics observe [12] that the bill, if enacted, would put in place a voter id requirement that is more stringent than the existing court-ordered process.

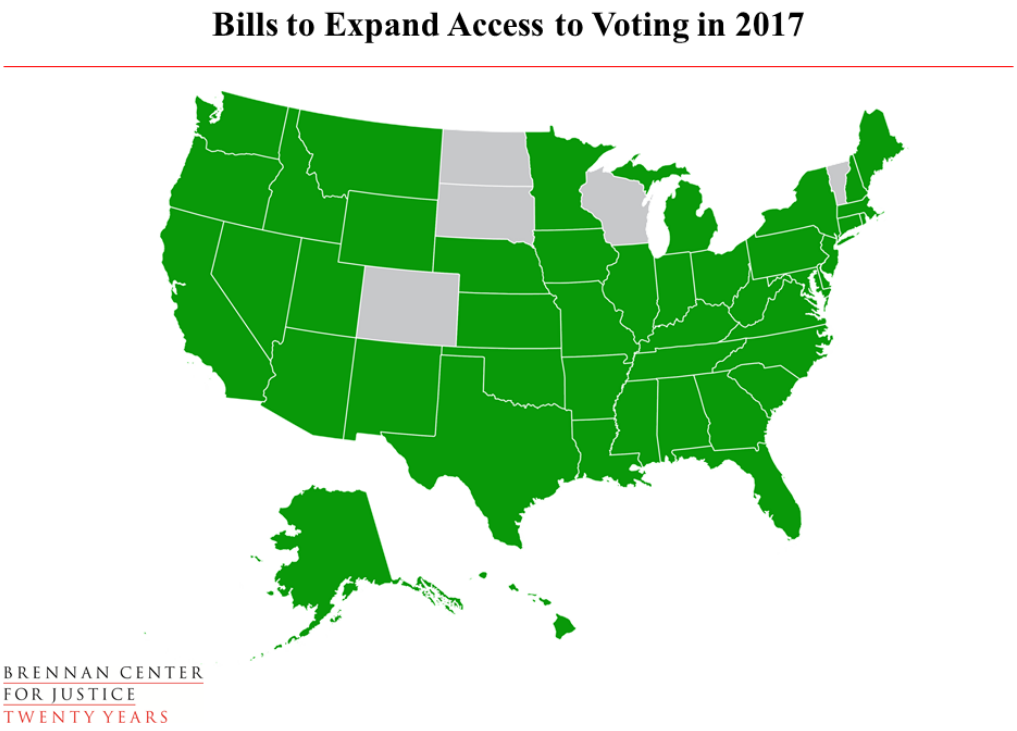
Bills to restrict voter access approved by state legislatures in 2017

Arkansas	Voter ID (HB 1047 [13]) (passed and signed) Voter ID (HJR 1016 [14]) (passed house and senate; signed by governor; must be approved as ballot measure to become law)

Georgia	Voter registration (HB 268 [15]) (passed and signed)
Indiana	Voter purge (SB 442 [16]) (passed and signed)
Iowa	Voter ID, restrictions on voter registration drives, Election Day registration, absentee voting (HF 516 [17]) (passed house and senate). Also contains voter list maintenance provisions that, if implemented improperly, could lead to voter purges.
Montana	Absentee ballot collection (SB 352 [18]) (passed house and senate; must be approved as ballot measure to become law)
North Dakota	Voter ID (HB 1369 [19]) (passed and signed)

Overview of Legislation to Expand Voting Access

Overall, at least **531 bills** to enhance voting access have been introduced in **45 states**. **One hundred fifty-six** bills have at least been considered and approved by a legislative committee in **30** states.



Fifteen state legislatures have passed bills to expand access to voting, but Governors have vetoed the most impactful legislation

Eight states have enacted bills that will make voting and registration easier, seven states have not yet enacted legislation but have passed it through their state legislatures, and **more than a hundred bills** to improve voting access have at least advanced through a committee. The two bills that would make the biggest impact on voting access, however, have been vetoed.

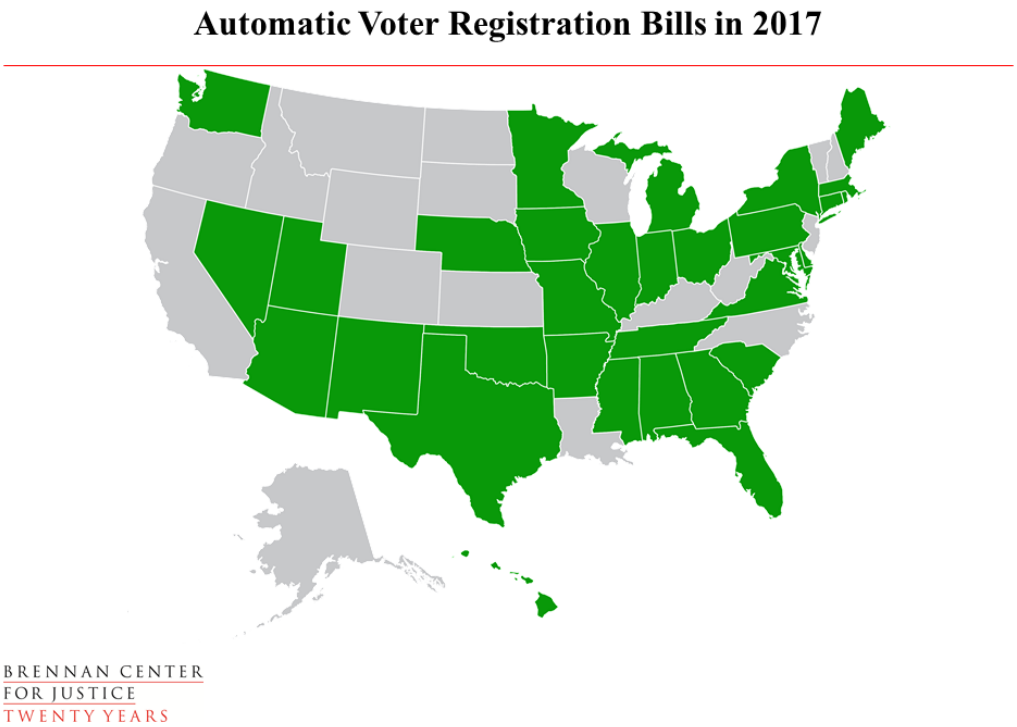
- **Florida, Kansas, New Jersey, Tennessee, Utah**, **Virginia** enacted legislation that would make it easier to vote without showing up to the polls on Election Day.
  - **New Jersey** improved voting for military voters.
  - **Utah** expanded early and absentee voting opportunities.
  - The other states upgraded their absentee voting procedures.
- **Indiana** improved its process for registering voters who visit the state drivers' license offices.
- **Wyoming** eased the process for restoring the right to vote for people with criminal convictions.
- **Idaho** made its voter ID law slightly less burdensome.
- The most significant reforms to pass, however, have been vetoed by Republican governors.

- **Nevada**'s assembly and senate passed legislation to establish automatic voter registration, but Republican Governor Brian Sandoval vetoed it. The legislation, an initiative petition, now goes to the voters, who could approve it by directly voting on it in the November 2018 general election.
- **Nebraska** Governor Pete Ricketts, also a Republican, vetoed a bill that would have restored the right to vote to citizens with criminal convictions upon their release from incarceration. The veto came after Nebraska's unicameral legislature (which is technically nonpartisan, but controlled by legislators generally identified as politically conservative), passed the bill by a 27-13 margin. An attempted veto override failed, with the chamber splitting 23-23 [20] for override.

Automatic registration and other reforms to modernize voter rolls are common forms of legislation to expand voting access

Automatic voter registration (AVR) remains a popular pro-voter reform that is being introduced in legislatures across the country, building on momentum from the last two years. AVR is a new reform that leverages existing technology to help get voters registered. It also changes our system from one in which voters must affirmatively register to vote to one in which they are registered unless they "opt out." In 2015 and 2016, six states passed or implemented AVR.

- This year, AVR became law in the **District of Columbia.**
- A bill [21] in **Illinois**, which nearly enacted the reform last year, just passed the Senate by a 48-0 vote. The bill is similar to legislation introduced and supported by both Democrats and Republicans in the last legislative session, and there is a strong possibility the bill will pass.
- **Nevada** passed an automatic voter registration bill through both legislative chambers, but it was vetoed [22] by the governor. It will be on the ballot in 2018 for the voters to decide.
- **Utah's** House also passed an automatic voter registration bill, but it died in the Senate.
- **Colorado, Connecticut, and Georgia** are moving forward to implement automatic voter registration administratively.
- Overall, at least **86 bills** to implement or expand AVR have been introduced in at least **32 states**.
- Legislation has at least been approved by a legislative committee in **Arkansas, Connecticut, Hawaii, Illinois, Maryland, Nebraska, Rhode Island, Virginia,** and **Washington**, and efforts to introduce and pass legislation have also received media attention in **Maine** and **Maryland**.



Legislation to expand early and absentee voting is popular

In addition to the six states that have already enacted legislation to make early, absentee, and military voting easier, **seven** states have at least moved early voting legislation through a committee, and **nineteen** states have done the same with absentee voting legislation. Overall, **166 bills** to improve early voting or absentee voting access have been introduced in **35 states**.

Legislation restoring the right to vote to people with past convictions is also common

As described above**, Nebraska and Wyoming**'s legislatures approved bills to help restore the right to vote to people with past criminal convictions. Nebraska's bill was vetoed.

- **Nevada's** Senate passed a bill that would improve the rights restoration process in the state, and a bill is also moving in the House. Nevada's Governor has opposed past efforts to restore the right to vote.
- In **Virginia**, different versions of a bill that would improve voting access for certain persons with criminal convictions passed in the house and senate, but neither was enacted.
- Overall, **55 bills** to help restore the right to vote to persons with past criminal convictions have been introduced in **18 states**, and bills have at least been approved by a committee in **17 states**.

Bills to enhance voter access approved by state legislatures 2017:

Florida	Absentee voting (H 105 [23]) (passed and signed)
Idaho	Voter ID (HB 149 [24]) (passed and signed)
Indiana	Electronic voter registration (HB 1178 [25]) (passed and signed)
Kansas	Absentee voting (HB 2158 [26]) (passed and signed)
Maryland	Voter registration (HB 1626 [27]) (passed house and senate)
Montana	Absentee voting (HB 287 [28]) (passed house and senate)
Nebraska	Voting rights restoration (LB 75 [29]) (passed unicameral legislature; vetoed by governor)
Nevada	Automatic voter registration (IP 1 [30]) (passed house and senate; vetoed by governor)
New Jersey	Military voting (SB 92 [31]) (passed and signed)
New Mexico	Disability access (HB 98 [32]) (passed house and senate)
Oklahoma	Early voting (SB 347 [33]) (passed house and senate)
Tennessee	Absentee (SB 286 [34]) (passed and signed)
Utah	Voter list maintenance (HB 86 [35]) (passed and signed) Early voting (HB 105) [36] (passed and signed) Absentee voting (HB 230 [37]) (passed house and senate) Minimum standards for polling places (SB 116 [38]) (passed house and senate)
Virginia	Absentee voting (HB 1912 [39]) (passed house and senate)
Wyoming	Voting rights restoration (HB 75 [40]) (passed and signed)

Voting Rights & Elections [41], Voting Reform Agenda [42], Voter Registration Modernization [43], Restricting the Vote [44], Restoring Voting Rights [45]

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[1] https://www.brennancenter.org/print/16821
[2] https://www.brennancenter.org/analysis/voting-laws-roundup-2015
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This Is the Worst Voter Suppression We've Seen in the Modern Era

Trump deserves blame, but there's plenty to go round

Zachary Roth [1], Wendy R. Weiser [2]

November 2, 2018

Large-scale voter purges from Florida to Maine. Ultra-strict registration rules keeping voters off the rolls in Georgia and other states. Cuts to early voting sites in North Carolina. A North Dakota voter ID law that could keep Native Americans from the polls. False voting information being spread online.

Since the modern-day push to create barriers to voting got underway around a decade ago, the Brennan Center has been tracking restrictive voting laws and practices as closely as any organization in the country – as well as speaking out against them and challenging many in court. As Election Day 2018 approaches, citizens in 24 states [4] are facing new laws making it harder for them to vote than it was in 2010. And in nine of those states, it's harder to vote than it was in 2016. (We rounded up the range of voting problems we've seen in 2018 here [5]). By our assessment, the range of voter suppression efforts has been more widespread, intense, and brazen this cycle than in any other since the modern-day assault on voting began, especially when viewed in combination with the accumulated new hurdles to voting.

A number of factors have converged to turn up the volume on voter suppression. First, by consistently and falsely stoking fear about illegal voting for over two years – including the lie that he'd have won the popular vote if it weren't for millions of non-citizen voters – President Trump has helped make the issue central to the far right's agenda. Trump's short-lived voter fraud commission collapsed in January after drawing bipartisan outrage, but it nonetheless acted as a signal to supportive states that efforts to make voting harder would be welcomed at the highest levels. It's no coincidence that in the first few months of Trump's presidency, a slew of states proposed or passed [6] new restrictions, after several years during which the pace had seemed to slow.

The courts also have played a key role. The Supreme Court's 2013 ruling in *Shelby County v. Holder*, which neutered the most effective plank of the Voting Rights Act, offered a green light to a host of election rules changes in parts of the country whose voting rules previously had been under federal supervision. The court's new staunchly conservative majority may be encouraging even states not directly affected by *Shelby* to lean forward on voter suppression, confident — we hope falsely — that the justices won't stop them. The court recently declined to block North Dakota's voter ID law, despite evidence that thousands of Native Americans who live on reservations could be stymied by its requirement that their IDs include a residential mailing address.

Of course, courts have also been major players in stemming the growth of voting restrictions. The number [7] of court decisions against new restrictions has ballooned in recent years, with several finding that officials had intentionally tried to keep minorities from voting. But

despite these victories, another troubling reality has emerged: Even when courts rule against restrictive voting measures, it isn't enough to deter those looking to limit access to the ballot.

Litigation is typically time-consuming, and so these harsh laws often stay in place, fully intact and disenfranchising voters, for one or more election before a court rules against them. And even if that ruling does come, it may only weaken the law rather than striking it down fully — as happened with Texas's and Wisconsin's strict voter ID laws, among other examples. That half-a-loaf outcome gives would-be vote suppressors little incentive to think twice about their strategy. And in the cases when a court scraps a law entirely, the confusion and misinformation [8] surrounding the process can often still keep some voters from the polls.

Equally troubling, those who seek to restrict access to voting do not seem to pay much of a political price. For example, the authors of North Carolina's sweeping voter suppression law, struck down by a federal court which found it "targeted African-Americans with almost surgical precision," did not lose their political perches — indeed, one of its key legislative champions now sits in the U.S. Senate, and the lawyer who defended the law has been nominated to be a federal judge. Put bluntly: In the absence of a broad Supreme Court ruling enforcing voting rights — something that is now an uphill battle at best — or strong federal legislation expanding the legal tools available to voters, the courts simply aren't enough to combat voter suppression.

Finally, there's race. There's evidence [9] that states in which the political clout of minorities is growing — where the ruling majority perceives a threat to its power — are more likely to see restrictive voting laws than are more demographically homogenous states. And as the salience of race in our politics has increased, so too has voter suppression.

A decade ago, there was a national spike in vote suppression efforts in the 2008 election cycle, when Barack Obama, backed by a multi-racial coalition, was bidding to become the nation's first African-American president. That spurred unfounded fears that ACORN, a community group serving mostly minority communities, and its allied voter registration group for which Obama once worked, was plotting to steal the election on his behalf. Two years later, this resulted in the first massive wave [10] of news laws cutting back on voting access. In the age of Trump, politicians have grown more comfortable openly playing to these fears. And this year, two of the highest-profile statewide races feature progressive African-American candidates – one the founder of a voter registration group – running against white conservative Trump supporters.

Partisanship plays a role too. Voting restrictions have almost exclusively been promoted and supported by Republicans. As our country becomes more polarized, the partisan divide on voting rights has taken on greater import.

Causes aside, here's the grim reality: The scope and sophistication of efforts to make voting more difficult make clear that voting advocates can't respond solely by playing a defensive whack-a-mole against the worst laws and practices. That crucial work will continue, but it must be paired with a positive reform agenda — one that is gaining momentum at the state level — that bolsters protections for the right to vote and expands access to the ballot. Adding to this momentum, on Tuesday voters in four states will consider ballot initiatives [11] to expand access to voting (in addition to four ballot initiatives to improve the redistricting process). After Election Day, it will be up to the new Congress and state legislatures to take up [12] voting rights.

We faced even worse voter suppression schemes before the 1965 Voting Rights Act, and we responded by making our democracy stronger. We should do so again.

(Image: Julie Denesha/Getty)

How the 2018 Vote Is At Risk — and What You Can Do to Protect It [13], Restricting the Vote [14]

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[13] https://www.brennancenter.org/protect-the-vote
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BRENNAN CENTER FOR JUSTICE at New York University School of Law

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Voting Problems 2018

From purges to voter intimidation to machine snafus, voting issues have proliferated this cycle. Here, a Brennan Center roundup.

Rebecca Ayala [1]
November 5, 2018

As Election Day approaches, obstacles continue to make it difficult for eligible voters to cast a ballot. This year, voters in 24 states [3] will have to navigate recently adopted laws that restrict voting access; in nine of those states, it will be harder to vote than it was in 2016. In addition to tracking these laws (and litigation and legislation affecting voting access), the Brennan Center has been tracking the full array of efforts nationwide to restrict access to voting. These efforts have been more widespread and intense [4] than in any other election in recent memory. Below is a non-exhaustive list of recent efforts to restrict voting rights over the past three months, including actual and possible incidents of voter suppression. For a full summary of the new legal restrictions voters face this year, look here [5].

Voter Purges

In the lead-up to this election, there has been a dramatic spike in voter purges, the often-flawed practice of cleaning up the voter rolls by deleting names of voters who may have moved or otherwise become ineligible. Done badly, purges can disenfranchise large numbers of eligible citizens. A Brennan Center report [6] issued this summer found a 33 percent increase in purges nationwide over the past decade. In a number of states, purge practices were especially troubling:

- **Increased purge rates in states previously covered by the pre-clearance provision of the Voting Rights Act:** Since 2012, states that had previously been subject to extra scrutiny under the federal Voting Rights Act because of a history of voting discrimination had much higher purge rates [6] than other states; had they purged at the same rate as the rest of the country, 2 million fewer voters would have been purged between 2012 and 2016.
- **Especially high purge rates in Southern States:** Between 2016 and 2018, the Brennan Center found Georgia, North Carolina, and Florida removed [7] an unusually high number of names from their voter rolls. Both Georgia and North Carolina removed over 10 percent of registrations from their voter lists, and Florida removed more than 7 percent. Since 2015, Alabama election officials purged [8] 658,000 voters, according to the state's chief election official; this number is dramatic given that the state had only 3.3 million registered [9] voters in 2016.
- **Indiana's problematic purge law:** After the 2016 election, Indiana passed a law that would require election officials to purge voters using the notoriously error-prone Crosscheck program developed by Kansas Secretary of State Kris Kobach, without offering voters the notice and waiting period required by federal law. One study [10] found Crosscheck would block 300 legal votes for every double vote prevented. The Brennan Center, on behalf of the NAACP and the League of Women Voters, challenged this practice in a lawsuit [11] filed last year. Although not yet used, the law was in effect up through this summer, when the court blocked it. An appeal is currently pending.

- **Other states have a history of problematic Crosscheck rules:** In the past, Maine and Alabama election officials had rules that allowed using Crosscheck to immediately purge [12] voters without providing notice or a waiting period. The Brennan Center and partners sent [13] letters to both states, and both said that they do not have plans to use the database at this time.
- **Ohio law allows voter purges:** Ohio is enforcing a law that requires election officials to begin a purge process for voters who missed one election. The Supreme Court upheld [14] the law against a legal challenge earlier this year. After plaintiffs filed an appeal on a narrower issue in the case, a court ordered [15] Ohio election officials to count [16] 2018 ballots from some of the voters who had been purged.
- **New Yorkers continue to experience impact of 2016 purge:** During the September primary [17], some registered voters reported that they were not found [18] on the voter rolls, had registrations wrongly transferred to new election districts, or were not given the right primary ballots [19] for their party affiliation. This follows the notorious Brooklyn purge of the 2016 presidential election, during which 200,000 voters were improperly purged [12] from the voter rolls.
- **West Virginia voter list maintenance may have removed eligible voters:** Last month, Secretary of State Mac Warner reported election officials had removed more than 100,000 [20] registrations from the voter rolls in the last two years. Some individuals reported issues [21] confirming their registration status. After contacting counties throughout the state, we discovered election officials may have inconsistent methods of restoring the registrations of voters wrongly removed. It is unclear how this large removal will impact voters on Election Day.

Georgia

Voters in the state [22] have continuously been subject to laws, policies, and legal action aimed at suppressing an individual's ability to cast a ballot. Secretary of State Brian Kemp has come under extensive criticism for his controversial actions contributing to voter suppression leading up to the 2018 election while running for governor. Here is a summary of recent suppressive actions in Georgia:

- **"Exact match" problem:** Georgia is enforcing an unusual policy of holding up registrations of voters if their application information does not exactly match the information on other government records. Under this flawed policy, about 53,000 [23] registrations are still "pending." Seventy percent of those applications being held are from African Americans. While those applicants can vote, they will experience additional obstacles. As a result of a lawsuit [24] filed by civil rights groups, those in "pending" status because the state was unable to verify their citizenship through this match process will be able to vote [25] a regular ballot on Election Day by providing proof of citizenship at the polls.
- **Threat to polling locations:** Earlier this year, a consultant recommended Randolph County, a majority black, rural county in South Georgia, close [26] seven of the nine voting locations due to ADA compliance issues. In response, several organizations filed a lawsuit [27] against the state and Secretary of State Brian Kemp. After significant public outcry, election officials rejected the proposal and fired the consultant.
- **Absentee ballot rejections in Gwinnett County:** Election officials rejected [28] an unusually high number of absentee ballots in Gwinnett County, 465 of which were for reasons including "mismatched" signatures, missing addresses, and incorrect birth years. In Georgia, the law requires county election officials to reject absentee ballots that have signatures that do not match the signature on file. As a result of a current lawsuit [29], county officials must now treat [30] absentee ballots with mismatched signatures as provisional ballots and contact voters whose ballots have been flagged.
- **Preventing access to the polls:** In Jefferson County, a senior centerdirector, at the request of county clerks, ordered [31] about 40 African American senior citizens off a bus that was transporting them to the polls during the early voting period. Despite being planned [32] by a nonpartisan organization, county clerks claimed the event was "political activity," which is not allowed during a county-sponsored event (the senior center is operated by Jefferson County). Those voters were unable to vote that day.
- **State election official exposes partisanship:** Secretary of State Brian Kemp stated at a public event [33] that his gubernatorial opponent's voter registration effort "continues to concern us, especially if everybody uses and exercises their right to vote." This is an example of the impact Kemp believes widespread turnout will have on his campaign and provides evidence for how his perspective may influence his actions as secretary of state during the general election.
- **Missing vote-by-mail applications:** Party officials reported 4,700 [34] missing vote-by-mail applications in Dekalb County. Some officials involved stated that county officials would explain the situation to the thousands of voters, although this course of action has not been confirmed by the county elections board.
- **Publicized security breach:** On November 3, reports [35] of a failed cyberattack on the registration system in Georgia surfaced. Rather than try to fix the situation, Secretary Kemp announced he would launch an investigation [36] into the Democratic Party of Georgia and contacted the FBI. The political party has strongly denied [37] these allegations, and Kemp provided no evidence to substantiate his claim.

North Carolina

Voters in North Carolina continue to experience challenges this election season. Reports of misleading information, voter intimidation, controversial policies, and legal action have all made it more difficult to cast a ballot that counts.

- **Restrictive and misleading constitutional amendments:** The state Legislature placed six constitutional amendments [38] on the November ballot, including an amendment that would require voters to present photo ID at the polls and one that would give the state General Assembly the ability to appoint members of the election board. In writing these amendments, GOP lawmakers took over this responsibility from other state officials, some say with the intent to mislead [39] voters.

- **Decrease in early voting sites:** A North Carolina law [40] created uniform early voting hours on weekdays. This new policy is expected to reduce [41] the number of early voting sites by 20 percent when compared to the number open in 2014. For example [42], two of the five early voting sites in Gaston County have been closed, and Iredell County has cut half of its early voting sites.
- **Election officials attempted to remove voters:** Prior to this election season, county officials were able to process challenges made by voters in large batches that caused purge-like results. A judge permanently blocked this provision, and now election officials must [43] give challenged voters a notice and waiting period, and must complete removals at least 90 days before federal elections.
- **Release of misleading information:** Lt. Governor Dan Forest released [44] a video funded by the NC Republic Council of State Committee titled *Voter Fraud 101* that gives instructions on how to commit voter fraud. This advertisement, originally released on Facebook, has since been determined to have targeted "North Carolinians interested in Donald Trump." Forest and others are clearly continuing to promote the myth [45] of widespread voter fraud.
- **Poll worker incident in Franklin County:** A poll worker was removed [46] from an early voting site for allegedly intimidating black voters. This individual repeatedly asked several black voters to spell their names.
- **Voter intimidation results in arrest:** In Mecklenburg County, three white individuals aggressively confronted [47] a black polling place volunteer at a Steele Creek poll and made racial slurs toward him, as well as exposed a BB gun in a holster. The individual who exposed the BB gun is currently in custody and was charged with ethnic intimidation. In response, the local police [48] department plans to devote more resources to monitoring polling places in Charlotte.
- **Federal subpoenas burden election officials:** In August, counties in North Carolina were served with subpoenas [49] issued by the U.S. Attorney's Office requesting voter records and ballots be turned over to U.S. Immigration and Customs Enforcement by September 25. The state officials determined that the response would be over 20 million pages [50] and place a significant burden on county election officials in the months leading up to the election. On September 6 [51], federal authorities decided to give counties until January to respond to this records request.

Students

Election officials in some states have made it difficult for a young voter to cast a ballot. Particularly, student voters in New Hampshire, Texas, Florida, and Michigan have been subject to suppressive policies leading up to the general election.

- **Change to residency requirements impact voter registration:** New Hampshire enacted a law last year that makes it more onerous for voters to establish that they are "domiciled" in the state for purposes of registering to vote. A judge briefly blocked [52] the state from implementing this law prior to the upcoming election. But the state Supreme Court ordered [53] the law [54] to stay in effect until after the November 6 election.
- **Registration confusion and few early voting sites:** At Prairie View A&M University, a historically black university in Texas, students were instructed to use one of two university building addresses for their registration applications in the absence of individual mailboxes. In October [55], reports [56] emerged that some students would have to fill out change-of-address forms on Election Day. After public opposition, state officials announced [57] students would not need to fill out the form on Election Day. Despite this victory, state officials continue to make it difficult for Texas students to vote. County election officials failed to provide an early voting location on campus or in Prairie View City for part of the early voting period. As a result, civil rights organizations filed a lawsuit [58] against Waller County and claim this lack of resources disenfranchises African American voters. County commissioners decided [59] to extend early voting hours and dates shortly after the lawsuit was filed.
- **Limited early voting site operation prevents students from voting:** In San Marcos, Texas State University's temporary early voting site [60] was only open for three days, as opposed to the two weeks before Election Day that most polling places in the state are open. Long lines prevented some from casting a ballot, and with the only other polling site miles away, students decided to contact county stakeholders and request the polling location be reopened. On October 26, reports [61] surfaced that a local GOP president sent an email to groups urging them to contact county commissioners and request they not extendvoting times for students at this location because extensions would "favor the Democrats."
- **Early voting sites not allowed on campus in Florida:** Prior to this year, Secretary of State Ken Detzner stated [62] local election officials could not hold early voting on public college campuses. In July 2018, however, a federal judge in Florida blocked [63] the state's "blanket ban" and ordered the state to allow local officials to site early voting locations on campuses.
- **First-time voter election policies impact Michigan voters:** Students at the University of Michigan and Michigan State University filed [64] a lawsuit [65] claiming a 20-year-old state voting law that requires some first-time voters to cast a ballot in person and mandates a voter's registration address match the one on their driver's license, violates the First and 26th Amendment. The case [66] is currently pending.

Online Vote Suppression

This election cycle has seen an increase in the use of online social media platforms to suppress the vote. In recent weeks, we have heard reports of both foreign and domestic entities involved in this form of voter suppression.

- **Russian organization used social media to incite conflict:** In Virginia [67], Elena Khusyaynova, has been charged [68] with conspiracy to defraud the United States by interfering in the 2018 election through "Project Lakhta," which published misinformation online on political issues and created fake social media profiles on multiple social media platforms. The accounts incited conflict on several political issues, and at times promoted opposing viewpoints. These social media accounts reached over one million people.

Yevgeniy Prigozhin, associate of President Vladimir Putin, funded Khusyaynova. The U.S. attorney's office in the Eastern District of Virginia and the Justice Department are prosecuting the case.

- **Fake Tweets spread false information about voting sites:** Twitter suspended [69] 1,500 accounts associated with a right-wing internet trolling campaign. The accounts posed as liberal activists and spread false information about the midterms, such as tweeting the incorrect date of the upcoming election: "Get out and vote Nov 7th! #BlueTsunami2018.…"
- **Facebook political ads are spreading misinformation:** According to this news outlet, a partisan organization has placed political ads [70] on Facebook with misleading information on candidates. The organization behind the ads has a purposefully nonpartisan sounding name.

Misleading Information

Another form of voter suppression includes the communication of false information to voters. Registered voters in Pennsylvania, Illinois, New Jersey, and Texas have been subjected to information that may prevent them from casting a ballot on Election Day.

- **Incorrect polling address information sent to voters in Pennsylvania:** Following the change of 33 polling places in Allegheny County, the county election officials sent letters [71] to voters with polling location address errors. The officials have since sent corrected letters.
- **Mailer includes inaccurate information regarding voter ID in Illinois:** Kendall County Clerk Debbie Gillette sent [72] out a mailer to voters that indicated they would have to "present identification to the election judge" at the polls. In response, the ACLU of Illinois sent a letter to the county clerk indicating the need to correct the misleading voter ID instructions, and county officials removed [73] the misleading information from the county's website. Voters do not have to present ID to cast a ballot in November.
- **In New Jersey, misleading mail-in ballot information sent to voters:** County clerks sent letters [74] to voters with inaccurate information regarding mail-in ballot protocol. The governor later corrected the information and the Department of State sent a memo to officials to clarify the law.
- **Voters sent false ballot information in Missouri:** Ten thousand voters received incorrect absentee ballot due date information from the Missouri Republican Party. The postcards [75] claim absentee ballots were due one week before the true deadline. Voters who received these mailers have been directed to the Secretary of State's website and webpage by the RNC.

    — In addition, a state court [76] in Missouri ordered the state to stop disseminating misleading information suggesting that voters without photo ID would not be able to vote.

    — Similarly, state courts in Iowa [76] prohibited the state from advertising that voters would need certain ID to vote in this year's election.

- **Montana voters received incorrect absentee ballot information:** A political party sent mailers [77] to voters that contained incorrect absentee ballot return date information. Party members later admitted the mistake and are contacting voters by phone and mail to clarify.
- **In New York, a candidate sent a mailer with inaccurate information:** According to this news source [78], the mailer contained the wrong absentee ballot deadline. The campaign later admitted the mistake and sent mailers with the correct information.
- **Ohio voters received mailers with false information:** A political party sent [79] voters mailers that incorrectly stated a voter's ability to return a completed absentee ballot at the polls on Election Day. A party representative stated they will encourage voters to return completed absentee ballots ahead of the election because voters will have to cast a provisional ballot if they bring a completed absentee ballot to the polls.

Language Access

Voters should have access [80] to voting materials and translators in their preferred language to ensure they are able to cast a ballot. However, counties in Texas and Florida did make adequate materials accessible to, in this case, Spanish speakers in the months leading up to the 2018 election.

- **Inadequate online Spanish translations in Texas:** After determining 36 county websites lacked sufficient Spanish language resources, the ACLU sent [81] notice letters to county officials. Many counties responded positively and are working toward making their websites more accessible to Spanish speakers.
- **Lack of Spanish language materials in Florida:** In the aftermath of Hurricane Maria, thousands of Puerto Ricans who moved to Florida may not have been able to exercise their right to vote without Spanish-language voting materials. To ensure these potential voters had all necessary resources, voting rights groups filed [82] a lawsuit [83] against state officials in order to compel the state to provide Spanish-language materials. A court ruled [84] the counties must print and provide the Spanish-language voting materials in time for the November election. The case is ongoing on other claims.

Registration and Identification Issues

In several states, state and election officials have implemented restrictive registration and identification policies or did not approve applications. These policies and actions effectively disenfranchise voters and may prevent thousands from casting a ballot this November.

- **Voter ID law impacts Native Americans in North Dakota:** In 2017, North Dakota enacted a new voter ID law. Among other things, the law requires voters to present an ID that includes a residential street address to vote. This law would disproportionately [85] impact Native American communities within the state because many members of these communities do not have street addresses. The Native American Rights Fund filed a lawsuit seeking to block the law, and a federal district court blocked the residential street address requirement. A Court of Appeals panel halted the district court's order, and the U.S. Supreme Court upheld [86] that ruling. In a final effort to relieve voters from this requirement, the Spirit Lake Tribe filed [87] a lawsuit in district court, seeking to block the application of the residential street address requirement to Native Americans living on reservations, but a judge denied the request. It is estimated that 5,000 [88] Native American voters will need to obtain qualifying ID before Election Day.
- **Kris Kobach enforced law that disenfranchised thousands of voters:** Kansas Secretary of State Kris Kobach's enforcement of a proof-of-citizenship law denied more than 35,000 potential voters from registering and casting a ballot in the lead up to the 2016 election. The law was struck down [89] this past June after a judge found the law violated the National Voter Registration Act and the U.S. Constitution.
- **State officials reject online registrations in Texas:** Days before the registration deadline, officials rejected [90] 2,400 online registrations submitted by Vote.org due to online signature issues, according to Vote.org. The organization quickly changed their online registration process. Although state officials have determined these registrations invalid, county officials in Travis decided to accept [91] about 800 registration applications from the organization.
- **State official in Arizona failed to contact voters to confirm address:** Civil rights organizations filed a lawsuit [92] after learning Secretary of State Michele Reagan failed to update addresses of over 500,000 registrations. U.S. District Judge James Teilborg rejected [93] a request to send address update mailers to voters.
- **Voter ID law challenged in Missouri:** Priorities USA filed a lawsuit [76] in June 2018 against the state that challenged a voter ID law. The judge [94] struck down [95] part of the law that required voters without ID to sign a confusing affidavit and prohibited state officials from disseminating misleading identification information about the ID law.
- **In Arkansas, voter ID law in effect during the 2018 election:** In 2017, Arkansas passed a new voter ID law. A voter filed a lawsuit claiming the law violated the state constitution, but the state Supreme Court allowed the law to go into place. Voters will have to comply [96] with the identification requirement [97] during the general election.
- **High voter registration form rejection rate in Tennessee:** This October, the Tennessee Black Voter Project filed a lawsuit [76] after 55 percent of registration applications from the organization's voter drive were identified as invalid. The organization believed the Shelby County Election Commission identified applications as incomplete for a variety of fairly minor reasons. An initial [98] court ruling required county election officials give voters the opportunity to update any deficiencies in their application on Election Day. Following an appeal, the Tennessee Court of Appeals ordered [99] voters whose applications were rejected must vote a provisional ballot and will not get the opportunity to update any deficiencies in their application on Election Day.
- **Computer glitch in Maryland impacted thousands of voters:** The Maryland Motor Vehicle Administration failed [100] to send changes voters made in their address and party affiliation to the state elections board due to a computer error. As a result, an estimated 80,000 voters were impacted by the computer glitch and had to cast provisional ballots in the June primary election. In response, state officials sent emails to a majority of those affected to ensure their registration was up-to-date.

Voter Challenges/Intimidation

Another form of voter suppression are voter challenges, which occur when an individual challenges another's registration status. In addition to this suppressive tactic, voters are at times subject to outright intimidation that can prevent them from safely casting their vote.

- **Reports of intimidating flyers in Wisconsin:** Individuals in Milwaukee reported [101]receiving flyers that stated Immigration and Customs Enforcement would be at polling locations. ICE proved these flyers contained false information [102]: "ICE does not patrol or conduct enforcement at polling locations. Any flyers or advertisements claiming otherwise are false."
- **Challenges to registrations in Texas result in suspensions:** County Tax Assessor-Collector Ann Harris Bennett prematurely placed [103] 1,735 voters on a suspension list as a result of a challenge of 4,000 registrations in July. According to this statement [104], the Republican Party ballot security committee chairman "involved using Republicans he appoints to the Ballot Board to review provisional ballots resulting from suspended voting statuses." HarrisBennett claimed that the premature suspensions resulted from a computer glitch and that the problem has been fixed.
- **Extreme levels of voter intimidation in Texas:** In Dallas County, voters have reported incidents of voter intimidation [105]. At three polling sites, voters have been subjected to electioneering, harassment [106], and intimidation from individuals outside the polls. One election official stated this level of voter intimidation is rather extreme: "I've been here for 30 years, and this harassment that's going on, I haven't ever seen the likes of this."
- **Voter challenges leave some 'fearful' in Colorado:** Earlier this year, voters subjected to challenges [107] reported intense investigation efforts that left many in the community fearful. Although Secretary of State Suzanne Staiert has declared four individuals' registrations valid, she has asked [108] the U.S. Attorney's office to investigate.
- **Candidate accused of voter intimidation in Hawaii:** Voters in House District 30 filed a lawsuit [109] in Hawaii Supreme Court against State Rep. Romy Cachola, who they claimed engaged in voter fraud, coercion, and intimidation during the primary election. On August 31, the Hawaii Supreme Court dismissed [110] the case.

Polling Places

For in-person voting, it is essential that registered voters be able to access polling locations. However, poll closures and natural disasters at times make it difficult for voters to cast a ballot on Election Day.

Single polling place moved for a city in Kansas: In Dodge City [111], part of Ford County, Kansas, election officials have moved the one polling site in a city of 27,000 residents, a majority of whom are Hispanic, to outside the city limits and one mile away from the nearest bus stop. Civil rights organizations filed a lawsuit [112] against the county in order to open another polling site in the city. This follows months of contact and letters between civil rights organizations and county officials. Ford County Clerk Debbie Cox forwarded one such message to Bryan Caskey, the Kansas Director of Elections, with a dismissive message [113], "This is what I got in the mail from ACLU. LOL." This lawsuit is currently pending. However, a monitor [114] from the U.S. Attorney's office will observe the election. Recent reports [115] from newly registered voters indicate county officials are sending official certificates that contain the incorrect polling address.

(Image: Craig Mitchelldyer/Getty)

Voting Rights & Elections [116], Restricting the Vote [117]

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Jim Crow 2.0?: Why States Consider and Adopt Restrictive Voter Access Policies

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Abstract

In recent years there has been a dramatic increase in state legislation likely to reduce access for some voters, including photo identification and proof of citizenship requirements, registration restrictions, absentee ballot voting restrictions, and reductions in early voting. Political operatives often ascribe malicious motives when their opponents either endorse or oppose such legislation. In an effort to bring empirical clarity and epistemological standards to what has been a deeply charged, partisan and frequently anecdotal debate, this paper uses multiple specialized regression approaches to examine factors associated with both the proposal and adoption of restrictive voter access legislation from 2006-11. Our results indicate that proposal and passage are highly partisan, strategic, and racialized affairs. These findings are consistent with a scenario in which the targeted demobilization of minority voters and African Americans is a central driver of recent legislative developments. We discuss the implications of these results for current partisan and legal debates regarding voter restrictions and our understanding of the conditions incentivizing modern suppression efforts. Further, we situate these policies within developments in social welfare and criminal justice policy that collectively reduce electoral access among the socially marginalized.

In *The Right to Vote: The Contested History of Democracy in the United States* Alexander Keyssar notes that: "History rarely moves in simple, straight lines, and the history of suffrage is no exception."[i] The trajectory of voting rights and electoral access in the U.S. is rightly seen as a story of the progressive extension of the franchise. However, often obscured by such broad narratives is the reality that electoral reforms have worked to both expand *and* restrict the franchise for particular categories of voters over time.[ii] Exclusionary reforms are nearly universally enacted for partisan advantage, a temptation enabled by state responsibility for the administration and regulation of elections.[iii] The struggle to shape access to the vote has intensified once again as the volume of legislation impacting electoral access has increased in recent years. In this article we focus on the increasing proposal and passage of state laws that place new restrictions on various aspects of both the voter registration process and the opportunity to actually cast a ballot. Required photo identification or proof of citizenship to vote, more stringently regulation of groups or individuals who aim to register new voters, shortened early voting periods, repeal of same-day voter registration, and increased restrictions on voting by felons exemplify the different types of policies that have been proposed and adopted in various states since the mid-2000s[iv]. Figure 1 illustrates the rise in the volume of proposed restrictive changes since 2006 and the dramatic increase in restrictive legislation that actually passed in 2011. These policies stand in sharp contrast to trends in the late 1990s and early 2000s where many states expanded voting by mail and early voting—usually under the assumption that these policies would increase voter participation.[v]

[Figure 1 goes about here]

Figure 2 illustrates which states have been the most active in proposing restrictive voter access policies. The geographic distribution of this activity is widespread and does not concentrate overwhelmingly in battleground states or any particular region. And while more restrictions were proposed in the South due to a couple of particularly active states, Southern states vary significantly in their rates of proposal. In short, the regional distribution of proposed bills makes clear that restrictive voter access legislation was

proposed with frequency nationwide from 2006 to 2011, but provides us little insight into why.

[Figure 2 goes about here]

Figure 3 presents the number of restrictive legislative changes that were actually passed by state legislatures between 2006-11. Consistent with the policy process[vi], restrictive voter access policies are passed at rates far lower than they are proposed. And in contrast to legislative proposals, the geographic distribution of passed legislation is more suggestive of the conditions driving policy adoption in this arena. It is clearly the case that legislation passed more frequently in the South and in battleground states like Ohio and Florida.

Collectively, these figures show that the proposal of restrictive voter access legislation occurred in nearly every state between 2006-11 and that at least one restrictive change passed in half of all states. Policy diffusion at such a significant rate and reach is significant given the complexities and peculiarities of state-level policy making.[vii] The popular press has taken note of these activities surrounding restrictive voter access policies, but the explanations provided for such developments rely nearly exclusively on partisan accounts.[viii] In what follows, we provide a comprehensive analysis of these legislative developments by examining the state-level partisan, electoral, demographic, and racial factors most strongly associated with more frequent proposal and passage of these voter restrictions within states. We draw upon both current political discourse and social science research for explanations as to why states have been more likely to consider and adopt these new restrictions and offer each to empirical test. With findings from sound social science as our vehicle, our analysis moves well beyond the trading of partisan barbs and allows us to demonstrate the deficiencies in these conventional takes for understanding recent legislative developments.

Beyond the partisan debate, our research offers an enrichment of theoretical conversations concerning the roles played by political parties in American democracy, voter suppression, race and policymaking, and even the broader literature on democratization. For example, the classical view that political parties enhance democratic

incorporation under tight election margins is not borne out by the recent history of US politics. Rather, we argue that the Republican Party has engaged in strategic demobilization efforts in response to changing demographics, shifting electoral fortunes, and an internal rightward ideological drift among the party faithful. Far from historically unique, we situate the most recent round of electoral reforms among other measures trumpeted as protecting electoral legitimacy while intended to exclude the marginalized for a particular political party's advantage. In doing so, our research bolsters and adds contemporary nuance to our understanding of the political conditions that incentivize parties to engage in voter suppression.

Our finding that legislative developments in this policy area remain heavily shaped by racial considerations is strongly resonant with the historical relationships between race, voter restrictions and federalism often viewed as hallmarks of American political development.[ix] Further, we suggest that useful conceptual links may be drawn between contemporary voter restrictions and recent developments in criminal justice and social welfare policy. In all three of these policy areas racial threat and myths are particularly salient, and the character of state-level legislation is particularly responsive to the racial composition of states. As modern poverty governance and criminal justice policies are increasingly understood through an analytic frame that emphasizes discriminatory and disempowering impacts[x], we view restrictive voter access legislation as an additional layer of barriers reducing electoral access for minority and lower income voters. While we focus on voter restrictions below, we highlight a broader suite of exclusionary policy developments occurring across multiple policy arenas that have produced significant, and increasing, variation in state-level access to the vote.

Theoretical links to the larger democratization literature are also in play here. Upon first blush, connections between our findings and this literature may seem a stretch because of the stability of U.S. democracy and absence of authoritarian traditions or contexts.[xi] The processes that result from contemporary democratic transitions certainly differ in magnitude from those involved in recent changes to American electoral policies. Nonetheless, we find it striking that our findings expose elements of American electioneering reminiscent of how actors in competitive authoritarian regimes manipulate election practices so that voters are drawn almost exclusively from their own

supporters.[xii] We thus compliment the work of Desmond King and colleagues by showing how one advanced democracy, the U.S., is actually changing voting procedures in a racialized and restraining fashion in the modern era – "de-democratization" along racial lines.[xiii] That this is true for the American case reinforces the incompleteness of most American narratives regarding citizenship and political development. Deeply racialized, exclusionary ideologies and corresponding practices have always accompanied the more readily acknowledged reality of liberal incorporation.[xiv] We find the exclusionary American tradition well represented today,[xv] a tendency bolstered, yet again, by the power and flexibility federalism grants to the states. Last, for advocates of electoral reform the developments examined here provide a cautionary reminder of the seemingly endless variation and creativity evidenced in efforts to repurposed electoral reforms and institutions to exclude voters and shape electoral outcomes.

[Figure 3 goes about here]

Partisan and Academic Perspectives

Those on the political left and political right have not been reticent to proffer accounts, or level accusations, for why restrictive voter access legislation has been proposed and adopted. On the left these policies are typically vilified as thinly veiled attempts by Republicans to depress turnout among constituencies deemed favorable to the Democratic Party: minorities, new immigrants, the elderly, disabled, and young.[xvi] Ari Berman summarizes this view well in reference to the 2012 presidential election:

> Republican officials have launched an unprecedented, centrally coordinated campaign to suppress the elements of the Democratic vote that elected Barack Obama in 2008. Just as Dixiecrats once used poll taxes and literacy tests to bar black Southerners from voting, a new crop of GOP governors and state legislators has passed a series of seemingly disconnected measures that could prevent millions of students, minorities, immigrants, ex-convicts and the elderly from casting ballots.[xvii]

Left-leaning media echo this line of reasoning, as do prominent interest groups like the American Association of Retired People (AARP) and the National Association for the Advancement of Colored People.[xviii] Such perceptions are only reinforced by instances such as that of a Pennsylvania Republican state house majority leader who infamously stated that the passage of the state's 2012 voter identification law would "allow Governor Romney to win the state of Pennsylvania."[xix]

The Senate Judiciary Subcommittee on Constitutional, Civil Rights and Human Rights, led by Democrats, held hearings on restrictive legislation under the title "New State Voting Laws: Barriers to the Ballot?".[xx] The Congressional Black Caucus, Congressional Hispanic Caucus, and Congressional Asian Pacific American Caucus joined forces in federal testimony and activism against the voter access policies' alleged discriminatory intent.[xxi] The Department of Justice under the Obama Administration, citing Section 5 of the Voting Rights Act, worked to nullify or stay voter access legislation in Florida, Texas, and South Carolina arguing that the legislation would "deny or abridge…. the right to vote on the basis of race, color, or membership in a language minority group".[xxii] It is clear that for Democrats, restrictive voter access policies are viewed as purposive efforts by Republicans to depress turnout amongst their core constituents.

Meanwhile, many Republican politicians and their allies assert that restrictive voter access legislation is intended to prevent or curtail rampant electoral fraud so as to preserve the legitimacy and integrity of the electoral process.[xxiii] Such discussions often emphasize the possibilities or invitation for fraud in voting rolls that include deceased individuals, "fraud friendly" registration laws like the Motor Voter Bill, and absentee ballots as a "tool of choice" for those attempting voter fraud.[xxiv] Further, some accuse Democrats of committing electoral high jinks with more frequency because their core constituents are more likely to commit fraud due to their economic insecurity.[xxv] As Larry Sabato and Glenn Simpson explain the right's logic, "Republican base voters are middle-class and not easily induced to commit fraud, while 'the pools of people who appear to be available and more vulnerable to an invitation to participate in vote fraud tend to lean Democratic… …a poor person has more incentive to sell his vote than an upper class suburbanite'."[xxvi] From this perspective, Democrats who oppose voter access regulations are working to continue their unfair and fraudulent advantages at the ballot box at the expense of democratic legitimacy. Kenneth Blackwell, former Attorney General of Ohio and current Republican operative, conveyed this while speaking on voter identification proposals:

> What more than 30 states have tried to do is put in place a common-sense measure of voter ID so that people are assured that voters are who they purport to be, and

> voter IDs are commonplace in our culture. You need [an ID] for a driver's license, for boarding an airplane, receiving a passport, purchasing alcohol or checking out a library book. So to use it to safeguard the integrity of the voting process at the voting station is pretty noneventful. … We all know the horror stories of ACORN in 2008 and 2010. So there is enough evidence to suggest that we need to put things in place to protect this from going crazy. This is a reasonable safeguard to protect against voter fraud and ballot box stuffing when we have sufficient enough evidence that there are some people who would do just that if given the opportunity.[xxvii]

Right-leaning prestige media and blogs add further heat to this line of argument by pushing back on the ascription of racial motivations by many on the left. As the *National Review's* Dennis Prager penned in 2011, and Fund and von Spakovsky similarly referenced in 2012, "it is hard to imagine a more demeaning statement about black America than labeling demands that all voters show a photo ID anti-black".

Rhetorically then partisans on both the right and left provide distinct explanations for the recent increase in restrictive voter access legislation.[xxviii1] On the right, they are a necessary response to rampant electoral fraud perpetrated by Democrats and allied organizations. On the left, restrictive access legislation is seen as a strategic attempt to reduce turnout amongst Democratic-leaning voters. Thankfully, there is a large body of academic research that allows us to operationalize and empirically examine both these claims while situating current developments within the larger context of American electioneering, extending the franchise, and voter suppression.

Many who view recent restrictive efforts as attempts at voter suppression often draw parallels to the long history of suppression and demobilization of certain categories of voters. Such connections are not difficult to make as voter suppression is viewed by many researchers familiar with the history of American elections as a pervasive and consistent feature of U.S. political practice and institutions.[xxix] Suppression and demobilization tactics range from the legal to illegal, the local to the national, and have been adapted consistently to accommodate new legal, demographic, and strategic realities over the years. The wide range of tactics employed include: violence and intimidation, misinformation and deceptive practices, voter "caging" and challenging voters, and suppressive administration by partisan election officials.[xxx] In this context the types of

restrictive changes to electoral access we examine here represent a softer, legal form of voter suppression. In fact, some scholars[xxxi] argue that in response to a changing legal environment modern suppression efforts have increasingly taken the form of changes to state election laws. That is, the legal regime that emerged following the passage of the 24th Amendment and the Voting Rights Act has made it more difficult to engage in the blunter forms of voter suppression utilized in the past. From this perspective, the recent policy changes examined here are analogous to the restrictive laws and practices in the Jim Crow era designed to achieve discriminatory impacts without violating the 15th Amendment. Lorraine Minnite contends:

> Today, vote-suppression strategies are pursued through subtle forms of intimidation and obstruction that take on the mantle of law and order. The strategy involves exaggerating the fraud threat to justify the complexity of the electoral system, a complexity created and compounded by the layering of more and more rules to deter fraud… …Administrative complexities justified as race-neutral necessities for deterring voter fraud are also opportunities for administrative error that have come to replace opportunities for vote suppression by other means. This is the context for the proliferation of unsupported fraud allegations today. The allegations shrewdly veil a political strategy for winning elections by tamping down turnout amongst socially subordinate groups. It is the most vulnerable voters, those with the least education or the least experience in operating the machinery of the electoral process, that are the most in need of the simplest rules and the easiest access. Thus, it is these voters who stand in for the criminal voters conjured up by the spurious voter fraud allegations and imagined by the U.S. cultural myth of voter fraud.[xxxii]

In the modern era, frontal attack on the right to vote is not politically acceptable, but targeting voter registration and access policies under the auspicious of "ballot security" continues to be quite viable.[xxxiii]

This academic work outlines the conditions under which parties are more likely to engage in suppression and demobilization. Francis Fox Piven and colleagues remind us of the simple reality that: "election contests can be won by bringing more voters to the polls or by deterring the voters who support the opposition from casting their ballots. In other words, by voter mobilization or by voter suppression".[xxxiv] Consequently, a principal expectation is that political parties may mobilize or demobilize as is electorally efficacious.[xxxv] This perspective contrasts with a classical view that suggests that competition drives political parties to mobilize new constituencies in pursuit of untapped

resources that may shape electoral outcomes.[xxxvi] Due to their comparatively low turnout rates overtime, the poor, African Americans, ethnic minorities, and immigrants are argued to become particularly attractive for mobilization. The demobilization view counters by highlighting the historical tensions between the legal expansion of the franchise for these groups and the actual practices surrounding its access.[xxxvii] Further, political parties are argued to have heightened incentives, under certain condition, to engage in the suppression of their opponents' supporters. Suppression becomes especially attractive when rallying new voters to one's own party is viewed as costly, unpredictable, or potentially disruptive to the base.[xxxviii] In particular, appeals and policy positions crafted to appeal to lower income voters may conflict with political precedents and the interests of more well heeled supporters.[xxxix] Given such constraints suppressing the competition is incentivized, particularly when election margins are tight.[xl]

The take-away is that in a two-party system both parties have faced incentives to selectively suppress the vote and both have done so. In the 19th century and the first half of the 20th century, the Democratic Party engaged in multiple interlocking layers of suppression efforts to disenfranchise African Americans in the South, while in the North Republicans, albeit to a much lesser extent, made efforts to suppress Democratic-leaning low-income and immigrant voters.[xli] Since the 1960s, however, political conditions have aligned in a manner intensifying these incentives for the Republican Party. The civil rights movement and the Voting Rights Act transformed the racial character of party affiliation such that African-American voters came to overwhelming support Democratic candidates. Being perceived as African American then became a reliable marker for partisan preferences and an efficient guide for targeting suppression efforts. Lower income voters, of any race, have been similarly targeted as they disproportionately vote Democratic.[xlii] In response to a changing electoral environment, the GOP has become the central driver of restrictive changes to election laws and the primary perpetrators of a wide range of suppression efforts.[xliii] In short, this literature is explicit about which political party is more likely to engage in suppression in the current era; the groups likely to be targeted by such efforts; and the likelihood that voter demobilization will be "accomplished by legal and administrative subterfuge, with justifications that proclaim the rules and practices to be essential in safeguarding American democracy".[xliv]

An Empirical Approach

These partisan and academic accounts ascribe vastly different motivations for the recent rise in the proposal and passage of restrictive legislation. The following analyses offer a unique empirical perspective in which we systematically examine which political, electoral, and contextual factors are associated with whether states proposed or passed restrictive voter access policies between 2006 and 2011.[xlv] Ours is *not* a treatment then that weighs in empirically on what the effect of passing and implementing such legislation has been or will be. Rather, we identify a constellation of conditions that may shape the policy making process in this area and subject them to empirical test. Restrictive legislation may be a response to strategic political calculation[xlvi], rational determination of a problem[xlvii], evidence of symbolic politics and fear[xlviii], interplay between the structural, partisan, and cultural confines of policymaking[xlix], or all of the above. These forces may be differentially relevant depending on whether proposal or passage is under examination. Passing legislation, for example, is more constrained by the specific political context within state legislatures than is a lawmaker's ability to propose legislation. Bills that are proposed, but are likely or expected to fail, may be motivated by a genuine effort by policymakers to achieve legislative change or by an interest in engaging in symbolic politics. Considering both provides multiple angles from which to build inferences as to what has motivated the pursuit of restrictive voter access policies. In doing so, we make a contemporary, empirical contribution to the larger body of work examining the conditions and historical moments in which parties engage in voter suppression efforts, and press the normatively important question of what role political parties play in securing access to the ballot. Further, we provide empirical footing for evaluating partisan claims regarding the motives driving contemporary restrictive access legislation. Today's widespread accusatory rhetoric is long on dramatic flair but short on evidence. This paper fills this much-needed evidentiary gap.

Independent and Control Variables

Popular discourse, research on voter suppression, and general research on the policymaking process suggest a wide range of state-level factors that may increase or

decrease the likelihood that states adopt or consider restrictive voter access legislation. Below we identify the primary variables included in our analyses. Data sources and details of operationalization for all variables are available in Appendix A.

This first set of variables center around partisan control and electoral competition. It is widely acknowledged that in modern era electoral politics, "vote fraud is traditionally the type of election irregularity that Republicans focus on, while vote theft is often cited by Democrats".[l] Further, empirical research consistently suggests that restrictive legislation of the kind considered here will disproportionately deplete turnout among potential low-income voters and minorities, two groups that skew heavily towards the Democratic Party.[li] Given this, and the fact that party lines are influential in determining policy outcomes[lii], we expect restrictive voter access policies will be considered and passed more often where Republican officials exercise more control. To examine the influence of *Republican party control* we include multiple factors that should capture the relative ease or difficulty Republicans have in getting their policy proposals adopted: Republican legislative strength, the presence of a Republican Governor, and whether or not the state has a divided government.

As discussed above, the voter suppression literature suggests that parties have more incentive to engage in suppression in the context of tight elections. We expect the *difference in the party vote share in the previous presidential election* to impact the likelihood of a state to propose and pass restrictive voter access legislation. If a state has a smaller value on this measure, meaning the state was more competitive in the Electoral College, the potential pay off for suppression efforts increases dramatically. However, the incentives for suppression are not symmetrical for the two major parties. In the context of highly competitive elections, Democratic legislators are presumably less inclined to pursue or enact changes that are likely to depress turnout among their own supporters. This suggests that the impact of competitiveness may be conditional, a possibility we explore below with interaction effects.

We also examine the role of *local interparty competition* understanding that state legislators may be motivated more by local partisan concerns rather than national electoral outcomes. State legislators in chambers closely divided along party lines may seek the passage of such legislation in the hopes of advantaging their own party. However, we also

expect it may be more difficult to pass such controversial legislation in the context of smaller majorities. The variable is a simplified version of the Ranney index[liii] so that higher values indicate more competitive scenarios (more evenly divided parties in each house) and total party control (100% of seats) would produce a value of 0.[liv]

Registering to vote, maintaining registration after a move, and the logistics involved in actually casting a ballot are more cumbersome in the United States than other advanced democracies.[lv] It is well known that these hurdles are more burdensome for those of lower socio-economic status, individuals of color, new citizens, and the elderly.[lvi] For those concerned about voter suppression, recent legislative developments introducing new requirements are but the modern continuation of purposeful efforts to selectively suppress the vote via procedural means.[lvii] If this is the case, all else being equal, we should see restrictive voter access legislation considered and adopted in states where historically vulnerable Democratic constituencies turnout at higher rates, have increased their levels of turnout in recent elections, or both.

We examine whether states with higher rates of *minority turnout*, and those that saw *increases in minority turnout* between the 2000 and 2004 and the 2004 and 2008 Presidential elections experienced an increase in the frequency of proposal or passage of restrictive legislation.[lviii] Similarly, if legislators are sensitive to the level of turnout among the less affluent in ways consistent with targeted voter suppression, states where low-income individuals turnout at rates that more closely approximate that of wealthier voters should see restrictive voter legislation proposed and passed with increased frequency. This is especially apt as levels of upper class turnout bias have decreased between the Presidential election years examined here. Our variable replicates James Avery and Mark Peffley's[lix] ratio of affluent voter turnout (over 75K) to that of lower income (under federal poverty line) for years 2000, 2004, and 2008 respectively. Larger values mean greater upper-class bias. The class bias change variable is the difference in the turnout ratio between the previous two Presidential elections. Positive values on this measure indicate that class bias has decreased.

We also explore the possibility that restrictive legislative activity may be a response to overall turnout. Gains in voter turnout at the federal level are usually drawn disproportionately from lower-income individuals who are disproportionately people of

color.[lx] Aggregate gains in turnout are often read as increases among constituencies favorable to Democrats. Reliable and valid real-time voting/polling data for all 50 states is notoriously difficult to gather, let alone data on specific subgroups of voters. Consequently, political professionals and elected officials who aim to strategically deplete turnout amongst Democratic constituencies may reasonably rely on aggregate turnout as a proxy for electoral shifts unfavorable to them. To explore this we include a measure of *overall turnout in the previous Presidential election.*

Proposing and passing restrictive voter access legislation in response to minority and lower-income electoral participation is a retrospective response—one that may involve initial electoral setbacks. Strategic politicians may then support restrictive policies *prior* to election season relying on purely demographic indicators deemed troubling for their re-election or party. We test for this motivation behind restrictive voter access legislation with the inclusion of the *percentage of African-Americans, non-citizens, and the elderly* within states. The logic is simple in each case. Of all racial and ethnic groups, the battle for the franchise is most interwoven with the African American experience in the U.S.. Historically, the larger the percentage of African Americans in a state the more difficult it is for African Americans to realize the right to vote.[lxi] If the proposal or passage of restrictive legislation is associated with state racial composition, this is supportive of a voter suppression narrative. The same pattern may hold for states with larger numbers of non-citizen residents. Many in this population will eventually acquire citizenship and new immigrants are more likely to vote Democratic – especially given the increasingly harsh immigration rhetoric in the Grand Old Party.[lxii] Last, if targeted demobilization drives restrictive legislation the opposite expectation holds for the percentage of elderly in a state. The elderly go to the polls at higher rates than other age groups and, increasingly since the 2008 election, disproportionately support Republican candidates.[lxiii] As many of the restrictive policies examined here may also suppress participation by elderly voters, we expect these policies may be pursued with less vigor in states with larger proportions of elderly residents.

Republicans typically contend that voter IDs, proof of citizenship to vote, and similar policies are necessary to curtail election fraud in the wake of reforms that have made it easier to vote.[lxiv] Examples cited as representative and uncontested include

phantom voters registered under "Motor Voter Laws", non-citizen voting, and the disenfranchisement of military voters. In addition, myths abound alleging massive voter fraud in Florida during the 2000 election and similar accusations involving ACORN in more recent elections.[lxv] A historical perspective certainly provides colorful examples of fraudulent electoral activities.[lxvi] Today, however, the largely uncontested conclusion within social science circles is that deliberate, systematic electoral fraud is extremely infrequent.[lxvii] Nonetheless, *reports of actual voter fraud* may predict the consideration and adoption of restrictive voter access policies. Our measure of fraud comes from the American Center for Voting Rights[lxviii] and Lorraine Minnite's[lxix] exhaustive accounting of all fraud allegations in the 2004 election cycle.

Interest group mobilization is also central to understanding agenda setting and policy outcomes. The American Legislative Exchange Council (ALEC) is one such interest group uniquely active in creating and disseminating model voter identification legislation. This organization coordinates task forces charged with drafting model legislation, and such legislation for voter identification provisions has been promoted by ALEC.[lxx] Given the purported influence of ALEC, and its work at the state level, we expect that state delegations who have higher percentages of *ALEC-affiliated members* may be more likely to pass restrictive voter access legislation.[lxxi]

Our third attempt to tap into perceptions of electoral fraud is a measure of political culture among a state's citizens. If liberals see fraud as infrequent and diversionary, and conservatives view fraud as frequent and threatening to democracy, then it follows that states with more liberal political cultures should be less interested in considering and adopting restrictive voter access legislation. We use updates of William Berry, Evan Ringquist, Richard Fording, and Russell Hanson's[lxxii] measure of *citizen ideology* to empirically characterize this dimension of state political culture.

We also examine the contribution of *policy diffusion*. Simply put, states tend to adopt the policies that their neighboring states do.[lxxiii] The processes by which this occurs remains contested but there is little doubt that policy diffusion happens between U.S. states and that it occurs with neighboring states most frequently. Consequently, states may be more likely to consider and adopt restrictive voter access legislation as surrounding states do so.

Last, all of our analyses below contain a number of control variables. First, if a state has *already passed a photo identification or proof of citizenship requirement* then we would expect there to be less proposal and certainly less passage of such legislation. Second, we control for whether a state currently makes available either *early or no-excuse absentee voting* or both. If voter suppression motivates the proposal and passage of voter access legislation, we expect states with more accessible election practices may be more likely to pass restrictive legislation. Finally, states with fewer economic resources may be less likely to create new regulations, restrictions, or procedures, as such innovations may be perceived as too costly.[lxxiv] This factor is included in the form of *real state revenue per capita*.

Measuring Restrictive Voter Legislation

Our dependent variables take the form of the annual count of restrictive changes to voter access proposed or passed within state legislatures between 2006 and 2011.[lxxv] As noted, we focus on five different types of legislation: photo identification requirements, proof of citizenship requirements, laws which introduce restrictions on voter registration, restrictions on absentee and early voting, and restrictions on participation by felons. Table 1 provides a breakdown of which states have passed these different types of laws and in which year. For the years 2006-2010 these data are drawn from the National Conference of State Legislatures' Database of Election Reform Legislation.[lxxvi] For 2011, we draw upon an exhaustive report from the Brennan Center for Justice, *Voting Law Changes in 2012*, which details legislative developments in these categories of laws in 2011.[lxxvii]

[Insert Table 1 here]

The passed legislation in Table 1 all have the potential to reduce voter access at various points in the registration and voting process. Perhaps most well known are new laws requiring photo identification to cast a ballot and proof of citizenship in order to register to vote. The category of registration restrictions includes policies that impact both voters directly and third party organizations involved in registering voters. The former include reductions in the window for registration, such as eliminating Election Day registration, or increasing state residency requirements. Restrictions on voter registration drives vary, but most commonly involve: requiring registration groups to register with the

state, mandatory training for anyone registering voters, special disclosure procedures, and short deadlines for the submission of voter registration forms. Failure to comply is often paired with newly established fines or criminal penalties. Restrictions on absentee voting include reducing the time during which absentee ballots can be applied for or accepted and restrictions preventing civic or political organizations from delivering absentee ballots. Last, early voting restrictions primarily involve reducing the number of days or hours during which early voting is available.

In addition, we examine proposed legislation that would restrict voter access. This includes all proposed legislation along the lines described above, but also legislation that increase requirements or restrictions on either registration or the voting process *relative* to existing state law. For example, in a state with no voter identification requirements a bill to introduce identification requirements, even if these requirements do not require a photograph, is considered a restrictive proposal.[lxxviii] Similarly, bills to increase the requirements for registration or the receipt of absentee ballots are considered restrictive. Last, while no state passed new legislation related to the voting rights of felons in the period under examination, it was proposed in many states.[lxxix] Most common was legislation banning felons (or those convicted of particular categories of felony offenses) from voting for life. Other such bills included increasing the criminal penalty for registering to vote if one is an ineligible felon, extending a felon's period of ineligibility to include parole or probation if state laws does not already prevent this, or requiring that all fines imposed by sentence and court costs must be paid before the restoration of voting rights.

Determinants of Proposal and Passage

In our analyses, we use specialized regression techniques that allow assessments of the relative strength and significance of each explanation for passing and proposing restrictive access legislation between 2006 and 2011 while controlling for other independent variables. These approaches follow the logic of classic multiple regression while accommodating the particular structure of, and specific issues within, our data.[lxxx] Below we briefly introduce the reasons for selecting each modeling approach before discussing the results of each set of models. All models were run using Stata version 11.2.

Proposed Legislation: GMM Analyses

First, we examine which state-level factors are associated with a higher annual count of proposed restrictive voter access legislation between 2006 and 2011. The cross sectional nature of our dataset and the fact that the dependent variable is a count (the number of restrictive legislative changes proposed in a state each year) would lead normally to the use of a pooled Poisson modeling approach. Unfortunately, one of our central variables of interest violates an assumption required for the use of a pooled Poisson approach. The "percentage of the state legislature Republican" variable is related to the error term in the model which can bias estimates.[lxxxi] This problem, referred to as endogeneity, requires that accommodations be made in order to address the presence of such endogenous variables.[lxxxii] We use a generalized methods of moments (GMM) modeling approach because it allows one to directly address the presence of endogenous variables through the use of instrumental variables.[lxxxiii] An instrument variable, a variable that stands in for an endogenous factor, must be correlated with the variable they are replacing but not with the error term. Three variables in our analyses meet these criteria: our ALEC variable, the Republican Governor variable, and the citizen ideology measure. For the following GMM analyses, these three variables are included in place of the problematic percentage of the state legislature Republican variable.

[Insert Table 2 here]

Table 2 contains the results of 4 GMM models examining the state-level factors associated with higher annual counts of *proposed* voter restriction legislation.[lxxxiv] Models 1 & 2 examine the factors associated with the proposal of all types of restrictive legislative changes identified above and these two models differ in only respect. The measures of minority turnout in the previous presidential election and state % African American are highly correlated and either variable is highly significant in the absence of the other. Models 1 & 2 introduce each of these variables individually. Both larger proportions of African American residents and higher levels of minority turnout in the previous presidential election are significantly associated with more proposed legislation. While such results make it difficult to adjudicate precisely between the contributions of these correlated but distinct factors, it is clear that *the racial composition of a state is strongly*

related to the proposal of changes which would restrict voter access. The minority turnout variable suggests that concern about the electoral consequences of minority, and especially African-American, turnout is a primary driver of the broader effect of state racial composition. Reinforcing this interpretation is that fact that in both Models 1 & 2 larger *increases* in minority turnout between the previous two presidential elections are associated with greater frequency of proposed legislation. All of this is consistent with minority voter suppression and electoral considerations being central motives for the proposal of voter restrictions.

Only two additional factors are found to increase the proposal of restrictive legislation. First, larger increases in class-biased turnout, indicating higher turnout among lower income voters relative to wealthy voters, is significantly associated with a larger volume of proposed legislative changes. Low-income individuals vote less frequently than the affluent in every state but where this gap has been closing in recent years, restrictive access legislation is more apt to be proposed. Second, states with larger proportions of non-citizens also saw restrictive legislation proposed more frequently. In sum, *where African-Americans and poor people vote more frequently, and there are larger numbers of non-citizens, restrictive access legislation is more likely to be proposed.*

It is noteworthy that within Models 1 & 2 none of our measures of partisan control or electoral competition are significant. In particular, a larger proportion of Republicans in the state legislature is not associated with a higher frequency of proposed bills. This could be due to multiple factors. A legislator does not need to be in the majority party to propose legislation. Further, multiple bills that have little chance of passing may be proposed by Republicans in the minority for partisan or symbolic reasons. For example, a number of (disproportionately Republican) legislators in Massachusetts have introduced dozens of restrictive bills, none of which have passed during this period. On the other hand, a legislature that is dominated by Republicans may be able to pass a larger proportion of a smaller number of proposed bills. Further, it is possible that Republican legislators in solidly Republican states may have less electoral incentive to pursue such restrictive legislation at all. All of these considerations may complicate a simple linear relationship between the percentage of Republican legislators and the proposal of restrictive legislation.

In order to explore whether the forces driving the proposal of identification and proof of citizenship requirements differs from the proposal of registration, absentee, and early voting restrictions, Models 3 and 4 examine the count of these proposed legislative changes separately. The factors associated with more frequent proposal of these different types of restrictions are largely the same, appearing to be primarily a response to either levels of or change in minority turnout, levels or change in class-biased turnout, and the proportion of non-citizens.

From all this a striking story emerges: the proposal of restrictive voter access legislation has been substantially more likely to occur where African-Americans are concentrated and both minorities and low-income individuals have begun turning out at the polls more frequently. Given that we are examining the years 2006-11, we can specifically attribute these developments to the significant increases in voter turnout among these groups in the 2008 election. States where these developments were felt more intensely were correspondingly more likely to propose legislation. While we can only infer motivation, these results strongly suggest that the proposal of these policies has been driven by electoral concerns differentially attuned to demobilizing African-American and lower-income Americans. Such patterns of association are strongly consistent with the expectations derived from the literature on voter suppression.

Passed Legislation: Pooled Poisson Analyses

In this second set of analyses we turn our attention to the actual passage of legislative changes that reduce voter access. As in our analysis of proposed legislation, a pooled Poisson approach is appropriate, but we again have a problem with the presence of endogenous variables. However, in this case it is not possible to use the GMM estimation technique for these analyses primarily because the new outcome of interest, passed legislation, occurs too infrequently. A fixed effects modeling approach is a commonly used technique to address this specific issue, the presence of endogenous factors, but this approach is not without some costs. Fixed effects approaches only utilize within-group, in our case within-state, variation over time. This significantly impacts both the cases involved in the analyses and the interpretation of the results. First, only cases that exhibit variation on the dependent variable and only variables that exhibit variation over time can

be included in such analyses. Consequently, only states that actually passed a piece of legislation during our 2006-2011 time period are included, resulting in a total of 150 state-year observations. Time-invariant variables, citizen ideology and voter fraud cases, are unavoidably dropped from all models. Second, it is important to stress that these analyses reveal only the *within* state developments associated with the increased likelihood of passage of legislation.[lxxxv]

[Insert Table 3 here]

Table 3 contains the results of 2 pooled-Poisson fixed effects models examining state level factors associated with the annual count of restrictive changes to voter access passed in each state. Beginning with the impact of the balance of partisan power within state governments, the proportion of the legislature Republican, the presence of a Republican Governor, and the degree of competitiveness between the parties within state legislatures are all significantly associated with the passage of restrictive changes. In the context of a fixed-effects framework, these results indicate that *within* states over time a larger proportion of Republicans in the legislature and the presence of a Republican Governor are associated with a higher annual count of passed legislation. These effects are most likely driven by the substantial increase in restrictive changes passed following the Republican "wave" election of 2010 where the GOP picked up 11 governorships and gained control of 57 state legislative chambers (up from 36 in 2009). Of the 41 adopted voter restrictions considered here, 34 restrictive changes (83%) passed in Republican controlled state legislatures. Further, of the bills requiring either photo ID or proof of citizenship (the policies that are the most unambiguously expected to disproportionately burden likely Democratic voters), *all* were passed in legislatures under Republican control (see Table 1). Given that the reductions in voter participation and access potentially resulting from these policies would overwhelmingly benefit Republicans, we are not surprised to see such a strong influence of party control on passage. The effect of the simplified Ranney index is negative indicating that states where the partisan balance of power has become more evenly divided are less likely to pass restrictive legislation. This likely reflects the reality that passing controversial legislation with obvious partisan

consequences is more difficult to accomplish in the context of more closely divided legislatures.

Our second measure of electoral competition captures a state's degree of competitiveness in national political contests: the difference in the party vote share in the previous presidential election. This variable is insignificant in Model 1. However in Model 2 it becomes significant upon the inclusion of an interaction effect testing whether the effect of a state's competitiveness on the passage of restrictive legislation depends upon the degree of party control exercised by state Republicans. This significant interaction effect indicates that increases in competitiveness within presidential contests translates into more restrictive changes in states with larger Republican majorities and fewer restrictive laws in states with larger Democratic majorities. Considerations of national electoral outcomes, especially the presidency, appear central to passing restrictive changes – especially in states where both the motivation and means converge.

After accounting for the variation in passage explained by party control and electoral competition, only three additional factors emerge as significant in Model 2. Consistent with our findings for proposed legislation, states where minority turnout has increased since the previous presidential election were more likely to pass restrictive legislation. Second, the variable capturing the proportion of the state population over 65 years old is negative and significant, indicating that states where the elderly population is growing are less likely to pass restrictive changes. Last, these results suggest that states where election accessibility has increased through the introduction of early or no-excuse absentee voting were more likely to pass restrictive legislation. We do not want to overemphasize this last finding though as the number of states who experienced such increased accessibility during this time period is extremely small.

Passed Legislation: 2011 Poisson Analyses

As stated above, fixed effects approaches only make use of within state-variation, but what of the effects of stable state characteristics that do not vary much within states over time but do vary substantially *between states*? For example, a demographic factor like the percentage of a state's population that is African-American will not fluctuate dramatically year-to-year, and we are not looking for an effect of such changes. Rather,

we are primarily interested in whether states with larger numbers of African-American residents are more likely to pass such legislation. In order to explore the impact of such cross-state differences, our last set of models present the results of multiple (traditional) Poisson regressions examining the determinants of the total count of restrictive changes to voter access passed in 2011. In 2011 state legislatures passed 22 provisions restricting voter access. The highest national count in the previous 5 years was 8 restrictive changes passed in 2006. 2011 was a year of dramatically increased legislative activity in this issue area and one that we suspect was influenced by a unique confluence of conditions and pressures that are unique to the post-2008 (and pre-2012) election years.

[Table 4 goes about here]

Table 4 presents the results of 4 Poisson analyses examining state-level determinants of the count of restrictive changes to voter access passed in 2011. Model 1 presents the results of a reduced model containing only our measures of partisan control. It indicates that states with Republican governors were more likely to pass such legislation, but the percent of the legislature Republican is insignificant and even bears a negative sign. This indicates that simply holding a majority of seats does not guarantee that the majority party can actually pass this controversial legislation. The presence of a Democratic Governor's veto will reduce the chance of a voter restriction bill becoming law even if passed by a Republican controlled state legislature. Additionally, in the context of divided government an opposition party, in this case usually the Democratic Party, may check the passage of legislation even if that party holds a strong majority of seats in one chamber. These combinations of conditions likely modify the direct effect of the percentage of Republican legislators on the count of restrictions passed. To examine this conjunctural effect more directly, we constructed a variable indicating the presence and strength of an *unencumbered Republican majority* in the state legislature.[lxxxvi] This variable simply takes the value of the percent of Republican legislators *unless* the Republicans are in the minority, the state has a divided government, or a Democratic governor. Under these conditions the variable takes a value of zero. Model 2-4 include this new variable and the variables which comprise it are dropped from the models. This

variable is both highly significant and is an extremely influential factor in these analyses indicating that the presence and size of an unencumbered Republican majority are positively associated with a larger volume of passed restrictive changes in 2011.

In these models we do not use the difference in party vote share variable in the previous presidential election, our measure of the competitiveness of the state in presidential elections used previously. Rather, we created a dummy variable for states that were identified in journalism published in 2010 as potential swing states in the 2012 election. For this list we drew primarily on outlets specializing in political reporting (e.g. *Roll Call* and *POLITICO*). Ten states were the most frequently discussed: Colorado, Florida, Iowa, New Hampshire, Nevada, North Carolina, Ohio, Pennsylvania, Virginia, and Wisconsin. Whether these states were actually considered highly competitive swing states in the actual run-up to the 2012 election is not as important as the perception among lawmakers in 2011 that their state could play a decisive role in the upcoming presidential election. This potential swing state variable is insignificant in Model 3, but becomes significant when interacted with the unencumbered Republican majority variable in Model 4. The negative direct effect of being a potential swing state indicates that it is more difficult on average to pass such restrictive changes in potential swing states than in non-swing states, presumably due to heightened political consequences making such changes more hard fought. The significant interaction effect captures the fact that potential swing states with an unencumbered majority Republican were more likely to pass restrictive changes in 2011. However, in the absence of an unencumbered Republican majority potential swing states were significantly less likely to enact such legislation. In other words, Democrats appear to have been extra vigilant in 2011 to prevent the passage of such changes in potential swing states.

The second most influential individual factor in these analyses is a state's racial composition as captured by either the percentage of the state population that is African American or minority turnout in the 2008 election. Both factors are associated with a larger number of passed restrictive changes and are highly significant in the absence of one another. Model 3 includes minority turnout in 2008 and omits the % African American variable; Model 4 provides the converse. *As was the case in both previous analyses of proposed and passed changes, controlling for a wide range of factors states*

with larger proportions of minority voters and African American residents were more likely to pass restrictive voter legislation in 2011.

In the remainder of this discussion we will focus on the results produced by Model 4, which takes into account both the highly influential impact of state racial composition and the swing state interaction effect discussed above. A number of additional factors emerge as significant. In contrast to our findings in the analyses of proposed changes, it appears that states with larger increases in minority turnout between 2004 and 2008 are less likely to pass restrictive changes in 2011. So states where minorities make up a larger proportion of those casting a ballot are more likely to pass restrictive legislation, but if that state experienced a surge in minority turnout in 2008 the likelihood of passage of such legislation is reduced. This could be indicative of a different political calculus confronting legislators in the context of states with larger shares of mobilized minority voters. Specifically, the possibility of public anger, attention, or backlash might undermine, or even reverse, any electoral benefits of actually passing restrictive legislation. Indeed, numerous journalistic reports have suggested the passage of restrictive voter legislation in a few states galvanized minorities and especially African American voters to participate in the 2012 election.[lxxxvii] Concerns about such a backlash effect strikes us a plausible explanation for the negative influence of increased minority turnout in 2008 on the passage of restrictive legislation in 2011.

Second, it also appears that states with larger levels of overall turnout in 2008 were *less* likely to pass restrictive legislation in 2011, but this is true only when controls for state racial composition or minority turnout are in place. Once the fact that states with more African-American voters and residents are more likely to pass restrictive legislation is accounted for, this variable captures the corresponding reality that higher levels of *white* turnout are associated with a reduced likelihood of the passage of such legislation. This simply underlines the centrality of racial considerations to the passage of restrictive voter legislation. Third, we find that states with larger proportions of elderly residents are less likely to enact restrictive changes. We interpret this as potentially reflective of a strategic, partisan recognition that restrictive policies likely to suppress lower-income and minority voters may also impede participation by elderly, and Republican-leaning, voters as well. Fourth, our measures characterizing the previous state of election accessibility indicate

that states that have already passed a photo identification or proof of citizenship law passed a smaller number of changes in 2011. On the other hand, states with highly accessible elections, as indicated by the presence of both no-excuse absentee and early voting, were more likely to pass restrictive changes in 2011. All of these findings are consistent with a voter suppression narrative.

Lastly, the number of reported cases of voter fraud is significantly associated with higher rates of passage of legislation in 2011. We are skeptical that this variable represents any true measure of actual voter fraud and find it more reasonable to consider it an indicator of selective, and in some cases explicitly partisan, efforts to raise concerns about voter fraud. That said, some may read this as evidence that restrictive legislation has passed, in part, in response to actual fraud. While it is not possible to adjudicate between these two interpretations here, it is important to stress that in the big picture the impact of this factor is minor compared to the influences of the partisan, electoral, and racial factors identified in these analyses. Figure 4 attempts to provide exactly this, a sense of the respective impacts of the central factors identified as significant in these analyses. It displays the change in the predicted count of restrictive provisions passed in 2011 given a one standard deviation increase in each factor while holding all other variables at their mean values. For example, a hypothetical state with a proportion of African American residents one standard deviation above the mean and average values on all other variables would be expected to pass over 2.5 more restrictive provisions in 2011 than a state with average values on all variables (including % African American). As this figure makes clear, partisan control and state racial composition are overwhelmingly the two most influential factors associated with the passage of restrictive legislation in this year.

[Figure 4 goes about here]

In sum, these findings suggest that over the 2006-2011 period states that increased their share of Republican legislators, elected a Republican Governor, or became more competitive in the electoral college *in the presence of* a Republican majority in the state house were more likely to pass restrictive voter legislation. States experiencing increasing minority turnout were also more likely to pass restrictive legislation. Focusing on legislation passed in 2011, we find that more restrictive changes passed in states with

unencumbered Republican majorities, larger proportions of minority voters or African American residents, more reported cases of voter fraud, and more accessible election systems.

Voter Restrictions as Strategic Voter Suppression

Zooming out, a straightforward picture emerges. Our analyses identify a very substantial and significant association between the racial composition of a state's residents or active electorate and both the proposal and passage of voter restriction legislation. This association is robust across multiple modeling approaches and controlling for a wide variety of relevant factors. Further, these findings demonstrate that the emergence and passage of restrictive voter access legislation is unambiguously a highly partisan affair, influenced by the intensity of electoral competition. The fact that in the context of heightened competition Republican control increases, while Democratic control reduces, the rate of restrictions passed underlines the highly strategic nature of these efforts. It also appears that demobilization efforts are not a blunt practice. Passing restrictive voter legislation (in noteworthy contrast to proposal) is shaped by an apparent sensitivity to the *net* impact of restrictive policies. That is, the electoral benefits of reforms with disproportionate suppression effects appear to be weighed against the risks of galvanizing turnout among groups targeted for demobilization or accidentally suppressing supporters. In combination, these findings are strongly consistent with a scenario in which minority voter suppression is a central driver of recent legislative developments restricting voter access.[lxxxviii] Indeed, we find that the best available measure of actual voter fraud is not associated with the proposal of legislation and is only a minor contributing factor to the passage of restrictive changes in 2011. This is not a particularly surprising finding as serious empirical attempts to quantify the extent of voter fraud have consistently found such fraud to be exceedingly rare in modern U.S. elections.[lxxxix] These findings are relevant to current partisan and legal debates regarding voter restrictions, our understanding of the conditions that incentivize suppression efforts, and broader developments across multiple policy arenas that have reduced electoral access among the socially marginalized.

The 2012 Election and Beyond

A typical cable news night surrounding election 2012 featured barely civil exchanges between Democratic operatives decrying how restrictive legislation aims to keep their constituents from the polls and Republican pundits scoffing at the allegation, making their own case that such legislation protects the legitimacy of the electoral process by combating fraud. Our findings confirm that *Democrats are justified in their concern that restrictive voter legislation takes aim along racial lines with strategic partisan intent.* But if that is the case, how do we interpret the President Obama's decisive victory in 2012? Some may read this as clear evidence that either reforms have not suppressed voters or that voter suppression efforts did not work. This narrow focus on the outcome in the presidential race both obscures the impacts of these policies and misreads the extent to which the 2012 election represented a true test of the effects of these laws.

Most importantly, many of the most onerous restrictive changes were not in effect for the 2012 election.[xc] While we have focused above on the proposal and passage of restrictive legislation, these developments have provoked a wide-ranging pushback in defense of voter access. In 11 states laws were blocked, weakened, or postponed by courts or the Department of Justice and in two states, Maine and Ohio, restrictive laws were repealed by citizens.[xci] Further, the effects of some of these laws can be subtle, difficult to discern, and most influential at the margins. For example, the results of a wide range of studies indicate that most registered voters do possess the forms of identification required by voter ID laws.[xcii] Consequently, such laws may do little to suppress routine voters, but may serve to reduce participation among the eligible unregistered population who are much more likely to lack basic forms of required identification. It has been suggested that "[t]he real value of restrictive voter ID may be in what we might call 'surge protection' against the kind of mobilization of new, first-time voters who very likely handed Obama his election [in 2008]."[xciii] Such effects may be consequential, but are difficult to measure empirically.

That said, the impacts of other restrictive changes have been much less subtle. Most infamously in Florida, one study estimates that roughly 200,000 voters were discouraged from voting in the 2012 election due to long lines[xciv] and another study found

that racial and ethnic minorities as well as Democrats were more likely to experience significantly longer waits.[xcv] These long lines were, in part, a direct result of a reduction in the number of early voting days passed by the Florida legislature in 2011. The estimates from these studies in Florida alone underline the sobering reality of the potential impact of these laws in the context of a tight election. Since the 2012 election, thus far restrictive laws have been passed or proposed by Republicans in Arkansas, Missouri, Montana, and Virginia. Republicans appear undeterred in their pursuit of these restrictive policies and this most recent presidential defeat may only serve to galvanize suppression efforts.

In addition, the Supreme Court recently decided to consider a constitutional challenge to Section 5 of the Voting Rights Act. Section 5 requires that states and localities determined to have a history of undermining the franchise get preclearance from the Department of Justice or the U.S. District Court in D.C. before enacting electoral changes to ensure these alterations do not have an adverse effect on racial or linguistic minorities. This is what allowed the Department of Justice to block or weaken restrictive access legislation in states like Florida, Texas, and South Carolina in the run-up to the 2012 election. Currently, in jurisdictions covered by Section 5 the burden of proof lies on state or local governments to demonstrate that electoral changes do not have a discriminatory or retrogressive impact on minorities *before* legislation goes into effect. If overturned, challenges may still be brought but these suits will be a response to new laws after they have been adopted and the burden of proof will lie with those bringing the challenge. Further, final rulings could come after relevant elections. A central argument made against the constitutionality of Section 5 is that it is outdated – covered states no longer intend to discriminate or do so. Our findings call such assertions into question and, more broadly, suggest that challenges to the implementation and passage of restrictive access legislation are merited on the grounds of racial bias.

Why the Recent Intensification of Suppression Efforts?

Overall, we find strong empirical support for the position that recent legislative efforts to restrict voter access are usefully conceptualized as yet another wave of election reforms, in a long history for such reforms, pursued in order to demobilize and suppress

particular categories of voters for partisan gain. But what is it about the current political moment that has lead to the recent increase in the proposal and passage of legislation? A widely acknowledged broad contextual factor is certainly the competitiveness of presidential elections and the tight balance of congressional power in recent decades. Tighter election margins incentivize not just voter suppression efforts, but a wide range of tactics, including redistricting and legal challenges intended to shape election outcomes.[xcvi] In the context of somewhat long-standing pressures to demobilize Democratic opponents, why the efforts to reduce electoral access in the mid-to-late 2000s? The marriage of our findings and the voter suppression literature suggest Republicans may have done so for a number of reasons: changing demographics; recent Republican electoral losses; an unforgiving internal shift within the party to the ideological right; and the party faithful's response to vote fraud mythology.

Immediately following the 2012 election a specific narrative emerged highlighting the manner in which the changing demographic composition of the United States and the heavy skew of minority groups towards the Democrats both provided an advantage for President Obama and potentially spelled trouble for the future prospects of the GOP. Our findings regarding the influence of race and minority turnout suggest that many Republicans were not unaware of these realities in the years preceding the 2012 election. This is understandable as the 2008 election was a particularly instructive experience in this specific regard. The historic magnitude of Republican losses in the 2008 election are hard to overstate.[xcvii] Minority turnout and Democratic vote margins among minority voters increased substantially in 2008 and this boost is widely viewed as critical to Obama's election.[xcviii] Republican upsets at the presidential level in the South, (Florida, North Carolina and Virginia) were particularly painful and alarming to many Republicans. "These three southern victories can be ascribed to two factors: unified bloc voting by black voters combined with some crossover support by a minority of whites… …the Obama-Biden ticket received almost unanimous support from black voters."[xcix]

Given these realities, it has been argued that the accelerated proposal and passage of restrictive election reforms represent a backlash against both the broader demographic changes widely viewed as troublesome for Republicans and strong minority turnout and support for the first non-white major party presidential nominee. Our findings are entirely

consistent with such a backlash narrative or even that of a strategic elite-driven "frontlash" in response to political setbacks as conceptualized by Velsa Weaver.[c] Weaver describes a "frontlash" as:

> "the process by which losers in a conflict become the architects of a new program, manipulating the issue space and altering the dimension of conflict in an effort to regain their command of the agenda. Frontlash hinges on the presence of winners and losers of a recent political conflict…. …The dissatisfied parties seek openings to mobilize a new issue, alter the dimensions of the conflict, or, in the terminology of social movement theorists, "shift the locus of attack."[ci]

In contrast to a traditional conception of a political backlash, exemplified perhaps in a process where resentment among white voters with racial progress shapes electoral outcomes, "[f]rontlash is preemptive, innovative, proactive, and, above all, strategic."[cii] Further, while the political momentum in backlash narratives are often a bottom-up account focused on the behavior and preferences of dissatisfied voters from the bottom up, a frontlash is conceptualized as an elite countermovement in response to some type of political defeat. We consider this a useful conceptual frame for understanding the rise of restrictive voter legislation, given the elite-driven nature of increased attention and policy responses to the issue of voter fraud, and both the timing and strategic pattern of these legislative efforts.

Also potentially at play in the recent GOP pursuit of restrictive legislation are the unintended ramifications of the declining proportion and influence of moderates within the party. As we have detailed, a voter suppression perspective argues that parties have an incentive to suppress their opponents, as opposed to mobilizing new voters, when these new voters bring demands or positions that conflict with their existing base of supporters. In recent decades the Republican Party has both become more conservative on average and more ideologically homogenous.[ciii] As Republicans in recent election cycles have found themselves needing to increasingly move to the political right to win their primaries, they have increasingly alienated particular groups of voters such as Latinos and women. We suspect that when a party's platform or rhetoric reduces the possibility of building electoral coalitions and bringing in new voters, while representing the interests of a demographically shrinking base, this alone increases the incentive to engage in voter suppression. In a two party system, when mobilizing supporters is insufficient,

demobilizing opponents may provide the only route to victory. The increasing effort put into voter suppression by the GOP in recent years may then be a reflection, in part, of these internal ideological and practical constraints on mobilizing new voters.

Finally, the steady amplification of voter fraud mythology since the 2008 election has undoubtedly contributed to the increased rate of restrictive legislative activity. The historical deployment of fraud charges reminds that doing so is often a valuable political tool for both explaining electoral losses and mobilizing supporters. Minnite goes as far as to argue that the voter fraud myth has come to represent a "new Southern strategy" in which the Republican base is "energized by the tarring of Democrats as cheaters and the association of Democrats with a racialized crime-prone underclass."[civ] For many conservatives, fraud is now genuinely believed to play an influential role in American political life. We find this unfortunate as such outsized concern will undoubtedly serve to both justify and prompt continuing pressure for restrictive reforms while obscuring attention to the very real problems that riddle our electoral institutions and practices.

Cumulative Voter Exclusion: Felon Disenfranchisement, Modern Poverty Governance, & Restrictive Access Legislation

Our findings are deeply troubling in their own right. This is compounded by the fact that we view this legislation as yet an additional layer of exclusionary policy practices which work to reduce political participation and electoral access by the socially marginalized. The manner in which these restrictions have unfolded bear a number of similarities with modern developments in other policy arenas, especially criminal justice policy and poverty governance.[cv] First, they are race, gender and class neutral on paper, but have disparate political impacts in practice. Second, much of this exclusionary policy action has occurred at the state-level where policymakers are less encumbered by federal oversight. Third, the resulting variation in the accessibility to rights and benefits across states is strongly shaped by considerations of race and social control. The net effect of these policy regimes is to reduce, to varying degrees, full political incorporation among the socially marginalized.

We have described recent legislative efforts to reduce electoral access, efforts that have been pursued more aggressively in states with more minority voters. These

developments rest on top of and interact with institutions and policies shaped by previous struggles over who deserves access to the full benefits and rights of citizenship. Massive increases in incarceration since the 1970s have combined with state-level variation in felon disenfranchisement laws so that 1 in 13 African American men were ineligible to vote in 2010 – compared to 1 in 40 of all Americans.[cvi] Differences in state disenfranchisement laws produce a situation where disenfranchisement rates are the highest in 7 Southern states and most potent in Florida, Kentucky, and Virginia where 1 in 5 African Americans legally cannot vote.[cvii] Felon disenfranchisement laws are an enduring legacy of previous suppression efforts shaped directly by considerations of racial impacts and social control. The increased punitiveness of the American criminal justice system has dramatically increased the proportion of Americans currently disenfranchised by this legacy, with African-Americans, the economically insecure, and minorities disproportionately affected. This is the most direct of exclusionary policies regarding access to the vote: *legally limiting* who is eligible to vote along racial and class lines.

Electoral participation is also impacted by access to basic economic security and support.[cviii] Since the mid-1990s Republicans have successfully led the charge, often with Democratic complicacy, to dramatically decrease the receipt of means-tested social welfare support while subjecting those who continue to receive support to harsh, supervisory, and paternalistic policies.[cix] The centrality of states in crafting their poverty policies under relatively weak federal guidelines has allowed for racial considerations and social control to continue to define this new poverty governance.[cx] African-Americans are more likely to live in states and localities that provide less generous benefits and are more likely to be punitively sanctioned than their white counterparts in the same state.[cxi] These disempowering policy experiences deplete political efficacy and participation beyond the already lowered participatory expectations stemming from low socio-economic status.[cxii] For our purposes, the negative impact on voting is most important. Felony disenfranchisement means one cannot vote. For the socially marginalized who can vote, existing poverty governance may undermine the political efficacy to do so for many through direct policy learning in punitive programs and by often failing to alleviate economic insecurity. As Joe Soss, Richard Fording, and Sanford

Schram argue, current poverty governance "deepens the political marginality of the poor, channeling them into positions of civic inferiority and isolation."[cxiii]

Viewed in the context of these intersecting policy developments, recent restrictive voter access policies introduce still additional hurdles to those that already exist for minorities, African-Americans, and lower-income citizens. In their current practice, felony disenfranchisement, means-tested social welfare programs, and restrictive access legislation make having the franchise, a welcoming path to accessing it, and the desire to use it less likely for the poor and minorities in the United States. From this vantage, recent passage of restrictive voter policies is an important prong in a broader suite of policies expanding a form of conditional and exclusionary American citizenship.[cxiv] In silent concert these policies work to undermine democratic voice for the most vulnerable.

The news then is not good for the inclusiveness of American democracy, but the trend we have examined does not represent a foregone conclusion. The recent wave of restrictive access legislation is rooted in long-standing racial and classist motivations revived for modern deployment. While we consider our findings consistent with this historical perspective on these developments, we also recognize the discursive and political power of the voter fraud narrative and the effectiveness of those who have vigorously purveyed this narrative. Simultaneously, the multifaceted political and legal *pushback* that has emerged to counter recent efforts to reduce voter access underlines that it is not only the advocates of restriction that have been exercising their political agency, but also the supporters of inclusive voting rights.[cxv] As a result, the issue is currently a matter of serious contestation. Supporters of voting rights can also take heart from the fact that the Democratic party, as an enduring political institution (as opposed to a social movement), has a strong and consistent electoral incentive to fight and attempt to reverse recently enacted restrictive policies. On the other hand, given the internal dynamics within the GOP and the current political landscape facing this party, we expect the incentives to engage in suppression and other electoral manipulations to remain heightened and to pose a continuing and significant threat to full electoral participation in the years to come[cxvi]. The future of voting rights in the US will be determined by the ongoing political contest between the Republican and Democratic parties. And at the

same time, this contest itself will be influenced by the continuing political and legal struggles over access to the ballot.

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[i] Keyssar 2000, 43.
[ii] Wang 2012; Keyssar 2009.
[iii] Wang 2012; Valelly 2004.
[iv] These specific types of policies have been considered and adopted at the state level with the most frequency in recent years. This assessment is based upon various reports that review state legislative activity in this policy area: National Conference of State Legislatures' Database of Election Reform Legislation and the Brennan Center for Justice's *Voting Law Changes in 2012* by Weiser & Norden 2011.
[v] Stewart 2011; Cain, Donovan, and Tolbert 2008; Fortier 2006; Gronke, Galanes-Rosenbaum, and Miller 2008; also see Burden et al. 2009.
[vi] Peters 1999.
[vii] Karch 2007; Mooney 2011; Stream 1999; Brooks 2007.
[viii] Berman 2011; Cooper 2011; Davenport 2011.
[ix] Smith 1999; King et al. 2009; Tuck 2009
[x] Soss, Fording, and Schram 2011.
[xi] See Stephan and Linz 2011 for fruitful discussion of the need for a comparative lens in examining American political development.
[xii] Schedler 2002, 2006; Levitsky and Way 2010.
[xiii] King, Lieberman, Ritter, and Whitehead 2009; see Stephan and Linz 2011.
[xiv] Smith 1999.
[xv] Jacobs and King 2009.
[xvi] Mahanta 2011; Jealous 2011; American Association of Retired People 2012.
[xvii] Berman 2011, 43.
[xviii] Maddow 2011a, 2011b, 2011c, 2011d; Sharpton 2011a, 2011b, 2012; Martin 2012; AARP 2012; Dilday 2011; Greenwald 2011.
[xix] Seitz-Wald 2012.

[xx] http://www.judiciary.senate.gov/hearings/hearing.cfm?id=2072649339b2bb3b19d320ce62f6c1b8 (download date March 24, 2012)
[xxi] Burke 2012; also http://www.c-spanvideo.org/appearance/600750999 (download date March 24, 2012).
[xxii] Isreal 2012; Yost 2012.
[xxiii] Fund and von Spakovsky 2012; Fund 2008: 7, 12; Hawkins 2012; Bloom 2012; Brown 2012.
[xxiv] Fund and von Spakovsky 2012.
[xxv] Fund and von Spakovsky 2012, 9.
[xxvi] Sabato and Simpson 1996 cited in Fund 2008, 10.
[xxvii] Meyers and Walter 2011.
[xxviii] See Kellogg 2012 for more complete review with emphasis on Article 5. http://www.dcbar.org/for_lawyers/resources/publications/washington_lawyer/september_2012/vote.cfm (download date May 25, 2013)
[xxix] e.g. Piven & Cloward 2000; Piven, Minnite, Groarke 2009; Wang 2012.
[xxx] Wang 2012.
[xxxi] Piven, Minnite, Groarke 2009 and Minnite 2010.
[xxxii] Minnite 2010, 88-89.
[xxxiii] Piven, Minnite, Groarke 2009, 11, 21, 164; Frymer 1999, 6; Keyssar 2011.
[xxxiv] Piven, Minnite and Groarke 2009, 16.
[xxxv] Shefter 1984; Piven and Cloward 1988; Keyssar 2011, 2012; Overton 2007.
[xxxvi] Key 1949; Schattschneider 1942, 1960, 59, 95; Rosenstone and Hansen 1993.
[xxxvii] Keyssar 2012, 2009; Piven and Cloward 1988.
[xxxviii] Piven, Minnite, Groarke 2009; Cohen 2009.
[xxxix] Piven and Cloward 1988; Piven, Minnite, Groarke 2009.
[xl] Shefter 1984.
[xli] Wang 2012.
[xlii] Wang 2012.
[xliii] Wang 2012; Piven, Minnite, Groarke 2009; Hasen 2012.
[xliv] Piven et al 2009, 20, 11.
[xlv] This timeframe is advantageous as it captures a period during which the rate of introduction of this legislation increased. In addition, this period brackets the 2008 election allowing potential prospective or retrospective responses to this election to be captured.
[xlvi] Kingdon 2002.
[xlvii] Weimer and Vining 2004; Mayhew 1974.
[xlviii] Stone 2002; Edelman 1964, 1988; Glassner 1999.
[xlix] Jacobs 1992; True, Jones, and Baumgartner 2007.
[l] Fund 2008: 3; Hasen 2012.
[li] e.g. Weiser and Norden 2011.
[lii] Jenkins 2008; Battista 2011; Battista and Richman 2011; Wright and Schaffner 2002.
[liii] There are many versions of the Ranney index most of which include the party of the governor and are operationalized differently. We use the simplified version above, following Berkowitz & Clay 2011, in order to focus specifically on competitiveness within the state legislature.

[liv] A quick note on the Nebraskan legislature, which is officially nonpartisan and unicameral, and is usually dropped from such analyses. While Nebraska state senators do not have official party affiliations most are endorsed by, register with, and have unofficial affiliation with either the Nebraska Democratic or Republican parties. We use various editions of the *Nebraska Blue Book* to identify the party with which each legislator is affiliated. We use this data to construct the % Republican variable and an adjusted version of the Ranney Index that accommodates the unicameral nature of this legislature.
[lv] Teixeira 1987; Brady and McNulty 2011.
[lvi] Cain, Donovan, and Tolbert 2008; Verba, Schlozman and Brady 1995; Piven and Cloward 1988; Rosenstone and Wolfinger 1978; Verba and Nie 1972.
[lvii] Keyssar 2012.
[lviii] The Census Bureau's Current Population Survey is the best available survey that allows for state-level estimates of voting behavior overtime. Sample sizes for some states are too small to produce reliable individual estimates for African Americans, Hispanics, and other racial and ethnic groups respectively by state. Hence, we measure aggregate minority turnout as a percentage of the state's total electoral turnout. This captures the relative differences to whites and the notion of white electoral threat central to the logic behind minority voter suppression.
[lix] Avery and Peffley 2005.
[lx] Fenton 1979.
[lxi] Piven, Minnite, and Groarke 2009; Musgrove 2012.
[lxii] Gimpel 2010; Judis and Texiera 2002; Campbell 2008; Green, Palmquist, and Schickler 2002.
[lxiii] Shields 2010.
[lxiv] Fund and von Spakovsky 2012; Fund 2008.
[lxv] Dreier and Martin 2010.
[lxvi] Campbell 2006; Gumbel 2005. Dreier and Martin 2010.
[lxvii] Waldman and Levitt 2007; Minnite 2010.
[lxviii] American Center for Voting Rights 2005.
[lxix] Minnite 2010, 159-200.
[lxx] Underwood and Mead 2012.
[lxxi] We constructed this estimate of the percentage of ALEC-affiliated legislators using information provided by the Center for Media and Democracy's ALEC Exposed project. This project catalogs individual state legislators that have been members of ALEC, have been reported to be members, or have received awards from ALEC. Most commonly, membership is ascertained based on ALEC's own materials or from the biographies of individual legislators. As there is no publicly available comprehensive list of members, we cannot evaluate the reliability of this measure that we know is based on a partial list of members. Any evaluation of the impact of this measure should bear this caveat.
[lxxii] Berry, Ringquist, Fording, and Hanson 1998.
[lxxiii] Berry and Berry 1990; Mooney and Lee 1995; Mintrom 1997; Karch 2007; Boehmke and Winter 2004.
[lxxiv] Nice 1994.
[lxxv] In nearly all cases this count corresponds to the number of bills proposed or passed, but in a handful of instances a single bill contained multiple significant restrictions to

different aspects of the voting process. While our dependent variables provide a count of the number of proposed or passed restrictive changes, not the number of bills, in practice these two slightly different measures are very highly correlated.

[lxxvi] http://www.ncsl.org/legislatures-elections/elections/2001-2010-database-of-election-reform-legislation.aspx (Download date March 12, 2012)

[lxxvii] Weiser & Norden 2011.

[lxxviii] However, if such a bill were passed it would not be included among our passed bills unless it required a photo identification.

[lxxix] Although, it is worth noting that in both Florida and Iowa previous executive orders that made it easier for felons to restore their right to vote were reversed by Republican Governors, both of whom were elected in 2010.

[lxxx] For example, these approaches are appropriate for situations where the dependent variable takes the form of a count, which in our case ranges from 0 to 3 legislative changes passed and 0 to 22 legislative changes proposed in any year. While Poisson regression is used in situations where a count dependent variable is examined across, for example, a set of states in a single year, pooled Poisson approaches are appropriate when count outcomes are observed in the context of a cross-sectional time series, that is, across states, but also over time.

[lxxxi] Specifically, this variable is related to the unobserved panel level component of the model.

[lxxxii] Mundlak 1978; Wooldridge 2001.

[lxxxiii] In addition, the GMM approach does not assume strict exogeneity.

[lxxxiv] There are 49 states observed over this 6-year period; consequently all of these models are based on a set of 294 state-year observations. Hawaii was identified as an unduly influential outlier and dropped from all models. It was dropped for the same reason in the examination of legislation passed in 2011 that is forthcoming.

[lxxxv] In addition, within these models we use cluster robust standard errors in order to control for the effects of both overdispersion and the correlation that arises naturally from repeated observations on the same state over time. The use of cluster robust standard errors substantially increases the standard errors of the estimates, correspondingly reduces t-statistics, and thus markedly raises the threshold for achieving statistical significance. The use of such standard errors is appropriate for these analyses. We only mention this here to stress that the results below represent a set of *very conservative* tests of the predictors of passed legislation. While such an approach unavoidably reduces the number of factors that will achieve statistical significance, the tradeoff is that we can have strong confidence in significance of the few factors that meet this stringent test.

[lxxxvi] We initially attempted to model such a conditional effect using a series of interactions. High collinearity between the component variables and the interaction effects in the context of the small *N* in these analyses made this approach unwieldy.

[lxxxvii] Timberg & Parker 2012; Wirzbicki 2012.

[lxxxviii] We recognize that some may view these associations as reflective of a necessary respond to widespread voter fraud committed disproportionately by racial and ethnic minorities. While there is literally no evidence to support such claims, right-wing narratives about voter fraud are often highly racial in nature. For example, one prominent conspiracy theory attributes President Obama's electoral victory in 2008 to a massive

voter fraud campaign orchestrated by the Obama campaign, the Democratic Party, and ACORN. While such conspiratorial beliefs may motivate some legislators, we categorically reject such narratives as a plausible explanation for these legislative developments overall.

[lxxxix] Levitt 2007; Waldman & Levitt 2007; Minnite 2010.

[xc] Weiser and Kasdan 2012.

[xci] Weiser & Kasdan 2012.

[xcii] see Streb 2012 for a review.

[xciii] Streb 2012, 105.

[xciv] Powers & Damron 2013.

[xcv] Herron & Smith 2012; Herron & Smith forthcoming.

[xcvi] Piven & Cloward 2000; Wang 2012; Hasen 2012.

[xcvii] Bullock & Gaddie 2009.

[xcviii] Dougherty 2009; Bullock & Gaddie 2009; Frey 2012.

[xcix] Bullock & Gaddie 2009, 367.

[c] Weaver 2007.

[ci] Weaver 2007, 236.

[cii] Weaver 2007, 238.

[ciii] Hacker & Pierson 2011; McCarty et al. 2008.

[civ] Minnite 2012, 90.

[cv] Soss, Schram, and Fording 2011; Katzenstein et al. 2010; Beckett and Western 2001.

[cvi] Uggen, Shannon, and Manza 2012. See Katzenstein et al. 2010

[cvii] Uggen, Shannon, and Manza 2012.

[cviii] Bartels 2012.

[cix] Greenberg et al. 1996; Soss, Fording, Schram 2011.

[cx] Bentele and Nicoli 2012; Soss, Fording, Schram 2011; Soss, Schram, Vartanian, and O'Brien 2001; Noble 1997.

[cxi] Soss, Fording, Schram 2011.

[cxii] Soss 2000; Schneider and Ingram 1993; Mettler and Soss 2004; O'Brien 2009.

[cxiii] Soss, Fording, Schram 2011, 16. See Isaac 2012.

[cxiv] Katzenstein et al. 2010.

[cxv] Moreno and Riccardi 2013.

[cxvi] For a detailing of recent efforts see Hauser 2013.

Appendix A. Definitions and Data Sources

Variable	Definition	Source
Dependent Variables		
Proposed Voter Restriction Legislation	The number of restrictive changes to voter access in proposed legislation in each year.	National Conference of State Legislatures's Database of Election Reform Legislation 2006-2010 & The Brennan Center for Justice 2011
Passed Voter Restriction Legislation	The number of restrictive changes to voter access in passed legislation in each year.	Ibid.
Independent Variables		
Political Control & Competition		
% of State Legislature Republican	Average of % Republican in each chamber of the state legislature*.	Statistical Abstract of the U.S.*
Republican Governor	Dummy variable indicating presence of Republican Governor.	Statistical Abstract of the U.S.
Divided State Government	Dummy variable indicating a state has a divided government.	Statistical Abstract of the U.S.*
Difference in Party Vote Share in Previous Presidential Election	Difference in state vote share between the Republican and Democratic parties in the previous presidential election.	Statistical Abstract of the U.S.
State Party Competition	A simplified version of the Ranney index containing only partisan seat shares: 100 - (abs[(% Democrats in upper house) + (% Democrats in lower house - 100])*	Statistical Abstract of the U.S.*
Voter Behavior & Suppression		
Minority Turnout in Previous Presidential Election	[{(citizen vote total by state) - (white citizen vote total by state)} / citizen vote total by state] * 100	U.S. Census Bureau, Current Population Survey, Voting and Registration in the Election of November 2000, 2004, 2008
Change in Minority Turnout between Previous Presidential Elections	minority turnout 2004 - minority turnout 2000 minority turnout 2008 - minority turnout 2004	U.S. Census Bureau, Current Population Survey, Voting and Registration in the Election of November 2000, 2004, 2008
Class-biased Turnout in Previous Presidential Election	% of upper class (individuals with family income over 75k) who voted in respective previous Presidential election year / by the % of the lower class (individuals with family income under federal poverty line) who did so, multiplied by 100. Higher values indicate more upper-class bias (Avery and Peffley 2004: 53, 62).	United States Census Bureau's Current Population Survey, Voter Supplement File for 2000, 2004, 2008
Change in Class-biased Turnout b/w Previous Presidential Elections	Class-bias turnout (CBT)2004 - CBT2000 CBT2008 - CBT2004	United States Census Bureau's Current Population Survey, Voter Supplement File for 2000, 2004, 2008
Total State Turnout in Previous Presidential Election	VEP (vote for highest office rates) in 2000, 2004, and 2008	Michael P. McDonald. 2012. "Presidential Voter Turnout Rates, 1948-2008. United States Elections Project. October 2011.
Perceptions of Voter Fraud		
Reported Cases of Voter Fraud	Count of all allegations of voter fraud formally brought in the 2004 Election Cycle	Lorraine Minnite's (2010: 159-200) complete description of voter fraud in 2004; American Center for Voting Rights compiled the original allegations filed
% of ALEC-affiliated State Legislators	Percentage of state legislators who either identify or have been identified as members or affiliates of the American Legislative Exchange Council.	The Center for Media and Democracy's ALEC Exposed project
Liberal Citizen Ideology	Based on interest groups' ratings of Congresspersons and their vote shares. See Berry et al. (1998) for details.	Berry et al. (1998) & Richard Fording
Demographic		
% African-American	Number of African-Americans divided by total population	U.S. Census Bureau Population Estimates
% Non-citizens	Number of non-citizens divided by total population	U.S. Census Bureau Population Estimates
% Over 65	Number of state residents 65 years and older divided by total population	U.S. Census Bureau Population Estimates
Policy Diffusion	This variable is the total count of restrictive voter access legislation passed or proposed in contiguous states in the previous year.	
Previous Relevant Policy & Control Variables		
Per capita Revenue (2008$)	Total real state revenue divided by total population	U.S. Census Bureau
Already Passed a Photo ID or Proof of Citizenship Requirement	This variable takes a value of 1 if a state has already pass a photo identification or a proof of citizenship requirement, and takes a value of 2 if a state has passed both.	National Conference of State Legislatures
No-excuse and/or Early Voting currently avaliable	If a state offers early voting this variable takes a value of 1, if the states offers early voting and no-excuse absentee voting then this variable takes a value of 2.	National Conference of State Legislatures

*Except Nebraska

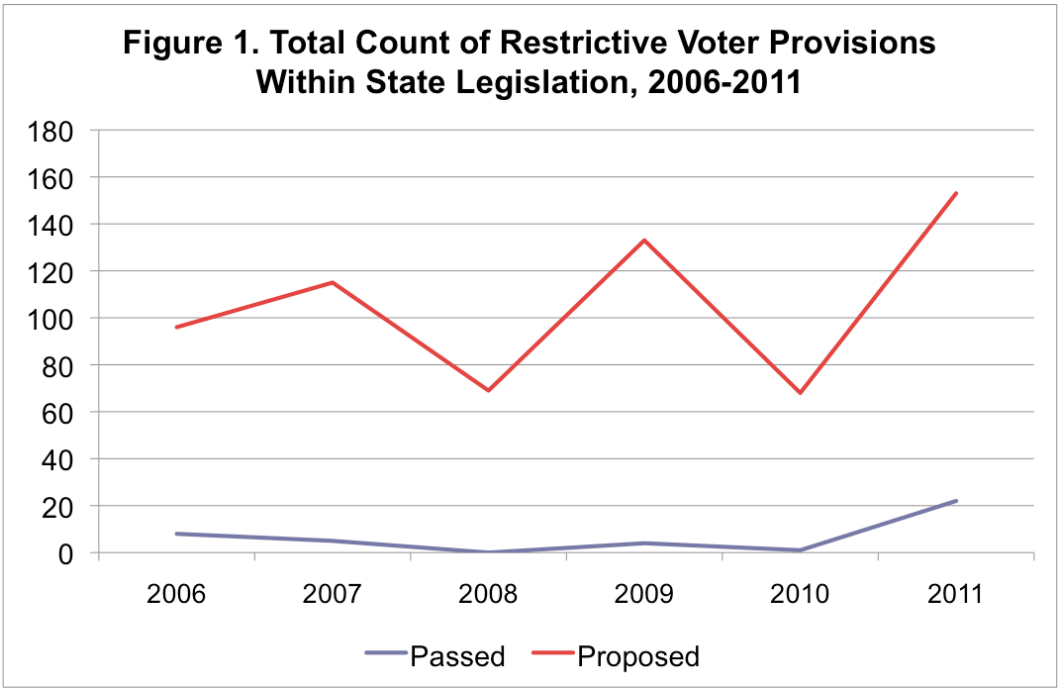
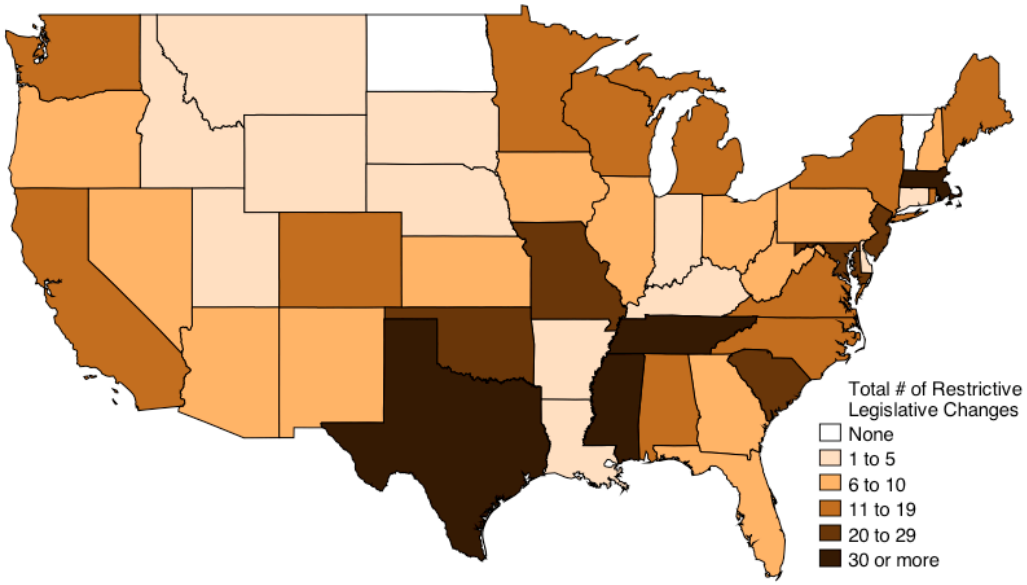
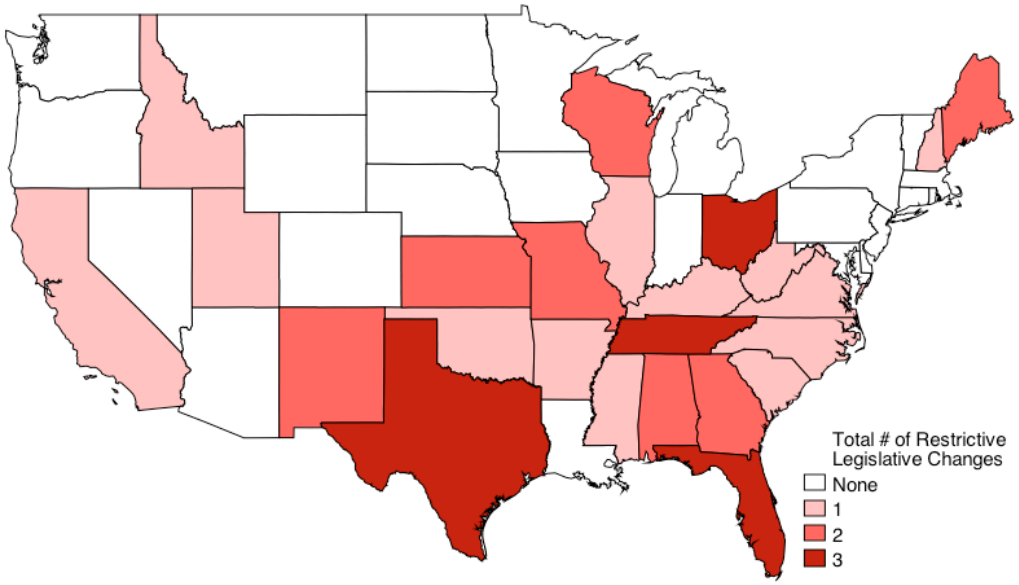


Figure 2. Total Count of Proposed Restrictive Voter Provisions: 2006-2011



2 pieces of legislation were proposed in Alaska and 1 in Hawaii

Figure 3. Total Count of Restrictive Voter Provisions Passed: 2006-2011



One bill was passed in Alaska; Hawaii did not pass any such legislation

Figure 4. Effect of a One Standard Deviation Increase on the Predicted Count of Restrictive Changes Passed in 2011

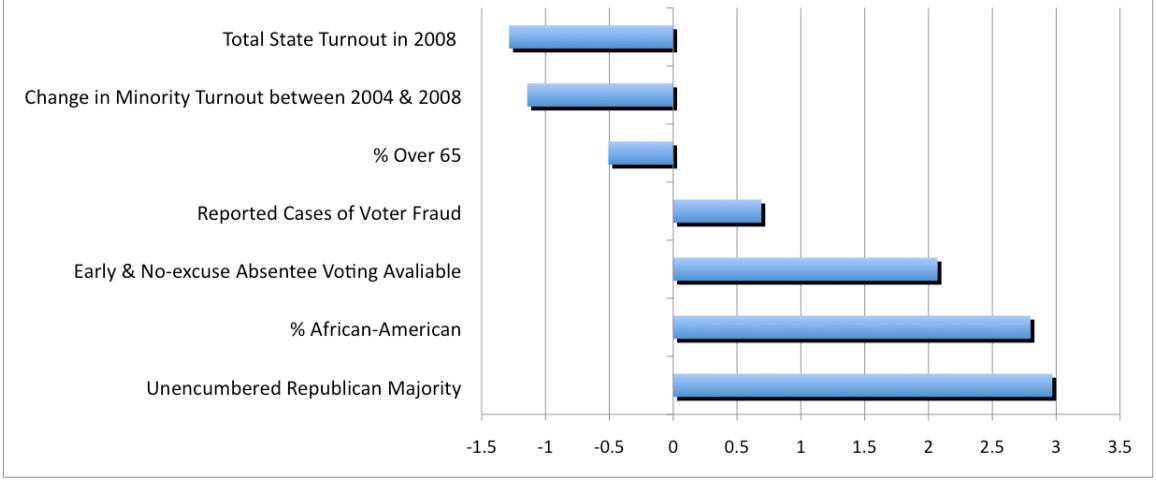


Table 1: States Passing Voter Restriction Laws, 2006-2011

Type of Law	2006	2007	2008	2009	2010	2011
Photo ID Required	Missouri	None	None	Oklahoma*	Idaho	Alabama, Kansas, Mississippi South Carolina, Tennessee, Texas, Wisconsin
Proof of Citizenship Required	None	None	None	Georgia	None	Alabama, Kansas, Tennessee
Registration Restrictions	California, Missouri, Ohio, Kentucky, New Hampshire	North Carolina Florida	None	None	None	Florida, Illinois, Maine, Ohio, Texas (2), Wisconsin
Absentee & Early Voting Restrictions	Alaska, Virginia	Maine, New Mexico (2)	None	Utah, Arkansas	None	Florida, Georgia, Ohio, Tennessee West Virginia
Felon Restrictions	None	None	None	None	None	None

Shading indicates states where the Democratic Party held a majority of seats in the state legislature in that year.

*Oklahoma voters may present a voter identification card (without a photo) in lieu of a photo id. This is the only exception and most voters present photo id in practice.

Table 2. GMM Analysis of Total Annual Proposed State Voter Restrictions: 2006-2011

	Model 1	Model 2	Model 3	Model 4
	All Proposed Legislation		ID & Proof of Citizenship	Registration, Early, & Absentee Restrictions
Partisan Control				
% of State Legislature Republican Instrument Variable	1.356 (1.125)	1.148 (1.048)	1.732 (1.955)	-0.138 (1.346)
Divided State Government	0.128	0.166	0.281	0.283
Electoral Competition	(0.194)	(0.202)	(0.304)	(0.271)
State Party Competition	-0.008 (0.011)	-0.011 (0.010)	-0.013 (0.017)	0.004 (0.010)
Difference in Party Vote Share in Previous Presidential Election	-0.009 (0.014)	-0.008 (0.013)	-0.010 (0.020)	**-0.028*** **(0.013)**
Voter Behavior & Voter Suppression				
Minority Turnout in Previous Presidential Election		**5.37*** ** **(1.12)**	**6.66*** ** **(1.45)**	1.41 (0.99)
Change in Minority Turnout between Previous Presidential Elections	**0.130*** ** **(0.032)**	**0.103*** ** **(0.029)**	0.073 (0.045)	**0.103** ** **(0.033)**
Class-biased Turnout in Previous Presidential Election	-0.005 (0.008)	-0.003 (0.007)	-0.000 (0.008)	**-0.012*** **(0.006)**
Change in Class-biased Turnout between Previous Presidential Elections	**0.011** ** **(0.004)**	**0.011** ** **(0.004)**	**0.011*** **(0.005)**	**0.014*** ** **(0.004)**
Total State Turnout in Previous Presidential Election	0.001 (0.020)	0.007 (0.021)	0.001 (0.022)	-0.014 (0.023)
Demographic				
% African American	**4.46*** ** **(1.08)**			
% Non-citizens	**0.082** ** **(0.028)**	**0.072*** **(0.029)**	**0.061^** **(0.043)**	**0.095** ** **(0.023)**
% Over 65	-0.039 (0.078)	-0.011 (0.076)	-0.059 (0.099)	-0.033 (0.080)
Incidence & Perceptions of Electoral Fraud				
Reported Cases of Voter Fraud	0.049 (0.037)	0.058 (0.041)	**0.079^** **(0.043)**	0.006 (0.056)
Policy Diffusion				
Total passed similar legislation in contiguous states (t-1)	0.099 (0.112)	0.119 (0.113)	-0.038 (0.218)	-0.028 (0.171)
Previous Relevant Policy & Control Variables				
Already Passed a Photo ID or Proof of Citizenship Requirement	**-1.237** ** **(0.371)**	**-1.142** ** **(0.351)**	**-2.364*** ** **(0.564)**	
No-excuse Absentee and/or Early voting currently avaliable	**-0.187^** **(0.106)**	**-0.231*** **(0.107)**		-0.205 (0.152)
Per Capita State Revenue	-0.034 (0.044)	-0.039 (0.044)	-0.069 (0.043)	-0.031 (0.043)
Constant	1.38 (2.97)	0.52 (2.99)	0.40 (4.72)	1.44 (2.75)
N	294	294	294	294

^p < .1 * *p* < .05 **p < .01 ***p < .001

Table 3. Pooled Fixed Effects Poisson Analysis of Total Annual Passed State Voter Restrictions: 2006-2011

	Model 1	Model 2
Partisan Control		
% of State Legislature Republican	**15.08**** **(5.34)**	**31.08***** **(6.13)**
Presense of Republican Governor	**1.94**** **(0.71)**	**2.58***** **(0.71)**
Divided State Government	-0.36 (2.09)	-0.069 (1.71)
Electoral Competition		
State Party Competition	**-0.061*** **(0.024)**	**-0.057*** **(0.028)**
Difference in Party Vote Share in Previous Presidential Election	-0.039 (0.067)	**0.563*** **(0.245)**
Difference in Party Vote Share **X** % of Legislature Republican		**-1.069*** **(0.419)**
Voter Behavior & Voter Suppression		
Minority Turnout in Previous Presidential Election	**92.68^** **(52.94)**	**143.7**** **(52.42)**
Change in Minority Turnout between Previous Presidential Elections	-0.215 (0.17)	-0.326 (0.267)
Class-biased Turnout in Previous Presidential Election	0.048 (0.049)	0.085 (0.058)
Change in Class-biased Turnout between Previous Presidential Elections	-0.013 (0.030)	-0.018 (0.030)
Total State Turnout in Previous Presidential Election	**-0.329^** **(0.187)**	**-0.324^** **(0.187)**
Demographic		
% African American	145.9 (281.9)	382.8 (279.1)
% Non-citizens	2.04 (1.11)	2.61 (1.83)
% Over 65	-1.59 (1.00)	**-2.48*** **(0.97)**
Perceptions of Electoral Fraud		
% of ALEC-affiliated State Legislators	4.14 (5.99)	-2.74 (6.20)
Policy Diffusion		
Total passed legislation in contiguous states (t-1)	-0.554 (0.342)	-0.662 (0.425)
Previous Relevant Policy & Control Variables		
Already Passed a Photo ID or Proof of Citizenship Requirement	-3.50 (3.97)	-2.96 (2.28)
No-excuse Absentee and/or Early voting currently avaliable	**17.67***** **(2.61)**	**16.38***** **(2.57)**
Per Capita State Revenue	17.67 (2.61)	-0.073 (0.225)
Log likelihood	-35.01	-31.51
N	150	150

^p < .1 * *p* < .05 **p* < .01 ***p* < .001

Table 4. Poisson Analysis of Count State Voter Restrictions Passed in 2011

	Model 1	Model 2	Model 3	Model 4
Partisan Control				
% of State Legislature Republican	-0.43 (1.98)			
Precense of Republican Governor	**1.98** (0.71)**			
Divided State Government	-1.18 (0.91)			
Unencumbered Republican Majority		**2.69*** (0.72)**	**7.29*** (1.72)**	**8.64*** (2.42)**
Electoral Competition				
State Party Competition			0.016 (0.024)	0.017 (0.024)
Potential Swing State in 2010			0.005 (0.704)	**-4.01** (1.33)**
Potential Swing State **X** Unencumbered Republican Majority				**4.54* (2.28)**
Voter Behavior & Voter Suppression				
Minority Turnout in 2008 Presidential Election			**24.43*** (3.24)**	
Change in Minority Turnout between Previous Presidential Elections			**-0.418* (0.184)**	**-0.564* (0.234)**
Class-biased Turnout in 2008 Presidential Election			-0.025 (0.054)	0.012 (0.041)
Change in Class-biased Turnout between Previous Presidential Elections			**0.041** (0.015)**	0.022 (0.015)
Total State Turnout in 2008 Presidential Election			**-0.308* (0.143)**	**-0.232* (0.106)**
Demographic				
% African American				**28.99*** (7.01)**
% Non-citizens			**-0.347* (0.143)**	-0.168 (0.106)
% Over 65			-0.198 (0.176)	**-0.306* (0.155)**
Incidence & Perceptions of Electoral Fraud				
Reported Cases of Voter Fraud			**0.334* (0.151)**	**0.329* (0.144)**
% of ALEC-affiliated State Legislators			0.205 (5.19)	-0.692 (4.69)
Liberal Citizen Ideology			**0.120^ (0.064)**	0.097 (0.065)
Previous Relevant Policy & Control Variables				
Already Passed a Photo ID or Proof of Citizenship Requirement	**-1.01^ (0.59)**	**-1.17^ (0.65)**	**-2.74*** (0.68)**	**-3.05*** (0.70)**
No-excuse Absentee and/or Early voting currently avaliable	-0.03 (0.23)	-0.05 (0.22)	**2.49*** (0.70)**	**2.82** (1.00)**
Per Capita State Revenue	**-0.41^ (0.23)**	**-0.38^ (0.20)**	**-0.83** (0.25)**	-0.23* (0.20)
Constant	0.89 (2.27)	0.79 (1.34)	14.31 (13.81)	1.36 (10.45)
Log likelihood	-35.48	-35.11	-22.21	-20.95
N	49	49	49	49

^p < .1 * *p* < .05 **p < .01 ***p < .001

BRENNAN CENTER FOR JUSTICE at New York University School of Law

Published on *Brennan Center for Justice* (https://www.brennancenter.org)

When Politicians Tell the Truth on Voting Restrictions

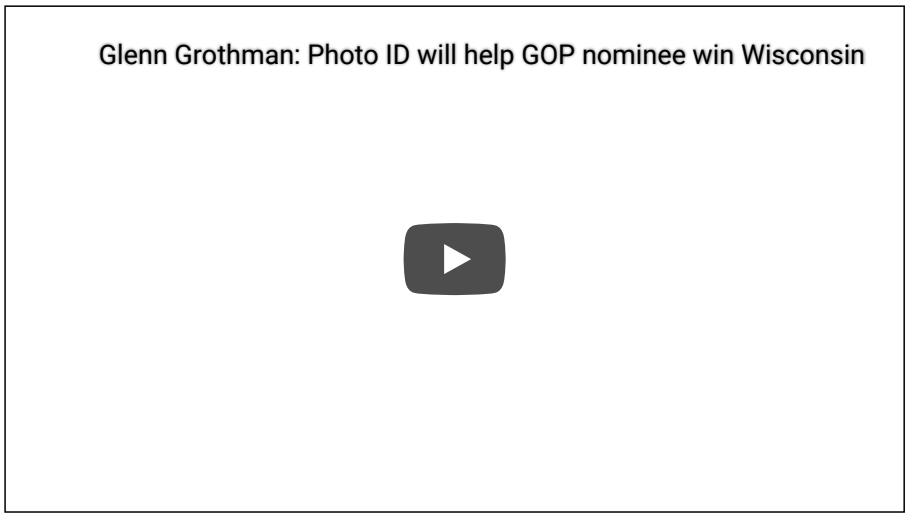
When lawmakers passed new voting requirements, particularly voter ID laws, they claimed it was to safeguard against voter fraud and protect election integrity. But occasionally we have seen politicians slip — and reveal a more strategic motive.

August 10, 2016

This year, voters in 14 states [2] will go to the polls with new voting restrictions in place for the first time in a presidential election. When lawmakers passed these new requirements, particularly voter ID laws, they claimed it was to safeguard against voter fraud and protect election integrity. But occasionally we have seen politicians slip — and reveal a more strategic motive for these laws.

Wisconsin Congressman Admits Voter ID Will Help GOP Win in 2016

Responding to an interview question about Republican's chance at the presidency in 2016, **U.S. Rep. Glenn Grothmann** (R-Wisc.) responded [3], "Hilary Clinton is about the weakest candidate the Democrats have ever out up, and now we have voter ID and I think voter ID is going to make a little bit of a difference as well." Grothman helped passed the voter ID law in 2011 when he served as assistant majority leader in the State Senate. In 2012, he claimed voter ID would help Mitt Romney win Wisconsin, saying [4], "[I]nsofar as there are inappropriate things, people who vote inappropriately are more likely to vote Democrat."



Legislative Leaders "Giddy" About Preventing Minorities and Students from Voting

At a May 2016 trial on Wisconsin's voting restrictions, former Republican staffer Todd Allbaugh testified [5] that some Wisconsin legislative leaders were "giddy" that the state's strict photo ID law could keep minority and young voters from the polls. When the law was being considered in 2011, he said, **State Sen. Mary Lazich (R)** argued in favor of the bill: "She got up out of her chair and hit her fist or her finger on the table and said, 'Hey, we've got to think about what this would mean for the neighborhoods around Milwaukee and the college campuses.'" State Sen. Dale Schultz, Allbaugh's boss, said they should consider how it would hurt people's ability to vote. **Glenn Grothman**, a state senate leader at the time, replied, "What I'm concerned about here is winning, and that's what really matters here."

Conservative Leader Argues Voter ID Skews Elections Toward Conservatives

Heritage Foundation president and former **U.S. Sen. Jim DeMint** (R-S.C.) said in an April 2016 radio interview [6], "[Voter ID laws are] something we're working on all over the country, because in the states where they do have voter ID laws you've seen, actually, elections begin to change towards more conservative candidates."

Georgia Politician Complains When Early Voting Location Opens in Black Neighborhood

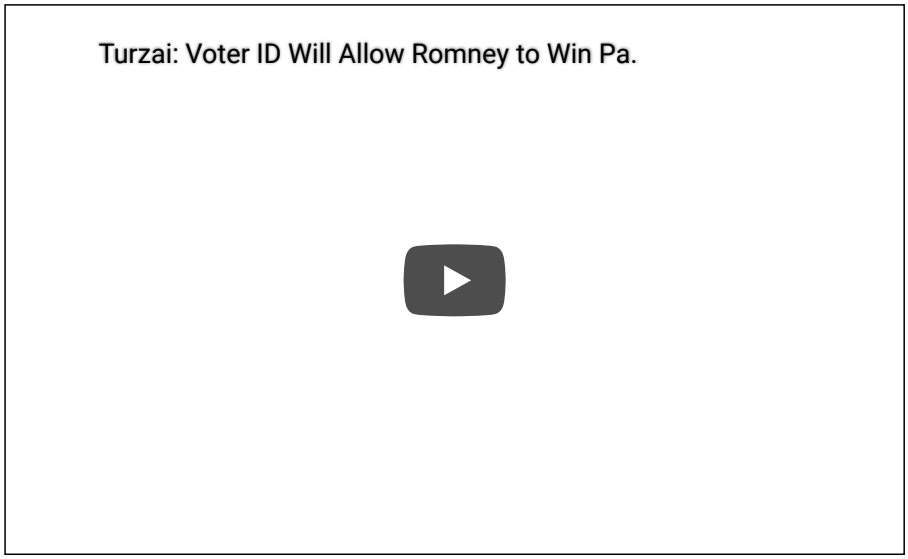
Georgia **State Sen. Fran Millar** (R) vented on social media [7] following the state's opening of a new early voting location in 2014. "This location is dominated by African American shoppers and near several large African American mega churches such as New Birth Missionary Baptist," he wrote [7] in a Facebook post.

Ohio Republican Says Early Voting Shouldn't Cater to African-Americans

In 2012, in response to a state-level battle over early voting hours, **Doug Preisse, chairman of Franklin County, Ohio's Republican Party**, told *The Columbus Dispatch* [8], "I guess I really actually feel we shouldn't contort the voting process to accommodate the urban — read African-American — voter turnout machine."

Pennsylvania House Leader Asserts Voter ID Will Secure Victory for Romney

State Rep. Mike Turzai, an architect of the state's then-existing strict voter ID law, said [9] at a 2012 Republican State Committee meeting that "voter ID [would] allow Governor Romney to win the state of Pennsylvania" — presumably by disenfranchising people who would vote against him.



Florida Lawmaker: Our Voting System is Too Easy, Because People in Africa Walk 200 Miles to Vote

In arguments over a 2011 Florida Senate bill that eliminated a provision allowing voters who moved to update their registration information on Election Day, **State Sen. Mike Bennett (R)** said the state made voting too easy and "people in Africa… literally walk two and three hundred miles so they can have the opportunity to do what we do [vote], and we want to make it more convenient?" PolitiFact [10] found that most people in Africa walk a maximum of just over a mile to vote.

Voting Rights & Elections [11], Restricting the Vote [12]

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[8] http://www.dispatch.com/content/stories/local/2012/08/19/fight-over-poll-hours-isnt-just-political.html
[9] https://www.youtube.com/watch?v=EuOT1bRYdK8
[10] http://www.politifact.com/florida/statements/2011/may/06/mike-bennett/think-we-have-it-tough-africa-people-walk-300-mile/
[11] https://www.brennancenter.org/issues/voting-rights-elections
[12] https://www.brennancenter.org/issues/restricting-vote

EXHIBIT C

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Voter Purge Rates Remain High, Analysis Finds

New data reveal that counties with a history of voter discrimination have continued purging people from the rolls at elevated rates.

Kevin Morris [1]
August 1, 2019

Updated: August 21, 2019

Using data released by the federal Election Assistance Commission (EAC) in June, a new Brennan Center analysis has found that between 2016 and 2018, counties with a history of voter discrimination have continued purging people from the rolls at much higher rates than other counties.

This phenomenon began after the Supreme Court's 2013 ruling in *Shelby County v. Holder*, a decision that severely weakened the protections of the Voting Rights Act of 1965. The Brennan Center first identified this troubling voter purge trend in a major report [3] released in July 2018.

Before the *Shelby County* decision, Section 5 of the Voting Rights Act required jurisdictions with a history of discrimination to submit proposed changes in voting procedures to the Department of Justice or a federal court for approval, a process known as "preclearance."

After analyzing the 2019 EAC data, we found:

- At least 17 million voters were purged nationwide between 2016 and 2018, similar to the number we saw between 2014 and 2016, but considerably higher than we saw between 2006 and 2008;
- The median purge rate over the 2016–2018 period in jurisdictions previously subject to preclearance was 40 percent higher than the purge rate in jurisdictions that were not covered by Section 5 of the Voting Rights Act;
- If purge rates in the counties that were covered by Section 5 were the same as the rates in non-Section 5 counties, as many as 1.1 million fewer individuals would have been removed from voter rolls between 2016 and 2018

To be clear, we report the total numbers of voters removed by a county for any reason. Election officials purge voters they believe are ineligible for a variety of reasons, including death and moving outside the jurisdiction. This analysis does not assess how many voters were improperly purged.

Methodology

Every two years, the EAC administers a survey to election officials around the country known as the Election Administration and Voting Survey (EAVS). The survey includes a host of questions about the state of voter registration in the jurisdiction and the experience of the most recent federal election. Jurisdictions are requested to report on information including how many new registrations occurred between the federal elections, the number of ballots cast on election day, and the number of polling sites that were open on election day. The jurisdictions are also asked to report how many voters were removed from the registration rolls — or "purged" — over the two-year period that preceded the most recent federal election. These data formed the backbone of our statistical analysis in last year's report, and we use them again here.

All election jurisdictions in the country are asked to respond to the EAVS survey every two years, but in 2018, some in Alabama and Texas did not report their purge numbers. Although this makes the data less than ideal, the EAC survey remains the best source for nationwide information on voter purges.

We calculate purge rates as the number of voters removed between 2016 and 2018 divided by the sum of total voters registered as of the 2018 election and the number removed. In other words,

$$Purge\ Rate = \frac{Number\ Purged}{Number\ Purged + Total\ Number\ Registered\ in\ 2018}$$

As with our report last year, we report the median purge rate when discussing aggregate purge rates. We use the median because of the nature of the data: using the *mean* purge rate would leave our analysis more susceptible to outliers.

Why purges can be problematic

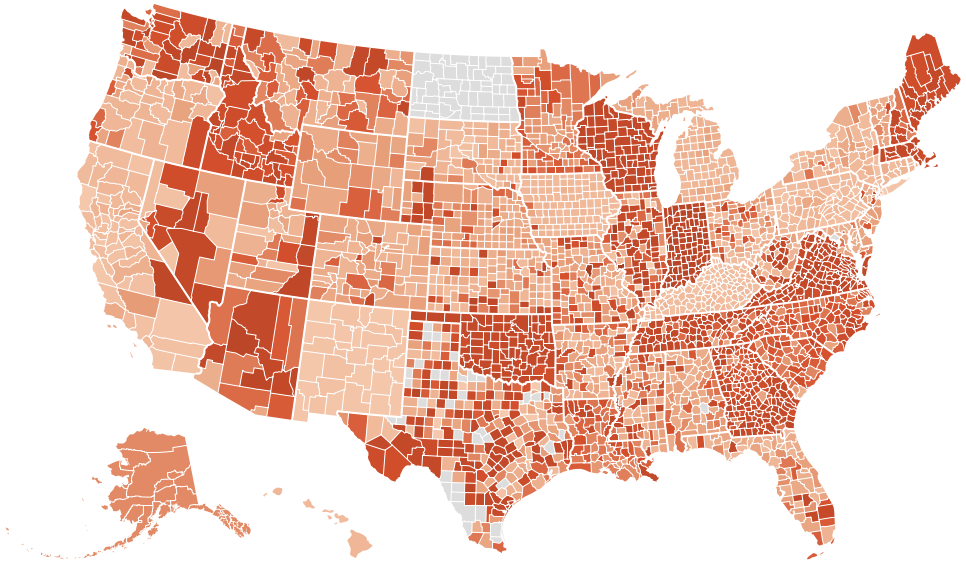
To be sure, there are many good reasons for a voter to be purged. For instance, if a voter moves from Georgia to New York, they are no longer eligible to cast a ballot in the Peach State. As such, they should be removed from Georgia's voter rolls. Similarly, voters who have passed away should be removed from the rolls. Reasonable voter list maintenance ensures voter rolls remain up to date.

Problems arise when states remove voters who are still eligible to vote. States rely on faulty data that purport to show that a voter has moved to another state. Oftentimes, these data get people mixed up. In big states like California and Texas, multiple individuals can have the same name and date of birth, making it hard to be sure that the right voter is being purged when perfect data are unavailable. Troublingly, minority voters are more likely to share names than white voters, potentially exposing them to a greater risk of being purged. Voters often do not realize they have been purged until they try to cast a ballot on Election Day — after it's already too late. If those voters live in a state without election day registration, they are often prevented from participating in that election.

Approximately 17 million purged between 2016 and 2018

The map below shows the purge rates for the counties that reported their information to the EAC. Some counties did not report their information. Because North Dakota does not have voter registration, it does not have a voter purge rate. Therefore, the state is grayed out below to mirror the non-reporting jurisdictions in Texas and Alabama.

Purge Rate, 2016-2018



Share of voters purged
0%
5%
10%
15%

Notes:
Data in the following states are aggregated here to the county-level but are reported at the sub-county level: CT, MA, ME, NH, RI, VT, and WI
North Dakota does not have voter registration.

Source: EAVS

In our report last year, we noted that 16 million voters were purged between the federal elections of 2014 and 2016, and that this was almost 4 million more names purged from the rolls than between 2006 and 2008.

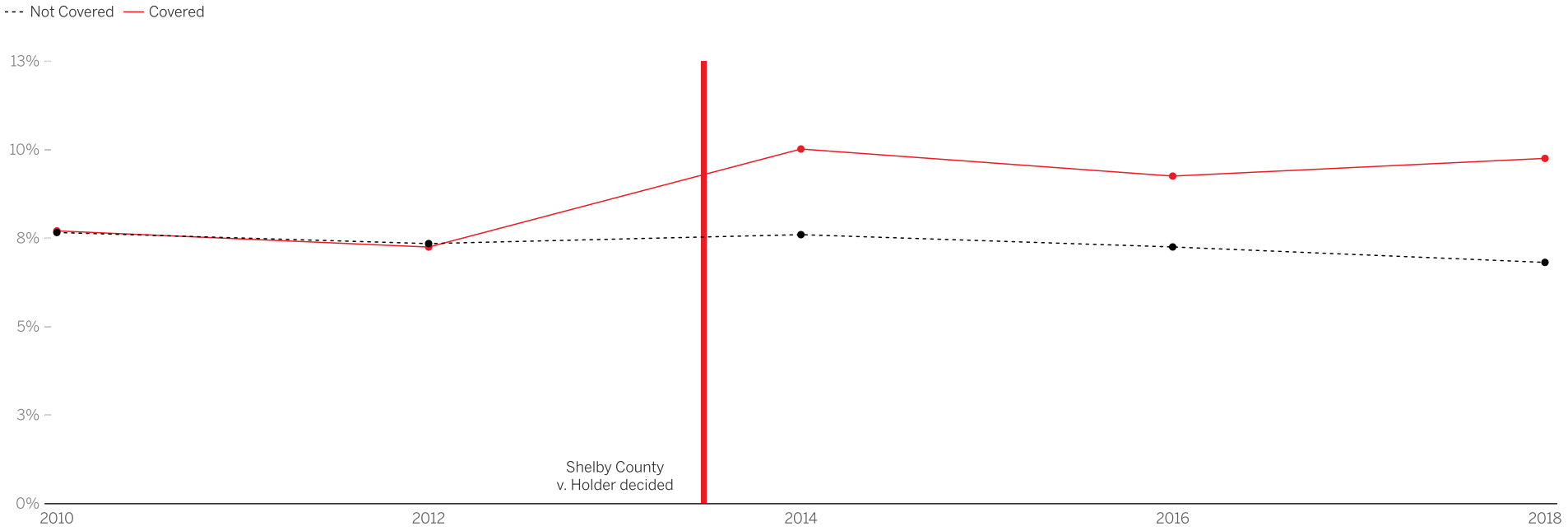
The latest data from the EAC shows that between the presidential election in 2016 and the 2018 midterms, more than 17 million voters were purged. While this number is higher than what we reported last year, it is likely due to the fact that more jurisdictions reported their data in 2018, pushing the reported total higher. As the figure below demonstrates, the median purge rate among counties that consistently report their data has remained largely the same.

Purge rates in Section 5 jurisdictions continue to be higher

Prior to *Shelby County,* jurisdictions covered under Section 5 of the Voting Rights Act collectively had purge rates right in line with the rest of the country. A major finding in last year's report was that jurisdictions that used to have federal oversight over their election practices began to purge more voters after they no longer had to pre-clear proposed election changes. The 2016–2018 EAC data shows a slightly wider gap in purge rates between the formerly covered jurisdictions and the rest of the country than existed between 2014 and 2016.

This is of particular interest because this continued — and even widening — gap debunks possible claims that certain states would experience a one-time jump when free of federal oversight, but then return to rates in line with the rest of the country. They haven't.

Purge Rates, 2008 - 2018



Note: Shows data for counties reporting in each period.
Source: EAVS

The median purge rate across the country in counties that were never covered by Section 5 of the Voting Rights Act decreased slightly between 2016 and 2018. In contrast, the purge rates ticked up in parts of the country that were covered at the time of the *Shelby County* decision. We found sustained higher purge rates in parts of the country that have a demonstrated history of discrimination in voting. If these formerly covered jurisdictions that reported their data each year had purged voters at rates consistent with the rest of the country — which they did before the *Shelby County* decision — they would have purged 1.1 million fewer voters between 2016 and 2018. In our report last year, we noted that *Shelby County* was likely responsible for the purge of 2 million voters over four years in these counties. The effect of the Supreme Court's 2013 decision has not abated.

Next Steps

As the country prepares for the 2020 election, election administrators should take steps to ensure that every eligible American can cast a ballot next November. Election administrators must be transparent about how they are deciding what names to remove from the rolls. They must be diligent in their efforts to avoid erroneously purging voters. And they should push for reforms like automatic voter registration and election day registration, which keep voters' registration records up to date.

Election day is often too late to discover that a person has been wrongfully purged.

Editor's note: *An earlier version of this analysis reported aggregated statewide purge rates. We have since learned that at least one state self-reported the data in a way that complicates a statewide aggregation. As such, we are no longer reporting any statewide numbers. That does not change the number of people the counties self-reported as removing.*

(Image: Alex Wong/Getty)

Voting Rights & Elections [4], The Voting Rights Act [5]

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Purges: A Growing Threat to the Right to Vote

By Jonathan Brater, Kevin Morris, Myrna Pérez, and Christopher Deluzio

Brennan Center for Justice at *New York University School of Law*

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Introduction

On April 19, 2016, thousands of eligible Brooklyn voters dutifully showed up to cast their ballots in the presidential primary, only to find their names missing from the voter lists. An investigation by the New York state attorney general found that New York City's Board of Elections had improperly deleted more than 200,000 names from the voter rolls.

In June 2016, the Arkansas secretary of state provided a list to the state's 75 county clerks suggesting that more than 7,700 names be removed from the rolls because of supposed felony convictions. That roster was highly inaccurate; it included people who had never been convicted of a felony, as well as persons with past convictions whose voting rights had been restored.

And in Virginia in 2013, nearly 39,000 voters were removed from the rolls when the state relied on a faulty database to delete voters who allegedly had moved out of the commonwealth. Error rates in some counties ran as high as 17 percent.

These voters were victims of purges — the sometimes-flawed process by which election officials attempt to remove ineligible names from voter registration lists. When done correctly, purges ensure the voter rolls are accurate and up-to-date. When done incorrectly, purges disenfranchise legitimate voters (often when it is too close to an election to rectify the mistake), causing confusion and delay at the polls.

Ahead of upcoming midterm elections, a new Brennan Center investigation has examined data for more than 6,600 jurisdictions that report purge rates to the Election Assistance Commission and calculated purge rates for 49 states.[1]

We found that between 2014 and 2016, states removed almost 16 million voters from the rolls, and every state in the country can and should do more to protect voters from improper purges.[2]

Almost 4 million more names were purged from the rolls between 2014 and 2016 than between 2006 and 2008.[3] This growth in the number of removed voters represented an increase of 33 percent — far outstripping growth in both total registered voters (18 percent) and total population (6 percent).

Most disturbingly, our research suggests great cause for concern that the Supreme Court's 2013 decision in *Shelby County v. Holder* (which ended federal "preclearance," a Voting Rights Act provision that was enacted to apply extra scrutiny to jurisdictions with a history of racial discrimination) has had a profound and negative impact:

For the two election cycles between 2012 and 2016, jurisdictions no longer subject to federal preclearance had purge rates significantly higher than jurisdictions that did not have it in 2013. The Brennan Center calculates that *2 million fewer voters* would have been purged over those four years if jurisdictions previously subject to federal preclearance had purged at the same rate as those jurisdictions not subject to that provision in 2013.[4]

In Texas, for example, one of the states previously subject to federal preclearance, approximately 363,000 more voters were erased from the rolls in the first election cycle after *Shelby County* than in the comparable midterm election cycle immediately preceding it.[5] And Georgia purged twice as many voters — 1.5 million — between the 2012 and 2016 elections as it did between 2008 and 2012.

Meanwhile, the Justice Department has abdicated its assigned role in preventing overly aggressive purges. In fact, the Justice Department has sent letters to election officials inquiring about their purging practices — a move seen by many as laying the groundwork for claims that some jurisdictions are not sufficiently aggressive in clearing names off the rolls.

This new report follows an extensive analysis of this issue in a 2008 Brennan Center report entitled *Voter Purges*.[6] In that report, we uncovered evidence that election administrators were purging people based on error-ridden practices, that voters were purged secretly and without notice, and that there were limited protections against purges. In this year's report, we discovered that little about purge practices has improved and that a number of things have, in fact, gotten worse.

This study also found:

- **In the past five years, four states have engaged in illegal purges, and another four states have implemented unlawful purge rules.**
  Federal standards for purges were set in the 1993 National Voter Registration Act (NVRA). Since 2013, Florida, New York, North Carolina, and Virginia have conducted illegal purges. Moreover, Brennan Center research has uncovered that four states (Alabama, Arizona, Indiana, and Maine) have written policies that by their terms violate the NVRA and provide for illegal purges. Alabama, Indiana, and Maine have policies for using data from a database called the Interstate Voter

Registration Crosscheck Program (Crosscheck) to immediately purge voters without providing the notice and waiting period required by federal law (Indiana's practice has been put on hold by a federal court). Arizona regulations permit Crosscheck purges during the 90 days prior to an election, a period during which federal law prohibits large-scale purges. These eight states are home to more than a quarter of registered voters across the nation.

- **States use inaccurate information.**
  Although states have improved the way in which they use data to purge the voter rolls in some respects, several jurisdictions rely on faulty data to flag potentially ineligible voters. And some of the new sources of information that have come into widespread use since our 2008 report, such as Crosscheck, are especially problematic.

- **A new coterie of activist groups is pressing for aggressive purges.**
  Most purging litigation brought by private litigants before 2008 contended that voter removal efforts were overly aggressive. Today, a different group of plaintiffs is hauling election officials into court, claiming that purging practices in their jurisdictions are not sufficiently zealous.

This report makes the following recommendations:

- **Enforce the NVRA's protections.**
  The NVRA, one of the major federal laws governing how states and localities can conduct purges, permits voters and civic groups to sue election officials if they violate the law's provisions. Monitoring jurisdictions to ensure they are complying with the NVRA — and bringing litigation when necessary — is especially important in an era when election officials are under pressure to mount aggressive purges.

- **States should set purging standards that provide even more protections than the NVRA.**
  The NVRA sets out federal standards for purges and requires that voters removed from the rolls for certain reasons be given notification. But these are minimum guidelines. States can and should do more to protect against disenfranchisement caused by improper purges — for example, providing public and individual notice before purging names from the rolls.

- **Pass automatic voter registration.**
  Automatic voter registration is a popular reform that minimizes registration errors and allows for easy updates, making rolls more accurate and current.

Methodology

We analyzed purge statutes, regulations, and other guidance in 49 states.[7] We interviewed 21 state or local election administrators in 18 states and reviewed documents from 20 states in response to public records requests.[8]

We also calculated state and county purge rates using voter registration data from the Election Administration and Voting Survey (EAVS), which is administered biennially by the U.S. Election Assistance Commission.[9] Our analysis used EAVS data from the 2008, 2010, 2012, 2014, and 2016 reports. In each two-year period, we calculated a jurisdiction's voter removal rate by dividing the number of *removed voters* by the sum of *registered voters* (i.e., both active and inactive registered voters) and *removed voters*.[10]

The 2018 Purge Landscape

Between the 2014 and 2016 elections, roughly 16 million names nationwide were removed from voter rolls.[11] The federal law governing purges[12] allows a voter's name to be purged from the voter rolls on the following grounds: (1) disenfranchising criminal conviction; (2) mental incapacity; (3) death; and (4) change in residence. In addition to these criteria, individuals who were never eligible in the first place, such as someone under 18 or a noncitizen, may be removed. Voters may be removed at their own request (even if they remain eligible). While all 49 states with voter registration lists have affirmative policies to remove names from the rolls (typically for several or all of the four delineated categories), states vary in the manner in and frequency with which they conduct voter purges.[13]

- **Disenfranchising Conviction**
  Except in Maine and Vermont, states disenfranchise at least some voters convicted of a crime for some period of time, which means that there are states that purge voters because of a criminal conviction. States have different policies about what causes a voter to become ineligible and different procedures for removing those who have been disenfranchised.[14] They also draw upon different lists to identify individuals with felony convictions, which may in turn be maintained with different levels of regularity and precision by courts or law-enforcement officials at the state or federal levels.

- **Mental Incapacity**
  Though less ubiquitous than some other bases of removal, 28 states have specific rules requiring removal from the rolls of a person determined not to have mental capacity to vote.[15] Definitions vary, and reform attempts have had

some success limiting the instances in which those with alleged mental incapacity lose their right to vote.[16]

- **Death**
  Federal law mandates that states take steps to remove the deceased from the rolls. Yet there is no uniform standard among the various state laws detailing the sources of information to be consulted to determine which voters are deceased. Some jurisdictions use information from state agencies, some review obituaries, and some rely on the Social Security Administration's Death Master File.[17]

- **Residency Changes**
  States vary in how they perform list maintenance for changes of address. Some of that variation is in timing. Montana, for example, conducts address removals every odd-numbered year,[18] and Connecticut conducts address removals annually.[19] There is also variation in which source of information is used. Two common sources are drivers' license updates and the postal service's National Change of Address (NCOA) database, but states also utilize other sources, such as interstate databases, returned mailings, or voter inactivity.

- **Noncitizenship**
  While election officials generally remove names of persons when it is made known to them that a noncitizen has gotten on the rolls, at least six states also have laws that require state officials to use jury declinations, drivers' license information, and/or federal databases to actively identify noncitizens on the voter rolls, to remove names of noncitizens so identified, or both.[20]

CURRENT FINDINGS

Purge Rates Are Higher Than a Decade Ago

In the two-year period ending in 2008, the median jurisdiction purged 6.2 percent of its voters.[21] At one end of the spectrum in 2008, Salt Lake County, Utah, purged less than 0.1 percent of its voters, and at the other end of the spectrum, Milwaukee County, Wisconsin, purged more than 34 percent of its voters. Of the 2,534 counties that reported purge rates to the Election Assistance Commission in 2008, only 97 had purged more than 15 percent of its registered voters in a two-year period.

Between the federal elections of 2014 and 2016, almost 4 million more names were purged from the rolls than in 2006-08. In this same period, more than twice the number of counties — 205 — had purged more than 15 percent of their voters than between 2006 and 2008.

Although a higher removal rate is not inherently bad, more purging means increased potential for eligible voters to be removed, especially given that we identified no state with the desired level of voter protections against purges.

Purge Rates Increased More in Jurisdictions Previously Subject to Federal Preclearance

Prior to 2013, the Voting Rights Act required certain jurisdictions with a history of discriminatory election practices to obtain federal certification that any intended election change, including voter purge practices, would not harm minority voters and was not enacted with discriminatory intent. This monitoring process was known as "preclearance."[22] In 2013, however, the Supreme Court concluded in *Shelby County v. Holder*[23] that Congress had inappropriately determined which jurisdictions should be subject to preclearance. As a result, jurisdictions subject to (or "covered" by) preclearance requirements were freed from making the case that minority voters would not be harmed by a proposed election change.

Across the board, formerly covered jurisdictions increased their purge rates after 2012 more than noncovered jurisdictions. Before *Shelby County*, jurisdictions that were subject to preclearance requirements ("covered jurisdictions") had removal rates equal to other jurisdictions ("noncovered jurisdictions").[24] After 2013, the two groups

FALLOUT FROM *SHELBY COUNTY*

Increases in purge rates in previously covered jurisdictions weren't the only changes after *Shelby County*.[1] Following the decision, many states and jurisdictions proceeded to enact or implement laws that would have been subject to preclearance. In fact, states formerly under preclearance requirements were more likely to pass legislation restricting their voting and election practices than the nation as a whole. Of the nine states once fully covered by the Voting Rights Act, seven have passed restrictive legislation since 2010. Of the 41 states not fully covered, only 18 passed restrictive laws over the same period. Two of these states (Florida and North Carolina) each had several counties subject to the Voting Rights Act.[2]

1 Shelby County v. Holder, 570 U.S. 2 (2013).

2 See Brennan Center for Justice, *New Voting Restrictions in America*, May 2017, https://www.brennancenter.org/sites/default/files/analysis/New_Voting_Restrictions.pdf. We include in this count legislation that was enacted and subsequently struck down by courts. *See, e.g.*, Applewhite v. Pennsylvania, No. 330 M.D. 2012, 2014 WL 184988 (Pa. Commw. Ct. Jan. 17, 2014) (striking down Pennsylvania voter ID law).

sharply diverged. For the 2012-14 and 2014-16 two-year election cycles, the removal rate for noncovered jurisdictions did not budge. The story was entirely different for covered jurisdictions, whose median removal rate was 2 percentage points higher after the *Shelby County* decision than the noncovered jurisdictions.[25] Though 2 percentage points may seem like a small number, more than 2 million fewer voters would have been removed if these counties had removal rates comparable to the rest of the country. Previously covered jurisdictions ended up removing more than 9 million voters between the presidential elections of 2012 and 2016. These increases were not concentrated in just a few small counties: 67 percent of residents in previously covered jurisdictions lived in areas where the removal rate increased, compared to just 46 percent of residents in non-covered jurisdictions. These calculations are restricted to jurisdictions that reported their data each year, but there is evidence that the same trend happened in counties that did not report each year, as our Texas analysis below shows.

The increase in removal rates in counties previously covered by the preclearance provision is not attributable to geographical or partisan factors (see footnote 25 for more information). We also conducted a difference-in-differences regression analysis[26] to see if population, minority presence, income, or other factors could explain the increase in removal rates in these counties. Even after controlling for these factors, a jurisdiction's former status under the Voting Rights Act was strongly associated with higher voter removal rates. Although this effect was larger in the two-year period coinciding with the lifting of the preclearance requirement, it continued even into the two-year period ending with the presidential election of 2016.

To be absolutely clear, our analysis cannot establish what percentage, if any, of these post-*Shelby County* purges were done erroneously. What we do know is that provisional ballots, which are given to voters who are missing from the voter rolls, had a statistically significant relationship to purge rates in previously covered jurisdictions.[27] This means that as the purge rates increased, so did the number of people who showed up to vote but were unable to do so, either because their names were not on the rolls or for some other reason.

Another factor is that between the presidential elections of 2012 and 2016, a handful of states implemented strict voter ID laws that required voters to cast provisional ballots if they did not have one of the limited number of accepted identifications. The implementation of these laws could, of course, have led to an increase in provisional ballot rates. (To isolate the impact of increased purge rates on provisional ballot rates, we performed a regression analysis in which we controlled for the implementation of strict voter ID laws and other sociodemographic factors. The regression specification and a closer look at a few counties with big increases in purge rates and provisional ballots can be found in Appendix C.)

The changes were particularly notable in three states: Georgia, Texas, and Virginia.

In **Georgia**, 750,000 more names were purged between 2012 and 2016 than between 2008 and 2012. Although Georgia did not report provisional ballot rates in 2012, their provisional ballot rates in the federal elections of 2010 and 2014 correspondingly increased as the removal rates increased. Of the state's 159 counties, 156 reported increases in removal rates post-*Shelby County*. This included the state's 86 most populous counties. The increased purge rate occurred during a period when Georgia was criticized for several controversial voter registration practices. For example, Georgia was sued for blocking registration applications between 2013 and 2016 because information (including hyphens in names) did not match state databases precisely. Georgia agreed to cease the matching rule as a result of the lawsuit but then enacted legislation reinstating a very similar practice the next year.[28]

Texas did not report removal rates for the two years ending in 2012 and is thus excluded from our high-level analysis of the previously covered jurisdictions. Nonetheless, the state exhibited a substantial increase in removal rates when we compare the two-year periods ending with the federal elections of 2010 and 2014. Between 2012 and 2014, approximately 363,000 more voters were removed than in 2008-10.[29] Unsurprisingly, the provisional ballot rate also increased between the midterm elections of 2010 and 2014. Consistent with the broader trend, these increases were not driven only by small counties: Fourteen of the 20 most populous counties increased their removal rates. Of the 183 Texas counties that reported their removal rates in both periods, 121 saw an increase after the *Shelby County* decision. Among the Texas counties that consistently reported their data and increased their removal rate after the *Shelby County* decision, the median increase was 3.5 percent. This increased purge rate did not occur in isolation but was joined by restrictive voting legislation. In 2014, a federal district court ruled that the strict photo ID law that Texas passed in 2011 was motivated in part by a discriminatory purpose of reducing minority political participation.[30] The Court of Appeals of the 5th Circuit did not decide whether the law was motivated by discriminatory animus but did conclude it had a discriminatory effect.[31] In 2017, Texas passed a new voter ID law. Litigation regarding the new law is ongoing.

In **Virginia**, previously covered counties removed 379,019 more voters between 2012 and 2016 than between 2008 and 2012. Once again, the increase in purge rates in these counties was not driven by small counties purging more voters. All the previously covered counties except one increased removal rates after *Shelby County*. The one previously covered county that showed a decrease — Highland County — is the least populous county in the state, home to just 2,230 people. More than 99 percent of Virginia's voters live in counties that increased their removal rates after *Shelby County*. As later discussed in more detail, a contributing factor may have been a highly problematic purge process that Virginia mounted in 2013.

States Continue to Conduct Flawed Purges

Broadly speaking, purges go wrong for one of two basic reasons: bad information about who should be removed from the rolls or a bad method for removing them. There are tools to catch and correct these mistakes, some of which are legally mandated. For example, federal law sets forth some important and relevant safeguards, such as requiring that systematic purges — those in which voter rolls are compared with lists of potentially ineligible individuals to remove groups of voters at the same time — occur well in advance of an election. Another is making sure certain categories of voters get a notice and waiting period before removal.[32] Yet as both a legal and practical matter, many states lack sufficient safeguards to detect and correct problems so that any harm can be repaired in advance of an election.

Two states' recent experiences illustrate the basic reasons purges go wrong — Arkansas used bad information, while Texas used a bad method.

In June 2016, the Arkansas secretary of state sent county officials a list of more than 7,700 records from the Arkansas Crime Information Center (ACIC) of persons who were supposedly ineligible to vote and should be removed from the rolls.[33] (Those convicted of felonies in Arkansas lose their right to vote until their sentence is complete or they are pardoned.[34]) But the list included a high percentage of voters who were indeed eligible,[35] yet appeared on the list because they had had some involvement with the court system, such as a misdemeanor conviction or a divorce.[36] Also included were names of those whose voting rights had been restored.[37] The error became public in July 2016, and despite the public outcry, the records of fewer than 5,000 of the more than 7,700 erroneously listed voters had been corrected by September 2016.[38] Pulaski County, the largest county in the state, explained that the problem was flagged by the counties, not the state, and not all counties were able to correct errors. Previously, the secretary of state had not been providing counties with regular updates of conviction data and, in the past, had been using the wrong source list for data on felony convictions. Once Arkansas switched to the list required by law, the secretary did an overly broad match and provided counties with inflated lists with bad matches. Pulaski County flagged the errors and was able to investigate the list, but some counties with insufficient resources simply sent purge notices to everyone on the list.[39]

Texas is an example of a bad purge caused by flawed data matching. In 2012, Texas officials conducted a purge of voters presumed to be dead. According to a representative from the Texas secretary of state's office, the purge was driven by a comparison of Texas voters' information to the Social Security Administration's Death Master File — the first time Texas had conducted such an exercise.[40] Matching to the Death Master File was required under a then-new Texas law (H.B. 174) mandating election officials to obtain such information about potentially deceased voters quarterly.[41]

While the 2008 Brennan Center report on voter purges showed that the Death Master File can contain errors,[42] the problem in Texas occurred because the state used what are called "weak" matches (meaning that the chances that the person identified was actually deceased were too low to be trusted) to target voters without conducting any further investigation.[43] For example, a voter whose date of birth and last four digits of their Social Security number matches a dead person's record would be a "weak" match.[44] On these grounds, a living Texas voter (and Air Force veteran) named James Harris, Jr., was flagged for removal because he shared information with an Arkansan, "James Harris," who had died in 1996.[45] According to one analysis, more than 68,000 of the 80,000 voters identified as possibly dead were weak matches.[46] This policy of flagging voters based on a weak match without further investigation was eventually changed when Texas settled litigation that had arisen on account of the bad purge.[47]

States south of the Mason-Dixon Line do not have a monopoly on bad purges. Before the April 2016 primary election, the New York City Board of Elections purged more than 200,000 voters, the majority of whom lived in Brooklyn. In 2014 and 2015, the Brooklyn Borough Office of the Board of Elections targeted for removal people who had not voted since the 2008 election.[48] New York City officials complied with the portion of federal law requiring them to *send* notice to affected voters but not with the part that required them to *wait* two federal elections before purging those who did not respond. Instead, the Board of Elections gave voters 14 days to respond, then

purged voters immediately. In the end, nearly 118,000 registrations were canceled when voters did not respond to these notices.[49] And through another process, an additional 100,000 voters were removed (also without the required waiting period) because New York City Board of Elections officials believed they had moved.[50] On Election Day, thousands of voters showed up at the polls only to learn their registrations had been erased. Moreover, these problems were not evenly distributed. One report found that 14 percent of voters in Hispanic-majority election districts were purged compared to 9 percent of voters in other districts.[51]

Federal Role in Voter Protection Diminished

The increased purge rates are a cause for concern because there are fewer federal protections against improper purges. The *Shelby County* decision has halted the preclearance provision, which had previously blocked election changes in certain jurisdictions unless it could be shown that the change would not make minority voters worse off and was not enacted with discriminatory intent.

And at least for now, voters have lost another important protector against improper purges: the Justice Department. Since 1993, the Justice Department has been charged with enforcing the National Voter Registration Act, the primary source of federal protection against inaccurate or overly broad purges.[52] While the Justice Department's purge history is mixed,[53]it brought pro-voter NVRA lawsuits during the Obama administration. Enforcement actions for violating the NVRA were undertaken against at least six states. In Florida and New York, the DOJ successfully challenged state purge practices.[54] In Florida, the Justice Department joined civic groups who successfully challenged the state's practice of conducting systematic purges just 90 days before an election.[55]

But the Trump administration has reversed course. For instance, in *Husted v. A. Philip Randolph Institute*, the Obama administration filed a brief in support of plaintiffs challenging an Ohio purging practice in which individuals who failed to vote in a single election received purge notices and were ultimately purged if they did not respond and did not vote in the next two federal elections. Failure to vote in a single election is poor evidence of ineligibility because not voting is common; for example, in the last midterm election, nearly 60 percent of Ohioans did not vote.[56] But when the case was pending before the U.S. Supreme Court in the summer of 2017, the Justice Department switched sides and supported Ohio.[57] On June 11, 2018, the Supreme Court ruled in favor of Ohio and the Justice Department's new position.[58]

Last summer, the Trump Justice Department also sent letters to 44 states demanding information about their voter purge practices.[59] Although the Justice Department has not taken further action so far, the suspicion is that the inquiries could be a precursor to enforcement actions to force states to purge more aggressively.[60]

New Flaws in Voter Purges

Three new risks have emerged in voter purges in recent years. One is the growth of interstate databases that purport to identify voters who have moved to a new state and are registered in both their current and former state. The two databases primarily used are the Interstate Voter Registration Crosscheck program (Crosscheck) and Electronic Registration Information Center (ERIC).

Launched in 2005 by the Kansas secretary of state, Crosscheck purports to identify voters who may have cast ballots in two different states in the same election. In 2017, 28 states participated in Crosscheck by sharing voter data with the system,[61] but not all of those states actively used, or use, Crosscheck to remove voters. The number of participating states in 2018 is still to be determined because a number of states are assessing their participation.

Another data-matching initiative, ERIC, began with assistance from the Pew Charitable Trusts in 2012. Twenty-four states and the District of Columbia are or will soon be members of ERIC.[62]

The second risky development is the increasing number of states scouring their rolls to identify alleged noncitizens registered to vote: The number of states with statutes specifically mandating searching for and removing noncitizens from the rolls has increased from two to six since 2008. Of course, noncitizens are not permitted to vote in federal and state elections, but the sources states rely upon to determine voter citizenship, such as driver's license lists, are not highly accurate. Moreover, the primary policy justification for aggressive purges aimed at removing noncitizens from the rolls — supposed widespread noncitizen voting — is not supported by the facts, a Brennan Center study of the 2016 election found. The study looked at 42 jurisdictions in 12 states, including eight of the 10 jurisdictions with the nation's largest noncitizen populations. Out of the 23.5 million votes cast in these jurisdictions, election officials referred only 30 instances of *suspected* noncitizen voting, or .0001 percent of the total.[63]

Finally, several conservative activist groups have sued state and local jurisdictions in recent years seeking to force them to purge their rolls more aggressively. For instance,

last September the Public Interest Legal Foundation noted that it had brought nine suits in six states in the past two years alleging lax vigilance of voter rolls. That tally was included in a press release announcing that the group had put 248 counties in 24 states "on notice" that they were risking litigation if they could not demonstrate "effective voter roll maintenance."[64]

Interstate Voter Registration Crosscheck Program (Crosscheck)

Purges based on a change of address have long been complicated and error prone. When the Brennan Center looked at purges a decade ago, it found that states primarily used the National Change of Address database compiled by the U.S. Postal Service to identify movers (as well as driver's license information).[65] But states have begun using other databases that go beyond the traditional sources of change-of-address information. Our research shows these new interstate databases have serious weaknesses that can lead to widespread and inaccurate purges.

When it began in 2005, the Kansas-based Crosscheck program had only four members.[66] In 2017, the most recent year data was shared, 28 states submitted data to the program.[67] Crosscheck's purpose is to identify possible "double voters" — an imprecise term that could be used to refer to people who have registrations in two states or who actually *voted* in an election in multiple states. While it is not uncommon for those who have recently moved to be registered in multiple places, actual double voting is rare. In 2017, Crosscheck examined the records of 98 million

CROSSCHECK IN THE CROSSHAIRS

Crosscheck's flaws put approximately 100 million voters in its database at potential risk, but some individuals are more vulnerable than others. Because of the loose matching criteria used by the program, parents and children with the same name are at greater risk of being confused with each other. Voters with common names are also more likely to match with different individuals for obvious reasons, but a less-obvious concern is the disproportionate effect this has on minority voters. African-American, Asian-American, and Latino voters are much more likely than Caucasians to have one of the most common 100 last names in the United States.[1]

Crosscheck creates matches based on first name, last name, and birthdate. Shared names and birthdates are fairly common. In fact, if you were to gather 23 or more people in the same place, there is a greater than 50 percent chance that two people would share a birthday (day and month).[2] Even adding in the year doesn't make an enormous difference: In a group of 180 people, it's more likely than not that two people will have been born on the exact same day.[3]

Of course, adding in first and last names substantially decreases the rate at which people look the same on paper. It doesn't, however, lower that rate sufficiently to make Crosscheck anywhere near accurate. When looking at records of millions of people, matching birthdates and names can still return thousands of inaccurate matches. This is true not only because of the so-called birthday problem but also because of the variation in the popularity of names. Jennifer, for instance, was the most common name for women born in the 1970s[4] but was the 191st most common name for women born between 2010 and 2017.[5] On average, 160 Jennifers were born every single day in the U.S. between 1970 and 1979. Among these, there were doubtless many who shared surnames common among Americans.

The program also hurts frequent movers such as college students and military personnel, who are more likely to be wrongly flagged by the database following a recent move. Because Crosscheck's date of registration data is unreliable, those who move more frequently are more likely to be wrongly identified as having moved out of the state that purges them.[6]

1 Non-white people are more likely to have common shared names. For instance, 16.3 percent of Hispanic people and 13 percent of black people have one of the 10 most common surnames, compared to 4.5 percent of white people. Joshua Comenetz, "Frequently Occurring Surnames in the 2010 Census," U.S. Census Bureau, October 2016, available at https://www2.census.gov/topics/genealogy/2010surnames/surnames.pdf.

2 Michael P. McDonald and Justin Levitt, "Seeing Double Voting: An Extension of the Birthday Problem," Election Law Journal 7, (2007): 111–122, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=997888.

3 Sharad Goel et al., "One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections" (working paper, Stanford University, 2017) 3, https://scholar.harvard.edu/files/morse/files/1p1v.pdf.

4 "Top names of the 1970s," Social Security Administration, accessed June 15, 2018. https://www.ssa.gov/oact/babynames/decades/names1970s.html.

5 "Top names of the period 2010 - 2017," Social Security Administration, accessed June 15, 2018. https://www.ssa.gov/oact/babynames/decades/names2010s.html.

6 Sharad Goel et al., "One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections" (working paper, Stanford University, 2017) appendix-22, https://scholar.harvard.edu/files/morse/files/1p1v.pdf.

voters[68] and produced 7.2 million "matches" representing 3.6 million voters supposedly registered in two states.[69]

Crosscheck compares the voter registration list of each participating state against the voter registration lists of the other participating states and flags all records that have the same first name, last name, and date of birth.[70] But in groups as large as statewide (or multistate) voter registration lists, the statistical odds of two registrants having the same name and birth date is sufficiently high as to be problematic.[71] A 2017 study led by Stanford professor Sharad Goel found that if applied nationwide, Crosscheck would "impede 300 legal votes for every double vote prevented."[72] Moreover, the study found that "there is almost no chance that double votes could affect the outcome of a national election."[73] One of Crosscheck's problems is that it does not have reliable registration dates, which means that an election official cannot competently determine which of the two places a voter is registered is more recent and therefore which state should remove the voter.

Virginia had a major problem with Crosscheck five years ago when it tried to purge nearly 39,000 voters. Crosscheck relies on little information before concluding that registration records in different states belong to the same person. Virginia sent counties the roster of voters for removal without checking its accuracy, and counties were not furnished with any guidance about the data or sufficient time to conduct a thorough review.[74] Eligible voters were wrongly flagged as having moved from Virginia to another state when they had in fact moved *from* another state *to* Virginia.[75] Error rates in some counties ran as high as 17 percent.[76] Counties did not begin spotting errors until some had begun removing voters. At the urging of civic groups, the state issued new guidance on the use of Crosscheck data but not until thousands of voters had been purged right before a statewide election.[77]

Especially troubling is that at least four states have policies or regulations on the books providing for the use of Crosscheck in an illegal manner. Alabama,[78] Indiana,[79] and Maine[80] regulations allow counties to use Crosscheck to immediately purge voters from the rolls, without providing these voters notice and a two-election waiting period before deleting them as required by the NVRA.[81] And Arizona regulations permit removing voters based on Crosscheck in some instances within 90 days of a federal election,[82] which is not allowed under the NVRA for systematic purges such as those using Crosscheck.

Not all participating states are actively using Crosscheck data to identify and remove potentially ineligible voters. In recent years, at least eight states have left the program altogether and no longer share data with or receive data from Crosscheck.[83] Additionally, seven other states have curtailed their use of Crosscheck data by not using it for the purposes of voter-list maintenance.[84] Instead, these states either do nothing with the data they receive or use it solely to identify people who appear to have *voted* (not merely registered) in multiple states.

In the midst of publicity around lax security protocols with Crosscheck[85] and news earlier this year that Crosscheck would review its security protocols and postpone uploading data,[86] Illinois announced that it would no longer transmit data to Crosscheck.[87] A state official was quoted as saying, "we will transmit no data to Crosscheck until security issues are addressed to our satisfaction."[88] A South Carolina official expressed a similar sentiment, explaining that the state stopped using data "due to issues with verification and concerns about cybersecurity."[89] According to an attorney representing the state of Indiana in litigation related to the state's use of Crosscheck, as of May 2 of this year, Crosscheck was not accepting data from participating states while a review of security processes remained in progress.[90]

Electronic Registration Information Center (ERIC)

The Electronic Registration Information Center is a program that uses voter registration data, motor vehicle licensing information, Social Security Administration data, and National Change of Address information to identify voters who may have moved. Begun six years ago, 24 states plus the District of Columbia are enrolled in the program (or soon will be).[91] To participate in ERIC, states must submit extensive voter data, including full address, driver's license or state ID number, last four digits of social security number, date of birth, voter registration activity dates, current record status, eligibility documentation, phone number, and email address.[92] Election officials in ERIC-participating states told us they provide notice and a two-election waiting period before removing voters.[93]

Election officials reported that ERIC also helps them identify potential voters who have moved into their jurisdictions but have not registered.[94] And one analysis of ERIC's first year of operation showed increases in registrations in ERIC states relative to non-ERIC states.[95]

Although most of the election administrators that we interviewed reported positive experiences with ERIC, the new data source has its limits. Administrators from Maryland and Illinois, for example, reported that it could be difficult to determine a voter's most recent address, which is a problem for frequent movers.[96] This absence of precise

information means that, even though ERIC is generally processed at the state level, it is local officials who must identify errors and determine which registration is more current — the one in the relevant jurisdiction or a registration in another state.[97] Wisconsin, meanwhile, reported that although ERIC was helpful in updating more than 25,000 registration addresses in 2017 and 2018, it also resulted in more than 1,300 voters signing "supplemental poll lists" at a spring 2018 election, indicating that they had not in fact moved and were wrongly flagged.[98]

Efforts to Purge Noncitizens Are More Frequent and Often Rely on Flawed Data

The Brennan Center's 2008 study found that attempts to purge noncitizens were rare. Back then only two states, Texas and Virginia, had laws mandating specific procedures for identifying noncitizens.[99] In the last decade, four more states — Georgia, Iowa, Minnesota, and Tennessee — have passed laws requiring removal of noncitizens.[100] More states are likely to pass such laws because of pressure to aggressively search for and delete noncitizen registrations.

As is true with other purges, the information relied upon to purge alleged noncitizens can be inaccurate. For example, at least 14 states have sought access to the federal Systematic Alien Verification for Entitlements (SAVE) program,[101] which checks several databases to ascertain the residence or citizenship status of people who have contacted benefit-granting agencies.[102] Some states, such as Virginia, were granted access. However, states found the database is useful only if an election administrator has someone's alien identification number, information election officials typically do not possess.[103]

Some states use driver's license data to purge noncitizens. Minnesota, Tennessee, and Virginia have statutes mandating this approach. Generally, driver's license data is deployed in one of two ways.[104] One involves review of documents the registrant provided to the driver's license office when obtaining a license. If a person showed a Permanent Resident Card, the presumption is that the registrant is a noncitizen and should be removed from the rolls. The problem, however, is that a person can lawfully not update their driver's license information for many years, in which time they may have become a citizen.[105]

States may also scour their voter lists for those who did not check the box indicating that they were a citizen on their driver's license application or renewal. Virginia has a specific statutory provision requiring this; Maryland does not but still engages in the practice.[106] Not surprisingly, election officials told us that sometimes citizens fail to check the citizenship box.[107]

In addition, at least three states (Georgia, Louisiana, and Texas) remove voters if they decline jury service on the grounds of noncitizenship.[108] But election officials told the Brennan Center in a 2017 report on noncitizen voting that eligible voters have been known to assert they are noncitizens solely for the purpose of evading jury duty. While illegal, these declarations are not necessarily indicative that a noncitizen has been registered to vote.[109]

Activist Groups Pressing for More Aggressive Purges

Another new dynamic is activist groups agitating for election officials to purge the rolls more aggressively. In the past, litigation was often used by groups seeking to protect voters *against* bad voter purges. For example, civic groups prevented voters from being illegally purged in Michigan in 2008,[110] Colorado in 2010,[111] and Florida in 2012.[112]

From 1998 through 2007, most of the litigation seeking purges was brought by the Justice Department — which made voter purges a priority in the midst of a failed nationwide voter fraud hunt[113] — whereas private plaintiffs typically brought suits because they were worried eligible people would be improperly purged. From 2008 to the present however, more than half of the 32 federal purge-related lawsuits brought by private parties have been filed by plaintiffs who believed that jurisdictions are not purging enough names from the rolls.[114]

In nine cases brought by private parties since 2012, election officials agreed to undertake more aggressive list maintenance.[115] One of the defendants in these cases was Noxubee County, a poor, rural, majority-Black county in eastern Mississippi that was sued by the American Civil Rights Union (ACRU, not to be confused with the American Civil Liberties Union).

"They went after minority counties who didn't have the financial resources to push back," said Willie M. Miller, the Election Commissioner for Noxubee County's fourth district.[116] As of this writing, the ACRU is suing Starr County and the State of Texas[117] for failing to purge aggressively enough, and the like-minded Judicial Watch has brought litigation in California.[118]

Unfortunately, this litigation has consequences. The ACRU lawsuit against Noxubee County resulted in about 1,500 (more than 12 percent) of its 9,000 voters being made inactive.[119] Being designated as inactive is the first stage of the removal process. The waiting period of two federal elections has yet to expire, so it's unclear at this juncture how many voters will ultimately be removed.[120] Similarly, Judicial Watch's 2012 suit against Indiana[121]

arguably led to the state undertaking more aggressive list maintenance. Before the suit was dismissed, Indiana announced that it had sent an "address confirmation mailing to all voters" and undertook other purging initiatives that led to more than 480,000 canceled registrations after the 2016 election.[122] Judicial Watch boasted that their lawsuit "forced" Indiana to undertake additional purge practices;[123] Indiana first sent out the required federal notices in 2014, then purged voters who did not respond and did not vote in 2014 or 2016.

Litigation is but one element of a broader strategy by these groups to force purges. In 2016, the Public Interest Legal Foundation published a report entitled "Alien Invasion in Virginia," complete with a flying saucer on the cover. Extrapolating from a small sample, the missive misleadingly suggested thousands of votes had been cast by noncitizens,[124] a claim election officials dispute.[125] The Foundation's pressure may have had an impact: Six hundred ninety-three alleged noncitizens were purged in the 2016 reporting period, but that number more than doubled to 1,686 in the 2017 period.[126] The purge has spawned yet more litigation, with several voters complaining that they were wrongly deleted, and the Public Interest Legal Foundation has been sued for defamation and illegal voter intimidation.[127] Election fraud vigilantes have also brought mass challenges to voters' registrations, including in North Carolina, where a judge blocked the practice.[128]

CHALLENGES CONTINUE

In at least 15 states, "challenge" laws permit challenges to the validity of a voter's registration prior to Election Day (additional states allow challenges to eligibility at the time of voting only).[1] These challenge laws, which are designed to allow for questioning the eligibility of registered voters on a case-by-case basis, have been used recently in several states to try to systematically remove voters from the rolls, functioning effectively as a purge that can operate outside the NVRA's protections. The use of challenge laws as back doors for purging is legally dubious and increases the risk of wrongful removals; precisely what has happened in some states.

Colorado's former secretary of state, Scott Gessler, matched the voter rolls against driver's license lists to produce a large (and inflated) list of potential noncitizens. He then attempted to use his state's challenger laws to remove voters en masse. After much public criticism, Gessler abandoned the effort.[2]

In Hancock County, Georgia, the majority-white Board of Elections used challenge procedures in the weeks leading up to a 2015 municipal election to challenge 174 voters — nearly 20 percent of the town of Sparta's electorate. The majority of the challenged voters were Black. Some of the challenges were based on as little evidence as a discrepancy between a voter registration address and an address record in a flawed driver's license database. Other challenges were based on second-hand claims that a voter had moved out of the county.[3] After being sued, the county agreed to reinstate wrongfully challenged voters who had been removed from registration lists.[4]

Iowa's former secretary of state, Matt Schultz, tried to use challenges to remove suspected noncitizens from the rolls, but he was blocked by a court.[5]

And in North Carolina, a federal court ruled in 2016 that local boards of elections likely violated the NVRA (52 U.S.C. § 20507(c)(2)(A)) when they systematically purged hundreds of voters through citizen-initiated challenge procedures fewer than 90 days before the general election. The judge based her ruling on the systematic purge occurring within the prohibited window, but she also remarked that the challenge process, which allows voters to be removed if they do not show up at a hearing upon being challenged based on second-hand evidence of a move, seemed "insane."[6] Nevertheless, state lawmakers expressly rejected legislation that would have made it more difficult to sustain a voter challenge on this basis.[7]

1 Nicholas Riley, *Voter Challengers* (New York: Brennan Center for Justice, August 2012), https://www.brennancenter.org/sites/default/files/legacy/publications/Voter_Challengers.pdf.
2 "Scott Gessler Decides Not To Proceed With Voter Purge After All," *HuffPost*, September 12, 2012, https://www.huffingtonpost.com/2012/09/10/scott-gessler-decides-not_n_1871524.html.
3 Complaint, Georgia NAACP et al v. Hancock County Bd. Of Elec. and Registration, No. 5:15-cv-00414 (M.D. Ga. Filed Nov. 3, 2015), https://lawyerscommittee.org/wp-content/
4 Kathleen Foody, "Georgia County Agrees to Restore Black Voters' Rights," *Associated Press*, March 8, 2017, https://www.usnews.com/news/best-states/georgia/articles/2017-03-08/georgia-county-to-restore-black-voters-rights-under-us-law. uploads/2016/01/Hancock-Co-Complaint.pdf.
5 Ruling, Am. Civ. Liberties Union v. Schultz, No. CV00931 (Iowa D. Polk March 5, 2014).
6 "North Carolina Voter Challenge Process Seems 'Insane,' Judge Says," *Associated Press*, November 2, 2016, https://www.cbsnews.com/news/north-carolina-voter-challenge-process-seems-insane-judge.
7 H. 303, Sess. 2017 (N.C. 2017), https://www2.ncleg.net/BillLookup/2017/H303.

Solutions

While no one disputes the rolls should be accurate, voters should be protected from wrongful purges. There are several ways to safeguard voters from overly aggressive list maintenance:

- **Enforce the National Voting Registration Act's Protections.**
  The NVRA permits an aggrieved voter to sue if a jurisdiction has been informed of a possible violation and does not correct it in a set period of time. Litigation to enforce the NVRA is especially crucial in a time when the Justice Department is unlikely to enforce voter protections and outside groups are agitating for more aggressive purges. Of course, most voters do not have the expertise or resources to bring such litigation. Therefore it is critically important that civil rights and other pro-voter organizations rigorously monitor purge activity and have the wherewithal to sue when necessary.

- **States Should Enact Laws That Provide Even More Protections than the National Voter Registration Act.**
  While the NVRA includes critical voter protections, states should do more. For example, the NVRA requires that voters suspected of moving from the jurisdiction receive notice of their possible removal. Not surprisingly, most states do not provide notice beyond what is federally required. For example, most states do not provide notice to voters purged based on death or a disenfranchising conviction, and many of those states that do provide notice in these circumstances do so only after the fact. States should surpass these minimal standards. No matter the reason, all voters should be informed in advance of their possible deletion and should be provided easy mechanisms for correcting errors on or before Election Day.

- **Enact Automatic Voter Registration.**
  Automatic voter registration is a popular reform that minimizes errors, saves money, and increases registration of eligible citizens. Automatic voter registration has two key features: (1) eligible citizens are registered unless they affirmatively decline; and (2) voter registration information is electronically transferred from a government office to election officials instead of relying on pen and paper. Currently, 12 states plus the District of Columbia have approved automatic voter registration.[129] In addition to adding more voters to the rolls, automatic voter registration also catches more address updates, reducing the need for change-of-address voter purges.

Endnotes

1 In the two-year election cycle ending in 2008, the Brennan Center found the median jurisdiction purged 6.2 percent of voters. For the two years ending in 2016, this study finds that the purge rate of the median jurisdiction had increased to 7.8 percent. We examined 49 states because North Dakota has no advance voter registration requirement and thus does not have required voter registration lists to purge. The state does keep records of individuals who vote, but it is not necessary to be on any registration list at the time of voting to cast ballots. Although there are other impediments to voting in North Dakota, including a strict photo ID law, voters do not face barriers related to voter registration in the state.

2 We assessed 49 states on the following criteria: First, whether the state used the Interstate Voter Registration Crosscheck program in a way that is problematic or not compliant with the NVRA. We found five states deficient in this category. Second, whether the state makes readily available lists of purged voters. We found 49 states deficient in this category (at least 10 states have statutory requirements for making some names of purged voters available, but all fail to do so in practice). Third, whether states provide prior notice to all voters purged on the basis of death, felony conviction, or noncitizenship. We found 49 states deficient in this category (21 states have statutory requirements whereby voters purged on the basis of death or felony conviction receive notice before or after the purge, but no state requires prior notice to voters purged for both categories). For additional recommendations to guard against unlawful or problematic voter purges and why they are important, see Myrna Pérez, *Voter Purges* (New York: Brennan Center for Justice, September 2008), 25-31, https://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf.

3 Calculated from total numbers reported to the Elections Assistance Commission in 2008 and 2016. Compare U.S. Election Assistance Commission, 2008 Election Administration and Voting Survey, https://www.eac.gov/research-and-data/2008-election-administration-voting-survey/, and U.S. Election Assistance Commission, 2016 Election Administration and Voting Survey, https://www.eac.gov/research-and-data/2016-election-administration-voting-survey/.

4 These previously covered areas had median purge rates of 9.5 percent, while noncovered jurisdictions had median purge rates of 7.5 percent.

5 The median county purge rate in the 2008-10 election cycle was 8.4 percent. But in the election cycle including the *Shelby County* decision, 2012-14, the purge rate jumped 26 percent to a median county purge rate of 10.6 percent.

6 Myrna Pérez, *Voter Purges* (New York: Brennan Center for Justice, September 2008), https://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf.

7 Omitting North Dakota, as explained above.

8 We served public records requests on election officials and their offices at the state and local levels in 22 states and sought interviews with election officials in 45. The numbers referenced in the text refer to respondents.

9 U.S. Election Assistance Commission, *2016 Election Administration & Voting Survey*, June 2017, https://www.eac.gov/research-and-data/election-administration-voting-survey/.

10 Not all jurisdictions report their data consistently. Whenever we make comparisons across time periods, we restrict our sample to the counties reporting consistently. For instance, 2,394 jurisdictions report removal data for each of the two-year periods ending in 2010, 2012, 2014, and 2016. Our analysis exploring the impact of the end of the preclearance condition of the Voting Rights Act looks only at these counties to ensure an apples-to-apples comparison.

11 U.S. Election Assistance Commission, *2016 Election Administration & Voting Survey*, June 2017, https://www.eac.gov/research-and-data/election-administration-voting-survey/. Sixteen million is in fact a conservative estimate because it includes only voters removed from jurisdictions who reported their data to the EAC in 2016. It therefore does not include voters removed during some problematic purges such as that in Kings County (Brooklyn), NY (discussed above).

12 National Voter Registration Act of 1993, H.R. 2, 103rd Cong. (1993), 52 U.S.C. § 20507, is the main source of

federal requirements. For more information on federal law around purges, see Appendix A.

13 Some states are not required to follow the National Voter Registration Act. The NVRA exempts the following states from its purge protocols because those states had Election-Day registration or lacked voter-registration requirements on or after August 1, 1994: Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming. National Voter Registration Act of 1993, H.R. 2, 103rd Cong. (1993) 52 U.S.C. § 20504(b). This reflects Congress's assessment that purge consequences are much less grave in a state that permits anyone eligible who is not on the registration rolls to register and vote on Election Day.

14 "Criminal Disenfranchisement Laws Across the United States," Brennan Center for Justice, last modified April 18, 2018, https://www.brennancenter.org/criminal-disenfranchisement-laws-across-united-states.

15 Ala. Code § 17-4-3(a) (requiring removal "whenever…a person registered to vote in that county has…been declared mentally incompetent"); Ariz. Rev. Stat. Ann. § 16-165(C) (requiring removal "[w]hen proceedings…result in a person being declared incapable of taking care of himself and managing his property, and for whom a guardian of the person and estate is appointed, result in such person being committed as an insane person"); Del. Code Ann. tit. 15, §§ 1701(a), 1702 (requiring removal of "person adjudged mentally incompetent…[which] refers to a specific finding in a judicial guardianship or equivalent proceeding, based on clear and convincing evidence that the individual has a severe cognitive impairment which precludes exercise of basic voting judgment"); Fla. Stat. Ann. § 98.075(4) (requiring removal for "registered voters who have been adjudicated mentally incapacitated with respect to voting and who have not had their voting rights restored"); Ga. Code Ann. § 21-2-231(b) (requiring removal "[of those] who were declared mentally incompetent during the preceding calendar month in the county and whose voting rights were removed"); Haw. Rev. Stat. Ann. § 11-23(a) (requiring removal "[of person] adjudicate[ed] as an incapacitated person under the provisions of chapter 560…[if] after the investigation the clerk finds that the person…lacks sufficient understanding or capacity to make or communicate responsible decisions concerning voting"); Iowa Code Ann. § 48A.30(1)(e) (requiring removal "[if] [t]he clerk of the district court or the state registrar sends notice that the registered voter has been declared a person who is incompetent to vote under state law"); Ky. Rev. Stat. Ann. § 116.113(2) (requiring removal "[u]pon receipt of notification from the circuit clerk that a person has been declared incompetent"); La. Stat. Ann. § 18:172 (requiring removal "[after] judgment of full interdiction or a limited interdiction for mental incompetence which specifically suspends the right to register and vote and which has become definitive"); Code Me. R. tit. 29-250 Ch. 505, § 1(B) (requiring removal "[if] the municipality receives notice indicating that a registrant has been placed under guardianship due to mental illness"); Md. Code Ann., Elec. Law §§ 3-102(b)(2), 3-501 (requiring removal "[if person] is under guardianship for mental disability and a court of competent jurisdiction has specifically found by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process"); Minn. Stat. Ann. § 201.145 (requiring removal "[of persons] under a guardianship in which a court order revokes the ward's right to vote or where the court has found the individual to be legally incompetent to vote"); Miss. Code. Ann. § 23-15-153(1) (requiring removal "[of voters who have] received an adjudication of non compos mentis"); Mo. Ann. Stat. § 115.199 (requiring removal "of voters…adjudged incapacitated"); Mont. Code Ann. § 13-2-402(3) (requiring removal "[if] the elector is of unsound mind as established by a court"); Neb. Rev. Stat. Ann. §§ 32-313(1), 32-326 (requiring removal "[of person] who is non compos mentis"); Nev. Rev. Stat. Ann. § 293.540(2)(b) (requiring removal "[if] the county clerk is provided a certified copy of a court order stating that the court specifically finds by clear and convincing evidence that the person lacks the mental capacity to vote because he or she cannot communicate, with or without accommodations, a specific desire to participate in the voting process"); N.M. Stat. Ann. § 1-4-26 (requiring removal "[w]hen in proceedings held pursuant to law, the district court determines that a mentally ill individual is insane as that term is used in the constitution of New Mexico"); N.Y. Elec. Law § 5-400(1)(c) (requiring removal "[of voter who] has been adjudicated an incompetent"); Ohio Rev. Code Ann. § 3503.18(B) (requiring removal of persons "who have been adjudicated incompetent for the purpose of voting, as provided in section 5122.301 of the Revised Code"); Okla. Stat. Ann. tit. 26, § 4-120.5 (requiring removal "of all persons who have been adjudged incapacitated"); S.C. Code Ann. § 7-5-340(1)(b) (requiring removal "if the elector is adjudicated mentally incompetent by a court of competent jurisdiction"); S.D. Codified Laws § 12-4-18 (requiring removal "of persons declared mentally incompetent"); Tex. Elec. Code Ann. § 16.031(a)(3) (requiring removal "on receipt of…an abstract of a final judgment of the voter's total mental incapacity, partial mental incapacity without the right to vote…or disqualification under Section 16.002"); Wash. Rev. Code Ann. § 29A.08.515 (requiring removal "[u]pon receiving official notice that a court has imposed a guardianship for an incapacitated person and has

determined that the person is incompetent for the purpose of rationally exercising the right to vote, under chapter 11.88 RCW"); W.Va. Code, § 3-2-23(3) (requiring removal "[u]pon receipt of a notice from the appropriate court of competent jurisdiction of a determination of a voter's mental incompetence"); Wis. Stat. Ann. §§ 6.03, 6.48, 6.935 (requiring removal "[through challenge] [of a]ny person who is incapable of understanding the objective of the elective process or who is under guardianship, unless the court has determined that the person is competent to exercise the right to vote"); W.S.1977 §§ 22-3-102(a)(iv), 22-3-115(a)(iv) (requiring removal "[of person] currently adjudicated mentally incompetent"). Additional states provide for loss of eligibility on these grounds but do not specifically describe the manner of removal. See Michelle Bishop, "Disability Is No Reason to Strip a Person's Voting Rights," *HuffPost*, May 12, 2018, https://www.huffingtonpost.com/entry/opinion-bishop-disability-voters_us_5af-5b085e4b0e57cd9f9042f.

16 See Doe v. Rowe, 156 F. Supp.2d 35 (D. Me. 2001); Minnesota Voters Alliance v. Ritchie, 890 F.S. 2d 1106 (August 17, 2012); in re Guardianship of Brian W. Erickson, 4th Judicial District, Dist. Ct., Probate/Mental Health Division (October 12, 2012); see also Matt Vasilogambros, "Thousands Lose Right to Vote Under 'Incompetence' Laws," *HuffPost*, March 21, 2018, https://www.huffingtonpost.com/entry/thousands-lose-right-to-vote-under-in-competence-laws_us_5ab25f7ce4b004fe24699810.

17 E.g., Alaska Stat. Ann. § 15.07.130(c) (requiring use of information from bureau of vital statistics); Wash. Rev. Code Ann. § 29A.08.510(2) (permitting use of obituaries); Tex. Elec. Code Ann. § 16.001 (requiring use of Social Security Administration information).

18 Montana Code Ann. § 13-2-220.

19 Conn. Gen. Stat. § 9-32.

20 Ga. Code Ann. § § 21-1-231(a.1)(b) (requiring clerk of superior court to forward noncitizen jury declinations and requiring election officials to remove names from voter list, La. Stat. Ann. § 18:178 (requiring clerk of the court to provide names of individuals who respond to jury notices saying they are noncitizens to Department of State); Minn Stat. Ann. § 201.145 (requiring county auditor to send to county attorney list of names of individuals who are registered to vote and not citizens); Tenn. Code Ann. § 2-2-141 (requiring coordinator of elections to compare registration list with Department of Safety database to ensure non-United States citizens are not registered to vote); Tex. Elec. Code Ann. § 16.0332 (requiring registrar to initiate voter removal process for voters for whom the registrar receives a notice of disqualification or excusal from jury service because of citizenship status); Va. Code Ann. § 24.2-404(A)(4) (requiring registrars to delete record of registered voters known not to be a citizen from reports of Department of Motor Vehicles or Systematic Alien Verification for Entitlements Program).

21 Throughout this document we report median removal rates. The median is the appropriate measure of central tendency because of how the removal rate data are distributed. Because some jurisdictions have very high removal rates, while most are clustered close to the lower bound of zero, using the mean would artificially bias reported numbers upward.

22 "About Section 5 of the Voting Rights Act," The United States Department of Justice, accessed May 24, 2018, https://www.justice.gov/crt/about-section-5-voting-rights-act.

23 Shelby County v. Holder, 570 U.S. 2 (2013).

24 Between the presidential elections of 2008 and 2012, the median two-year removal rate for both previously covered and noncovered jurisdictions was 7.5 percent. Throughout this section, we limit our analysis to jurisdictions that reported removal rates for each of the two-year periods ending 2010, 2012, 2014, and 2016. Kings County, New York, for instance, did not report removal rates for the two years ending 2016 and thus is excluded from the entire pre/post *Shelby* analysis. It is important to note that this does not meaningfully impact our analysis: The median removal rate in 2016 for counties that reported their data each year was 7.9 percent compared to 7.6 percent for jurisdictions that reported their data in 2016 but also failed to do so in at least one other year. To maintain consistency with discussions of two-year removal rates elsewhere in this report, we continue to use two-year removal rates here. For instance, Escambia County, Florida, removed 0.42 percent of its voters between 2008 and 2010, and 0.42 percent again between 2010 and 2012. Here we call their median *two-year* removal rate 0.42 percent. Their four-year removal rate would, of course, be higher. We group the data into four-year buckets because of the natural variation in removal rates between presidential and nonpresidential election cycles.

25 Formerly covered jurisdictions are disproportionately located in the southeastern part of the country. We considered the possibility that the increased purge rate is attributable to some regional factor or factors aside from the lifting of the preclearance requirements. To control for this, we repeated the above analysis but restricted our sample to just those states in the Southeast (AL, FL, GA, KY, MS, NC, SC, TN, VA, and WV). Among jurisdictions in the Southeast that consistently reported their data, 461 counties were covered under the Voting Rights Act and 388 were not. We found that even within the Southeast, formerly covered jurisdictions increased their purge rates more than their noncovered peers. In fact, noncovered jurisdictions in the Southeast did not increase their removal rates between the two periods. The increase in removal rates in previously covered jurisdictions in this region mirrored those of the group of covered jurisdictions as a whole:

	Federal Election 2008-12	Federal Election 2012-16
Previously Covered	7.2%	9.7%
Not Covered	6.6%	6.6%

Nor can the difference in purge rate be explained by differences in partisan tendency. Formerly covered counties are more Republican-leaning than the nation as a whole. Within counties that reported data consistently to the EAC, President Donald Trump received 51 percent of the ballots cast in counties that required preclearance prior to Shelby, but just 46 percent of the ballots cast in noncovered jurisdictions. To test the possibility that Republican-leaning counties were more likely to increase their removal rates regardless of their status under the Voting Rights Act, we compared the 409 previously covered jurisdictions that Trump received more votes than Hillary Clinton to the 1,594 noncovered jurisdictions in which he did so.

	Federal Election 2008-12	Federal Election 2012-16
Previously Covered	7.3%	9.4%
Not Covered	7.5%	7.4%

Removal rates in noncovered jurisdictions that Trump won did not increase their removal rates at all. Trump-supporting jurisdictions that were previously covered, however, increased their removal rates substantially. Clearly, the increase in removal rates among the jurisdictions that were covered under the VRA was not a function of an electorate likely to support Donald Trump. *Sources: Townhall.com,* https://townhall.com/election/2016/president; *and SouthEastern Division of the Association of American Geographers,* http://sedaag.org.

26 See Appendix B.

27 See Appendix C. While not a perfect predictor because there are many reasons why a voter might cast a provisional ballot, our finding that high provisional ballot numbers are probative as to the existence of a purge are corroborated by other experts in the field. See, for example, U.S. Commission on Civil Rights, *Briefing Report: Department of Justice Voting Rights Enforcement for the 2008 U.S. Presidential Election* (Washington: July 2009) (summarizing testimony of Dan Tokaji), http://www.usccr.gov/pubs/DOJVotingRights2008PresidentialElection.pdf.

28 Tim Reid and Grant Smith, "Missing Hyphens Will Make It Hard for Some People to Vote in U.S. Election," *Reuters*, April 11, 2018. https://www.reuters.com/article/us-usa-election-laws/missing-hyphens-will-make-it-hard-for-some-people-to-vote-in-u-s-election-idUSKBN1HI1PX. Georgia's practice of purging voters on the basis of not voting was also challenged. See Georgia State Conf. of the NAACP v. Kemp, No. 2:16-cv-219, filed Sept. 14, 2016 (N.D. Ga.); Common Cause v. Kemp, No. 1:16-cv-00452, filed Feb. 10, 2016 (N.D. Ga.). See also Tony Pugh, "Georgia Secretary of State Fighting Accusations of Disenfranchising Minority Voters," *McClatchy*, October 7, 2016, http://www.mcclatchydc.com/news/politics-government/article106692837.html; Regina Willis, "More Than 380,000 Georgia Voters Receive 'Purge Notice,'" *Rewire.News*, July 21, 2017, https://rewire.news/article/2017/07/21/more-380000-georgia-voters-received-purge-notice/.

29 Overall, 54% of voters lived in counties in which the removal rate increased. Numbers are drawn from counties that reported data in both 2010 and 2014, a set representing 94% of total Texas voters.

30 Veasey v. Perry, 71 F.Supp.3d 627 (S.D. Tex. 2014).

31 Veasey v. Abbott, 830 F.3d 216 (5th Cir. 2016) (en banc) *cert. denied*, 137 S. Ct. 612 (2017).

32 National Voter Registration Act of 1993, H.R. 2, 103rd Cong. (1993), 52 U.S.C. § § 20507(b), (c)(2), (d)(2).

33 Holly Dickson (Legal Director, Arkansas Civil Liberties Union Foundation) to Hon. Mark Martin (Arkansas Secretary of State), October 31, 2016, 3, https://www.acluarkansas.org/sites/default/files/field_documents/369.pdf; John Lyon, "Hutchinson: Clerks Should Lean Toward Letting People Vote," *Arkansas News*, August 4, 2016, http://www.arkansasnews.com/news/20160804/hutchinson-clerks-should-lean-toward-letting-people-vote.

34 In Arkansas, those convicted of a felony are ineligible to vote "unless the person's sentence has been discharged or the person has been pardoned." Ark. Const. Amend. 51, § 9(a)(1).

35 More than 4,000 people were incorrectly included on the list. See John Lyon, "Hutchinson: Clerks Should Lean Toward Letting People Vote," *Arkansas News*, August 4, 2016, http://www.arkansasnews.com/news/20160804/hutchinson-clerks-should-lean-toward-letting-people-vote. Pulaski County found that at least 300 of the 1,800 Pulaski County residents on the list belonged to people who were "completely innocent." Matthew Mershon, "Pulaski Co. Clerk Says Sec. of State Needs to Take Responsibility in Possible Voter Purge," *KATV*, August 13, 2016, http://katv.com/news/local/pulaski-co-clerk-says-sec-of-state-needs-to-take-responsibility-in-possible-voter-purge.

36 See Benjamin Hardy, "Data Mix-Up from Ark. Secretary of State Purges Unknown Number of Eligible Voters," *Arkansas Blog*, *Arkansas Times*, July 25, 2016, https://www.arktimes.com/ArkansasBlog/archives/2016/07/25/data-mix-up-from-ark-secretary-of-state-purges-unknown-number-of-eligible-voters; Brenda Blagg, "Taking a Vote: State Botches Inmate Report to County Clerks," Between the Lines, *Northwest Arkansas Democrat-Gazette*, July 27, 2016.

37 See Benjamin Hardy, "Data Mix-Up from Ark. Secretary of State Purges Unknown Number of Eligible Voters," *Arkansas Blog*, *Arkansas Times*, July 25, 2016, https://www.arktimes.com/ArkansasBlog/archives/2016/07/25/data-mix-up-from-ark-secretary-of-state-purges-unknown-number-of-eligible-voters.

38 See Brian Fanney, "20,000 Cases Erroneously Listed Felonies," *Arkansas Democrat-Gazette*, Sep. 3, 2016, https://www.pressreader.com/usa/arkansas-democrat-gazette/20160903/281496455722563.

39 Jason Kennedy (Assistant Chief Deputy Clerk, Pulaski County, Arkansas), interview by Brennan Center for Justice, June 8, 2018.

40 See Julián Aguilar, "Voter Purge Bill Raises Concerns After Living Flagged as Possibly Dead," *The Texas Tribune*, September 12, 2012, https://www.texastribune.org/2012/09/12/concerns-raised-after-living-voters-flagged-dead/.

41 2011 Tex. Sess. Law Serv. Ch. 683 (H.B. 174), https://capitol.texas.gov/tlodocs/82R/billtext/pdf/HB00174F.pdf#navpanes=0.

42 See Myrna Pérez, *Voter Purges* (New York: Brennan Center for Justice, September 2008), 20 https://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf.

43 See Defendant Andrade's Notice Of Withdrawal, Plea To The Jurisdiction, And Motion To Dissolve The Temporary Restraining Order, Moore v. Morton, No. D-1-GN-12-002923 (Dist. Ct. Travis Cnty. Tex. Sept. 21, 2012). See also Chuck Lindell, "State Settles Lawsuit on 'Dead' Voter Purge," *American-Statesman*, October 3, 2012, https://www.statesman.com/news/state--regional-govt--politics/state-settles-lawsuit-dead-voter-purge/n1zTG10Yiyobma3AlT7QSJ/.

44 Corrie MacLaggan, "Texas Voter Purge Lawsuit Ends with Clarification Memo on Process for Clearing Rolls," *Reuters*, October 3, 2012, https://www.huffingtonpost.com/2012/10/03/texas-voter-purge-lawsuit_n_1937564.html.

45 Lise Olsen, "Texas' voter purge made repeated errors," *Houston Chronicle*, November 2, 2012, https://www.chron.com/news/politics/article/Texas-voter-purge-made-repeated-errors-4001767.php.

46 Ibid.

47 See Notice to the Court of Rule 11 Agreement, Moore v. Morton, No. D-1-GN-12-002923 (Dist. Ct. Travis Cnty. Tex. Oct. 3, 2012); see also Chuck Lindell, "State Settles Lawsuit on 'Dead' Voter Purge," *American-Statesman*, October 3, 2012, https://www.statesman.com/news/state--regional-govt--politics/state-settles-lawsuit-dead-voter-purge/n1zTG10Yiyobma3AlT7QSJ/.

48 See Marjorie Landa, *Audit Report on the Board of Elections' Controls over the Maintenance of Voters' Records and Poll Access* (New York: City of New York Office of the Comptroller, November 2017), 9, https://comptroller.nyc.gov/reports/audit-report-on-the-board-of-elections-controls-over-the-maintenance-of-voters-records-and-poll-access/.

49 Ibid.

50 New York State Office of the Attorney General, "A.G. Schneiderman Moves to Intervene in Lawsuit Against NYC Board of Elections Regarding Voter Registration Purges," news release, January 27, 2017, https://ag.ny.gov/press-release/ag-schneiderman-moves-intervene-lawsuit-against-nyc-board-elections-regarding-voter.

51 Brigid Bergin, John Keefe, and Jenny Ye, "Brooklyn Voter Purge Hit Hispanics Hardest," *WNYC*, June 21, 2016, https://www.wnyc.org/story/brooklyn-voter-purge-hit-hispanics-hardest/.

52 The other major federal statute regulating voter purges is the Help America Vote Act of 2002 (HAVA) 52 U.S.C. § 21083(a). The law reaffirms requirements of the NVRA and contains additional regulations for the maintenance of voter lists, requires states to set up unique identifying numbers for registered voters, requires states to attempt to verify the validity of information submitted by voter registration applicants, and ensures certain voters, including those missing from the voter rolls, can cast provisional ballots.

53 Under the Bush Administration, the DOJ filed several suits against jurisdictions for failing to purge enough voters. Office of the Inspector General, U.S. Department of Justice, *A Review of the Operations of the Voting Section of the Civil Rights Division* (2013), 97, https://oig.justice.gov/reports/2013/s1303.pdf. See also Steven Rosenfeld, "Voter Purging: A Legal Way for Republicans to Swing Elections?" *AlterNet*, September 11, 2017, http://web.archive.org/web/20071118161151/http:/www.alternet.org/story/62133/. The Department also pressured a U.S. Attorney to sue Missouri, even though St. Louis had improperly purged 50,000 voters only 4 years earlier. After that U.S. Attorney refused, he was fired. Jonathan Brater, Brennan Center for Justice, "The Purge: Ten Years Later?" June 30, 2017, https://www.brennancenter.org/blog/purge-ten-years-later.

54 See, e.g., "Cases Raising Claims Under the National Voter Registration Act," U.S. Department of Justice, last modified October 16, 2015, https://www.justice.gov/crt/cases-raising-claims-under-national-voter-registration-act; U.S. Attorney's Office, Eastern District of New York, "United States Announces Settlement with New York City Board of Elections Resolving Improper Removal of Voters from Registration Rolls," news release, October 31, 2017, https://www.justice.gov/usao-edny/pr/united-states-announces-settlement-new-york-city-board-elections-resolving-improper; U.S. Department of Justice, Office of Public Affairs, "State of Connecticut Agrees to Resolve Claims of National Voter Registration Act Violations," news release, August 5, 2016, https://www.justice.gov/opa/pr/state-connecticut-agrees-resolve-claims-national-voter-registration-act-violations; U.S. Department of Justice, Office of Public Affairs, "State of Alabama Agrees to Resolve Claims of National Voter Registration Act Violations," news release, November 13, 2015, https://www.justice.gov/opa/pr/state-alabama-agrees-resolve-claims-national-voter-registration-act-violations; see also Arcia v. Fla. Sec'y of State, 772 F.3d 1335, 1343–48 (11th Cir. 2014) (finding Florida's purge violated the NVRA's prohibition on systematic purges within 90 days of a federal election).

55 Ibid.

56 Brief for the League of Women Voters et al as Amicus Curiae supporting Respondents 17, Husted v. A. Philip Randolph Institute, No. 16-980 (2017).

57 Brief for the United States as Amicus Curiae supporting Petitioner, Husted v. A. Philip Randolph Institute, No. 16-980 (2017).

58 See "Husted v. A. Philip Randolph Institute," Brennan Center for Justice, last modified June 11, 2018, https://www.brennancenter.org/legal-work/husted-v-philip-randolph-institute-0.

59 See Pam Fessler, "Advocates Worry Trump Administration Wants to Revamp Motor Voter Law," *NPR*, July 8, 2017, https://www.npr.org/2017/07/08/536006813/advocates-worry-trump-administration-wants-to-revamp-motor-voter-law; Jonathan Brater, Brennan Center for Justice, "The Purge: Ten Years Later?," June 30, 2017, https://www.brennancenter.org/blog/purge-ten-years-later. For an example of the letters, see https://assets.documentcloud.org/documents/3881818/SOS-Letter.pdf.

60 For example, Vanita Gupta (CEO of the Leadership Conference on Civil and Human Rights and former head of DOJ's civil rights division under President Barack Obama) said that, "[i]t is not normal for the Department of

Justice to ask for voting data from all states covered by the National Voter Registration Act. It's likely that this is instead the beginning of an effort to force unwarranted voter purges." Sam Levine, "This DOJ Letter May Be More Alarming Than Trump Commission's Request For Voter Data," *HuffPost*, July 5, 2017, https://www.huffingtonpost.com/entry/department-of-justice-voter-purge_us_595d22b1e4b0da2c7326c38b. See also Leon Neyfakh, "How Trump's DOJ Will Try to Purge Voter Rolls," *Slate*, July 11, 2017, http://www.slate.com/articles/news_and_politics/jurisprudence/2017/07/how_trump_s_doj_will_try_to_purge_voter_rolls.html (describing DOJ letters as "a first step toward bringing back a George W. Bush–era strategy of forcing states to aggressively purge their voter rolls under threat of litigation"). The Department did intervene in a lawsuit filed against Kentucky by a private plaintiff organization seeking more aggressive purging. Judicial Watch, Inc. v. Grimes, 3:17-cv-00094, filed November 14, 2017 (E.D. Ky.).

61 Kansas State Rep. Keith Esau, "Interstate Voter Registration Crosscheck Program" (PowerPoint presentation, National Conference of State Legislators, Williamsburg, VA, June 15, 2017), 5, http://www.ncsl.org/Portals/1/Documents/Elections/Kansas_VR_Crosscheck_Program.pdf.

62 "ERIC," Electronic Registration Information Center, accessed May 24, 2018, http://www.ericstates.org/.

63 Christopher Famighetti, Douglas Keith, and Myrna Pérez, *Noncitizen Voting: The Missing Millions* (New York: Brennan Center for Justice, May 2017), https://www.brennancenter.org/sites/default/files/publications/2017_NoncitizenVoting_Final.pdf.

64 Public Interest Legal Foundation, "248 Counties Have More Registered Voters Than Live Adults," news release, September 25, 2017, https://publicinterestlegal.org/blog/248-counties-registered-voters-live-adults/. The Brennan Center for Justice and other civil rights groups contacted the same jurisdictions to notify them that some information provided by the organization was misleading. Brennan Center for Justice, "Civil Rights Groups Launch National Effort to Combat Alarming Voter Purge Attempt," news release, November 22, 2017, https://www.brennancenter.org/press-release/civil-rights-groups-launch-national-effort-combat-alarming-voter-purge-attempt.

65 See Myrna Pérez, *Voter Purges* (New York: Brennan Center for Justice, September 2008), https://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf.

66 Missouri, Iowa, Nebraska, and Kansas. See Memorandum of Understanding Between the State of Iowa, Nebraska, and Kansas For the Improvement of Election Administration, December 2005 (on file with the Brennan Center for Justice).

67 These states were Alabama, Arizona, Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia, and West Virginia. This information is derived from a spreadsheet obtained from officials in Idaho via public records request (on file with the Brennan Center for Justice).

68 Ibid.

69 Ibid. Some of these matches could also include individuals matched in more than 2 states, so the number of individuals could be lower than 3.6 million.

70 Interstate Voter Registration Crosscheck Program, *2017 Participation Guide*, January 2017, goo.gl/zbsygH.

71 See *infra* text box describing limitations of name and birthdate matching.

72 Sharad Goel et al., "One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections" (working paper, Stanford University et al., 2017), 3, 26, https://scholar.harvard.edu/files/morse/files/1p1v.pdf.

73 Ibid. 27.

74 See Jonathan Brater, Brennan Center for Justice, "Virginia Offers Lessons for Voter List Maintenance," November 25, 2013, https://www.brennancenter.org/analysis/virginia-offers-lessons-voter-list-maintenance.

75 See Jim Nolan, "Chesterfield Registrar Delays Purge of Voter Rolls," *Richmond Times-Dispatch*, October 9, 2013, http://www.richmond.com/news/local/chesterfield/chesterfield-registrar-delays-purge-of-voter-rolls/article_162e36b5-0be7-5dc8-af9f-48876a167b43.html.

76 Ibid.

77 See Matthew Barakat, "Va. Removes 40K From Voter Rolls Over Democrats' Objections," *Richmond Times-Dispatch*, October 17, 2013, http://www.richmond.com/news/state-regional/va-removes-k-from-voter-rolls-over-democrats-objections/article_2d111de4-49de-523b-bd9c-5d93b7c0a00e.html. Virginia subsequently began to release reports explaining, among other things, the way Crosscheck data was used. They found that only 10 percent of Crosscheck matches were usable for list maintenance. Virginia Department of Elections, *Annual List Maintenance Report*, 2017, 5, https://www.elections.virginia.gov/Files/maintenance-reports/2017SBEListMaintenancereport.pdf.

78 Alabama law exempts county boards from the requirement that they contact voters to verify suspected address changes when another state provides notice that "the elector registered to vote in another jurisdiction, within or without the State of Alabama, at a date subsequent to the date the elector registered to vote in the jurisdiction of the county board of registrars." Ibid. at § 17-4-38.1(c). An Election Handbook provided by the Alabama Secretary of State's office indicates that such notice is sufficient to disqualify and remove the voter when a "registration official from another state notifies registrars in writing that the voter has registered elsewhere." Alabama Law Institute, Alabama Election Handbook: Eighteenth Edition (2017), 262. But in a December 1, 2016 email obtained through a public records request, the Secretary of State's Supervisor of Voter Registration provided county registrars a list of voters that Crosscheck suggested had "registered to vote in another state more recently" than in Alabama and directed the registrars to review the list and "take the action you would normally take as if you received notice directly from another state." Clay Helms (Supervisor of Voter Registration, Office of Alabama Secretary of State), email to local registrars, December 1, 2016, on file with authors. In an interview, Alabama confirmed that the state has considered Crosscheck data as information provided directly from another state; although the state does filter the data to rule out some mismatches, it does not require a notice and waiting-period process. Alabama, which uses ERIC, has not determined whether it will use Crosscheck in future years. John Bennett (Deputy Chief of Staff/Communications Director, Alabama Secretary of State's Office), interview by Brennan Center for Justice, June 15, 2018.

79 Indiana Code § 3-7-38.2-5(d). The Brennan Center is suing Indiana over this matter. Indiana NAACP & League of Women Voters of Indiana v. Lawson, No. 1:17-cv-2897 (S.D. Ind.). Indiana's law does not provide notice as required by the NVRA. See Indiana Code § 3-7-38.2-5(d). On June 8, 2018, a federal judge issued a preliminary injunction against the law, meaning it is temporarily blocked. Order Granting Plaintiffs' Motion for Preliminary Injunction, Indiana NAACP & League of Women Voters of Indiana v. Lawson, No. 1:17-cv-2897 (S.D. Ind.). *Available at* https://www.brennancenter.org/sites/default/files/legal-work/2018-06-18_Order_Granting_Plaintiffs%27_Motion_for_Preliminary_Injunction.PDF.

80 "2017 Maine Crosscheck Data Review Plan" (providing, "If the matched data shows that the Maine voter record is older than the other state's voting record, then the Maine record will be cancelled. No notice to the voter is required"). Document produced in response to public records request issued by Brennan Center for Justice and on file with authors.

81 Idaho also removes voters immediately, but its practice permitting immediate removal of individuals flagged by Crosscheck without notice or a waiting period does not violate federal law because Idaho is exempt from the NVRA, and therefore does not have to abide by the NVRA notice and waiting period requirements.

82 State of Arizona, *Elections Procedures Manual*, 2018 Edition, 104, http://live-az-sos.pantheonsite.io/sites/default/files/2018%200330%20State%20of%20Arizona%20Elections%20Procedures%20Manual.pdf (allowing removal within 90 days in the case of a "true match," which could, but need not, involve direct confirmation from the voter). Arizona declined to be interviewed for this report but informed the Brennan Center that it no longer participates in Crosscheck. Eric Spencer (State Election Director), email to Brennan Center for Justice, June 14, 2018, on file with the Brennan Center. The state did participate in the last Crosscheck match in 2017, and its 2018 election manual provides for removal through Crosscheck.

83 These states are Alaska, Florida, Kentucky, Massachusetts, New York, Oregon, Pennsylvania, and Washington. See Jonathan Brater, Brennan Center for Justice, "The Purge: Ten Years Later?," June 30, 2017, https://www.brennancenter.org/blog/purge-ten-years-later. In addition to those states, Arizona informed the Brennan Center that it is no longer participating in Crosscheck. Eric Spencer (State Election Director, Arizona), email to Brennan Center for Justice, June 14, 2018, on file with the Brennan Center.

84 According to the Center for Investigative Reporting, those 7 states are: Colorado, Georgia, Louisiana, Nevada,

North Carolina, South Carolina, and West Virginia. See Aaron Sankin, "Crosscheck is ineffective and insecure. But states aren't withdrawing," *Reveal*, March 26, 2018, https://www.revealnews.org/blog/crosscheck-is-ineffective-and-insecure-but-states-arent-withdrawing/.

85 For a discussion of some of these security lapses, see, for example, Jonathan Brater, Brennan Center for Justice, "The Purge: Ten Years Later?," June 30, 2017, https://www.brennancenter.org/blog/purge-ten-years-later; Dell Cameron, "As Crosscheck Moves to Secure Voter Data, Hacking Fears Grow Among Experts and Politicians," *Gizmodo*, January 24, 2018, https://gizmodo.com/as-crosscheck-moves-to-secure-voter-data-hacking-fears-1822344007.

86 See *Testimony on the Interstate Crosscheck Program*, Kan. H. Comm. on Elections, January 17, 2018 (testimony of Bryan A. Caskey, Director of Elections), http://www.kslegislature.org/li/b2017_18/committees/ctte_h_electns_1/documents/testimony/20180117_01.pdf; Allison Kite, "Kobach's Office Will Delay Data Uploads for Crosscheck Voter System to Accommodate Security Review," *The Topeka Capital-Journal*, January 17, 2018, http://www.cjonline.com/news/20180117/kobachs-office-will-delay-data-uploads-for-crosscheck-voter-system-to-accommodate-security-review.

87 Sophia Tareen, "Illinois Delays Sending Voter Data to Multi-State Program," *Associated Press*, January 16, 2018, https://www.usnews.com/news/best-states/illinois/articles/2018-01-16/illinois-delays-sending-voter-data-to-multi-state-program.

88 Ibid.

89 Aaron Sankin, "Crosscheck Is Ineffective and Insecure. But States Aren't Withdrawing," *Reveal*, March 26, 2018, https://www.revealnews.org/blog/crosscheck-is-ineffective-and-insecure-but-states-arent-withdrawing/.

90 See Transcript of Oral Argument at 49:7-50:13, In. NAACP & League of Women Voters of In. v. Lawson, No. 1:17-cv-2897 (S.D. Ind., May 2, 2018).

91 "ERIC," Electronic Registration Information Center, accessed May 24, 2018, http://www.ericstates.org/.

92 Electronic Registration Information Center, Inc., *Bylaws*, December 2016, 21, http://www.ericstates.org/images/documents/ERIC_Bylaws_12-16-2016.pdf; Tim Harper, Bipartisan Policy Center, "Florida Joins the ERIC Club – and Brings 14 Million New Eligible Voters," March 20, 2018, https://bipartisanpolicy.org/blog/florida-joins-the-eric-club-and-brings-14-million-new-eligible-voters/. Kentucky informed the Brennan Center in June 2018 that the state would soon be joining ERIC, and agreed to use ERIC data for voter list maintenance in court settlement. Jared Dearing (Executive Director, State Board of Elections), interview by Brennan Center for Justice, June 14, 2018; Judicial Watch, Inc. v. Grimes, 3:17-cv-00094, filed November 14, 2017 (E.D. Ky).

93 See, e.g., Matt Dietrich (Public Information Officer, Illinois State Board of Elections), interview by Brennan Center for Justice, May 8, 2018; Wayne Thorley (Deputy Secretary of State for Elections, Nevada Secretary of State) and Justus Wendland (HAVA Administrator, Nevada Secretary of State), interview by Brennan Center for Justice, May 18, 2018; see also Colo. Rev. Stat. § 1-2-605(7).

94 For example, Alabama credited ERIC with helping to increase voter registration in the state. John Bennett (Deputy Chief of Staff/Communications Director, Alabama Secretary of State), interview by Brennan Center for Justice, June 15, 2018.

95 Gary Bland and Barry C. Burden, *Electronic Registration Information Center (ERIC) Stage 1 Evaluation* (RTI International, December 2013), 1, https://www.rti.org/sites/default/files/resources/eric_stage1report_pewfinal_12-3-13.pdf. In ERIC's first year of operation, "ERIC states showed a net improvement in new registration of 0.87 percentage points over non-ERIC states."

96 Roger Stitt (Voter Registration Manager of Operations, Maryland State Board of Elections), interview by Brennan Center for Justice, May 8, 2018; Kyle Thomas (Director, Voting and Registration Systems, Illinois State Board of Elections), interview by Brennan Center for Justice, May 10, 2018.

97 Kyle Thomas (Director, Voting and Registration Systems, Illinois State Board of Elections), interview by Brennan Center for Justice, May 10, 2018.

98 Memorandum from Meagan Wolfe, Interim Administrator (Prepared by Sarah Whitt, WisVote IT Lead, and Jodi Kitts, WisVote Specialist) to Wisconsin Election Commission Members, May 24, 2018, provided to Brennan Cen-

ter by Wisconsin Elections Commission (on file with Brennan Center). Wisconsin implemented the supplemental poll lists after some voters experienced problems at a February 2018 election. Through the use of the supplemental poll lists, these voters were able to reactivate their registrations at the polls and vote, rather than having to re-register. Sarah Whitt (WisVote Functional Lead, Wisconsin Elections Commission), interview by Brennan Center for Justice, June 4, 2018.

99 Act of May 18, 2006, 2006 Va. Laws Ch. 940 (S.B. 313), § 1 (codified as amended at Va. Code Ann. §§ 24.2-404 & 24.2-427); Act of June 11, 1997, 1997 Tex. Sess. Law. Serv. Ch. 640 (H.B. 1645), § 1 (codified as amended at Tex. Elec. Code Ann. § 16.0332).

100 Act of Apr. 30, 2009, 2009 Georgia Laws Act 86 (H.B. 549), § 1 (amending Ga. Code Ann. § 21-2-231, to require removal of registration of every person that declined jury duty based on noncitizenship); Act of May 5, 2017, Act 2017 (87 G.A.) ch. 110, H.F. 516, § 4 (amending Iowa Code Ann. § 48A.30 to require cancelation of voter registration of every person that submits documentation to prove noncitizenship for purpose of disqualifying themselves from jury duty); Act of Apr. 1, 2010, 2010 Minn. Sess. Law Serv. Ch. 201 (H.F. 3108), § 12 (adding Minn. Stat. Ann. § 201.158, which requires county auditors to challenge the registration of every registered voter who is identified as a noncitizen by the commissioner of public safety) (later repealed and re-codified as amended at Minn. Stat. Ann. § 201.145); Act of May 23, 2011, 2011 Tennessee Laws Pub. Ch. 235 (S.B. 352), § 1 (adding Tenn. Code. Ann. § 2-2-141, requiring coordinator of elections to begin removal proceedings for registered voters identified as noncitizens in the Department of Safety database).

101 Janelle Ross, "Voter Roll Purges Could Spread to At Least 12 States," *HuffPost*, July 31, 2012, https://www.huffingtonpost.com/2012/07/31/voter-roll-purge_n_1721192.html.

102 "About SAVE," U.S. Citizenship and Immigration Services, last modified September 8, 2016, https://www.uscis.gov/save/about-save.

103 "SAVE Verification Process," U.S. Citizenship and Immigration Services, last modified June 15, 2016, https://www.uscis.gov/save/about-save/verification-process; Edgardo Cortes and Liz Howard (Virginia State Board of Elections), interview by Brennan Center for Justice, August 9, 2017.

104 Minn Stat. Ann. § 201.145; Tenn. Code Ann. § 2-2-141; Va. Code Ann. § 24.2-427.

105 See Marc Levy, "State Disputes Claim 100K Noncitizens Registered to Vote," *AP News*, March 1, 2018, https://www.apnews.com/033c89a4d0d646d386a63117c0c72a11. Relatedly, a Wyoming official told us that when the state investigated a list of potential noncitizens produced from state Department of Transportation records, the state did not determine that there were any noncitizens on the rolls and found that many purported noncitizens had subsequently naturalized and were thus eligible to vote. Jennifer Trabing (Election Policy and Planning Analyst, Elections Division, Wyoming Secretary of State's Office), interview by Brennan Center for Justice, May 9, 2018.

106 Va. Code Ann. § 24.2-410.1; Roger Stitt (Voter Registration Manager of Operations, Maryland State Board of Elections), interview by Brennan Center for Justice, May 8, 2018.

107 Christopher Famighetti, Douglas Keith, and Myrna Pérez, *Noncitizen Voting: The Missing Millions* (New York: Brennan Center for Justice, May 2017), https://www.brennancenter.org/sites/default/files/publications/2017_NoncitizenVoting_Final.pdf ("Other times, noted one administrator, a citizen will forget to check the 'citizen' box when filling out a driver's license form and that will trigger a process which could end in a citizen's registration being canceled, and also artificially inflate the number of alleged noncitizens who are on the registration rolls.").

108 Ga. Code Ann. § 21-2-231; La. Stat. Ann. § 18:178; Tex. Elec. Code Ann. § 16.0332.

109 Christopher Famighetti, Douglas Keith, and Myrna Pérez, *Noncitizen Voting: The Missing Millions* (New York: Brennan Center for Justice, May 2017), https://www.brennancenter.org/sites/default/files/publications/2017_NoncitizenVoting_Final.pdf ("Several interviewees described how eligible Americans sometimes check a box on a jury service form claiming not to be citizens because they do not want to serve on the jury. 'One way for people to get out of jury duty is they can say they're a noncitizen and fill out a card saying they're not a citizen,' explained Jacquelyn Callanen, Elections Administrator in Bexar County, Texas.")

110 U.S. Student Ass'n Found. v. Land, 2:08-CV-14019, filed September 17, 2008 (E.D. Mich).

111 "Common Cause of Colorado, et al. v. Buescher," Brennan Center for Justice, last modified January 22, 2010, https://www.brennancenter.org/legal-work/common-cause-colorado-et-al-v-buescher.

112 Arcia v. Fla. Sec'y of State, 772 F.3d 1335, 1343–48 (11th Cir. 2014).

113 Adam Gitlin and Wendy Wesier, *The Justice Department's Voter Fraud Scandal: Lessons* (New York: Brennan Center for Justice, January 2017), https://www.brennancenter.org/sites/default/files/publications/Justice_Department_Voter_Fraud_Scandal_Lessons.pdf.

114 Compare Judicial Watch, Inc. v. Logan, 2:17-cv-08948, filed December 13, 2017 (C.D. Cal.), Judicial Watch, Inc. v. Grimes, 3:17-cv-00094, filed November 14, 2017 (E.D. Ky.); Voter Integrity Project NC, Inc. v. Wake Cty. Bd. of Elections, 5:16-cv-00683, filed July 18, 2016 (E.D.N.C.); Bellitto v. Snipes, 0:16-cv-61474, filed June 27, 2016 (S.D. Fla.); Va. Voter's Alliance, Inc. v. Leider, 1:16-cv-00394, filed April 7, 2016 (E.D. Va.); American Civil Rights Union v. Philadelphia City Commissioners, 2:16-cv-01507, filed April 4, 2016 (E.D. Pa.); American Civil Rights Union v. Rodriguez, 7:16-cv-00103, filed March 4, 2016 (S.D. Tex.); American Civil Rights Union v. Noxubee Cty., 3:15-cv-00815, filed November 12, 2015 (S.D. Miss.); American Civil Rights Union v. Clarke Cty., 2:15-cv-00101, filed July 27, 2015 (S.D. Miss.); American Civil Rights Union v. Martinez-Rivera, 2:14-cv-00026, filed March 27, 2014 (W.D. Tex.); American Civil Rights Union v. McDonald, 2:14-cv-00012, filed Jan. 27, 2014 (W.D. Tex.); True the Vote v. Stewart, 1:13-cv-03369, filed December 12, 2013 (D. Colo) (voluntarily dismissed); True the Vote v. Wintz 1:13-cv-03368, filed December 12, 2013 (D. Colo) (voluntarily dismissed); American Civil Rights Union v. Jefferson Davis Cty., 2:13-cv-00087, filed April 26, 2013 (S.D. Miss.); American Civil Rights Union v. Walthall Cty., 2:13-cv-00086, filed April 26, 2013 (S.D. Miss.); Judicial Watch, Inc. v. Husted, 2:12-cv-00792, filed August 30, 2012 (S.D. Ohio); Judicial Watch, Inc. v. King, 1:12-cv-00800, filed June 11, 2012 (S.D. Ind.), with Common Cause Indiana v. Lawson, 1:17-cv-03963, filed October 27, 2017 (S.D. Ind.); Indiana NAACP v. Lawson, 1:17-cv-02897, filed August 23, 2017 (S.D. Ind.); N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections, 1:16-cv-1274, filed October 31, 2016 (M.D.N.C.); Husted v. A. Philip Randolph Institute, 2:16-cv-00303, filed April 6, 2016 (S.D. Ohio); Common Cause v. Kemp, 1:16-cv-00452, filed February 10, 2016 (N.D. Ga.); Ga. State Conf. of the NAACP v. Hancock Cty. Bd. of Elections and Registration, 5:15-cv-00414, filed November 3, 2015 (M.D. Ga.); The Democratic Party of Va. v. Va. State Bd. of Elections, 1:13-cv-1218, filed October 1, 2013 (E.D. Va.); LULAC v. Harris Cty., 4:12-cv-03035, filed October 11, 2012 (S.D. Tex.); Colón-Marrero v. Conty-Pérez, 12-cv-1749, filed September 12, 2012 (D.C.P.R.); Arcia v. Detzner, 1:12-cv-22282, filed June 19, 2012 (S.D. Fla.); Mi Familia Vota Education Fund v. Detzner, 8:12-cv-1294, filed June 8, 2012 (M.D. Fla.); Janis v. Nelson, 5:09-cv-05019, filed on February 18, 2009 (D.S.D.); Common Cause of Colorado v. Buescher, 1:08-cv-02321, filed October 25, 2008 (D. Colo.); Mont. Democratic Party v. Eaton, 9:08-cv-00141, filed October 6, 2008 (D. Mont.); U.S. Student Ass'n Found. v. Land, 2:08-cv-14019, filed September 17, 2008 (E.D. Mich).

115 Judicial Watch, Inc. v. Grimes, 3:17-cv-00094, filed November 14, 2017 (E.D. Ky.); Voter Integrity Project NC, Inc. v. Wake County Board of Elections, 5:16-cv-00683, filed July 18, 2016 (E.D.N.C.); American Civil Rights Union v. Noxubee County, 3:15-cv-00815, filed November 12, 2015 (S.D. Miss.); American Civil Rights Union v. Clarke County, 2:15-cv-00101, filed July 27, 2015 (S.D. Miss.); American Civil Rights Union v. Martinez-Rivera, 2:14-cv-00026, filed March 27, 2014 (W.D. Tex.); American Civil Rights Union v. McDonald, 2:14-cv-00012, filed Jan. 27, 2014 (W.D. Tex.); American Civil Rights Union v. Jefferson Davis County, 2:13-cv-00087, filed April 26, 2013 (S.D. Miss.); American Civil Rights Union v. Walthall County, 2:13-cv-00086, filed April 26, 2013 (S.D. Miss.); Judicial Watch, Inc. v. Husted, 2:12-cv-00792, filed August 30, 2012 (S.D. Ohio).

116 Willie M. Miller (Noxubee County District 4 Election Commissioner), interview by Brennan Center for Justice, May 29, 2018.

117 American Civil Rights Union v. Rodriguez, 7:16-cv-00103, filed Mar. 4, 2016 (S.D. Tex.).

118 Judicial Watch, Inc. v. Logan, 2:17-cv-08948, filed December 13, 2017 (C.D. Cal.).

119 American Civil Rights Union v. Noxubee County, 3:15-cv-00815, filed November 12, 2015 (S.D. Miss.).

120 Sylvester Tate (Noxubee County District 1 Election Commissioner) and Willie Miller (Noxubee County District 4 Election Commissioner), interview by Brennan Center for Justice, May 29, 2018.

121 Judicial Watch, Inc. v. King, 1:12-CV-00800, filed June 11, 2012 (S.D. Ind.).

122 Indiana Secretary of State, "Hoosier Voters to Receive Postcard with Election Information in the Mail," news release, June 19, 2014, goo.gl/Xy2cbp; see also Max Greenwood, "Indiana Purges Nearly 500,000 from Voter Rolls," *The Hill,* April 20, 2017, http://thehill.com/blogs/ballot-box/329659-indiana-purges-nearly-half-a-million-from-voter-rolls; Indiana Secretary of State, "Indiana Prepares for Future Elections by Cleaning Up Its Voter Roll," news release, April 18, 2017, https://goo.gl/9dFzps.

123 Judicial Watch, "Judicial Watch, True the Vote Historic Indiana Lawsuit Forces Statewide Clean-Up of Voter Registration Lists, Permanent Changes in Election Law Procedures," news release, August 7, 2014, https://www.judicialwatch.org/press-room/press-releases/judicial-watch-true-vote-historic-indiana-lawsuit-forces-statewide-clean-voter-registration-lists-permanent-changes-election-law-procedures/.

124 Public Interest Legal Foundation, *Alien Invasion in Virginia*, September 2016, https://publicinterestlegal.org/files/Report_Alien-Invasion-in-Virginia.pdf; see also Public Interest Legal Foundation, *Alien Invasion II,* May 2017, https://publicinterestlegal.org/files/Alien-Invasion-II-FINAL.pdf.

125 Christopher Famighetti, Douglas Keith, and Myrna Pérez, *Noncitizen Voting: The Missing Millions* (New York: Brennan Center for Justice, May 2017), https://www.brennancenter.org/sites/default/files/publications/2017_NoncitizenVoting_Final.pdf.

126 These noncitizen removal figures are derived from Virginia's annual list maintenance reports. Virginia Department of Elections, *Annual List Maintenance Report*, 2015, https://www.elections.virginia.gov/Files/maintenance-reports/2015SBEListMaintenancereport.pdf; Virginia Department of Elections, *Annual List Maintenance Report*, 2016, https://www.elections.virginia.gov/Files/maintenance-reports/2016SBEListMaintenancereport.pdf; Virginia Department of Elections, *Annual List Maintenance Report*, 2017, https://www.elections.virginia.gov/Files/maintenance-reports/2017SBEListMaintenancereport.pdf.

127 League of United Latin American Citizens of Richmond v. Public Interest Legal Foundation 1:18-cv-00432-LO-IDD V.A.E.D, https://www.southerncoalition.org/wp-content/uploads/2017/01/LULAC-of-Richmond-v.-PILF.pdf. See also Pema Levy, "Member of Trump's Voter Fraud Commission Sued for Voter Intimidation," *Mother Jones,* April 12, 2018, https://www.motherjones.com/politics/2018/04/member-of-trumps-voter-fraud-commission-sued-for-voter-intimidation/; Pema Levy, "Trump Election Commissioner Used Dubious Data to Allege an 'Alien Invasion,'" *Mother Jones,* July 18, 2017, https://www.motherjones.com/politics/2017/07/trump-election-commissioner-used-dubious-data-to-allege-an-alien-invasion/; Stephen Dinan, "American Kicked Off Virginia Voter Rolls as 'Declared Non-Citizen,'" *The Washington Times,* June 18, 2017, https://www.washingtontimes.com/news/2017/jun/18/maureen-erickson-kicked-off-virginia-voting-rolls-/.

128 See *supra* text box on challenges.

129 Alaska, California, Colorado, District of Columbia, Georgia, Illinois, Maryland, New Jersey, Oregon, Rhode Island, Vermont, Washington, West Virginia. For a detailed description of the status of implementation of automatic voter registration in these states see "Automatic Voter Registration," Brennan Center for Justice, last modified April 17, 2018, https://www.brennancenter.org/analysis/automatic-voter-registration.

Appendix A: Federal Statutory Regulation of Voter Purge Practices

Purge practices are regulated by a combination of federal and state law. Below is a summary of federal statutes:

VOTING RIGHTS ACT

As a general matter, the Voting Rights Act (VRA), 52 U.S.C. § 10301 et seq, prohibits discrimination in voting. The Supreme Court has held that this prohibition applies to purges.[1] Prior to 2013, certain jurisdictions were required to seek federal preclearance of purge practices before they were implemented.[2] However, the formula by which these jurisdictions were covered was invalidated in *Shelby County v. Holder*,[3] effectively ending preclearance until Congress issues a new formula. Purge practices must still comply with Section 2 of the VRA, which bans discriminatory voting practices.[4]

NATIONAL VOTER REGISTRATION ACT

The National Voter Registration Act (NVRA) is the most comprehensive federal law regulating voter purges and applies to 44 states. Six states (Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming) are exempt because they had election day registration or no voter registration as of the date provided by the NVRA. These exemptions make sense because purge consequences are much less grave in a state that permits anyone eligible who is not on the registration rolls to register and to vote on Election Day (or does not require them to register in order to vote).

The law discusses five categories of removal from voter rolls: (1) request of the registrant; (2) disenfranchising criminal conviction; (3) mental incapacity; (4) death; and (5) change in residence.[5] The NVRA sets forth a series of specific requirements that apply to purges of registrants believed to have changed residence.[6]

The law also contains a series of additional proscriptions on state practices. For example, it provides that list maintenance must be uniform, nondiscriminatory, and in accordance with the Voting Rights Act.[7] It also prohibits *systematic* voter purges (those programs that remove groups of voters at once) within 90 days of a federal election.[8] The Act also has provisions that apply on Election Day if a voter has changed address. Voters who have moved within a jurisdiction are permitted to vote at either their new or old polling place (states get to choose), while purged voters — mistakenly believed to have moved — who show up on Election Day have the right to correct the error and cast a ballot that will count.[9]

HELP AMERICA VOTE ACT

The Help America Vote Act of 2002 (HAVA) reaffirms the requirements of the NVRA and contains additional regulations for voter list maintenance.[10] For example, HAVA requires states to create statewide voter registration databases with unique identifiers for registered voters.[11] The law also requires states to attempt to verify the validity of information submitted by voter registration applicants.[12] HAVA also ensures that certain voters, including those who do not appear on poll books, are permitted to vote provisional ballots at minimum.[13]

1 Young v. Fordice, 520 U.S. 273 (1997).
2 52 U.S.C. § 10304.
3 570 U.S.C. 2 (2013).
4 52 U.S.C. § 10301(a).
5 52 U.S.C. § 20507(a).
6 See 52 U.S.C. § 20507(d)(1).
7 52 U.S.C. § 20507(b)(1).
8 52 U.S.C. § 20507(c)(2)(A).
9 52 U.S.C. § 20507(e).
10 52 U.S.C. § 21083(a).
11 52 U.S.C. § 21083(a)(5)(A).
12 52 U.S.C. § 21083(a)(5)(B).
13 52 U.S.C. § 21082.

Appendix B: What Explains a Jurisdiction's Purge Rate?

	Removal Rate	Removal Rate
D (Preclearance Condition Lifted)	0.0150*** (0.00166)	
D (Preclearance Condition Lifted) * D (2014)		0.0240*** (0.00207)
D (Preclearance Condition Lifted) * D (2016)		0.00605*** (0.00193)
Median Age	-0.000600*** (0.000168)	-0.000601*** (0.000169)
Percent of Residents Who Moved in Past Year	0.0582*** (0.0124)	0.0578*** (0.0124)
Log (Median Income)	0.00639** (0.00283)	0.00625** (0.00283)
Log (Voting Age Population)	-0.000184*** (0.000608)	-0.000182*** (0.000608)
Log (Percent Black)	-0.00124*** (0.000362)	-0.00125*** (0.000362)
D (Secretary of State Appointed by Governor)	0.00634*** (0.00187)	0.00636*** (0.00187)
D (Secretary of State Appointed by Legislature)	0.0168*** (0.00202)	0.0168*** (0.00202)
D (State Legislature Controlled by Republicans)	0.0138*** (0.00122)	0.0138*** (0.00122)
Constant	0.0339 (0.0293)	0.0353 (0.0293)
Observations R-squared	9,057 0.069	9,057 0.073
Robust standard errors in parentheses, clustered by county. Year dummies not shown. *** p<0.01, ** p<0.05, * p<0.1 Notes: Data are from the 2010, 2012, 2014, and 2016 reporting periods. Includes jurisdictions that reported in each time period. Sources: U.S. Election Assistance Commission, U.S. Census Bureau: American Community Survey 5-Year Estimates, National Conference of State Legislatures		

Appendix C: Relationship Between Purge Rates and Provisional Ballot Rates

	Provisional Ballot Rate
Removal Rate	0.0177** (0.00697)
Turnout Rate	-0.00553*** (0.00164)
Log (Median Income)	0.00189*** (0.000504)
Log (Percent Black)	-0.000554* (0.000308)
Log (Percent White)	-0.00453*** (0.00132)
D (Implemented Strict Voter ID Requirement)	-0.00314 (0.000406)
Constant	-0.0185*** (0.00523)
Observations R-squared	1,854 0.741
Robust standard errors in parentheses, clustered by county. Year and state-level dummies not shown. *** p<0.01, ** p<0.05, * p<0.1 Notes: Data are from the 2010, 2012, 2014, and 2016 reporting periods. Includes jurisdictions covered under Section V of the Voting Rights Act at the time of the *Shelby County* decision in 2013 that reported in each time period. Sources: U.S. Election Assistance Commission, U.S. Census Bureau: American Community Survey 5-Year Estimates, National Conference of State Legislatures.	

Regression analysis shows that the higher a covered county's purge rate the higher their provisional ballot rate. Each 1 percent increase in removal rates was associated with an additional 1.8 provisional ballots for every 10,000 ballots cast. Although this number is small, the median for these jurisdictions in the 2012 presidential election was fewer than 1 provisional ballot per 10,000 cast. Importantly, this statistically significant relationship holds even after controlling for other sociodemographic factors such as population, turnout rate, racial composition, political orientation, and implementation of strict voter ID requirements.

As with any statistical study of this sort, it is impossible to determine whether the increase in purge rates in any particular county is responsible for an increase in provisional ballots. However, a closer look at the numbers in a few jurisdictions suggests how this relationship might work.

Shelby County, Alabama, the jurisdiction at issue in *Shelby County v. Holder,* is illustrative. After preclearance ended in 2013, the county's removal rate more than doubled, from 5.0 percent to 10.4 percent. In 2014, more than 18 percent of the county's voters were purged. In 2012, the provisional ballot rate was 0.15 percent, virtually identical to the national average of 0.16 percent. Following years in which the county purged an average of 10 percent of voters, the provisional ballot rate tripled to 0.45 percent.

Montgomery County, Alabama, also had to seek federal preclearance for purges in the past. From 2009 to 2012, when preclearance was required, the average two-year removal rate was 4.7 percent, well below the national average. But after

Shelby County effectively ended preclearance, the removal rates increased dramatically, nearly tripling to 12.0 percent. Montgomery County's numbers are similar to Shelby County's. In the two years ending in 2014, a period covering the cessation of preclearance, Montgomery County had a massive purge in which 21 percent of voters were removed. Subsequently, the provisional ballot rate shot up from 0.31 percent in the 2012 presidential election to more than 1 percent in the 2016 election.

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VOTER PURGES

Myrna Pérez

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The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. Our work ranges from voting rights to redistricting reform, from access to the courts to presidential power in the fight against terrorism. A singular institution – part think tank, part public interest law firm, part advocacy group – the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measurable change in the public sector.

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EXECUTIVE SUMMARY

Voter registration lists, also called voter rolls, are the gateway to voting. A citizen typically cannot cast a vote that will count unless her name appears on the voter registration rolls. Yet state and local officials regularly remove — or "purge" — citizens from voter rolls. In fact, thirty-nine states and the District of Columbia reported purging more than 13 million voters from registration rolls between 2004 and 2006.[1] Purges, if done properly, are an important way to ensure that voter rolls are dependable, accurate, and up-to-date. Precise and carefully conducted purges can remove duplicate names, and people who have moved, died, or are otherwise ineligible.

Far too frequently, however, eligible, registered citizens show up to vote and discover their names have been removed from the voter lists. States maintain voter rolls in an inconsistent and unaccountable manner. Officials strike voters from the rolls through a process that is shrouded in secrecy, prone to error, and vulnerable to manipulation.

While the lack of transparency in purge practices precludes a precise figure of the number of those erroneously purged, we do know that purges have been conducted improperly before. Over the past several years, every single purge list the Brennan Center has reviewed has been flawed. In 2004, for example, Florida planned to remove 48,000 "suspected felons" from its voter rolls. Many of those identified were in fact eligible to vote.[2] The flawed process generated a list of 22,000 African Americans to be purged, but only 61 voters with Hispanic surnames, notwithstanding Florida's sizable Hispanic population. To compound the problem, the purge list over-represented African Americans and mistakenly included thousands who had had their voting rights restored under Florida law. [3] Under pressure from voting rights groups, Florida ordered officials to stop using the purge list.[4] To compound the problem, the purge list over-represented African Americans and mistakenly included thousands who had had their voting rights restored under Florida law.

In New Jersey in 2005, the Brennan Center worked with a political science professor to analyze a purge list prepared by a political party using "matching" techniques. We found that the list was compiled using a number of faulty assumptions and that it would have harmed eligible voters if used as the basis for a purge. In 2006, the Secretary of State of Kentucky attempted to purge the state's rolls based on a flawed attempt to identify voters who had moved from Kentucky to neighboring South Carolina and Tennessee. A resulting lawsuit uncovered the fact that eligible voters who had not, in fact, moved out of the state of Kentucky were caught up in the purge; a state court ordered the state to reverse the purge.

The purges reviewed for this report give no greater grounds for comfort. While the reasons vary from state to state, no state reviewed in this report uses purge practices or procedures that are free from risk of error or manipulation, that have sufficient voter protections, or that have adequate procedures to catch and correct errors.

The secret and inconsistent manner in which purges are conducted make it difficult, if not impossible, to know exactly how many voters are stricken from voting lists erroneously. And when purges are made public, they often reveal serious problems. Here are a few examples recent examples:

- In Mississippi earlier this year, a local election official discovered that another official had wrongly purged 10,000 voters from her home computer just a week before the presidential primary.

- In Muscogee, Georgia this year, a county official purged 700 people from the voter lists, supposedly because they were ineligible to vote due to criminal convictions. The list included people who had never even received a parking ticket.

- In Louisiana, including areas hit hard by hurricanes, officials purged approximately 21,000 voters, ostensibly for registering to vote in another state. A voter could avoid removal if she provided proof that the registration was cancelled in the other state, documentation not available to voters who never actually registered anywhere else.

FINDINGS

This report provides one of the first systematic examinations of the chaotic and largely unseen world of voter purges. In a detailed study focusing on twelve states, we identified four problematic practices with voter purges across the country:

Purges rely on error-ridden lists. States regularly attempt to purge voter lists of ineligible voters or duplicate registration records, but the lists that states use as the basis for purging are often riddled with errors. For example, some states purge their voter lists based on the Social Security Administration's Death Master File, a database that even the Social Security Administration admits includes people who are still alive.[5] Even though Hilde Stafford, a Wappingers Falls, NY resident, was still alive and voted, the master death index lists her date of death as June 15, 1997.[6] As another example, when a member of a household files a change of address for herself in the United States Postal Service's National Change of Address database, it sometimes has the effect of changing the addresses of all members of that household. Voters who are eligible to vote are wrongly stricken from the rolls because of problems with underlying source lists.

Voters are purged secretly and without notice. None of the states investigated in this report statutorily require election officials to provide public notice of a systematic purge or even individual notice to those voters whose names are removed from the rolls as part of the purge. Additionally, with the exception of registrants believed to have changed addresses, many states do not notify individual voters before purging them. In large part, states that do provide individualized notice do not provide such notice for all classes of purge candidates. For example, our research revealed that it is rare for states to provide notice when a registrant is believed to be deceased. Without proper notice to affected individuals, an erroneously purged voter will likely not be able to correct the error

before Election Day. Without public notice of an impending purge, the public will not be able to detect improper purges or to hold their election officials accountable for more accurate voter list maintenance.

Bad "matching" criteria leaves voters vulnerable to manipulated purges. Many voter purges are conducted with problematic techniques that leave ample room for abuse and manipulation. State statutes rely on the discretion of election officials to identify registrants for removal. Far too often, election officials believe they have "matched" two voters, when they are actually looking at the records of two distinct individuals with similar identifying information. These cases of mistaken identity cause eligible voters to be wrongly removed from the rolls. The infamous Florida purge of 2000 — conservative estimates place the number of wrongfully purged voters close to 12,000 — was generated in part by bad matching criteria.[7] Florida registrants were purged from the rolls in part if 80 percent of the letters of their last names were the same as those of persons with criminal convictions.[8] Those wrongly purged included Reverend Willie D. Whiting Jr., who, under the matching criteria, was considered the same person as Willie J. Whiting.[9] Without specific guidelines for or limitations on the authority of election officials conducting purges, eligible voters are regularly made unnecessarily vulnerable.

NO EFFECTIVE NATIONAL STANDARD GOVERNS VOTER PURGES. THIS MAKES THE RISK OF BEING PURGED UNPREDICTABLE AND DIFFICULT TO GUARD AGAINST.

Insufficient oversight leaves voters vulnerable to manipulated purges. Insufficient oversight permeates the purge process beyond just the issue of matching. For example, state statutes often rely on the discretion of election officials to identify registrants for removal and to initiate removal procedures. In Washington, the failure to deliver a number of delineated mailings, including precinct reassignment notices, ballot applications, and registration acknowledgment notices, triggers the mailing of address confirmation notices,[10] which then sets in motion the process for removal on account of change of address. Two Washington counties and the Secretary of State, however, reported that address confirmation notices were sent when any mail was returned as undeliverable, not just those delineated in state statute. Since these statutes rarely tend to specify limitations on the authority of election officials to purge registrants, insufficient oversight leaves room for election officials to deviate from what the state law provides and may make voters vulnerable to poor, lax, or irresponsible decision-making.

POLICY RECOMMENDATIONS

No effective national standard governs voter purges; in fact, methods vary from state to state and even from county to county. A voter's risk of being purged depends in part on where in the state he or she lives. The lack of consistent rules and procedures means that this risk is unpredictable and difficult to guard against. While some variation is inevitable, every American should benefit from basic protections against erroneous purges.

Based on our review of purge practices and statutes in a number of jurisdictions, we make the following policy recommendations to reduce the occurrence of erroneous purges and protect eligible voters from erroneous purges.

A. Transparency and Accountability for Purges

States should:

- **Develop and publish uniform, non-discriminatory rules for purges.**

- **Provide public notice of an impending purge.** Two weeks before any county-wide or state-wide purge, states should announce the purge and explain how it is to be conducted. Individual voters must be notified and given the opportunity to correct any errors or omissions, or demonstrate eligibility before they are stricken from the rolls.

- **Develop and publish rules for an individual to prevent or remedy her erroneous inclusion in an impending purge.** Eligible citizens should have a clear way to restore their names to voter rolls.

- **Stop using failure to vote as a trigger for a purge.** States should send address confirmation notices only when they believe a voter has moved.

- **Develop directives and criteria with respect to the authority to purge voters.** The removal of any record should require authorization by at least two officials.

- **Preserve purged voter registration records.**

- **Make purge lists publicly available.**

- **Make purge lists available at polling places.** Purge lists should be brought to the polls on Election Day so that errors can be identified and pollworkers can find the names of erroneously purged voters and allow them to vote regular ballots.

B. Strict Criteria for the Development of Purge Lists

States should:

- **Ensure a high degree of certainty that names on a purge list belong there.** Purge lists should be reviewed multiple times to ensure that only ineligible voters are included.

- **Establish strict criteria for matching voter lists with other sources.**

- **Audit purge source lists.** If purge lists are developed by matching names on the voter registration list to names from other sources like criminal conviction lists, the quality and accuracy of the information in these lists should be routinely "audited" or checked.

- **Monitor duplicate removal procedures.** States should implement uniform rules and procedures for eliminating duplicate registrations.

C. "Fail-Safe" Provisions to Protect Voters

States should ensure that:

- **No voter is turned away from the polls because her name is not found on the voter rolls.** Instead, would-be voters should be given provisional ballots, to which they are entitled under the law.

- **Election workers are given clear instructions and adequate training as to HAVA's provisional balloting requirements.**

D. Universal Voter Registration

States should:

- **Take the affirmative responsibility to build clean voter rolls consisting of all eligible citizens.** Building on other government lists or using other innovative methods, states can make sure that all eligible citizens, and only eligible citizens, are on the voter rolls.

- **Ensure that voters stay on the voter rolls when they move within the state.**

- **Provide a fail-safe mechanism of Election Day registration for those individuals who are missed or whose names are erroneously purged from the voter rolls.**

I. INTRODUCTION

In 1959, the local Citizens Council, a white supremacist group with an organizational mission of maintaining racial segregation, together with a local election official removed 85% of the African American voters from the registration rolls of Washington Parish, Louisiana, under the guise of removing from the rolls all persons illegally registered.[11]

In 2007, almost 50 years after a court found that the Washington Parish purge was unconstitutional both in purpose and effect, election officials in Louisiana removed more than 21,000 people from the voter registration rolls, the majority from areas most devastated by Hurricane Katrina a year earlier.[12] Almost a third of those removed were from Orleans Parish,[13] which has a majority African American population.[14] A voter could avoid removal if she provided proof that the registration was cancelled in the other state, documentation not available to voters who never actually registered anywhere else.[15]

While we may be past the days in which election officials are complicit with those who intentionally seek to target persons of color for removal from the voter rolls, the way in which voter registration lists are maintained in this country may sometimes have a similar effect.[16]

WHEN PURGES GO WRONG, ELIGIBLE VOTERS OFTEN DISCOVER THEY HAVE BEEN KNOCKED OFF VOTER ROLLS ONLY WHEN THEY SHOW UP AT THE POLLS TO VOTE—AND CAN'T.

Voter registration lists are the gateway to voting. In most instances,[17] a citizen can only vote and have her vote count if her name appears on the registration rolls. Yet officials regularly remove, or "purge," citizens each day from voter registration lists. In fact, at least 13 million people were purged from voter rolls between the close of registration for the 2004 federal general election and the close of registration for the 2006 federal general election. A voter has been "purged" if her registration status has changed such that she is no longer listed on the registration list as a person who is able to cast a regular ballot or a ballot that will be counted.

Dependable, accurate, and up-to-date voter registration lists increase the integrity of our elections in many ways. They let candidates and get-out-the-vote groups work more efficiently. Dependable lists also reduce confusion at the polls, make turnout numbers more precise and election misconduct easier to detect and deter. To the extent that they help insure that registration lists correctly reflect eligible registrants, precise, carefully conducted purges are important.

Unfortunately, many of the voter purges in this country are performed in a slipshod manner and leave ample room for abuse and manipulation. When purges go wrong, eligible voters are removed from the rolls, frequently with no notice or knowledge until they show up at the polls to vote.

This report examines what goes wrong with those purges, how voter purges are conducted, and how to minimize the risk that eligible voters will be incorrectly purged across the county. Our analysis is based on a review and examination of state statutes, regulatory materials, and news reports in the following twelve states, representing a cross-section of regions, election systems, and purge practices: Florida, Kentucky, Indiana, Michigan, Missouri, Nevada, New York, Ohio, Oregon, Pennsylvania, Washington, and Wisconsin. In five states — Kentucky, Missouri, Nevada, Ohio, and Washington — we also conducted extensive interviews with state and local election officials charged with the maintenance of voter registration lists.

Due to the secret nature of purges, it is difficult to know the full extent of the problem, or the exact number of people who have been wrongfully kept from voting. What we do know is that in the states studied, purge practices are unnecessarily secretive and in need of improvement. When purges are made public, they reveal serious problems. Given the margins by which elections are won, these purges matter greatly, and there is reason to believe that the number of people wrongfully purged makes a difference. There is no reason for purges to be kept secret — they undermine confidence in elections, and cast doubt on our concept of fairness.

The Brennan Center is dedicated to investigating the precise nature of these purges conducted behind closed doors. We encourage election officials, legislators, advocates and concerned members of the public to use this report to improve voter purge practices and ensure that the rights of eligible voters are not jeopardized.

II. TYPES OF VOTER PURGES

Purges occur as part of a process of "list maintenance" that states and localities use to update and clean their voter registration lists. Depending on the state, purges are conducted by local officials, state officials, or both. Voters are generally purged on one of the following grounds: (1) changes of address, (2) death, (3) disenfranchising criminal conviction, (4) duplication of other records, (5) inactivity or failure to vote, and (6) mental incapacitation.

Three statutes provide the bulk of the few existing federal requirements and voter protections for conducting purges — the National Voter Registration Act of 1993 ("NVRA"), the Help America Vote Act of 2002 ("HAVA"), and the Voting Rights Act of 1965. Under the NVRA, any state purge practice must be "uniform, non-discriminatory, and in compliance with the Voting Rights Act of 1965."[18] The NVRA also imposes certain limitations on election officials as to when and how registrants can be removed from the voter rolls on account of change of address,[19] which afford some protections against one type of purge. HAVA emphasizes that voter purges must be done in accordance with the NVRA,[20] and requires that the process for maintaining statewide computerized voter registration databases, which HAVA requires, include minimum standards of accuracy to ensure that registration records are accurate and regularly updated.[21]

Purges can be "systematic," meaning that they are large-scale and done in an organized and pre-planned fashion, or they can be "routine," meaning that they affect an individual voter and are based on individualized information. A systematic purge is one in which all people believed to be deceased are removed from the registration rolls; a routine purge is one in which a son brings his mother's death certificate to the local registrar and asks that she be removed from the rolls. Routine purges can have serious consequences for individual voters, but given the sheer number of persons affected, it is especially important to ensure that systematic purges are done well, with adequate protections for affected voters.

This section examines the statutes, policies, and procedures employed by states and localities for purging voters, and explains the policy choices that may affect the ability of voters to cast ballots which count. The particulars of how purges are conducted reveal how purge practices vary dramatically from jurisdiction to jurisdiction, how there is also a lack of consistent protections for voters, and how there are opportunities for mischief in the purge process.

A. CHANGE OF ADDRESS

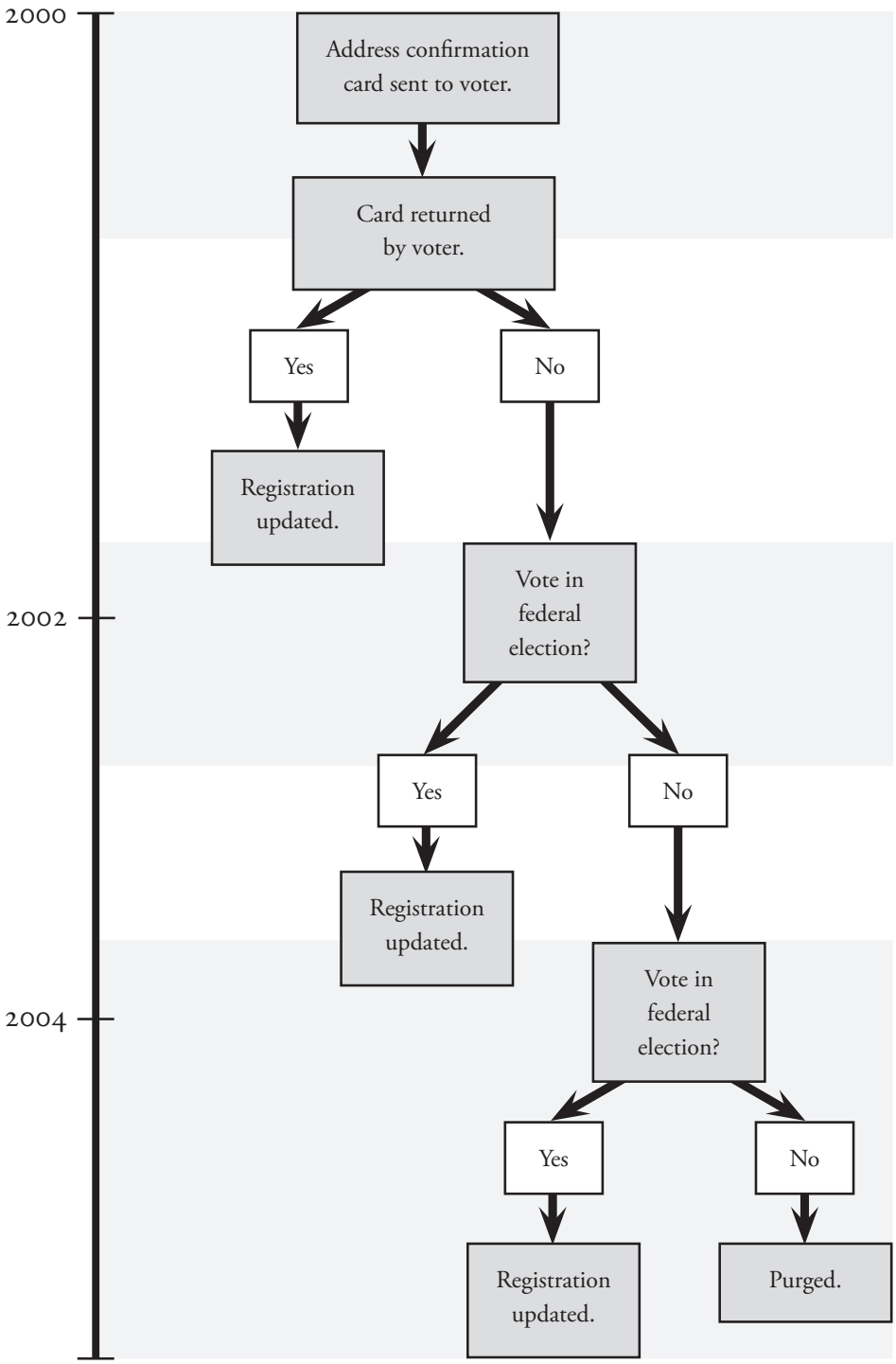
Twenty-nine million voting-age Americans move each year.[22] Accordingly, it is no surprise that changes of name and address accounted for 43% of all voter registration transactions for the time period between the close of the 1996 elections to right after the close of the 1998 elections.[23] From the close of the 2004 elections to the close of the 2006 elections, changes of name, address, and political party accounted for more than 30% of all voter registration transactions.[24]

IF A JURISDICTION USES UNDELIVERABLE MAIL FROM A MASS MAILING AS THE SOLE BASIS FOR PURGING A VOTER, IT BREAKS FEDERAL LAW.

Election officials we interviewed reported that changes of address are the most difficult aspect of list maintenance.[25] A number of election officials believe that changes of address account for the bulk of duplicate registrations on the voter rolls[26] because people who have moved often re-register at their new places of residency without notifying election officials in their former places of residence of the address change.[27]

Under federal law, election officials may purge a registrant believed to no longer be a resident of the election jurisdiction if two conditions are satisfied. First, the registrant must fail to respond to an address confirmation notice from the relevant election office in the time period designated under state law. The notice must be sent by forwardable mail and include a postage prepaid, pre-addressed response card. Second, the registrant must fail to vote in two federal general elections following the mailing of the address confirmation notice.[28] The sending of these notices starts the running of the clock for the time period in which a person must vote in two subsequent federal general elections or be removed from the rolls in those states that conduct purges.[29]

SAMPLE TIMETABLE FOR CHANGE-OF-ADDRESS PURGE



Timeline not drawn to scale.

In spite of this federal mandate, there are great discrepancies in the methods states and localities use to implement purges based on changes of address, including: differences in which events trigger the mailing of a notice seeking address confirmation; which information sources are used to identify registrants who have moved; how registrants' addresses are verified; and how officials proceed when a person does not respond to an address confirmation notices.

1. Post Card Purges and other Triggers for Address Confirmation Notices

The most common triggers causing a local election official to send an address confirmation notice include: the return of a mailing sent to the person from the election office; an acceptable source provides information suggesting that the person has moved; or the election office undertakes a program to verify addresses and finds an address that appears questionable.

In several states, officials are given the authority to send an address confirmation notice to a registrant if other undeliverable mail is returned to the election office in certain circumstances.[30] States, and even counties within states, vary in the type of mail that can trigger the mailing of a confirmation notice. Some states or counties will send an address confirmation notice based on the return of a mailing sent to all registered voters designed to ferret out bad addresses. This is sometimes referred to as a "canvass." In other jurisdictions, a wider array of undeliverable election mail may trigger the mailing of an address confirmation notice, such as absentee ballots, registration acknowledgement notices, and precinct reassignment notices.[31]

If a purge arises from a mass mailing, typically a non-forwardable postcard, it is referred to as a "postcard purge."[32] In some cases, a postcard mailing is part of a jurisdiction's canvassing efforts. When postcards are returned as undeliverable, the jurisdiction usually sends an address confirmation notice to the voter. If the voter does not respond to the notice and fails to vote in two subsequent federal elections, the voter can be lawfully purged from the voter registration list, provided that the removal does not take place within 90 days of a federal election. If a jurisdiction uses undeliverable mail from a mass mailing as the sole basis for purging a voter, it breaks federal law. A Michigan law is legally vulnerable on this ground because if the original "voter identification" card — the card sent to new registrants — is returned as undeliverable to the local clerk, the clerk cancels the registration.[33]

Although returned postcards from mass mailings probably form the most common basis for supposed changes of address, this kind of returned mail is not a reliable indicator that a person has moved for the reasons set forth below. Several of the factors that make this method unreliable affect voters in poor and minority communities more than those in other communities. Before presuming that returned mail means a person has moved, states and localities should consider the following sources of error:

a. Voter registration lists suffer from typos and other clerical errors

Mail sent to a listed registration address may be returned as undeliverable because of a typo or other data entry errors on the voter rolls. Large government databases are notoriously vulnerable to

such flaws.[34] One study found that as many as 26% of records in a Florida social service database included city names that were spelled differently from the same names on a master list, including more than 40 spelling variations of Fort Lauderdale, one of the largest cities in the state.[35] Address numbers and names may be mistyped or transposed. Portions of addresses apartment numbers or house numbers or directional indicators (e.g., S. Main St. or N. Main St.) may be dropped. Addresses may be entered incorrectly (e.g., 211-2 Main St. becomes 21 Main St.).

b. A voter may not be listed on the mailbox of her residential voting address

Mail sent to a listed registration address may be returned as undeliverable because the United States Postal Service does not know that the voter actually lives at the address listed. Couples, roommates, or family members may list only one or two members of the residential unit on the mailbox. Particularly when the unlisted members of the unit do not share the same surname as the listed member, the postal delivery person may simply presume that the individual in question does not live at the listed address.

c. A voter may live at a non-traditional residence

Mail sent to a listed registration address may be returned as undeliverable because the voter does not live at a traditional address. Homeless individuals, who have the right to register and vote in every state, are a prime example of this problem.[36] Depending on the law of the state, these citizens may list a homeless shelter or government building as their legal voting residence, even if the institution listed will not accept their mail.

d. A voter may be temporarily away from her permanent residence

Mail sent to a listed registration address may be returned as undeliverable because the voter is temporarily away from her permanent residence, and does not receive mail there. For example, an active duty member of the military may have difficulty receiving mail. In one notorious Louisiana case, a member of Congress who received her mail in Washington D.C. rather than at her home address in her district was challenged after a letter to her home was returned as undeliverable.[37]

e. A voter's permanent mailing address may differ from her residential voting address

Mail sent to a listed registration address may be returned as undeliverable because the voter receives mail elsewhere — at a post office box, for example. When individuals register to vote, they list their physical residences, but not all Americans receive mail at their residential addresses.

f. Mail may not be properly delivered

Sometimes, of course, mail sent to a listed registration address is returned as undeliverable because it was not delivered properly, through no fault of the voter.[38] Mail can be lost or misrouted, causing

it to be returned to the sender. Erratic mail problems can be quite significant. In the 1990 census, for example, the *New York Times* reported that "[a]lthough at least 4.8 million [census] forms were found to be undeliverable by the Postal Service, 1.8 million of those were later delivered by hand."[39] Moreover, ineffective mail delivery is more common in poor and minority communities.[40]

g. A voter's street name may have changed

Mail sent to a listed registration address may be undeliverable because the street name may have changed since the voter registered, even though the voter remains in the same residence. In Milwaukee in 2006, for example, when street addresses were checked against a postal service address program, city officials reviewing the list of discrepancies found that some addresses were flagged because of changes to the street names themselves.[41]

h. A voter may refuse to accept certain mail

Mail sent to a listed registration address may be undeliverable because the voter refuses to accept the piece of mail in question. There is no requirement that an individual accept a piece of mail offered for delivery, rather than sending it back with the delivery person. Catherine Herold of Ohio, for example, reported that she refused to accept delivery of a partisan mailing — which was returned undelivered and then used as purported evidence of her allegedly invalid registration.[42]

i. A voter may have moved permanently, but nevertheless remains eligible to vote

State rules differ as to when a voter who has moved must inform election officials of her new address. At a minimum, however, federal law provides that if a voter has moved within the same area covered by a given polling place — if, for example, a voter moves from one apartment to another within the same apartment complex — she may legitimately vote at that polling place even if she has not yet notified a registrar of her move.[43]

Federal law prohibits systematic purges within 90 days of an election.[44] Voter advocacy groups have criticized jurisdictions which have sent or have contemplated sending a mass mailing as the first step to confirm addresses when the initial mailing has taken place within 90 days of an election.[45] Mass mailings of this kind are inadvisable not only because undelivered mail is an unreliable indicator that a person has moved (as explained above), but also because of timing. Election officials are busiest in the 90 days preceding an election: they must process new registrations, update registration records, identify polling locations, prepare voting materials, and more. Without the time to exercise due care, data entry and other mistakes are more likely, subjecting eligible voters to the risk of a purge.

2. Information Sources Used to Identify Registrants Who Have Moved

Often voters do not tell election officials they have moved out of a jurisdiction, and so it is hard for officials to identify invalid records on voter registration lists. States, therefore, turn elsewhere to

identify voters who have moved. Given the NVRA's explicit authorization to do so, it is no surprise that states often rely heavily on information provided by the United States Postal Service, its licensees, and the USPS's National Change of Address database.[46] This method, though, has its own problems, including inaccuracies in postal service data and cost to election officials.[47] Some states use information gained in connection with jury notices and information from other departments, such as the bureau of motor vehicles to identify address changes.[48] For example, in Kentucky, one election official used information on changes of address for updating driver's licenses to update addresses in the voter registration list.[49]

In some states, individuals can provide information about someone else's change of address that is then acted upon by election officials. In Nevada, county clerks can send an address confirmation notice based on information gained from another voter or other "reliable person" who submits an affidavit stating that a particular voter has moved outside the county with the intent to abandon her residence.[50]

3. Address Verification Procedures

Some state statutes permit broad canvasses to confirm voters' addresses. For example, some states allow local election officials to conduct door-to-door canvasses to find voters.[51] In actuality, however, a local election official we interviewed reported that this was not a widespread practice.[52]

Some state statutes permit localities to initiate their own efforts to identify registrants who have moved. In some cases, the acceptable methods are unspecified or unlimited. Missouri law grants election officials broad authority and wide latitude to verify a person's address. The statute reads, in relevant part: "[t]he election authority may investigate the residence or other qualifications of any voter at any time it deems necessary. The election authority shall investigate material affecting any voter's qualifications brought to its attention from any source, and such investigations shall be conducted in the manner it directs."[53]

4. Voter Classification After an Address Confirmation Notice is Sent

While the details of the process differ, after sending address confirmation notices states tend to follow one of two schemes: states designate any voter who is sent an address confirmation notice as "inactive,"[54] while others do not designate a voter as "inactive" until after the voter fails to respond to the address confirmation notice in a timely matter.[55] This distinction is relevant because in some states, the voting experience of someone designated "inactive" may be different from, and more difficult than, that of an "active" voter. In Massachusetts, for example, inactive voters shoulder additional identification burdens when they show up to vote.[56] In Oregon, where all elections in the state are allowed to be conducted by mail, inactive voters are not statutorily required to be given ballots by mail.[57] Additionally, some polling stations are reported to have a list of inactive voters that is separate and apart from the active voter list. There is at least some anecdotal evidence that sometimes the lists of inactive voters are not available at the polling stations, putting inactive voters at a disadvantage when attempting to vote.

B. DEATH

Both HAVA and the NVRA address the removal of deceased voters from the voter rolls. Under the NVRA, states must make a "reasonable effort" to remove those who have died from the registration rolls.[58] HAVA directs each state to coordinate its voter registration database with state death records for the purposes of removing names of deceased persons from the voter rolls.[59]

Different agencies in different states maintain records of deaths, and so election officials get information about deceased registrants from varying sources. In some states, the department of health sends a list to election officials.[60] Elsewhere, local and state registrars or departments of vital statistics send a list of deceased persons to voting officials.[61] Still other states do not designate which agency is charged with providing information on decedents.[62]

Some states permit election officials to consider sources other than data from state agencies in gathering information on decedents. In some states, for example, election officials are permitted to use newspaper obituaries to identify deceased registrants.[63] In Washington State, a registrant may be removed from the registration rolls if another registered voter signs a statement of personal knowledge or belief that the registrant is deceased.[64] Elsewhere, state law authorizes the use of other sources, without specifying what sources may be considered.[65]

C. DISENFRANCHISING CRIMINAL CONVICTIONS[66]

State have a blizzard of varying laws regarding the voting rights of people with criminal convictions. Kentucky and Virginia permanently disenfranchise all people with felony convictions unless their rights are specifically restored by the government, while in Maine and Vermont, people with criminal convictions do not lose their voting rights at all — even prisoners are permitted to vote. Most state laws, however, fall somewhere in between those two positions.

Thirteen states and the District of Columbia automatically restore voting rights to formerly incarcerated persons upon their release from prison.[67] In contrast, eight states permanently disenfranchise citizens convicted of certain crimes unless the government approves individual rights restoration.[68] Five states allow probationers to vote and automatically restore the voting rights of persons with criminal convictions after release from prison and discharge from parole.[69] It is most common for a state to restore an individual's voting rights upon completion of his sentence, including prison, parole, and probation.[70]

Federal law provides little guidance or voter protections in this area. The NVRA permits states to purge people with felony convictions from the voter rolls consistent with state law.[71] HAVA requires states to "coordinate the computerized list with State agency records on felony status" to remove registrants made ineligible by criminal convictions.[72] As with other types of purges addressed in this report, state purge practices for people ineligible because of felony convictions are varied in numerous ways.

1. Authority and Responsibility

The responsibility for purging people with disenfranchising convictions differs from state to state. In some states, like Kentucky, the statutory responsibility rests with state election officials.[73] In other states, like Nevada, local officials are responsible.[74] There are also hybrid systems for removing people with disenfranchising convictions: in Washington, for example, local officials remove some people convicted of felonies while state officials remove others.[75] In Florida, local officials are required to conduct removals, but do so in accordance with information provided by state officials.[76] In other cases, state election law does not clearly delineate which officials are responsible for removing ineligible persons with felony convictions.[77]

2. Sources of Information

Under federal law, United States Attorneys are required to notify states' chief election officials of felony convictions in federal court.[78] State election officials, then, in turn notify relevant local election officials. In addition to the provision of information by U.S. Attorneys, some state statutes provide that election officials are to obtain information on people with disenfranchising convictions from a number of other sources.[79] State statutes, however, do not always provide clear guidance as to what sources election officials can rely on in gathering information about registrants rendered ineligible by criminal convictions.[80] Consequently, sources vary on a county-by-county basis.[81]

D. DUPLICATE RECORDS

Often when voters move within a state, they register to vote in a new neighborhood without canceling their registration in the old one. Or, accidentally, a voter can register from the same address multiple times. Federal law says that state systematic purge programs should screen for and eliminate duplicate names from the centralized state voter registration list. But the federal law gives no specific guidance on how states should identify such duplicate records, or what processes should be followed.[82] As a result, from state to state and county to county, officials remove duplicates in an inconsistent and confusing manner. There is not even any uniformity as to how duplicate registration records should be resolved once they are detected. For example, while a number of officials, when encountering what they presume to be duplicate registrations for the same person, presume that the more recent registration is the accurate one,[83] one election official in Michigan reported a practice of removing the newer registration when confronted with a duplicate.[84]

Given the errors and inconsistencies in the records on state voter rolls, it may be impossible to tell with certainty whether two records indeed refer to the same person and therefore are duplicates — unless the affected individuals are contacted and can confirm the duplication. States and localities therefore typically rely to some extent on approximation and assumptions, which may not be accurate in some circumstances.

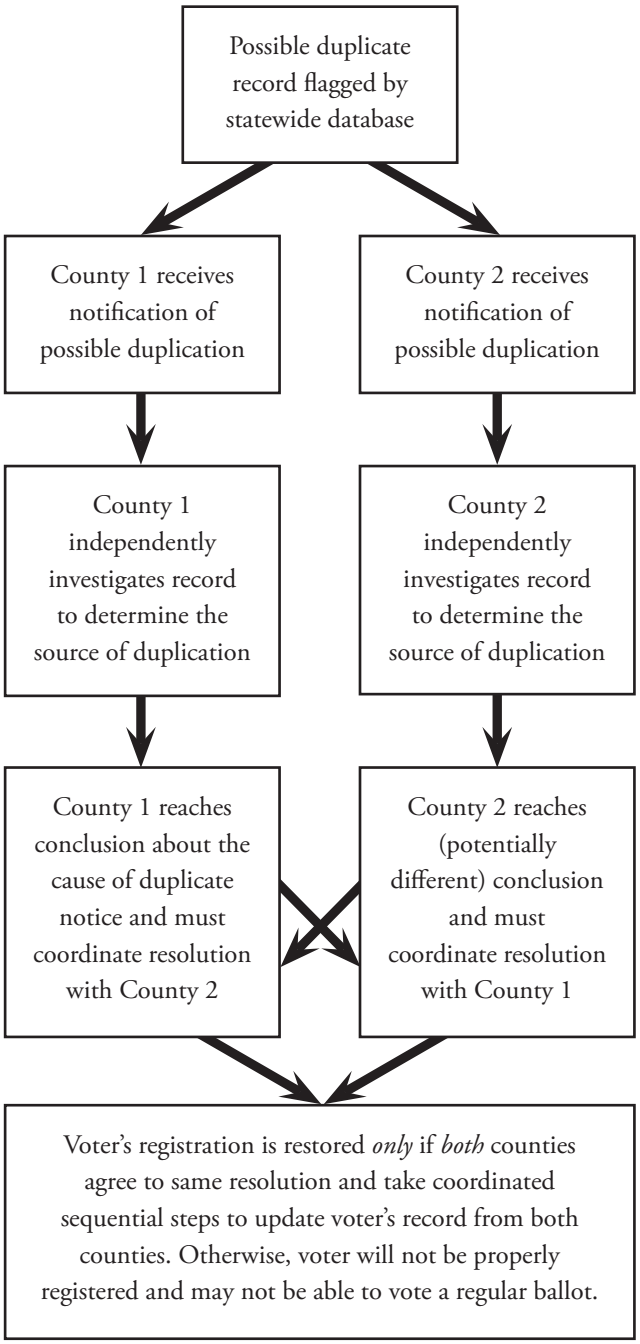
Some statewide list maintenance programs identify potential duplicate records automatically, but rely on local election officials to sort through the flagged records. These registrars are supposed to

purge only actual duplicates, while leaving untouched any records falsely flagged as duplicates.[85] The process is often confusing and time-consuming. For example, Missouri law gives local election officials explicit authority to identify and remove duplicate records, but it does not specify how duplicates should be identified or what evidence is enough to remove a voter.[86] As a result, different county election officials in Missouri follow very different procedures for identifying duplicate records. In one county, election officials request confirmation from voters for possible duplicate records, and the duplicate record is purged if the voter does not respond or appear to vote in the following election.[87] In a different county, election officials simply flag possible duplicates and monitor for voting fraud but take no further action.

Most state statutes, in fact, offer very little guidance to local election officials and do not specify what identifying characteristics should be verified, or what degree of approximation is permitted.[88] One election official in Ohio stated that their ability to identify duplicates is further complicated by, among other things, name changes after marriage and poorly programmed registration software that slows down the process.[89] When local election offices become busy with processing large numbers of new registrations prior to elections, they tend to relax the level of scrutiny they pay to checking the accuracy of duplicate matches.[90]

Despite vague laws and scarce resources, local election officials reported increased pressure from state officials to "clean" the voter registration list of duplicate records.[91] Such pressure, in the absence of counterbalancing restrictions or guidelines, is likely in the future to result in larger numbers of improperly purged registrants.

AN EXAMPLE OF DUPLICATE RESOLUTION



Source: Jennifer Brunner, Ohio Secretary of State, Statewide Voter Registration Database (SWVRD) System Manual (2008), 31-32, *available at* http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-52.pdf.

E. INACTIVITY/FAILURE TO VOTE

Federal law explicitly states that a person cannot be purged merely for a failure to vote — a basic protection for registered voters who may only vote sporadically.[92] This protection ensures that a voter does not lose her right to vote simply because she chooses not to exercise that right in a particular election. Accordingly, federal law prevents election officials from relying on the fact that a voter has not voted for some time to conclude that she moved, died, or otherwise becomes ineligible and then to cancel her registration based on that conclusion.

Election officials are, however, permitted to remove voters pursuant to the NVRA's change of address process. Under the NVRA, states must send forwardable address confirmation notices to voters believed to have moved with a postage prepaid and pre-addressed response card to either confirm a continuing address or update the state with a new address. If the card is not returned, the state cannot remove the voter unless the voter not only does not return the card confirming her address, but also does not vote in at least one of the two general federal elections following the notice's mailing.[93]

1. Inadequate Guidance

Voters who have not voted for a designated period of time, or have not responded to an address confirmation notice, nor presented themselves to vote in the subsequent elections are often referred to as "inactive voters."[94] Most of the state statutes surveyed for this report fail to provide clear guidance on how to meet the NVRA's requirements relating to "inactive voters."

The Kentucky statute, for example, reiterates the NVRA requirement outlined above, but does not provide any guidance on how an inactive voter should be allowed to vote (for example, by signing a written affidavit confirming her address). As a result, local election officials impose inconsistent requirements for inactive voters who turn up at the polls on Election Day. One Kentucky county requires inactive voters to sign an affidavit before being allowed to vote, whereas another county requires an election officer at the polling place to call a central election office to confirm the registration before allowing inactive voters to receive a ballot.

The inconsistent requirements at different polling places can lead to the de facto disenfranchisement of inactive voters who should, instead, be protected by the NVRA. For example, in locations where telephone confirmations are required before inactive voters are allowed to vote, the polling places are sometimes not equipped with sufficient telephone lines to keep up with the high volume of voters in heavy turnout precincts, effectively forcing precincts to turn away inactive voters rather than allowing them to vote.[95] Thus, voters who would otherwise have been classified as active again could instead find themselves purged for failure to vote, despite attempting to do so. This problem reportedly occurred to inactive voters in St. Louis County in 2006.[96]

2. Programs Targeting Voters who Failed to Vote

Some jurisdictions' policies stretch compliance with the NVRA's prohibition against purging a

voter merely for failure to vote. For example, in Ohio, though not required to do so by law,[97] many jurisdictions send address confirmation cards exclusively to registered voters who did not vote in the most recent election, rather than to all registered voters, as many other states do.[98] Ninety days following each general election in Wisconsin, state election officials are required to identify persons who have not voted within the previous four years and mail them a notice that informs the addressees that their registration will be "suspended" unless they apply to continue their registration.[99] Thus, the simple failure to vote in these jurisdictions is sufficient to trigger a process that could ultimately result in being purged from the voter registration list.

F. INCAPACITATION[100]

Federal law offers even fewer guidelines for removing voters from the registration rolls because of mental incapacitation. In contrast to its references to purges based on felony convictions or death, HAVA does not mention the removal of persons adjudged incapacitated. The NVRA simply provides that states must comply with state law in removing names from the registration list of voters because of mental incapacity.[101]

1. Varying Rights

State laws vary with respect to the voting rights of persons who are mentally incapacitated. Pennsylvania, Michigan and Indiana, for example, do not by statute disenfranchise persons who are adjudged mentally incapacitated. In fact, Pennsylvania's statute goes as far as specifying the means for determining the residency of individuals who live at institutions for mentally ill patients expressly for the purpose of voter registration.[102] Indiana's law specifies that the "[d]etention or commitment of an individual…does not deprive the individual of . . . [t]he right to . . . [v]ote."[103] Like Pennsylvania, Indiana law specifies the residency of persons who are committed so that they may be able to vote.[104] In contrast, the Oregon Constitution contains a disenfranchising provision that renders ineligible those specifically adjudicated incompetent to vote.[105]

The statutory practices for purging voters for mental incapacitation similarly vary. States like Missouri and New York provide only the most general standards for disenfranchising persons on account of mental incapacitation, providing that persons who are declared incapacitated may be removed from the rolls.[106] Similarly, Nevada requires cancellation of a registration when "the insanity or mental incompetence of the person registered is legally established."[107] By contrast, states like Florida indicate that the declaration of mental incapacitation must be specifically with respect to voting before a person can be removed from the voter rolls.[108]

The experience of election officials suggests that the public is not always informed as to the state voting protections for persons perceived to be mentally incapacitated. For example, local officials in Nevada and Ohio reported that they have had removal requests made by individuals relating to another voter on the grounds of mental incapacitation even when there was no court adjudication.[109]

2. Sources for Identifying Individuals

In a number of states, like Kentucky,[110] election officials are supposed to receive, pursuant to statute, lists indicating the names of persons who may no longer be eligible to vote on account of mental incapacity from state circuit or probate courts, district courts, or in the case of some states, for example, Washington[111] and New York,[112] the office of the court administrator. These practices are consistent with the policy of not depriving a person of the franchise absent court adjudication. In practice, however, the lists of those ineligible to vote on account of mental incapacitation do not always come from the court system. At least one locality in Missouri claims to receive incapacitation lists from the state Department of Health and Human Services. One county election official in Ohio reported that local board of elections staff, sent to nursing facilities to help the elderly vote, sometimes determine that a particular person is incapable of voting.

III. PROBLEMS WITH PURGES

Our review of state purge practices reveals a number of shortcomings. Across the country, problems occur because the lists used to identify people to be purged are unreliable, purges are done in secret, election officials use bad matching criteria, and purges are conducted with insufficient oversight.

A. SOURCE LISTS ARE RIDDLED WITH ERRORS

States regularly purge their voter registration lists of ineligible voters or duplicate registration records, but the lists states use as the basis for purging voters are often riddled with errors, which result in the removal of many eligible voters. For example, some states purge voter registration rolls of individuals based on the Social Security Administration's Death Master File,[113] a database of 77 million deaths, dating back to 1937.[114] Unfortunately, even the Social Security Administration admits there are people in its master death index who are not actually dead.[115] The master death index lists the date of death of Hilde Stafford, a Wappingers Falls, NY resident, as June 15, 1997. The 85-year-old's response: "I'm still alive," Stafford said, "I still vote."[116] Indeed, from January 2004 to September 2005, the Social Security Administration had to "resurrect" the records of 23,366 people wrongly added to its Death Master File, meaning that the Administration was presented with irrefutable evidence that it had incorrectly listed 1,100 people a month, or more than 35 a day, as deceased.[117]

EVEN THE SOCIAL SECURITY ADMINISTRATION ADMITS THERE ARE PEOPLE IN ITS MASTER DEATH INDEX WHO ARE NOT ACTUALLY DEAD.

Lists can be inaccurate because they are overbroad, lack specificity, or simply contain errors. For example, when a member of a household files a change of address for herself in the United States Postal

Service's National Change of Address database, the filing sometimes has the incorrect effect of changing the address of all members of that household.[118] Lists may also fail to contain sufficiently specific identifying information, for example, only names and ages.[119]

Indeed, Florida's infamous purge of people presumed to have felony convictions in 2000 is a prime example of a bad purge based on unreliable underlying lists. The purge list wrongly included some, such as Reverend Willie Dixon, because the list contained inaccurate information — Reverend Dixon had been pardoned of a crime he committed in his youth and had his voting rights restored.[120] In other cases, the list reflected a misunderstanding of what types of crimes resulted in permanent disenfranchisement. Floridian Wallace McDonald was purged from the voter rolls for committing a misdemeanor, even though misdemeanors do not affect one's voting rights.[121] Additionally, the purge wrongly included more than 300 individuals who had conviction dates in the future.[122] Other problems with this purge are addressed below.

B. PURGES ARE CONDUCTED IN SECRET, WITHOUT NOTICE TO VOTERS

Approximately one week before the Mississippi's March 2008 presidential primary election, the circuit clerk of Madison County, Mississippi discovered that a local election commissioner had purged more than 10,000 residents from the voter registration rolls. County Election Commissioner Sue Sautermeister reportedly accessed the voter registration list from her home computer and purged the voters, including a Republican congressional candidate, his wife and daughter, and some people who had voted as recently as the November 2007 elections.[123] Fortunately, the Secretary of State's office and others recognized that Sautermeister's actions violated the NVRA, and worked to restore the purged voters in time for the March election.[124]

The public — voters, advocates, and others — rarely, if ever, receive meaningful notice of systematic purges. In fact, none of the states we studied have statutes requiring election officials to notify the public in advance of systematic purges. The statutes themselves generally do not provide notice by specifying when systematic purges will or should occur — a typical indication would be that such a purge must take place at least 90 days before an election,[125] but offering no further specificity. Adequate advance notice is essential to prevent erroneous purges. When registrants are properly informed of pending purges, they can act to correct or clarify a situation. Conversely, registrants may be denied due process of law if they are disenfranchised without notice and without a meaningful opportunity to challenge the purge. An Election Day discovery that a purge has taken place is generally too late for the affected voter to cast a ballot that is counted.

Except for registrants believed to have changed addresses, many states do not notify individual registrants believed to be candidates for purges either. When states do give individual notice, they rarely do so for all types of purges. For example, states rarely require notice when a voter is believed to have died. Florida and New York, for instance, statutorily require the provision of notice prior to removal in other circumstances, but appear to omit the notice requirement when the person is believed to be dead.[126] Without such notice, it is far harder to correct errors when the voter has been confused with an unfortunate decedent, or is, in any case, very much alive.

In certain circumstances in some states, officials are statutorily required to notify registrants after they are removed.[127] While that is better than no notice at all, notice after the fact could preclude an erroneously purged voter from being reinstated in time for an upcoming election.

Some state laws require officials to tell registrants with disqualifying convictions before they are purged; indeed, in some states these voters may have more protections than those affected by other types of purges. In Florida and Washington, election officials must give advance warning to voters with disqualifying convictions, and give them an opportunity to respond prior to removal.[128] Indiana law requires election officials to send a notice to the last known address of all people who are disenfranchised because they are imprisoned no later than the day after the registration has been canceled from the rolls.[129]

With notice provided neither to the public nor to the affected voter, election officials can conduct purges with little outside scrutiny or oversight. The lack of transparency makes voters vulnerable to manipulated or haphazard purges.

C. BAD "MATCHING" CRITERIA LEAVES VOTERS VULNERABLE TO PURGES

In 2008, the Elections Director for Muscogee County, Georgia, sent out 700 letters to local residents informing them that they were ineligible to vote because they were convicted felons. More than one-third of the voters called to report that there had been a mistake. The purged voters included an octogenarian who insisted she had never even received a parking ticket. According to media reports, the list that went to Muscogee County was generated by a new computer program, and included voters whose names, but not necessarily other information, corresponded or "matched" the names of those with felony convictions.[130]

Largely because of HAVA, states now have computerized statewide voter registration databases. These digital lists have improved the registration process substantially. But they can also boost the danger of wrongful purging since large numbers of people can now be purged at one time. The inadequacies of existing purge protections are apparent in the use of bad "matching" criteria.

Computerized database "interoperability" allows for election officials to purge registrants because of an apparent "match" of identifying information in a voter registration record to records found in lists of people ineligible to vote for various reasons. However, far too often what appears to be a "match" will actually be the records of two distinct registrants with similar identifying information. States have failed to implement protections to ensure that eligible voters are not erroneously purged.

There are many reasons states have trouble with matching requirements. Often, state statutes do not often specify what information — what fields and how many — must match to warrant removal of a registrant from the voter registration list.[131] This means that local purging officials use their own, often varied and insufficient, matching standards. For example, two Nevada county election officials reported different match standards for the removal of deceased registrants. One reported that if a person's name and address or age on the report provided by the Department of Vital Statistics matches

the record of a registrant, the official would remove that registrant from the rolls. Another reported that she removed registrants when the date of birth, social security number, and first and last names of deceased people provided by the state's Department of Vital Statistics matched a registrant's record.

States that do set forth requirements for the kind of identifying information elections officials should use frequently require too little information — for example name and date of birth — to be confident that a particular registered voter is the same person listed on a list subject to purging.[132]

Elementary statistics preclude reaching such a conclusion on such little information. In a group of 23 people, it is more likely than not that two will share the same day and month of birth; in a group of 180, it is more likely than not that two will share the same birth date, including year of birth.

Also, in any group of significant size, statistics teaches us that there will be many with the same first and last names — and it is likely that at least two such individuals will be born on the same day.[133] Certain names are more popular in certain years. For example, it would be unsurprising to find two Jessica Smiths born on the same day in 1985, or Lisa Smiths in 1965, or Mildred Smiths in 1925. Likewise, the prevalence of surnames will fluctuate with the immigration patterns of particular ethnicities, which vary from decade to decade.

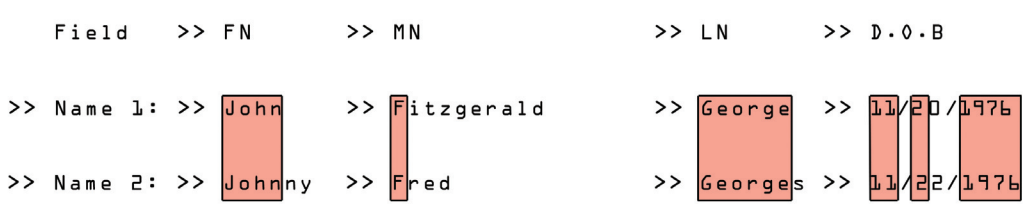
Purging officials who ignore prefixes or suffixes can increase the likelihood of erroneous matches. A 2005 attempt to identify double voters and duplicate registrations on the New Jersey voter rolls was flawed in this respect: in seeking duplicates, it ignored middle names and suffixes, alleging that the voter records of distinct registrants J.T. Kearns Jr. and J.T. Kearns Sr. belonged to the same individual.[134]

IN A LARGE GROUP, STATISTICS TEACHES US THAT THERE WILL BE MANY WITH THE SAME FIRST AND LAST NAMES — AND IT IS LIKELY THAT AT LEAST TWO SUCH INDIVIDUALS WILL BE BORN ON THE SAME DAY.

Another problem arises when states do not specify how exacting purging officials must be when comparing fields. For example, in Missouri, where exact matches are not required, one election official reportedly deemed an approximate date of birth (e.g., a difference by one month or one day) as sufficient to establish a match.

In Florida, lists of ineligible people provided to election officials must contain certain identifying information, but the Florida statutes does not establish how or to what extent the information must exactly match that of a registrant before the registrant can be removed.[135] The Florida purge of 2000 discussed above — conservative estimates place the number of wrongfully purged voters close to 12,000 — was generated in part by bad matching criteria. Florida registrants were purged from the rolls if, in part, 80 percent of the letters of their last names were the same as those of known felons.[136]

HOW BAD MATCHING CRITERIA CAN RESULT IN DISENFRANCHISEMENT



Source: Gregory Palast, *The Wrong Way to Fix the Vote*, Wash. Post, June 10, 2001, at B01.

Those wrongly purged included Reverend Willie D. Whiting Jr., who under the matching criteria, was considered to be the same person as Willie J. Whiting.[137] These purges were wildly inaccurate. In Miami-Dade County, for example, over half of the African American registrants who appealed their placement on the felon exclusion list were found to be eligible voters.[138]

The matching criteria some states use, however, may not differ greatly from the criteria responsible for the erroneous purge in Florida. To identify possible duplicates, New York requires only that the first three letters of the first name, the first five letters of the last name, and date of birth match, although it will consider other information if it is available.[139]

D. Purges Are Conducted with Insufficient Oversight

Insufficient oversight permeates the purge process beyond just the issue of matching. For example, state statutes often rely on the discretion of election officials to identify registrants for removal and to initiate removal procedures. Since these statutes rarely tend to specify limitations on the authority of election officials to purge registrants, eligible registrants may be unnecessarily made vulnerable to poor, lax, or irresponsible decision-making.[140]

Insufficient oversight also leaves room for election officials to deviate from what the state law provides. In Washington, the failure to deliver a number of delineated mailings, including precinct reassignment notices, ballot applications, and registration acknowledgment notices, triggers the mailing of address confirmation notices,[141] which then sets in motion the process for removal on account of change of address. Two Washington counties and the Secretary of State, however, reported that address confirmation notices were sent when any mail was returned as undeliverable, not just those delineated in state statute. Although Ohio's election law expressly provides that information regarding the deaths of persons over age 18 must come directly from government health agencies, one local official reported using obituaries as a source to identify deceased registrants, and another official reported a practice of sending inquiries to local funeral homes, a practice also not condoned by statute.[142] An election official in Missouri reported relying on both personal knowledge and obituaries, even though the state election code does not provide for the use of those sources.

The state statutes examined are generally more specific with respect to the amount of discretion election officials have to remove registrants for mental incapacitation than they are with respect to other grounds for removal. In a number of states we examined, a determination to purge someone because of mental incapacitation occurs only if individuals meet certain legal criteria, for example, if they are declared mentally incapacitated with respect to voting.[143] However, elections officials interviewed for this report indicated that in spite of these statutory strictures, they sometimes make their own determinations that particular residents are incapable of voting and deny ballots according to that determination.[144]

IV. POLICY RECOMMENDATIONS

While much of election administration is governed by state law, the NVRA and HAVA provide guidance, and in some cases, explicit requirements, for how voters' rights to register and participate in the political process should be protected. Through the NVRA,[145] Congress minimized the states' historical ability to function as a gatekeeper for registration in many ways by requiring states to use and accept the Federal Mail Voter Registration Application.[146] It also made it easier to get on the voter rolls by requiring states to: distribute the Federal Mail Voter Registration Application to public and private entities and voter registration organizations;[147] permit a person to register to vote at the same time as applying for or renewing a driver's license;[148] and provide voter registration services at designated public agencies.[149]

WHEN THERE IS A QUESTION, FEDERAL LAW CLEARLY FAVORS THE INCLUSION OF ALL ELIGIBLE REGISTRANTS RATHER THAN THE REMOVAL OF EACH AND EVERY INELIGIBLE REGISTRANT.

HAVA facilitates voter registration by requiring states to create and maintain a single statewide computerized database of its registered voters, and to coordinate that database with other state databases, including state agency records on felony status[150] and state agency records on death.[151]

The text of these two laws clearly prioritizes the inclusion of all eligible registrants over the removal of each and every ineligible registrant when there is a question. The relevant section in the NVRA begins with "each State shall ensure that any eligible applicant is registered to vote in an election."[152] While the NVRA also requires states to

undertake a program to conduct list maintenance, they must only conduct a "reasonable" effort to purge the names of registrants who are ineligible because they have died or, in certain circumstances, have changed their addresses."[153] The NVRA permits, but does not require, a state to remove a registrant from the official list of eligible voters when a registrant has requested removal or when the law of the state disenfranchises persons on account of criminal conviction or mental incapacity.[154]

HAVA requires that states perform regular "list maintenance" and make "reasonable effort[s]" to ensure that ineligible voters and duplicate records are removed from the voter rolls.[155] Before addressing purges, HAVA expressly requires states to "ensure that each registered voter appears in the computerized list" and that "only voters who are not registered or who are not eligible to vote are removed from the computerized list."[156]

The existing federal requirements and voter protections do not go far enough, however, to protect voters. Indeed, the NVRA and HAVA do not specifically address most aspects of purge practices. Given the problems identified in our review of state purge practices and statutes, we recommend that states take action to reduce the occurrence of erroneous purges. Below are some recommendations of best practices based on our research.

A. TRANSPARENCY AND ACCOUNTABILITY FOR PURGES

Purges of voter registration lists should be conducted in a transparent and uniform manner. Any rules or procedures developed with respect to purges should establish accountability at all stages of a purge.

1. Develop and publish uniform, non-discriminatory rules for purges.

State election officials should publicly post consistent and fair rules that describe when, why, how, and by whom a voter registration record can be purged from the voter rolls. States should clearly identify appropriate sources of information on ineligible people and ensure that all localities are conforming to the same standards when relevant. State election officials should work with local election officials to ensure that state protocols are understood and being followed.

While the state of Ohio is not without its troubles in election administration, it can be commended for publicly posting all directives, advisories, and memoranda related to elections on the Secretary of State's website. Not only does this practice allow local election officials easy access to the documents, it also gives members of the public the opportunity to be informed and educated as to election-related policies. Armed with this knowledge, watchdogs and individuals can help encourage compliance and hold localities accountable for any lapses. Irrespective of the nature of the rules, their transparency is necessary to ensure that they are fair and effective protocols.

2. Provide public notice of an impending purge.

States should provide public notification of any organized county-wide or state-wide purge at least two weeks prior to the purge, and provide a detailed explanation of how that purge is to be conducted.

Before a voter is removed from the voter registration list for any reason, she should be individually notified and given the opportunity to correct any errors or omissions, or demonstrate eligibility.

For most types of purge candidates, New York notifies registrants at risk of being purged 14 days in advance of the purge.[157] Best practices would extend this protection to all individuals who are candidates for purges and give each 30 days to respond before purging them from the voter rolls.

3. Develop and publish rules to remedy erroneous inclusion in an impending purge.

The rules and procedures for curing erroneous inclusion in an impending purge should be publicly posted and widely available. Additionally, for registrants who have been purged from the voter registration list, states should explicitly set out means by which they may be restored easily to the voter registration list, without regard to the voter registration deadline.

Pennsylvania, by statute, provides certain registrants both notice of an impending purge and a process for responding to any erroneous purge. Pennsylvania is required to send written notice to each individual whose registration is canceled.[158] Pennsylvania law also offer an additional protection: its statutes specifically contemplate the possibility that a registrant can be incorrectly reported as dead or incorrectly removed on the grounds of death and sets forth a process for addressing these instances.[159] States could and should apply this protection to all classes of purges.

4. Do not use failure to vote as a trigger for a purge.

States should ensure that registrants are sent address confirmation notices only in response to an indication that the registrant has moved — not when a registrant has not voted for some time. All voters who have been inactive should be allowed to vote by regular ballot up until they are purged. If an inactive registrant votes during any of the two federal election cycles, they should remain on the voter registration list.

5. Develop directives and criteria with respect to who has the authority to purge voters.

No one person, acting alone, should be able to remove names from the list. The removal of any record should require authorization by at least two officials. Good directives for purge authorization minimize opportunities for mischief in the process.

Although majority support from the local election commission is required in Mississippi prior to the removal of any voter from the voter registration list, Madison County election commissioner Sue Sautermeister managed to purge more than 10,000 names from the list, alone, reportedly from her home computer.[160] This example highlights the importance of purge protocols which preclude non-compliance, for example, by designing the database so two people must enter an authorization code before voters can be removed.

6. Preserve purged voter registration records.

Statewide voter registration databases should have the design capacity to keep the records of names removed from the voter registration list, including who authorized the removal and on what grounds. Maintenance of this information ensures that the removal of any registrants is properly documented, allows for easier restoration to the list, and assigns accountability for the purge.

All media reports suggest that the Mississippi Secretary of State was successfully able to reinstate the voters purged by the Madison County commissioner.[161] Officials from the Secretary of State's office indicated that the database is designed such that voting records are retained, even when the voter status changes.[162] This design feature of the database makes for easier restoration than when the record is erased.

7. Make purge lists publicly available.

The records of voters purged from the list and the reason for removal should be made available for public inspection and copy. If any code is used to identify the reason for removal, a key defining each code symbol shall be made accessible to the public. These lists should also be brought to the polls on Election Day. This allows the public to verify that purged records were removed for fair reasons.

For example, Washington requires the Secretary of State and each county auditor to compile lists of everyone who is removed from the voting rolls and the reason for their removal; these lists must be preserved and kept available for public inspection for at least two years.[163] Additionally, some states allow voters to check their registration status electronically via voter portal functions on their websites that allow voters to check the status of their registration by entering their name and/or other personal information.[164]

While these portals are a useful resource, there are some limits to their helpfulness. For example, not all interfaces inform the voter when the system was last updated. This is problematic because a voter unable to find her registration record might, instead of waiting for the system to be updated, send in an additional form out of desire to ensure that her name make it onto the rolls. Additional registration forms for the same individual increase administrative burdens for the registrar and the likelihood that there are errors in the registration. This problem can be ameliorated simply by noting when the interface was last updated. Another problem with portals is that not everyone will search for their record using the information as exactly listed on their registration application, or an inputting error will prevent a voter from being able to find her registration record. This problem can be corrected by designing the interface such that when a registration record is not found, more information is solicited and then the interface displays to the seeker similar names affiliated with the information provided. Individuals who suspect that they have found their record, but that the record contains misspellings or other errors, can then call the registrar's office and correct the problem.

Notwithstanding the usefulness of portals, they are an inferior substitute to purge lists because portals confine the information provided to a unique voter and do not allow voters and their advocates to observe trends.

8. Make purge lists available at polling places.

The records of voters purged from the list over the past two federal election cycles should be made available at the polls so that individuals erroneously purged can be identified and allowed to vote by regular ballot.

B. STRICT CRITERIA FOR THE DEVELOPMENT OF PURGE LISTS

To ensure a high degree of accuracy, states should use strict criteria for the development of purge lists. States should establish measures to protect eligible people from erroneous removal from the voter registration list.

1. Ensure a high degree of certainty that names on a purge list belong there.

Before purging any name from the voter registration list, authorized officials should have a high degree of certainty that a name belongs to an ineligible person or a duplicate record. Purge lists should be reviewed multiple times to ensure that only ineligible people are included.

2. Establish strict criteria for matching.

If purge lists are developed by matching names on the voter registration list to names from other sources, states should specify the information sufficient for attaining a high degree of certainty, including, at a minimum, last name, first name, middle name, prefix, suffix, date of birth, and address or driver's license number. Exact matches of a large number of fields substantially reduce the risk that such purges will erroneously remove eligible people.

As discussed throughout the report, the Florida purge in 2000 underscores the need for strict matching criteria. When records were deemed a match because 80% of the last name was the same, approximately 12,000 people were misidentified as disenfranchised felons.

3. Audit purge source lists.

If purge lists are developed by matching names on the voter registration list to names from other sources (for example, criminal conviction lists) the quality and accuracy of the information in these lists should be routinely "audited" or checked. Errors in source lists may lead to the erroneous removal of eligible people. Accordingly, election officials should calibrate reliance based on the known accuracy of the source list.

4. Monitor duplicate removal procedures.

States should implement uniform rules and procedures for eliminating duplicate registrations in accordance with HAVA. States should provide clear guidance to election officials with respect to when to flag a possible duplicate registration, how to verify that the registration is in fact duplicative, and when to remove that registration from the voter registration list.

C. "FAIL-SAFE" PROVISIONS TO PROTECT VOTERS

While inaccurate purges will be mitigated with the implementation of the previously mentioned recommendations, there must still be mechanisms in place to protect voters in the event that a person is incorrectly removed from the voter registration list.

1. No voter should be turned away from the polls because her name is not found on the voter registration list.

Instead, she should be provided a provisional ballot which will be counted upon determination by election officials that she is eligible to vote. In many states, however, voters have not been given the provisional ballots to which they are entitled.[165]

2. Election workers should be given clear instructions and adequate training as to HAVA's provisional balloting requirements.

HAVA sets forth a number of requirements with respect to the use of provisional ballots as a fail-safe in the event that a voter's name does not appear on the registration list. Election workers should clearly understand that: no voter should be denied a provisional ballot; all voters must be given the opportunity to substantiate their eligibility to vote; all voters must be informed as to how they can substantiate their eligibility and how they can determine whether a ballot was counted; and the ballots must be counted when a voter confirms that she is eligible and registered to vote.

D. UNIVERSAL VOTER REGISTRATION

The purge systems currently in place are rife with error and vulnerable to manipulation. Even the best processes for culling the voter rolls will inevitably be imperfect and will erroneously lead to purges of at least some eligible voters. No eligible citizen should be deprived of the right to vote or put through an obstacle course because of these system malfunctions. Currently, eight states have a backup system in place that will protect the votes of those American caught up in a faulty purge — a system of Election Day registration which enables eligible citizens to register and vote on Election Day (or other days on which voting takes place). Some fear that Election Day registration may overwhelm election officials with a swarm of new and unexpected voters. Although those fears are baseless, they can be completely eliminated if Election Day registration is embedded within a system of universal voter registration in which the government takes the

affirmative responsibility of adding all eligible citizens in its records to the voter lists. Under such a system, there would be far fewer unregistered voters who show up at the polls on Election Day since virtually all eligible citizens would be registered. In addition to providing a fail-safe for those voters wrongly purged, universal voter registration would increase confidence in the accuracy of voter registration lists since they would have been assembled by election officials rather than by voters.

Universal voter registration has other benefits as well: it would add up to 50 million unregistered Americans to the voter rolls; eliminate the opportunity for partisan or other gamesmanship with voter registration rules and procedures; reduce fears of potential voter fraud, as those derive largely from the potential for fraudulent registrations; and reduce burdens on election officials, who currently devote substantial resources to processing voter registration forms in the months and days leading up to an election. The elements of a system of universal registration are as follows:

- The government takes affirmative responsibility to build clean voter lists consisting of all eligible citizens.
- Each eligible citizen only has to register once within a state; the government ensures that voters stay on the lists when they move within state.
- Election Day registration is available as a fail-safe for those eligible citizens whose names are erroneously not added to or erroneously purged from the voter rolls.

V. EMERGING ISSUES WITH RESPECT TO PURGES

There are numerous blemishes in our country's voting history. Since the end of Reconstruction in the late nineteenth century, the voting rights of poor and minority citizens have been restricted through a complex system of laws enacted by state legislatures and intended to limit or ignore the commands of the 14th and 15th Amendments. In the immediate aftermath of the Civil War and the Reconstruction Amendments, voting among African American men briefly soared in the former slave states.[166] In Louisiana in 1867, for example, approximately 90% of the eligible black male population had registered to vote.[167] However, by the end of the Reconstruction era in 1877, most Southern states had erected significant new barriers to minority voting that re-established control by the white Democratic Party, eliminating these hard-won rights from the vast majority of non-white voters.[168] At first glance, these new voting laws appeared race-neutral, so as not to violate the 14th and 15th Amendments, but in effect they purposely excluded many African Americans from the polls. Poll taxes, literacy tests, and grandfather clauses, for example, proved to be effective barriers to African American voting. Though these new restrictions did not, on face, target one group of voters over another, they were discriminatorily applied to African American voters.[169]

Some commentators argue that voter purges are simply a variation of older, more overt methods of disenfranchisement intended to reduce minority participation.[170] Courts have agreed: one court overturned the aforementioned Louisiana purge, finding it "massively discriminatory in

purpose and effect,"[171] and another referred to a Texas statute requiring yearly re-registration as a "direct descendant of the poll tax" that unconstitutionally disenfranchised voters.[172] Although other courts differ on the motivations of purges, they do not deny that their effect can be discriminatory.[173]

Irrespective of whether purging officials act with racial animus, if done without adequate protections, voter purges can have the same disenfranchising effect as the overt voter restrictions used in earlier decades. While new nuances to problematic purges are always emerging, there are at least two relatively new issues for which problems are predictable.

A. VOTER CAGING

In the later half of the twentieth century, a category of voter purges known as "voter caging" arose as a new tactic to generate lists of voters to be purged from voter registration lists or challenged at the polls. Adapted from a direct mail marketing practice of sorting mailing addresses,[174] voter caging is a controversial method of targeting voters in which non-forwardable mail is sent to registered voters at their voter registration address. Some percentage of that mail is returned to the sender as undeliverable for a variety of reasons, many unrelated to the recipient's status as a voter.[175] On this basis alone, the sender (typically a political operative) uses the list of returned mail to either request election officials to purge the names from the registration list or later challenge the validity of the voter's registration at the polls on Election Day, or both.

COMPUTERIZED VOTER REGISTRATION LISTS NOW MAKE IT POSSIBLE FOR THOUSANDS OF VOTERS TO BE DISENFRANCHISED WITH A SINGLE KEYSTROKE.

Voter caging has been demonstrated to produce grossly inaccurate results and has threatened to disenfranchise thousands of legitimately registered voters.[176] The history of voter caging is littered with examples of political operatives targeting poor and minority neighborhoods where mail delivery might be less reliable or where voters are believed to be threatening to certain political interests. First uncovered in 1958, the practice has frequently been used to generate purges of thousands of voters. In 1986, for example, the Republican National Committee ("RNC") hired a vendor to conduct a voter caging effort in at least three states, intending to purge voters residing in primarily African American neighborhoods.[177] Unearthed in subsequent litigation, an RNC internal memorandum discussing the targeting of Louisiana voters stated the goal of the voter caging program:

> I would guess that this program will eliminate at least 60-80,000 folks from the rolls . . . If it's a close race, which I'm assuming it is, this could really keep the black vote down considerably.[178]

In more modern times, reports of intended voter caging efforts have surfaced in Ohio, Michigan, and Virginia.[179] Because voters who are victims of caging cannot cast a regular ballot, purges of this kind pose a significant threat to the completeness of voter registration lists, and ultimately, to the legitimacy of our nation's elections.

B. COMPARING DATABASES WITHIN AND ACROSS STATE LINES

HAVA's requirement of centralized computer voter registration databases has allowed election officials to maintain their voter lists with greater ease as states move away from many separate voter lists, but it also significantly amplifies the potential for large-scale disenfranchisement.[180] Indeed, computerized voter registration lists now make it possible for thousands of voters to be disenfranchised with a single keystroke.

Officials have increasingly focused attention on ways of making state databases "interoperable" with other databases that may contain relevant information on registered voters. "Interoperability" is generally defined as a method of connecting or integrating multiple databases so that changes in one database can be recognized and mirrored in a second database automatically. Seizing on language in HAVA which requires or recommends states to "coordinate" voter registration databases with felony conviction databases, death records, and records of voter moves through state DMV databases,[181] several groups of states have started to compare voter registration lists among each other and initiate voter purges based on matches between records on different states' lists, presuming that individuals who have moved from one state to another have neglected to notify the original state before registering to vote in the new state.[182]

The problem is that there are not always sufficient protections to ensure that the same individuals are identified as opposed to two different individuals with similar identifying information. In 2006, for example, the Kentucky State Board of Elections attempted to match names on its registration database against lists of voters in Tennessee and South Carolina, and purged 8,000 voters as a result of the match — without notifying the voters, and in violation of specific provisions of federal law.

Interoperability technology grants many opportunities to improve election administration and the maintenance of voter registration databases. Yet because of the speed and scale at which information can be shared, interoperability in many ways poses a greater threat to the right to vote than traditional methods of record coordination. State and local officials should strive to use existing computer and electronic technology in a way that enhances the experiences of voters and minimizes disenfranchising errors during the voter registration processes.

VI. CONCLUSION

Purges should be a carefully calibrated process designed to account for the complications that invariably arise. Without adequate safeguards, voters experience an unreasonable risk of disenfranchisement, and purges are vulnerable to manipulation. The above recommendations will go far in minimizing unnecessary risks to voters and should be implemented without delay.

ENDNOTES

1 U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006: A Report to the 110th Congress,* 50 (2007), *available at* http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment_download/file).

2 Ford Fessenden, *Florida List for Purges of Voters Proves Flawed*, N.Y. Times, July 10, 2004, at A02.

3 *Id.*

4 *Florida Scraps Flawed Felon Voting List*, Assoc. Press, USA Today, July 10, 2004.

5 John Ferro, *Deceased Residents on Statewide Voter List*, Poughkeepsie Journal, Oct. 29, 2006.

6 *Id.*

7 Adam C. Smith, *No Telling if Voter Rolls are Ready for 2004,* St. Petersburg Times, Dec. 21, 2003.

8 Gregory Palast, *The Wrong Way To Fix the Vote*, Wash. Post, June 10, 2001, at B1.

9 *Id.*

10 Wash. Rev. Code Ann. § 29A.08.620 (2008).

11 *See United States v. McElveen*, 180 F. Supp. 10, 11-14 (E.D. La. 1960) (ruling that the removals were in violation of the Fifteenth Amendment and that the voters taken off the registration rolls were illegally removed) *Id.* at 14.

12 Marsha Shuler, *Registrar Drops More than 21,000 from Voters Rolls*, The Advocate, Aug. 17, 2007, at A10.

13 *Id.*

14 Joe Gyan Jr., *Study: N.O. Population Older, Less Poor, City Remains Majority Minority*, The Advocate, Sept. 13, 2007, at A1 (reporting that New Orleans' black population dropped from 67% before Hurricane Katrina to 58% a year later).

15 Press Release, Secretary of State Jay Dardenne, Voters Registered in Multiple States Should Notify Registrar of Voters to Avoid Being Cancelled (June 15, 2007); Letter from Robert Poche to Voter entitled "Notice: Letter of Intent to Challenge" (June 15, 2007). Both documents were attached as exhibits to the Complaint filed in *Segue v. Louisiana*, No. 07-5221, 2007 U.S. Dist. LEXIS 74428 (E.D. La. Oct. 3, 2007) and are available at http://moritzlaw.osu.edu/electionlaw/litigation/documents/exhibit_000.pdf.

16 Although, it was not too long ago in which a political operative involved in a voter caging effort noted, "I would guess that this program will eliminate at least 60-80,000 folks from the rolls. . . . If it's a close race, which I'm assuming it is, this could really keep the black vote down considerably." *See* Martin Tolchin, G.O.P. Memo Tells of Black Vote Cut, N.Y. Times, Oct. 25, 1986, at 7.

17 North Dakota is the only state that does not require voter registration. Eight other states — Idaho, Maine, Minnesota, Montana, New Hampshire, Wisconsin and Wyoming — have Election Day registration, which allows voters to register and vote on Election Day. *See* Iowa Code Ann. § 48A.7A (2008); Idaho Code Ann. § 34-408A (2008); Me. Rev. Stat. Ann. tit. 21-A, § 122.4 (2008); Minn. R. 8200.5100 (2007); Mont. Admin. R. 44.3.2015(1)(a) (2008); N.H. Rev. Stat. Ann. § 654:7-a (2008); Wis. Stat. Ann. § 6.55 (2007); Wyo. Stat. Ann. § 22-3-104(f) (2008).

18 42 U.S.C. § 1973gg-6(b)(1) (2008).

19 *See* 42 U.S.C. § 1973gg-6(d)(1)-(2) (2008).

20 42 U.S.C. § 15483(a)(2)(A)(i) (2008).

21 42 U.S.C. § 15483(a)(4) (2008).

22 Lawrence Norden *et. al*, Better Ballots 10 (Brennan Center for Justice ed., 2008), *available at* http://www.brennancenter.org/page/-/Democracy/Better%20Ballots.pdf (calculated average of number of voting-age persons who moved between 2000 and 2006, as reported by the U.S. Census Bureau).

23 U.S. Federal Election Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 1997-1998: A Report to the 106th Congress* 11 (July 1999), *available at* http://www.eac.gov/files/clearinghouse/reports_surveys/The%20Impact%of%20the%20NVRA%20of%201993%20on%20Admin%20of%20Elections%20for%2097-98/pdf.

24 U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006: A Report to the 110th Congress* 10 (June 2007), *available at* http://www.eac.gov/program-areas/research-resources-and-reports/copy_of_docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment_download/file.

25 Confirmed by interviews with local boards of election officials in Missouri and Washington conducted in 2007. All interviews are on file at the Brennan Center.

26 Confirmed by interviews with local boards of election officials in Kentucky, Missouri, and Washington conducted in 2007. All interviews are on file at the Brennan Center.

27 While the NVRA does not specifically raise the issue of duplicates, and instead clarifies that the limitations imposed by the NVRA are not interpretable as precluding "correction of registration records," 42 U.S.C. § 1973gg-6(c)(2)(B)(ii), (2008) HAVA instructs states to conduct list maintenance "in a manner that ensures that . . . duplicate names are eliminated from the computerized list," 42 U.S.C. § 15483(a)(2)(B)(iii). Some states, like Washington, Wash. Rev. Code Ann. § 29A.08.610 (2008) and Florida, Fla. Stat. Ann. §§ 98.075, 98.073 (2008), have codified some guidance for addressing the problem of duplicate registrations, albeit with varying degrees of helpfulness. Election statutes in other states, for example, Ohio, and Wisconsin, however, remain silent on the topic of duplicate registration. A number of local officials indicated that duplicates are generally the result of change of addresses, and as such, their processes for responding to duplicates are essentially the purge practices with respect to change of addresses.

28 The NVRA makes clear that no person is to be removed from the statewide registration list solely on account of failure to vote. 42 U.S.C. § 1973gg-6(b)(2). The NVRA does permit, however, the removal of a name from the registration list if a person does not respond to an address confirmation notice AND does not vote in the subsequent two federal elections. *Id*.

29 A problem occurred in Travis County, Texas whereby individuals believed to have moved because of returned mail were purged despite having voted in at least one of the two subsequent federal elections after the mail was returned. Any update or information needed by election officials should have occurred while the person was at the polls voting. But for reasons not entirely clear, these voters were purged despite their having voted. *See* Marty Toohey, *Glen Maxey TV Ads Allege Voter Disenfranchisement*, Austin American-Statesman, Feb. 3, 2008.

30 Arkansas, Florida, Maine and Oklahoma all permit the mailing of address confirmation notices in such circumstances. *See* Ark. Const. amend. 51, § 7 (2008); Fla. Stat. § 98.065(4) (2008); Me. Rev. Stat. Ann. tit. 21-A, § 162-A (2008); Okla. Stat. ANN. tit. 26, § 4-120.2 (2008).

31 Wash. Rev. Code § 29A.08.620 (2008).

32 The section that follows is taken in large part from: Justin Levitt & Andrew Allison, Brennan Ctr. for Justice, A Guide to Voter Caging 3-6 (2007), *available at* http://www.brennancenter.org/dynamic/subpages/download_file_49608.pdf.

33 MCLS § 168.499(3) (2008).

34 *See* Association for Computing Machinery, Statewide Databases of Registered Voters 21 (Feb. 2006), *available at* http://www.acm.org/usacm/PDF/VRD_report.pdf.

35 Nancy Cole & Ellie Lee, Abt Assocs., Inc., Feasibility and Accuracy of Record Linkage to Estimate Multiple Program Participation, Vol. III, Results of Record Linkage 20 (Econ. Research Serv., Elec. Publ'ns from the Food Assistance & Nutrition Research Program, 2004).

36 *See* Nat'l Coalition for the Homeless, State-by-State Chart of Homeless People's Voting Rights (2008), *available at* http://www.nationalhomeless.org/getinvolved/projects/vote/chart.pdf; *cf.* Sec'y of State of Mo., Mandate for Reform: Election Turmoil in St. Louis, November 7, 2000 27 (2001), *available at* http://bond.senate.gov/mandate.pdf.

37 Jon Margolis, *GOP Sued Over Voters Tactic*, Chi. Tribune, Oct. 8, 1986, at C9. There are many other examples of voters who are temporarily away from their permanent residences. A college student may legally reside at her parents' home address and register to vote there while she is away at school, even though she does not receive mail at her parents' house. A voter may be on an extended vacation and have canceled or transferred mail service, or may have done the same for a temporary job transfer. *See* Steve Suo, *Some Inactive Voters Aren't*, The Oregonian, Aug. 27, 2000, at C1. A citizen living overseas, but registered to vote at her last domestic residence, might also receive no mail at her registered address; for example, mail sent to one such voter in New Hampshire was returned undelivered despite the fact that the voter was eligible to vote. Memorandum from Bud Fitch, Deputy Att'y Gen., N.H. Dep't of Justice, to Robert Boyce, Chairman, N.H. Sen. Internal Aff. Comm., et al. 3 (Apr. 6, 2006), *available at* http://doj.nh.gov/publications/nreleases/pdf/040606wrongful_voting.pdf. Similarly, a member of the armed forces, stationed away from his voting residence, could illegitimately get caught up in the purge process.

38 *More Mail Undelivered*, Ft. Lauderdale Sun-Sentinel, Apr. 16, 1994, at 3A.

39 Felicity Barringer, *Cities Seek Bush's Backing to Avert Census 'Crisis,'* N.Y. Times, Apr. 18, 1990, at A17. *See also*, *e.g.*, James Barron, *Sign of Approval, But Will It Bring Mail?*, N.Y. Times, Aug. 2, 2004, at B1. Also, in larger group residential homes, the voting residence may quite properly list the street address, but mail will not be delivered without a unit number.

40 *See* Dayne L. Cunningham, *Who Are To Be the Electors? A Reflection on the History of Voter Registration in the United States*, 9 Yale L. & Pol'y Rev. 370, 393-94 & nn.134-35 (1991) (considering studies of the distribution of census surveys and tax forms shows that ineffective mail delivery is more common in poor and minority communities). *Cf.* Chandler Davidson et al., Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression—or Both? 14 (2004), http://www.votelaw.com/blog/blogdocs/GOP_Ballot_Security_Programs.pdf.

41 Larry Sandler & Greg Borowski, *Parties Spar Over City Voter Lists*, Milwaukee J. Sentinel, Oct. 27, 2006, at B1; *see also* Tom Kertscher, *Landlord Sees a Lot in a Name*, Milwaukee J. Sentinel, June 8, 2004 at B5. The same apparently happened to some challenged voters in Louisiana in 1986. *See* Thomas M. Burton, *Democrats Sue Over GOP Bid to Mail Down the Vote*, Chi. Tribune, Sept. 25, 1986, at C1.

42 John Riley, *Complications, Challenges Abound*, Newsday, Oct. 31, 2004, at A37; *see also*, Sandy Theis, *Fraud-busters Busted*, Cleveland Plain Dealer, Oct. 31, 2004, at H1.

43 42 U.S.C. § 1973gg-6(e)(1)(2008). Similarly, a voter who has moved within the same registrar's jurisdiction and congressional district may return to vote at her former polling place without re-registering. 42 U.S.C. § 1973gg-6(e)(2)(A)(i)(2008). Especially in urban areas where there is high mobility within a particular neighborhood, undeliverable mail may simply reflect the recent move of a voter who remains fully eligible to vote.

44 42 U.S.C. § 1973gg-6(2)(A).

45 *See also* Kandiss Crone, *Hosemann: Voter Purge Violated Federal Law*, WLBT News 3, Mar. 5, 2008, http://www.wlbt.com/Global/story.asp?s=7973229; Joint Press Release, Advancement Project, MERA, Michigan NAACP and ACORN, Voting Groups Caution Michigan Election Officials on Eve of National Secretary of State Conference (July 24, 2008), *available at* http://www.democraticunderground.com/discuss/duboard.php?az=view_all&address=159x12543.

46 42 U.S.C. § 1973gg-6(c)(2008).

47 For example, one Kentucky election official reported that the information compiled by the Postal Service does not match the criteria his county uses to identify voters.

48 Indiana and Florida are examples of states that use jury notices and information from other government agencies to identify people who may have moved. Ind. Code Ann. § 3-7-38.2-2(c)(2), (4) (2008) (permitting the use of information from a court regarding jury notices and from the bureau of motor vehicles regarding the surrender of a person's Indiana license for the operation of a motor vehicle to another jurisdiction); Fla. Stat. Ann. § 98.065(4) (2008) (permitting the use of information regarding jury notices signed by a voter and returned to the courts and information from the Department of Highway Safety and Motor Vehicles indicating that the legal address of a registered voter might have changed).

49 Unless another authority is otherwise cited, information in this report about Kentucky was derived from interviews with county clerks conducted in April 2007 and an interview with an official from the State Board of Election conducted in September 2008. All interviews are on file at the Brennan Center.

50 Nev. Rev. Stat. Ann. § 293.535 (2008).

51 Mich. Comp. Laws Serv. § 168.509dd(3)(a) (2008) (permitting house-to-house canvasses as part of a program to remove the names of unqualified voters from the voter registration list); Wis. Stat. Ann. § 6.40(2)(b) (2007) (permitting municipal clerks to conduct door-to-door canvasses to identify voters who no longer reside at their registered addresses); 25 Pa. Cons. Stat. Ann. § 1901(b)(2) (2008) (allowing election officials to visit registered addresses to supplement other list maintenance activities); Nev. Rev. Stat. Ann. § 293.530(2) (2008) (permitting county clerks to conduct house-to-house canvasses to investigate registrations). New York's statute provides a variation whereby New York Board of Elections employees are required to conduct a canvass upon written request of any Board of Elections member. N.Y. Elec. Law § 5-710 (Consol. 2008).

52 This was reported to us by an interviewee from Nevada in March 2007. Unless another authority is cited, information in this report about Nevada was derived from interviews conducted with county clerks and registrars in March, 2007.

53 Mo. Rev. Stat. § 115.191 (2008).

54 Wash. Rev. Code Ann. § 29A.08.620(1) (2008) (designating voters as inactive if certain pieces of mail are returned to sender as undeliverable); N.Y. Elec. Law § 5-712(5) (Consol. 2008) (designating all voters who are sent an address confirmation notice as inactive); Or. Rev. Stat. § 247.563(3) (2007) (designating the registration of voters sent address confirmation notices as inactive until further determination).

55 Fla. Stat. Ann. § 98.065 (4)(c) (2008) (designating as inactive all voters who have been sent an address confirmation notice and who have not returned the postage prepaid, preaddressed return form

within 30 days or for which an address confirmation notice has been returned as undeliverable.); Mo. Rev. Stat. § 115.193(5) (2008) (designating any voter as an inactive voter if . . . the voter fails to respond to the notice . . . within thirty days after the election authority sends such notice).

56 *See* 950 Mass. Code Regs. 54.04(6) (2008).

57 *Cf.* Or. Rev. Stat. § 254.470(2)(a) (2007) (directing that ballots be sent "to each *active* elector") (emphasis added).

58 42 U.S.C. § 1973gg-6(a)(4)(A) (2008).

59 42 U.S.C. § 15483(a)(2)(A)(ii)(II) (2008).

60 *See e.g.* Fla. Stat. Ann. § 98.093(2)(a) (2008) (requiring the Department of Health to furnish monthly to the department a list containing the name, address, date of birth, date of death, social security number, race, and sex of each deceased person 17 years of age or older.); Ind. Code Ann. § 3-7-45-2.1(b)(1) (2008) (stating that the state department of health provides election officials with information on decedents); N.Y. Elec. Law § 5-708(1) (Consol. 2008) (stating that state health department must deliver to the state board of elections monthly records of the names of all persons of voting age for whom death certificates were issued); Ohio Rev. Code Ann. § 3503.18 (2008) (directing the chief health officer and director of health to file list of decedents with board of elections); 4 Pa. Code § 183.6(d)(1) (2008) (stating that death notices are received from the department of health for the purposes of removing records).

61 *See e.g.*, Mo. Rev. Stat. § 115.195(1) (2008) (state or local registrar of vital statistics provides election officials with a list of decedents); Wash. Rev. Code Ann. § 29A.08.510(1) (2008) (state department of vital statistics provides the list to the Secretary of State).

62 Nevada statute does not specify what state agency provides the names of Nevada residents who have died. In fact, the statute permits local officials to cancel the registration of a voter only if the county clerk "has personal knowledge of the death of the person registered, or if an authenticated certificate of the death of any elector is filed in his office." Nev. Rev. Stat. § 293.540(1) (2008).

63 Wash. Rev. Code Ann. § 29A.08.510(2) (2008) (permitting county auditors to use newspaper obituary articles to cancel a voter's registration). Election officials in three Washington counties confirmed the use of this practice.

64 Wash. Rev. Code Ann. § 29A.08.510(3) (2008).

65 Kentucky permits the removal of a deceased registrant based on the notification of "other reliable sources." Ky. Rev. Stat. Ann. § 116.113(1) (2008). Similarly, Florida law suggests that the state permits removal of deceased registrants based on information from "other sources." Fla. Stat. Ann. § 98.093(3) (2008).

66 For more information on the voting rights of persons with criminal convictions, please visit the Brennan Center's website at: http://www.brennancenter.org/content/section/category/voting_after_criminal_conviction/. *See also* Erika Wood, Restoring the Right to Vote (Brennan Center for Justice ed., 2008) *available at* http://www.brennancenter.org/content/resource/restoring_the_right_to_vote/ for a discussion of why voting rights should be restored to persons with criminal convictions upon release from prison.

67 The thirteen states are Hawaii, Illinois, Indiana, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah.

68 Those eight states are Alabama, Arizona, Delaware, Florida, Mississippi, Nevada, Tennessee, and Wyoming.

69 The five states are California, Colorado, Connecticut, New York, and South Dakota.

70 These twenty states are Alaska, Arkansas, Georgia, Idaho, Indiana, Kansas, Louisiana, Maryland, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, Washington, West Virginia, Wisconsin. (Nebraska imposes a two-year waiting period after completion of sentence.)

71 42 U.S.C. § 1973gg-6(a)(3)(b) (2008).

72 42 U.S.C. § 15483(a)(2)(A)(ii)(I) (2008).

73 *See* Ky. Rev. Stat. Ann. § 116.113 (2008).

74 *See* Nev. Rev. Stat. Ann. § 293.540(3) (2008) (vesting county clerks with the task of canceling the voter registrations of persons convicted of felonies).

75 Unless otherwise cited, information pertaining to Washington was derived from interviews with four county board of elections officials as well as with staff from the Secretary of State's office conducted during February-April, 2007. All interviews are on file with the Brennan Center.

76 Fla. Stat. Ann. § 98.075(5) (2008).

77 For example, the Missouri statute specifically requires the county's election authority, which is generally the county auditor, to *remove* registrants reported dead or adjudged incapacitated, but with respect to those with criminal convictions, the statute only directs that the election authority to determine the voting qualifications of those reported convicted or pardoned. Mo. Rev. Stat. § 115.199 (2008). Some local officials in Missouri indicated that it is not their practice to purge persons convicted of disenfranchising crimes from the rolls. Instead, the registrant is placed in a particular status indicating current ineligibility. When the registrant's sentence has been completed, the person's eligibility is reactivated upon a showing of the appropriate documentation. *See* interviews with officials from city boards of election in Missouri conducted in 2007. Also, Pennsylvania, which automatically restores voting rights upon release from prison, does not indicate in its election statutes that individuals are removed because of incarceration — instead, the statute specifies that incarcerated persons are not eligible for absentee ballots. *See* 25 Pa. Cons. Stat. Ann. § 2602(w) (2008).

78 42 U.S.C. §§ 1973gg-6(g)(1), (g)(5) (2008).

79 Fla. Stat. Ann. § 98.093(2)(c)-(f) (2008) (stating that the department of law enforcement, board of executive clemency, and department of corrections, in addition to the U.S. Attorney, will provide information about people with criminal convictions to election officials); Ind. Code Ann. §§ 3-7-46-4.1, 3-7-46-6 (2008) (stating that department of correction and county sheriffs will provide information about people with criminal convictions).

80 For example, in Nevada, the state statute does not specify where the purging officials are to receive information on who has been convicted of disqualifying convictions. Nev. Rev. Stat. Ann. § 293.540(3) (2008). Note, however that Nevada statutes do require the Director of the Department of Corrections to submit monthly to each county clerk in this state a list which provides the name of each persons released from prison by expiration of term of imprisonment during the previous month or who was discharged from parole during the previous month. *See* Nev. Rev. Stat. Ann. § 209.134 (2008).

81 In Nevada, local election officials reported varying practices with respect to the removal of individuals with criminal convictions. One local official reported a practice of obtaining information on disqualifying convictions from jury questionnaires. Another stated that he receives such information from the state Department of Corrections. A third reported finding information on disqualifying convictions by reviewing courts' judgments.

82 42 U.S.C. § 15483(a)(2)(B)(iii) (2008).

83 Nevada officials offered examples of this assumption.

84 Interview with a county election official in Michigan conducted in September 2008 is on file at the Brennan Center. A county official in Washington similarly reported that the newer registration record is removed when faced with a known duplicate.

85 *E.g.*, Missouri's statewide voter registration database creates a duplicate list on a monthly basis, and local election officials are responsible for working through the list. (Confirmed by a Missouri county board of election official.) Washington's statewide voter registration list produces a potential duplicate report that local election officials check daily. (Confirmed by a Washington county board of elections official.) The Ohio Secretary of State's office creates a daily duplicate list that is accessed by county elections officials. (Confirmed by a Ohio county board of elections officials.)

86 Mo. Ann. Stat. § 115.165(4) (2008).

87 Unless another authority is otherwise cited, information in this report about Missouri was derived from interviews with staff from the Secretary of State's office, officials from city boards of election, a county election official, and voter protection advocates conducted in 2007. All interviews are on file with the Brennan Center.

88 *See*, *e.g.*, Nev. Rev. Stat. Ann. § 293.540(9) (2008) (authorizing removal of duplicate records, but providing no criteria for identifying matching records). *But see* Wash. Rev. Code Ann. § 29A.08.610 (2008) (providing required criteria of identical date of birth, similar names and compared signatures; the only statute of those surveyed to provide such detailed criteria).

89 Unless another otherwise cited, information in this report about Ohio was derived from interviews with county board of elections officials conducted during February-March, 2007. All interviews are on file with the Brennan Center.

90 A Missouri board of election official attested to the consequences of these periods of heightened activity.

91 This has been the case, for instance, in Missouri and Ohio according to local elections officials there.

92 *See* 42 U.S.C. § 1973gg-6(b)(2) (2008).

93 42 U.S.C. § 1973gg-6(d)(2) (2008).

94 *See*, *e.g.*, U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006* 97 (2007), *available at* http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment_download/file.

95 This scenario reportedly occurred in both 2000 and 2006 in precincts in St. Louis, Missouri according to voter protection advocates working in the state.

96 Interviews with voter protection advocates in Missouri conducted in 2007.

97 Ohio Rev. Code Ann. § 3503.21(B) (2008).

98 Ohio boards of election officials confirmed this practice.

99 Wis. Stat. Ann. § 6.50(1)-(3) (2007). Note that Wisconsin, a state with Election Day registration, is exempt from the NVRA.

100 While the NVRA and some state laws contemplate the removal of persons from voter registration rolls for the reason of mental incapacitation in accordance with state law, our interviews with local officials indicate that very few registrants are purged from voter rolls on this basis.

101 42 U.S.C. § 1973gg-6(a)(3)(b) (2008).

102 25 Pa. Cons. Stat. § 1302(a)(4) (2008).

103 Ind. Code Ann. § 12-26-2-8(1)(F) (2008).

104 *See Id.* § 3-5-5-17 (2008) (specifying that individuals who are committed to institutions for the mentally ill do not gain residency in the precinct of the institution).

105 Or. Const. art. 2, § 3 (2007).

106 Mo. Rev. Stat. §§ 115.199, 115.133 (2) (2008); N.Y. ELEC. LAW § 5-400(1)(c) (Consol. 2008) (cancelling a voter's registration, including the registration of a voter in inactive status, if he has been adjudicated incompetent).

107 Nev. Rev. Stat. Ann. § 293.540(2) (2008).

108 Fla. Stat. Ann. § 98.075(4) (2008). Washington and Ohio similarly indicate that the declaration of mental incapacitation must be specifically with respect to voting to warrant removal from the rolls. Wash. Rev. Code Ann.§ 29A.08.515 (2008) (cancelling the voter registration for one who has been appointed a guardian and adjudicated incompetent with respect to voting); Ohio Rev. Code Ann. § 3503.21(4) (2008) (cancelling a registration based upon adjudication of incompetency of the registered elector for the purpose of voting).

109 Confirmed by interviews with local boards of election officials in Kentucky, Nevada, and Ohio conducted in 2007. All interviews are on file at the Brennan Center.

110 Ky. Rev. Stat. §116.113(2) (2008) (circuit court). In Florida, Missouri, Nevada, and Ohio, election officials also receive lists of individuals ineligible to vote due to adjudication of mental incapacity from state courts. Fla. Stat. Ann. § 98.093(2)(b) (2008) (circuit court); Mo. Rev. Stat. § 115.195(3) (2008) (probate division of the circuit court); Nev. Rev. Stat. Ann. § 293.542 (2008) (district court); Ohio Rev. Stat. § 3503.18 (2008) (probate judge).

111 Washington's statutes strongly suggest as much. The text of the statute indicates that the computerized statewide voter registration list must be coordinated with other agency databases within the state, including the office of the administrator for the courts. *See* Wash. Rev. Code Ann. § 29A.08.651(5) (2008). However, the statute is not more explicit than the county auditor will receive official notice that a court has imposed a guardianship for an incapacitated person and has determined that the person is incompetent for the purpose of rationally exercising the right to vote. *See Id.* § 29A.08.515.

112 *See* N.Y. Elec. Law §§ 5-614(5), 5-106(6) (Consol. 2008). Note that lists can be also be supplied by any court with jurisdiction over such matters. *Id.* § 5-708(3).

113 This was confirmed by county boards of election officials in Washington; Press Release, Wash. Sec'y of State, State's First Consolidated List of Registered Voters Combats Voter Fraud (Feb. 20, 2007), *available at* http://www.secstate.wa.gov/office/osos_news.aspx?i=FenKyLcm7pnRO0P0kcR9kA%3d%3d.

114 John Ferro, *Deceased Residents on Statewide Voter List*, Poughkeepsie Journal, Oct. 29, 2006.

115 *Id.*

116 *Id.*

117 Office of the Inspector General, Social Security Administration, *Audit Report* 2 (Sept. 2006), *available at* http://www.ssa.gov/oig/ADOBEPDF/A-06-06-26020.pdf.

118 An Ohio election official reported that entire households were removed when an address appeared in the national change of address list on account of one individual associated with that address moving. A

Kentucky county official similarly reported that the National Change of Address database is unreliable and that the postal service is incapable of differentiating which person in a household has moved.

119 An Ohio county official reported that the list he received with the names of deceased residents sometimes contained records without dates of birth, making it hard to use to guide the removal of deceased registrants. A Nevada official opined that the lists from the Department of Vital Statistics were of an adequate quality, but sometimes hard to use because they provided a decedent's age instead of providing the decedent's date of birth.

120 *Id*.

121 *Id*.

122 Greg Palast, *Ex-Con Game: How Florida's "Felon" Voter-Purge Was Itself Felonious*, Harper's Mag., Mar. 1, 2002, *available at* http://www.ejfi.org/voting/voting-95.htm.

123 Kandiss Crone, *Hosemann: Voter Purge Violated Federal Law*, WLBT News 3, Mar. 5, 2008, http://www.wlbt.com/Global/story.asp?s=7973229; Lucy Weber, *Purged Voting Rolls to be Fixed*, Clarion Ledger, Mar. 6, 2008, at 1A; Lucy Weber, *Thousands of Names Removed From Madison County Voter Rolls*, Clarion Ledger, Mar. 5 2008, at 1; Lucy Weber, *Resignation, Investigation Urged in Madison Co. After Vote-Roll Purge*, Clarion Ledger, Mar. 7, 2007, at 1A; Cheryl Lasseter, *Landrum Asking for Voter-Roll Investigation*, WLBT News 3, Mar. 6, 2008, http://www.wlbt.com/Global/story.asp?s=7977823.

124 Andrew Ujifusa, *Change to Voter Rolls Called Into Question*, Madison County Herald J., Mar. 13, 2008, at 1; Kandiss Crone, *Hosemann: Voter Purge Violated Federal Law*, WLBT News 3, Mar. 5, 2008, http://www.wlbt.com/Global/story.asp?s=7973229; Lucy Weber, *Purged Voting Rolls to be Fixed*, Clarion Ledger, Mar. 6, 2008, at 1A; Lucy Weber, *Thousands of Names Removed From Madison County Voter Rolls*, Clarion Ledger, Mar. 5 2008, at 1; Lucy Weber, *Resignation, Investigation Urged in Madison Co. After Vote-Roll Purge*, Clarion Ledger, Mar. 7, 2007, at 1A; Cheryl Lasseter, *Landrum Asking for Voter-Roll Investigation*, WLBT News 3, Mar. 6, 2008, http://www.wlbt.com/Global/story.asp?s=7977823

125 *See generally* Wash. Rev. Code Ann. § 29A.08.605 (2008); Ky. Rev. Stat. Ann. § 116.112(6) (2008).

126 *See* Fla. Stat. Ann. § 98.075(3) (2008); N.Y. Elec. Law § 5-402(2) (Consol. 2008). Interestingly, Florida's decision to exempt persons presumed deceased from notice requirements is in contrast to its statute squarely requiring that a registrant be given notice and the opportunity to respond to the charge of ineligibility on account of mental incapacitation prior to removal from the registration rolls, Fla. Stat. Ann. § 98.075(4), (7) (2008), protections for which Florida is unique among the states studied in expressly providing.

127 Ind. Code Ann. § 3-7-46-9 (2008) (requiring notification after removal from the registration list, specifically sent to the last known address of all people disenfranchised on account of imprisonment not later than the day following the day that the registration has been canceled from the rolls).

128 Fla. Stat. Ann. § 98.075(7) (2008); Wash. Rev. Code Ann. § 29A.08.520(1) (2008) (requiring that if a registrant is found on a list of felons, the canceling authority must send a notice of the proposed cancellation and an explanation of the requirements for restoring the right to vote once all terms of sentencing have been completed; if the person fails to respond within thirty days, the registration is to be canceled).

129 Ind. Code Ann. § 3-7-46-9 (2008).

130 *See*, *e.g.*, Alan Riquelmy, *Political Confusion: Removal Letter Confuses Law-Abiding Voters*, Columbus Ledger-Enquirer, April 3, 2008, at A01.

131 *See e.g.*, American Civil Liberties Union, *Purged!: How Flawed and Inconsistent Voting Systems Could Deprive Millions of Americans of the Right to Vote* 8 (2004), *available at* http://tinyurl.com/4vdl75.

132 Election officials in Washington state reported only using a few fields to identify voters for removal.

133 Michael P. McDonald & Justin Levitt, *Seeing Double Voting* 11 (July 1, 2007) (unpublished manuscript, submitted to the 2007 Conference on Empirical Legal Studies), *available at* http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID997888_code698321.pdf?abstractid=997888&mirid=1.

134 Brennan Center for Justice at NYU School of Law & Michael McDonald, Preliminary Analysis of the September 15, 2005 Report Submitted to the New Jersey Attorney General by the New Jersey Republican Party 6-7 (2005), *available at* http://www.brennancenter.org/page/-/d/download_file_35010.pdf.

135 Fla. Stat. Ann. § 98.093(2)(a) (2008).

136 Gregory Palast, *The Wrong Way To Fix the Vote*, Wash. Post, June 10, 2001, at B1.

137 *Id.*

138 U.S. Commission on Civil Rights, Voting Irregularities in Florida During the 2000 Presidential Election, Ch. 5 (June 2001) available at http://www.usccr.gov/pubs/vote2000/report/ch5.htm. African Americans constituted over 65% of the voters on the county's exclusion list. Id. Ch. 1, available at http://www.usccr.gov/pubs/vote2000/report/ch1.htm.

139 N.Y. COMP. CODES R. & REGS. tit. 9 § 6217.8 (2008).

140 Missouri's statutes are an example of a wide grant of authority given to election officials regarding the sources and methods permitted to verify a person's address, reading "[t]he election authority may investigate the residence or other qualifications of any voter at any time it deems necessary. The election authority shall investigate material affecting any voter's qualifications brought to its attention from any source, and such investigations shall be conducted in the manner it directs." Mo. Ann. Stat. § 115.191 (2008).

141 Wash. Rev. Code Ann. § 29A.08.620 (2008).

142 Ohio Rev. Code Ann. § 3503.18 (2008).

143 Fla. Stat. Ann. § 98.075(4) (2008). Wash. Rev. Code Ann. § 29A.08.515 (2008) ("Upon receiving official notice that a court has imposed a guardianship for an incapacitated person and has determined that the person is incompetent for the purpose of rationally exercising the right to vote, under chapter 11.88 RCW, if the incapacitated person is a registered voter in the county, the county auditor shall cancel the incapacitated person's voter registration."); Ohio Rev. Code Ann. § 3503.21(4) (2007) ("The adjudication of incompetency of the registered elector for the purpose of voting as provided in section 5122.301 [5122.30.1] of the [Ohio] Revised Code.").

144 Confirmed by county boards of election officials in Ohio.

145 42 U.S.C. § 1973gg *et. seq.*

146 42 U.S.C. § 1973gg-4(a)(1) (2006); *see Charles H. Wesley Educ. Found. v. Cox,* 408 F.3d 1349, 1355 (11th Cir. 2005) (holding that NVRA prohibited state from rejecting voter registration applications postmarked by correct date under state law); *see also Assoc. of Cmty. Organizations for Reform Now v. Edgar*, 56 F.3d 791, 792-3, 795 (7th Cir. 1995) (overriding state law to the extent that it conflicts with the NVRA).

147 42 U.S.C. § 1973gg-4(b) (2006).

148 42 U.S.C. § 1973gg-3(a)(1) (2006).

149 42 U.S.C. § 1973gg-5(a)(2)(A) (2006).

150 42 U.S.C. § 15483(a)(2)(A)(ii)(I) (2006).

151 42 U.S.C. § 15483(a)(2)(A)(ii)(II) (2006).

152 42 U.S.C. § 1973gg-6(a)(1) (2006) (enumeration omitted) (emphasis added).

153 42 U.S.C. § 1973gg-6(a)(4)(A)-(B) (2006).

154 42 U.S.C. § 1973gg-6(a)(3)(A)-(B) (2006).

155 42 U.S.C. § 15483(a)(4)(A) & (B)(2)(iii) (2006).

156 *Id.* § 15483(a)(2)(B)(i) & (ii).

157 The New York Board of Elections must notify voters by mail and wait 14 days prior to cancellation for any reason except request to be removed (which includes registering in another state), death, or inactivity for two general elections. N.Y. Election Law § 5-402(2) (McKinney 2007).

158 25 Pa. Cons. Stat. Ann. § 1203(h) (2006).

159 *Id.* § 1505(c) (2006).

160 Lucy Weber, *Purged Voter Rolls To Be Fixed*, Clarion-Ledger, Mar. 6, 2008 at 1A.

161 Lucy Weber, *Resignation, Investigation Urged in Madison Co. After Voter-Roll Purge*, madison county journal, Mar.7, 2008 at 1; Andrew Ujifusa, *Change to Voter Rolls Called Into Question*, Madison County Journal, Mar. 13, 2008 at 1.

162 *See* Letter from C. Delbert Hosemann, Mississippi Secretary of State (Mar. 31, 2008) (on file with the Brennan Center). A later conversation with staff from the Secretary of State's office clarified this feature.

163 Wash. Rev. Code § 29A.08.770 (2008). Other states grant the public varying degrees of access to records of voters purged. *See*, *e.g.*, Fla. Stat. Ann. § 98.045(2)-(3) (2007); Mich. Comp. Laws § 168.514 (2007); Wis. Stat. §§ 6.33, 6.36 (2007).

164 Of the twelve states covered in this report, for example, the following ten provide readily accessible voter portal functions on their websites: Indiana, Kentucky, Michigan, Missouri, Nevada, New York, Ohio, Pennsylvania, Washington, and Wisconsin.

165 *See, e.g.*, People for the American Way et al., *Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections*, at 8 (December 2004); Demos, *Continuing Failures in "Fail-Safe" Voting*, at 4 (Dec. 2005), *available at* http://www.demos-usa.org/pubs/December%20PB%20Report%20Draft%2015.pdf.

166 *See* Robert M. Goldman, Reconstruction And Black Suffrage: Losing The Vote In Reese And Cruikshank 13 (Univ. Press of Kansas 2001).

167 Chandler Davidson and Bernard Grofman eds., Quiet Revolution In The South 104 (Princeton Univ. Press 1994).

168 *Id.* at 105.

169 *Id.*

170 Steve Barber *et al.*, *The Purging of Empowerment: Voter Purge Laws and the Voting Rights Act*, 23 Harv. C.R.-C.L. L. Rev. 483, 486-87 (1988).

171 *United States v. McElveen*, 180 F.Supp. 10, 11-13 (E.D. La. 1960) (finding that purges for errors in voter registration affected 85% of black voters and only 0.07% of white voters, despite similar errors among half of white registrations).

172 *Beare v. Smith*, 321 F. Supp. 1100, 1103 (S.D. Tex. 1971), *aff'd sub nom. Beare v. Briscoe*, 498 F.2d 244, 248 (5th Cir. 1974).

173 *See*, *e.g.*, *Toney v. White*, 488 F.2d 310, 312 (5th Cir. 1973) (voiding the results of an election on the ground that a voter purge conducted 30 days prior to the election had a racially discriminatory effect, notwithstanding a lack of evidence suggesting the purge was racially motivated).

174 Paul Kiel, TPMMuckraker.com, Cage Match: Did Griffin Try to Disenfranchise African American Voters in 2004?, http://www.tpmmuckraker.com/archives/003523.php (June 26, 2007).

175 Justin Levitt & Andrew Allison, A Guide to Voter Caging 3-6 (Brennan Center for Justice ed., 2007) *available at* http://www.brennancenter.org/dynamic/subpages/download_file_49608.pdf.

176 *Id.*

177 Chandler Davidson et al., Center for Voting Rights and Protection, Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression or Both? 17 (2004) *available at* http://www.votelaw.com/blog/blogdocs/GOP_Ballot_Security_Programs.pdf.

178 Martin Tolchin, *G.O.P. Memo Tells of Black Vote Cut*, N.Y. Times, Oct. 25, 1986, at 7.

179 *See 2004 Presidential Election: Hearing Before the Committee on House Judiciary Subcommittee on Constitution, Civil Rights, and Civil Liberties*, (2008) (statement of J. Gerald Hebert, Executive Director & Director of Litigation, The Campaign Legal Center); Chandler Davidson *et al.*, *Election Law: Vote Caging as a Republican Ballot Security Technique*, 34 Wm. Mitchell L. Rev. 533, 561 (2008); Teresa James, *Caging Democracy: A 50-Year History of Partisan Challenges to Minority Voters* 16-20, 22 (Project Vote ed., Sept. 2007), *available at* http://projectvote.org/index.php?id=355.

180 At the time of publication, most, but not all, states have implemented centralized statewide voter registration databases. For example, California's VoteCal system is not expected to be fully deployed until 2010. *See* http://www.sos.ca.gov/elections/bidders_library/q_a_rfp_regional_co.pdf.

181 42 U.S.C. § 15483(1)(A)(iv); *see also* §§ 15483(2)(A)(ii)(I)-(II), (5)(B)(i)-(ii).

182 *See* Memorandum of Understanding Between the States of Missouri, Iowa, Nebraska and Kansas for the Improvement of Election Administration, December 2005, *available at* http://www.sos.mo.gov/elections/2005-12-11_MO-KS-IA-NE-MemorandumOfUnderstanding.pdf; *see also* Sean Greene, *Midwest Voter Registration Data-Sharing Project Moves Forward: Kansas Leads Groups of States Crosschecking Information; Advocates Voice Concern*, electionline.org, Dec. 13, 2007, http://www.pewcenteronthestates.org/report_detail.aspx?id=33612; M. Mindy Moretti, *Western States Contemplate Voter Information Sharing: Interstate Cooperation Has Promise and Pitfalls, Officials Decide*, electionline.org, Feb. 2, 2006, http://www.pewcenteronthestates.org/report_detail.aspx?id=33814.

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121 F.Supp.2d 1054
United States District Court,
E.D. Texas,
Lufkin Division.

Barry CURTIS, Michael A. Claunch, and Brenda B. Neil, Plaintiffs,
v.
Marion A. “Bid” SMITH, in his official capacity as Tax Assessor–Collector for Polk County, Texas, Defendant.

No. Civ.A. 9:00–CV–241.
|
Nov. 3, 2000.

Synopsis
Registered voters whose residency was challenged en masse brought action to prohibit county registrar from mailing confirmation letters to them in accordance with Texas Election Code. Upon voters' motion for preliminary injunction, a three-judge panel of the District Court, Cobb, J., held that: (1) allowing of an en masse challenge of residency of approximately 25% of county's registered voters, particularly in such close proximity to a national election date, constituted a change in Texas challenge standard, practice, or procedure which had been impermissibly initiated without preclearance under Voting Rights Act, and (2) process of issuing en masse confirmation notices triggered by en masse challenge to voter residency meeting the requirements of Texas Election Code required separate preclearance under Voting Rights Act.

Motion granted.

Attorneys and Law Firms

***1055** Larry Parish York, Mary Frances Keller, Baker & Botts, Austin, TX, for plaintiffs.

Robert Thrane Bass, Allison Bass & Associates, Austin, TX, for defendant.

Randall B. Wood, Ray Wood & Fine, Austin, TX, for intervenors Howard Daniel Jr., Tiffany Jones, and Jerry Don Marsh.

MEMORANDUM AND ORDER

COBB, District Judge.

Before the court is Plaintiffs' Motion for Preliminary Injunction, and the court having heard the witnesses and attorneys for the parties and having reviewed the motion and response thereto is of the opinion that the motion be GRANTED.

Plaintiffs seek in this action to prohibit defendant, Marion “Bid” Smith, from mailing confirmation letters to approximately 9,000 persons who are currently registered voters in Polk County, Texas. They are self-styled “Escapees,” largely retirees, and apparently travel a major portion of each year in recreational vehicles (RV's). They purchased licenses for their vehicles in Polk County, Texas, and all claim their residence is in the Rainbow's End RV Park in Polk County. All have applied for and been registered by the appropriate county official to vote in that county.

I. Procedural history and background.
Rainbow's End is a parcel of land containing 130 acres south of Livingston, the county seat of Polk County, Texas. It does not have the ability to park 4500 or 9,000 RV's on its land at any one time. It probably can accommodate approximately 200–300 licensed RV's simultaneously in spaces with permanent services such as electricity and water.

***1056** Plaintiffs base their action on the requirements of 42 U.S.C. § 1973 *et. seq.,* titled the Voting Rights Act ("the Act"). Section 5 of the Act requires that any change in voting qualifications or prerequisites, or any standard, practice, or procedure within a covered state or subdivision of a state be precleared either by a declaratory judgment of the United States District Court for the District of Columbia or, alternatively, by submission to the Department of Justice ("DOJ"), which must respond to the submission within 60 days. The specific reason for such preclearance is to ensure that any such change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c (§ 5 of the Act). Preclearance by submission to the DOJ is apparently the method preferred by states and their subdivisions. Under the terms of the Act, Texas and its subdivisions are covered by the Act and must preclear any voting related change not in effect as of November 1, 1972.

The present Texas Election Code, which was enacted originally in 1985 and became effective January 1, 1986, was submitted to the Department of Justice in 1984 for pre-clearance before the Texas Legislature was to meet in biennial session in 1985. This Code replaced the formerly existing Texas civil statutes governing elections. The codified changes were precleared by the DOJ in accordance with § 5 of the Voting Rights Act, prior to the 1985 enactment. There have been two other pre-clearances in 1994 (prior to the legislative session) and in 1995. The changes submitted were approved.

On September 11, 2000, in accordance with the provisions of the Texas Election Code (§ 16.0921), three resident voters filed affidavits which challenged the residency (and thus the voter-eligibility) of approximately 9,000 voters in Polk County. These affidavits triggered the action of the Tax Assessor–Collector (who by statute is the voter registrar in his county) in his sending confirmation notices to the Escapees.

The Texas Election Code provides only a single method to challenge a voter's residence. Section 16.0921 of the Election Code provides:

> (a) On the filing of a sworn statement under Section 16.092 alleging a ground based on residence, the registrar shall promptly deliver to the voter whose registration is challenged a confirmation notice in accordance with Section 15.051.
>
> (b) If the voter fails to submit a response to the registrar in accordance with Section 15.053, the registrar shall enter the voter's name on the suspense list.

The sworn statement, or affidavit, is required to be based on personal knowledge, and not merely on information and belief. The challenged voter's name must be stated in the affidavit as well as his address. The three affidavits at issue are identical in content, and attach the lists of registered voters as exhibits. One exhibit contains all Escapees claiming Rainbow's End as their permanent residence, and a much shorter list contains several hundred names of persons who have fixed, non-mobile homes in the two precincts (19 and 20) involved.

The voters claiming Rainbow's End residency receive their mail at a personal mail box (PMB) at a physical post office address at Rainbow's End. A Ms. Carr keeps current records of the names of the Escapees and where to forward mail to each person with a PMB.

The Texas Election Code requires the registrar to mail the confirmation notice to a voter whose residence is properly challenged. The notice includes a form confirming that the address on his or her voter registration certificate is correct, or, if not, his or her present place of permanent residency. In accordance with Texas Election Code § 15.053, the challenged voter must submit a written, signed response to the confirmation notice not later than the 30th day after the date the confirmation notice is mailed, or the voter is placed upon the suspense list for that precinct. ***1057** No one in the suspense list can vote at the next ensuing election unless he or she confirms either in person or by returning by mail the form confirming his or her residence before the day of the election.

Thus, in practical terms if the Escapees are mailed confirmation notices at their PMB's and do not return them timely and properly stating their places of residence are correctly stated on their voter registration cards, their votes are not counted in the next election.

The next election after September 11, 2000, is the general election on November 7, 2000, both as to national, state, and local offices. Plaintiffs attorney, purporting to represent all 9,000 persons, claims that they may be disenfranchised.

The Attorney General of Texas, representing the state and its Secretary of State brought suit in state court seeking injunctive relief until such process and practice by the Polk County registrar who responded to this massive challenge was precleared by either a declaratory judgment of the United States District Court for the District of Columbia, or by review of the Attorney General of the United States. The state district court, after two hearings, granted a Temporary Restraining Order requested by the Secretary of State. But on application of the intervenors herein (the three individuals who originally filed the affidavits challenging the Escapees' residency, but not joined in by Marion “Bid” Smith, Registrar, the named defendant), the Ninth Court of Appeals for the State of Texas stayed the issuance of the injunction by order dated October 4, 2000.

Later that day, plaintiffs here filed in this court an action seeking a Temporary Restraining Order against “Bid” Smith and the intervenors in the state court action from mailing any further confirmation notices, alleging such actions were in violation of the National Voting Rights Act originally passed in 1965, as amended in 1970, 1975, and 1982.

The individual judge to whom this case was assigned granted the Temporary Restraining Order, and set a hearing for October 6, 2000, which was held on that date. The plaintiffs here sought a three-judge court as provided by Title 28 United States Code § 2284 and Title 42 United States Code § 1973c (§ 5 of the Voting Rights Act). After the hearing, this judge extended the Temporary Restraining Order, made findings, and sought the designation of a three-judge court by the Chief Judge of the United States Court of Appeals for the Fifth Circuit. That same day, the designation was made by Chief Judge Carolyn Dineen King, designating this panel.

The hearing before us was held on October 25, 2000. At that hearing, counsel for plaintiffs submitted the record of the October 6, 2000, hearing and offered the testimony of two witnesses, Ms. Ann McGeehan, the Director of the Elections Division of the Texas Secretary of State, and Mr. Marion “Bid” Smith, the Polk County Tax Assessor–Collector and Registrar of Voters. The court admitted the record of the October 6 hearing into evidence, and the transcript of the testimony given at the two previous state hearings, and other documents, and heard the two witnesses and the arguments by counsel for plaintiffs, the defendant, and the intervenors.

The plaintiffs' fundamental complaint can be summarized as asserting two causes of action. First, plaintiffs contend that the *en masse* challenge to the voting residence of the Escapees whereby each individual challenger was allowed to submit a sworn affidavit challenging the residency of over 9,000 of the Escapees was a method not previously used by the state of Texas and therefore constituted a change in standard, practice, or procedure requiring preclearance under the Act. Second, plaintiffs contend that the individual members of the Escapees were previously permitted to register and vote as Polk County residents (and apparently still are) under the Texas Election Code and that sending confirmation notices to the Escapees challenged in the

September 11, 2000, affidavits constitutes ***1058** recognition of a change in voting residency qualifications or prerequisites by the Registrar of Polk County, which requires preclearance.

II. Scope of review by the three-judge District Court.

In a Voting Rights Act case, the issue before the court is limited to the scope of § 5 of the Act. A three-part inquiry must be made: (1) whether there was a change in the procedures administering a covered action that was subject to preclearance under § 5; (2) whether the requirements of § 5 were respected; and (3) if not, what permissible remedy is appropriate. *See Henderson v. Graddick,* 641 F.Supp. 1192, 1198 (M.D.Ala.1986).

Although the thrust of the Act is to preclude the denial or abridgment of the right to vote based on race or color, we may not consider any actual discriminatory purpose or effect in arriving at our conclusion. *See Allen v. State Board of Elections,* 393 U.S. 544, 570, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969). The proper review is whether the change has the potential for discrimination and hence is subject to § 5 preclearance requirements. *See Dougherty County Board of Education v. White,* 439 U.S. 32, 36, 99 S.Ct. 368, 58 L.Ed.2d 269 (1978).

The plaintiffs here note that there are some minorities within the ranks of the Escapees. In fact, one of the named plaintiffs, Ms. Brenda Neil, is African–American. However, testimony in the October 6 hearing leads us to believe that, overall, a relatively small fraction of the Escapees are members of a minority within the protective intent of the Act. Counsel for plaintiffs has not seriously argued that there has been any discriminatory thrust based on race or color behind the residency challenge. However, whether there is a real charge of racial discrimination in a complaint taken pursuant to § 5 is immaterial. As the U.S. Supreme Court stated in *Morse v. Republican Party of Virginia,*

> First, while it is true that the case before us today does not involve any charge of racial discrimination in voting, the decision whether discrimination has occurred or was intended to occur, as we have explained on many occasions, is for the Attorney General or the District Court for the District of Columbia to make in the first instance. *Citations omitted.* The critical question for us, as for the District Court below, is whether "the challenged alteration has the *potential* for discrimination."

Morse v. Republican Party of Virginia, 517 U.S. 186, 216–17, 116 S.Ct. 1186, 134 L.Ed.2d 347 (1996) (emphasis in original).

Therefore, we examine the evidence not from the perspective of whether the changes claimed by the plaintiffs had a discriminatory intent or effect in this case, but rather whether such non-precleared changes would provide the potential for discrimination in either the November 7, 2000, national election or any future election.

III. *En masse* challenge.

In the state court proceedings, the *sufficiency* of the sworn affidavits used to challenge the residency of the Escapees has also been attacked. The sufficiency of the challenges—e.g., whether they meet Texas law in terms of adequacy of voter identification or the affiant's personal knowledge—is not the controlling issue before this court, however. That remains an issue for the Texas state courts to determine. What we must determine is whether allowing an *en masse* challenge of this scope (approximately 25% of the Polk County registered voters), particularly in such close proximity to a national election date which also encompasses several narrowly contested local races, constitutes a change in the challenge standard, practice, or procedure which has been impermissibly initiated without preclearance under § 5.

The Texas Election Code does not have a specific provision governing an *en masse* voter residency challenge. It does provide for the right to challenge voter registration. ***1059** "Except as otherwise provided by this subchapter, a registered voter may challenge the registration of another voter of the same county at a hearing before the registrar." Tex.Elec.Code § 16.091. Section 16.092 requires a voter who challenges a registration to file a sworn statement of the grounds for the challenge with the registrar.

If a challenge is based on residency, however, § 16.0921 requires that the challenge/confirmation process be used. Subparagraph (a) states: "On the filing of a sworn statement under Section 16.092 alleging a ground based on residence, the registrar shall promptly deliver to the voter whose registration is challenged a confirmation notice in accordance with Section 15.051." The plain language of the Code is written in the singular. However, that does not necessarily mean that a single voter may only challenge one other voter, nor that a single voter may only challenge one other voter in a single written challenge.

This issue was submitted in 1983 to the Texas Secretary of State, then the Honorable David A. Dean. The specific question was posed by The Tax Assessor–Collector of Hays County, Texas. It asked, "Whether an individual may challenge voters *en masse* with a single affidavit?" Secretary of State Dean's opinion was published saying:

> It is my opinion that a single affidavit filed as a challenge of more than one voter is acceptable if: (1) the affidavit properly identifies each challenged voter; and (2) the affidavit states a challenge, based upon personal knowledge, that each challenged voter does not possess a specific qualification for remaining registered.

Op.Tex. Sec'y of State No. DAD–73 (1983).

It is important to note that DAD–73 was issued in 1983, before the submission of the newly created draft Texas Election Code to the Department of Justice in 1984. If the analysis of this court required greater depth, it would be necessary to determine whether DAD–73 had been included as part of the submission for review. In response to a question on this point before this court, the representative of the Secretary of State, Ms. McGeehan, did not give a definitive answer.

However, such an in depth analysis is not necessary. Although the Code speaks in the singular, DAD–73 clearly establishes that a single voter is not limited to challenging only one other voter on the basis of residency. Regardless, it is instructive that DAD–73 answers the question of whether "*en masse* " challenges may be filed with an answer that one voter may challenge "more than one" in a single challenge and then goes on to qualify that capability with restrictions that such a challenge properly identify the challenged voter and be based on personal knowledge of the affiant.

At the hearing before us, Ms. McGeehan testified that DAD–73 did not, and the office of the Secretary of State does not, countenance a challenge of this massive a proportion in a single sworn statement, although she could not establish a figure beyond which an *en masse* challenge would be *per se* impermissible. The sheer volume of such a challenge arguably goes beyond the action contemplated in being able to file a challenge against "more than one" appropriately identified individuals based on personal knowledge. On that basis, the fact that the intervenors herein were permitted to do so appears to be a departure from the standard, practice, or procedure established by the Texas Election Code and interpreted by DAD–73, whether DAD–73 was itself considered in the Department of Justice's preclearance review of the Texas Election Code.

Of equal concern to this court is the timing of the challenge. Certainly, states are allowed to police their voting rolls. Title 42 U.S.C. § 1973gg–6 sets the standard by which states may do so. Although that statute requires that "[a] State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove ***1060** the names of ineligible voters from the official lists of eligible voters," an exception is made for a reasonable effort to remove ineligible voters by reason of residency. 42 U.S.C. § 1973gg–6(c)(2)(A)–(B). We recognize that the Texas Election Code is written in conformance with that standard and establishes no other time limit for clearing the rolls by reason of residency. We further recognize that the Texas Election Code works to place challenged voters on a suspense list for future removal after additional safeguards have been met.

Nonetheless, the timing of the challenges in this case has the potential to unfairly rush the statutory voter challenge process in that the traveling Escapees who do not promptly receive their confirmation notices, recognize them for what they are, and file a response within 30 days of the mailing of the confirmation notices will be placed on a suspense list and their votes effectively discarded. The affidavits were filed, challenging over 9,000 persons, 57 days before the November 7th election. Clearly, the circumstances of the Escapees' residency could have been recognized and challenged far in advance of September 11, 2000. That would have permitted an orderly identification of those who are not Texas residents, and clearing them from the Polk County rolls, while permitting enough time for those who are genuine residents of Polk County to resolve any conflict imposed by time and travel.

The potential for discrimination on the basis of race or color by the use of this method, challenging a massive number of similarly situated individuals' qualification to vote by surprise within too short a time to rectify any conflicts arising thereby, has already been demonstrated within the jurisprudence of actions under the Voting Rights Act. *See generally Edwards v. Sammons,* 437 F.2d 1240 (5th Cir.1971) (wherein 150 black citizens were "purged" from the voters list for failure to pay city ad valorem taxes, a prerequisite for voting, a week prior to a general election for mayor and city council in Fort Valley, Georgia).

Such an action, representing a change from "more than one" to over 9,000 in one fell swoop, coupled with the timing of the challenges before us, must be precleared in accordance with § 5 of the Voting Rights Act.

IV. Change in residency requirements.

Plaintiffs also contend that the confirmation action by the Polk County Registrar, "Bid" Smith, is recognition by a state subdivision that the Escapees, who maintain they are residents of the Rainbow's End RV Park, do not meet the qualification for voting residence under the Texas Election Code. Since the Escapees were previously permitted to obtain residency in Polk County as a prerequisite to registering to vote, plaintiffs contend this constitutes a change to their qualifications or prerequisites to voting, requiring preclearance under § 5.

Defendant, and the intervenors especially, have contended that the Texas Election Code is precleared in its entirety, including the provisions governing the challenge of qualifications for Texas residency. Further, they contend that the confirmation notice process is a ministerial one under the Code and that the registrar has no discretion in carrying it out. On that basis, they assert that no preclearance is necessary and that "Bid" Smith acted properly, with no discretion to do otherwise, in accordance with a precleared state code.

It is uncontested that the Escapees have been permitted to claim they are residents of Texas and Polk County under the Texas Election Code. Plaintiffs point to Polk County's April 30, 1999 submission to the Voting Rights Section of the U.S. Department of Justice seeking preclearance for the proposed establishment of voting precincts 19 and 20 at Rainbow's End. The second paragraph of the submission's cover letter includes the assertion that, "Independent Counsel for the County has consulted with the Secretary of State, verifying that the individuals living ***1061** within the confines of the Escapees compound clearly meet the liberal residence requirements of the Texas Election Code Sec. 1.005(17) and Sec. 1.015(a–d)." It also makes clear that the Escapees registered voters numbered, at that time, 7,780 individuals who claimed a "suite" address at Rainbow's End while traveling around the country in their RV's. The Department of Justice lodged no objection to the proposed voting precincts in its June 29, 1999, response by the Chief of the Voting Section.

The defendant Smith and the intervenors assert the triggering of confirmation notices by the residency challenges does not require separate preclearance because the state statutory scheme under which it is carried out mandates such action without discretion on the part of the registrar. Although the confirmation notice process is necessarily founded on the assertions made

in the affidavits that the Escapees are not qualified voters because they are non-residents, they claim the process is merely ministerial in nature and thus not subject to separate preclearance.

Texas Election Code § 16.0921(a) does require that, on the filing of a sworn statement alleging a ground based on residence, the registrar shall promptly deliver a confirmation notice to the voter whose registration is challenged. "Bid" Smith commenced this process promptly and precisely in accordance with the Code. He did so without apparent discretion in the matter, which is a ministerial effort in response to a triggering event under state law. Further, before taking action, he consulted the Secretary of State's Office and testified that he proceeded in accordance with their advice. Acting as a faithful public servant in this manner, "Bid" Smith was almost instantly beleaguered by complaints and imprecations demanding he alternatively cease and desist as a matter of fairness or press on in accordance with the letter of the law. The Texas Secretary of State then sued for an injunction against his further action. He was subject to public outcry by the Escapees and in the press, while the so-called "permanent" residents of Polk County who challenged the Escapees' residency pressured him to continue the confirmation process. The nature and volume of this response to "Bid" Smith's commencement of the confirmation process is a signal flag that the "ministerial" action under the precleared Texas Election Code may have required review in and of itself.

Preclearance of a state statute does not shelter a specific action taken under that statute if the preclearance submission made by the state to the Department of Justice is insufficient to put that agency on notice that the state is seeking to employ that specific action. *See Foreman v. Dallas County,* 521 U.S. 979, 981, 117 S.Ct. 2357, 138 L.Ed.2d 972 (1997) (holding that the change in procedure for selecting election judges which was made by Dallas County, Texas, under the precleared language of the Texas Election Code, required separate preclearance. The language submitted to the U.S. Department of Justice for review was insufficient to put that agency on notice that such a change was contemplated). Therefore, if the submission of the draft Texas Election Code and its later changes were insufficient to put the Department of Justice on notice that the state could change its interpretation of the proper qualifications or prerequisites for an individual to obtain residence for voting purposes, then any action taken to administer the non-precleared qualifications or prerequisites would require its own separate preclearance.

As in the previous analysis, precisely what constitutes Texas residency is not a controlling issue before this court. That, too, remains an issue for the state of Texas to determine, either on the continued basis of its common law or through legislative enactment. The issue before us is simply whether the Escapees were allowed to become residents for voting purposes and whether the process of issuing *en masse* confirmation notices triggered by a challenge meeting the requirements of the ***1062** Texas Election Code requires separate preclearance under § 5.

Additionally, acts by a political subdivision of a state which are simply ministerial in nature and taken in response to state law may be subject to separate preclearance when the interests enumerated in § 5 of the Voting Rights Act are invoked. *See Lopez v. Monterey County,* 525 U.S. 266, 278, 119 S.Ct. 693, 142 L.Ed.2d 728 (1999) (agreeing that a covered jurisdiction (Monterey County) "seeks to administer" a voting change even where the jurisdiction exercises no discretion in giving effect to a state-mandated change, requiring § 5 preclearance before implementation). The fact that, in *Lopez,* Monterey County was covered under § 5 while the state of California was not so covered is unimportant. The salient issue is that where a subdivision of a state takes "ministerial" action in accordance with state law whereby a change in voting practice occurs, that subdivision is seeking to administer such a change. That in and of itself requires preclearance where there is potential for discrimination.

Although the confirmation action employed by "Bid" Smith was strictly in accordance with the Texas Election Code, was undertaken without discretion, and was ministerial in nature, it was necessarily predicated on the allegations of the persons challenging the Escapees' right to vote. In that challenge, several identically worded affidavits asserted that the Escapees "are not 'qualified voters' because they are not residents of Polk County, Texas" on the basis that they rent space at the RV park, have mail forwarded out of county, and have several individuals assigned to single lots. Initiating residency confirmation action, whether ministerial or not, on this assertion is equivalent to administering the voters rolls in Polk County based on a change in the prerequisites or qualifications to obtain residency.

A challenge to the voting eligibility of a large block of similarly situated voters, who are mobile and whose residency is based on a state code definition which is open to interpretation different from that identified to the Department of Justice, has the potential for being used in a discriminatory manner. Plaintiffs have offered the hypothetical of a group of minority migrant farm workers who might be disenfranchised or whose right to vote might be burdened by such a challenge. Since such a process has the potential for discrimination, it must receive separate preclearance whether the process is "ministerial" or not.

Counsel for the defendant and for the intervenors ask how the responsible public official in a situation such as this should know he must depart from state law and submit a non-discretionary action for preclearance under the Voting Rights Act before implementing it. Certainly, here, "Bid" Smith was faced with a Hobson's choice which he fairly and faithfully tried to implement. Regardless, any time a potential change in that most crucial right, the right to vote, for a large number of previously registered voters is implied, such a consideration as to whether preclearance is necessary must be made.

V. Preliminary injunction.

Having determined, first, that the actions taken by the Polk County Registrar required preclearance in accordance with § 5 of the Voting Rights Act, and, second, that such preclearance was not sought nor obtained, we now turn to the proper remedy. It is our holding that a preliminary injunction be entered prohibiting defendant from pursuing the confirmation of residence of the Escapees, or any similarly situated group, under the Texas Election Code until such time as the process itself has been submitted for preclearance by either the U.S. District Court for the District of Columbia or the U.S. Department of Justice in accordance with § 5. This action is taken to ensure no discriminatory potential exists in the use of such a process in either the upcoming November 7, 2000, election nor in any future election.

***1063** The court retains jurisdiction of this case for the entry of any further orders deemed necessary.

All Citations

121 F.Supp.2d 1054

End of Document

Exhibit 1d

U.S. Department of Justice

Civil Rights Division

Voting Section - NWB.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

JKT:JBG:ALP:maf
DJ 166-012-3
2005-2390
2005-2391

September 6, 2005

The Honorable Charlie Crist
Attorney General
State of Florida
PL-01, The Capitol
Tallahassee, Florida 32399-1050

Dear Mr. Crist:

This refers to Chapters 277, 278, 279 and 286 (2005) of the Florida Legislature, the specific provisions of which are provided in Attachment A, submitted pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on July 8, 2005; supplemental information was received through August 26, 2005.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Chapters 277 and 278 include provisions that are enabling in nature. Therefore, the State of Florida is not relieved of its responsibility to seek Section 5 review of any changes affecting voting proposed to be implemented pursuant to this legislation as noted in Attachment A with an asterisk (e.g., any rules prescribed by the Department of State for: filing an elections-fraud complaint and for investigating complaints; making forms available via alternative formats and

via the internet; providing for changes to the uniform statewide voter registration application; governing the access use and the operation of the statewide voter registration system; governing maintenance of records in the statewide voter registration system; and interpreting and implementing the provisions of F.S. Chapters 97 through 102 and 105). See 28 C.F.R. 51.15.

Sincerely,

for John Tanner
Chief, Voting Section

Attachment

Attachment A

This refers to certain acts of the Florida Legislature submitted pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. Your submission includes the following:

1. Chapter 277, Section 1 (2005) and Chapter 278, Section 1 (2005) that amend F.S. 97.012, which pertains to the responsibilities of the Secretary of State*;

2. Chapter 277, Section 2 (2005), Chapter 278, Section 2 (2005) and Chapter 286, Section 2 (2005) that amend F.S. 97.021, which pertains to the definition of terms for the purpose of the election code;

3. Chapter 277, Section 3 (2005) and Chapter 278, Section 4 (2005) that amend F.S.97.051, which pertains to the oath used to register to vote;

4. Chapter 277, Section 4 (2005) and Chapter 278, Section 5 (2005) that amend F.S. 97.052, which pertains to the uniform statewide voter registration application*;

5. Chapter 277, Section 5 (2005) and Chapter 278, Section 6 (2005) that amend F.S. 97.053, which pertains to acceptance of voter registration applications;

6. Chapter 277, Section 6 (2005), Chapter 278, Section 8 (2005), and Chapter 286, Section 3 (2005) that amend F.S. 97.055, which pertains to the close of registration books for an election;

7. Chapter 277, Section 7 (2005) that amends F.S. 97.0575, which pertains to third party voter registration;

8. Chapter 277, Section 8 (2005), Chapter 278, Section 12 (2005), and Chapter 286, Section 4 (2005) that amend F.S. 97.071, which pertains to registration identification cards;

9. Chapter 277, Section 9 (2005) and Chapter 278, Section 18 (2005) that amend F.S. 98.045, which pertains to the administration of voter registration*;

10. Chapter 277, Section 10 (2005) and Chapter 278, Section 22 (2005) that amend F.S. 98.077, which pertains to the update of voter signatures;

11. Chapter 277, Section 11 (2005), Chapter 278, Section 51 (2005), and Chapter 286, Section 7 (2005) that amend F.S. 99.061, which pertains to the methods of qualifying for nomination or election to federal, state, county or district office;

12. Chapter 277, Section 12 (2005) and Chapter 286, Section 8 (2005) that amend F.S. 99.063, which pertains to candidates for Governor and Lieutenant Governor;

13. Chapter 277, Section 13 (2005) that amends F.S. 99.092, which pertains to qualifying fees for candidates;

14. Chapter 277, Section 14 (2005) and Chapter 286, Section 9 (2005) that amend F.S. 99.095, which pertains to the petition process in lieu of a qualifying fee and party assessment;

15. Chapter 277, Section 15 (2005) that amends F.S. 99.0955, which pertains to the place on the ballot of candidates with no party affiliation;

16. Chapter 277, Section 16 (2005) that amends F.S. 99.096, which pertains to the place on the ballot of minor political party candidates;

17. Chapter 277, Section 17 (2005) that amends F.S. 99.09651, which pertains to signature requirements for ballot position in year of apportionment;

18. Chapter 277, Section 18 (2005) that amends F.S. 100.101, which pertains to the opening and closing of polls;

19. Chapter 277, Section 19 (2005) that amends F.S. 100.101, which pertains to special elections and special primary elections;

20. Chapter 277, Section 20 (2005) and Chapter 286, Section 13 (2005) that amend F.S. 100.111, which pertains to filling vacancies;

21. Chapter 277, Section 21 (2005) and Chapter 286, Section 14 (2005) that amend F.S. 100.141, which pertains to the notice of a special election to fill any vacancy in office;

22. Chapter 277, Section 22 (2005) that amends F.S. 101.031, which pertains to the instructions for electors;

23. Chapter 277, Section 23 (2005) and Chapter 278, Section 30 (2005) that amend F.S. 101.043, which pertains to identifications required at polls, provided that as set forth in your letter dated August 24, 2005, provisional ballots voted by persons who fail to present identification will be counted if the canvassing board finds that the signature on the voter certificate matches the signature on the voter registration record;

24. Chapter 277, Section 24 (2005) and Chapter 278, Section 32 (2005) that amend F.S. 101.048, which pertains to provisional ballots;

25. Chapter 277, Section 25 (2005) that amends F.S. 101.049, which pertains to provisional ballots under special circumstances;

26. Chapter 277, Section 26 (2005) that amends F.S. 101.051, which pertains to electors seeking assistance in casting ballots;

27. Chapter 277, Section 27 (2005) that amends F.S. 101.111, which pertains to challenges to voters;

28. Chapter 277, Section 28 (2005) that amends F.S. 101.131, which pertains to pollwatchers;

29. Chapter 277, Section 29 (2005) that amends F.S. 101.151, which pertains to the specifications for ballots;

30. Chapter 277, Section 30 (2005) that amends F.S. 101.171, which pertains to the availability of a copy of proposed constitutional amendments at voting locations;

31. Chapter 277, Section 31 (2005) that amends F.S. 101.294, which pertains to the purchase and sale of voting equipment;

32. Chapter 277, Section 32 (2005) that amends F.S. 101.295, which pertains to penalties for violation of Sections 101.292 - 101.295;

33. Chapter 277, Section 33 (2005) that amends F.S. 101.49, which pertains to the procedure of election officers where signatures differ;

34. Chapter 277, Section 34 (2005) that amends F.S. 101.51, which pertains to requirement for the elector to occupy the voting booth alone;

35. Chapter 277, Section 35 (2005) that amends F.S. 101.5606, which pertains to the requirements for approval of voting systems;

36. Chapter 277, Section 36 (2005) that amends F.S. 101.5608, which pertains to voting by electronic or electromechanical methods;

37. Chapter 277, Section 37 (2005) that amends F.S. 101.5612, which pertains to the testing of tabulation equipment;

38. Chapter 277, Section 38 (2005) that amends F.S. 101.5614, which pertains to the canvass of returns;

39. Chapter 277, Section 39 (2005) that amends F.S. 101.572, which pertains to public inspection of ballots;

40. Chapter 277, Section 40 (2005) that amends F.S. 101.58, which pertains to supervising and observing the voter registration and election processes;

41. Chapter 277, Section 41 (2005) that amends F.S. 101.595, which pertains analysis and reports of voting problems;

42. Chapter 277, Section 42 (2005) that amends F.S. 101.6103, which pertains to the mail ballot election procedure;

43. Chapter 277, Section 43 (2005), Chapter 278, Section 37 (2005), and Chapter 286, Section 16 (2005) that amend F.S. 101.62, which pertains to requests for absentee ballots;

44. Chapter 277, Section 44 (2005) and Chapter 278, Section 38 (2005) that amend F.S. 101.64, which pertains to the delivery of absentee ballots and envelopes;

45. Chapter 277, Section 45 (2005) and Chapter 278, Section 39 (2005) that amend F.S. 101.657, which pertains to early voting;

46. Chapter 277, Section 46 (2005) and Chapter 278, Section 40 (2005) that amend F.S. 101.663, which pertains to the change of residence of an elector;

47. Chapter 277, Section 47 (2005) that amends F.S. 101.68, which pertains to canvassing absentee ballots;

48. Chapter 277, Section 48 (2005) that amends F.S. 101.69, which pertains to voting in person and the return of absentee ballots;

49. Chapter 277, Section 49 (2005) and Chapter 278, Section 42 (2005) that amend F.S. 101.6923, which pertains to special absentee ballot instructions for certain first time voters;

50. Chapter 277, Section 50 (2005) that amends F.S. 101.5694, which pertains to the mailing of ballots upon receipt of federal postcard application;

51. Chapter 277, Section 51 (2005) that amends F.S. 101.697, which pertains to the electronic transmission of election materials;

52. Chapter 277, Section 52 (2005) and Chapter 278, Section 43 (2005) that amend F.S. 102.012, which pertains to the inspectors and clerks who conduct the election;

53. Chapter 277, Section 53 (2005) and Chapter 286, Section 17 (2005) that amends F.S. 102.014, which pertains to pollworker recruitment and training;

54. Chapter 277, Section 54 (2005) that amends F.S. 102.031, which pertains to the maintenance of good order at the polls;

55. Chapter 277, Section 55 (2005) that amends F.S. 102.071, which pertains to the tabulation of votes and proclamation of results;

56. Chapter 277, Section 56 (2005) that amends F.S. 102.111, which pertains to the Election Canvassing Commission;

57. Chapter 277, Section 57 (2005) that amends F.S. 102.112, which pertains to the deadline of submission of county returns to the Department of State;

58. Chapter 277, Section 58 (2005) that amends F.S. 102.141, which pertains to the duties of the county canvassing board*;

59. Chapter 277, Section 59 (2005) that amends F.S. 102.166, which pertains to manual recounts;

60. Chapter 277, Section 60 (2005) that amends F.S. 102.168, which pertains to contest of an election;

61. Chapter 277, Section 61 (2005) and Chapter 286, Section 18 (2005) that amend F.S. 103.021, which pertains to nomination for presidential electors;

62. Chapter 277, Section 62 (2005) that amends F.S. 103.051, which pertains to establishment of meeting dates and times for presidential electors;

63. Chapter 277, Section 63 (2005) that amends F.S. 103.061, which pertains to the meeting of electors and filling of vacancies;

64. Chapter 277, Section 64 (2005) that amends F.S. 103.121, which pertains to the powers and duties of party executive committees;

65. Chapter 277, Section 65 (2005) and Chapter 286, Section 21 (2005) that amend F.S. 105.031, which pertains to the items to be filed for candidate qualification;

66. Chapter 277, Section 66 (2005) that amends F.S. 105.035, which pertains to the petition process;

67. Chapter 277, Section 67 (2005) that amends F.S. 106.022, which pertains to the appointment and duties of a registered agent;

68. Chapter 277, Section 68 (2005) and Chapter 278, Section 46 (2005) that amend F.S. 106.08, which pertains to limitations on contributions;

69. Chapter 277, Section 69 (2005) that amends F.S. 106.24, which pertains to the membership, powers and duties of the Florida Election Commission;

70. Chapter 277, Section 70 (2005) that amends F.S. 106.141, which pertains to the disposition of surplus funds by candidates;

71. Chapter 277, Section 71 (2005) which transfers and renumbers F.S. 98.122 as 106.165;

72. Chapter 277, Section 72 (2005) that amends F.S. 106.22, which pertains to the duties of the Division of Elections;

73. Chapter 277, Section 73 (2005) that amends F.S. 16.56, which pertains to the Office of Statewide Prosecution;

74. Chapter 277, Section 74 (2005) that amends F.S. 119.07, which pertains to the inspection and copying of ballots;

75. Chapter 277, Section 75 (2005) that amends F.S. 145.09, which pertains to the Supervisor of Elections*;

76. Chapter 277, Section 76 (2005) that amends F.S. 104.0615, which pertains to the suppression and prohibition of vote intimidation and creates the Voter Protection Act;

77. Chapter 277, Section 77 (2005) the repeal Sections 98.095, 98.0979, 98.181, 98.481, 101.253, 101.635, 102.061, 106.085, and 106.144;

78. Chapter 278, Section 3 (2005) that amends F.S. 97.026, which pertains to election forms to be available in alternative formats and via the internet;*

79. Chapter 278, Section 7 (2005) that amends F.S. 97.0535, which pertains to special requirements for certain voter registration applicants;

80. Chapter 278, Section 9 (2005) that amends F.S. 97.057, which pertains to voter registration by the Department of Highway Safety and Motor Vehicles;

81. Chapter 278, Section 10 (2005) that amends F.S. 97.058, which pertains to voter registration agencies*;

82. Chapter 278, Section 11 (2005) that amends F.S. 97.061, which pertains to special registration for electors requiring assistance*;

83. Chapter 278, Section 13 (2005) that amends F.S. 97.073, which pertains to the disposition of voter registration applications;

84. Chapter 278, Section 14 (2005) and Chapter 286, Section 5 (2005) that amend F.S. 97.1031, which pertains to the notice of change of residence, change of name or change or party affiliations;

85. Chapter 278, Section 15 (2005) that amends F.S. 97.105, which pertains to the establishment of a permanent single registration system;

86. Chapter 278, Section 16 (2005) that amends F.S. 98.015, which pertains to the duties of the supervisor of elections;

87. Chapter 278, Section 17 (2005) that amends F.S. 98.035, which pertains to the statewide voter registration system*;

88. Chapter 278, Section 19 (2005) that amends F.S. 98.065, which pertains to registration list maintenance program;

89. Chapter 278, Section 20 (2005) that amends F.S. 98.075, which pertains to voter registration records maintenance activities*;

90. Chapter 278, Section 21 (2005) that amends F.S. 98.0755, which pertains to the appeal of a determination of ineligibility;

91. Chapter 278, Section 23 (2005) and Chapter 286, Section 6 (2005) that amend F.S. 98.081, which pertains to names removed from the statewide voter registration system;

92. Chapter 278, Section 24 (2005) that amends F.S. 98.093, which pertains to the duty of officials to furnish lists of deceased persons, persons adjudicated mentally incapacitated, and person convicted of a felony;

93. Chapter 278, Section 25 (2005) that amends F.S. 98.0981, which pertains to the statewide voter registration database;

94. Chapter 278, Section 26 (2005) that amends F.S. 98.212, which pertains requirements for the Department of State and county supervisors to furnish statistical and other information regarding election results and voter registration;

95. Chapter 278, Section 27 (2005) that amends F.S. 98.461, which pertains to the contents of the voter registration application and precinct register;

96. Chapter 278, Section 28 (2005) that amends F.S. 100.371, which pertains to the placement of initiatives on ballots;

97. Chapter 278, Section 29 (2005) that amends F.S. 101.001, which pertains to precinct boundaries and polling places;

98. Chapter 278, Section 31 (2005) that amends F.S. 101.045, which pertains to the requirement that electors be registered in a precinct and provisions for residence or name changes;

99. Chapter 278, Section 33 (2005) that amends F.S. 101.161, which pertains to ballots for referenda;

100. Chapter 278, Section 34 (2005) that amends F.S. 101.56062, which pertains to the standards for accessible voting systems;

101. Chapter 278, Section 35 (2005) that amends F.S. 101.5608, which pertains to procedures for voting by electronic or electromechanical methods*;

102. Chapter 278, Section 36 (2005) that amends F.S. 101.573, which pertains to the record of election results, by precinct*;

103. Chapter 278, Section 41 (2005) that amends F.S. 101.6921, which pertains to the delivery of special absentee ballots to certain first time voters;

104. Chapter 278, Section 44 (2005) that amends F.S. 104.013, which pertains to the unauthorized use, possession or destruction of voter information cards;

105. Chapter 278, Section 45 (2005) that amends F.S. 106.0705, which pertains to the electronic filing of campaign treasurer's report;

106. Chapter 278, Section 47 (2005) that amends F.S. 106.33, which pertains to election campaign financing;

107. Chapter 278, Section 48 (2005) that amends F.S. 106.34, which pertains to campaign expenditure limits;

108. Chapter 278, Section 49 (2005) that amends F.S. 196.141, which pertains to the duty of the property appraiser in cases of homestead exemptions;

109. Chapter 278, Section 50 (2005) that amends F.S. 120.54, which pertains to rulemaking*;

110. Chapter 278, Section 52 (2005) that amends F.S. 322.142, which pertains to color photographic or digitally imaged licenses;

111. Chapter 278, Section 53 (2005) that creates a new law, which pertains to violations of absentee ballot and voting laws;

112. Chapter 278, Section 54 (2005) that repeals Subsection 1 of F.S. 104.047, which pertains to the electronic filing of campaign treasurer's report;

113. Chapter 278, Section 55 (2005) that repeals Sections 98.055, F.S., relating to voter registration list maintenance forms; 98.095, F.S., relating to county voter registers; 98.0977, F.S., relating to the statewide voter registration database and its operation and maintenance; 98.0979, F.S., relating to inspection of the statewide voter registration database; 98.101, F.S., relating to specifications for permanent registration binders, files, and forms; 98.181, F.S., relating to duty of the supervisor of elections to make up indexes or records; 98.231, F.S., relating to duty of the supervisor of elections to furnish the department with the number of registered electors; 98.451, F.S., relating to automation in processing voter registration data; 98.481, F.S., relating to challenges to electors; 101.635, F.S., relating to distribution of blocks of printed ballots;

114. Chapter 279, Section 1 (2005) that amends F.S. 97.0585, which pertains to public record exemptions and information regarding voters;

115. Chapter 279, Section 2 (2005) that amends F.S. 741.465, which pertains to public record exemptions for the Address Confidentiality Program for Victims of Domestic Violence;

116. Chapter 286, Section 1 (2005) that repeals F.S.100.091 and 100.096, which pertains to the second primary election;

117. Chapter 286, Section 10 (2005) that amends F.S. 99.103, which pertains to the Department of State's remittance of a portion of the filing fee and party assessment of candidates;

118. Chapter 286, Section 11 (2005) that amends F.S. 100.061, which pertains to primary elections;

119. Chapter 286, Section 12 (2005) that amends F.S. 100.081, which pertains to nomination of county commissioners at the primary election;

120. Chapter 286, Section 15 (2005) that amends F.S. 101.252, which pertains to the candidates that are entitled to have their names printed on the ballot;

121. Chapter 286, Section 19 (2005) that amends F.S. 103.022, which pertains to write in candidates for President and Vice President;

122. Chapter 286, Section 20 (2005) that amends F.S. 103.091, which pertains to political parties;

123. Chapter 286, Section 22 (2005) that amends F.S. 105.041, which pertains to the form of ballots;

124. Chapter 286, Section 23 (2005) that amends F.S. 105.051, which pertains to determinations of election or retention to an office;

125. Chapter 286, Section 24 (2005) that amends F.S. 106.07, which pertains to reports of contributions;

126. Chapter 286, Section 25 (2005) that amends F.S. 106.08, which pertains limitations on contributions;

127. Chapter 286, Section 26 (2005) that amends F.S. 106.29, which pertains to reports on contributions and expenditures by political parties.

128. Chapter 278, Section 46 (2005) that amends F.S. 106.8, which pertains to campaign finance contribution limitations.

* Includes enabling legislation

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

June 22, 1990

Ms. Debbie Barnes
Chairperson, Dallas County
Board of Registrars
P.O. Box 997
Selma, Alabama 36701

Dear Ms. Barnes:

This refers to the additional procedures for the 1990 implementation of the voter reidentification and purge program pursuant to Act No. 84-389, including the schedule and voter update program, for Dallas County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on April 23, 1990.

At the outset we note that on September 12, 1984, we precleared, pursuant to Section 5, State of Alabama Act No. 84-389, which mandates annual purge and reidentification of voters in each county and the appointment of deputy registrars in each county precinct, and the procedures for implementing the provisions of Act No. 84-389 as outlined in the Alabama Secretary of State's August 7, 1984, letter. Under the precleared procedures for Act No. 84-389, the county board of registrars is to identify deceased electors and other electors who are believed to be no longer qualified to vote in the county, and, under certain conditions, to purge the active voter registration list of the names of these electors and to place the names of these electors on a list of inactive voters. The statute and the Secretary of State's letter set forth the timetable and the specific procedures that are to be followed in carrying out these actions.

It is our understanding that the precleared statute and implementation procedures do not address a countywide re-identification of voters or general re-registration program nor do they provide any procedures for completely re-constituting

the county's voter registration list. Act No. 84-389 seems designed simply to remove from the existing registered voters list the names of those persons who are no longer qualified to vote because of death, conviction of certain crimes, or taking up residence in another county.

On September 18, 1989, we precleared a submission by the county of its implementation of Act No. 84-389. As you know, the county's implementation plan received the requisite Section 5 preclearance only after the county withdrew provisions of the program that involved procedures for using a voter update form which would have been mailed to all registered voters. The remaining portions of the county's program, which was precleared, merely tracked the precleared state law.

Based on the information available to us, it appears that the 1990 implementation of the voter reidentification and purge program pursuant to Act No. 84-389 deviates in several ways from the precleared procedures under Act No. 84-389, and, thus, from the county program precleared September 18, 1989. The proposed changes, implemented without benefit of Section 5 preclearance, include the use of voter update forms, which the county apparently had printed and distributed notwithstanding that the September 18, 1989, preclearance occurred only after the county withdrew its proposal for a voter update form that would be mailed to each registered voter. We note that while the distribution of these forms apparently did not include any mail-out procedure, the county implemented the voter update program without the requisite Section 5 preclearance, and relied on the information provided by the forms to disqualify electors from voting or re-qualify electors for voting in the June 5, 1990, primary election.

We understand that the voter update program has been implemented in such a way that many black voters believed they were not qualified to vote in the June 5, 1990, primary election if they had not returned a voter update form. Further, it appears that this misapprehension was exacerbated during the election because the voter registration list prepared by the board of registrars used the same designation for voters who did not return a voter update form or whose form was not yet processed by the county, as the designation for voters who are required to reidentify under Act No. 84-389. Thus, the voter update program has resulted in a voter registration list that actually includes many voters who have been and continue to

be qualified to vote, but may not have been permitted to vote on June 5 and may be purged and thus disqualified from voting in subsequent elections simply because they failed to pick up or return a voter update form, when there was no valid requirement that they do so.

The proposed schedule apparently did not permit time for completing the voter update program prior to the election, but the county proceeded to implement the incomplete, and in some cases erroneous, results for the June 5, 1990, primary election. The outcome was that many voters who had returned the voter update form were required to reidentify a second time, at the polls or elsewhere, prior to being permitted to cast a ballot. The proposed schedule also apparently did not permit sufficient time for adequate training of poll officials, with the result that the re-registration and reidentification procedures were applied inconsistently. Some voters were made to travel to the probate judge's office to reidentify, while other voters were required to complete reidentification forms prior to voting, and still other voters were permitted to cast regular ballots prior to completing reidentification forms. It appears that there was little if any reasonable evidence to believe that most of the voters who were designated by a "P" listing and who were made to reidentify or re-register in fact were not qualified to vote in the June 5, 1990, primary election.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In satisfying its burden, the submitting authority must demonstrate that the proposed change is not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In light of these principles, and under the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed 1990 implementation of Act No. 84-389 and the proposed voter update program. We note that this objection does not otherwise affect any precleared procedures for conducting the June 26, 1990, election.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the

effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the additional procedures for the 1990 implementation of Act No. 84-389 and the voter update program continue to be legally unenforceable, and, therefore, may not be enforced in any manner in the June 26, 1990, run-off election or subsequently. See also 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Dallas County plans to take with respect to these matters. In order to avoid further voter confusion, we stand ready to work with local and appropriate state officials. In that regard, we will be contacting you soon to discuss these matters.

If you have any questions, feel free to call Ms. Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

BRENNAN CENTER FOR JUSTICE at New York University School of Law

Published on *Brennan Center for Justice* (https://www.brennancenter.org)

Florida, Georgia, North Carolina Still Purging Voters at High Rates

In a major report in July, we found that voter purges increased significantly in the 2016 election cycle. Now, new numbers from three states offer cause for alarm about 2018, too.

Kevin Morris [1], Myrna Pérez [2]

October 1, 2018

Earlier this summer, when the Brennan Center released a report [4] examining voter purge data through 2016, we found that four million more people were purged from the rolls between the federal elections of 2014 and 2016 than between 2006 and 2008. Much of that increase came from states that were previously required under the Voting Rights Act (VRA) to get election changes cleared in advance, before that part of the law was eviscerated by the Supreme Court in 2013.

Although comparable data for the two years ending in 2018 won't be available until early next year, we were able to use different data sources to figure out how many voters have been purged over the past two years in three states we had studied — Florida, Georgia, and North Carolina. A preliminary analysis supports our initial alarm over the purge processes in these three states, showing that they continued to have high purge rates.

Purges in and of themselves aren't bad. They're commonly used to clean up voter lists when someone has moved, passed away, and more. But too often, names identified for removal are determined by faulty criteria that wrongly suggests a voter be deleted from the rolls. When flawed, the process threatens to silence eligible voters on Election Day — especially in states where purge rates are high.

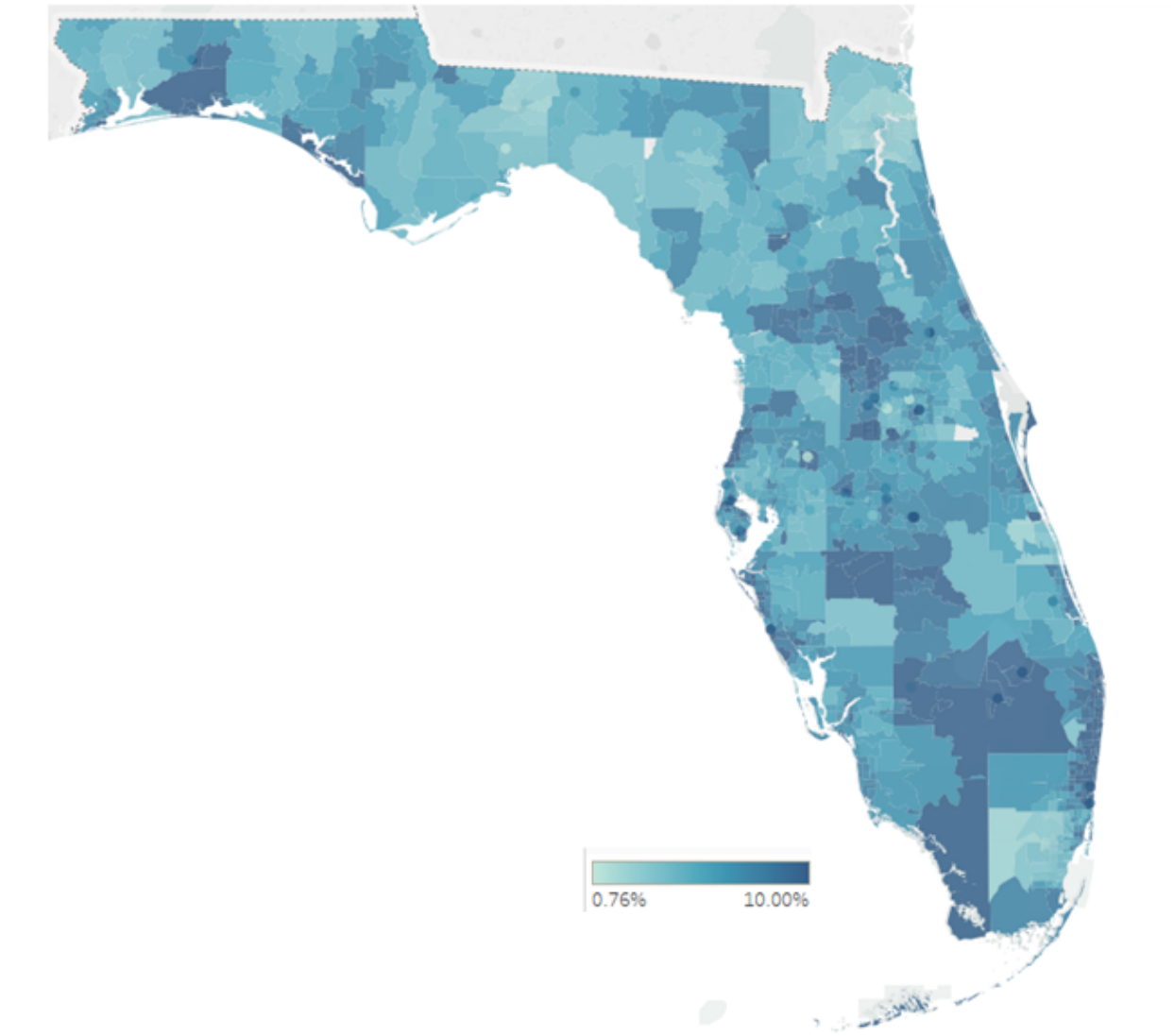
Florida

From November 2008 to November 2010, the median purge rate in the Sunshine State was 0.2 percent. That number jumped to 3.6 percent from 2012 to 2014. And new data show it's jumped again: **Between December 2016 and September 2018, Florida has purged more than 7 percent of its voters**.

Not only can we tell that purges have increased — we also know where the biggest purges are happening. Hardee, Hendry, Palm Beach, and Okaloosa counties have each purged more than 10 percent of their voters in the last two years.

Dade and Broward counties also have a number of zip codes that purged at higher rates. Some of those zip codes, however, include military bases or college campuses, which one would expect to have higher purge rates because of the transient nature of the population and the established processes for removing voters who have moved.

Purge Rates in Florida



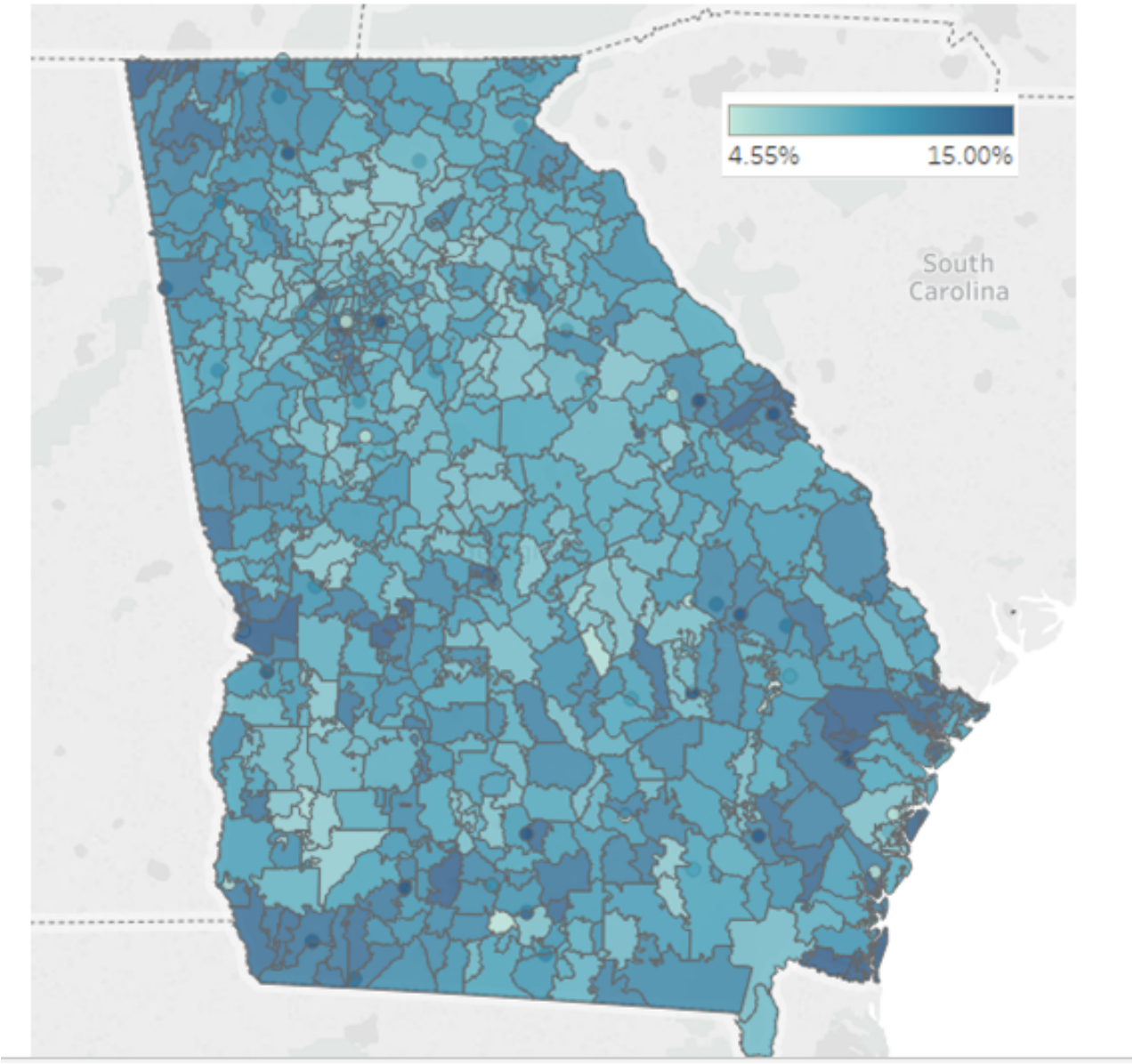
**Purge rates from December 2016 through September 2018. Source: Florida Board of Elections.*

Georgia

Between 2010 and 2014 — a period of time that covers before and after the Supreme Court's decision on the Voting Rights Act — Georgia's median purge rate increased from 6.7 percent to 10.7 percent. Our analysis of the data shows that the state continues to have a high purge rate: **Over the past two years, the state has purged 10.6 percent of voters**. Nonwhite voters were slightly overrepresented among those purged when compared to the total population breakdown.

Ninety-seven of the state's 159 counties purged more than 10 percent of their voters in the last two years. Four counties (Chattahoochee, Liberty, Dade, and Camden) are particular outliers, each purging at least 15 percent of their voters. At a more granular level, 430 of the 781 zip codes have purged more than 10 percent of their voters since 2016. This rebuts any speculation that the VRA's preclearance provision may have blocked reasonable list maintenance practices. "Catching up" might have seemed like an excusable reason for increased rates in the first purge cycle without pre-clearance (2014-2016), but Georgia's purge rates have not returned to pre-2013 levels in the five years since the decision was handed down.

Purge Rates in Georgia

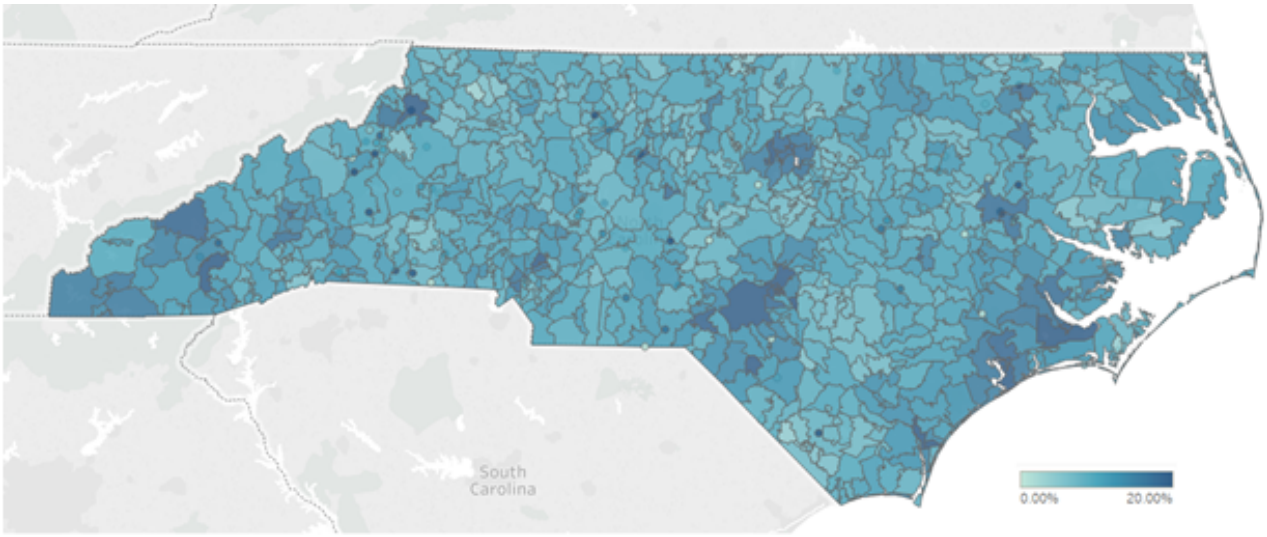


**Purge rates from September 7, 2016 through September 14, 2018. Source: Georgia Board of Elections.*

North Carolina

North Carolina's purge rates fall in between Florida and Georgia. Forty of its one hundred counties were covered under Section V of the Voting Rights Act at the time of the *Shelby County v. Holder* decision in 2013. The average purge rate in the state increased modestly between 2010 to 2014, from 8.0 to 8.8 percent. Like in Georgia and Florida, however, this didn't represent a temporary increase, but rather has been sustained over the past few years. **Between September of 2016 and May of 2018 (the latest date data is available), the state purged 11.7 percent of its voter rolls**. Just 19 of its counties purged fewer than 10 percent of their voters, and no county purged fewer than 8 percent. These purges have been especially troubling for voters of color – in 90 out of 100 counties, voters of color were over-represented among the purged group.

Purge Rates in North Carolina



**Purge rates from September 7, 2016 through September 14, 2018. Source: Georgia Board of Elections.*

To voters living in these three states – and to voters around the country: Check your registration status to make sure that you're still on the rolls. If you are not registered, and think you should be, call your local election official and find out why. There is still time to register in many states if you have a problem.

***Correction**: This post originally said Harris County, Florida was one of the counties that had purged more than ten percent of its voters. In fact, it was Hardee County. There is no Harris County in Florida.*

Photo: Joe Skipper/Getty Images

Voting Rights & Elections [5]

Source URL: https://www.brennancenter.org/blog/florida-georgia-north-carolina-still-purging-voters-high-rates

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EXHIBIT D

BRENNAN CENTER FOR JUSTICE at New York University School of Law

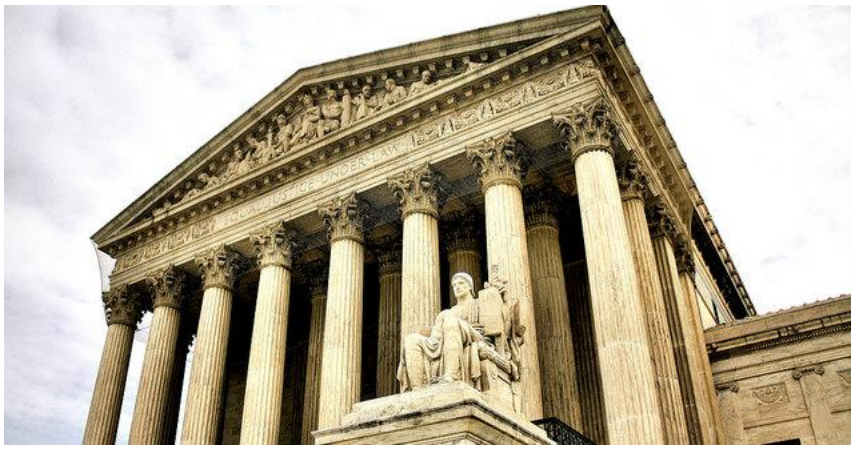
Published on *Brennan Center for Justice* (https://www.brennancenter.org)

'Shelby County': One Year Later

Our new paper details the controversial election changes that have been made since last year's *Shelby County* ruling weakened a core provision of the Voting Rights Act.

Tomas Lopez [1]

June 24, 2014



[View this analysis as a PDF] [3]

One year ago, the U.S. Supreme Court gutted the most powerful provision in the Voting Rights Act of 1965 — a law widely regarded as the most effective piece of civil rights legislation in American history. Specifically, in *Shelby County v. Holder*, the Court invalidated the formula that determined which states and localities, because of a history of discrimination, had to seek federal "preclearance," or approval, from either the Department of Justice or a federal court before implementing any changes to their voting laws and procedures. For nearly 50 years, preclearance (set forth in Section 5 of the Voting Rights Act) assured that voting changes were transparent, vetted, and fair to all voters.

Before the *Shelby County* decision, the Brennan Center examined the potential consequences of a ruling against the preclearance process in *If Section 5 Falls: New Voting Implications* [4]. In just the year since *Shelby County*, most of the feared consequences have come to pass — including attempts to: revive voting changes that were blocked as discriminatory, move forward with voting changes previously deterred, and implement new discriminatory voting restrictions.

The decision has had three major impacts:

- Section 5 no longer blocks or deters discriminatory voting changes, as it did for decades and right up until the Court's decision.
- Challenging discriminatory laws and practices is now more difficult, expensive, and time-consuming.
- The public now lacks critical information about new voting laws that Section 5 once mandated be disclosed prior to implementation.

This paper summarizes some of the stories behind these facts, and tracks the voting changes that have been implemented in the states and other jurisdictions formerly covered by Section 5: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia in their entirety; and parts of California, Florida, Michigan, New York, North Carolina, and South Dakota.

I. The Loss of Section 5 Has Removed an Effective Deterrent Against Harmful Election Law Changes

Section 5 was a uniquely effective law that blocked or otherwise prevented scores of discriminatory voting changes from being implemented. While the *Shelby County* decision argued that the law was effectively obsolete, Section 5 remained a powerful tool through June 2013. In the 15 years before its operation was halted, Section 5 blocked 86 laws through its administrative process[1] and several more through litigation.[2] At least 13 of these laws were blocked in just the final 18 months before the *Shelby* Court's ruling.[3]

Its effectiveness went beyond the laws it blocked. In one recent six-year period, 262 voting changes were withdrawn or altered after the Department of Justice (DOJ) asked the jurisdictions for more information to assess whether they were discriminatory under the Voting Rights Act (VRA).[4] That figure does not include the hundreds of voting changes that were deterred because jurisdictions knew they would not withstand VRA review.

A. Statewide Voting Changes That Were or Would Likely Have Been Blocked

Immediately after *Shelby County*, one state moved forward with implementing laws that were previously blocked, two states moved forward with passed laws that may have been blocked, and one state passed new restrictive legislation:

- **Texas:** On the very day of the *Shelby County* ruling, Texas officials announced[5] they would implement the state's strict photo ID law, which was previously blocked by Section 5 because of its racial impact. "[U]ndisputed… evidence demonstrates that racial minorities in Texas are disproportionately likely to live in poverty, and [that the ID law] will weigh more heavily on the poor," a federal court held.[6] Early assessments indicated that between 600,000 and 800,000 registered voters in Texas lacked photo ID, over 300,000 of them Latino.[7] Voter advocates, including the Brennan Center and the DOJ, have now sued [5] the state of Texas over this law under Section 2 of the Voting Rights Act, among other claims.

- **North Carolina:** Also shortly after the *Shelby County* decision, the state legislature passed a law that imposed a strict photo ID requirement, significantly cut back on early voting, and reduced the window for voter registration. This law is widely regarded as the most restrictive piece of voting legislation passed in recent years. Lawmakers waited until after preclearance was gone to move forward with the legislation, with a State Senate committee chair telling the press after the Court's decision, "now we can go with the full bill," rather than a pared down, less restrictive version.[8] Prior to *Shelby County*, the legislation, which is currently being challenged under Section 2 of the VRA, among other claims, would have required preclearance review before going into effect. Data shows the law will disproportionately affect minorities. In North Carolina, the State Board of Elections identified more than 300,000 registered voters who lack a DMV-issued ID, the most common form of ID accepted under the state's strict law.[9] One-third of these voters are African American.[10] And 7 in 10 African Americans who cast ballots in 2008 used the early voting period (23 percent of whom did so during the week that was cut by the law).[11]

- **Alabama:** After the *Shelby County* decision, the state moved ahead with its law requiring strict photo ID to vote. This law passed in 2011 and would have required preclearance. However, state officials never submitted the bill for preclearance[12] and did not announce plans for implementation until after the Supreme Court's ruling.[13] More than 30 percent of Alabama's voting-age citizens live more than 10 miles from the nearest state-ID issuing office.[14] According to a Brennan Center study, in 2012, 11 counties with substantial black populations had state driver's licenses offices that were open only once or twice per week.[15] Even those looking to register to vote in Alabama will experience challenges — legislators also passed a law requiring individuals to provide documentary proof of citizenship when registering to vote.[16] This measure is not currently in effect.

- **Mississippi:** Shortly following the Supreme Court's ruling, state officials moved to enforce its photo ID law, which the state submitted for preclearance but was never allowed to implement.[17] Nearly 35 percent of the state's voting-age population lives more than 10 miles from the nearest office that will issue ID and,[18] in 2012, 13 contiguous counties with sizable African-American populations lacked a single full-time driver's license office.[19]

These laws exist alongside other attempted or proposed statewide policy measures that can restrict the ability to vote through design and/or poor implementation:

- In 2013, Florida officials attempted to purge thousands of people from the state's voter's rolls because of suspicions they were non-citizens.[20] The state ultimately suspended these efforts.[21] When it tried the same thing in 2012, its purge list began with 180,000 suspected non-citizens on the voter rolls and was reduced to approximately 2,700.[22] That purge list contained a disproportionately high number of Latino surnames. While Latinos compose 13 percent of Florida's registered voters, an analysis found they made up 58 percent of that group of approximately 2,700.[23] From the 180,000 to fewer than 3,000, Florida eventually found fewer than 40 non-citizens suspected of voting illegally.[24]

- Also in 2013, Virginia officials sought to purge the names of tens of thousands of voters from the state's rolls. While a federal court allowed the purge to proceed,[25] the state's efforts were error-prone and taken unnecessarily close to that year's elections.[26] One month before the election, one county registrar found that of a list of 1,000 names he was told to purge, more than 170 were in error.[27]

- Arizona officials have proposed implementing separate voter registration systems for federal and state elections. The U.S. Supreme Court ruled last year that Arizona cannot ask for documentary proof of citizenship when voters sign up using the federal registration form.[28] State officials then devised a two-tiered system that would allow the state to require proof of citizenship documents for anyone registering to vote in a state election.[29] The Department of Justice has previously used Section 5 to block such dual registration systems.[30]

B. Local Voting Changes That Were or Would Likely Have Been Blocked

Section 5's loss will perhaps be felt most acutely at the local level. The great majority of voting law changes that were blocked as discriminatory under the Voting Rights Act were local: counties, municipalities, and other places that operate below the state level.[31] In the past year, the following changes and attempted changes have already taken place in jurisdictions previously covered in whole or in part by preclearance:

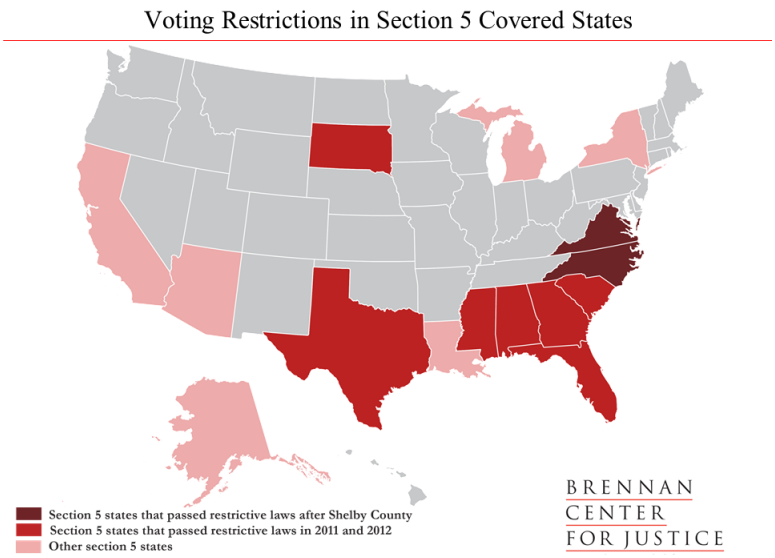
- In 2013, Galveston County, Texas, revived a redistricting plan for electing justices of the peace that was previously blocked by the DOJ because it discriminated against minority voters. The new map diminished minority voting strength by reducing the number districts where minority voters would have a fair and effective voice.[32]The Justice Department blocked a similar proposal under Section 5 only two years ago out of concern that "minority voters possess the ability to elect candidates of choice."[33] Now, without Section 5's protections, the districts are slated to be implemented in 2015,[34] but are being challenged in an ongoing case in federal court in the Southern District of Texas. The case went to trial this spring and is awaiting a decision.[35]

- The city of Pasadena, Texas, is redrawing its city council districts in a way that is expected to diminish the influence of its Latino voters in municipal government.[36] A functioning Section 5 would have blocked any new redistricting plan that would have made it harder for Latinos to elect their candidates of choice.

- After *Shelby County*, Georgia officials moved the dates of municipal elections in two counties with substantial African American populations from the traditional November date to another date. This may reduce black voter participation in local elections because the municipal elections are not occurring when citizens are voting in state and federal general elections. The DOJ blocked a similar proposal under Section 5 in 2012 because turnout is lower outside of November elections, and the drop in turnout is "significantly greater" for black voters than white voters.[37] After a federal court dismissed a challenge to the new date for one of the counties, municipal elections took place in May 2014.[38] Data as to minority participation is not yet available for that election, but overall turnout in that county was down nearly 20 percent (30.02 percent in 2014)[39] from the previous mayoral election (49.54 percent turnout in 2010).[40]

C. Restrictive Voting Legislation in States Previously Covered by Section 5

In 2013 and 2014, at least 10 of the 15 states that had been covered in whole or in part by Section 5 introduced new restrictive legislation that would make it harder for minority voters to cast a ballot. These have passed in two states: Virginia (stricter photo ID requirement and increased restrictions on third-party voter registration) and North Carolina (the above-discussed omnibus bill, which included the ID requirement, early voting cutbacks, and the elimination of same-day voter registration). Further, seven other formerly covered states also passed restrictive legislation in 2011 and 2012, prior to the *Shelby County* decision.



II. Challenging Discriminatory Voting Laws is Now More Difficult, Expensive, and Time Consuming

As described above, under Section 5, discriminatory voting laws could not go into effect unless they were vetted through the preclearance process, which consisted of either an effective administrative process or through litigation before a federal court. The jurisdiction had the choice of which preclearance route to take, and the vast majority of preclearance actions were done through the administrative process because it was cheaper, faster, and easier than preclearance litigation.

Consider Texas, where state lawmakers passed one of the country's most restrictive photo ID laws. That law did not and could not go into effect unless and until it was precleared by the DOJ or a three-judge federal court. In this instance, Texas first sought preclearance from the DOJ, but then eventually elected to litigate the matter before a federal court. Both the DOJ and the court denied preclearance, finding the restrictive photo ID requirement violated Section 5.

After the *Shelby County* decision, Texas put the previously blocked law into effect, and it remains so until voters can win a new lawsuit under another provision of the VRA, Section 2, making a similar showing, albeit under a different legal standard.[41] The photo ID law has been in place for local elections and the March 2014 primaries. The case is currently scheduled to go to trial before the 2014 election.

Challenging restrictive laws one by one under Section 2 or some other law is considerably more expensive than the administrative preclearance process these individual challenges now have to replace. The active Texas photo ID suit, which is a number of consolidated lawsuits, now lists more than 50 counsel of record on all sides.[42] In the months since that litigation began, the parties have produced more than 300 court filings, including motions, notices, and briefs, large and small. The consolidated North Carolina lawsuits include 40 counsel of record and have filed more than 120 documents.[43] The total cost of these lawsuits will be substantial. As a point of reference, three lawyers who participated in the Texas photo ID preclearance case in 2012 sought more than $350,000 in attorneys' fees to cover their expenses.[44] The expenses for the active Texas photo ID litigation can expect to run into the millions.

III. Without Section 5, Thousands of Voting Law Changes Lack Accountability

Section 5 used to cover more than 8,000 state and local jurisdictions. That is gone now, and it is a large loss. In 2012, the final full calendar year before the *Shelby County* decision, the Justice Department received 18,146 election law and procedure changes from Section 5 jurisdictions.[45] From 2009 to 2013, the DOJ received 58,692 such changes.[46]

One of the statute's most important functions was to impose transparency on these many thousands of election law changes. For example, the preclearance process included the possibility of input from the public, who could consult with the DOJ during its review or weigh in during any preclearance litigation before a court. Because covered jurisdictions had to provide notice to the DOJ whenever they made a change to their voting systems, there was also a centralized method to monitor those changes before they were implemented. The public benefited from that accountability. Without Section 5, thousands of changes to voting procedures may go unnoticed.

While advocates and community leaders remain vigilant and are working to build monitoring systems, Section 5's mandate to centralize information for thousands upon thousands of voting law changes will be very difficult to replicate. Public notice by election officials and constant awareness by community members may well keep the public informed to a certain extent, but no *ad hoc* method of learning about incidents will adequately replace a tool with considerable coverage.

IV. Conclusion

Section 5 protected voting rights by regulating, deterring, and blocking harmful voting law changes for nearly 50 years. The above information speaks to the fact that it remained active well after its enactment in 1965, and the continued existence of harmful, discriminatory voting laws rebuts the Supreme Court's claim that progress has made the statute obsolete.

For all the real progress Section 5 facilitated, the nation and its voters now lack a critical tool to protect those earned advances. Bad laws with lasting, harmful consequences now lack a review mechanism, the method of fighting these laws is now limited to costly and time-intensive litigation, and the public has lost the one centralized means to track the thousands of changes annually that affect Americans' right to vote.

The year since *Shelby County* tells only the beginning of a story, but even that beginning points to the tools and accountability that have been lost, and the necessity that our lawmakers recover them.

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[1] This is the number of submissions of voting changes from the beginning of 1998 to which DOJ has interposed an objection. Some objections were later withdrawn or were superseded by a declaratory judgment action for court preclearance in the U.S. District Court for the District of Columbia. For state-by-state chronological listings of Section 5 objections, *see Section 5 Objection Letters*, U.S. Dept. of Justice, http://www.justice.gov/crt/records/vot/obj_letters/index.php [6] (listing 86 objections since the beginning of 1998).

[2] *See, e.g.*, *Florida v. United States*, 885 F. Supp. 2d 299, 357 (D.D.C. 2012) (denying preclearance for reduction in early voting opportunities but granting preclearance for procedures for inter-county movers); *Texas v. Holder*, 888 F. Supp. 2d 113, 144 (D.D.C. 2012) (denying preclearance for Texas voter photo ID law); *Texas v. United States*, 887 F. Supp. 2d 133, 178 (D.D.C. 2012) (denying preclearance for Texas's redistricting plans).

[3] *Supra* notes 1 and 2. This is the number of objections interposed from the beginning of 2012 through the date of the *Shelby County* decision, combined with the preclearance litigation described in note 2.

[4] Myrna Pérez & Vishal Agraharkar, *If Section 5 Falls: New Voting Implications* 5 (2013) (*citing* Luis Ricardo Fraga & Maria Lizet Ocampo, *More Information Requests and the Deterrent Effect of Section 5 of the Voting Rights Act*, *in* Voting Rights Act Reauthorization of 2006: Perspectives on Democracy, Participation, and Power, 47, 57-58 (Ana Henderson ed., 2007), *available at* http://www.law.berkeley.edu/files/ch_3_fraga_ocampo_3-9-07.pdf [7].

[5] Ed Pilkington, *Texas Rushes Ahead with Voter ID Law after Supreme Court Decision*, The Guardian (June 25, 2013), http://www.theguardian.com/world/2013/jun/25/texas-voter-id-supreme-court-decision [8].

[6] *Texas v. Holder*, 888 F. Supp. 113, 127 (D.D.C. 2012), *available at* http://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/340%20Opinion%20Denying%20States%20Request%20for%20a%20Declaratory%2 [9].

[7] Letter from Thomas E. Perez, Assistant Att'y Gen., to Keith Ingraham, Director of Elections, Office of the Texas Secretary of State (Mar. 12, 2012), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/l_120312.pdf [10].

[8] Laura Leslie, *NC Voter ID Bill Moving Ahead With Supreme Court Ruling*, WRAL.com (June 25, 2013), http://www.wral.com/nc-senator-voter-id-bill-moving-ahead-with-ruling/12591669/ [11].

[9] North Carolina State Board of Elections, *April 2013 SBOE-DMV ID Analysis* 9 (April 17, 2013), *available at* http://canons.sog.unc.edu/wp-content/uploads/2013/12/St-Bd-voter-ID-report.pdf [12].

[10] *Id.*

[11] Compl., *United States v. North Carolina*, No. 13-861 (M.D.N.C. Sept. 30, 2013), *available at* http://www.justice.gov/iso/opa/resources/646201393013723793555.pdf [13].

[12] Kim Chandler, *State Has Yet to Seek Preclearance of Photo Voter ID Law Approved in 2011*, AL.com (June 12, 2013), http://blog.al.com/wire/2013/06/photo_voter_id.html [14].

[13] Kim Chandler, *Alabama Photo Voter ID Law to be Used in 2014, State Officials Say*, AL.com (June 26, 2013), http://blog.al.com/wire/2013/06/alabama_photo_voter_id_law_to.html [15].

[14] Keesha Gaskins & Sundeep Iyer, *The Challenge of Obtaining Photo Identification*, Brennan Center for Justice, at 7, *available at* http://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/Challenge_of_Obtaining_Voter_ID.pdf [16].

[15] *Id.*

[16] Ala. Code § 31-13-28.

[17] Letter from Delbert Hosemann, Mississippi Secretary of State, to T. Christian Herren, Jr., U.S. Dept. of Justice (Jan. 18, 2013), *available at* http://sos.ms.gov/links/voter_id/Cover%20letter.pdf [17]. *See Voting Determination Letters for Mississippi*, U.S. Dept. of Justice, *available at* http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=ms [18] (listing no objection letter as to Mississippi's ID law).

[18] Gaskins & Iyer, *supra* note 14, at 3 (Table 1).

[19] *Id.* at 8.

[20] *See* Steve Bousquet & Michael Van Sickler, *Governor to Launch New Purge of Florida Voter Rolls*, Miami Herald (Aug. 4, 2013), http://www.miamiherald.com/2013/08/04/3538862/governor-to-launch-new-purge-of.html [19]; Amy Sherman, *Many Questions, Few Answers on State's Voter Purge Plan*, Miami Herald, (Oct. 9, 2013), http://www.miamiherald.com/2013/10/09/3680007/many-questions-few-answers-on.html [20].

[21] Steve Bousquet & Amy Sherman, *Florida Halts Purge of Noncitizens from Voter Rolls*, Tampa Bay Times, (Mar. 27, 2014), http://www.tampabay.com/news/politics/elections/florida-halts-purge-of-noncitizens-from-voter-rolls/2172206 [21].

[22] Lizette Alvarez, *Ruling Revives Florida Review of Voting Rolls*, N.Y. Times, (Aug. 7, 2013), http://www.nytimes.com/2013/08/08/us/ruling-revives-florida-review-of-voting-rolls.html?_r=0 [22].

[23] Marc Caputo, *Feds to Florida: Halt Non-Citizen Voter Purge*, Miami Herald, (May 31, 2012), http://www.miamiherald.com/2012/05/31/2826708/feds-demand-florida-cease-its.html [23].

[24] Lizette Alvarez, *Ruling Revives Florida Review of Voting Rolls*, N.Y. Times (Aug. 7, 2013), http://www.nytimes.com/2013/08/08/us/ruling-revives-florida-review-of-voting-rolls.html [24]; Rachel Weiner, *Florida's Voter Purge Explained*, Wash. Post (June 18, 2012), http://www.washingtonpost.com/blogs/the-fix/post/floridas-voter-purge-explained/2012/06/18/gJQAhvcNlV_blog.html [25].

[25] Matt Zapotosky, *Virginia's Democratic Party loses challenge against purge of 38,000 voters from rolls*, Wash. Post (Oct. 18, 2013), http://www.washingtonpost.com/local/virginia-politics/federal-judge-rejects-democratic-challenge-to-virginia-voter-roll-purge/2013/10/18/26235068-3809-11e3-8a0e-4e2cf80831fc_story.html [26].

[26] *See* Jonathan Brater, *Virginia Offers Lessons for Voter List Maintenance*, Brennan Center for Justice (Nov. 25, 2013), http://www.brennancenter.org/analysis/virginia-offers-lessons-voter-list-maintenance [27] *see also Virginia Removes 40K From Voter Rolls Over Democrats' Objections*, Associated Press (Oct. 17, 2013), http://www.timesdispatch.com/news/state-regional/va-removes-k-from-voter-rolls-over-democrats-objections/article_2d111de4-49de-523b-bd9c-5d93b7c0a00e.html [28].

[27] Jim Nolan, *Chesterfield registrar delays purge of voter rolls*, Richmond Times-Dispatch (Oct. 9, 2013), http://www.timesdispatch.com/news/local/chesterfield/chesterfield-registrar-delays-purge-of-voter-rolls/article_162e36b5-0be7-5dc8-af9f-48876a167b43.html [29].

[28] *Arizona v. Inter-Tribal Council of Arizona*, 133 S. Ct. 2247 (2013).

[29] Ariz. Op. Att'y Gen. No. I13-011 (Oct. 7, 2013); *see* Cindy Carcamo, *Arizona officials say rule may keep thousands from voting*, L.A. Times (Oct. 8, 2013), http://articles.latimes.com/2013/oct/08/nation/la-na-ff-arizona-voting-20131009 [30].

[30] *See* Letter from Sandra M. Shelson, Special Assistant Att'y Gen., U.S. Dept. of Justice, to State of Mississippi (Sept. 22, 1997), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/MS/MS-2650.pdf [31] (denying preclearance for a two-tier system, noting that "a similar requirement had led to pronounced discriminatory effects on black voters"). *See Young v. Fordice*, 520 U.S. 273, 275 (1997) (holding that Mississippi needed to seek preclearance for its proposed change to a two-tier system).

[31] *See Section 5 Objection Letters*, Dept. of Justice, *available at* http://www.justice.gov/crt/records/vot/obj_letters/index.php [6]. Unfortunately, because of the loss of Section 5's notice requirement, it is difficult to learn of voting changes at the local level, which typically are not as high profile as the state-level changes. While some local voting changes have come to light, many others (like polling place closures, local election cancellations, and the like) are undoubtedly undiscovered.

[32] Galveston County, Tex., Redistricting Order Establishing Justice of the Peace Precinct Boundaries (Aug. 19, 2013), *available at* http://www.guidrynews.com/13August/23113GalvestonCo.pdf [32]. *See also* Harvey Rice, *Lawsuit says Galveston remap discriminatory*, Houston Chronicle (Aug. 26, 2013), http://www.houstonchronicle.com/news/houston-texas/texas/article/Lawsuit-says-Galveston-remap-discriminatory-4761878.php [33] (paywall only).

[33] Letter from Thomas E. Perez, Assistant Att'y Gen., to James E. Trainor, III, Counsel for Galveston County, Texas (March 5, 2012), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/l_120305.pdf [34]

[34] Annette Baird, *Candidates compete for fewer Galveston County justices of peace positions*, Houston Chronicle (Feb. 18, 2014), http://www.chron.com/neighborhood/bayarea/news/article/Candidates-compete-for-fewer-Galveston-County-5245671.php [35].

[35] *Petteway, et al. v. Galveston County, Texas, et al.*, No. 3:13-cv-308 (S.D. Tex. Aug. 26, 2013).

[36] Sylvia Garcia & Larry Peacock, Garcia, *Peacock: Redistricting proposal targets Hispanic gains*, Houston Chronicle (Nov. 1, 2013), http://www.chron.com/opinion/outlook/article/Garcia-Peacock-Redistricting-proposal-targets-4947300.php [36].

[37] Letter from Thomas E. Perez, Assistant Att'y Gen., to Dennis R. Dunn, Deputy Att'y Gen., State of Georgia (Dec. 21, 2012), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/GA/l_121221.pdf [37].

[38] Sandy Hodson, *City Wins Lawsuit over Change in Election Date for Local Offices*, The Augusta Chronicle (May 13, 2004), http://chronicle.augusta.com/news/government/elections/2014-05-13/city-wins-lawsuit-over-change-election-date-local-offices [38]; Maggie Lee, *Macon-Bibb Legislators React After Tuesday Wins*, The Telegraph (Macon, Ga.) (May 21, 2014), http://www.macon.com/2014/05/21/3109205/macon-bibb-legislators-react-after.html?sp=/99/148/198/415/ [39].

[39] Table of Voter Turnout in General Primary/General Nonpartisan/Special Election (May 20, 2014), Georgia Secretary of State, *available at* http://results.enr.clarityelections.com/GA/51345/132192/en/vt_data.html [40].

[40] Augusta-Richmond County General Election Results 2010, Augusta-Richmond County Board of Elections, *available at* http://appweb.augustaga.gov/board_elections/voter/electab10ge/totals.asp?RaceID=310 [41].

[41] Some private plaintiffs also raised constitutional and state law claims, which could also be a basis for striking down the law. *See Ortiz, et al. v. State of Texas*, No. 2:13-cv-00348 (S.D. Tex. Nov. 5, 2013), ECF No. 1. The *Ortiz* suit has been consolidated with other challenges to the Texas ID law. Order,

Veasey v. Perry, No. 2:13-cv-193 (S.D. Tex., Jan. 10, 2014), *available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/Consolidating.pdf [42] (granting motion to consolidate cases).

[42] *See* Notice of Pending Matters and Submission of Proposed Orders at 8-10, *Veasey v. Perry*, No. 2:13-cv-193 (S.D. Tex., June 4, 2014), *available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/Veasey3441.pdf [43].

[43] *See* Joint Status Report Regarding Defs.' and the State Legislators' Doc. Produc. at 4-7, *N.C. State Conference of the NAACP, et al. v. McCrory*, No. 1:13-cv-658 (M.D.N.C. May 22, 2014), *available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/League168.pdf [44] (listing counsel of record).

[44] *See* Kennie Def.-Intervenors' Mot. For Att'ys' Fees, Expenses, and Costs With Supporting P. & A. at 27, *Texas v. Holder*, No. 1:12-cv-00128 (D.D.C. Sept. 10, 2013), ECF No. 130.

[45] U.S. Dept. of Justice, *Section Five Changes by Type and Year*, http://www.justice.gov/crt/about/vot/sec_5/changes_10s.php [45].

[46] *Id.*

Voting Rights & Elections [46], Restricting the Vote [47], The Voting Rights Act [48]

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EXHIBIT E

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Texas NAACP v. Steen (consolidated with Veasey v. Abbott)

September 21, 2018

This case was previously captioned Veasey v. Perry.

Texas NAACP v. Steen *is a consolidated lawsuit challenging Texas' discriminatory voter ID law in federal court. The Brennan Center, the Lawyers' Committee for Civil Rights Under Law, and co-counsel represent the Texas State Conference of the NAACP and the Mexican American Legislative Caucus of the Texas House of Representatives (MALC). Since the lawsuit was filed in September 2013, a federal district court has twice found that the Texas legislature passed the voter ID law with discriminatory intent, and the Fifth Circuit Court of Appeals has affirmed that the law had a discriminatory effect on African-American and Latino voters. In 2017, in response to the lawsuit, the Texas legislature revised the voter ID law.*

The Latest

On April 27, 2018 a divided panel of the Fifth Circuit Court of Appeals issued a decision [2] permitting Texas to implement its voter ID law in the revised form the Texas legislature adopted in 2017, in response to this lawsuit.

On September 17, 2018, the District Court entered a final judgment, dismissing the case for the reasons set forth in the Fifth Circuit's opinion.

Background

SB 14's Requirements

Signed into law in 2011, SB 14 [3] was the strictest voter ID law in the nation. Texas previously allowed [4] voters to prove their identity using a wide variety of documents, but SB 14 required voters to present an unexpired photo ID from a list of only seven acceptable documents. Experts estimated that more than 600,000 registered Texas voters – and many more unregistered but eligible voters – did not have an ID approved under the law.

Per the requirements of the Voting Rights Act [5] at the time, Texas filed a federal lawsuit seeking preclearance to enforce SB 14. The Brennan Center and co-counsel represented the Texas NAACP and MALC in opposition in Texas v. Holder [6]. In August 2012, the U.S. District Court for the District of Columbia rejected the law, ruling that Texas was unable to prove that the law would not discriminate against African-American and Latino voters.

Following the Supreme Court's 2013 decision in Shelby County v. Holder [7], which eliminated the requirement that Texas receive preclearance, the State announced that it would implement SB 14. In response, the Brennan Center along with the Lawyers' Committee for Civil Rights, the NAACP, Jose Garza, Robert Notzon, Gary Bledsoe, and Clay Bonilla filled a complaint [8] on behalf of the Texas NAACP and MALC in September 2013.

SB 5's Requirements

In June 2017, Texas enacted SB 5 – a new voter ID law that replaced SB 14. SB 5 adopted some of the provisions of an interim remedial order that the District Court put in place to govern the November 2016 election (but it is stricter in certain respects than the interim order). SB 5 requires Texas voters to present limited types of photo identification in order to vote, but permits voters who do not possess those types of ID to submit non-photo ID and to sign a declaration indicating why they were unable to obtain the requisite photo ID.

Plaintiffs argued that SB 5 does not adequately remedy SB 14's violations and, to the contrary, perpetuates SB 14's discriminatory defects.

Case Timeline

Following the Supreme Court's decision striking down Section 5 of the VRA, the Brennan Center and co-counsel filled a complaint [8] on behalf of the Texas NAACP and MALC on September 1, 2013.

In October 2014, following a nine-day trial, the District Court for the Southern District of Texas held that SB 14 violates Section 2 of the VRA by impermissibly abridging African Americans' and Latinos' access to the ballot; was passed by the Texas legislature with the intent to discriminate against minority voters; imposes an unconstitutional burden on the right to vote; and constitutes an unconstitutional poll tax. The Court issued a 143-page order [9], enjoining Texas from implementing the law. Days after this ruling, however, the Fifth Circuit temporarily stayed the District Court's order [10] in light of an upcoming election. The Supreme Court upheld that ruling [11], granting Texas permission to implement its photo ID law for the November 2014 election. The Brennan Center chronicled the many instances of vote denial [12] that occurred under SB 14 in that election.

On August 5, 2015, a three-judge panel of the Fifth Circuit unanimously affirmed [13] the District Court's holding that SB 14 has a racially discriminatory impact in violation of Section 2 of the VRA. The panel vacated the District Court's holding on the intentional discrimination claim and remanded for further evaluation of the evidence. (The panel also dismissed the unconstitutional burden and poll tax claims.) Texas subsequently petitioned for and was granted en banc review [14].

In July 2016, the Fifth Circuit, sitting en banc, issued a decision largely tracking the key conclusions of the panel. The Court upheld the District Court's ruling [15] that SB 14 has a racially discriminatory impact in violation of the VRA; but vacated the District Court's ruling on the intentional discrimination claim, remanding it for further evaluation of the evidence. In light of its decision to vacate the District Court's intentional discrimination holding, the Court also

instructed the District Court to fashion a new remedy, which it did in August 2016 [16]. Texas filed a petition for a writ of certiorari [17] with the U.S. Supreme Court in late September, but the Supreme Court declined [18] to hear the case.

In August 2016, the District Court ordered an interim remedy to be applied during the November 2016 election. Critically, the Court required Texas to permit voters who lacked SB 14 identification documents to cast their ballot, if they affirmed that they had a specified reasonable impediment to obtaining ID.

Following the Administration change in January 2017, the DOJ dropped [19] its intentional discrimination claim. The private plaintiff groups, however, including those represented by the Brennan Center, maintained that claim. In April 2017, after reweighing the evidence in light of the Fifth Circuit's guidance, the District Court again ruled [20] that Texas legislators enacted SB 14 with the intent to discriminate against minority voters.

In June 2017, Texas passed a new voter ID law, SB 5, which it claimed remedied the effects of SB 14, but which in fact perpetuated those effects. In July 2017, private plaintiffs [21] submitted briefing on the issue of remedy. Plaintiffs asked for a declaratory judgment that SB 14 violates Section 2 of the Voting Rights Act and the 14th and 15th Amendments of the Constitution, and a permanent injunction against both SB 14 and SB 5. In Texas' brief [22], defendants argued that SB 5, and the "reasonable impediment" procedure contained therein, constituted a sufficient remedy. Therefore, they asked the Court to issue a limited remedy ordering the use of a reasonable impediment form until SB 5 took effect in January 2018, at which time the remedy would be dissolved.

On August 23, 2017, the District Court found [23] that SB 5 perpetuates the discriminatory features of SB 14. The Court issued an order striking down both laws. The Court also ordered a hearing on whether Texas should be required to pre-clear future voting rules changes with the federal government under the "bail-in" provisions of Section 3 of the VRA. Texas appealed.

On August 24, 2017, Texas filed an Emergency Motion to Stay Pending Appeal [24] with the Fifth Circuit, asking the appellate court to halt the effect of the District Court's orders until its appeal was resolved. The Fifth Circuit granted [25] the motion in early September, instructing Texas to abide by the terms of the 2016 interim remedy in administering the 2017 elections.

On April 27, 2018 a divided panel of the Fifth Circuit Court of Appeals issued a decision [2] permitting Texas to implement SB 5 – the 2017 version of the voter ID law. Unusually, each judge on the panel wrote a separate opinion. In the lead opinion, Judge Jones concluded that SB 5 constituted an adequate remedy for SB 14's violations of Texans' voting rights.

On June 27, 2018, Texas filed [26] a motion to dismiss private plaintiffs' claims for a judicial declaration that the voter ID law violated the Constitution and the VRA and for bail-in relief under VRA Section 3. On August 8, 2018 private plaintiffs filed a response [27], arguing that the Fifth Circuit had ended the case and that there was no further action on the merits for the District Court to take.

On September 17, 2018, the District Court entered a final judgment, dismissing the case for the reasons set forth in the Fifth April 27 opinion.

Legal Documents

Trial Court Proceedings Following Fifth Circuit's April 2018 Decision and Judgement

- Final Judgement [28] (09/17/2018)
- Private Plaintiffs' Response to Defendants' Motion to Dismiss [27] (08/08/2018)
- United States' Response to Defendants' Motion to Dismiss [29] (08/07/2018)
- Defendants' Motion to Dismiss Plaintiffs' Claims, Or, in the Alternative, Enter Final Judgement for Defendants on Plaintiffs' Claims [26] (06/27/2018)

Fifth Circuit Appeal from District Court's Order on Remand

- Fifth Circuit Opinion [2] (04/27/2018)
- Response of Appellants to Private Plaintiffs-Appellees' Motion to Life Stay [30] (12/22/2017)
- Response of the United States to Private Plaintiffs-Appellees' Motion to Life Stay [31] (12/21/2017)
- Private Plaintiffs-Appellees' Motion to Lift Stay [32] (12/18/2017)
- Appellants' Reply Brief [33] (11/20/2017)
- Private Appellees' Brief on Appeal [34] (11/10/2017)
- United States' Brief on Appeal [35] (10/27/2017)
- Appellants' Brief [36] (10/17/2017)
- Fifth Circuit's Order Denying Petition for Hearing En Banc [37] (10/10/2017)
- United States' Response to Petition for Initial Hearing En Banc [38] (09/18/2017)
- Appellants' Response to Petition for Initial Hearing En Banc [39] (09/18/2017)
- Private Appellees' Petition for Initial Hearing En Banc and Rehearing En Banc of Motions Panel's Stay Decision [40] (09/08/2017)
- Fifth Circuit's Order on Appellants' Motion for Stay Pending Appeal [41] (09/05/2017)
- State's Reply in Support of Appellants' Emergency Motion to Stay Pending Appeal [42] (09/01/2017)
- Response of the United States to Appellants' Emergency Motion to Stay [43] Pending Appeal District Court Order Granting Permanent Injunction [43] (08/31/2017)
- Private Appellees' Response to Appellants' Emergency Motion to Stay [44] Pending Appeal District Court Order Granting Permanent Injunction [45] (08/31/2017)
- Appellants' Emergency Motion to Stay Pending Appeal District Court Order Granting Permanent Injunction [24] (08/25/2017)

Trial Court Proceedings on Remand

Intentional Discrimination Remedies

- Defendants' Motion for a Stay Pending Appeal [46] (08/24/2017)
- Order Granting Section Two Remedies and Terminating Interim Order [23] (08/23/2017)
- Defendants' Response Brief on Remedies [47] (07/17/2017)

- Private Plaintiffs' Response to Texas' and the United States' Brief Regarding the Proper Remedies for SB 14's Intentional Discrimination [48] (07/17/2017)
- United States' Response Brief Regarding Remedies [49] (07/17/2017)
- United States' Response to Defendants' Motion to Issue Second Interim Remedy or to Clarify First Interim Remedy [50] (07/12/2017)
- Brief of Private Plaintiffs Regarding the Proper Remedies for SB 14's Racial Discrimination [21] (07/05/2017)
- United States' Brief Regarding Remedies [51] (07/05/2017)
- Defendants' Brief on Remedies [22] (07/05/2017)

Intentional Discrimination Merits

- Defendants' Motion for Reconsideration of Discriminatory Purpose Ruling in Light of SB 5's Enactment [52] (07/05/2017)
- Order on Claim of Discriminatory Purpose [20] (04/10/2017)
- Order on Government's Motion for Voluntary Dismissal of Discriminatory Purpose Claim and Assertion of Mootness [19] (04/03/2017)
- Reply Brief of Private Plaintiffs Regarding Effect of New Voter ID Legislation on This Case [53] (03/21/2017)
- United States' Memorandum in Response to Private Plaintiffs' March 7 Brief [54] (03/14/2017)
- Defendants' Brief Regarding the Effect of Voter-ID Legislation on Plaintiffs' Claims of Intentional Racial Discrimination [55] (03/14/2017)
- Brief of Private Plaintiffs Regarding Effect of New Voter ID Legislation on This Case [56] (03/07/2017)
- United States' Motion for Voluntary Dismissal of Discriminatory Purpose Claim Without Prejudice [57] (02/27/2017)
- Brief of Private Plaintiffs in Response to Defendants' Proposed Findings of Fact [58] (12/16/2016)
- United States Response Brief Concerning Discriminatory Intent [59] (12/16/2016)
- Defendants' Response to Plaintiffs' Briefs Concerning Discriminatory Intent [60] (12/16/2016)
- Defendants' Response to Plaintiffs' Joint Proposed Findings of Fact [61] (12/16/2016)
- Private Plaintiffs' Brief in Support of a Finding of Intentional Discrimination [62] (11/18/2016)
- United States' Brief Concerning Discriminatory Intent [63] (11/18/2016)
- Plaintiffs' Joint Proposed Findings of Fact [64] (11/18/2016)
- Defendants' Proposed Findings of Facts and Conclusions of Law (Redacted) [65] (11/18/2016)

Interim Remedies

- Order on Motion to Enforce [66] (09/20/2016)
- United States Reply Memorandum in Support of Motion to Enforce Interim Remedial Order [67] (09/16/2016)
- State Defendants' Response to the United States' Motion to Enforce Interim Remedial Order and Private Plaintiffs' Motion for Further Relief [68] (09/12/2016)
- Private Plaintiffs' and Plaintiff-Intervenors' Motion for Further Relief to Enforce Interim Remedial Order [69] (09/07/2016)
- United States Motion to Enforce Interim Remedial Order [70] (09/06/2016)
- Order Regarding Agreed Interim Plan for Elections [16](08/10/2016)
- Supplement to Submission of Agreed Terms and Exhibits [71] (08/10/2016)
- Joint Submission of Agreed Terms [72] (8/03/2016)
- Order for Texas House District 120 Special Election [73] (7/23/2016)

Supreme Court Petition for Writ of Certiorari

- Order List - Petition for Writ of Certiorari Denied [18] (01/23/2017)
- Reply Brief for Petitioners [74] (12/13/2016)
- Brief in Opposition on Behalf of Texas State Conference of the NAACP Branches, the Mexican American Legislative Caucus of the Texas House of Representatives, Lenard Taylor et al., and Imani Clark [75] (11/28/2016)
- Brief in Opposition on Behalf of Marc Veasey, et al. [76] (11/28/2016)
- Brief for the United States in Opposition [77] (11/28/2016)
- P [66]etition for a Writ of Certiorari [17] (09/23/2016)

Fifth Circuit Appeal on the Merits – En Banc Proceedings

- En Banc Opinion [15] (7/20/2016)
- Oral Argument Recording [14] (5/24/2016)
- Supplemental En Banc Brief for NAACP / MALC et. al. [78] (5/09/2016)
- Supplemental En Banc Brief for Veasey-LULAC Appellees [79] (5/09/2016)
- Supplemental En Banc Brief for United States as Appellee [80] (5/09/2016)
- Supplemental En Banc Brief for Texas League of Young Voters Education Fund and Imani Clark [81] (5/09/2016)
- Supplemental En Banc Brief for the State of Texas [82] (4/15/2016)
- Order Granting En Banc Review [83] (3/9/2016)
- Appellants' Petition for Rehearing En Banc [84] (8/28/2015)
- Motion for Limited Remand [85] (8/20/2015)

Fifth Circuit Appeal on the Merits – Panel Proceedings

- Fifth Circuit Opinion [86](8/5/2015)
- Oral Argument Recording [87](4/28/2015)
- Response Brief of the United States of America [88](3/04/2015)
- Response Brief of NAACP and MALC et. al. [89] (3/03/2015)
- Response Brief of Texas League of Young Voters Education Fund and Imani Clark [90] (3/03/2015)
- Response Brief of the Veasey-LULAC Plaintiffs [91] (3/03/2015)
- Defendants-Appellants' Opening Brief on Appeal before the Fifth Circuit [92] (1/27/2015)

Supreme Court Application to Vacate Fifth Circuit Stay

- Order Denying Application to Vacate Fifth Circuit Stay of Permanent Injunction [93] (04/29/2016)
- Respondents' Opposition to Application to Vacate Fifth Circuit Stay of Permanent Injunction [94] (04/11/2016)
- Application to Vacate Fifth Circuit Stay of Permanent Injunction [95](03/25/2016)
- Supreme Court Order Denying Application to Vacate Fifth Circuit Stay [96] (10/18/2014)
- Reply in Support of Emergency Application to Vacate Fifth Circuit Stay [97](10/16/2014)
- State of Texas' Response to the Application to Vacate Fifth Circuit Stay [98] (10/16/2014)
- United States' Emergency Application to Vacate Fifth Circuit Stay [99] (10/15/2014)
- NAACP and MALC Et Al. Emergency Application to Vacate Fifth Circuit Stay [100](10/15/2014)
- Veasey-LULAC Emergency Application to Vacate Fifth Circuit Stay [101](10/15/2014)

Fifth Circuit – Proceedings on Motion to Stay

- Fifth Circuit Opinion Granting Stay Pending Appeal [102] (10/14/2014)
- Opposition of the Texas League of Young Voters, et al. to Petition to Stay Final Judgment [103] (10/12/2014)
- Opposition of Taylor Respondents' to Petition to Stay Final Judgment [104] (10/12/2014)
- Opposition of the NAACP and MALC to Petition to Stay Final Judgment [105] (10/12/2014)
- Opposition of Veasey-LULAC to Petition to Stay Final Judgment [106] (10/12/2014)
- Opposition of the United States to Petition to Stay Final Judgment [107] (10/12/2014)
- State of Texas' Advisory Statement [108] (10/11/2014)
- State of Texas' Petition to Stay Final Judgment Pending Appeal and Motion for Expedited Consideration (Redacted) [109] (10/10/2014)

Original Trial Court Proceedings

- District Court Opinion [9] (10/09/2014)
- Plaintiffs and Plaintiff-Intervenors' Proposed Findings of Fact of Conclusions of Law [110] (09/18/2014)
- Defendants' Findings of Fact and Conclusions of Law [111] (08/22/2014)
- Trial Transcripts [112] (September 2-22, 2014)

Day One [113]	Day Two [114]
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Day Five [117]	Day Six [118]
Day Seven [119]	Day Eight [120]
Day Nine [121]	

- Reply in Support of Defendants' Motion to Dismiss [122] (12/06/2013)
- Order on Motions to Dismiss [121] (07/02/2014)
- Response to Motion to Dismiss by NAACP and MALC [123] (11/22/2013)
- Motion to Dismiss by State of Texas [124] (10/25/2013)
- Taylor Plaintiffs' Original Complaint [125] (11/05/2013)
- Complaint for Declaratory and Injunctive Relief by NAACP and MALC [8] (09/17/2013)
- Motion to Intervene by Texas League of Young Voters Education Fund and Imani Clark [126] (8/26/2013)
- Complaint of United States [127] (8/22/2013)
- Complaint of Congressman Marc Veasey [128] (6/26/2013)

Related Research

- The Texas Voter ID and the 2014 Election: A Study of Texas's 23rd Congressional District [129]
- Preclearance Letters Regarding Texas and South Carolina Voter ID Laws [130]
- Collected Research and Publications on Voter ID [131]
- Texas Photo ID Law Blocks Legitimate Voters [132]

Voting Rights & Elections [133], Restricting the Vote [134], Myth of Voter Fraud [135], The Voting Rights Act [136]

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265 F.Supp.3d 684
United States District Court, S.D. Texas, Corpus Christi Division.

Marc VEASEY, et al, Plaintiffs,
v.
Greg ABBOTT, et al, Defendants.

CIVIL ACTION NO. 2:13–CV–193
|
Signed 8/23/2017

Synopsis

Background: Individuals, advocacy groups, and United States brought action against State of Texas, challenging under the Constitution and the Voting Rights Act (VRA) state's voter identification (ID) law. The District Court, Nelva Gonzales Ramos, J., 71 F.Supp.3d 627, invalidated the law. State appealed. The Court of Appeals, 796 F.3d 487, affirmed in part, vacated in part, and remanded in part. On rehearing en banc, the Court of Appeals, 830 F.3d 216, affirmed in part, reversed in part, vacated in part, remanded in part, and rendered judgment in part. The District Court, Nelva Gonzales Ramos, J., 2017 WL 1209822, granted United States' motion for voluntary dismissal of its discriminatory purpose claim under § 2 of VRA, and later, 2017 WL 1315593, ruled that individuals and advocacy groups established state's racially discriminatory intent or purpose in enacting voter ID law, in violation of § 2 of VRA. State filed motion for reconsideration in light of new legislation.

Holdings: The District Court, Nelva Gonzales Ramos, J., held that:

state had burden of proving that new legislation was appropriate remedy for discriminatory purpose and discriminatory effect of voter ID law;

new legislation did not remedy § 2 violations; and

District Court would enter permanent injunction rather than craft and institute a different voter ID plan.

Motion denied; declaratory and injunctive relief granted.

West Codenotes

Held Invalid
Tex. Elec. Code Ann. § 63.0101

Attorneys and Law Firms

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Nelva Gonzales Ramos, United States District Judge

ORDER GRANTING SECTION 2 REMEDIES AND TERMINATING INTERIM ORDER

In its Opinion of October 9, 2014 (D.E. 628), this Court held that Texas Senate Bill 14 (SB 14) [1] had an impermissible discriminatory effect against Hispanics and African–Americans and was passed with a discriminatory purpose in violation of Section 2 of the Voting Rights Act (VRA) and the 14th and 15th Amendments to the United States Constitution. *Veasey v. Perry*, 71 F.Supp.3d 627 (S.D. Tex. 2014) (*Veasey I*). On appeal, the Fifth Circuit, sitting en banc, affirmed the discriminatory effect claim and remanded the discriminatory purpose claim for reconsideration. ***687** *Veasey v. Abbott*, 830 F.3d 216, 241 (5th Cir. 2016) (en banc) (*Veasey II*). [2]

In the meantime, the Fifth Circuit instructed this Court to issue an interim remedy to eliminate—or at least reduce—the discriminatory effects of SB 14 for the 2016 general election and any other elections to take place before final disposition. As part of its mandate, the Fifth Circuit directed that this Court fashion the interim remedy so as to give effect, if possible, to the Texas legislature's stated interest in securing the integrity of its election process. In that regard, the interim remedy was to include a requirement that those in possession of qualifying SB 14 ID produce it before voting in person. *Veasey II*, at 271.

With the Fifth Circuit's parameters in mind, the parties conferred and presented the Court with an agreed interim order. It required those with SB 14 ID to show it and it instituted a Declaration of Reasonable Impediment (DRI) process for those who did not. Any qualified voter who did not have SB 14 ID was required, under penalty of perjury, to state that he or she did not have qualified ID and was then required to check a box to indicate the reason, including a box for "other," with a line for the "other" explanation. Upon completing the DRI, the individual was permitted to vote a regular ballot. The voter's reason could not be questioned.

The Court approved the interim order, which was a stop-gap measure instituted with a general election, including a United States presidential contest, less than three months away. The remedy was formulated in conformity with the powers and parameters of a VRA Section 2 discriminatory "results" claim. Because of the procedural posture of the case, it did not purport to provide any remedy for the still-pending Section 2/Fourteenth and Fifteenth Amendment discriminatory "purpose" claim.

On remand, this Court again found that SB 14 was passed with a discriminatory purpose. D.E. 1023. Thus Plaintiffs are now entitled to a remedy under VRA Section 2 for both the discriminatory effect and discriminatory purpose of SB 14. To determine the necessary injunctive relief, the Court offered the parties an evidentiary hearing, which they all declined. Instead, they agreed to rely on simultaneously-filed opening and responsive briefing and the existing record. *See* D.E. 1039–41, 1044. Before the Court are the parties' briefs. D.E. 1048, 1049, 1051, 1052, 1056, 1058, 1059, 1060. [3] Also before the Court are Defendants' Motion for Reconsideration of Discriminatory Purpose Ruling in Light of SB 5's [4] Enactment (D.E. 1050) and Private Plaintiffs' Response (D.E. ***688** 1066). [5]

For the reasons set out below, the Court DENIES Defendants' motion for reconsideration (D.E. 1050), and GRANTS declaratory and injunctive relief for the Section 2 violations, superseding and terminating the Order Regarding Agreed Interim Plan for Elections (D.E. 895).

MOTION FOR RECONSIDERATION OF DISCRIMINATORY PURPOSE

The Fifth Circuit, noting that the record included sufficient evidence to find that SB 14 was passed with a discriminatory purpose, mandated that this Court reconsider its initial purpose finding in light of the appellate critique of the probative value of certain evidence. Defendants now present their third request [6] that this Court defer to the Texas Legislature and treat SB 5 as retroactively purging SB 14 of its discriminatory purpose.

As previously found, the Texas Legislature's subsequent action in passing SB 5—after years of litigation to defend SB 14—does not govern a finding of intent with respect to the previous enactment. Even if such a turning back of the clock were possible, the provisions of SB 5 fall far short of mitigating the discriminatory provisions of SB 14, as detailed more fully below. Along with continued provisions that contribute to the discriminatory effects of the photo ID law, SB 5 on its face embodies some of the indicia of discriminatory purpose—particularly with respect to the enhancement of the threat of prosecution for perjury regarding a crime unrelated to the stated purpose of preventing in-person voter impersonation fraud.

SB 5 does not negate SB 14's discriminatory purpose. The Court DENIES the request (D.E. 1050) to reconsider the discriminatory purpose finding.

SECTION 2 REMEDIES

Among the Private Plaintiffs' requested remedies are (1) a declaratory judgment that SB 14 was passed with a discriminatory purpose and engendered a discriminatory result in violation of the Voting Rights Act and the United States Constitution; (2) injunctive relief in the form of a prohibition against the enforcement of SB 14 and SB 5; and (3) retention of jurisdiction. The United States and the State Defendants request that this Court deny injunctive relief on the basis that SB 5 constitutes an adequate remedy for any violation of law that SB 14 presents. They further oppose retention of jurisdiction on the basis that there is nothing further for this Court to monitor or review. The issue of Section 3 remedies has been reserved for later briefing and decision.

*689 A. Declaratory Relief

The request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 is a natural result of the disposition of the claims made. *See also*, Fed. R. Civ. P. 57. It is further an appropriate foundation for the consideration of Section 3 relief. The Court's Opinion of October 9, 2014 (D.E. 628) and Order on Claim of Discriminatory Purpose of April 10, 2017 (D.E. 1023) effectively grant that request for declaratory relief, which will be included in the Court's final judgment. The Court GRANTS declaratory relief and holds that SB 14 violates Section 2 of the Voting Rights Act and the 14th and 15th Amendments to the United States Constitution.

B. Injunctive Relief

1. Manner of Evaluating Injunctive Relief

Private Plaintiffs seek an injunction completely barring implementation and enforcement of SB 14, Sections 1 through 15 and Sections 17 through 22,[7] as well as SB 5 in order to eliminate the discriminatory law "root and branch." D.E. 1051, p. 4. Defendants and the United States contend that this Court's hands are tied because the remedies imposed by SB 5 are sufficient to ameliorate SB 14's ills and the Court is bound to defer to that state remedy. Thus the Court's first task is to determine to what extent, if any, the Court must defer to the state's choice of remedy and how, if at all, the Court's jurisdiction extends to interference with SB 5, which was enacted after this Court's determination of the voting rights liability issues on their merits.

Federal courts have broad equitable powers to remedy voting rights violations that implicate constitutional rights. *See Swann v. Charlotte–Mecklenburg Bd. of Educ*., 402 U.S. 1, 15–16, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971). The Court must fashion its remedy, taking into account "obvious" considerations such as "the severity and nature of the particular constitutional violation, the extent of the likely disruption to the ordinary processes of governance,...what is necessary, what is fair, and what is workable." *North Carolina v. Covington*, —— U.S. ——, 137 S.Ct. 1624, 1625, 198 L.Ed.2d 110 (2017) (quoting *New York v. Cathedral Academy*, 434 U.S. 125, 129, 98 S.Ct. 340, 54 L.Ed.2d 346 (1977)). Additionally, the Court must act with proper restraint when intruding on state sovereignty. *Covington, supra* at 1626.

What constitutes proper restraint from intrusion is not clear. In *Operation Push*, the Fifth Circuit noted that proper deference to the state meant giving the government the first opportunity to institute its own cure for the VRA § 2 violation. *Mississippi State Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400, 405–06 (5th Cir. 1991). In the prior appeal of this case (*Veasey II*), after discussing the need to fashion an interim remedy, the Fifth Circuit wrote:

> [S]hould a later Legislature again address the issue of voter identification, any new law would present a new circumstance not addressed here. Such a new law may cure the deficiencies addressed in this opinion. Neither our ruling here nor any ruling of the district court on remand should prevent the Legislature from acting to ameliorate the issues raised in this opinion.

Veasey II, 830 F.3d at 271. Consistent with these holdings, this Court delayed its remedies ***690** decision until after the Texas Legislature's 2017 General Session to give the legislature an opportunity to act. Texas passed SB 5 and it is now this Court's job to determine whether SB 5 cured the unconstitutional discrimination in SB 14.

Nothing further is required in the nature of deference to legislative choices when this Court reviews the substance of SB 5.

> [I]t is because legislators and administrators are properly concerned with balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality. But racial discrimination is not just another competing consideration. When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified.

Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265–66, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977). Even if some measure of deference were required (for instance, if relief were being considered only for the discriminatory results claim), that deference yields if SB 5 is not a full cure of the terms that render SB 14 discriminatory.

> "The federal district court is precluded from substituting even what it considers to be an objectively superior plan for an otherwise ***constitutionally and legally valid plan*** that has been proposed and enacted by the appropriate state governmental unit." The district court must accept a plan offered by the local government ***if it does not violate statutory provisions or the Constitution.***

Operation Push, 932 F.2d at 406–07 (a voter registration case, quoting *Seastrunk v. Burns*, 772 F.2d 143, 151 (5th Cir. 1985) (a reapportionment case) and citing *Wright v. City of Houston, Miss*., 806 F.2d 634, 635 (5th Cir. 1986) (a redistricting case)) (emphasis added). [8]

"It is clear that any proposal to remedy a Section 2 violation must itself conform with Section 2." *Dillard v. Crenshaw Cty., Ala*., 831 F.2d 246, 249 (11th Cir. 1987) (citing *Edge v. Sumter Cty. Sch. Dist*., 775 F.2d 1509, 1510 (11th Cir. 1985)). The *Dillard* court stated that an element of an election proposal that "will not with certitude *completely* remedy the Section 2 violation" cannot be authorized. *Dillard, supra* at 252. This is consistent with the Fifth Circuit's holding, referencing Supreme Court jurisprudence, that no VRA remedy is permitted if it would allow the perpetuation of an existent denial of VRA rights. *Kirksey v. Bd. of Sup'rs of Hinds Cty., Miss*., 554 F.2d 139, 143 (5th Cir. 1977).

While there appears to be no dispute that the remedy must pass constitutional muster, each side of this action places the burden of proof on the other. Private Plaintiffs state that "Texas cannot meet its burden to demonstrate that SB 5 fully ***691** remedies the discriminatory results of SB 14." D.E. 1051, p. 3. State Defendants and the United States rely on the rule of deference to legislative action (addressed above) and the implication that Private Plaintiffs have not satisfied their burden to allege and prove that SB 5 imposes a burden on minority voters. D.E. 1049; 1052, pp. 2–3; 1058, pp. 6, 8 n.3, 14; 1060, pp. 3, 5.

Because Private Plaintiffs have already demonstrated that they are entitled to a remedy that eliminates SB 14's VRA violations, and because the remedy must comply with the requirements of VRA § 2, the burden of proof is on the proponents of SB 5 to show that SB 5 is an appropriate remedy in this case. [9] *United States v. Virginia*, 518 U.S. 515, 547, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996); *Green v. Cty. Sch. Bd. of New Kent Cty., Va*., 391 U.S. 430, 439, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968) ("The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now."); *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 240 (4th Cir. 2016), *cert. denied sub nom.*, *North Carolina v. North Carolina State Conference of NAACP*, —— U.S. ——, 137 S.Ct. 1399, 198 L.Ed.2d 220 (2017). If SB 5 does not cure the Section 2 violations, then this Court may enjoin the enforcement of SB 14 and SB 5 pursuant to the Court's equitable power to protect Private Plaintiffs' rights.

SB 5—as a proposed remedy—is "in part measured by the historical record, in part measured by difference from the old system, and in part measured by prediction." *Dillard*, 831 F.2d at 250. Thus the Court's decision is based on the evidence already of record in this case, [10] an evaluation of the parties' respective arguments as to the curative nature of SB 5 as compared to SB 14, and the Court's prospective conceptualization of the impact of SB 5's requirements. This inquiry has been facilitated by the legislature's choice to build on the existing SB 14 framework rather than begin anew with an entirely different structure.

State Defendants and the United States rely heavily on a comparison between SB 5 and the interim remedy. However, the Court notes that, because of the agreed, interim nature of that remedy and the parties' waiver of an evidentiary hearing on the full and permanent remedy to be imposed, the record holds no evidence regarding the impact of the interim Declaration of Reasonable Impediment (DRI), either in theory or as applied. So while the Court acknowledges that Private Plaintiffs were willing to accept a DRI remedy on an interim basis as a partial remedy, the Court does not treat that temporary compromise as a binding determination that a DRI will cure the Section 2 violations.

2. SB 5 Does Not Render SB 14 a Constitutional and Legally Valid Plan

Pursuant to the scope and standard of review set out above, the Court revisits ***692** SB 14's failings and then compares them to SB 5's terms. The Court's Section 2 findings are based on several features of SB 14, which alone or in combination unconstitutionally discriminate against African–Americans and Hispanics with respect to the right to vote. While detailed more fully in the Court's previous Orders, [11] those features may be categorized as:

a. **Type of ID**: The limited number and type of photo IDs that can be used to vote, along with the prohibition on the use of photo IDs that have been expired more than 60 days prior to the election;

b. **Obstacles to Obtaining ID**: The financial, geographic, and institutional obstacles to obtaining qualifying photo ID or the underlying documentation necessary to obtain qualifying photo ID;

c. **Exemptions:** The limitations on the sources that may be used to support an exemption for a disability;

d. **Alternative Proof**: The onerous provisional ballot process, requiring that the voter cure the ID issue within six days of voting before the vote may be counted; and

e. **Education**: Educational provisions that (1) fail to provide voters with timely notice of what is required and instructions regarding how to obtain qualified SB 14 ID, if possible, and (2) fail to train poll workers so that they do not deny the right to vote to qualified voters.

Veasey I, 71 F.Supp.3d at 641–42. The Court evaluates SB 5's provisions with respect to each of these troubling features, below:

a. **Type of ID**:

• Under SB 5, "United States passport" is amended to state "United States passport book or card."

• SB 5 enlarges the amount of time a qualifying ID may be expired from 60 days to 4 years. Voters over 70 years of age do not have a limit on the amount of time their ID may be expired.

The clarification that both passport books and cards are accepted does not necessarily expand the reach of qualifying IDs because (a) there is no evidence that only passport books were permitted under SB 14, which permitted the use of "passports," and (b) the requirements for obtaining either form of passport include underlying documents of the type likely to exclude minorities, along with the requirement of the payment of a substantial fee. [12] This feature remains discriminatory because SB 5 perpetuates the selection of types of ID most likely to be possessed by Anglo voters and, disproportionately, not possessed by Hispanics and African–Americans. Those findings were set out in the Court's prior Opinion.

SB 5 does not meaningfully expand the types of photo IDs that can qualify, even though the Court was clearly critical of Texas having the most restrictive list in the country. *Veasey I*, 71 F.Supp.3d at 642–43. For instance, Texas still does not permit federal or Texas state government photo IDs—even those it issues to its own employees. SB 5 permits the use of the free voter registration card mailed to each registered voter and other forms of non-photo ID, but only through the use of a Declaration of Reasonable Impediment ***693** (DRI) more fully addressed below. Because those who lack SB 14 photo ID are subjected to separate voting obstacles and procedures, SB 5's methodology remains discriminatory because it imposes burdens disproportionately on Blacks and Latinos.

SB 5's expansion of the amount of time a prescribed form of identification may be used—from sixty (60) days to four (4) years before the date of the election—is one way to reduce the draconian aspect of the photo ID requirement. However, there is no evidence that it appreciably reduces the comparative discriminatory effect of the law. Instead, the provision may actually

exacerbate the discrimination. The greatest benefit from SB 5's liberalized requirements is conferred on voters over the age of 70, for whom there is no limit to the use of expired (but still qualified types of) photo ID. According to the evidence at trial, that class of voters is disproportionately white. Lichtman, PX 772, pp. 64–65.

The Court concludes that SB 5's limited provisions addressing the types of photo IDs that may be used for voting and their expiration dates do not ameliorate the discriminatory effects or the discriminatory purpose of SB 14 with respect to the limited forms of qualified SB 14 ID.

b. **Obstacles to Obtaining ID**:

- SB 5 provides for free mobile units that can travel the state and issue Election ID Certificates (EICs) upon request by constituent groups or at special events.

- Any request for a mobile unit can be denied if required security or other "necessary elements of the program" cannot be ensured. The Secretary of State is empowered to adopt rules to implement the mobile unit program.

Mobile EIC units were originally offered with SB 14. However, the evidence at trial was that they were too few and far-between to make a difference in the rates of qualifying voters. Their mobile nature made notice and duration major factors in their effectiveness. *See Veasey I*, 71 F.Supp.3d at 679 & n.398, 687. Yet nothing in SB 5 addresses the type of advance notice that would be given in order to allow voters to assemble the necessary documentation they might need in time to make use of the units. And the idea that the units be made available at "special events" or upon request of "constituent groups" (undefined terms) implies a limited duration appearance at limited types of events.

Moreover, SB 5 contains no provisions regarding the number of mobile EIC units to be furnished or the funding to make them available. Requests for them can be denied for undefined, subjective reasons, placing too much control in the discretion of individuals. The Court concludes that the provision for mobile EIC units does not appreciably ameliorate the discriminatory effects or purpose of SB 14 with respect to the obstacles to obtaining qualified photo ID.

c. **Exemptions**:

- SB 5's reasonable impediment declaration provision allows listing a disability or illness as a reason to vote without qualifying ID.

This provision eliminates the objection regarding the limited sources needed to support a disability exemption from the strict requirements of SB 14. However, its amelioration is dependent upon the DRI procedure, which has its own limitations, as addressed below.

d. **Alternative Proof**:

- SB 5 allows the use of a Declaration of Reasonable Impediment (DRI) that supplants the provisional ballot procedure for those who are registered, but do not have qualified SB 14 photo ID.

***694** • SB 5 requires that any DRI include a threat of criminal penalties for perjury and it increases those penalties with respect to a DRI to a state jail felony.

SB 5 uses the DRI procedure in place of the SB 14 provisional ballot/cure procedure. Defendants and the United States argue that the DRI procedure should eliminate the complaints of discrimination because it offers voters a way to vote a regular ballot if they do not have and cannot reasonably obtain SB 14 photo ID for one or more of six reasons: lack of transportation; lack of birth certificate or other documents needed to obtain the prescribed identification; work schedule; lost or stolen ID; disability or

illness; family responsibilities; and the ID has been applied for, but not received. They further argue that the DRI's acceptability should not be questioned because it was the procedure the Private Plaintiffs agreed to as the interim remedy previously imposed by this Court. However, the interim remedy was never intended to be the final remedy and it did not address the discriminatory purpose finding. Additionally, SB 5 imposes some material departures from the interim remedy.

The interim DRI remedy was a negotiated stop-gap measure addressing a quickly-advancing general election, pending the final resolution of additional issues in this case. It was formulated as a counterpart to the Fifth Circuit's directive that those who had SB 14 photo ID be required to produce it in order to vote. The DRI was negotiated as, and intended to be, only a partial, temporary remedy. Its use under those circumstances does not pretermit the question whether it is appropriate full and final relief in this case—or that it was the choice the Court would have imposed had the parties not agreed.

Because of the posture of the case, the interim DRI remedy was limited to addressing the discriminatory results claim. This Court is now considering a remedy for both the results and the discriminatory purpose claim. The breadth of relief available to redress a discriminatory purpose claim is greater than that for a discriminatory results claim. *See Veasey II*, 830 F.3d at 268 & n.66 (citing *City of Richmond v. United States*, 422 U.S. 358, 378, 95 S.Ct. 2296, 45 L.Ed.2d 245 (1975) and *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 465–66, 471, 487, 102 S.Ct. 3187, 73 L.Ed.2d 896 (1982) for the proposition that the discriminatory purpose finding, as opposed to the results finding, supports enjoining the entire offending statute).

Moreover, SB 5's DRI differs materially from the interim DRI. Initially, Private Plaintiffs complain that SB 5 allows the use of only a "domestic" birth certificate, eliminating the ability of naturalized citizens—disproportionately Hispanics—to use their foreign birth certificates to prove identity. D.E. 1051, p. 15. Private Plaintiffs do not cite to any evidence upon which they base their representation that Hispanics in Texas are disproportionately impacted by this provision. While very likely true, the Court's decision must be supported by the record, which the parties declined to expand for this remedy phase. The Court has not been directed to any evidence regarding the proportion of naturalized citizens who are Hispanic and does not recall any such evidence. The Court's decision does not rest on this assertion or this particular complaint.

The most concerning difference between the interim DRI and the SB 5 DRI is the elimination of the "other" category as the basis for the voter's lack of SB 14 ID. Defendants complain that this open alternative permitted 19 voters who used the DRI procedure to simply protest SB 14. ***695** D.E. 1049, p. 16, D.E. 1049–2. [13] However, it was also used for reasonable excuses related to the issues supporting Private Plaintiffs' challenge to SB 14, including financial hardship and the misunderstanding or misapplication of SB 14 or the prerequisites for obtaining SB 14 photo ID. [14]

Giving registered voters an opportunity to explain their impediment in their own words reduces the chance that a misunderstanding of the law or its requirements will deprive them of their franchise. And there is no evidence in this record that any of the persons using the "other" category were not the registered voters they said they were. Eliminating this alternative is a material change to the interim DRI remedy. It does not necessarily advance the state's interest in secure elections. And the change takes on added meaning because of the increased penalties for perjury instituted by SB 5.

Listing a limited number of reasons for lack of SB 14 is problematic because persons untrained in the law and who are subjecting themselves to penalties of perjury may take a restrictive view of the listed reasons. Because of ignorance, a lack of confidence, or poor literacy, they may be unable to claim an impediment to which they are entitled for fear that their opinion on the matter would not comport with a trained prosecutor's legal opinion. Consequently, the failure to offer an "other" option will have a chilling effect, causing qualified voters to forfeit the franchise out of fear, misunderstanding, or both. [15]

The State Defendants claim that a DRI insulates a voter photo ID law from complaints of discrimination. D.E. 1049, p. 13 (citing *South Carolina v. United States*, 898 F.Supp.2d 30 (D.D.C. 2012) (mem. op.) (preclearance decision). However, the court

in *South Carolina* repeatedly emphasized the fact that the DRI procedure offered there included a voter's ability to claim any reason whatsoever—as long as it was true—in order for his or her vote to be counted. [16]

The State Defendants suggest that the loss of the "other" option under SB 5 is a fair trade-off for the fact that Texas does not have a mechanism for rejecting votes tendered by a voter using a DRI for identification. D.E. 1049, p. 15. Defendants have offered no evidence to support this assertion. Neither have they offered evidence that the reason a voter has no qualified ID makes any difference in identifying a voter so as to prevent fraud. In the *South Carolina* case, the state was to follow ***696** up with voters who did not have qualified ID to assist in getting ID so there was a logical reason to identify the impediment. Texas has offered no reason to identify a voter's reasonable impediment. Without evidence to justify the trade-off, this Court will not allow defects in Texas's election system to justify disproportionate burdens on Hispanic and African–American voters.

The prescribed form of the DRI addresses two separate issues, only one of which relates to the stated purpose of the statutes: to prevent in-person voter impersonation fraud. When a person signs the DRI prescribed by SB 5, that person first attests to being a particular registered voter on the Secretary of State's list. The DRI then inquires into why that registered voter does not have one of the limited forms of photo ID the state is willing to accept. Nothing in the record explains why the state needs to know that a person suffers a particular impediment to obtaining one of the qualified IDs. The impediments do not address whether the persons are who they say they are and the impediments are not being used to assist in obtaining qualified ID. There is no legitimate reason in the record to require voters to state such impediments under penalty of perjury and no authority for accepting this as a way to render an unconstitutional requirement constitutional.

Requiring a voter to address more issues than necessary under penalty of perjury and enhancing that threat by making the crime a state jail felony appear to be efforts at voter intimidation. SB 5, § 3. The record reflects historical evidence of the use of many kinds of threats and intimidation against minorities at the polls—particularly having to do with threats of law enforcement and criminal penalties. *Veasey I*, 71 F.Supp.3d at 636–37, 675.

Thus the DRI procedure does not represent a remedy that puts victims of discrimination in the position they would have occupied absent discrimination.

> A remedial decree, [the Supreme] Court has said, must closely fit the constitutional violation; it must be shaped to place persons unconstitutionally denied an opportunity or advantage in "the position they would have occupied in the absence of [discrimination]." *See Milliken v. Bradley*, 433 U.S. 267, 280, 97 S.Ct. 2749, 2757, 53 L.Ed.2d 745 (1977) (internal quotation marks omitted)....A proper remedy for an unconstitutional exclusion, we have explained, aims to "eliminate [so far as possible] the discriminatory effects of the past" and to "bar like discrimination in the future." *Louisiana v. United States*, 380 U.S. 145, 154, 85 S.Ct. 817, 822, 13 L.Ed.2d 709 (1965).

United States v. Virginia, 518 U.S. 515, 547, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996).

As to the severity of the penalty of perjury, the United States argues that the increase to a state jail felony cannot be discriminatory because that penalty is less than the maximum penalty permitted for perjury in connection with registering or voting in a federal election under federal law, citing 52 U.S.C. §§ 10307(c) and 20507(a)(5)(B). But the falsity punished by § 10307(c) about which the voter must be notified under § 20507(a)(5)(B) is "information as to his name, address or period of residence in the voting district." These are clear, objective facts. There is no federal penalty associated with any tangential issue, such as mistakenly claiming a particular impediment to possession of qualified ID—information that is subjective, may not always fit into the State's categories, and could easily arise from misinformation or a lack of information from the State itself as to what is required.

***697** The United States further argues that there is no evidence that there have been prosecutions for perjury under the interim DRI or that the process has had a chilling effect. Yet current restraint does not preclude future prosecutions or intimidation.

The Court has found that SB 14 was enacted with discriminatory intent—knowingly placing additional burdens on a disproportionate number of Hispanic and African–American voters. The DRI procedure trades one obstacle to voting with another—replacing the lack of qualified photo ID with an overreaching affidavit threatening severe penalties for perjury. While the DRI requires only a signature and other presumably available means of identification, the history of voter intimidation counsels against accepting SB 5's solution as an appropriate or complete remedy to the purposeful discrimination SB 14 represents. *See McCrory,* 831 F.3d at 240–41 (refusing to accept the obstacles represented by a DRI procedure as a remedy for another set of obstacles created by a voter photo ID law; instead, the offending law was enjoined).

The Court concludes that SB 5 is insufficient to remedy the discriminatory purpose and effects of SB 14's alternative proof requirements.

e. **Education**:

• SB 5 is silent on the type or extent of any necessary educational or training programs.

• SB 5 provides no funding or budget for any such programs.

In its prior Opinion, the Court noted that SB 14's sea change in the requirements for voting could not be accomplished in a fair and effective manner without widespread education for voters and training for poll workers. *See Veasey I*, 71 F.Supp.3d at 642, 649. And the Fifth Circuit recognized that educational efforts were necessary to ensure that any change to the voting rights is effective as to both voters and poll workers. *Veasey II*, 830 F.3d at 271–72. Yet SB 5 does not address this issue at all.

Texas claims that it has publicly stipulated to a four million dollar education and training program, but this stipulation is not part of SB 5 or any other statute. [17] And there is no evidence that the legislature has budgeted the funds, earmarked for that purpose. The Court concludes that the terms of SB 5 do not create an effective remedy for the discriminatory features of SB 14 regarding education and training.

Not one of the discriminatory features of SB 14 is fully ameliorated by the terms of SB 5. The SB 5 DRI process is superior to the provisional ballot process of SB 14 in addressing those who have impediments to obtaining the necessary photo ID. But it leaves out an important feature of the interim DRI. And even the interim DRI was not a full remedy for either the discriminatory effects or discriminatory purpose of SB 14 to be remedied under VRA Section 2. The Court rejects SB 5 as an adequate remedy for the findings of discriminatory purpose and discriminatory effect in SB 14.

3. Injunctive Relief is Appropriate as to Both SB 14 and SB 5

Defendants and the United States have failed to sustain their burden of proof that SB 5 fully ameliorates the discriminatory purpose or result of SB 14. They have not shown that SB 5, together with SB 14, constitutes a constitutional and legally valid plan. Therefore, the question becomes ***698** whether the Court can and should craft and institute a different voter photo ID plan in an attempt to salvage some of the intent of the photo ID effort. In contrast, the Court can permanently enjoin the enforcement of SB 14 and SB 5, returning Texas to the law that preceded the 2011 enactment. The Texas legislature can then address anew any voter ID measures it may feel are required.

Counseling against this Court's formulation of its own voter ID plan are several issues. First, the Court's finding of discriminatory intent strongly favors a wholesale injunction against the enforcement of any vestige of the voter photo ID law. Second, the lack of evidence of in-person voter impersonation fraud in Texas belies any urgency for an independently-fashioned remedy from this Court at this time. [18] There is no apparent harm in the delay attendant to allowing the Texas legislature to go through its ordinary processes to address the issues in due legislative course. Third, making informed choices regarding the expansion of

the types of IDs or the nature of any DRI would require additional fact-findings on issues not currently before the Court. These matters, regarding reliable accuracy in photo ID systems, are better left to the legislature.

Consequently, the only appropriate remedy for SB 14's discriminatory purpose or discriminatory result is an injunction against enforcement of that law and SB 5, which perpetuates SB 14's discriminatory features. With respect to the VRA § 2 discriminatory purpose finding, elimination of SB 14 "root and branch" is required, as the law has no legitimacy. *E.g., City of Richmond, Virginia v. United States*, 422 U.S. 358, 378–79, 95 S.Ct. 2296, 45 L.Ed.2d 245 (1975); *Green v. Cty. Sch. Bd. of New Kent Cty., Va.*, 391 U.S. 430, 437–38, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968). [19] This is consistent with the result in *McCrory,* 831 F.3d at 239–41. There, the Fourth Circuit found that the voter photo ID law had been passed with a discriminatory purpose. While different in details, the North Carolina law was faulted, in part, for its discriminatory selection of qualified IDs. The North Carolina DRI —different in its details—was held to simply trade one set of obstacles for another and was not considered sufficient to offset the discriminatory purpose of the law. Neither did it place those who were impacted by the law back in the place they occupied prior to its enactment. "[T]he proper remedy for a legal provision enacted with discriminatory intent is invalidation." *McCrory*, 831 F.3d at 239. This remedy prevents any lingering burden on African–Americans and Hispanics. *Id*. at 240.

That is not to say that invalidation is always required. The parties have identified some cases in which the remedy accepted some part of the discriminatory law. For instance, *City of Port Arthur v. United States*, 459 U.S. 159, 168, 103 S.Ct. 530, 74 L.Ed.2d 334 (1982), involved a new election plan for a city council, necessitated by the city's annexations that expanded its ***699** boundaries. Practically speaking, then, there was no status quo ante to return to.

The *City of Port Arthur* trial court had been presented with a series of plans regarding at-large and single member districts. By the time the third evolution of the plan was proposed, the Court had identified a single remaining flaw: the majority rule, which required that the successful candidate in a multi-candidate contest receive more than fifty percent of the vote. The trial court eliminated that feature in order to make the plan comply with Section 2 and the Constitution. On appeal, the Court held that the decision was within the trial court's equitable discretion.

The Supreme Court delayed the implementation of a new election provision in *Louisiana v. United States*, 380 U.S. 145, 154 n.17, 85 S.Ct. 817, 13 L.Ed.2d 709 (1965), so that all previously registered voters would be on the same page when the new provision went into effect. Delay of SB 5 would do nothing here to make the Texas plan less discriminatory. SB 5 is an improvement over SB 14, but it does not eliminate the discrimination in the choice of photo IDs, which disproportionately continues to impose undue burdens on Hispanics and African–Americans.

Operation Push, 932 F.2d 400, also cited as a case taking a hands-off approach to new legislation, is distinguishable. Insofar as the new legislation was evaluated as a remedy for violations previously found, it succeeded and was accepted. Insofar as it instituted new provisions that had not previously been challenged, there was no jurisdictional basis upon which to take action. In contrast, SB 5 fails to cure certain SB 14 discriminatory features that have been adjudicated. Consequently, as a remedy, it does not ameliorate SB 14's violations. Its new features do not function without the discriminatory features it perpetuates. Therefore, the remedy of the SB 14 issues necessarily invalidates SB 5 for all purposes.

Defendants argue that the discriminatory taint of SB 14 can no longer control the remedy because SB 5 stripped SB 14 of its discriminatory purpose, citing *Cotton v. Fordice*, 157 F.3d 388, 391 (5th Cir. 1998). In *Cotton*, the issue was the disenfranchisement of convicted criminals. In 1890, the measure was passed as a way to suppress the Black vote. The crimes that triggered disenfranchisement were only those crimes thought to be committed primarily by Blacks. In that respect, it originally omitted murder and rape. In 1950 and 1968, the statute was amended to first remove burglary and then include murder and rape. Cotton, convicted of armed robbery, sued on the basis that the statute was discriminatory, based on the original motivation in 1890.

The Fifth Circuit held that the original taint of discrimination had subsided over the hundred years the statute had been in place—amended in ways that validated its facial neutrality and eliminated some discriminatory terms. The same dissipation of discrimination cannot be said to have occurred here, where only six years have passed, SB 5 was passed only after SB 14 was held to be unconstitutionally discriminatory and while the remedies phase of this case remained pending, and a large part of what makes SB 14 discriminatory—placing a disproportionate burden on Hispanics and African–Americans through the selection of qualified photo IDs—remains essentially unchanged in SB 5.

The Court's injunctive power extends to SB 5, consistent with the Court's power to prevent repetition of unlawful conduct. *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 & n.10, 102 S.Ct. 1070, 71 L.Ed.2d 152 (1982). The Court has found that the SB 5 DRI process does not fully relieve minorities of the burden of discriminatory ***700** features of the law. Thus the Court has the power to enjoin SB 5 as a continuing violation of the law as determined in this case. The Court thus issues injunctive relief to prevent ongoing violations of federal law and the recurrence of illegal behavior. *Id.*

C. Retention of Jurisdiction

Because the permanent injunction against enforcement of SB 14 and SB 5 does not require any continued monitoring, the Court DENIES the request that it retain jurisdiction over this matter. *See generally, McCrory*, 831 F.3d at 241. The need, if any, for continued supervision of Texas election laws under the preclearance provisions of the Voting Rights Act is reserved for, and will be considered in, the Court's consideration of Section 3(c) relief.

CONCLUSION

For the reasons set out above, the Court

- DENIES the request (D.E. 1050) to reconsider the discriminatory purpose finding;
- GRANTS declaratory relief and holds that SB 14 violates Section 2 of the Voting Rights Act and the 14th and 15th Amendments to the United States Constitution;
- GRANTS a permanent injunction against enforcement of SB 14, Sections 1 through 15 and Sections 17 through 22;
- GRANTS a permanent injunction against enforcement of SB 5;
- DENIES the request for continuing post-judgment jurisdiction as to relief under VRA Section 2;
- ORDERS the parties to confer and file on or before August 31, 2017, memoranda—not to exceed 7 pages—stating whether an evidentiary hearing is requested for the consideration of VRA § 3(c) relief and the preferred briefing schedule for same.

ORDERED this 23rd day of August, 2017.

All Citations

265 F.Supp.3d 684

Footnotes

1 Texas Senate Bill 14, Act of May 16, 2011, 82d Leg., R.S., ch. 123, 2011 Tex. Gen. Laws 619.

2 In *Veasey I*, this Court also found in favor of Plaintiffs with respect to two constitutional claims. The claim that SB 14 constituted an unconstitutional burden on the right to vote under the 1st and 14th Amendments was vacated and dismissed under the principle that the VRA provided a remedy and thus those constitutional claims need not be reached. The claim that SB 14 constituted a poll tax under the 14th and 24th Amendments was vacated and rendered on the merits.

3 In competing advisories, Private Plaintiffs and the United States have sparred over whether the United States may be heard on issues related to the discriminatory purpose claim. D.E. 1064, 1065. The United States withdrew its discriminatory purpose claim and now supports the State Defendants in that regard and takes positions inconsistent with positions previously taken in this case. The Court recognizes that the United States remains a party and has a right to be heard on every issue in this case.

4 Texas Senate Bill 5, Act of June 1, 2017, 85th Leg., R.S., 2017 Tex. Sess. Laws. ch. 410 (SB 5).

5 Defendants filed their Motion to Issue Second Interim Remedy or to Clarify First Interim Remedy (D.E. 1047), to which the other parties responded (D.E. 1057, 1061, and 1062). Defendants have since withdrawn that motion. D.E. 1063.

6 Before the 2017 Texas legislative session convened, Defendants' Proposed Briefing Schedule (D.E. 916) argued that this Court should delay reconsideration of the purpose finding until after that legislative session. The Court rejected that argument when setting the briefing schedule. D.E. 922. During the 2017 legislative session, Defendants and the United States filed their "Joint Motion to Continue February 28, 2017 Hearing on Plaintiffs' Discriminatory Purpose Claims" (D.E. 995). In that motion, they argued that SB 5, then pending, would alter or moot any disposition of the discriminatory purpose claim if and when it was passed into law. The Court denied that motion. D.E. 997. Now that the 2017 legislative session has ended and SB 5 has been enacted and signed into law, Defendants reiterate their argument that the new law purges the old law of its unconstitutionally discriminatory purpose.

7 SB 14, § 16, which Private Plaintiffs would leave intact, increased the penalty for voting when ineligible, voting more than once in an election, knowingly impersonating another person so as to vote as that person, and marking another voter's ballot without that person's consent to a second degree felony. *See generally*, Tex. Elec. Code § 64.012(a).

8 The United States is mistaken when it argues that *Operation Push* placed the burden of proof on those challenging the state's preferred remedy. D.E. 1060, p. 5 (citing *Operation Push*, 932 F.2d at 407). *Operation Push* addressed the state's new statute on two levels: as a remedy for the ills of the old statute and as an imposition of new measures that went beyond remedial concerns. As a remedy, the burden was on the state as the proponent of the measure. That burden was easily met by compliance with the trial court's directives after making findings of discrimination. Because the state's new law went beyond what the trial court had required and because plaintiffs wanted to raise complaints not previously addressed in the liability phase, any such challenge was premature—without proof directed at the consequences of the law's new features. The language the United States relies upon was extracted from the portion of the opinion addressing the placement of the burden with respect to the new (premature) claims.

9 It would be premature to try to evaluate SB 5 as the existing voter ID law in Texas because there is no pending claim to that effect before the Court, which claim would place the burden of proof elsewhere—on the claimant. Consideration of SB 5 in the context of a remedy for SB 14's ills places the burden on SB 5's proponents. *See Operation Push*, 932 F.2d at 407 (declining to evaluate the remedial statute as raising new VRA claims). To require the Private Plaintiffs to bear the burden on every legislative remedy that might be passed would present Plaintiffs with a "moving target," preventing any final resolution of this case.

10 As Private Plaintiffs have observed, SB 5 is built upon the "architecture" of SB 14. SB 5 brings forward many of SB 14's terms, such that the existing record addresses much of the Section 2 analysis that must be applied to SB 5.

11 The Court made extensive fact findings on these issues in its initial decision, which findings are incorporated into this Order by reference.

12 *See*, https://travel.state.gov/content/passports/en/passports/information/fees.html (passport cards, the less expensive of the two forms of passport, carry a $30 application fee and a $25 execution fee).

13 As previously noted, the parties declined an evidentiary hearing in connection with the remedies phase of this case. Nonetheless, no party has objected to the submission of these DRIs. In fairness, the Court considers these DRIs as well as those offered by the Private Plaintiffs in connection with motion briefing.

14 In connection with motion briefing, Private Plaintiffs submitted DRIs that listed the following reasonable impediments: just moved to Texas; just became resident of Texas and don't drive in Texas; just moved to Texas, haven't gotten license yet; financial hardship; unable to afford Texas Driver's License; lack of funds; out of state college student; and attempted to get Texas EIC but they wanted a long form birth certificate. D.E. 1061–1.

15 The Court is sympathetic to the state's frustration with voters who used the "other" box to list questionable reasons or to protest SB 14. However, elimination of all other conceivable explanations for a lack of qualified ID, thus relegating voters to cryptic explanations that may or may not be properly understood, is a harsh response that does not necessarily make elections more secure.

16 It should also be noted that the South Carolina voter photo ID law expanded the types of IDs that could be used, made getting the IDs much easier than had been the case prior to the law's enactment, included a wide-open DRI process, and contained detailed provisions for educating voters and poll workers regarding all new requirements.

17 *See* D.E. 1039, 1051, 1058, p. 18. The Court does not credit this unsworn suggestion on this record, in which all parties eschewed the opportunity to present additional evidence.

18 The State Defendants submitted their Advisory Regarding Record Evidence on Voter Fraud in response to the Court's inquiry regarding record evidence of actual fraud. D.E. 1011. That Advisory is replete with accounts of allegations and investigations, but not of any findings or convictions for in-person voter impersonation fraud. As this Court previously found, there were only two votes cast that resulted in fraud convictions in the ten years prior to passage of SB 14 and the rate of referrals, investigations, and convictions (detection and deterrence) did not increase during the time SB 14 was in place. *Veasey I*, 71 F.Supp.3d at 639.

19 The parties disagree on whether an ongoing federal violation must be demonstrated in order to issue injunctive relief. Because the Court has found that a continuing violation exists despite the enactment of SB 5, this argument is moot.

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249 F.Supp.3d 868
United States District Court, S.D. Texas, Corpus Christi Division.

Marc VEASEY, et. al., Plaintiffs,
v.
Greg ABBOTT, et. al., Defendants.

CIVIL ACTION NO. 2:13–CV–193
|
Signed 04/10/2017

Synopsis

Background: Individuals, advocacy groups, and United States brought action against State of Texas, challenging under the Constitution and the Voting Rights Act (VRA) state's voter identification (ID) law. The District Court, Nelva Gonzales Ramos, J., 71 F.Supp.3d 627, invalidated the law. State appealed. The Court of Appeals, 796 F.3d 487, affirmed in part, vacated in part, and remanded in part. On rehearing en banc, the Court of Appeals, 830 F.3d 216, affirmed in part, reversed in part, vacated in part, remanded in part, and rendered judgment in part. The District Court, Nelva Gonzales Ramos, J., 2017 WL 1209822, granted United States' motion for voluntary dismissal of its discriminatory purpose claim under § 2 of the VRA.

The District Court, Nelva Gonzales Ramos, J., held that individuals and advocacy groups established state's racially discriminatory intent or purpose of in enacting the voter ID law, in violation of § 2 of VRA.

Discriminatory intent or purpose found.

Attorneys and Law Firms

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Arthur D'Andrea, Angela V. Colmenero, Jennifer Marie Roscetti, Matthew Hamilton Frederick, Office of the Attorney General, Scott A. Keller, Office of the Attorney General Solicitor General's Office, Jason R. LaFond, Stephen Ronald Keister, Austin, TX, Ben Addison Donnell, Corpus Christi, TX, for Defendants.

ORDER ON CLAIM OF DISCRIMINATORY PURPOSE

NELVA GONZALES RAMOS, UNITED STATES DISTRICT JUDGE

After en banc review of the record in this case, the Fifth Circuit majority held that there was sufficient evidence to sustain a conclusion that the Texas voter photo identification bill, SB 14, [1] was passed with a discriminatory purpose, despite its proponents' assertions that it was necessary to combat voter fraud. *Veasey v. Abbott*, 830 F.3d 216, 241 (5th Cir. 2016) (*Veasey II*). At the same time, the Fifth Circuit held that certain evidence outlined in this Court's prior opinion [2] was not probative of

discriminatory intent and posited that this Court may have been unduly swayed by that evidence in making its determination of this issue.

To test that theory, and because "it is not an appellate court's place to weigh evidence," [3] the Court remanded the matter to this Court. This Court is thus charged with reexamining the probative evidence underlying Plaintiffs' discriminatory purpose claims weighed against the contrary evidence, in accord with the appropriate legal standards the Fifth Circuit has described. *Veasey II*, at 242. The Fifth Circuit instructed that this Court was not to reopen the evidence, but to rely on the record developed at the bench trial of this case, held in September 2014. *Veasey II*, at 242.

Consistent with those instructions, the Court permitted the parties to propose new findings of fact and conclusions of law and re-brief the issue. *See* D.E. 960, 961, 962, 963, 965, 966, 975, 976, 977, 979, 980. On February 28, 2017, the Court heard oral argument. After appropriate reconsideration and review of the record, and for the reasons set out below, the Court holds ***872** that Plaintiffs have sustained their burden of proof to show that SB 14 was passed, at least in part, with a discriminatory intent in violation of the Voting Rights Act of 1965 § 2, 52 U.S.C. § 10301(a).

STANDARD OF REVIEW

The rubric for the question—whether SB 14 was passed with a discriminatory purpose—was set out in the Supreme Court's decision, *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265–68, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977). *Veasey II*, at 230. Under *Arlington Heights*, discriminatory intent is shown when racial discrimination was a motivating factor in the governing body's decision. Discriminatory purpose "implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker ... selected or reaffirmed a particular course of action at least in part 'because of,'... its adverse effects upon an identifiable group." *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279, 99 S.Ct. 2282, 60 L.Ed.2d 870 (1979) (internal citations and footnotes omitted). Racial discrimination need not be the primary purpose as long as it is one purpose. *Velasquez v. City of Abilene*, 725 F.2d 1017, 1022 (5th Cir. 1984).

Rather than attempt to discern the motivations of particular legislators, the Court considers all available direct and circumstantial evidence of intent, "including the normal inferences to be drawn from the foreseeability of defendant's actions." *United States v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009) (internal quotation marks and citations omitted). The Supreme Court in *Arlington Heights* considered the following factors as informing the intent decision:

(1) The disparate impact of the legislation;

(2) Whether there is a clear pattern, unexplainable on grounds other than race, which emerges from the effect of the state action even when the governing legislation appears neutral on its face;

(3) The historical background of the decision;

(4) Whether the decision departs from normal procedural practices;

(5) Whether the decision departs from normal substantive concerns of the legislature, such as whether the policy justifications line up with the terms of the law or where that policy-law relationship is tenuous; and

(6) Contemporaneous statements by the decisionmakers and in meeting minutes and reports. [4]

Arlington Heights, supra at 266, 97 S.Ct. 555 (paraphrased). If Plaintiffs' evidence establishes that discriminatory purpose was at least one of the substantial or motivating factors behind passage of SB 14, "the burden shifts to the law's defenders to

demonstrate that the law would have been enacted without this factor." *Hunter v. Underwood*, 471 U.S. 222, 228, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985).

DISCUSSION

1. Disparate Impact

This Court found that SB 14 had a discriminatory impact, supporting Plaintiffs' results claim under Section 2. ***873** *Veasey v. Perry*, 71 F.Supp.3d 627, 659–79 (S.D. Tex. 2014) (*Veasey I*). With one exception, [5] the related findings in part IV(B) and conclusions in part VI(B)(1) were undisturbed on appeal and the Fifth Circuit affirmed the discriminatory result claim. *Veasey II*, at 264–65. Without setting forth the associated findings at length, this Court adopts its prior findings and conclusions, with the exception of those related to the potential effect of racial appeals in political campaigns. Plaintiffs have satisfied the disparate impact factor of the discriminatory purpose analysis.

2. Pattern Unexplainable on Non-Racial Grounds

In parts IV(A)(4) and (5) of this Court's prior opinion, it detailed a number of efforts, which the Texas legislature rejected, that would have softened the racial impact of SB 14. *Veasey I*, at 651–53 & Appendix. For instance, amendments were proposed to allow additional types of photo identification, a more liberal policy on expired documents, easier voter registration procedures, reduced costs for obtaining necessary ID, and more voter education regarding the requirements. At the same time, there was no substance to the justifications offered for the draconian terms of SB 14, noted in part IV(A)(6) of the opinion. *Veasey I*, at 653–59. This Court then concluded, in part VI(B) of the opinion, that these efforts revealed a pattern of conduct unexplainable on nonracial grounds, to suppress minority voting. *Veasey I*, at 694–703.

In connection with the discriminatory purpose analysis, the Fifth Circuit wrote, approving of this evidence:

> The record shows that drafters and proponents of SB 14 were aware of the likely disproportionate effect of the law on minorities, and that they nonetheless passed the bill without adopting a number of proposed ameliorative measures that might have lessened this impact. For instance, the Legislature was advised of the likely discriminatory impact by the Deputy General Counsel to the Lieutenant Governor and by many legislators, and such impact was acknowledged to be "common sense" by one of the chief proponents of the legislation.

Veasey II, at 236. This is some evidence of a pattern, unexplainable on grounds other than race, which emerges from the effect of the state action even when the governing legislation appears neutral on its face. Again, without setting forth the associated findings at length, this Court adopts its prior findings and conclusions with respect to the pattern of conduct unexplainable on grounds other than race factor.

3. Historical Background

In discussing SB 14's historical background for purposes of the discriminatory intent analysis, this Court included a prefatory sentence referencing Texas's long history of discriminatory practices, which was set out in a separate section of the opinion. *Veasey I*, at 700. The Court's reference was for context only. Treated as only providing perspective, the Court did not, and does not, assign distant history any weight in the discriminatory purpose analysis.

With respect to the question at hand, the Fifth Circuit held that historical evidence, to be relevant, must be "reasonably contemporaneous." *Veasey II*, at 232 (citing ***874** *McCleskey v. Kemp*, 481 U.S. 279, 298 n.20, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987) and *Shelby Cty. v. Holder*, —— U.S. ——, 133 S.Ct. 2612, 2618–19, 186 L.Ed.2d 651 (2013). The evidence upon which the Court previously relied dated from 2000 forward. *Veasey I*, at 700 (part VI(B)(2)(Historical Background)). Included was the contemporary seismic demographic shift by which Texas had become a majority-minority state and polarized voting patterns allowing the suppression of the overwhelmingly Democratic votes of African–Americans and Latinos to provide an Anglo partisan advantage. The Fifth Circuit found no fault with this evidence and this Court adopts these findings anew.

The Fifth Circuit also credited other historical events from the 1970s forward.

> [A]s late as 1975, Texas attempted to suppress minority voting through purging the voter rolls, after its former poll tax and re-registration requirements were ruled unconstitutional. It is notable as well that "[i]n every redistricting cycle since 1970, Texas has been found to have violated the [Voting Rights Act] with racially gerrymandered districts." Furthermore, record evidence establishes that the Department of Justice objected to at least one of Texas's statewide redistricting plans for each period between 1980 and the present, while Texas was covered by Section 5 of the Voting Rights Act. Texas "is the only state with this consistent record of objections to such statewide plans." Finally, the same Legislature that passed SB 14 also passed two laws found to be passed with discriminatory purpose.

Veasey II, at 239–40 (citations and footnotes omitted). The Court recognizes that the Fifth Circuit credits this evidence in the discriminatory purpose calculus whereas this Court had not previously done so. While this Court now also credits this evidence, the weight assigned to it is not outcome-determinative here.

Consistent with the Fifth Circuit opinion, in re-weighing this issue, the Court confirms that it does not rely on the evidence of Waller County officials' efforts to suppress minority votes and the redistricting cases for the discriminatory purpose analysis. The Court finds that reasonably contemporaneous history supports a discriminatory purpose finding.

4. Departures From Normal Practices

In part IV(A) of its prior opinion, this Court detailed the extraordinary procedural tactics used to rush SB 14 through the legislative process without the usual committee analysis, debate, and substantive consideration of amendments. *Veasey I*, at 645–53. The Fifth Circuit agreed that the Court can credit these "virtually unprecedented" radical departures from normal practices. *Veasey II*, at 238. Without setting forth the associated findings at length, this Court adopts its prior findings and conclusions with respect to the factor addressing departures from normal practices.

5. Legislative Drafting History

Proponents touted SB 14 as a remedy for voter fraud, consistent with efforts of other states. As previously demonstrated, the evidence shows a tenuous relationship between those rationales and the actual terms of the bill. "[T]he evidence before the Legislature was that in-person voting, the only concern addressed by SB 14, yielded only two convictions for in-person voter impersonation fraud out of 20 million votes cast in the decade leading up to SB 14's passage." *Veasey II*, at 240. The evidentiary support for SB 14 offered at trial was no better. And the bill did nothing to address mail-in balloting, which is much more vulnerable to fraud. *See generally*, *Veasey I*, at 641, 653–55.

***875** Furthermore, the terms of the bill were unduly strict. Many categories of acceptable photo IDs permitted by other states were omitted from the Texas bill. The period of time for which IDs could be expired was shorter in SB 14. Fewer exceptions were made available. And the burdens imposed for taking advantage of an exception were heavier with SB 14. The State did not demonstrate that these features of SB 14 were necessarily consistent with its alleged interest in preventing voter fraud or

increasing confidence in the electoral system. These and other similar issues were detailed by this Court in parts III(B) and IV(A)(4) of its previous opinion, along with the Appendix. *Veasey I*, at 642–45, 651–52 & Appendix.

Also evidencing the disconnect between the legislature's stated purposes and the terms of SB 14 were the constantly shifting rationales, revealed as pretext and detailed at part IV(A)(6) of the opinion. *Veasey I*, at 653–59. SB 14 was pushed through in a manner contrary to the legislature's stated prohibition against bills accompanied by a fiscal note. *Veasey I*, at 649 (part IV(A)(2)(Questionable Fiscal Note)), 651 (part IV(A)(3)(Fiscal Note, Impact Study, and Emergency)). This was due to a $27 million budget shortfall—a crisis the legislature needed to address. SB 14 added $2 million to the budget shortfall. And other pressing problems facing the legislature did not get the procedural push that SB 14 received. So not only did SB 14 not accomplish what it was supposed to, it did accomplish that which it was not supposed to do.

The Fifth Circuit approved of the consideration of the tenuousness of the relationship between the legislature's policies and SB 14's terms. It also found the fiscal note issue relevant. And the Court is permitted to credit evidence of pretext. *Veasey II*, at 237–41. The Court thus adopts its previous findings and conclusions with respect to the legislative drafting history. *Veasey I*, at 701–02.

6. Contemporaneous statements

In part VI(B)(2)(Contemporaneous Statements), this Court discussed the evidence offered regarding legislator observations of the political and legislative environment at the time SB 14 was passed. *Veasey I*, at 702. The Fifth Circuit found much of this undisputed and unchallenged evidence to be infirm as speculative, not statistically significant, or not probative of legislator sentiment. *Veasey II*, at 233–34. Thus this Court assigns no weight to the evidence previously discussed, except for Senator Fraser, an author of SB 14, stating that the Voting Rights Act had outlived its useful life and the fact that the legislature failed to adopt ameliorative measures without explanation, which was shown to be out of character with sponsors of major bills. *See Veasey II*, at 236–37 (approving of the consideration of this evidence). While crediting this evidence, the Court assigns it little weight.

CONCLUSION

Because the Fifth Circuit found that some of the evidence in this case was not probative of a discriminatory purpose in the Texas Legislature's enactment of SB 14, this Court was tasked with re-examining its conclusion on the discriminatory purpose issue. Upon reconsideration and a re-weighing of the evidence in conformity with the Fifth Circuit's opinion, the Court holds that the evidence found "infirm" did not tip the scales. Plaintiffs' probative evidence—that which was left intact after the Fifth Circuit's review—establishes that a discriminatory purpose was at least one of the substantial or motivating factors behind passage of SB 14. Consequently, the burden shifted to the State to demonstrate ***876** that the law would have been enacted without its discriminatory purpose. *Hunter*, 471 U.S. at 228, 105 S.Ct. 1916. The State has not met its burden. Therefore, this Court holds, again, that SB 14 was passed with a discriminatory purpose in violation of Section 2 of the Voting Rights Act.

ORDERED this 10th day of April, 2017.

All Citations

249 F.Supp.3d 868

Footnotes

1 Texas Senate Bill 14, Act of May 16, 2011, 82d Leg., R.S., ch. 123, 2011 Tex. Gen. Laws 619.

2 *Veasey v. Perry*, 71 F.Supp.3d 627, 633 (S.D. Tex. 2014).

3 *Veasey II*, at 241 (citing *Price v. Austin Indep. Sch. Dist*., 945 F.2d 1307, 1317 (5th Cir. 1991)).

4 This includes the legislative drafting history, which can offer interpretive insight when the legislative body rejected language or provisions that would have achieved the results sought in Plaintiffs' interest. *See Hamdan v. Rumsfeld*, 548 U.S. 557, 579–80, 126 S.Ct. 2749, 165 L.Ed.2d 723 (2006).

5 The Fifth Circuit did not overturn the fact finding, but held that anecdotal evidence of racial campaign appeals did not necessarily show that SB 14 abridged the right to vote. *Veasey II*, at 261. On remand, this Court assigns no weight to that anecdotal evidence.

71 F.Supp.3d 627
United States District Court,
S.D. Texas,
Corpus Christi Division.

Marc VEASEY, et al., Plaintiffs,
v.
Rick PERRY, et al., Defendants.

Civil Action No. 13–CV–00193.
|
Signed Oct. 9, 2014.

Synopsis

Background: Advocacy groups and United States filed suit claiming that Texas' voter photo identification (ID) law, as applied, was unconstitutional and violated Voting Rights Act (VRA).

Holdings: After bench trial, the District Court, Nelva Gonzales Ramos, J., held that:

law placed unconstitutional burden on right to vote under First and Fourteenth Amendments;

law produced discriminatory result in violation of VRA;

law had discriminatory purpose in violation of VRA and Fourteenth and Fifteenth Amendments; and

law constituted unconstitutional poll tax under Twenty-fourth Amendment and Equal Protection Clause.

Ordered accordingly.

Attorneys and Law Firms

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OPINION

NELVA GONZALES RAMOS, District Judge.

The right to vote: It defines our nation as a democracy. It is the key to what Abraham Lincoln so famously extolled as a "government of the people, by the people, [and] for the people." [1] The Supreme Court of the United States, placing the power of the right to vote in context, explained: "Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." [2]

In this lawsuit, the Court consolidated four actions challenging Texas Senate Bill 14 (SB 14), which was signed into law on May 27, 2011. The Plaintiffs and Intervenors (collectively "Plaintiffs") [3] claim that SB 14, which requires voters to display one of a very limited number of qualified photo identifications (IDs) to vote, creates a substantial burden on the fundamental right to vote, has a discriminatory effect and purpose, and constitutes a poll tax. Defendants [4] contend that SB 14 is an ***633** appropriate measure to combat voter fraud, and that it does not burden the right to vote, but rather improves public confidence in elections and, consequently, increases participation.

This case proceeded to a bench trial, which concluded on September 22, 2014. Pursuant to Fed.R.Civ.P. 52(a), after hearing and carefully considering all the evidence, the Court issues this Opinion as its findings of fact and conclusions of law. The Court holds that SB 14 creates an unconstitutional burden on the right to vote, has an impermissible discriminatory effect against Hispanics [5] and African–Americans, and was imposed with an unconstitutional discriminatory purpose. The Court further holds that SB 14 constitutes an unconstitutional poll tax.

I.

TEXAS'S HISTORY WITH RESPECT TO RACIAL DISPARITY IN VOTING RIGHTS

The careful and meticulous scrutiny of alleged infringement of the right to vote, which this Court is legally required to conduct, includes understanding the history of impairments that have plagued the right to vote in Texas, the racially discriminatory motivations and effects of burdensome qualifications on the right to vote, and their undeniable legacy with respect to the State's minority population. This uncontroverted and shameful history was perhaps summed up best by Reverend Peter Johnson, who has been an active force in the civil rights movement since the 1960s. "They had no civil rights towns or cities in the State of Texas because of the brutal, violent intimidation and terrorism that still exists in the State of Texas; not as overt as it was yesterday. But east Texas is Mississippi 40 years ago." [6]

State Senator Rodney Ellis testified about the horrific hate crime in the east Texas town of Jasper in the late 1990s in which James Byrd, an African–American man targeted for his race, was dragged down the street until he died. [7] A few years later, two African–American city council members spearheaded the effort to name a highly-qualified African–American as police chief in Jasper. Thereafter, those city council members were removed from their district council seats through "a strange quirk in the law" that allowed an at-large recall election. [8]

A. Access to the Polls

This anecdote demonstrating Texas's racially charged communities, the power of the polls, and the use of election devices to defeat the interests of the minority population is, unfortunately, no aberration. Dr. O. Vernon Burton has focused much of his career in American History on the issue of race relations. [9] Dr. Burton testified about the use in Texas of various election devices to suppress minority voting from the early days of Texas through today. Other experts, including Dr. Chandler Davidson, a

professor emeritus of sociology and political science at Rice University, and George Korbel, an attorney with an expertise in voting rights, corroborated Dr. Burton's ***634** findings. This history is summed up as follows:

- 1895–1944: All–White Primary Elections
    - On the heels of Reconstruction, freed slaves and other minority men were just gaining access to the right to vote. The white primary method denied minority participation in primaries which effectively disenfranchised minority voters because Texas was dominated by a single political party (the Democratic Party) such that the primary election was the only election that mattered. The state law that mandated white primaries was found unconstitutional by the Supreme Court in 1927. [10]
- In response, the Texas Legislature passed a facially neutral law allowing the political parties to determine who was qualified to vote in their primaries, resulting in the parties banning minority participation. This law was held unconstitutional in 1944. [11]
- 1905–1970: Literacy and "Secret Ballot" Restrictions
    - The Terrell Election Law, which also enabled white primaries, prohibited voters from taking people with them to the polls to assist them in reading and interpreting the ballot. Only white Democratic election judges were permitted to assist these voters who could not verify that their votes were cast as intended. Because minority voters had not been taught to read while enslaved or were subject to post-Civil War limited and segregated educational opportunities, and could not use their own language interpreter, these restrictions were struck down in 1970 as rendering voting an empty ritual. [12]
- 1902–1966: Poll Taxes
    - The Texas Constitution included the requirement that voters pay a $1.50 poll tax [13] as a prerequisite for voting. [14] While race-neutral on its face, this was intended to, and had the effect of, suppressing the African–American vote. In 1964, the practice was eliminated as to federal elections when the 24th Amendment to the United States Constitution was adopted. [15]
- However, Texas retained the poll tax for elections involving only state ***635** issues and campaigns. This practice was ruled unconstitutional as disenfranchising African–Americans in 1966. [16]
- 1966–1976: Voter Re–Registration and Purging
    - Having lost the poll tax, the Texas Legislature passed a re-registration requirement by which voters had to re-register annually in order to vote. It was characterized as a "poll tax without the tax." Because of its substantial disenfranchising effect, it was ruled unconstitutional in 1971. [17]
- In response, Texas enacted a purge law requiring re-registration of the entire electorate. Because Texas was, by then, subject to the Voting Rights Act (VRA) preclearance requirements, the United States Department of Justice (DOJ) objected to the change in the law and it was ultimately enjoined by a federal court in 1982. [18]
- 1971–2008: Waller County Students

- In 1971, after the 26th Amendment extended the vote to those 18 years old and older, Waller County which was home to Prairie View A & M University (PVAMU), a historically Black university, became troubled with race issues. Waller County's tax assessor and voter registrar prohibited students from voting unless they or their families owned property in the county. This practice was ended by a three judge court in 1979. [19]

- In 1992, a county prosecutor indicted PVAMU students for illegally voting, but dropped the charges after receiving a protest from the DOJ. [20]

- In 2003, a PVAMU student ran for the commissioner's court. The local district attorney and county attorney threatened to prosecute students for voter fraud—for not meeting the old domicile test. These threatened prosecutions were enjoined, but Waller County then reduced early voting hours, which was particularly harmful to students because the election day was during their spring break. After the NAACP filed suit, Waller County reversed the changes to early voting and the student narrowly won the election. [21]

- In 2007–08, during then Senator Barack Obama's campaign for president, Waller County made a number of voting changes without seeking preclearance. The county rejected "incomplete" voter registrations and required volunteer deputy registrars (VDRs) to personally find and notify the voters of the rejection. The county also limited the number of new registrations ***636** any VDR could submit, thus limiting the success of voter registration drives. These practices were eventually prohibited by a consent decree. [22]

- 1970–2014: Redistricting

  - In every redistricting cycle since 1970, Texas has been found to have violated the VRA with racially gerrymandered districts. [23]

This history describes not only a penchant for discrimination in Texas with respect to voting, but it exhibits a recalcitrance that has persisted over generations despite the repeated intervention of the federal government and its courts on behalf of minority citizens.

In each instance, the Texas Legislature relied on the justification that its discriminatory measures were necessary to combat voter fraud. [24] In some instances, there were admissions that the legislature did not want minorities voting. [25] In other instances, the laws that the courts deemed discriminatory appeared neutral on their face. There has been a clear and disturbing pattern of discrimination in the name of combatting voter fraud in Texas. In this case, the Texas Legislature's primary justification for passing SB 14 was to combat voter fraud. The only voter fraud addressed by SB 14 is voter impersonation fraud, which the evidence demonstrates is very rare (discussed below).

This history of discrimination has permeated all aspects of life in Texas. Dr. Burton detailed the racial disparities in education, employment, housing, and transportation, which are the natural result of long and systematic racial discrimination. As a result, Hispanics and African–Americans make up a disproportionate number of people living in poverty, [26] and thus have little real choice when it comes to spending money on anything that is not a necessity.

Minorities continue to have to overcome fear and intimidation when they vote. Reverend Johnson testified that there are still Anglos at the polls who demand that minority voters identify themselves, telling them that if they have ever gone to jail, they will go to prison if they vote. [27] Additionally, ***637** there are poll watchers who dress in law enforcement-style clothing for an intimidating effect. State Representative Ana Hernandez–Luna testified that a city in her district, Pasadena, recently made two city council seats into at-large seats in order to dilute the Hispanic vote and representation. [28]

And even where specific discriminatory practices end, their effects persist. It takes time for those who have suffered discrimination to slowly assert their power. Because of past discrimination and intimidation, there is a general pattern by African–Americans of not having the power to fully participate. [29] Other than to assert that today is a different time, Defendants made no effort to dispute the accuracy of the expert historians' analyses and other witnesses' accounts of racial discrimination in Texas voting laws—its length, its severity, its effects, or even its obstinacy.

B. Racially Polarized Voting

Another relevant aspect in the analysis of Texas's election history is the existence of racially polarized voting throughout the state. Racially polarized voting exists when the race or ethnicity of a voter correlates with the voter's candidate preference. [30] In other words, and in the context of Texas's political landscape, Anglos vote for Republican candidates at a significantly higher rate relative to African–Americans and Hispanics.

Dr. Barry C. Burden, a political science professor at the University of Wisconsin–Madison, testified regarding racially polarized voting in Texas. Dr. Burden explained that the gap between Anglo and Latino Republican support is generally 30–40 percentage points. The rate of racially polarized voting between Anglo and African–American voters is even larger. These racial differences were much greater than those among other sociodemographic groups—including differences between those of low and high income, between men and women, between the least and most educated, between the young and the old, and between those living in big cities and small towns. [31] Many courts, including the United States Supreme Court, have confirmed that Texas suffers from racially polarized voting. [32] And Mr. Korbel testified without contradiction that, in the current redistricting litigation pending in ***638** the Western District of Texas, San Antonio Division, Texas admitted that there is racially polarized voting in 252 of its 254 counties. [33] Mr. Korbel opined that racially polarized voting extends to the remaining two counties as well. [34] Defendants offered no evidence to the contrary on this issue.

C. Extent to Which Texans Have Elected African–Americans and Hispanics to Public Office

Texas's long history of racial discrimination may explain why African–Americans as well as Hispanics remain underrepresented within the ranks of publicly elected officials relative to their citizen population size. According to Dr. Burden's findings, as of 2013, African–Americans held 11.1% of seats in the Texas Legislature although they were 13.3% of the population in Texas as estimated by the 2012 U.S. Census. [35] Hispanics fared worse. In 2013, Hispanics held 21.1% of seats in the state legislature even though they were 30.3% of the Texas citizen population the year before. [36]

African–American and Hispanic underrepresentation did not improve when reviewing elected seats beyond the legislature. The most recent data available indicates that, as of 2000, only 1.7% of all Texas elected officials were African–American. [37] A similar analysis from 2003 found that approximately 7.1% of all Texas elected officials were Hispanic. [38] Defendants did not challenge these findings or offer any controverting evidence. Thus, this Court adopts Dr. Burden's conclusion that African–Americans and Hispanics remain woefully underrepresented among Texas's elected officials.

D. Overt or Subtle Racial Appeals

Another aspect of Texas's electoral history is the use of subtle and sometimes overt racial appeals by political campaigns. As Dr. Burton explained in his report, "[t]hrough the twentieth century, racial appeals—once more explicit—have become increasingly subtle." [39] He noted that, words like "welfare queen," "lazy," and "immigration" have been used by campaigns to activate racial thinking in the minds of voters. [40]

Instances of campaigns relying on racial messages persist in Texas. [41] For example, in a 2008 Texas House of Representatives race, an Anglo candidate sent a mailer featuring a manipulated picture of his Anglo opponent. The opponent's skin was darkened, a Mexican flag button was superimposed on his shirt, and an oversized Chinese flag was positioned directly behind him—all while questioning his commitment against illegal immigration. [42] Another example is a campaign mailer sent by an Austin-based political action committee against an Anglo candidate running for a Texas House of Representatives seat. The mailer, titled "Birds of a Feather Flock Together," featured black birds and the Anglo candidate surrounded by various minority elected officials—the late Texas State Senator Mario Gallegos, Congresswoman Sheila Jackson Lee, and President Barack Obama—with the caption "Bad ***639** Company Corrupts Good Character." [43] Dr. Burton offered another example of a 2008 campaign mailer aimed at dissuading African–Americans from voting. The mailer, sent to African–Americans in Dallas, Texas, warned that a group suspected of voter fraud was trying to get people to the polls and that "[p]olice and other law enforcement agencies [would] be at the voting locations." The mailer further stated that a victim of voter fraud could serve jail time. [44]

This Court finds that racial appeals remain a tactic relied on by Texas's political campaigns. Defendants offered no controverting evidence on this issue.

II.

THE STATUS QUO BEFORE SB 14 WAS ENACTED

In-person voter impersonation in Texas is rare. Before SB 14 went into effect, the only document required for a registered voter to cast a ballot in Texas was his or her voter registration certificate. [45] Absent the certificate, the voter could use a driver's license or any number of other documents such as a utility bill that would, as a practical matter, identify the person as the registered voter. Major Forrest Mitchell works in the Texas Attorney General's law enforcement division. He testified regarding the Special Investigations Unit which handles all claims of election violations brought to the Attorney General. In the ten years preceding SB 14, only two cases of in-person voter impersonation fraud were prosecuted to a conviction—a period of time in which 20 million votes were cast. [46]

In the first case, Lorenzo Almanza, Jr., appeared at the polls with his brother Orlando's voter registration certificate and represented himself to be Orlando, who was incarcerated at the time. The poll worker knew the brothers and alerted the election judge. Because Lorenzo had Orlando's valid voter registration certificate, the elections department permitted him to vote. Lorenzo was convicted, along with his mother, who accompanied him to the polls and fraudulently vouched that Lorenzo was, in fact, Orlando. [47] In the other case, Jack Crowder, III voted as his deceased father. [48]

According to Major Mitchell, since the implementation of SB 14's photo ID requirements over three elections, there has been no apparent change in the rate of voter fraud referrals and no higher rate of convictions. [49] This is not surprising, considering the testimony of several experts who are abundantly familiar with the nature of in-person voter impersonation fraud and election history, and who testified convincingly that such fraud is difficult to perpetrate, has a high risk/low benefit ratio, and does not occur in significant numbers.

While there have always been allegations of in-person voter impersonation fraud, the reality is that the allegations are seldom substantiated. According to Randall Buck Wood, an attorney who was formerly the Director of Elections for the Texas Secretary of State (SOS) and whose ***640** specialty is election law, in over 44 years of investigating and litigating election

issues, including allegations of rampant voter impersonation fraud, he has never found a single instance of successful voter impersonation in an election contest. [50]

Dr. Lorraine Minnite, a tenured Associate Professor of Public Policy at Rutgers University, has done extensive work since 2000 studying voter fraud in American contemporary elections. She produced a report specific to Texas, which was consistent with other states' history of very little in-person voter impersonation fraud. [51] Dr. Minnite found fewer than ten cases of in-person voter impersonation fraud in the United States between 2000 and 2010. [52] Two of those were in Texas, with one involving a woman with a falsified driver's license bearing her actual photo, so it is questionable whether SB 14 would have had any effect on that case. [53] Two occurred after SB 14 was passed. [54]

Dr. Minnite's research found that sloppy journalism regarding voter fraud and officials repeatedly suggesting that voter fraud has occurred have instilled a misconception in the public. Press releases making allegations of voter fraud were often repeated in news stories without having been verified, feeding a baseless skepticism about election integrity. [55] Looking at the pre-SB 14 procedures in place and the rarity of in-person voter impersonation fraud, she concluded: “So SB 14 doesn't add anything, in my opinion, to what we already have in place.” [56]

U.S. Representative Marc Veasey previously served as a state representative in Texas. He served on the House Elections Committee over several sessions and did not see any evidence of widespread in-person voter fraud. Instead, it was always just innuendo. [57] Defendants claim that voter impersonation fraud is difficult to detect and could potentially be more widespread than the two incidents actually shown would indicate. They further claim that the voter rolls are bloated with deceased voters, which creates an opportunity to commit in-person fraud. However, they failed to present evidence that the deceased are voting, which they could have done by comparing the deceased voter list against the list of those who have voted.

As Mr. Wood and Dr. Minnite made clear, in-person voter impersonation fraud is difficult to perpetrate with success. The perpetrator would have to: (1) know of an existing registered voter; (2) gain possession of that person's voter registration certificate or some other documentation of name and residence; (3) precede that person to the polls; (4) elude recognition as either who they actually are or as not being who they pretend to be; and (5) hope that the actual voter does not appear at the polls later to cast his or her own ballot. In State Representative Todd Smith's terms, such a person would have to be a fool to take such risks, with significant criminal penalties, in order to cast a single additional ballot in that election. [58]

***641** The cases addressing voter photo ID laws hold that the states have a legitimate interest in preventing in-person voter impersonation fraud despite minimal evidence that it exists as a real threat to any election, and Defendants here have offered very little evidence that such fraud is occurring. This Court finds that instances of in-person voter impersonation fraud in Texas are negligible. In contrast, there appears to be agreement that voter fraud actually takes place in abundance in connection with absentee balloting. [59] Mr. Wood testified that some campaign assistants befriend the elderly and raid their mailboxes when mail-in ballots arrive from the county. [60] SB 14 does nothing to combat fraud in absentee ballots and, ironically, appears to relegate voters who are over 65 and do not have qualified SB 14 ID to voting by absentee ballot. Justifiably, many of the registered voters who testified in this case stated that they need to vote in person because they do not trust that their vote will be properly counted if they have to vote by absentee ballot. [61]

III.

THE TEXAS PHOTO IDENTIFICATION LAW

A. The Challenged Provisions of SB 14

Effective January 1, 2012, Texas registered voters are required to present a specified type of photo ID when voting at the polls in person. SB 14, § 26 (effective date). The law has a number of provisions placed in issue in this case, described generally as follows.

The only acceptable forms of photo ID are: (1) a driver's license, personal ID card, and license to carry a concealed handgun, all issued by the Department of Public Safety (DPS); (2) a United States military ID card containing a photo; (3) a United States citizenship certificate containing a photo; and (4) a United States passport. *Id.,* § 14. All of these forms of photo ID must be current or, if expired, they must not have expired earlier than sixty days before the date of presentation at the polls. *Id.*

If a voter does not have such photo ID, that voter may obtain an election identification certificate (EIC), which is issued by DPS upon presentation of proof of identity. *Id.,* § 20. Persons with a verifiable disability may obtain an exemption from the photo ID requirement, but must provide required documentation of the disability to the voter registrar. *Id.,* § 1. The sources of that documentation are limited to the United States Social Security Administration and United States Department of Veterans Affairs. *Id.*

When the voter appears at the polling place, the law requires that the voter's registered name and name on the photo ID be exactly the same or "substantially similar." *Id.,* § 9(c). If they are exactly the same, the voter may cast a ballot without further complication. If they are not exactly alike, but are deemed by the poll workers to be "substantially similar" under the SOS's guidelines, the voter is permitted to vote, but must first sign an affidavit that the actual voter and the registered voter are one and the same. *Id.*

***642** If the registered name and the name on the photo ID are not deemed by the poll workers to be "substantially similar," or if the voter does not have any of the necessary photo ID, the voter may cast a provisional ballot, which will be counted only if the voter, within six days of the election, goes to the voter registrar with additional documentation to verify his or her identity. *Id.,* §§ 15, 17, 18. Those who have a religious objection to being photographed or who lost their photo ID in a natural disaster may also cast a provisional ballot subject to later proof of identity within six days of any election in which that person votes. *Id.,* § 17.

The law requires each county voter registrar to provide notice of the photo ID law when issuing original or renewal registration certificates. *Id.,* § 3. The registrar must post a notice in a prominent location at the county clerk's office and include notice in any website maintained by that registrar. *Id.,* § 5. The SOS is required to include the notice of this law on the SOS website and must conduct a statewide effort to educate voters regarding the new requirements. *Id.,* § 5. The SOS must also issue training standards for poll workers regarding accepting and handling the photo IDs. *Id.,* § 6. The county clerks are directed to provide training pursuant to the SOS's standards for their respective poll workers. *Id.,* § 7.

B. The Texas Law is Comparatively the Strictest Law in the Country

States began considering voter photo ID laws in the late 1990s. [62] As of 2014, eleven states, including Texas, have enacted laws described as "Strict Photo ID" by the National Conference of State Legislatures, with two of those states delaying implementation. [63] There are several features of photo ID laws to evaluate when determining how strict they are, including soft rollouts (which Texas did not adopt), educational campaigns (which are woefully lacking in Texas), the time frame during which an expired ID will be accepted (a matter on which Texas is relatively strict), the time frame in which provisional ballots may be cured (a matter on which Texas is arguably in the middle ground), and terms on which provisional ballots may be cured

(where Texas's requirements that the voter still produce a qualified photo ID make it strict). Comparing the acceptable forms of photo IDs of the strict states, it is clear that SB 14 provides the fewest opportunities to cast a regular ballot, as demonstrated in the following table.

STRICT STATE COMPARISON [64]

***643** This table demonstrates that there are at least 16 forms of ID that some of the other strict states permit, but that Texas does not, and there are three classes of persons, including the elderly and indigent, who are excused in whole or in part from the photo ID requirement in many states, but not in Texas.
According to the evidence, the costs to obtain the respective forms of photo IDs permitted in Texas, if the voter does not already have an accurate original or certified copy of his or her birth certificate, are as follows: [65]

***645** Thus, unless the voter already has an official copy of his or her birth certificate, the minimum fee to obtain an SB 14–qualified ID to vote will be $2.00 and, according to the individual Plaintiffs' testimony, will likely be much more because of prevalent problems with the accurate registration of births of minorities.

IV.

THE METHOD AND RESULT OF PASSING SB 14

A. The Texas Legislature's Approach to the Consideration of SB 14 Was Extraordinary

SB 14 was the Texas Legislature's fourth attempt [69] to enact a voter photo ID law. Over time, the provisions became increasingly strict [70] and the procedural mechanisms engaged to ensure passage became more aggressive.

- HB 1706 (2005)
    - In addition to the ID permitted under SB 14, the provisions included: (1) driver's licenses and personal ID cards issued by a DPS-equivalent of any state, further accepting those IDs even if they were expired for two years; (2) employer IDs issued in the ordinary course of business; (3) student photo IDs issued by a public or private institution of higher education; (4) a state agency ID card; and (5) a photo ID issued by an elections administrator or county clerk. Non-photo ID, such as utility bills, bank statements, and paychecks that were permitted under existing law continued to be acceptable. A personal identification certificate would have been available free of charge upon execution of an affidavit, with no underlying documentation specified. It further provided that it would not take effect unless it passed VRA scrutiny. [71]

- The bill, after being reported out of the Elections Committee, passed the House but died in the Senate Committee on State Affairs. [72]

- HB 218 (2007)

  - The provisions, as the bill was reported out of the Senate State Affairs Committee, included (in addition to the ID permitted under SB 14): (1) a DPS driver's license or personal ID card even if it was expired for two years (leaving out those IDs issued by other states); (2) employer IDs issued in the ordinary course of business; (3) student photo IDs issued by a public or private institution of higher education (now requiring that the school be located in Texas); (4) an ID issued by an agency or institution of the federal government (added); and (5) an ID issued by an agency, institution, or political subdivision of the State of Texas. This bill still permitted the use of non-photo ID. The free election identification certificate provision left out the requirement of an affidavit or any other proof of identity. There was no requirement that it pass VRA scrutiny. [73]

  ***646** • The bill was reported out of the House Elections Committee and several House amendments were adopted. In the Senate, it was reported out of the State Affairs Committee. While the rules were initially suspended to take it up out of order for second reading, the vote was reconsidered and the measure failed. The rules were not suspended, at which point the bill died. [74]

- SB 362 (2009)

  - As it emerged from the House Elections Committee, the provisions included (in addition to ID permitted by SB 14): (1) a driver's license or personal ID card issued by DPS, which has not been expired for more than two years; (2) an ID issued by an agency or institution of the federal government; and (3) an ID issued by an agency, institution, or political subdivision of the State of Texas. Employer and student IDs were omitted. Nonphoto ID was still permitted. This bill repeated the free election identification certificate with no underlying documentation requirement. [75]

  - The bill started in the Senate this time. The Senate adopted a rules change just for voter ID legislation, allowing it to be set as "special order" upon majority vote, which vote was obtained. It was referred to the Committee of the Whole Senate, from which it was reported favorably with no amendments. Upon second reading, two amendments offered by a primary author, Senator Troy Fraser, were adopted. A point of order complaining of the lack of a fiscal note, evidenced by the Finance Committee's contingency rider authorizing $2 million for voter education from the general revenue fund, was overruled. It passed the Senate and went to the House Elections Committee. It was reported out of committee, but died on the calendar, due to chubbing. [76]

Based on this experience, the proponents of voter ID legislation knew that additional procedural changes would be required to get the legislation passed. With the 2010 elections giving Republicans a majority in both the House and the Senate, they had the votes to pass a law as long as they could eliminate any two-thirds vote requirement in the Senate and keep the bill at the front of the line in both houses.

1. New Uncompromising Sponsorship

In 2011, SB 14 appeared with nineteen authors [77] and was described by some of the Texas legislators as having questionable authorship because the authors and sponsors seemed to not have full command of the text of the bill, and it was presented as "pre-packaged," already "baked," or a "done deal." [78] Sponsors exhibited an aggressive attitude and were reluctant to answer

questions, appearing evasive or ***647** disinterested in any consideration of opponents' substantive concerns. [79] When Senator Ellis asked primary author Senator Fraser questions about SB 14, the response was, "I am not advised." [80] This attitude, which Ellis testified was out of character for sponsors of major bills, was explained when Senator Fraser indicated that he had "drawn the straw." [81] The attitude in the 2011 session was dramatically different from that of 2009 in that SB 14 proponents were not willing to negotiate in their shared interests. [82]

2. Speed Through the Texas Senate

Special Priority and the Need for Speed. According to Senator Ellis, Texas legislation is a "game for the swift" [83] and SB 14 was "on a spaceship. I mean, it—was trying to rocket this bill out of there." [84] It was pre-filed on November 8, 2010, and had a bill number of SB 178. [85] So on January 12, 2011, the sponsors obtained the permission of Lieutenant Governor David Dewhurst to re-file the bill under one of the low numbers reserved for his priorities, thus giving it the number "SB 14." [86] That number telegraphs to the Senate a priority for the Lieutenant Governor. [87]

Emergency Designation. Governor Rick Perry designated "Legislation that requires a voter to present proof of identification when voting" as an "emergency matter for immediate consideration" by both houses of the Texas Legislature. [88] According to Senator Wendy Davis, no one could explain what the emergency was. [89] The effect of this was to permit the legislature to process SB 14 during the first sixty (60) days of the legislative session. [90] Without that designation, it would have taken a four-fifths vote of the Senate to take up the legislation that early in the session. [91] With the emergency designation and the ability to proceed during the first two months of the session when the calendar was clear, other techniques for slowing down the process were eliminated. For instance, there were no "blocker bills" in the way. [92]

Two–Thirds Rule Change. At the beginning of the 2011 legislative session, the Senate adopted the governing rules of the prior session. [93] Under Senate Rule ***648** 5.11(a), a two-thirds majority vote is required to make a bill or resolution a "special order." When designated as a "special order," the bill is considered prior to other business of the Senate. The Senate of the 2009 Texas Legislature had adopted a significant rules change to Rule 5.11 providing that a bill relating to voter ID requirements that was reported favorably from the Committee of the Whole Senate could be set as a special order at least 24 hours after a motion to set it was adopted by a majority of the members of the Senate. [94] That rules change, made solely for voter ID legislation, followed the 2007 session when the two-thirds rule blocked predecessor HB 218 from being taken up out of the ordinary order of business and the rule remained in place for the 2011 Texas Senate. [95]

Senators Davis, Ellis, and Carlos Uresti all testified that the suspension of the two–thirds rule was an extraordinary measure. [96] While the rule may not be enforced for insignificant matters, and has been suspended by agreement for politically sensitive votes, [97] it is unprecedented to suspend that rule for contentious legislation as important as SB 14. [98] Senator Uresti testified that the rule had been in place at least five decades and he had never seen it waived for any other major legislation, [99] and Senator Ellis considered it a 100–year honored tradition. [100] Even Lieutenant Governor Dewhurst admitted that he was not aware of any similar rule change for any other bill. [101]

Committee Bypass. Pursuant to Senate rules, no action may be taken on a bill until it has been reported on by a committee. Immediately after the emergency designation was made, the Texas Senate passed a resolution to convene the Committee of the

Whole Senate that same day, on January 24, 2011, to consider only SB 14. [102] According to Representative Trey Martinez–Fischer, use of the Committee of the Whole is unusual, with no useful purpose in this instance other than to eliminate the natural delay attendant to the ordinary committee process. [103]

The first reading in the Senate was on January 24, 2011, at which time SB 14 was referred to the Committee of the Whole, with Senator Robert Duncan presiding. [104] The next day, January 25, 2011, at 9:20 p.m., Senator Duncan reported SB 14 out of committee and to the Senate with the ***649** recommendation that it be passed. [105] Immediately, Senator Fraser moved that it be set as a special order for 9:20 p.m. Wednesday, January 26, 2011, and the motion passed by majority vote. [106]

Questionable Fiscal Notes. Ordinarily, fiscal notes signed by the Director of the Legislative Budget Board (and kept current as legislation changed) were required to accompany any legislation. [107] This requirement was particularly important in 2011 because the legislative session was confronting a $27 billion budget shortfall. [108] Lieutenant Governor Dewhurst, presiding over the Senate, and Speaker Straus, presiding over the House, instructed both chambers that they were not to advance any bill with a fiscal note in the 2011 session because no additional costs could be added to the state's budget. [109] However, the $2 million fiscal note that had accompanied the prior legislature's voter ID bill [110] was eventually continued with SB 14, unchanged.

Senator Davis explained that a one-time expenditure of $2 million would never be enough to accurately reflect the cost of SB 14. [111] A quarter of that amount was earmarked for research just to determine what type of voter education was needed. [112] The remainder was grossly insufficient for any media campaign. [113] The failure to fund SB 14 was clear at trial—no real educational campaign was initiated, and the individuals such a campaign needed to reach knew little, if anything, about the change in the law, including which photo IDs were allowed and the availability of EICs. [114]

Defendants failed to adduce any evidence to controvert Senator Davis' assertion that it would take far more than $2 million of publicity to reach registered voters who would need to be educated effectively and in a timely manner on this significant change in the ability to vote. And it is clear from the testimony of registered voters in this case that many heard about the change in the law only after they appeared at the polls to cast their vote. [115] ***650** For many, six days to cure a provisional ballot with a qualified photo ID was an unreasonable expectation because they did not understand the procedure, they needed time to save money (if they could) and obtain underlying documents (if they could), and it would take a significant effort to get to the proper office to apply for and get the necessary photo ID, which might take weeks or months to arrive. [116]

Passed from Senate Without Meaningful Debate. As set out below, the proponents allowed no real debate on SB 14's strict requirements, tabling most amendments and thus preventing discussion. There was evidence that Senator Tommy Williams requested that the DPS ID databases be compared to the SOS registered voter database to get an idea of how many voters would not have the required photo ID. [117] That database match was performed by the SOS, but the results showing 504,000 to 844,000 voters being without Texas photo ID were not released to the legislature. [118]

As scheduled, on January 26, 2011, SB 14 was passed [119] having spent three days before the Senate prior to being passed on to the House of Representatives.

3. Committee Process, Evidence, and Debate in the Texas House

Special Committee. While there was slightly greater lag time in the House, compared to the three days it took to get SB 14 through the Senate, the bill did not get any more meaningful debate there. As in the Senate, House rules require that all bills be referred to a committee and be reported from that committee before consideration by the House. [120] On February 11, 2011, SB 14 was assigned to a Select Committee on Voter Identification and Voter Fraud, [121] instead of the standing committee on elections which generally considered election matters. [122] Using the Select Committee allowed the Speaker of the House to assign representatives to the committee.

Representative Veasey, who was on both the Elections Committee and the Select Committee, felt that the Select Committee's membership was not a fair representation of the House and his appointment as vice-chair was only for appearances. [123] Representative Martinez–Fischer commented that seniority was not honored on a select committee, and [124] Representative Anchia noted that the select committee device was highly unusual, particularly to consider a single bill. [125]

***651 Fiscal Note, Impact Study, and Emergency.** As noted, there is some question whether SB 14 was accompanied by an appropriate fiscal note. Representative Martinez–Fischer testified that there had been no impact study submitted to the legislature. [126] Under the House rules, bills are required to be accompanied by an impact statement when they create or impact a state tax or fee. [127] Furthermore, Representative Anchia's questions about racial impact went unanswered. [128]

On March 21, 2011, SB 14 was placed on the emergency calendar of the House. However, due to a point of order related to a misleading bill analysis, it was returned to the Select Committee and re-emerged on March 23, 2011, to again be placed on the emergency calendar, and the proposed amendments were immediately reviewed. The following day, SB 14 passed the House, bearing only a few amendments. [129]

4. The Amendments that Were Considered

While a total of 104 amendments were proposed in the two houses of the legislature, those that would have ameliorated the harsh effects of SB 14 were largely tabled. [130] Representatives Veasey and Hernandez–Luna testified that there was an attitude that amendments were simply not going to be accepted. [131] The amendments proposed terms that, in some cases, were similar to those adopted by other states—even those that have passed strict photo ID laws. Some sought provisions that had been included in prior Texas photo ID bills. But the amendments in Texas, when tabled, [132] were effectively eliminated from any debate or consideration.

> A motion to lay on the table, if carried, shall have the effect of killing the bill, resolution, amendment, or other immediate proposition to which it was applied. Such a motion shall not be debatable, but the mover of the proposition to be tabled, or the member reporting it from committee, shall be allowed to close the debate after the motion to table is made and before it is put to a vote. [133]

Appended to this Opinion is a table outlining the proposals that would have accommodated the voters. They included the use of additional forms of ID, allowing the use of IDs that were not exact matches or that had expired for a longer period than SB 14 allows, making it easier to register to vote and obtain photo ID, requiring voter education, requiring SOS reporting of data relevant to the implementation of SB 14, and funding.

Senator Davis attempted to communicate to her colleagues that the terms of SB ***652** 14 created a Catch–22 for voters who did not have the necessary underlying documents to obtain photo ID. She created a detailed and informative diagram of the

burden involved. [134] In essence, for the most common documentation, Senator Davis showed that a DPS ID was required in order to request a certified copy of a voter's birth certificate and a certified copy of a birth certificate was required to get a DPS ID. And obtaining both required payment of fees. So if the registered voter had neither, he or she could get neither—without going to extraordinary lengths and, in some cases, significant expense. [135] Many of the legislative amendments offered and tabled sought the loosening of the ID requirements and/or elimination of fees for a DPS personal ID card (if a registered voter had the underlying documentation to get one.) [136]

Knowing that all amendments were being tabled, Senator Davis withdrew her proposed amendment which would allow indigents to vote a provisional ballot that could be cured by affidavit, and prevailed upon Senator Duncan, the Republican who had been placed in charge of SB 14, to include the indigent-friendly terms with his amendment which included similar terms for those with religious objections to having their photo taken. Senator Duncan's amendment, containing the indigent provision, passed the Senate. [137] However, the House stripped the indigent provision and added in the natural disaster provision, which is how SB 14 emerged from the conference committee.

5. Refusal of Amendments and Going "Outside the Bounds"

A few ameliorative amendments passed the House and remained in the enrolled version of SB 14, such as a contingency plan (provisional balloting) for voters whose photo IDs were stolen or lost in a natural disaster. However, the House passed a few more, leading the Senate to refuse to concur in the House amendments. Of particular note are the following amendments: (1) including as a qualified ID an ID card that contains the person's photograph and is issued or approved by the State of Texas (H 20; Alonzo); [138] (2) including as a qualified ID a valid ID card that contains the person's photograph and is issued by a tribal organization (H 30; Gonzalez, N.); and (3) preventing DPS from collecting a fee for a duplicate personal identification certificate from a person who seeks a voter ID (H 45; Anchia).

To resolve matters regarding SB 14, the two bodies formed a conference committee. [139] Rather than accept the amendment to make duplicate DPS IDs free, the conference committee sought approval to go outside the bounds of both the Senate and House versions of the bill. Ordinarily, Senate Rule 12.03 (2011) prescribed the bounds within which the conference committee was to work: conference committees are not to "add text on any matter which is not included in either the House or Senate version of the bill or resolution." ***653** [140] A similar rule governs the jurisdiction conferred on the conference committee by the House. [141] Resolutions permitting the conference committee to go outside the bounds were passed in both houses and the resulting language of SB 14 included the invention of the election identification certificate (EIC). [142]

The EIC additions were apparently offered to resolve concerns that registered voters needed access to a photo ID without the necessity of paying a fee. However, Representative Anchia testified that it was very unusual to go outside the bounds in this manner and include an entirely new provision that had not been properly vetted by either the Senate or the House. [143] And as illustrated by the voters testifying in this case, an EIC does not resolve the substantial issues that had been identified with respect to voters obtaining the underlying documents that are needed in order to apply for an EIC (just as they are needed for Texas driver's licenses and Texas personal ID cards).

A conference committee report was passed, and SB 14 was sent to Governor Perry, who signed it into law on May 27, 2011. [144] SB 14, as signed into law, did not include photo IDs issued by Texas state agencies or departments (other than the original IDs issued by DPS) and did not include tribal IDs.

6. Shifting Rationales

As the Texas Legislature pushed the voter photo ID laws over the years, the justifications shifted, starting with combatting voter fraud mixed with prohibiting non-citizens from voting, and then to improving election integrity and voter turnout. Although, these rationales are important legislative purposes, there is a significant factual disconnect between these goals and the new voter restrictions. As Mr. Wood put it, the 2011 Texas Legislature did not really try to determine if photo ID was necessary, nor did it try to determine whether SB 14 would have a positive effect. [145] Plaintiffs argued that it was a solution looking for a problem.

a. Preventing Voter Fraud

As demonstrated above, the Texas Legislature had little evidence of in-person voter impersonation fraud. [146] While there is general agreement that voting fraud exists with respect to mail-in ballots, the same was not demonstrated to be a real concern with in-person voting. And it was generally agreed that in-person voting fraud is the only type of voting fraud that would be addressed by a photo ID law. Even with respect to policing in-person voting, Representative Anchia testified that DPS officers had shown a collection of photo IDs to legislators and they could not tell which ones were fake, [147] leading him to conclude that poll workers would be no better at evaluating what IDs were authentic, a matter not addressed by the terms of SB 14.

Over time, proponents of the photo ID bill began to conflate voter fraud with concern over illegal immigration. [148] The 2010 U.S. Census had revealed a large ***654** increase in the Hispanic population in Texas. In 2011, bill proponents were pointing to illegal immigration in relation to voter ID while the legislature also addressed redistricting, the elimination of sanctuary cities, an English-only bill, and rollbacks of the Affordable Care Act. [149] There was a lot of anti-Hispanic sentiment. [150] Representative Martinez–Fischer testified,

> From a Legislative perspective, I think it takes a census to sort of wake people's eyes up, and so in the context of 2011 that we evaluated their ID and other proposals, it came on the heels of a census release that showed that the State of Texas grew by over 4 million people in the course of a decade; 89 percent of that minority; 65 percent of that Hispanic, 23 million children 95 percent Hispanic. It marked the first time in the history of the State of Texas that our public education system became majority Hispanic. These were astronomical metrics of demographic growth. [151]

As Dr. Burton testified, voter restrictions tend to arise in a predictable pattern when the party in power perceives a threat of minority voter increases. [152]

But Representative Hernandez–Luna testified convincingly that illegal immigrants are not likely to try to vote. “They are living in the shadows. They don't want any contact with the government for fear of being deported because that—I mean, my family was afraid to even go grocery shopping much less attempt to illegally vote.” [153] Instead, the issue of non-citizen voting appears related to citizens who have confused the voter registration records because, when they are summoned for jury duty, they deny their citizenship in order to be exempt from service. So that “non-citizen” report filters into voter records despite the fact that it is false. [154]

Representative Todd Smith admitted that he had no facts to support his concerns about non-citizen voting, but was reacting to allegations. [155] Furthermore, non-citizens (legal permanent residents and visa holders) can legally obtain a valid Texas driver's license and a concealed handgun license, [156] making the use of those IDs to prevent non-citizen voting rather illusory. Only

one instance of a non-citizen voter was revealed at trial. In that case, a Norwegian citizen, who had truthfully filled out his form to reflect that he was not a citizen, was mailed a voter registration card anyway. [157] So he thought he ***655** had the right to vote. Clearly, he was not trying to improperly influence an election. [158]

Representatives Anchia, Hernandez–Luna, and Martinez–Fischer and Senator Uresti indicated that the repeated references to illegal-aliens and non-citizens voting generated anti-Hispanic feelings. [159] Representative Hernandez–Luna even testified that lawmakers were equating Hispanic immigration with risks of leprosy in a very tense atmosphere. [160] Senator Davis added that there was unfounded concern about non-citizen students. [161]

b. Increasing Public Confidence and Voter Turnout

Proponents of the voter ID law argued that such laws fostered public confidence in election integrity and increased voter turnout. However, there was no credible evidence to support (a) that voter turnout was low because of any lack of confidence in the elections, (b) that a photo ID law would increase confidence, or (c) that increased confidence would translate to increased turnout. [162] Senators Fraser and Dan Patrick were unaware of anyone not voting out of concern for voter fraud. [163] Ann McGeehan, who was the Director of the Elections Division at SOS, said the same. [164] She further admitted that implementing the provisional ballot process might even cause voters to lose confidence. [165]

The public confidence argument was, for the most part, premised on the United States Supreme Court's approval of the Indiana photo ID law and implementation of similar laws in other states, along with the increase in voter turnout in the 2008 general election. Representative Anchia noted that the 2008 increase in voter turnout was nationwide (not just in photo ID law states) and was in response to Barack Obama's presidential campaign rather than any photo ID law. [166] Defendants' expert, Dr. M.V. (Trey) Hood, testified that he linked the 2008 increased voter turnout to the unprecedented Obama campaign. [167] His study of the voter turnout in Georgia in the 2012 election reflected an across-the-board suppression of turnout, which he concluded was caused by implementation of that state's photo ID law. [168] He did not do a study of Texas for this case. [169]

Dr. Burden testified that SB 14 would decrease voter turnout because it increases the cost associated with voting. Because the poor are more sensitive to cost issues, [170] he concluded that SB 14's terms raising the cost of voting would almost certainly decrease voter turnout, particularly among minorities. [171] Dr. Hood admitted ***656** that it was a firmly established political science principle that increased costs of voting are related to decreased turnout, which could be expected with respect to the cost of obtaining an EIC unless some other factor outweighed it for the voters. [172]

Defendants presented evidence that public opinion polls showed that voters overwhelmingly approved of a photo ID requirement. [173] Polls showed approval ratings as high as 86% for Anglos, 83% for Hispanics, and 82% for African–Americans in 2010. [174] In similar polls conducted in 2011 and 2012, those numbers dropped, but were still over 50%. [175] As Senators Davis and Ellis and Representative Anchia pointed out, Defendants have not shown that those voters were informed of (1) the low rate of in-person voter impersonation fraud, (2) the limited universe of documents that were considered to be qualified photo ID under SB 14, or (3) the plight of many qualified and registered Texas voters who did not have and could not get such ID without overcoming substantial burdens. [176] So while the Court is aware that legislators should be responsive to their constituents, the particular polls were not formulated to obtain informed opinions from constituents and, more importantly, polls

cannot justify actions by the legislature which have the effect of infringing the right to vote in violation of the United States Constitution or the VRA.

Defense counsel's questioning noted that there have been few voter complaints since SB 14 was implemented in November 2013, indicating, they argue, that the electorate is not unhappy with SB 14 as implemented. [177] However, the demographics of those likely to be burdened by SB 14—the poor, minorities, disabled, and elderly—are persons unlikely to have the wherewithal to register a complaint in any officially meaningful way. The evidence does not support the proponents' assertions that SB 14 was intended to increase public confidence or increase voter turnout. While those justifications are appropriate concerns of a state, the Court finds that the justifications do not line up with the content of SB 14.

c. Racial Discrimination

Senators Davis, Ellis, and Uresti and Representatives Anchia and Veasey testified that SB 14 had nothing to do with voter fraud, but instead had to do with racial discrimination. [178] The legislature had been working on the voter ID issue for six years and Representative Martinez–Fischer had done quite a bit of fact-checking and had found that there was no substance to the claims of in-person voter impersonation fraud, non-citizen voting, or improving election integrity related to the terms of the photo ID bills. [179] Representative Anchia had served on a number of voter ID-related committees and was Chair of the Subcommittee to Study Mail–In Ballot Fraud and Incidence of Non-citizen Voting. He testified that they had done quite a bit of work in interim sessions and issued a report in 2008 showing that ***657** the incidence of non-citizen voting was very low. [180]

Other issues were also investigated in committee hearings, with testimony from state agencies, state officials, advocacy groups, and the Attorney General's office. It was clear that in-person voter impersonations were almost non-existent. [181] It was also clear that a photo ID law would hurt minorities.

> In our subcommittee, gosh, we went down to Brownsville and we took testimony on the very issue that you heard from Mr. Lara earlier, which was people—a lot of people, especially in rural areas or along the border who were birthed by midwives or were born on farms, didn't have the requisite birth certificates and were in limbo. We took a ton of testimony at UT Brownsville on that, and that was an issue of concern. [182]

Contrasting the legislature's willingness to barrel-through a voter ID law despite the lack of need and countervailing evidence, Representative Anchia noted that critically important issues such as the $27 billion budget shortfall and transportation funding did not get a select committee or an exemption from the two-thirds rule. [183] He stated, "I have not seen a bill other than this one get that kind of procedural runway." [184]

Senator Uresti complained that he had made it clear that SB 14 would hurt minorities and the legislators knew that when they passed it. [185] He testified that he knew his district's racial and ethnic makeup (many of his constituents live in colonias), and he knew the impact that SB 14 would—and was intended to—have on those voters. From the terms of the law and the way it was passed, he firmly believes that it had a discriminatory purpose. [186]

Representative Smith expected that SB 14 might cause up to 700,000 voters to be without necessary ID. [187] After acknowledging that those affected voters would most likely be poor, he stated,

> You know, to me, again, if the question is are the people that do not have photo IDs more likely to be minority than those that are not, I think it's a matter of common sense that they would be. I don't need a study to tell me that. [188]

Bryan Hebert, Deputy General Counsel in the Office of the Lieutenant Governor, also assumed that the poor, who would be most affected by the law, would be minorities. [189] Senator Ellis testified that all of the legislators knew that SB 14, through its intentional choices of which IDs to allow, was going to affect minorities the most. [190] Despite the evidence against SB 14 being a necessary or appropriate change in the law, Representative Smith said, "I think every Republican member of the legislature would have been lynched if the bill had not passed." [191] It is clear that the ***658** legislature knew that minorities would be most affected by the voter ID law. However, the political lives of some legislators depended upon SB 14's success. [192]

The fact that past discrimination has become present in SB 14 is apparent from both the obvious nature of the impact and the manner in which the legislature chose options that would make it harder for African–Americans and Hispanics to meet its requirements. This was demonstrated by the analysis of Dr. Alan Lichtman, Distinguished Professor of History at American University, who is an expert in quantitative and qualitative historical analysis of voting, political, and statistical data. His report documents "intentional discrimination against minorities to achieve a partisan political advantage." [193] Dr. Davidson and Mr. Korbel echo Dr. Lichtman's opinions.

Dr. Lichtman analyzed the extraordinary procedural history of SB 14, described above. He noted that since 1981, the Senate has only made an exception to its two-thirds rule for two categories of legislation: redistricting and voter ID bills. [194] The Texas Legislature accepted amendments that would broaden Anglo voting and rejected amendments that would broaden minority voting. For instance, the provision allowing the use of concealed handgun permits favors Anglos because they are disproportionately represented among those permit holders. [195] Likewise, Anglos are a disproportionate share of Texas's military veterans of voting-age population relative to African–Americans and Hispanics. [196] Anglos are also disproportionately represented among those using mail-in ballots, which were left untouched by SB 14. [197] When the legislature rejected student IDs, state government employee IDs, and federal IDs, they rejected IDs that are disproportionately held by African–Americans and Hispanics. [198]

Dr. Lichtman also pointed out that SB 14's sponsors' justifications for the bill were disingenuous. They claimed to have modeled SB 14 after Indiana and Georgia laws but had substantially departed from those laws. [199] Bryan Hebert, with the Lieutenant Governor's office, expressly warned them that SB 14 would likely fail any preclearance standard without the additional methods of proving identity found in Georgia's law. [200] The legislature also knew that a disproportionate number of African–Americans and Hispanics had their driver's licenses suspended under various law enforcement programs that involved payment of surcharges before the license-holder could regain the license. [201] Those minority drivers, disproportionately poor, would have a more difficult time getting their licenses reinstated, and the legislature rejected measures to warn people that tendering their license in a suspension action might leave them without ID necessary to vote. [202]

***659** Dr. Lichtman opined that in passing SB 14, the legislature passed a measure that minimized minority voting while doing little to address the stated purposes of fighting in-person voter impersonation fraud and non-citizen voting. [203] Consequently, the record as a whole (including the relative scarcity of incidences of in-person voter impersonation fraud, the fact that SB 14 addresses no other type of voter fraud, the anti-immigration and anti-Hispanic sentiment permeating the 2011 legislative session, [204] and the legislators' knowledge that SB 14 would clearly impact minorities disproportionately and likely disenfranchise them) shows that SB 14 was racially motivated.

B. The Result

1. Expert Analysis Demonstrates the Magnitude of the Harm

a. The No–Match List and the Number and Race of Burdened Registered Voters.

Several experts were tasked with determining the number of registered voters who might lack SB 14 ID, along with their demographic characteristics. [205] Based on the testimony and numerous statistical analyses provided at trial, this Court finds that approximately 608,470 registered voters in Texas, representing approximately 4.5% of all registered voters, lack qualified SB 14 ID and of these, 534,512 voters do not qualify for a disability exemption. Moreover, a disproportionate number of African–Americans and Hispanics populate that group of potentially disenfranchised voters.

Dr. Stephen Ansolabehere, professor of Government at Harvard University, performed an extensive match of various databases to arrive at the figures set out above, which is referred to as the "No–Match List." First, he determined which of the 13.5 million voters in Texas's voter registration database, the Texas Election Administration Management System (TEAM), lacked SB 14 ID. He did this by comparing individual TEAM voter records with databases containing the records of those who possessed SB 14 ID—current DPS—issued Texas driver's licenses, Texas personal ID cards, EICs, Texas concealed handgun licenses, United States passports, citizenship certificates, and military photo IDs—to arrive at a list of voter records that did not match with any SB 14 qualified photo ID. [206]

Dr. Ansolabehere "scrubbed" the list by removing entries that appeared to be duplicates and those appearing in other databases that identified persons who were deceased and who had relocated (potentially ***660** out of state). He also removed voters identified as inactive, [207] and those who were eligible for SB 14's disability exemption to further ensure that he was counting only those who had no alternative for voting other than with a qualified SB 14 ID. All of these matches were performed with algorithms designed to address different name spellings and the use of nicknames or other variations in the way individuals are identified or would be input into a database. He concluded that approximately 608,470 voters in the TEAM database lack qualified SB 14 ID. [208]

Plaintiffs also offered the testimony of Dr. Michael Herron, Professor of Government at Dartmouth College, who is an expert in database analysis and statistical methods and who also performed a series of database matches. Dr. Herron described his methodology in much the same terms as did Dr. Ansolabehere. Both experts had to write codes so that the fields of the respective databases were compared correctly, even though the databases were formatted differently. The match was programmed so that entries like "last name," "social security number," and "Texas driver's license number" were each compared to the corresponding field across databases. Dr. Herron's results were highly consistent with Dr. Ansolabehere's results, confirming that the coding and algorithms used in the matching methodology were consistent with the demands of the scientific field. [209]

Defendants challenged Dr. Ansolabehere's findings by arguing that he failed to remove felons and voters who subsequently re-registered in another state. There was evidence that the SOS purges the TEAM database on a daily basis for felons, and Dr. Ansolabehere testified that recent data from both the Pew Research Center and various secretaries of state established that the number of voters who may have re-registered in another state is extremely small—less than one percent. [210] Additionally, Dr. Ansolabehere removed the records of voters who filed a change of address form with the post office. [211]

Defendants' expert, Dr. Hood, who did not perform a match himself, criticized the Plaintiffs' No–Match List because, according to his analysis, 21,731 of the individuals on the No–Match List voted in the elections held in the Spring of 2014, several weeks

or months after the data exchange offered by the parties for analysis. However, some of these votes were cast by mail, which does not require a qualified SB 14 ID, and some of these individuals may have obtained SB 14 ID in the interim.

b. The Demographic Characteristics of the No–Match List Demonstrate the Impact on Minorities.

Texas does not maintain racial or ethnic data in its voter registration list and while DPS forms requested this information, the form did not offer applicants the choice of "Hispanic" until May of 2010.[212] This rendered all self-reported ethnicity data "anomalous and highly misleading."[213] To ***661** compensate for the state's failure to collect reliable data on this issue, Dr. Ansolabehere relied on four complementary and widely accepted methodologies used in the social sciences for geocoding[214] the No–Match List and determining its racial makeup.

Dr. Ansolabehere (1) conducted an ecological regression analysis, (2) performed a homogenous block group analysis, (3) compared data to a Spanish Surname Voter Registration list (SSVR),[215] and (4) consulted Catalist LLC, an election data utility company. All four methods yielded equivalent results.

Dr. Ansolabehere's first method, an ecological regression analysis, measured the correlation between his No–Match List and race. Using this method, which is often used in political science studies, Dr. Ansolabehere compared individuals in his No–Match List with the racial composition of Census areas.[216] Dr. Ansolabehere concluded that Hispanic registered voters are 195% and African–American registered voters are 305% more likely than Anglo voters to lack SB 14 ID. Such racial disparities are statistically significant and "highly unlikely to have arisen by chance."[217]

Dr. Ansolabehere's homogenous block group analysis corroborated his initial finding as to racial disparities. According to this method, Dr. Ansolabehere assigned each of his No–Match voter records to its corresponding 2010 Census block group. Relying only on those block groups reported to be homogenous, he inferred the racial composition of those voters. Dr. Ansolabehere concluded that Hispanic registered voters are 177% and African–American voters are 271% more likely than Anglo voters to lack SB 14 ID. These racial disparities are statistically significant.

Assigning his data the ethnicity information used in the SSVR, Dr. Ansolabehere found that 5.8% of all SSVR voters lacked qualified SB 14 ID compared to 4.1% of non-SSVR registered voters—a pool including Anglos, African–Americans and all other races.[218] This 1.7% difference is statistically significant."[219]

Last, Dr. Ansolabehere compared his No–Match List to race estimates maintained by Catalist LLC. Catalist is a private company that maintains demographic information based on a statistical model provided by its vendor, CPM Technologies.[220] The data assigns demographic characteristics to individuals referencing the person's name in combination with their location.[221] Catalist data on ethnicity estimates are widely used in academic research and are considered highly reliable.[222] According to Dr. Yahir Ghitza, Catalist's Chief Scientist, "[f]or records ***662** with the highest race confidence scores, Catalist has found that CPM Technologies' predictions match the voter's self-reported race with 90% accuracy or greater in most cases."[223] Relying on this data, Dr. Ansolabehere concluded that Hispanic registered voters are 58% more likely and African–American registered voters are 108% more likely than Anglo voters to lack qualified SB 14 ID.[224]

Defendants challenged Dr. Ansolabehere's findings by pointing out that the Catalist analysis misclassified the race of six Plaintiffs, suggesting that the overall results were thus biased in favor of Plaintiffs. As Dr. Ansolabehere explained, the effect of misclassifications in this analysis is counter-intuitive. Both Dr. Ansolabehere and Dr. Ghitza testified that misclassification

of individuals on the No–Match List would actually bias in favor of Defendants. "It's well known in statistics that if you have measurement error in a classification variable such as race it will bias toward finding no effect, bias toward finding nothing, no difference across groups." [225] Defendants did not challenge that statistical concept.

Dr. Herron also conducted various statistical analyses to determine the racial composition of registered voters lacking SB 14 ID. He based his analyses on two algorithms, one provided by the Plaintiffs and the other by the Defendants. Notwithstanding the different methods, his results were effectively the same as those of Dr. Ansolabehere [226] —the possession rate of qualified SB 14 ID among Anglo registered voters is higher than that of African–American and Hispanic voters. Dr. Herron also conducted his own ecological regression analysis and homogenous block group analysis on Dr. Ansolabehere's No–Match List and his findings were essentially the same as those of Dr. Ansolabehere. [227] A third expert, Dr. Coleman Bazelon, [228] also testified that the conclusions resulting from his own homogenous block group analysis were "highly consistent" with those of Dr. Ansolabehere. [229]

Added to this array of experts, methodologies, and consistent results are the field survey findings of Drs. Matthew Barreto and Gabriel Sanchez. Dr. Barreto, a Professor of Political Science at the University of Washington, and Dr. Sanchez, an Associate Professor of Political Science at the University of New Mexico, are experts in survey research, particularly in the field of racial and ethnic politics. [230] They conducted a four-week survey of over 2,300 eligible voters in Texas, [231] and concluded that ***663** African–American eligible voters are 1.78 times more likely to lack qualified SB 14 ID than Anglo eligible voters. [232] The observed racial disparity was magnified with Hispanic eligible voters as they are 2.42 times more likely to lack qualified SB 14 ID compared to Anglo eligible voters. [233] In addition, Drs. Barreto and Sanchez observed an even greater impact when analyzing the smaller universe of Hispanic and African–American eligible voters who were also registered to vote. [234]

Dr. Hood's evaluation of Drs. Barreto and Sanchez's field survey contained several significant methodological oversights. For example, Dr. Hood failed to properly classify certain responses, resulting in a miscount, [235] and did not properly weight his reconstruction of Drs. Barreto and Sanchez's survey data to account for disparities within the African–American and Hispanic populations as to income, education, gender, and age—a necessary step to ensure the survey's accurate reflection of the population as a whole. [236] On cross-examination, Plaintiffs pointed out a multitude of errors, omissions, and inconsistencies in Dr. Hood's methodology, report, and rebuttal testimony, which Dr. Hood failed to adequately respond to or explain. [237] The Court thus finds Dr. Hood's testimony and analysis unconvincing and gives it little weight. [238] Even with its flaws, Dr. Hood's result still confirmed Plaintiffs' experts' conclusions regarding a statistically significant disparity in the lack of qualified SB 14 ID among African–American and Hispanic registered voters as well as eligible voters relative to the Anglo population. [239]

Accordingly, the Court credits the testimony and analyses of Dr. Ansolabehere, Dr. Herron, and Dr. Barreto, all of whom are impressively credentialed and who explained their data, methodologies, and other facts upon which they relied in clear terms according to generally accepted and reliable scientific methods for their respective fields. The Court finds that approximately 608,470 registered voters in Texas lack proper SB 14 ID. The Court also finds that SB 14 disproportionately impacts both African–Americans and Hispanics in Texas.

c. The No–Match Numbers Matter

When 4.5% of voters are potentially disenfranchised, election outcomes can easily change. According to Councilman Daniel Guzman, in 2013, four out of six councilmembers up for election in the small town of Ed Couch, Texas, won by a margin of

50 votes or less.[240] As will be explained later, Councilman Guzman took many individuals who were not allowed to vote to the local DPS office and they were unable to get SB ***664** 14 ID.[241] The Court finds that the number of voters potentially disenfranchised by SB 14 is significant in comparison to the number of registered voters in Texas.

d. The Discriminatory Effect

Evidence shows that a discriminatory effect exists because: (1) SB 14 specifically burdens Texans living in poverty, who are less likely to possess qualified photo ID, are less able to get it, and may not otherwise need it; (2) a disproportionate number of Texans living in poverty are African–Americans and Hispanics; and (3) African–Americans and Hispanics are more likely than Anglos to be living in poverty because they continue to bear the socioeconomic effects caused by decades of racial discrimination.

SB 14 Disproportionately Burdens the Poor. The draconian voting requirements imposed by SB 14 will disproportionately impact low-income Texans because they are less likely to own or need one of the seven qualified IDs to navigate their lives. A legacy of disadvantage translates to a substantial burden when these people are confronted with the time, expense, and logistics of obtaining a photo ID that they did not otherwise need. Drs. Barreto and Sanchez's field survey found that 21.4% of eligible voters who earn less than $20,000 per year lack a qualified SB 14 ID. That number compares to just 2.6% of eligible voters who earn between $100,000 and $150,000 per year.[242] In other words, lower income Texans are over eight times more likely to lack proper SB 14 ID.

In addition, Drs. Barreto and Sanchez also found that lower income respondents were the most likely to lack underlying documents to get an EIC—a finding that is echoed by various other trial experts and witnesses. Also, 22.5% of those earning less than $20,000 annually believed that they had a qualified SB 14 ID when, in fact, they did not—making it more likely that poll workers will be forced to turn away more low-income voters than others on election day.[243]

Dr. Jane Henrici, an anthropologist and professorial lecturer at George Washington University, testified at trial and offered an expert report to contextualize why lower income Texans are less likely to have a qualified SB 14 ID. First, Dr. Henrici found that lower income Texans have difficulties obtaining, keeping, replacing, and renewing government-issued documentation. Dr. Henrici explained:

> [U]nreliable and irregular wage work and other income ... affect the cost of taking the time to locate and bring the requisite papers and identity cards, travel to a processing site, wait through the assessment, and get photo identifications. This is because most job opportunities do not include paid sick or other paid leave; taking off from work means lost income. Employed low-income Texans not already in possession of such documents will struggle to afford income loss from the unpaid time needed to get photo identification.[244]

Second, the lack of reliable income leaves many lower income Texans without access to credit and other formal financial services.[245] This, in turn, allows poor Texans to go without the types of photo ID that SB 14 requires.[246] Dr. Henrici testified that they may not have bank accounts and their checks are likely cashed by their local grocer who knows them personally.[247]

***665** Last, Dr. Henrici concluded that many lower income Texans do not own vehicles or own vehicles that are unreliable, which illustrates why low-income Texans may not have an incentive to renew their driver's license—an adequate SB 14 ID. [248]

The poor also feel the burden most acutely. The concept is simple—a $20.00 bill is worth much more to a person struggling to make ends meet than to a person living in wealth. Economists call this concept the diminishing marginal utility of wealth. [249] Mrs. Bates, an African–American retiree living on a $321.00 monthly income, described it well. She testified that it took a while to save the $42.00 she needed to pay for her Mississippi birth certificate because "when you're getting a certain amount of money, you're going to put the money where you feel the need is most urgent at the time ... I had to put the $42.00 where it was doing the most good. It was feeding my family, because we couldn't eat the birth certificate ... [a]nd we couldn't pay rent with the birth certificate, so, [I] just wrote it off." [250] Mrs. Bates's dire circumstances illustrate how SB 14 effectively makes some poor Texans choose between purchasing their franchise or supporting their family.

Thus, based on Drs. Barreto, Sanchez, and Henrici's findings, which confirm the demographic findings of the No–Match List, this Court finds that SB 14 will disproportionately impact lower income Texans because they are less likely to own and need proper SB 14 ID, because they are less likely to have the means to get that ID, and because the choice of how they spend their resources lacks the voluntary quality of most choices.

The Poor Are Disproportionately Minorities. As already discussed, and as confirmed by multiple methods, the persons on the No–Match List are disproportionately African–American or Hispanic. Members of those minority groups are significantly more likely to lack qualified photo ID, live in poverty (lacking the resources to get that ID), live without vehicles for their own transportation to get to ID-issuing offices, and live substantial distances from ID-issuing offices.

Minorities Live in Poverty Because of Discrimination. African–Americans and Hispanics are substantially more likely than Anglos to live in poverty throughout Texas because they continue to bear the socioeconomic effects caused by decades of discrimination. As Dr. Burton stated in his expert report:

> Since the State's admission to the Union, Texas, as well as its political subdivisions, have engaged in racial discrimination against its African–American and Latino citizens in all areas of public life ... [t]he foreseeable result of such past and present discrimination is the substantial inequalities that exist between minority and Anglo voters in the state. [251]

Discrimination against Texas's African–Americans and Hispanics can be found in the fields of employment and income. The latest U.S. Census figures show that 29% of African–Americans and 33% of Hispanics in Texas live in poverty—in other words, nearly one in every three. On the other hand, at 12%, just one in every ten Anglos in Texas lives in poverty. [252]

***666** Similarly, the unemployment rate for Anglos is 6.1% compared to 8.5% for Hispanics and 12.8% for African–Americans. [253] And the median household incomes for Anglos is $63,393, while it is $38,848 for Hispanics and $37,906 for African–Americans. [254] According to Dr. Burton, these economic disparities continue to this day because employment discrimination persists in Texas. For instance, within the last twelve years, the Texas Department of Health, the Texas Department of Family and Protective Services, the City of El Paso, and the City of Houston have all entered into consent decrees or settlement agreements to redress claims of racial discrimination in employment. [255]

African–Americans and Hispanics also face the adverse effects caused by discrimination in educational institutions. The 1875 Texas constitution required that "[s]eparate schools shall be provided for the white and colored children...." [256] Even after the Supreme Court's landmark 1954 decision in *Brown v. Board of Education,* [257] Texas resisted integration that extended well through the following three decades. [258] Educational achievement gaps between Anglo and both African–American and Latino students continue to plague Texas. According to the U.S. Department of Education, 91.7% of Anglo 25–year–olds in Texas graduated from high school, while 85.4% of African–Americans and 58.6% of Latinos earned a diploma. [259] Likewise, Anglos are significantly more likely to have earned a college degree. The bachelor's degree completion rate for Anglos is 33.7% in comparison to 19.2% for African–Americans and 11.4% for Latinos. [260]

According to Dr. Burton, the performance gaps in Texas could partially be explained by discriminatory disciplinary procedures. In Texas, African–American students are three times more likely to be removed from school for lower-level offenses relative to Anglo students. [261] African–American students were 31% more likely to face a school discretionary action compared to otherwise identical Anglo and even Hispanic students. [262] Such disparities are of great concern because, as Dr. Burton outlined, students who were suspended or expelled have a higher drop-out rate than students who did not face disciplinary action. [263]

The harmful effects of discrimination can also be seen in the field of health. According to the U.S. Centers for Disease Control, African–Americans and Hispanics in Texas are much more likely to report ***667** being in poor or fair health, to lack health insurance, and to have been priced-out of visiting a doctor within the past year. [264] And compared to adult Anglos throughout the state, minorities in Texas experience higher levels of health impairment—particularly those minorities who are low-income. [265] This is a predictable effect of discrimination because health, education, and employment opportunities are all interdependent. [266]

African–Americans and Latinos are less educated because of discrimination, suffer poorer health because of discrimination, are less successful in employment because of discrimination, and are likewise impoverished in greater numbers because of discrimination. Based on this evidence, which Defendants did not contest, this Court finds that SB 14's requirements will fall significantly more heavily on the poor and that African–Americans and Latinos are substantially more likely than Anglos to live in poverty in Texas because they continue to bear the socioeconomic effects caused by more than a century of discrimination.

2. The Plaintiffs Demonstrate the Impact

Plaintiffs assert three general types of injuries associated with the implementation of SB 14: personal, political, and organizational. Those asserting personal injuries include Plaintiffs whose ability to vote has been threatened by SB 14 requirements or those who fear poll workers could keep them from voting because the name on their ID may not be "substantially similar" to that on the voter registration rolls. Those asserting political injuries include those Plaintiffs who state that SB 14 has or will cause their political campaigns to spend additional time, effort, or funding to educate their constituents about SB 14 requirements. Last, those asserting organizational injuries include Plaintiff groups who state that they were forced to divert resources from their core missions to respond to the adverse effect of SB 14 on the people they serve.

a. The Personal Injury Plaintiffs

Fourteen of the twenty-six Plaintiffs assert that SB 14 will: (1) deny them the right to vote; (2) cause them a substantial burden in exercising their right to vote; or (3) require them to vote in an unequal manner. Of those fourteen, nine lack a qualified SB 14

ID—Floyd Carrier, Gordon Benjamin, Ken Gandy, Eulalio Mendez, Jr., Lionel Estrada, Lenard Taylor, Estela Garcia Espinoza, Margarito Martinez Lara, and Imani Clark. Most of these Plaintiffs attempted to obtain, but were unsuccessful in securing, a qualified SB 14 ID because they lacked the underlying documentation required to obtain such forms of identification.

Free EIC is Obscure. Defendants assert that no one is denied the right to vote because SB 14 allows individuals without a qualified photo ID to get a free EIC. The problem is that the implementation of the EIC program has been insufficient. A voter without qualified SB 14 ID must first know that they need such identification to vote. And if they do not have the generally available ID, they must know that an EIC exists before they are able to apply for it. The word is not out. A number of Plaintiffs had not heard of an EIC until ***668** they were deposed—even those who had shown up at the polls and were turned away for not having the necessary photo ID [267] and those who made multiple attempts to obtain DPS-issued photo IDs. [268] And some of those turned away at the polls were not offered a provisional ballot so that they could attempt to resolve the identification issue after election day. [269] For instance, Floyd Carrier was well-known to the election workers at his polling place, but was not offered a provisional ballot and was not permitted to cast a vote. [270] His son went to great efforts to get him an SB 14–qualified photo ID, never learning that an EIC was an option. [271]

No real effort has been made by Texas to educate the public about the availability of an EIC to vote, where to get it, or what is required to obtain it. [272] In order to obtain an EIC, an applicant must provide: (1) documentation of identity, (2) documentation of U.S. citizenship, and (3) a valid Texas voter registration card. [273] An applicant may satisfy the documentation of identity requirement in three ways by: (1) providing one primary form of identification, (2) providing two secondary forms of identification, or (3) providing one secondary form of identification and two supporting identification documents. [274] To prove citizenship, an applicant must provide: (1) a U.S. passport book or card, (2) a birth certificate issued by a U.S. state or the U.S. Department of State, (3) a U.S. Certificate of Citizenship or Certificate of Naturalization, ***669** or (4) an Immigration and Naturalization Service U.S. Citizen ID card. [275] Thus, for the vast majority of applicants who lack a primary form of identification, the only way to prove identity for EIC purposes is through a birth certificate. As of the trial, however, DPS's website failed to identify EIC-only birth certificates as one of the secondary forms of identification. [276]

Underlying Documents are Not Free. Even if the EIC, itself, is issued at no charge, the problem for the registered voters who do not have one of the approved photo IDs is getting the documents that they need to obtain an EIC—the same documents DPS requires for a Texas driver's license. [277] Ordinarily, the easiest and cheapest underlying document is a birth certificate. SB 14 was passed with no provision reducing or eliminating the $22.00–$23.00 fee charged in Texas for a birth certificate despite Senator Davis' warning to the legislature that this would cripple the ability of those without SB 14 ID in their effort to obtain it. [278] The State has since reduced the fee for obtaining a birth certificate (if sought exclusively for an EIC), but that reduced fee of $2.00–$3.00 has not been publicized and the Texas Department of State Health Services (DSHS) forms for requesting birth certificates do not address an EIC-only version. [279]

Mr. Mendez paid $22.00 for his birth certificate because he did not know and was not informed about an EIC birth certificate. [280] Also, as Plaintiffs' individual stories substantiate, the reduced-fee EIC-only birth certificate is not readily available to anyone whose birth has not been registered or if there are inaccuracies on the birth certificate requiring amendment.

Delayed Birth Certificates for Unregistered Births. Plaintiffs testified as to the varied bureaucratic and economic burdens associated with purchasing a proper birth certificate when their births were not registered. Mr. Lara, a 77–year–old Hispanic retiree from Sebastian, Texas, has attempted to locate his birth certificate for more than twenty years. [281] He was born in what he described as a "farm ranch" in Cameron County, Texas. [282] With the help of his daughter, he visited three offices in two counties

but was unsuccessful in locating his birth certificate. [283] Mr. Lara later paid a $22.00 search fee to DSHS to confirm what he already suspected—his birth was never registered. [284] Thus, Mr. Lara must now apply for a delayed birth certificate (using a 14–page packet of instructions and forms) at a cost of $25.00. Additionally, he will have to pay $22.00 for a certified copy of the birth certificate. [285] ***670** He testified that he has twice attempted to apply for the delayed birth certificate to no avail. [286]

Like her brother, Maximina Lara's birth was not registered. [287] Although she currently has a driver's license, it will expire in October 2015, and because of a change in Texas law, she will need to show proof of citizenship to renew her license. Therefore, Ms. Lara will need to obtain a delayed birth certificate at a cost of $47.00, which she cannot afford. And she does not have the underlying documents to get the delayed birth certificate. Similarly, Mr. Carrier was forced to endure an exhaustive course that is further documented below to purchase a delayed birth certificate because he was born at home. [288] This problem is far from unusual.

Amended Birth Certificates to Correct Errors. It is important that birth certificates be accurate in order for individuals to use them to obtain identification. Mistakes tend to crop up on birth certificates of those born at home with the help of midwives and many of those born at home are minorities. [289] Mistakes occur in the names of parents and child, gender of child, date of birth of parents and child, and place of birth. Ms. Gholar, who intends to vote in person as long as she can walk, will be required to hire a lawyer in Louisiana, where she was born, to amend her birth certificate there. [290]

Mr. Carrier, an 84–year–old retiree from China, Texas, was born at home and, with the help of his son, contacted three different counties trying to locate his birth certificate to no avail. [291] He then paid DSHS $24.00 for them to conduct a search for his birth certificate. [292] After twelve weeks, DSHS sent him a birth certificate, but it was riddled with mistakes (his first name was listed as "Florida," his last name was misspelled, and his date of birth was wrong). [293] Mr. Carrier, again with the help of his son, submitted an application to amend his birth certificate which included a $12.00 notary fee. [294] After some months, DSHS contacted him and requested additional documentation to execute the amendment, one of which included the same document he was attempting to obtain in the first place—a birth certificate. [295] Eventually his son received a call from the Texas deputy registrar, who assured him that the matter would be resolved. [296] A week before he was to testify in this case, Mr. Carrier received his amended birth certificate. Unfortunately, the birth certificate still contains the incorrect birth date. [297]

Mrs. Espinoza testified that she did not have a birth certificate until January of ***671** 2014 when Texas Rio Grande Legal Aid paid for the document. [298] The birth certificate contains her maiden name and misstates her date of birth. [299] She must now obtain an amended birth certificate, as well as a copy of her marriage license, to obtain an EIC.

Out–of–State Birth Certificates. Many people living in Texas were born in other states. If they do not have their birth certificate, it can be difficult and costly to obtain one. Mr. Benjamin, a 65–year–old African–American, was unable to afford a certified copy of his birth certificate because Louisiana charged $81.32 to process his online application. [300] He later discovered that Louisiana allowed a relative to request a birth certificate in person at no cost. [301] Fortunately, his sister was able to request his birth certificate on her way to a family reunion in Atlanta, Georgia—a trip he could not make himself. [302]

Mr. Gandy does not have a certified copy of his New Jersey birth certificate. [303] He conducted Internet research to determine what he had to do to get it, but did not order it because the $30.00 fee is "quite a bit of money" for him. [304] This Court heard testimony from other witnesses regarding the difficulty in obtaining identification for individuals born in states outside of Texas. [305]

Suspension of, and Surcharges on, DPS–Issued ID. Mr. Estrada, a 41–year–old Hispanic part-time construction worker from Kenedy, Texas, testified that he has been unable to renew his commercial driver's license (CDL) because he cannot afford the surcharges imposed for failure to comply with financial responsibility laws. [306] He testified that he would have to pay $260.00 a year for the next three years to renew his CDL. [307] To obtain an EIC, he would have to forfeit his CDL, which would threaten his future ability to earn a living as a truck-driver. [308] Mrs. Ramona Bingham went without a Texas driver license for about four years because she could not afford to pay the traffic-related fines. [309]

Dr. Lichtman noted that the suspension of more than a million driver's licenses because of substantial surcharges related to traffic violations disparately burdened African–Americans and Latinos. [310] The legislature rejected amendments that would require the issuance of substitute photo ID if a driver's license was suspended or at least provide notice to the individual that the right to vote was in jeopardy. [311]

Inability to Pay the Costs. Some Plaintiffs testified that they were either unable to pay or that they would suffer a substantial burden in paying the cost associated with getting a qualified SB 14 ID or ***672** the necessary underlying documents. Mr. Mendez testified about his family's "very sad" financial state, explaining that "[e]ach month by the last week there's no food in the house and nothing with which to buy any, especially milk for the children. Then my wife has to go to a place to ask for food at a place where they give food to poor people." [312] Mr. Mendez was embarrassed to admit at trial that having to pay for a new birth certificate was a burden on him and his family. [313] Mr. Lara described his financial situation by stating that "we got each our little ... small amount of cash ... and we try to ... stretch it out as possible by the end of the month, and sometimes we'll make it and sometimes we won't." [314] Ms. Lara described her financial state as both difficult and very stressful. [315]

Travel Required for ID or Underlying Documents. The cost of traveling to a DPS office to obtain SB 14 ID is a particular burden in Texas because of its expansive terrain. Of the 254 counties in Texas, 78 do not have a permanent DPS office. [316] For some communities along the Mexican border, the nearest permanent DPS office is between 100 and 125 miles away. [317] Dr. Daniel G. Chatman, Associate Professor of City and Regional Planning at the University of California, Berkeley, concluded that over 737,000 citizens of voting age face a round-trip travel time of 90 minutes or more when visiting their nearest DPS office, mobile EIC unit, or nearest county office that agreed to issue EICs. [318]

While that number represents only 4.7% of citizens of voting age, for those who do not have access to a household vehicle, 87.6% have that long commute to obtain an SB 14–qualified ID, reflecting an extraordinary burden on the poor. [319] Dr. Chatman's study also concluded that over 596,000 citizens of voting age faced a travel time of at least two hours and over 418,000 faced a commute of three hours or more, which is 54% of those without access to a vehicle. [320] He further testified that the travel burden fell most heavily on poor African–Americans and Hispanics at differential rates that were statistically significant at the very highest level. [321] The travel times would be both burdensome and unreasonable to most Texans—regardless of wealth or income. [322]

Some of the Plaintiffs without SB 14 ID do not have the ability or the means to ***673** drive. [323] Four of them—Ms. Clark, Mr. Gandy, Mr. Benjamin, and Mr. Taylor—rely almost exclusively on public transportation. [324] The lack of personal transportation adds to both the time and the cost of collecting the underlying documents. Mr. Taylor, who was recently homeless, declared that he sometimes cannot afford a bus pass. [325] And for those who can afford the fare, like Mr. Gandy, it can take an hour to reach the nearest DPS office. [326] Others, like Mr. Estrada and Mrs. Espinoza are forced to rely on the kindness of family and

friends to move about town, much less for a 60–mile roundtrip ride to the nearest DPS station. [327] Mr. Lara, who is nearing his eightieth birthday, testified that he has to ride his bicycle when he is unable to find a car ride. [328] And Mr. Carrier, who is in a wheelchair, must rely on others to drive him even to his own mailbox because it is, as is the case with everyone's mailbox in China, Texas, located at the local post office. [329]

DPS, Using Discretion, Can Apply the Burdens Inconsistently. The evidence demonstrated that there are inconsistencies in the enforcement of SB 14 by DPS and other Texas officials. Plaintiffs' likelihood of acquiring qualified photo ID may be determined not by the underlying documents they possess but by the luck of the customer service representative (CSR) they draw during their DPS visit.

Mr. Tony Rodriguez, a DPS senior manager in charge of the EIC program, testified at trial that CSRs and other DPS officials are granted discretion to circumvent the underlying document requirements when granting EICs. [330] He was unable to articulate a protocol as to how and when DPS staff could exercise their discretion. [331] He admitted that there were no written instructions or training materials on the matter. [332] Thus, DPS may grant or reject an EIC application based not on the underlying documentation but rather on the office's location, [333] with little to no consistency.

This may explain Ruby Barber's trip through the system. Mrs. Barber, a 92–year–old woman from Bellmead, Texas, went to DPS to get an EIC but was unsuccessful because she did not have a birth certificate or other required documents. [334] She or her son called the press, and the Waco Tribune ran a story on her difficulties obtaining an EIC. [335] Within a matter of days, without any additional documentation submitted by Mrs. Barber, DPS gave her an EIC, explaining that DPS had found a U.S. Census entry from the 1940s that supported her claim to her identity. [336]

***674 Name Changes and Variations.** Five Plaintiffs possess SB 14 ID, but fear that poll workers could keep them from voting in the future because the name on their ID may not be deemed "substantially similar" to that on the voter registration rolls. These Plaintiffs include: Anna Burns, Koby Ozias, John Mellor–Crummey, Evelyn Brickner, and Maximina Martinez Lara. After marriage, Anna Burns, whose maiden name is Anna Maria Bargas, changed her name to Anna Maria Bargas Burns and that is the name on her driver's license. [337] However, she registered to vote as Anna Maria Burns. [338]

Ms. Lara's only form of SB 14 ID is her driver's license, which states her name as Maxine Martinez Lara. [339] However, Ms. Lara is registered to vote as Maximina M. Lara. [340]

Mr. Mellor–Crummey was concerned that a poll worker would turn him away because he was registered to vote as John M. Mellor–Crummey but the name on his driver license is J M Mellor–Crummey. [341] Mr. Ozias, who is in the process of changing his name, is registered to vote as Stephanie Lynn Dees. [342] Mr. Ozias fears he will be turned away from the polls because, in his words, "I don't really match my photograph and you always get people who just don't like transgender people...." [343]

Commissioner Oscar Ortiz, who asserts a political injury, testified that he had a bit of a problem voting because the name on his driver license and voter registration card do not match—one has Oscar O. Ortiz and the other has Oscar Ochoa Ortiz. [344] In order to vote, he had to sign a substantially similar name affidavit. [345]

The Disability Exemption is Strict. At least four Plaintiffs may qualify for SB 14's disability exemption. Mr. Carrier, Ms. Espinoza, Mr. Mendez, and Mr. Taylor testified that they suffer from a disability. SB 14 provides for a disability exemption

which can be obtained with written documentation from (a) the United States Social Security Administration evidencing the individual's disability or (b) the United States Department of Veterans Affairs evidencing a disability rating of at least 50%. [346] These Plaintiffs were not made aware of this exemption when they went to DPS or other relevant offices. [347] As of January 15, 2014, only 18 voters were granted a disability exemption in Texas. [348]

A Widespread, Practical Problem. The experiences of these Plaintiffs are not unusual. Other than for voting, many of the Plaintiffs in this case do not need a photo ID to navigate their lives. They do not drive (many do not own a car), they do not travel (much less by plane), they do ***675** not enter federal buildings, [349] and checks they cash are cashed by businesspeople who know them in their communities. [350]

At trial, the Court heard from witnesses who painted a compelling picture of the more universal photo ID plight. Kristina Mora worked for a non-profit organization in Dallas, Texas, The Stew Pot, which assists the homeless who are trying to get a photo ID to obtain jobs or housing. She testified that her indigent clients regularly number 50 to 70 per day. [351] Dawn White is the Executive Director of Christian Assistance Ministry (CAM), a church-funded organization in San Antonio, Texas, providing crisis management and ID recovery services. [352] Her clients are the homeless or working poor, 80% of which are African–American and Hispanic. [353] Of approximately 10,000 people eligible for and seeking CAM services regarding obtaining an ID, CAM can only accept 5,000 and is successful in obtaining ID for about 2,500. [354]

According to Ms. Mora, these clients confront four general barriers to getting necessary ID: (1) understanding and navigating the process; (2) financial hardship; (3) investment of time; and (4) facing DPS or any type of law enforcement. [355] The Stew Pot and CAM, exist in part, to help with the first barrier and to an extent, the second barrier. These two witnesses testified that it costs on average, $45.00 to $100.00 per person in document and transportation costs to get a photo ID. [356] It generally takes an individual two trips to obtain the necessary documents to get an ID. [357] Many homeless individuals do not have a birth certificate or other underlying documents because they have nowhere to secure them and they get lost, stolen, or confiscated by police. [358] Furthermore, most are not in communication with their families and cannot get assistance with any part of this process. Ms. Mora testified that it generally takes about one hour to get to DPS or the necessary office, one hour to stand in line and be served, and one hour to return to the shelter. [359] This generally has to be done in the morning because homeless shelters have early afternoon curfews. [360] The $45.00 cost to obtain a Texas ID card is equivalent to what these clients would pay for a two-week stay in a shelter. [361]

The clients served by CAM who work have difficulties obtaining IDs because they cannot get time off of work, they do not have transportation, and a two-hour bus ride to the DPS office is not uncommon. [362] For those who are able to obtain an ID, the process usually takes four to six weeks, but can take much longer. Fear of law enforcement by this population is widespread and justified. [363] Many homeless ***676** people have outstanding tickets that they cannot pay and DPS is a law enforcement office where their names can be checked for outstanding tickets and arrest warrants. [364] Testimony at trial confirmed that DPS took fingerprints for EICs until the SOS asked them to stop. [365] DPS has done nothing to allay public perception that DPS can fingerprint, conduct a warrant check, and arrest EIC applicants. [366]

Despite both Mora and White's expertise in obtaining photo ID for many people every day, they were not aware of the existence of an EIC until they were contacted for this case. [367] Despite Mora's familiarity with the DPS website, she had trouble finding any instructive materials for obtaining an EIC. [368] And the information said nothing about any reduction in the fee for birth

certificates. [369] The EIC, because it requires the same underlying documents, is not easier for the clients to obtain and, because its only use is for voting, it is likely that neither organization will assist their clients in obtaining one. [370]

Alternatives and Choices. Defendants argue that none of the individual Plaintiffs are disenfranchised or substantially burdened because (1) those over 65 or disabled can vote by mail; and (2) any remaining Plaintiffs can get qualified SB 14 ID, but choose not to. Defendants fail to appreciate that those living in poverty may be unable to pay costs associated with obtaining SB 14 ID. The poor should not be denied the right to vote because they have "chosen" to spend their money to feed their family, instead of spending it to obtain SB 14 ID.

Insufficiency of Mail–In Ballots. The evidence also indicates that the choice of using the absentee ballot system is not truly an appropriate choice. At trial, there was universal agreement that a much greater risk of fraud occurs in absentee balloting, where some campaign workers are known to harvest mail-in ballots through several different methods, including raiding mailboxes. [371] Mail-in ballots are not secure and require an application in advance of the election and mailing or returning the ballot before election day. [372]

There was substantial testimony that people want to vote in person at the polls, not even in early voting, but on election day, and they were highly distrustful of the mail-in ballot system. [373] For some African–Americans, it is a strong tradition—a celebration—related to overcoming ***677** obstacles to the right to vote. [374] Reverend Johnson considers appearing at the polls part of his freedom of expression, freedom of association, and freedom of speech. [375]

Nine of the fourteen Plaintiffs are eligible to vote by mail because they are over the age of 65 and/or are disabled, [376] and all but two of the nine expressed a reservation about casting their vote by mail. [377] Even Mr. Gandy, who voted by mail rather than not vote at all, stated that he felt as though he was being treated like "a second-class citizen." [378] He is on the Nueces County Ballot Board, but cannot vote in person. Mr. Benjamin expressed his distrust of voting by mail when he stated that "mail ballots have a tendency to disappear." [379] Calvin Carrier testified that his father's mail often gets lost and his father does not want to rely on a mail-in ballot to exercise his franchise. [380]

In a case in which Defendants claim that voter fraud and public confidence motivated and justified the change in the law, it is ironic that they want the voters adversely affected by that law to vote by a method that has an increased incidence of fraud and a lower level of public confidence.

b. The Political Injury Plaintiffs

Six of the twenty-six Plaintiffs assert a political injury: Congressman Marc Veasey, Constable Michael Montez, Justice of the Peace Penny Pope, Justice of the Peace Sergio de Leon, Commissioner Oscar Ortiz, and Jane Hamilton. Congressman Veasey, who testified that he represents a majority-minority district, believes that SB 14 is a hardship on his constituents and that it requires additional resources, manpower, and time to educate his constituents about the new requirements. [381] Any election campaign must address voter registration, but with the enactment of SB 14, campaigns must now ensure that those who are registered to vote also possess the necessary photo ID to cast their ballots, or they must persuade them to give up the privilege of voting in person and vote by mail—if they are eligible to do so and can timely register for the mail-in ballot. [382] Ms. Hamilton, Congressman Veasey's chief of staff and campaign manager, declared that SB 14 has made her job significantly more difficult as she has screened numerous calls from voters ***678** who did not know how to obtain proper ID and who were overwhelmed by

the process. [383] Constable Montez, Justice of the Peace Pope, Justice of the Peace de Leon, and Commissioner Ortiz all asserted an injury because they anticipated having to spend additional time, effort, and funds to campaign in their upcoming elections.

c. The Organizational Injury Plaintiffs

The last six of the twenty-six Plaintiffs assert an organizational injury. Those Plaintiffs include the League of United Latin American Citizens (LULAC), the Texas Association of Hispanic County Judges and County Commissioners (HJ & C), the Texas League of Young Voters Education Fund (TLYV), the Texas State Conference of NAACP Branches (Texas NAACP), La Union Del Pueblo Entero, Inc. (LUPE), and the Mexican American Legislative Caucus of the Texas House of Representatives (MALC). Like the political injury Plaintiffs, the organizational Plaintiffs assert that they must now expend additional time, effort, and funding in order to educate their constituents about SB 14.

A Texas NAACP representative testified that the organization had to make the most extensive changes ever to its printed voter education materials because of SB 14. [384] In addition, the Texas NAACP had to shift the responsibilities of one of its employees from mostly administrative work to 80% legislative work as a result of SB 14. [385] Similarly, a representative from the TLYV testified that the organization was forced to pivot from its core mission of encouraging young people—and, in particular, young people of color—to engage in civic participation through voting by redirecting resources to print additional marketing materials and by launching the "Got ID Texas Coalition." [386] Almost the entire "get out the vote" mission has changed from focusing on why to vote to how to vote. [387]

LULAC asserts that it is and will be required to expend time, effort, and funds to educate its members about the requirements of SB 14. To that end, LULAC representatives testified in the Texas Legislature, held press conferences, conducted trainings, and sent out various communications to its members regarding SB 14. [388] LUPE asserts that SB 14 caused it to divert resources to educate its constituents on voting requirements. [389] In doing so, LUPE—a non-partisan organization whose mission is to improve the community by encouraging civic engagement—created and distributed flyers and booklets to educate its members and the greater community about SB 14. Thus, according to LUPE's executive director, the organization has been unable to completely fulfill its mission because of SB 14. [390]

Before SB 14, MALC allocated few of its resources to voter education. But since SB 14's adoption, MALC has experienced a radical uptick in the amount of time, effort, and funding to address SB 14's requirements. MALC's executive director stated that the organization now spends approximately 80% of its resources on voter ***679** education, and voting rights issues. [391] As a result, it has been hindered in pursuing its policy goals and initiatives. [392] MALC was also forced to let go of a staff member because of the additional costs. [393] HJ & C also asserts that SB 14 has diverted the organization from its core mission of Hispanic voter turnout because it must now educate its constituents on how to satisfy SB 14 requirements. [394]

d. Plaintiffs' Standing

The Court finds that Plaintiff Jane Hamilton's claimed injury is not the kind of injury that the VRA or the United States Constitution was intended to redress. Her claims are DISMISSED. The Court finds that each of the remaining Plaintiffs has standing to sue and has stated a legal injury sufficient to support his or her respective claims regarding SB 14 requirements.

V.

CHALLENGES TO PHOTO ID LAWS.

This Court does not write on a clean slate, as there are several cases that have addressed challenges to voter photo ID laws on United States constitutional and VRA grounds. Understandably, Defendants rely heavily on the Supreme Court of the United States' *Crawford v. Marion County Election Board* [395] opinion. That case involved a facial challenge to the Indiana voter photo ID law, with the argument that it imposed an unconstitutional burden on the right to vote. The Supreme Court upheld the Indiana law, but it did not hold that all voter photo ID laws are valid. This case is different because the Indiana law is materially different from SB 14, this is an as-applied rather than a facial challenge, there are substantial differences in the evidentiary record developed in this case, and this case includes claims of discriminatory effect, discriminatory purpose, and a poll tax, which were not present in *Crawford.*

Notably, while Defendants claim that SB 14 was modeled after the Indiana law, the Indiana law is more generous to voters. Unlike SB 14, it permits the use of any Indiana state-issued or federal ID and contains a nursing home resident exemption. Furthermore, Indiana is more generous in its acceptance of certain expired ID. [396] Of particular relevance here, Indiana's accommodation of indigents, while requiring an additional trip to the county election office to claim an exemption, does not require an indigent to actually obtain, or pay any fees associated with, a qualified photo ID. [397] This is significant, as demonstrated in this case. There was also a reference in *Crawford* to a "greater public awareness" of the law, which would prompt voters to secure qualified ID, as opposed to a relative dearth of publicity and instruction in Texas. [398]

***680** Even more compelling, however, is the difference in the record developed by the parties. In *Crawford,* the Court was confronted with sparse evidence. An expert report was deemed unreliable and the number of voters potentially disenfranchised in that case was estimated at 43,000 or 1% of eligible voters. [399] Here, Plaintiffs' experts were abundantly qualified, produced meticulously prepared figures regarding voters who lack SB 14 ID, and that number is estimated at 608,470, or 4.5% of registered (not just eligible) voters. [400] Unlike the record in *Crawford,* [401] the experts here provided a clear and reliable demographic picture of those voters based on the best scientific methodology available.

And while the *Crawford* case apparently had no evidence of a single actual voter who was disenfranchised or unduly burdened, [402] this record contains the accounts of several individuals who were turned away at the polls, who could not get a birth certificate to get the required ID, or for whom the costs of getting the documents necessary to get qualified photo ID exceeded their financial and/or logistical resources.

Crawford applied the *Anderson/Burdick* balancing test by which the law's burden on the right to vote is weighed against the state's justifications for the law to see if the law is constitutional. The differences in the particular voter ID law and the evidence between this case and *Crawford* affect the weight of the burden side of the *Anderson/Burdick* calculus. On the justification side, Texas relies on two of the four justifications discussed in *Crawford:* (1) detecting and deterring voter fraud; and (2) increasing public confidence in elections. There is no question these are legitimate legislative interests. It is this Court's task to make the "hard judgment," [403] based on the record provided, of how to navigate the intersection of the individual's fundamental right to vote and the state's obligation to ensure the integrity of elections.

The Eleventh Circuit's decision in *Common Cause/Georgia v. Billups* (*Common Cause III*), [404] which addressed the Georgia voter photo ID law, is similarly distinguishable. Like Indiana's law, the Georgia law is substantially more liberal than SB 14. It

permits the use of IDs issued by the federal government (and its branches or departments) as well as those issued by ***681** the State of Georgia (and any of its political subdivisions, such as counties, municipalities, boards, and authorities). It also includes certain employee badges and tribal IDs. [405]

Like the Supreme Court in *Crawford,* the Eleventh Circuit applied the *Anderson/Burdick* balancing test. And, as in *Crawford,* the *Common Cause III* court found the evidence regarding the burden on voters to be fatally insufficient. Instead of determining how many registered voters had no qualifying ID, the plaintiffs produced a list of registered voters who had no qualifying ID *issued by the Department of Driver Safety.* Because the Georgia law includes a number of other qualifying IDs, databases for which had not been tested against the registered voter list, the resulting number was not probative of the number of registered voters who might not have ID. [406] Furthermore, there was no evidence of any particular voters who were unable to obtain, or were substantially burdened in getting, a qualifying ID. [407]

The Texas law here is far more restrictive and the evidence is far more robust—both with respect to the integrity of the No–Match List and with respect to individual voters who face substantial, and perhaps insurmountable, burdens in obtaining the necessary documents to vote in person.

The Tennessee voter photo ID law was challenged in *Green Party of Tennessee v. Hargett* [408] under only the First and Fourteenth Amendments. This recent decision addressed whether a preliminary injunction should issue. The Court recognized that the plaintiffs had raised substantial issues, but it denied the preliminary injunction because the plaintiffs chose not to submit any evidence in support of the issues they had raised. [409]

Frank v. Walker FN [410] involves the Wisconsin voter photo ID law. Wisconsin's voter photo ID law is the most similar to SB 14, including the requirement of presenting to the Department of Motor Vehicles certain underlying documents in order to obtain a free state photo ID card. However, it includes two categories of photo ID that Texas does not: an ID issued by a federally recognized Indian tribe in Wisconsin and an ID issued by an accredited Wisconsin university or college. The trial court struck down this slightly more liberal law, but the Seventh Circuit reversed. [411]

The trial court found that the claimed purpose of preventing in-person voter impersonation fraud was very weak. The trial court found no evidence that such fraud was much of a problem, perhaps because the risk/benefit of the crime prevents it from being a rational goal and because it is not easy to commit. [412] Existing measures, including significant criminal penalties, were held to provide any necessary deterrence, particularly given that a successful perpetration of the fraud would net only a single additional vote, unlikely to sway an election. [413]

There was no empirical evidence to support the claim that a voter photo ID law would increase public confidence in elections. [414] The trial court stated that the ***682** public may perceive the state's conduct—of choosing to combat voter fraud by raising substantial obstacles to voting—as projecting a much larger problem than there is, thereby undermining confidence. [415] Further, the law did nothing to boost confidence among those individuals the law would disenfranchise or put to unnecessary trouble. The trial judge found unpersuasive the state's goals of detecting and deterring other voter fraud and promoting orderly election administration and accurate recordkeeping. [416]

The trial judge weighed those weak justifications against the same types of burdens evidenced here: (a) the challenge of navigating the process so as to understand the requirements; (b) the cost and difficulty of obtaining underlying documents that are required to support an application for a free election ID; (c) the distance between voter residences and the offices that can issue the election ID and the special trip needed, often without ready access to transportation, for the exclusive purposes of

proving up the right to vote; and (d) the fact that the number of voters potentially disenfranchised were certainly sufficient to sway elections. [417] The trial judge in *Frank* found that the Wisconsin voter photo ID law was an unconstitutional burden on the right to vote.

The *Frank* trial court also found that the Wisconsin voter photo ID law violated Section 2 of the VRA because the burdens of the law disproportionately impacted Black and Latino voters and the law suppressed those minority voters in part because they are disproportionately impoverished due to a historical legacy of past, combined with present, discrimination. [418] The evidence and arguments in the *Frank* case are similar to those presented here.

The trial court permanently enjoined the implementation of the Wisconsin photo ID law, but on appeal, the Seventh Circuit, citing *Crawford,* reversed. This Court notes several distinguishing factors between this case and the Seventh Circuit's view of the facts in *Frank,* including: evidence before this Court regarding the attempt by Plaintiffs to overcome the multiple obstacles to obtaining ID, such as the State's determination of location and hours of ID-issuing offices, the strict requirements regarding underlying documentation necessary to apply for IDs, and the cost involved with obtaining those underlying documents (rather than Plaintiffs appearing "unwilling to invest the necessary time"); and uncontroverted record evidence regarding the extensive history of official discrimination in Texas and the extraordinary legislative history of SB 14. In addition, the Supreme Court's determination that another state's law is constitutional in response to a facial challenge does not govern this as-applied challenge to SB 14. In sum, this record is compelling in detailing how SB 14's particular terms are functionally preventing motivated and historically faithful voters from casting their ballots in person at the polls.

In Pennsylvania, the focus of *Applewhite v. Commonwealth (Applewhite I)* [419] was on the initial implementation of the voter photo ID law. In particular, the question was whether the voters had adequate access to the free ID that the law provided to those who did not have any other qualifying ID. The Pennsylvania Department of Transportation was requiring an original or certified copy of a birth certificate or its ***683** equivalent, along with a social security card and two forms of documentation showing current residency. [420] It was clear that some qualified voters would be unable to meet these requirements because they either did not have an adequate opportunity to become educated about the requirements and navigate the process or, because of age, disability, and/or poverty, they would be unable to meet the requirements in time for the upcoming election. [421]

The Supreme Court of Pennsylvania, over two dissenting opinions that called for an immediate imposition of injunctive relief against the photo ID law's implementation, remanded to the trial court for a determination of whether the flaws in implementation could be cured prior to the election. [422] Finding that they could not, the trial court entered a limited preliminary injunction against enforcement of the law until such time as all qualified voters could have a reasonable opportunity to obtain a free identification without application requirements that would have the effect of disenfranchising those voters. [423] While that court did not enjoin poll workers from requesting to see photo ID, they were enjoined from prohibiting a voter from casting a ballot without that ID. [424]

That decision was made on a partial record addressing the implementation of the voter photo ID law prior to the November 2012 election. Subsequently, the trial court permanently enjoined the law on state grounds not present here, which require that a registered voter have liberal access to his or her right to vote. [425] Among other reasons, the court held that there was no substance to Pennsylvania's claim that photo ID was necessary to combat in-person voter impersonation fraud because there was no evidence that such fraud was a real problem. [426] The court also found that the voter ID law would not increase voter confidence in election integrity because of the numbers of qualified, but disenfranchised, voters who would be turned away at the polls. [427] The free voter ID cards were not being issued at expected levels, and thus they were insufficient to offset the

vast numbers of registered voters who were disenfranchised by the law and may not know about the free IDs or be able to get them. [428]

The Tenth Circuit, in *ACLU of New Mexico v. Santillanes,* [429] considered a federal equal protection challenge to a city charter's photo ID law, which required "one current valid identification card containing the voter's name and photograph." [430] There, the list of acceptable IDs was non-exclusive, and included any government-issued ID, student ID, credit or debit cards, insurance cards, union cards, and professional association cards. No address or expiration date was required. In the absence of sufficient identification, the voter could cast a provisional ballot, supported by affidavit, with ten days to cure. ***684** Moreover, a free ID was available from the city clerk's office (even on the day of the election and each of the following ten days) with no evidence of the need for costly or difficult-to-obtain underlying documentation. [431]

In relevant part, the court determined that the law was not unconstitutionally vague and survived the *Anderson/Burdick* balancing test. While the court gave significant weight to the city's desire to prevent in-person voter impersonation fraud, it noted that there was insufficient evidence to support the challengers' assertion that there was voter confusion because of lack of education. In the final analysis, the court appeared to rely heavily on the liberality of the requirements and the measures in place to ensure that all voters could obtain a truly free voter certificate at a conveniently located office.

Finally, SB 14 itself was previously considered by a three judge court in the District of Columbia pursuant to Texas's prior preclearance requirement. [432] While the Court is fully cognizant that the resulting opinion was vacated when the Supreme Court "invalidated the Section 4(b) preclearance coverage formula of the VRA", [433] and while the burden of proof in that case was on the State and retrogression was the standard, it is instructive that the court found that SB 14 weighs more heavily on the poor, who are more likely to be minorities. [434] "A law that forces poorer citizens to choose between their wages and their franchise unquestionably denies or abridges their right to vote." [435]

VI.

DISCUSSION

A. SB 14 Places an Unconstitutional Burden on the Right to Vote—1st and 14th Amendment Claims [436]

The individual's right to vote is firmly implied in the 1st Amendment of the United States Constitution [437] and is ***685** protected as a fundamental right by both the Due Process and Equal Protection Clauses of the 14th Amendment. [438] An equal protection challenge applies either when a state "classifies voters in disparate ways, or places restrictions on the right to vote." [439] It is the restriction on the right to vote that applies here. And while the right to vote is not absolute, [440] the state may not burden it unduly.

1. The Test For Evaluating the State's Interest Against the Individual's Right

The determination of what is an undue burden is made by applying one of three tests formulated to calibrate the respective interests of individual voters against the state in a constitutional dispute. [441] If the burden is severe, such that the individual loses the ability to vote, for instance, the standard of review is one of strict scrutiny. [442] Strict scrutiny requires courts to review the

restriction to assure that it is "narrowly drawn to advance a state interest of compelling importance." [443] Plaintiffs concede, and the Court finds, that the burden SB 14 imposes on Texas voters is not severe as that term is used in this constitutional analysis.

On the opposite end of the spectrum are those regulations that do not treat individuals differently and do not impose much of a burden at all. In those cases, the courts apply a rational basis test. [444] That test does not apply here because a burden on the right to vote, which is preservative of other rights, [445] implicates heavier burdens than the rational basis test will accommodate. [446]

Here, Plaintiffs assert a substantial, albeit not severe, burden on their right to vote. To evaluate claims in this middle ground, the Court applies the *Anderson/Burdick* balancing test as the standard of review. [447] The balancing test is articulated in *Burdick* as follows:

> A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," ***taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."*** [448]

***686** In other words, the Court must "determine the legitimacy and strength of each of [the State's] interests" [449] and the extent to which those particular interests cannot be achieved without imposing the particular resulting burden on Plaintiffs' right to vote. [450]

2. How to Apply the Balancing Test

The question is whether the State's interests, including detecting and preventing voter fraud, preventing non-citizen voting, and fostering public confidence in election integrity, justify the specific burdens that are imposed on voters who are required to produce one of the limited SB 14–qualified photo IDs in order to vote in person at the polls. There is some question whether, when assessing this balance, a court is to consider the magnitude of the law's burden on the electorate generally or on a specific subgroup. [451] In other words: Does the burden imposed by having to produce an SB 14–qualified ID have to unduly burden all of the registered voters in Texas or just those who do not already have the ID?

In *Crawford's* lead opinion, Justice Stevens concluded that the Supreme Court was not supplied with the evidence necessary to assess the burden on a subgroup and therefore evaluated Indiana's law as it applied generally. [452] Justice Stevens' reasoning in dismissing the subgroup-particularized balancing test does not apply here because the type of evidence that Justice Stevens needed in order to consider the burden on the subgroup has been supplied as to Texas voters in this case.

On the other hand, Justice Scalia's concurring opinion dismisses any need to evaluate subgroups because he treats them not as having a particularized burden, but rather as having individual impacts from a single burden—and he considered the law to be unconcerned with individual impacts. He treated the Indiana voter ID law as one slight burden applied universally. [453] This Court reads *Anderson* and *Burdick,* as well as the lead opinion in *Crawford,* to require balancing the state's interest against the burdens imposed upon the subgroup—here, those who do not possess an SB14–qualified photo ID. [454]

3. The Balancing Test, Applied

Unlike in *Crawford,* this Court is confronted with an as-applied challenge to the voter photo ID law. This decision comes after full trial on the merits in which the Court heard abundant evidence of specific Plaintiffs' individual burdens as well as evidence of more categorical burdens that apply to the population represented by the No–Match List. The Court must determine the nature of SB 14's burden, the nature of the state's justifications, and whether the state's interests make it necessary to burden the Plaintiffs' rights. While Plaintiffs have not demonstrated that any particular voter absolutely cannot get the necessary ID or vote by absentee ballot under SB 14, such an extreme burden is not necessary in an as-applied challenge.

***687 a. The Burden**

i. The Extent of the Burdened Voters

As set out above, sophisticated statistical methods employed by highly qualified experts have revealed that approximately 608,470 registered voters in Texas lack SB 14–qualified ID. [455] Even if that number is discounted by the numbers Dr. Hood challenges, over half a million registered voters are expected to lack the ID necessary to cast their votes in person at the polls. [456]

To vote in person at the polls, all but the disabled (who fall into a limited class of officially acknowledged disability) and those who have a religious objection to being photographed must have one of the prescribed forms of photo ID. The evidence is clear that there is significant time, expense, and travel involved in obtaining SB 14–qualified ID, even if a person has the necessary documents, time, and transportation available to do so. The evidence in this case is extensive and has been detailed above.

ii. The EIC is Not a Safe Harbor

Knowing that a substantial number of registered voters lack SB 14–qualified ID, and knowing that voting must be accessible to the poor, the legislature created the EIC as a safe harbor. But the terms on which an EIC is available do little to make it a bona fide safe harbor for those having difficulty obtaining other SB 14–qualified ID. Applicants still need the same underlying documents required to obtain a driver's license or personal ID card. Those underlying documents will cost at least $2.00. Voters must go to a DPS office, or in some cases the county clerk's office, which may be substantially further than their polling place and is sometimes a prohibitive distance. [457]

DPS officers are present at driver's license offices that issue EICs, the law still permits fingerprinting, [458] and there is still the impression that EIC applicants will be screened for outstanding tickets and warrants, instilling a fear of arrest. While mobile EIC units have been created, the evidence at trial indicated that there are too few and their schedules are too erratic to make a real difference. The fact that only 279 EICs had been issued as of the time of trial, compared to the rate of issuance of free IDs offered in other states, indicates that the EIC safe harbor program has failed to mitigate the burdens on Texas voters who do not have SB 14–qualified ID.

iii. Provisional Balloting is Not A Safe Harbor

A registered voter who appears at the polls without the required SB 14 ID is supposed to be given the opportunity to cast a provisional ballot, which must be cured within six days of the election. Some Plaintiffs testified that they were turned away without being given the provisional ballot opportunity. More important, however, is the fact that the only way to cure a

provisional ballot and have it count is to later produce SB 14–qualified ID. If a voter does not have that ID on election day, the evidence indicates that it will be very difficult for the voter to get it within six days.

***688** Thus the provisional ballot procedure may work for voters who know to ask for a provisional ballot, who need one simply because they forgot the SB 14–qualified ID they already have, and who will suffer no substantial impediment to returning to the designated location to later cure the ballot. On the other hand, the provisional ballot procedure does nothing for voters who are not informed of the procedure, who do not have SB 14–qualified ID already available and do not have an original or certified copy of their birth certificate or other necessary proof of identity at the ready, or who do not have necessary transportation. Plaintiffs, who fall squarely within the demographic expectations of the individuals on the No–Match List, are largely unable to cast a provisional ballot that can be cured in a timely manner and thus be counted.

iv. The Mail–In Alternative Does Not Relieve the Burden

In reviewing the extent of the burden imposed by SB 14 on individual Plaintiffs, the Court has considered the alternative of voting by mail. Defendants argue that many of the individual Plaintiffs—those who are 65 years of age or older, or disabled—are not burdened by SB 14 because they are eligible to vote by mail-in ballot, for which SB 14 ID is not required. [459] However, absentee balloting carries other burdens.

Voters May Not Be Aware. Some individuals who are eligible to vote by mail may be unaware that it is permitted or that SB 14–qualified ID is not required with that method. This problem was evidenced by the testimony of witnesses at trial.

The Procedure is Complicated. The mechanics of voting by mail create a different set of procedural hurdles that may prevent an individual from successfully casting a ballot and having that ballot counted. [460] In order to vote by mail in Texas, an eligible voter must complete an application and mail it to the early voting clerk. [461] Eligible voters who reside in Texas [462] and wish to vote by mail must apply for a mail-in ballot within a specific window of time: no earlier than 60 days and no later than 9 days before election day. [463]

If an application that was received 12 or more days before the election is rejected, the applicant will be notified of the reasons for the rejection and will be able to submit a second application. [464] If an application that was received fewer than 12 days before the election is rejected, the voter will be notified of the reasons for the rejection but will be unable to submit a second application. [465] If the application is accepted, the clerk mails the voter a ballot, which ***689** the voter must fill out and return so as to be received before polls close (generally 7:00 p.m.) on election day. [466]

Requiring elderly or disabled voters—the population that is most likely to need assistance—to vote by mail can deny them the opportunity to receive assistance with their ballots. [467] In contrast, when voting in person, if the voter needs help with the logistics of casting a ballot, poll workers are there to assist, as testified to by Ms. Eagleton. [468] Other factors outside of a voter's control may also affect the reliability of an absentee ballot. [469]

Materials Go Missing. Voting by mail also carries a risk of the application or the ballot itself being delayed or lost in the mail, which would prevent the voter from actually casting a ballot. No such risk exists for those voting in person. Several Plaintiffs testified that they do not trust the process of voting by mail-in ballot and prefer to vote in-person, for reasons that include seeing their vote actually being cast. [470] Plaintiff Benjamin testified that he was suspicious of voting by mail, stating that "mail ballots

have a tendency to disappear."[471] Calvin Carrier testified that his father's mail often gets lost and that his father does not want to rely on a mail-in ballot to exercise his franchise.[472]

Timing Requires Pre–Planning and Deprives a Voter of Considering Last–Minute Campaign Developments. Voting by mail also requires significantly more advance planning than voting in person does. Any individual wishing to vote by mail-in ballot must plan far enough in advance to make a timely application and then must also mail the ballot early enough to ensure that the ballot is received no later than 7:00 p.m. the day of the election.[473] Because of that timing issue, individuals voting by mail are deprived of using relevant information that becomes available immediately prior to the election to possibly change how they want to vote in a particular contest.[474]

***690 Different is Not Equal.** Otherwise eligible voters should not be abridged in the manner in which they choose to exercise their franchise. The Supreme Court has repeatedly found that "a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction."[475] "The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise."[476]

Some Plaintiffs desire the ability to fully carry out their civic duty and exercise a right that some Plaintiffs remember being effectively abridged or denied within their lifetimes.[477] Plaintiff Gholar does not consider voting by mail equivalent to voting in person, and describes voting in person on election day as a "celebration" that she has "earned."[478] Plaintiff Gandy testified that he regards being forced to vote by mail as akin to being treated like a "second-class citizen."[479] Plaintiff Hamilton testified that the senior citizens that she works with resent being told to vote by mail and that many want to personally go to the polls, especially those who "literally fought for the right to vote."[480]

Mail–In Balloting is Not a Cure for SB 14 Burdens. There is extensive evidence in the record that "voting by mail is not actually a viable 'alternative means of access to the ballot' " for many of the Plaintiffs.[481] This record confirms what other courts have found: that voting by mail is fundamentally different from voting in person and, itself, constitutes a burden on the right to vote.[482] Elderly and disabled voters especially should not be required to vote by mail, while most others continue to vote in person, merely to avoid the obstacles created by the State. The Court thus finds that voting by mail is not a satisfactory alternative for elderly and disabled voters who lack SB 14 ID and thus does not excuse the significant burdens placed on those voters by the State.

*691 b. The State's Interests

"A State indisputably has a compelling interest in preserving the integrity of its election process."[483] States must be able to regulate elections if they are to be fair, honest, and orderly.[484] Likewise, the restrictions they use must, in fact, be "generally applicable, even-handed, politically neutral, and ... protect the reliability and integrity of the election process."[485] Proper administration of elections further works to the individual's benefit in assuring the individual's right to vote and to associate with others for political ends.[486] Yet even a slight burden on voters "must be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.' "[487]

In the time period during which voter photo ID laws were debated in the Texas Legislature, the asserted rationales shifted. At one time or another, Defendants argued five justifications for the photo ID law: (1) detecting and preventing voter fraud;[488] (2)

preventing non-citizen voting; [489] (3) improving the electorate's confidence in the integrity of elections; n [490] (4) increasing voter turnout; [491] and (5) addressing bloated voter registration rolls. [492] There is no question that the State has a legitimate interest in each of those issues. [493] The question for this Court is whether those interests justify the particular burdens imposed.

Detecting and Deterring Fraud. SB 14, if effective, would operate only against in-person voter impersonation fraud. That type of fraud is very rare. Yet, the State is not required to prove specific instances of voter fraud in order to have some interest in protecting against it. [494] Because the record contains proof of four instances of in-person voter impersonation fraud in Texas, only two of which predated the passage of SB 14 with any proximity, there is some question whether a change in the law was required. The existing pre-SB 14 framework, outlined in Section II, of requiring the voter registration card and, in the absence of that, other forms of identification that included non-photo ID, was demonstrated to be sufficient to assure that those showing up to vote were the registered voters that they claimed to be. Defendants failed to rebut this evidence, and witnesses for the state were unable to articulate a reason that additional measures were required to combat this type of voter fraud.

***692** SB 14's proponents were unable to articulate any reason that a more expansive list of photo IDs would sabotage the effort other than speculation that the limited universe of SB 14 IDs would be easier for poll workers to process. While the state has an interest in detecting and deterring voter fraud, SB 14 was clearly overkill in that its extreme limitation on the type of photo IDs that would qualify does not justify the burden that it engenders.

Non–Citizen Voting. There is very limited evidence that non-citizen voting is a problem. Only one instance was described. It involved a Norwegian, who was legally in the country and who filled out paperwork admitting that he was not a citizen. When he nonetheless received a voter registration card, he thought he was legally permitted to vote and did so. [495] Representative Hernandez–Luna indicated that most illegal immigrants would be afraid to vote. The problem, if there is one, is rare.

Importantly, it is undisputed that SB 14–qualified ID can be legally obtained by non-citizens. Those who are legal permanent residents or who hold unexpired visas are entitled to obtain a Texas driver's license [496] even though they are not entitled to vote. Non-citizen members of the military will have military IDs. Thus requiring those persons to produce an SB 14–qualified photo ID at the polls would not stop them from voting. Again, the nature of the concern and the method for addressing it do not line up well and this is not a compelling justification for the specific terms of SB 14.

Improving Confidence in Elections. Lieutenant Governor Dewhurst reported general hearsay that people lack confidence in elections and Defendants relied on opinion polls in which people reported that they favored some sort of photo ID requirement to vote. However, nothing in the evidence linked the particular terms of SB 14 with voter confidence. In fact, the provisional ballot requirement for those without SB 14 ID would likely decrease voter confidence. There is a substantial risk of the loss of confidence when fully qualified, registered voters cannot vote in person and are relegated to the less reliable mail-in ballot or cannot vote at all. Because there is always some state interest in running elections in a manner that instills confidence, the Court gives this justification some weight, but finds that the justification is not served by the overly strict terms of SB 14.

Increasing Voter Turnout. This was often stated in conjunction with improving voter confidence. There was some evidence that photo ID laws suppress voter turnout and no competent evidence that any photo ID law has improved voter turnout. SB 14 has been enforced since November 2013, and there is no credible evidence that election turnout since then has been any better than before. The Court finds that this justification has weight only in its abstract form and does not justify the burdens accompanying the restrictive terms of SB 14.

Bloated Voter Registration Rolls. This justification came up during the trial and in the Defendants' proposed findings of fact and conclusions of law. While stated as a separate justification, it is part of the concern over voter impersonation fraud. With

registration rolls including the names of persons who do not belong on them, it is easier (although not necessarily more likely) for voter impersonation to take place. The Court combines this interest with the first interest in detecting and deterring voter fraud.

***693** The Court is mindful of the various burdens placed on the Plaintiffs and the right to vote discussed above. [497] They face obstacles far in excess of the usual burdens of voting in that they have to go through complicated and expensive lengths to obtain an accurate birth certificate, they have to prove up name discrepancies, and one would even have to forfeit a commercial driver's license or pay surcharges that he cannot now afford. The State's legitimate interests are so rarely implicated, that it is difficult to conceive how any restriction that places a substantial burden on voters without SB 14–qualified ID could be justified.

c. Under *Anderson/Burdick,* SB 14 Places an Unconstitutional Burden on Voters

The record in this case does not support the legislature's specific choices in passing the strictest law in the country—allowing the fewest types of ID and providing no safe harbor for indigents. [498] SB 14's restrictions go too far and do not line up with the proffered State interests. Thus Plaintiffs have sustained their legal burden to show a violation of the 1st and 14th Amendments because SB 14 imposes a substantial burden on the right to vote, which is not offset by the state's interests.

The unconstitutionality of SB 14 lies not just in the fees the State charges for birth certificates, although that is part of it. It is not just about causing people to make extra trips—in many cases covering significant distance—to county and state offices to get their photo IDs, although that is part of it. It is not just about making people figure out the requirements on their own and choose whether to go to work or go get a photo ID, although that is part of it. It is not just about creating a second class of voters who can only vote by mail, although that is part of it. And it is not just about placing the administration of voting rights in the hands of a law enforcement agency, although that, too, is part of it.

The unconstitutionality of SB 14 lies also in the Texas Legislature's willingness and ability to place unnecessary obstacles in the way of a minority that is least able to overcome them. It is too easy to think that everyone ought to have a photo ID when so many do, but the right to vote of good citizens of the State of Texas should not be substantially burdened simply because the hurdles might appear to be low. For these Plaintiffs and so many more like them, they are not.

***694** B. The Voting Rights Act is Constitutional and SB 14 Violates the Act

Defendants contend that Plaintiffs' Section 2 claims are unconstitutional as exceeding the scope of the 14th and 15th Amendments and being unduly vague in applying a "totality of the circumstances" test. This Court has previously rejected these arguments [499] and continues to hold that, under *LULAC v. Clements* FN [500] and *Jones v. City of Lubbock,* [501] Plaintiffs have stated viable claims to relief pursuant to Section 2 of the Voting Rights Act. The Court rejects Defendants' challenges to the constitutionality or viability of the Section 2 claims.

1. SB 14 Produces a Discriminatory Result—Voting Rights Act, Section 2 [502]

Section 2 of the Voting Rights Act prohibits a state from imposing a voting qualification, prerequisite to voting, or standard, practice, or procedure that "results in a denial or abridgment of the right of any citizen of the United States to vote on account of race[,] color[, or language minority status]." [503] This is referred to as the "results test." When analyzing a violation under the results test, proof of intentional discrimination is not required. [504]

A results violation "is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [protected class] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." [505] In vote denial cases, a two-part analysis is conducted under the "totality of the circumstances" test. [506] First, a court determines whether the law has a disparate impact on minorities. [507] Second, if a disparate impact is established, ***695** the court assesses whether that impact is caused by or linked to social and historical conditions that currently or in the past produced discrimination against members of the protected class. [508] The Court finds both that SB 14 imposes a disparate impact on African–Americans and Latinos and that its voter ID requirements interact with social and historical conditions to cause an inequality in voting opportunity. [509]

a. SB 14 Has a Disparate Impact on African–Americans and Latinos

It is clear from the evidence—whether treated as a matter of statistical methods, quantitative analysis, anthropology, political geography, regional planning, field study, common sense, or educated observation—that SB 14 disproportionately impacts African–American and Hispanic registered voters relative to Anglos in Texas. The various studies of highly credentialed experts compel this conclusion. [510] And while Defendants criticized Plaintiffs' experts' methods on cross-examination and with proffered experts of their own, they failed to raise a substantial question regarding this fact.

To call SB 14's disproportionate impact on minorities statistically significant would be an understatement. Dr. Ansolabehere's ecological regression analysis found that African–American registered voters were 305% more likely and Hispanic registered voters 195% more likely than Anglo registered voters to lack SB 14–qualified ID. Drs. Barreto and Sanchez's weighted field survey, a different but complementary statistical method, found that Hispanic voting age citizens were 242% more likely and African–American voting age citizens were 179% more likely than Anglos to lack adequate SB 14 ID. This evidence was essentially unrebutted and the Court found the experts' methodology and testing reliable.

Thus, regardless of the method, the experts [511] and this Court conclude that SB 14 will have a disparate impact on both Hispanics and African–Americans throughout the State of Texas. However, a bare statistical showing of a disproportionate impact is not enough. [512] It is only the first part of the Section 2 results standard.

b. SB 14's Terms Combine With the Effects of Past Discrimination to Interfere with the Voting Power of African–Americans and Latinos

The Section 2 results standard also requires "a searching practical evaluation ***696** of the 'past and present reality' " and "a 'functional' view of the political process" [513] to determine whether the voting regulation diminishes voting opportunities for African–Americans and Latinos. Generally, factors to review in assessing whether a law violates the Section 2 results standard include, but are not limited to:

1. The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

2. The extent to which voting in the elections of the state or political subdivision is racially polarized;

3. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

4. If there is a candidate slating process, whether the members of the minority group have been denied access to that process;

5. The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process;

6. Whether political campaigns have been characterized by overt or subtle racial appeals;

7. The extent to which members of the minority group have been elected to public office in the jurisdiction.

Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

[8.] Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; [and]

[9.] Whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous. [514]

"[T]here is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." [515]

These Senate factors were designed with redistricting and vote-dilution in mind. [516] In contrast, "Vote denial occurs when a state employs a 'standard, practice, or procedure' that results in the denial of the right to vote on account of race." [517] Vote denial is at issue here. [518] At least one ***697** court declined to apply the Senate factors to a vote denial case." [519] Although the courts most commonly apply the Senate factors in vote dilution cases, multiple courts have expressly found these factors to be relevant to vote denial cases as well. [520] The Court finds that Senate factors 1, 2, 5, 6, 7, 8, and 9 are relevant and have been demonstrated by the evidence.

Factor One: History of Official Discrimination. The Court has set out above in Section I(A) the long history of official discrimination practiced in Texas that impacted the right to vote of minorities. It will not be repeated here. This factor weighs strongly in favor of finding that SB 14 produces a discriminatory result.

Factor Two: Racially Polarized Voting. Included in the historical discussion above is evidence that racially polarized voting has been prevalent, including in recent years, with the State of Texas admitting as much in redistricting litigation currently pending. This finding is particularly relevant because, as Dr. Burden explained, "SB 14 imposes additional costs on Blacks and Latinos in a way it does not on Anglos, and is more likely to deter minority participation than Anglo participation. Because those minority groups have different preferences, it's likely that SB 14 could affect the outcome of elections." [521] This factor weighs in favor of finding that SB 14 produces a discriminatory result.

Factor Five: Education, Employment, and Health Effects on Political Participation. As outlined in Section IV(B)(1)(d) above, African–Americans and Hispanics bear the effects of discrimination in education, employment, and health. African–Americans are 2.4 times more likely and Hispanics are 2.75 times more likely than Anglo Texans to live in poverty. The median

household income for Anglos is more than 50% higher compared to Hispanics and African–Americans. Hispanics and African–Americans suffer considerably lower high school graduation and college completion rates than Anglos. And in the field of health, African–Americans and Hispanics are more likely to report they are in "poor" health and lack health insurance—a matter often related to employment and income status. The evidence at trial clearly related the current socioeconomic status of these minorities to the effects of discrimination. [522] These socioeconomic disparities have hindered the ability of African–Americans and Hispanics to effectively participate in the political process. Dr. Ansolabehere testified that these minorities register and turnout for elections at rates that lag far behind Anglo voters. This factor weighs strongly in favor of finding that SB 14 produces a discriminatory result.

Factor Six: Racial Appeals in Campaigns. Overt or subtle racial appeals by political campaigns were identified and discussed in Section I(D). This factor weighs in favor of finding that SB 14 produces a discriminatory result.

Factor Seven: Proportional Representation. Hispanics and African–Americans remain underrepresented within the ranks of publicly elected officials relative to their population size, as discussed in Section ***698** I(C) above. This factor weighs in favor of finding that SB 14 produces a discriminatory result.

Factor Eight: Lack of Legislative Responsiveness to Minority Needs. Texas's long history of state-mandated discrimination, along with the process and outcome relating to SB 14 itself, are strong indicators of a significant lack of responsiveness to the needs of Texas's minority voters. Significant amendments proposed for SB 14, which would have expanded the type of IDs accepted, allowed the use of expired IDs, and provided exemptions for indigents, were summarily rejected despite the fact that bill sponsors knew that the harsh effects of SB 14 would fall on minority voters. This factor weighs in favor of finding that SB 14 produces discriminatory results.

Factor Nine: Policy Underlying SB 14 is Tenuous. As discussed in Section IV(A)(5) and (6) regarding the unjustified burden placed on the right to vote by SB 14's photo ID requirement, the rarity of in-person voter impersonation fraud and non-citizen voting, coupled with the fact that SB 14's photo ID requirements are unduly restrictive yet still would not prevent non-citizens from voting or have any effect on potential mail-in voter fraud, lead to the conclusion that the stated policies behind SB 14 are only tenuously related to its provisions. Given that the severity of its provisions falls disproportionately on minorities, this factor weighs heavily in favor of finding that SB 14 produces a discriminatory result.

SB 14 Creates a Discriminatory Result. This Court finds that Plaintiffs have met their burden of proving that SB 14 produces a discriminatory result that is actionable because SB 14's voter ID requirements interact with social and historical conditions in Texas to cause an inequality in the electoral opportunities enjoyed by African–Americans and Hispanic voters as compared to Anglo voters. In other words, SB 14 does not disproportionately impact African–Americans and Hispanics by mere chance. Rather, it does so by its interaction with the vestiges of past and current racial discrimination. [523] SB 14 results in the denial or abridgement of the right of African–Americans and Latinos to vote on account of their race, color, or membership in a language minority group in violation of Section 2 of the Voting Rights Act.

2. SB 14 Has a Discriminatory Purpose—Voting Rights Act, Section 2 and 14th and 15th Amendments [524]

Plaintiffs challenge SB 14 on the basis that it was enacted with a discriminatory purpose under the VRA and the 14th and 15th Amendments. While the United States proceeds under VRA Section 2 and the remaining Plaintiffs proceed under both Section 2 and the constitutional provisions, the rubric for making a ***699** determination of a discriminatory purpose is the same. [525] Discriminatory intent is shown when racial discrimination was a motivating factor in the governing body's

decision. [526] Discriminatory purpose "implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker ... selected or reaffirmed a particular course of action at least in part 'because of,'... its adverse effects upon an identifiable group." [527] In the final analysis, discriminatory purpose need not be the primary purpose of the official act for a violation to occur as long as it is one purpose. [528]

The Court does not attempt to discern the motivations of particular legislators and attribute that motivation to the legislature as a whole. [529] Instead, to determine intent the Court considers direct and circumstantial evidence, "including the normal inferences to be drawn from the foreseeability of defendant's actions." [530]

The Supreme Court in *Arlington Heights* and the Fifth Circuit in *Brown* noted the relevance of some of the Senate factors, discussed above, as circumstantial evidence of discriminatory purpose. [531] The foregoing discussion of the Senate factors is thus incorporated by reference into this analysis of purposeful discrimination. Pursuant to *Arlington Heights* and *Brown,* the Court further considers the following nonexclusive and nonexhaustive list of factors in determining whether discriminatory intent was a motivating factor in enacting SB 14: [532]

- The historical background of the decision;
- The sequence of events leading up to the decision;
- Whether the decision departs from normal practices;
- Contemporaneous statements by the decisionmakers; [533] and

***700** • Whether the impact of the decision bears more heavily on one racial group than another. [534]

Historical Background. As amply demonstrated, the Texas Legislature has a long history of discriminatory voting practices. [535] To put the current events into perspective, Texas was going through a seismic demographic shift at the time the legislature began considering voter ID laws. Hispanics and African–Americans accounted for 78.7% of Texas's total population growth between 2000 and 2010. [536] In addition, it was during this time that Texas first became a majority-minority state, with Anglos no longer comprising a majority of the state's population. [537] As previously discussed, this Court gives great weight to the findings of Dr. Lichtman that "[t]he combination of these demographic trends and polarized voting patterns ... demonstrate that Republicans in Texas are inevitably facing a declining voter base and can gain partisan advantage by suppressing the overwhelmingly Democratic votes of African–Americans and Latinos." [538]

Sequence of Preceding Events. The more specific background of SB 14 shows that the voting rights of minorities were increasingly threatened, despite the failure of three prior efforts to pass a voter photo ID bill. Rather than soften its provisions that would accomplish the bill's stated purpose while not affecting a disproportionate number of African–Americans and Hispanics, the bill sponsors made each bill increasingly harsh, turning to procedural mechanisms to pass the bill rather than negotiation and compromise. Throughout the prior six years of debating this issue, and despite opposing legislators' very vocal concerns, no impact study or analysis was done to demonstrate whether the bill would unduly impair minority voting rights. This same legislature also enacted at least two redistricting plans that were held by a three judge federal court to have been passed with a discriminatory purpose. [539]

Departures from Normal Practices. The passage of SB 14 involved extraordinary departures from the normal procedural sequences. As set forth in Section IV(A) of this opinion, the proponents of SB 14 engaged in a number of procedural devices

intended to force SB 14 through the legislature without regard for its substantive merit. Calling it an emergency, they disposed of the usual order of business, and ensured that—with unnatural speed—it would reach the end of the legislative journey relatively unscathed. It was, procedurally, unorthodox.

The passage of SB 14 was also a substantive departure because "the factors usually considered important by the decisionmakers strongly favor a decision contrary to the one reached." [540]

***701** • SB 14 proponents offered the bill as a way to address voter fraud and to assure the integrity of the ballot box. Yet, by all accounts, a real effort to reduce voter fraud would have focused on the rather prevalent mail-ballot fraud rather than the extremely rare in-person voter impersonation fraud. Oddly, in supposedly fighting voter fraud, the Legislature would relegate a large number of voters from the relatively secure in-person polls to the mail-in system that is openly acknowledged to suffer a higher incidence of fraud. [541]

• In ostensibly fighting non-citizen voting, the legislature approved of the use of a very small number of photo IDs, including some which are legally issued to non-citizens, while the legislature rejected many others that would be needed to permit citizens who are registered to vote to cast their ballots in person.

• Whereas the proponents of SB 14 claim to want to foster the public's perception of election integrity and improve voter turnout, it chose legislation that will cause many qualified, registered voters to be turned away at the polls and, at best, require many to use the fraud-riddled mail-in ballot system.

As outlined in Section IV(A) above, there is a tenuous nexus between SB 14's purported goals and the legislation's design. **Legislative Drafting History.** Proponents of SB 14 claimed that it was modeled after voter ID laws in Georgia and Indiana which had passed constitutional and VRA muster. However, SB 14 was a material departure from those other state laws, was openly understood to be "the strictest photo ID law in the country," [542] and it lacked any accommodations for indigents, who the legislature knew were disproportionately African–American and Latino.

As addressed in Section III(B) of this opinion, Georgia allows citizens to vote with a valid out-of-state photo ID while SB 14 does not, Georgia and Indiana allow any federal government-issued photo ID to vote while SB 14 does not, Georgia allows in-state college and university photo ID to vote while SB 14 does not, and Indiana allows for an indigence accommodation at the polls while SB 14 does not. Both Georgia and Indiana permit the use of expired IDs for a much longer period of time than does SB 14. The expiration factor, alone, would permit a number of Plaintiffs to continue to vote in person because they simply allowed their otherwise-qualified SB 14 photo ID to expire because they did not need it anymore.

SB 14's legislative proponents knew at the time that they would face VRA Section 5's preclearance requirement, which precluded passing a bill that would have retrogressive effects on ethnic minorities. As set forth in Section IV(A) above, SB 14 proponents' decision to bar the use of government employee and college and university photo IDs to vote while allowing concealed handgun permits made the voting requirements much more restrictive for African–Americans and Hispanics while making it less so for Anglos. [543]

Even Mr. Hebert, who assisted Lieutenant Governor Dewhurst in shepherding SB 14 through the legislature and who drafted the EIC provision, expressed concern to various legislative staffers about preclearance, recommending that, at a minimum, the list of acceptable photo IDs should be ***702** expanded to include federal, state, and municipal government-issued IDs. [544] His warning was not heeded. As outlined in Section IV(A)(4) [545] above, proponents of SB 14 rejected a litany of ameliorative

amendments that would have redressed some of the bill's discriminatory effects on African–Americans and Hispanic voters—amendments that would not have detracted from the legislation's stated purpose.

Contemporaneous Statements. There are no "smoking guns" in the form of an SB 14 sponsor making an anti-African-American or anti-Hispanic statement with respect to the incentive behind the bill. However, the 2011 legislative session was a racially charged environment. With the 2010 U.S. Census results showing substantial gains by minority populations, there were a number of measures proposed that exhibited an anti-Hispanic sentiment—anti-immigration laws, an effort to abolish sanctuary cities—and there were even concerns about leprosy being raised.[546] Add to this environment that Representative Smith admitted that it was "common sense"—he did not need a study to tell him—that minorities were going to be adversely affected by SB 14. Yet SB 14 was pushed through in the name of goals that were not being served by its provisions.

Disparate Impact. As set out above, this Court has concluded that SB 14's effects bear more heavily on Hispanics and African–Americans than on Anglos in Texas. This impact evidence was virtually unchallenged.

Conclusion. The evidence establishes that discriminatory purpose was at least one of the motivating factors for the passage of SB 14. "Once racial discrimination is shown to have been a 'substantial' or 'motivating' factor behind enactment of the [challenged] law, the burden shifts to the law's defenders to demonstrate that the law would have been enacted without this factor."[547] The record demonstrates that SB 14 was discriminatory, among other reasons, because: (1) its list of acceptable IDs was the most restrictive of any state and more restrictive than necessary to provide reasonable proof of identity; (2) IDs that had expired more than 60 days before an election were still capable of identifying the ID-holder, yet were not permitted; and (3) there is no cost-free way for an indigent to prove up his or her identity in order to vote.

Defendants did not provide evidence that the discriminatory features of SB 14 were necessary to accomplish any fraud-prevention effort. They did not provide evidence that the discriminatory features were necessary to prevent non-citizens from voting. They did not provide any evidence that would link these discriminatory provisions to any increased voter confidence or voter turnout. As the proponents who appeared (only by deposition) testified, they did not know or could not remember why they rejected so many ameliorative amendments, some of which had appeared in prior bills or in the laws of other states. There is an absence of proof that SB 14's discriminatory features were necessary components to a voter ID law.

Defendants rely on the proposition that SB 14 is a facially-neutral law imposing burdens that do not exceed the normal burdens associated with a normal life, including voting. Given the demographic ***703** statistics of the No–Match List, and the Plaintiffs' testimony, it is clear that possessing a photo ID, possessing a birth certificate, having a nearby DPS or other ID-issuing office, having transportation, and having the funds to purchase an ID are all things that are not within normal, tolerable burdens.

This Court concludes that the evidence in the record demonstrates that proponents of SB 14 within the 82nd Texas Legislature were motivated, at the very least in part, *because of* and not merely *in spite of* the voter ID law's detrimental effects on the African–American and Hispanic electorate. As such, SB 14 violates the VRA as well as the 14th and 15th Amendments to the United States Constitution.

C. SB 14 Constitutes an Unconstitutional Poll Tax—24th and 14th Amendments[548]

The 24th Amendment provides that a citizen's right to vote in a federal election may not be "denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax."[549] The 24th Amendment "nullifies sophisticated as well as simple-minded modes of impairing the right guaranteed."[550] A statute also violates the 24th Amendment if "it imposes

a material requirement solely upon those who refuse to surrender their constitutional right to vote in federal elections without paying a poll tax." [551]

In *Harper v. Virginia State Board of Elections,* [552] the Supreme Court extended the ban on poll taxes to state elections, using the Equal Protection Clause of the 14th Amendment. Specifically, the Court held that a State may not use "the affluence of the voter or payment of any fee [as] an electoral standard" because "wealth or fee paying has ... no relation to voting qualifications." [553] In finding that a $1.50 poll tax for state elections violated the Equal Protection Clause, the *Harper* Court held that "[t]he degree of the discrimination is irrelevant." [554]

The Veasey Plaintiffs argue that SB 14 is a poll tax, in violation of the 14th and 24th Amendments. They do not claim that the requirement to show photo identification prior to voting itself is a tax, but that the underlying costs (including the payment of fees as well as travel and time costs), which must be incurred by individuals without acceptable identification, effectively function as a poll tax. Defendants respond that SB 14 is not like the poll taxes struck down by the Supreme Court and, furthermore, Texas provides, free of charge, an EIC to individuals who need qualifying ID to vote. Defendants also claim that the incidental economic costs of obtaining appropriate identification cannot constitute a poll tax prohibited by the Constitution since in-person voting itself often entails unavoidable travel costs.

The Supreme Court has not considered whether a voter photo ID law constitutes a ***704** poll tax. However, several other courts have recently done so regarding laws that were different in important respects from SB 14. Various versions of the Georgia voter photo ID law were challenged as constituting an impermissible poll tax. [555] In *Common Cause I,* voters without an approved form of government-issued ID were required to pay a $20.00 fee to obtain a five-year photo ID card (or a $35 fee to obtain a ten-year photo ID card) in order to vote in person. [556] The Court found that "as a practical matter, most voters who do not possess other forms of Photo ID must obtain a Photo ID card to exercise their right to vote, even though those voters have no other need for a Photo ID card" and thus "requiring those voters to purchase a Photo ID card effectively places a cost on the right to vote" in violation of the 24th and 14th Amendments. [557] The court further held that the possibility of the fee being waived for voters who complete an affidavit of indigency did not save the law from being a poll tax because it constituted a material requirement in lieu of a poll tax, as rejected in *Harman.* [558]

Indiana's voter ID law was also challenged as a poll tax and prevailed because it only potentially imposed incidental costs on certain voters. [559] The court found that "the imposition of tangential burdens does not transform a regulation into a poll tax" and "the cost of time and transportation cannot plausibly qualify as a prohibited poll tax because these same 'costs' also result from voter registration and in-person voting requirements, which one would not reasonably construe as a poll tax." [560]

The Indiana court did recognize that, although the state-issued voter photo ID card was free, the fee required to obtain a birth certificate (which would then be used to obtain the photo ID card) might plausibly be considered a poll tax. [561] Nonetheless, the court decided that it was not, because it found that the need to pay that fee was "purely speculative and theoretical" due to the plaintiffs not providing evidence that anyone would "actually be required to incur this cost in order to vote." [562]

When the Georgia law was challenged again, the state provided photo ID free of charge and eliminated the previous requirement of an indigency affidavit. [563] The plaintiffs nonetheless argued that the law still constituted a poll tax because voters without approved photo ID were required to arrange for transportation to a registrar's office and to successfully navigate the process of receiving the state photo ID. [564] Additionally, the plaintiffs contended that some voters "might be required to pay a fee to obtain a birth certificate in ***705** order to obtain a Voter ID card." [565] The court rejected these arguments, finding that the cost of

time and transportation did not qualify as a prohibited poll tax. [566] The court further found entirely speculative the contention that any voter would be required to pay a fee to obtain a birth certificate to vote, because the registrar could accept a number of other documents to issue a voter ID card and there was no evidence that any particular voter would actually be required to incur the cost for a birth certificate. [567] The court thus found that the plaintiffs had not demonstrated that the cost of obtaining a birth certificate [was] sufficiently tied to the requirements of voting so as to constitute a poll tax." [568]

Pursuant to SB 14, any individual wishing to vote in person must procure one of seven forms of approved photo ID if he or she currently lacks such identification. Individuals must pay an application fee in order to obtain any of the required forms of ID, except for the EIC. The EIC itself, issued by DPS, must be issued free of charge. But in order to receive an EIC, an applicant must provide one of several supporting documents, the cheapest of which is a birth certificate. If the applicant does not have a birth certificate, it must be purchased at a minimum fee of $2.00 in Texas. [569]

In addition to the fee, individuals also must expend time and resources, which are significant in some instances, in order to travel to the vital statistics office, a local registrar, or a county clerk to obtain a birth certificate (even more so if more than one visit is required). [570] Nonetheless, the Court cannot reasonably conclude at this time that the incidental time, travel, and information search costs constitute either a poll tax or "other tax" prohibited by the 24th Amendment, or a "material requirement" imposed "solely upon those who refuse to ... pay[ ] a poll tax." [571]

But the fact that a voter without an approved form of SB 14 ID and without a birth certificate, in order to vote, must pay a fee to receive a certified copy of his or ***706** her birth certificate, which is functionally essential for an EIC, violates the 24th Amendment as an impermissible poll tax or "other tax." [572] It also violates the 14th Amendment by making the "payment of any fee ... an electoral standard." [573]

Unlike in *Common Cause II* and *Rokita* (and by extension *Crawford*), there is ample evidence in the record of several Plaintiffs having to pay a substantial fee in order to obtain a birth certificate (in some cases a delayed or amended birth certificate) for the purpose of receiving an EIC. [574] Victor Farinelli, who testified with comprehensive knowledge of how the State of Texas issues birth certificates, demonstrated that they are never free. Even at birth, a newborn's birth certificate must be ordered and paid for. [575]

Although as of October 21, 2013, the fee to receive a certified copy of a birth certificate specifically for the purpose of receiving an EIC is only $2.00, the amount of the fee is irrelevant. [576] Plaintiffs have thus demonstrated that every form of SB 14–qualified ID available to the general public is issued at a cost. And for voters without appropriate SB 14 ID, they can only obtain a free EIC with a birth certificate that they have already purchased or one for which they now must pay at least $2.00. [577] The cost of obtaining a birth certificate is thus sufficiently tied to the requirements of voting as to constitute an unconstitutional poll tax or other tax.

The fact that those Plaintiffs who were either disabled or over the age of 65 could have opted to vote by mail-in ballot, thus avoiding the cost of obtaining an EIC, does not change the result. First, being forced to vote by mail-in ballot in lieu of paying for a birth certificate constitutes "a material requirement" imposed "solely upon ***707** those who refuse to surrender their constitutional right to vote ... without paying a poll tax." [578] Voting by mail requires properly filling out and mailing a form in order to request a mail-in ballot, well before, but no more than 60 days before, the election, for every single election in which the voter wishes to participate. [579] That process is analogous to the yearly reregistration requirement that was struck down in

Harman. [580] Second, mail-in voting, for the many reasons discussed in Sections IV(B)(2)(a) and VI(A)(3)(a)(iv), *supra,* is "not a realistic alternative to voting in person." [581]

Therefore, the Court finds that SB 14 imposes a poll tax in violation of the 24th and 14th Amendments.

VII.

THE REMEDY

"No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined" [582] To preserve that right, the Court, pursuant to its equitable powers and to redress the VRA claims of discriminatory result and discriminatory purpose, will enter a permanent and final injunction against enforcement of the voter identification provisions, Sections 1 through 15 and 17 through 22, of SB 14. [583]

To avoid piecemeal decisionmaking, including piecemeal appellate review, and also because the claims rely on many of the same underlying facts, the Court has ruled on each of the legal theories presented. In addition, the requests for a preclearance order under Section 3(c) of the Voting Rights Act, and for authorization of election observers under Section 3(a) of the Act, depend on a finding that SB 14 was enacted with a discriminatory purpose, and therefore the Court was obligated to rule on the purpose issue. The injunction described above is sufficient to remedy the Plaintiffs' as-applied challenge to the unconstitutional burden that SB 14 places on the right to vote, along with the challenge to SB 14 as a poll tax. No further delineation of relief as to those claims is required at this time.

Under the injunction to be entered barring enforcement of SB 14's voter identification provisions, Texas shall return to enforcing the voter identification requirements for in-person voting in effect immediately prior to the enactment and implementation of SB 14. Should the Texas Legislature enact a different remedy for the statutory and constitutional violations, this Court retains jurisdiction to review the legislation to determine whether it properly remedies the violations. Any remedial enactment by the Texas Legislature, as well as any remedial changes by Texas's administrative agencies, must ***708** come to the Court for approval, both as to the substance of the proposed remedy and the timing of implementation of the proposed remedy.

By subsequent order, the Court will set a status conference to address the procedures to be followed for considering Plaintiffs' request for relief under Section 3(c) of the Voting Rights Act.

APPENDIX

TABLE OF AMENDMENTS OFFERED ON SB 14

NUMBER [584]	SUBSTANCE OF PROPOSED AMENDMENT	SPONSOR
	Allowing the Use of Additional Forms of ID	
S F10	Allowing proof of identity by affidavit	Zaffirini

S F16	Two forms of non-photo ID Voter registration certificate accompanied by reliable documents United States Military ID with photo ID issued by Federal government agency or institution ID issued by Texas agency, institution, or political subdivision	Van de Putte
S F17	Temporary driving permit	Gallegos
S F19	Student photo IDs issued by accredited public university in Texas [585]	Ellis
S F20	Medicare ID cards issued by Social Security Administration accompanied by voter registration certificate	West
S F21	Employee photo IDs issued by Federal government agency or institution Texas agency, institution, or political subdivision Institution of higher education located in Texas	Davis
S F24	Voter registration certificates with photo issued by county election administrator or county clerk	Hinojosa
H 11	Allowing proof of identity by affidavit	Veasey
H 12	Allowing proof of identity by personal knowledge of election judge	Dutton
H 17	Temporary driving permit	Dukes
H 21	Employee photo IDs issued by any employer in ordinary course of business	Veasey
H 23	Student photo IDs issued by public or private high school or institution of higher education	Dutton
H 24	Any photo IDs issued by the State of Texas [586]	Martinez–Fischer

H 25	IDs issued by Texas agency, institution, or political subdivision or Federal agency or institution	Hernandez-Luna
H 38	Temporary driving permit issued after license revocation (defeated by vote)	Burnam
H 39	Provisional ballot accepted when voter signs affidavit at polls and signature on affidavit is substantially similar to voter registration application or other public document	Anchia, Strama
H 42	Allowing county voter registrars to issue voter registration certificates with photos and providing for cooperation with DPS and other Texas state agencies for access to voter photos	Walle
H 30	Tribal IDs allowed (adopted, but omitted from the Conference Committee Report and is not in SB 14 as enacted) [587]	Naomi Gonzalez
	Allowing the Use of IDs With Irregularities	
S F13	Allowing the use of any expired IDs [588]	Davis
S F15	Expanding use of expired IDs by including those that expired after the last general election	Davis
S F16	Expanding the use of expired IDs by including those that expired within two years of the current election	Van de Putte
S F22	Allowing the use of IDs expired within 60 days of election; For those over 65 years of age, allowing the use of any expired driver's license or personal identification cards issued by Texas or any other state	Lucio
S F 11	Allowing nonconforming names of women upon a showing of a marriage certificate, divorce decree, or upon execution of an affidavit affirming identity	Davis
H 37	Allowing nonconforming names upon voter's execution of affidavit stating voter's name was changed as a result of marriage or divorce (defeated by vote)	Hernandez-Luna
	Making Qualified Photo IDs or Voting More Accessible	
S F1	Providing criminal penalties for intimidating voters	Watson
S F2	Ensuring that those seeking a new or renewed personal identification card that it is free if needed for voting (upon presentation of voter registration certificate).	Davis

S F12	Eliminating the fees for underlying documents (needed to obtain photo ID) ordinarily charged by Texas agencies, institutions, and political jurisdictions	Davis
S F25	Requiring DPS to have one driver's license office for every 50 voting precincts, centrally located by voting age population	Gallegos
S F26	Requiring DPS to open any new driver's license facility no more than 5 miles from public transportation, if county has public transportation	Gallegos
S F28	Allowing for same-day voter registration	Ellis
S F29	Enlarging the hours of DPS offices to at least 7:00 p.m. one weeknight per week and for four hours on two Saturdays per month	Gallegos
S F36	Giving the disabled the option of voting by mail without having to renew the disability exemption; providing reasonable notice of the availability of the disability exemption to those likely to need it	Davis
S F39	Exempting the indigent by allowing cure of provisional ballot upon execution of affidavit of indigency	Davis
H 15	Eliminating the fee for underlying documents (needed to obtain photo ID) ordinarily charged by Texas agencies, institutions, and political subdivisions	Martinez
H 16	Allowing exemption upon proof of an employee paycheck and affirmation that the employer does not permit taking off work to get photo ID and the DPS office is not open for at least two consecutive hours when employee is off work	Raymond
H 36	Expanding the time to cure a provisional ballot, using only “business days”	Dutton
H 43	Allowing for same-day voter registration	Rodriguez
H 44	Prohibiting application of changes to counties that do not have a DPS full-service driver's license office	Gallego
H 49	Allowing for same-day voter registration	Alonzo
H 50	Providing for reimbursement of travel expenses incurred by indigent voters to secure photo ID	Raymond
H 52	Allowing only a poll worker to request to see photo ID; any other person requesting ID is harassing a voter and commits a felony	Castro

H 61	Exempting application of the requirement to lineal descendants of those prevented from voting by white primary laws or other laws targeting a citizen's right to vote based on race, nationality, or color	Martinez
H 63	Exempting voters over age 65 from photo ID requirement Allowing for same-day voter registration Authorizing the Secretary of State to establish additional documents to prove residency	Eiland
	Educating the Public About Photo ID Requirements	
S F2	Providing for notice to those renewing an ID by mail that an ID is free for voting purposes	Davis
S F27	Providing for notice to applicants for marriage license that any name change requires updating of voter registration	Lucio
S F37	Requiring the Secretary of State to develop uniform statewide voter registration outreach program and ombudsmen to address allegations of voter suppression, discrimination, or other abuse	Davis
S F38	Expanding the triggers for providing a voter with notice of the cancellation of voter registration	Davis
H 46	Requiring DPS to give notice to applicants for new or renewed driver's license or personal identification card that ID for voting is available at no charge	Martinez
	Requiring Analysis and Reporting by Secretary of State	
S F30	Requiring the SOS to produce an annual report disclosing: the comparative number of eligible voters who have and do not have the necessary ID to vote; the number and percentage of voters who are disqualified by name changes, address changes, or expired IDs; the average amount of time a voter must wait for qualified ID from DPS; the number of provisional ballots cast; and an analysis of photo ID requirements on women, elderly, disabled, students, and racial or ethnic minorities.	Ellis
H 54	Requiring the SOS to keep detailed records by county and precinct, including demographic information regarding the number of voters who were prohibited from voting because of photo ID requirements and the number of provisional ballots that were not counted	Alvarado
H 55	Requiring the SOS to determine whether the majority of provisional ballots cast for lack of photo ID were cast by	Veasey

	members of a racial or ethnic minority; if so, subsequent election qualification would be by voter registration certificate	
H 58	SB 14 not to take effect until SOS completes (a) a study of the impact of the law on state residents, including the availability of offices to issue qualified photo ID and (b) an analysis of the law's impact on voter turnout	Anchia
H 62	Requiring the SOS to conduct election integrity training to enhance detection, investigation, and prosecution of in-person voter impersonation fraud and establishing election integrity task forces to prosecute such crimes; requiring county clerks to conduct an election integrity audit and publish the results after each general election, along with requiring any evidence of voter fraud to be referred for prosecution	Strama
	Requiring Funding	
S F31	SB 14 not to take effect until implementation is fully funded and SOS has certified that it and all counties are in compliance or have developed training and information required to implement.	Van de Putte
S F32	SB 14 not to take effect until funded	Watson
H 57	SB 14 not to take effect unless there is a specific appropriation to fund implementation	Anchia

All Citations

71 F.Supp.3d 627

Footnotes

1 Gettysburg Address.

2 *Reynolds v. Sims,* 377 U.S. 533, 562, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964).

3 In ***No. 13–cv–193 (Veasey Case),*** the **Veasey Plaintiffs** are Marc Veasey, Floyd James Carrier, Anna Burns, Michael Montez, Penny Pope, Jane Hamilton, Sergio DeLeon, Oscar Ortiz, Koby Ozias, John Mellor–Crummey, Evelyn Brickner, Gordon Benjamin, Ken Gandy, and League of United Latin American Citizens (LULAC). D.E. 109, 385. Intervenors in the Veasey Case include Texas Association of Hispanic County Judges and County Commissioners (HJ & C) (**HJ & C Intervenors**) (D.E. 153, 385) and Texas League of Young Voters Education Fund (TLYV) and Imani Clark (**TLYV Intervenors**) (D.E. 73). In ***No. 13–cv–263 (U.S. Case),*** the Plaintiff is the United States of America. D.E. 1. In ***No. 13–cv–291 (NAACP Case),*** the Plaintiffs are Texas State Conference of NAACP Branches (NAACP) and Mexican American Legislative Caucus of the Texas House of Representatives (MALC). D.E. 1. In ***No. 13–cv–348 (Ortiz Case),*** the Plaintiffs are Eulalio Mendez Jr., Lionel Estrada, Lenard Taylor, Estela Garcia Espinoza, Margarito Martinez Lara, Maximina Martinez Lara, and La Union Del Pueblo Entero, Inc. (LUPE). D.E. 4.

4 Defendants include the State of Texas, Rick Perry in his official capacity as Governor of the State of Texas, John Steen in his official capacity as Texas Secretary of State, and Steve McCraw in his official capacity as Director of the Texas Department of Public Safety. Mr. Steen was Texas Secretary of State when this action was filed. The current Texas Secretary of State is Nandita Berry.

5 For purposes of this Opinion, the terms “Hispanic” and “Latino” will be used interchangeably.

6 Johnson, D.E. 569, p. 10.

7 Ellis, D.E. 573, pp. 159–62.

8 Ellis, D.E. 573, p. 161.

9 Dr. Burton is Creativity Professor of Humanities, History, Sociology, and Computer Science at Clemson University. D.E. 376–2, p. 5.

10 *Nixon v. Herndon,* 273 U.S. 536, 47 S.Ct. 446, 71 L.Ed. 759 (1927).

11 *Smith v. Allwright,* 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987 (1944).

12 *Garza v. Smith,* 320 F.Supp. 131 (W.D.Tex.1970), *vacated and remanded on procedural grounds,* 401 U.S. 1006, 91 S.Ct. 1257, 28 L.Ed.2d 542 (1971), *on appeal after remand,* 450 F.2d 790 (5th Cir.1971).

13 Dr. Burton notes that $1.50 is equivalent to $15.48 in current dollars. Burton, D.E. 376–2, p. 13 (report) (citations omitted).

14 A 1902 amendment, proposed by Acts 1901, 27th Leg., p. 322, S.J.R. No. 3 and adopted at the Nov. 4, 1902 election, added a provision requiring voters subject to poll tax to have paid the poll tax and hold a receipt therefor, or make affidavit of its loss. TEX. CONST. ART. VI, § 2 (amended 1966); *see also* TEX. CONST. ART. VIII, § 1 (historical notes, reflecting prior authorization for imposing poll tax among authorized taxes).

15 The Texas Legislature did not vote to ratify the 24th Amendment's abolition of the poll tax until the 2009 legislative session. S.J. of Tex., 81st Leg., R.S. 2913 (2009) (HJR 39); H.J. of Tex., 81st Leg. R.S. 4569 (2009) (HJR 39); *see also* Korbel, D.E. 578, p. 189 (testimony). Even so, the process has not been completed and the measure last went to the Secretary of State. http://www.capitol.state.tx.us/Bill Lookup/BillStages.aspx?LegSess=81R&Bill=HJR39.

16 *United States v. Texas,* 252 F.Supp. 234 (W.D.Tex.1966). The Supreme Court extended the ban on poll taxes to state elections in *Harper v. Virginia State Board of Elections,* 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966).

17 *Beare v. Smith,* 321 F.Supp. 1100 (S.D.Tex.1971), *aff'd sub nom. Beare v. Briscoe,* 498 F.2d 244 (5th Cir.1974).

18 *See Flowers v. Wiley,* 675 F.2d 704, 705–06 (5th Cir.1982); Dr. Burton, D.E. 376–2, p. 14 (report).

19 *United States v. Texas,* 445 F.Supp. 1245 (S.D.Tex.1978) (three-judge court), *aff'd mem. sub nom. Symm v. United States,* 439 U.S. 1105, 99 S.Ct. 1006, 59 L.Ed.2d 66 (1979).

20 Burton, D.E. 376–2, p. 20 (report) (citations omitted).

21 *Id.*

22 Consent Decree, *United States v. Waller Cnty.,* No. 4:08–cv–03022 (S.D.Tex. Oct. 17, 2008), *available at* http://www.justice. gov/crt/about/vot/sec_5/waller_cd.pdf.

23 *E.g., LULAC v. Perry,* 548 U.S. 399, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006); *Bush v. Vera,* 517 U.S. 952, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996); *Upham v. Seamon,* 456 U.S. 37, 102 S.Ct. 1518, 71 L.Ed.2d 725 (1982); *White v. Weiser,* 412 U.S. 783, 93 S.Ct. 2348, 37 L.Ed.2d 335 (1973); *White v. Regester,* 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973). While the Supreme Court eliminated the formula for the preclearance requirement in *Shelby Cnty., Ala. v. Holder,* —— U.S. ——, 133 S.Ct. 2612, 186 L.Ed.2d 651 (2013), prior to that opinion, a three-judge court had found that two of Texas's 2011 redistricting plans violated the VRA. *Texas v. United States,* 887 F.Supp.2d 133 (D.D.C.2012), *vacated and remanded on other grounds,* —— U.S. ——, 133 S.Ct. 2885, 186 L.Ed.2d 930 (2013). The 2011 redistricting plans are still the subject of ongoing litigation. *See Perez v. Perry,* 26 F.Supp.3d 612 (W.D.Tex.2014).

24 Burton, D.E. 582, pp. 22–23 (testimony) (Texas's stated rationale for the white primaries, secret ballot provisions, poll tax, re-registration requirements, and voter purges was to reduce voter fraud).

25 Burton, D.E. 376–2, pp. 10–11 (report).

26 Burden, D.E. 391–1, p. 14 (report) (citing *Poverty Rate by Race/Ethnicity,* THE HENRY J. KAISER FAMILY FOUNDATION, http://kff. org/other/stateindicator/poverty-rate-by-raceethnicity/ (last visited June 3, 2014)).

27 Johnson, D.E. 569, pp. 17–18; *see also Rodriguez v. Harris Cnty.,* 964 F.Supp.2d 686, 783 (S.D.Tex.2013) (describing poll workers being hostile to Latinos and requiring them to show driver's licenses to vote).

28 Hernandez–Luna, D.E. 573, pp. 373–74; *see also* Korbel D.E. 365, p. 26 (report).

29 Rev. Johnson testified that it took five years after Rosa Parks spurred the integration of public accommodations for African–Americans to sit in the front of the bus. D.E. 596, p. 13. This delayed progress was confirmed by Sen. Ellis, who testified that, in his experience negotiating political power, African–Americans remain deferential to Anglos. D.E. 573, pp. 158, 162–63.

30 *Thornburg v. Gingles,* 478 U.S. 30, 53 n. 21, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986) (racially polarized voting "exists where there is a consistent relationship between [the] race of the voter and the way in which the voter votes, or to put it differently, where black voters and white voters vote differently") (internal quotation marks and citations omitted).

31 Burden, D.E. 391–1, p. 13 (report); Burden, D.E. 569, p. 307 (testimony).

32 *See, e.g., LULAC,* 548 U.S. at 427, 126 S.Ct. 2594 ("The District Court found 'racially polarized voting' in south and west Texas, and indeed 'throughout the State.' "); *League of United Latin Am. Citizens (LULAC), Council No. 4434 v. Clements,* 986 F.2d 728, 776 *on reh'g,* 999 F.2d 831 (5th Cir.1993); *Benavidez v. Irving Indep. Sch. Dist.,* 3:13–CV–0087–D, 2014 WL 4055366, at *12 (N.D.Tex. Aug. 15, 2014); *Fabela v. City of Farmers Branch, Tex.,* 3:10–CV–1425–D, 2012 WL 3135545, at *11, *13 (N.D.Tex. Aug. 2, 2012); *see also Bush v. Vera,* 517 U.S. 952, 981, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996).

33 Korbel, D.E. 578, pp. 200–01 (discussing *Perez v. Perry,* 26 F.Supp.3d 612).

34 *Id.*

35 Burden, D.E. 391–1, p. 16 (report).

36 *Id.*

37 *Id.*

38 *Id.*

39 Burton, D.E. 376–2, p. 36 (report).

40 *Id.* at 38.

41 Additional examples were provided by Dr. Korbel, D.E. 365, p. 23 (report).

42 Burton, D.E. 376–2, pp. 41, 65 (report).

43 *Id.* at 39–40.

44 *Id.* at 40, 62–63 (the message warned that a national political group was engaging in voter fraud by taking people to the polls on election day and that their victims—the voters—would be prosecuted).

45 TEX. ELEC.CODE § 63.001(b) (Vernon 2011).

46 McGeehan, D.E. 578, p. 274.

47 Mitchell, D.E. 592, pp. 70–72.

48 *Id.* at 76.

49 Mitchell, D.E. 578, p. 174.

50 Wood, D.E. 563, pp. 198, 204 (testimony).

51 Minnite, D.E. 578, pp. 119–20 (testimony).

52 *Id.* at 130.

53 *Id.* at 134–37.

54 *Id.* at 135.

55 *Id.* at 137–38; *see also* Patrick, D.E. 588, p. 249 (testifying that the public had a widespread belief that there was fraud in elections based on news accounts).

56 Minnite, D.E. 578, p. 142 (testimony).

57 Veasey, D.E. 561, pp. 239–40.

58 Smith, D.E. 578, p. 343 ("My presumption is that you are a fool or you're uninformed if you're willing to commit a felony in order to add a single vote to the candidate of your choice.").

59 Wood, D.E. 563, p. 202 (testimony); Burden, D.E. 569, p. 320 (testimony); Lichtman, D.E. 573, p. 67 (testimony); Anchia, D.E. 573, p. 322; Minnite, D.E. 375, p. 21 (report) (most of the voter fraud referrals concern violations of the state's absentee and early voting laws, mishandling of mail ballots, unlawful assistance to the voter, coercion or intimidation of voters, and alleged ballot tampering); Mitchell, D.E. 578, p. 176.

60 Wood, D.E. 563, pp. 224–26.

61 See Section IV(B)(2)(a), *infra.*

62 The first challenge to a photo ID requirement for voting was in Virginia in 1999. *See Democratic Party of Va. v. State Bd. of Elections,* HK–1788, 1999 WL 1318834 (Va.Cir.Ct. Oct. 19, 1999).

63 North Carolina and New Hampshire enacted strict voter photo ID laws in 2012 and 2013, respectively, but they will not be implemented until 2015 and 2016. *See Voter Identification Requirements—Voter ID Laws,* NATIONAL CONFERENCE OF STATE LEGISLATURES, http://www.ncsl. org/research/elections-and-campaigns/voter-id.aspx.

64 *See* ARK.CODE ANN. §§ 7–1–101, 7–5–201, 7–5–305, 7–5–321; GA.CODE ANN. § 21–2–417; IND.CODE §§ 3–5–2–40.5, 3–11–8–25.1, 3–11.7–5–2.5; KAN. STAT. ANN. §§ 25–2908, 25–1122; MISS.CODE ANN. § 23–15–563; N.C. GEN.STAT. ANN. § 163–166.13 (effective 2016); N.H. REV. STAT. ANN. § 659:13; TENN.CODE ANN. § 2–7–112; VA.CODE ANN. §§ 24.2–643, 24.2–

653; WIS. STAT. ANN. §§ 5.02, 6.79(2), 6.97(3). Arkansas law held unconstitutional and stayed pending appeal. *See Ark. State Bd. of Election Comm'rs v. Pulaski Cnty. Election Comm'n,* 2014 Ark. 236, 437 S.W.3d 80. Oral arguments heard Oct. 2, 2014. Wisconsin law enjoined, but reinstated upon appeal *Frank v. Walker,* 768 F.3d 744 (7th Cir.2014), still subject to further appeal.

65 Bazelon, D.E. 614–1, p. 19 (report); Farinelli, D.E. 582, pp. 312–98. These figures, of course, do not include travel costs, or time off of work. The cost of a birth certificate is used because it is ordinarily the most widely available and least expensive alternative of primary identification.

	Texas EIC	
Issued by DPS	Application Fee	$0.00
Issued by DSHS or County Registrar	EIC-only Birth Certificate if the application is tendered in person (not by mail or online) and only if already registered and accurate	$2.00–3.00 [66]
	Full-purpose Birth Certificate (the only type issued by mail, even if for EIC purposes)	$22.00–23.00
	Search Fee to find Birth Certificate plus statutory surcharge	$22.00
	Delayed Birth Certificate—Search fee plus certified copy	$47.00
	Application to Amend Birth Certificate plus certified copy	$37.00
Other State or Territory	Out–of–State Birth Certificate [67]	$5.00–34.00
	Total Fees Required To Be Paid To Obtain EIC	**$2.00–47.00**
	Texas Driver's License	
Issued by DPS	Application Fee	$9.00–25.00
	Replacement Fee	$11.00
	Birth Certificate (see above)	$22.00–47.00
	Total Fees Required To Be Paid To Obtain Driver's License	**$31.00–72.00**
	Texas Personal Identification Card	
Issued by DPS	Application Fee	$6.00–16.00
	Replacement Fee	$11.00
	Birth Certificate (see above)	$22.00–47.00
	Total Fees Required To Be Paid To Obtain Personal ID Card	**$28.00–63.00**
	Texas Concealed Handgun License	
Issued by DPS	Application Fee–new	$70.00–140.00
	Application Fee-renewed	$70.00
Issued by DPS	Texas Driver's License or Personal Identification Card	$9.00–63.00
Private Vendor	Classroom Training	Varies
	Total Fees Required To Be Paid To Obtain Handgun License	**Over $79.00**
	Passport	
Issued by US	Application Fee—New	$55–135

	Application Fee—Renewed	$30.00–110.00
Private Vendor	Photo	Varies
	Total Fees Required To Be Paid To Obtain Passport	**Over $30.00**
	Citizenship Certificate with Photo	
Issued by US	Original Naturalization Certificate	$680.00
	Original Certificate of Citizenship	$600.00
	Copy of Naturalization Certificate [68]	$345.00
	Total Fees Required To Be Paid To Obtain Citizenship Cert.	**$345–680**
	Military ID with Photo	
	Not Quantifiable	

66 The State did not reduce the charge of $22.00 for a birth certificate until after SB 14 passed and was signed into law. Hebert, D.E. 592, pp. 183–84; *see generally* Farinelli, D.E. 582, p. 323.

67 Pls.' Ex. 474, pp. 5, 31 (CDC Vital Statistics Guide).

68 Hernandez–Luna, D.E. 573, p. 367. While naturalization certificates are not listed in SB 14, the SOS has allowed them by administrative rule. *See generally* 1 TEX. ADMIN. CODE § 81.8; 37 TEX. ADMIN. CODE § 15.182.

69 Tex. S.B. 362, 81st Leg., R.S. (2009); Tex. H.B. 218, 80th Leg., R.S. (2007); Tex. H.B. 1706, 79th Leg., R.S. (2005).

70 Ellis, D.E. 573, p. 185; *see also* HB 1706 (2005), *supra;* HB 218 (2007), *supra;* SB 362 (2009), *supra.*

71 http://www.capitol.state.tx.us/tlodocs/79R/billtext/pdf/HB01706 E.pdf# navpanes =0.

72 http://www.capitol.state.tx.us/BillLookup/Actions.aspx?Leg Sess=79R&Bill=HB1706.

73 http://www.capitol.state.tx.us/tlodocs/80R/billtext/pdf/HB00218 S.pdf# navpanes =0.

74 http://www.capitol.state.tx.us/BillLookup/Actions.aspx?Leg Sess=80R&Bill=HB218.

75 http://www.capitol.state.tx.us/tlodocs/81R/billtext/pdf/SB00362 H.pdf# navpanes =0.

76 http://www.capitol.state.tx.us/BillLookup/Actions.aspx?Leg Sess=81R&Bill=SB362. *See also* Dewhurst, D.E. 588, pp. 26, 31–33, 45–47 (SB 362 was "chubbed to death"); Patrick, D.E. 588, pp. 279–84.

77 http://www.capitol.state.tx.us/BillLookup/Authors.aspx?Leg Sess=82R&Bill=SB14.

78 Anchia, D.E. 573, pp. 339, 355 ("I think the evasiveness of the bill authors, the failure to act to answer questions—the fact that a lot of the bills authors—or that the bill authors didn't really even know their bill that well caused me to believe that maybe somebody else was writing that bill for them."); Veasey, D.E. 561, p. 248 (pre-packaged).

79 Anchia, D.E. 573, pp. 338–39; Martinez–Fischer, D.E. 561, p. 106 (testifying that his concerns "fell on deaf ears").

80 Ellis, D.E. 573, pp. 184–85 ("My ... friend Senator [Fraser] would say something to the effect, 'I'm not advised, ask the Secretary of State.' "); Fraser, D.E. 588, p. 414.

81 Ellis, D.E. 573, p. 186.

82 *Id.* at 186–87 (specifically disputing Sen. Fraser and Lt. Gov. Dewhurst's assertions that they were trying to work out a consensus on SB 14); Martinez–Fischer, D.E. 561, pp. 98–99.

83 Ellis, D.E. 573, pp. 165–66.

84 *Id.* at 176.

85 Fraser, D.E. 588, p. 407.

86 Fraser, D.E. 588, pp. 407–08.

87 Dewhurst, D.E. 588, pp. 65–66.

88 S.J. of Tex., 82nd Leg., R.S. 54 (2011); H.J. of Tex., 82nd Leg., R.S. 80 (2011).

89 Davis, D.E. 573, pp. 9–10; *see also* McGeehan, D.E. 578, pp. 276–77 (testifying that she did not know of any election law emergency and did not know why the Governor declared one).

90 Senate Rules 7.08, 7.13 (2011).

91 Senate Rule 7.13 (2011).

92 A blocker bill is a bill on a relatively mundane subject that is never passed. It sits in the way of other legislation, requiring a vote to suspend the regular order of business to move other legislation through. Patrick, D.E. 588, pp. 261–64.

93 S.J. of Tex., 82nd Leg., R.S. 43 (2011) (Sen. Res. 36).

94 S.J. of Tex., 81st Leg., R.S. 23, 28 (2009) (Sen. Res. 14). The 2009 Texas Senate had also made a special rules change regarding Senate Rule 16.07, allowing any bill regarding voter ID requirements to be set for special order by a simple majority vote. That rule was carried forward in the 2011 rules.

95 Williams, D.E. 592, pp. 107–11; S.J. of Tex., 82nd Leg., R.S. 43 (2011) (Sen. Res. 36).

96 Davis, D.E. 573, p. 9; Uresti, D.E. 569, pp. 221–22; Ellis, D.E. 573, p. 164.

97 Ellis, D.E. 573, pp. 167–68 (Senate suspended the two-thirds rule during the "Segregation Forever" special session in the 1950s and during redistricting).

98 Davis, D.E. 573, p. 9; Ellis, D.E. 573, p. 164; Uresti, D.E. 569, p. 216.

99 Uresti, D.E. 569, pp. 221–22.

100 Ellis, D.E. 573, p. 165.

101 Dewhurst, D.E. 588, p. 57.

102 S.J. of Tex., 82nd Leg., R.S. 60 (2011) (Sen. Res. 79).

103 Martinez–Fischer, D.E. 561, pp. 107–08; McGeehan, D.E. 578, pp. 267–68; Duncan Dep., Aug. 28, 2014, pp. 79–80 (D.E. 592, pp. 221–22 (admitting dep.)).

104 S.J. of Tex., 82nd Leg., R.S. 54, 61–62, 99 (2011). When a Committee of the Whole Senate is formed, the President (Lieutenant Governor) leaves the chair and appoints a chair to preside in committee. The President may then participate in debate and vote on all questions. Senate Rule 13.02, 13.03 (2011).

105 S.J. of Tex., 82nd Leg., R.S. 99 (2011).

106 *Id.*

107 Senate Rule 7.09(b)-(h) (2011). The House rule on that issue appears at H.J. of Tex., 82nd Leg., R.S. 116–17 (2011); Davis, D.E. 573. pp. 11–12 (requirement to keep current).

108 Davis, D.E. 573, pp. 12–13; Anchia, D.E. 573, p. 358.

109 Davis, D.E. 573, pp. 12–13.

110 In 2005, the 79th Legislature's fiscal note for the voter ID law was $130,000 per year, based on the estimated number of indigents (using poverty guidelines) that would require free state ID cards at $15 per card. Davis, D.E. 573, p. 14. In the 80th Legislature (2007), the fiscal note reflected $171,000 per year based on only 11,000 indigents needing free ID. *Id.* That session's fiscal note was later raised to $670,000 based on changes to the legislation that offered a free ID without necessity of showing indigence. *Id.* at 15. In the 81st Legislature (2009), when the bill originated in the Senate for the first time, the voter ID bill was originally filed without a fiscal note. *Id.* at 16. Later, there was a fiscal note attached, showing no impact on the state's budget. *Id.* at 16. When that was questioned, a $2 million note was attached. *Id.*

111 Davis, D.E. 573, pp. 17–18.

112 *Id.* at 18.

113 *Id.* at 18–19.

114 Peters, D.E. 582, pp. 146–47 (testified as the assistant director of DPS's Driver License Division that they did not conduct any targeted outreach for EICs); Cesinger Dep., May 20, 2014, pp. 50, 55, 59, 90 (D.E. 592, pp. 221–22 (admitting dep.)) (testifying that DPS did not have a budget to publicize the EIC program, did not attempt to target its outreach, and did not translate any of their communications into Spanish).

115 C. Carrier, D.E. 561, p. 27 (learned about the EIC identification only after being deposed by the State for this case); Bates, Pls.' Ex. 1090, p. 13 (did not know that her existing ID would be insufficient until she arrived at the polls); Mendez, D.E. 563, p. 104 (was not informed about his option to purchase an EIC-only birth certificate).

116 See Section IV(B)(2)(a), *infra.*

117 Williams, D.E. 592, pp. 128–29.

118 Sen. Williams requested the analysis from the SOS's office in 2011. While the analysis was done, it was not turned over to the legislature. Williams, D.E. 592, pp. 128–29; McGeehan, D.E. 578, pp. 285–92. Sen. Ellis asked for discriminatory impact data from SOS and never got it. Ellis, D.E. 573, pp. 182–84. Sen. Uresti never saw any such statistical analysis. Uresti, D.E. 569, pp. 211–

12. However, Lt. Gov. Dewhurst was aware of the No–Match List results showing 678,000 to 844,000 voters being potentially disenfranchised. Dewhurst, D.E. 588, pp. 71–72; *see also* McGeehan, D.E. 578, pp. 284–92.

119 S.J. of Tex., 82nd Leg., R.S. 146 (2011).

120 H.J. of Tex., 82nd Leg., R.S. 153 (2011) (House Res. 4; Rule 8, § 12).

121 H.J. of Tex., 82nd Leg., R.S. 329 (2011).

122 Martinez–Fischer, D.E. 561, p. 561; Anchia, D.E. 573, p. 317.

123 Veasey, D.E. 561, p. 241 (not a fair representation).

124 Martinez–Fischer, D.E. 561, p. 108.

125 Anchia, D.E. 573, p. 354.

126 Martinez–Fischer, D.E. 561, pp. 112–13.

127 H.J. of Tex., 82nd Leg., R.S. 117–18 (2011) (House Res. 4). The imposition of the requirement of photo ID was considered by many to place a fee on the right to vote. As amended in the House, the bill would have reduced the fee for a Texas personal ID card.

128 Anchia, D.E. 573, pp. 338–39 ("And on the House floor, when I was asking ... the House sponsor ... what were the impacts on minority populations, or had she seen a study, or had she engaged in a study, the answers were very evasive and ... nonresponsive.").

129 H.J. of Tex., 82nd Leg., R.S. 1081–82 (2011).

130 http://www.capitol.state.tx.us/BillLookup/Amendments.aspx?Leg Sess=82R&Bill=SB14 (listing amendments and the disposition of each, including copies for viewing and downloading).

131 Veasey, D.E. 561, pp. 247, 253; Hernandez–Luna, D.E. 573, p. 371 ("It seemed like there was no desire to have a discussion about the issues that were being raised through amendments").

132 S.J. of Tex., 82nd Leg., R.S. 103, 112–139 (2011) (SB 14); H.J. of Tex., 82nd Leg., R.S., 943, 958–1029 (2011) (C.S.S.B. 14).

133 H.J. of Tex. 82nd Leg., R.S. 144 (2011) (House Res. 4; House Rule 7, § 12).

134 Davis, D.E. 573, pp. 24–25; Pls.' Ex. 650.

135 *See* Pls.' Exs. 13, 650.

136 Victor Farinelli, Communication Manager for Texas Department of State Health Services (DSHS), testified that it was possible for DPS to set up a portal with DSHS to allow DPS to verify a birth at no charge to the voter, but this has not been pursued. Farinelli, D.E. 582, pp. 393–95; *see also* Peters, D.E. 582, pp. 147–48.

137 S.J. of Tex., 82nd Leg., R.S. 137–38 (2011).

138 *See* Appendix to Opinion: TABLE OF AMENDMENTS OFFERED ON SB 14.

139 S.J. of Tex., 82nd Leg., R.S. 918 (2011); H.J. of Tex., 82nd Leg., R.S. 1014 (2011).

140 Pls.' Ex. 173, p. 92 (2011 Senate Rules).

141 H.J. of Tex., 82nd Leg., R.S. 167–68 (2011) (House Res. 4; House Rule 13, § 9).

142 S.J. of Tex., 82nd Leg., R.S. 2082 (2011) (Res. 935); H.J. of Tex., 82nd Leg., R.S. 4049 (2011) (Res. 2020). In creating the EIC, no one from the legislature consulted SOS. McGeehan, D.E. 578, p. 280.

143 Rep. Anchia, D.E. 573, p. 354.

144 S.J. of Tex., 82nd Leg., R.S. 4526 (2011).

145 Wood, D.E. 563, pp. 208–09.

146 See Sections II, IV(B)(6)(a), *supra.*

147 Anchia, D.E. 573, p. 327.

148 Martinez–Fischer, D.E. 561, p. 104.

149 Anchia, D.E. 573, p. 319. "Sanctuary cities" are cities that have refused to fund law enforcement efforts to look for immigration law violators, leaving that to the federal government. S.J. of Tex., 82nd Leg., R.S. 8 (2011) (designating the elimination of sanctuary cities as a legislative emergency).

150 Hernandez–Luna, D.E. 573, pp. 369–70; Martinez–Fischer, D.E. 561, p. 120.

151 Martinez–Fischer, D.E. 561, pp. 97–98.

152 Burton, D.E. 582, p. 36 (testimony) (relating SB 14 as equivalent to the poll tax, in part, because "both come at times when the party in power in politics in Texas perceives the threat of African Americans, in particular, and minority voter increased voter ability to participate in the electoral process"); *see also* Lichtman, D.E. 374, p. 9 (report) ("Demographic changes help explain why the

Republican-dominated state legislature and the Republican governor enacted the specific provisions of the photo identification law that discriminate against African–American and Latinos").

153 Hernandez–Luna, D.E. 573, p. 373; *see also* Anchia, D.E. 573, pp. 319, 322–25.

154 Anchia, D.E. 573, pp. 323–24.

155 Smith, D.E. 578, pp. 333–34.

156 *See* TEX. TRANSP. CODE § 522.021; TEX. GOV'T CODE ANN. § 411.172; Anchia, D.E. 573, p. 325; McGeehan, D.E. 578, p. 264.

157 Anchia, D.E. 573, pp. 322–23.

158 *Id.* at 323.

159 *Id.* at 329; Hernandez–Luna, D.E. 573, p. 377; Martinez–Fischer, D.E. 561, p. 104; Uresti, D.E. 569, p. 232.

160 Hernandez–Luna, D.E. 573, pp. 369–70.

161 Davis, D.E. 573, pp. 8–9.

162 *See* Dewhurst, D.E. 588, p. 15.

163 Fraser, D.E. 588, p. 419; Patrick, D.E. 588, p. 304.

164 McGeehan, D.E. 578, p. 279.

165 *Id.* at 280.

166 Anchia, D.E. 573, pp. 320–21. Likewise, increased voter turnout in the elections in Ed Couch, Texas, had more to do with the fact that all six councilmembers were up for election than that any voter had increased confidence. Guzman, D.E. 569, p. 381.

167 Hood, D.E. 588, pp. 154–56.

168 *Id.* at 121–22, 144.

169 *Id.* at 131; Patrick, D.E. 588, pp. 245–47.

170 Burden, D.E. 569, pp. 298–99.

171 *Id.* at 295, 298–99, 315, 323, 332.

172 Hood, D.E. 588, pp. 125–29 (testimony).

173 *E.g.,* Dewhurst, D.E. 588, pp. 32, 76–79; Patrick, D.E. 588, pp. 245–46.

174 Pls.' Ex. 214.

175 Pls.' Exs. 251, 252.

176 Davis, D.E. 573, pp. 39–40; Ellis, D.E. 573, pp. 188–89; Anchia, D.E. 573, pp. 360–61; Patrick, D.E. 588, p. 251.

177 *See generally* Ellis, D.E. 573, p. 191; Williams, D.E. 592, p. 100; Guidry, D.E. 592, pp. 151–53, 156–60; Patrick, D.E. 588, pp. 253–54.

178 Davis, D.E. 573, pp. 8, 31; Ellis, D.E. 573, p. 187; Uresti, D.E. 569, p. 223; Anchia, D.E. 573, pp. 354–55; Veasey, D.E. 561, pp. 254–55.

179 Martinez–Fischer, D.E. 561, pp. 103–04.

180 Anchia, D.E. 573, pp. 320–21, 323–24.

181 *Id.* at 321–22.

182 *Id.* at 329–30.

183 *Id.* at 362.

184 *Id.* at 362.

185 Uresti, D.E. 569, p. 223.

186 *Id.* at 223.

187 Smith, D.E. 578, pp. 327–28. Lt. Gov. Dewhurst testified that he estimated 3–7% of registered voters did not have a Texas DPS-issued ID and believed the number could be as high as 844,000 based on what he had learned from the unpublished SOS no-match exercise. *See* Dewhurst, D.E. 588, pp. 70–73.

188 Smith, D.E. 578, p. 346.

189 Hebert, D.E. 592, pp. 195–98.

190 Ellis, D.E. 573, pp. 178–79.

191 Smith, D.E. 578, pp. 339–40; Patrick, D.E. 588, pp. 305–07; Pls.' Ex. 330.

192 *See* Pls.' Exs. 707, 734, 736, 746, 749.

193 Lichtman, D.E. 374, p. 5 (report).

194 Davidson, D.E. 481–1, p. 29 (report).

195 Lichtman, D.E. 374, pp. 24–25 (report).

196 Pls.' Ex. 454, p. 7.

197 Lichtman, D.E. 374, pp. 53–54 (report)

198 *Id.* at 24–29.

199 *Id.* at 38–41.

200 *Id.* at 42–44; Pls.' Exs. 205, 272; Hebert, D.E. 592, pp. 189–91, 203–05; Hebert Dep. June 20, 2014, pp. 88–93, 261–62; Davidson, D.E. 481–1, pp. 20, 30 (report).

201 Lichtman, D.E. 374, pp. 33–35 (report) ("The DPS has also released the ten zip codes with the largest number of surcharges. [T]hese zip codes are overwhelmingly Latino and African–American in their voting age population.").

202 *Id.* at 46–47.

203 *Id.* at 67–71.

204 Reps. Martinez–Fischer and Hernandez–Luna testified that the 2011 session was highly racially-charged, and anti-Hispanic, with consideration of the abolition of sanctuary cities, an English-only bill, and the rollback of the Affordable Health Care Act. Martinez–Fischer, D.E. 561, p. 98; Hernandez–Luna, D.E. 573, pp. 369–70; *see also* Davidson, D.E. 481–1, pp. 37–38 (report).

205 Dr. Stephen Ansolabehere and Dr. Yair Ghitza on behalf of the United States; Dr. Michael C. Herron, Dr. Matthew A. Barreto, and Dr. Gabriel R. Sanchez on behalf of the Veasey Plaintiffs; Dr. Coleman Bazelon on behalf of the Texas League of Young Voters Education Fund.

206 This database comparison was performed using a matching protocol by which database fields were standardized, identifiers such as DPS and Social Security numbers were constructed, and the data went through multiple algorithmic "sweeps" to find matches. Ansolabehere, D.E. 600–1, pp. 8–9, 14, 16–31 (report). There was no disagreement among the experts as to the propriety of these methods for performing the statistical analysis. *See generally* Herron, D.E. 563, pp. 14–24 (testimony); Hood, D.E. 588, pp. 175–76 (testimony).

207 An inactive, or "suspense," voter is one whose registration renewal notice was returned by mail to the county registrar as undeliverable, failed to respond to a confirmation notice, or was excused or disqualified from jury service because he was not a resident of the underlying county. TEX. ELEC.CODE § 15.081; Ingram, D.E. 588, p. 311–12; Ansolabehere, D.E. 600–1, p. 48 (report).

208 Ansolabehere, D.E. 600–1, p. 2 (report).

209 Herron, D.E. 473, pp. 10–27 (report).

210 Ansolabehere, D.E. 561, p. 204 (testimony).

211 *Id.* at 181; *see also* Ghitza, D.E. 360–1, pp. 6–7 (report).

212 Crawford, D.E. 592, pp. 38–39.

213 "[T]he number of Hispanic ID-holders in Texas is exponentially higher than DPS's raw data indicates." Pls.' Ex. 942 (letter from Keith Ingram, Texas Director of the Elections Division at the Secretary of State's Office, to the Department of Justice).

214 The experts agreed that there is no discretion involved in geocoding this data. Ansolabehere, D.E. 561, p. 226 (testimony); Ghitza, D.E. 563, pp. 150–51 (testimony).

215 The SSVR was developed based upon U.S. Census Bureau data in 2000. Dr. Ansolabehere testified that the Texas Legislative Council uses the Spanish Surnames list in conducting analyses (D.E.561, p. 135), as does the SOS. McGeehan, D.E. 578, p. 259; Dewhurst, D.E. 588, pp. 64–65. It is considered a reliable way to estimate data related to Latinos.

216 *See* Ansolabehere, D.E. 600–1, p. 38 (report).

217 *Id.* at 40.

218 *Id.* at 105.

219 *Id.* at 54.

220 Ghitza, D.E. 563, pp. 154–55 (testimony); Ghitza, D.E. 360–1, pp. 4–5 (report).

221 Ghitza, D.E. 360–1, p. 4 (report).

222 Ansolabehere, D.E. 561, p. 227 (testimony); Ansolabehere, D.E. 600–1, p. 23 (report).

223 Ghitza, D.E. 360–1, p. 5 (report).

224 Ansolabehere, D.E. 600–1, p. 41 (report).

225 *Id.* at 153–54; *see also* Ghitza, D.E. 563, pp. 163–65 (testimony).

226 Herron, D.E. 563, p. 66 (testimony).

227 *Id.* at 69.

228 Dr. Coleman Bazelon is a principal in the Washington, D.C. office of The Brattle Group, an economic consulting firm and received a Ph.D. and M.S. in Agricultural and Resource Economics from the University of California, Berkeley, a Diploma in Economics from the London School of Economics and Political Science, and a B.A. from Wesleyan University. Bazelon, D.E. 614–1, p. 4 (report).

229 Bazelon, D.E. 582, p. 96 (testimony).

230 Barreto–Sanchez, D.E. 370, pp. 2–3 (report) (Dr. Barreto received a Ph.D. in Political Science, with an emphasis on racial and ethnic politics in the U.S., political behavior, and public opinion, at the University of California, Irvine. Dr. Sanchez received a Ph.D. in Political Science, with the same emphasis, at the University of Arizona.)

231 They reported a response rate of 26.3%. Barreto, D.E. 569, pp. 47–49 (testimony). According to Drs. Barreto and Sanchez, the field survey's response rate is well within the acceptable range of 20 to 30%, making it scientifically valid. Barreto–Sanchez, D.E. 370, p. 16 (report).

232 Barreto–Sanchez, D.E. 370, p. 18 (report).

233 *Id.*

234 *Id.* at 19.

235 Hood, D.E. 588, pp. 217–22 (testimony).

236 *Id.* at 222–36.

237 *See id.* at 121–244 (testimony).

238 *Frank v. Walker,* 17 F.Supp.3d 837, 881–83, 885–86 (E.D.Wis.), *rev'd,* 768 F.3d 744 (7th Cir.2014); *Florida v. United States,* 885 F.Supp.2d 299, 324–30, 365–68 (D.D.C.2012); *Common Cause/Georgia v. Billups,* 4:05–CV–0201–HLM, 2007 WL 7600409, at *14 (N.D.Ga. Sept. 6, 2007).

239 Dr. Hood's reconstructed survey results conclude that 4.0% of Anglo voting eligible population lack qualified SB 14 ID compared to 5.3% of African–Americans and 6.9% of Hispanics. Similarly, his reconstructed results indicate that 2.5% of registered Anglo voters lack qualified SB 14 ID while 4.2% of African–American and 5.1% of Hispanic registered voters lack such ID. Hood, D.E. 450, p. 30 (report) (Dr. Hood did not update this analysis in his amended report).

240 Guzman, D.E. 569, p. 375.

241 *Id.* at. 368, 372–73.

242 Barreto–Sanchez, D.E. 370, p. 24 (report).

243 *Id.*

244 Henrici, D.E. 369–1, p. 17 (report).

245 *Id.*

246 *Id.*

247 Henrici, D.E. 569, p. 188 (testimony).

248 Henrici, D.E. 369–1, pp. 18–19 (report).

249 Bazelon, D.E. 614–1, p. 11 (report).

250 Bates, Pls.' Ex. 1090, pp. 14–17.

251 Burton, D.E. 376–2, pp. 24–35 (report); *see also* Burden, D.E. 391–1, pp. 14–16 (report).

252 Burden, D.E. 391–1, p. 14 (report) (citing *Poverty Rate by Race/Ethnicity,* THE HENRY J. KAISER FAMILY FOUNDATION, http:// kff. org/other/stateindicator/poverty-rate-by-raceethnicity/ (last visited June 3, 2014)).

253 Burden, D.E. 391–1, p. 15 (report).

254 *Id.* at 14–15.

255 Burton, D.E. 376–2, pp. 26–27 (report).

256 *Id.* at 24.

257 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

258 Burton, D.E. 376–2, pp. 23–24 (report).

259 Burden, D.E. 391–1, p. 14 (report) (citing *Percentage of Persons Age 25 and Over with High School Completion or Higher and a Bachelor's or Higher Degree, by Race/Ethnicity and State: 2008–2010,* NATIONAL CENTER FOR EDUCATION STATISTICS, http://nces.ed. gov/programs/digest/d12/tables/dt12_015.asp (last visited June 3, 2014)).

260 *Id.*

261 Burton, D.E. 376–2, p. 28 (report).

262 *Id.*

263 *Id.* (citing Tony Fabelo, et al., *Breaking School's Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement,* Council of State Governments Justice Center/The Public Policy Research Institute, July 2011, *available at* http://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_ Rules_Report_Final.pdf (last accessed June 27, 2014), pp. 46, x-xi).

264 Burden, D.E. 391–1, p. 15 (report) (citing *Texas: Minority Health,* HENRY J. KAISER FAMILY FOUNDATION, http://kff.org/state-category/minority-health/?state=TX (last visited June 3, 2014)).

265 Henrici, D.E. 369–1, p. 24 (report) (citing Ronald Angel, Laura Lein, and Jane Henrici. *Poor Families in America's Health Care Crisis: How the Other Half Pays,* pp. 79–100 (New York: Cambridge University Press, (2006))).

266 *See* Bazelon, D.E. 521–1, pp.39–40 (report); Burton, D.E. 376–2, pp. 48–49 (report); Henrici, D.E. 369–1, pp. 14, 24, 30, 32 (report); Burden, D.E. 391, pp. 14–15 (report).

267 *See* Bates, Pls.' Ex. 1090, p. 13 (did not know that her existing ID would be insufficient until she arrived at the polls); Washington, Pls.' Ex. 1093, pp. 17–24; *see also* Barreto, D.E. 569, p. 66 (testimony) (testifying that 87% of survey respondents without a high school diploma had never heard of an EIC). Sen. Uresti testified that his constituents were not aware of EICs. Uresti, D.E. 569, p. 249. City Councilman Guzman testified that, while helping registered voters turned away at the polls during the November 2013 election to obtain appropriate identification, he was not aware of EICs. Guzman, D.E. 569, pp. 359–62, 364, 367–68, 372–74.

268 Calvin Carrier testified that throughout his efforts to obtain the underlying documentation and qualifying ID for his father, no one mentioned the EIC. C. Carrier, D.E.561, pp. 14–28; *see also* Barber, Pls.' Ex. 1108, pp. 26–30; Espinoza, D.E. 582, p. 177.

269 Bingham, Pls.' Ex. 1091, pp. 33–34 (was not offered a provisional ballot until she specifically asked if there was some other way she could vote). Councilman Guzman testified that his constituents who were turned away from the polls did not know about provisional ballots. Guzman, D.E. 569, pp. 367–68, 375.

270 C. Carrier, D.E. 561, pp. 26–27.

271 *Id.* at 27–28.

272 *See* Jewell, D.E. 578, pp. 35–36, 38–39 (testimony); Uresti, D.E. 569, pp. 214–15; Cornish, D.E. 569, pp. 259–66, 287; Peters, D.E. 582, pp. 156–57.

273 37 TEX. ADMIN. CODE §§ 15.181–.183.

274 A primary form of identification is a Texas driver license that has been expired for at least 60 days but no more than two years. *Id.* at § 15.182. A secondary form of identification can be: (1) an original or certified copy of a birth certificate issued by the appropriate State Bureau of Vital Statistics or equivalent agency; (2) an original or certified copy of United States Department of State Certification of Birth (issued to United States citizens born abroad); (3) an original or certified copy of a court order with name and date of birth indicating an official change of name or gender; or (4) a U.S. Citizenship or Naturalization Certificate (regardless of whether it contains an identifiable photo). *Id.* An EIC-only birth certificate issued by the Texas Department of State Health Services is also an accepted form of a secondary identification. Peters, D.E. 582, p. 156. Supporting documentation includes twenty-eight different documents—including a Social Security card, a Texas driver license or identification card that has been expired for more than two years, a voter registration card, a Texas vehicle title or registration, as well as certain school records. 37 TEX. ADMIN. CODE § 15.182.

275 *Election Identification Certificates (EIC)—Documentation Requirements,* TEXAS DEPT. OF PUBLIC SAFETY, http://www.txdps.state.tx. us/DriverLicense/eicDocReqmnts.htm (last visited October 7, 2014).

276 Peters, D.E. 582, p. 156.

277 Mr. Peters testified that the application requirements for an EIC were simply adopted from those required for a driver's license or personal ID card in order to provide continuity and simplicity for the customer service representatives. Peters, D.E. 582, pp. 138–39. Mr. Rodriguez confirmed this. Rodriguez, D.E. 582, pp. 253–54.

278 Davis, D.E. 572, pp. 24–27; Pls.' Ex. 650.

279 *See* Farinelli, D.E. 582, pp. 340–41, 384–85, 389–92.

280 Mendez, D.E. 563, pp. 103–04.

281 Mar. Lara, D.E. 573, pp. 219–20.

282 *Id.*

283 *Id.* at 222.

284 *Id.* at 222–23.
285 *Id.;* Pls.' Ex. 989.
286 Mar. Lara, D.E. 573, p. 231.
287 Max. Lara, D.E. 573, p. 235.
288 C. Carrier, D.E. 561, p. 14.
289 Gholar, Pls.' Ex. 1092, p. 64 (testifying that it was common when she was born in the 1930s for midwives to not read and write very well, adding that church birth records were better kept because "they didn't hold Black people very valuable"); Bazelon, D.E. 603–1, p. 24 (report) ("Evidence provided at trial in the recent Wisconsin voter ID case of *Frank v. Walker* found that '[m]issing birth certificates are also a common problem for older African American voters who were born at home in the South because midwives did not issue birth certificates.' " (citation omitted)).
290 Gholar, Pls.' Ex. 1092, pp. 61, 79.
291 C. Carrier, D.E. 561, pp. 14–16.
292 *Id.* at 16–17.
293 *Id.* at 56–57.
294 *Id.* at 16–17, 20.
295 *Id.* at 23.
296 *Id.* at 32.
297 *Id.* at 33.
298 Espinoza, D.E. 582, p. 167.
299 *Id.* at 166; Pls.' Ex. 996 (birth certificate).
300 Benjamin, D.E. 563, pp. 291–93.
301 *Id.* at 292–93.
302 Benjamin, D.E. 563, pp. 293–94.
303 Gandy, D.E. 573, pp. 208–09.
304 *Id.* at 215; Gandy Dep., June 11, 2014, p. 41 (D.E. 592, pp. 221–22 (admitting dep.)).
305 Bates, Pls.' Ex. 1090, p. 7 (Mississippi); Barber, Pls.' Ex. 1108, p. 6 (Tennessee); Gholar, Pls.' Ex. 1092, p. 62 (Louisiana).
306 Estrada, D.E. 569, pp. 129, 135, 140.
307 *Id.* at 135.
308 *Id.* at 141.
309 Bingham Dep., July 29, 2014, pp. 16–18.
310 Lichtman, D.E. 374, pp. 33–35 (report).
311 *See* Appendix: Table of Amendments Offered on SB 14.
312 Mendez, D.E. 563, p. 107.
313 *Id.*
314 Mar. Lara, D.E. 573, p. 225.
315 Max. Lara, D.E. 573, p. 245.
316 Peters, D.E. 582, pp. 148–49.
317 Burton, D.E. 376–2, p. 46 (report) (citing *Texas v. Holder,* 888 F.Supp.2d 113, 140 (D.D.C.2012), *vacated and remanded on other grounds,* —— U.S. ——, 133 S.Ct. 2886, 186 L.Ed.2d 930 (2013)).
318 Chatman, D.E. 426–1, pp. 2, 9, 27 (report).
319 *Id.* at 29.
320 Chatman, D.E. 426–1, p. 27 (report).
321 The 90–minute burden was expressed as falling on Whites at the rate of 3.3%, on Hispanics at the rate of 5%, and on Blacks at the rate of 10.9%. Chatman, D.E. 578, pp. 97–98 (testimony); Chatman, D.E. 426–1, p. 29 (report).
322 Using generally accepted quantitative data principles, Dr. Bazelon quantified the general travel burdens associated with obtaining an EIC for those registered voters on the No–Match List. Dr. Bazelon considered both monetary costs, like bus or taxi fares, and non-monetary costs such as travel time. Dr. Bazelon estimated that the average travel cost to obtain an EIC for all affected registered voters

was $36.23—a conservative estimate because it did not attempt to quantify the totality of costs associated with acquiring underlying documentation like day care or time off work.

323 Mendez, D.E. 563, p. 101 (does not have a driver's license).

324 Clark Dep., May 2, 2014, p. 89 (D.E. 592, pp. 221–22 (admitting dep.)); Gandy, D.E. 573, p. 208; Benjamin, D.E. 563, pp. 291, 295; Taylor, D.E. 569, p. 147; Taylor Decl., Pls.' Ex. 1000.

325 Taylor Decl., Pls.' Ex. 1000.

326 Gandy Dep., June 11, 2014, p. 12 (D.E. 592, pp. 221–22 (admitting dep.)).

327 Estrada, D.E. 569, p. 134; Espinoza, D.E. 582, p. 173.

328 Mar. Lara, D.E. 573, pp. 219, 223–24.

329 C. Carrier, D.E. 561, pp. 13–14, 29, 42.

330 Rodriguez, D.E. 582, pp. 251–52.

331 *Id.* at 276–79.

332 *Id.* at 251–52.

333 *Id.* at 278.

334 Barber, Pls.' Ex. 1108, pp. 6, 27–30.

335 Barber, D.E. 578, p. 320; *see also* Defs.' Exs. 270, 271, 272.

336 Rodriguez, D.E. 582, pp. 207–08; Barber Dep., Pls.' Ex. 1108, pp. 36, 37–38.

337 Burns Dep., July 21, 2014, pp. 12–13 (D.E. 592, pp. 221–22 (admitting dep.)).

338 *Id.* at 22.

339 Max. Lara, D.E. 573, pp. 236–37; Pls.' Ex. 987.

340 Max. Lara, D.E. 573, p. 237.

341 Mr. Mellor–Crummey has since obtained the necessary alignment of names between his voter registration and driver's license. Defs.' Ex. 2520.

342 Ozias Dep., July 22, 2014, pp. 5, 17–18 (D.E. 592, pp. 221–22 (admitting dep.)).

343 *Id.* at 51.

344 Ortiz, D.E. 578, pp. 13–14.

345 *Id.* at 28–29.

346 TEX. ELEC.CODE ANN. § 13.002(i).

347 *See* C. Carrier, D.E. 561, pp. 72–73; Taylor, D.E. 569, p. 150. In helping his constituents vote in light of SB 14's ID requirements, Councilman Guzman testified that he was not aware of any disability exemption from the photo ID requirement. Guzman, D.E. 569, p. 375.

348 Ansolabehere, D.E. 600–1, p. 8 (report).

349 A federal employee ID will not permit a person to vote under SB 14.

350 Henrici, D.E. 569, p. 188 (testimony); Henrici, D.E. 369–1, pp. 18–19 (report).

351 Mora, D.E. 563, pp. 114–15.

352 White, D.E. 563, pp. 268–69.

353 *Id.* at 271–72. CAM has two offices. The one on the north side of town services a population that is largely Anglo. Requests for ID recovery in that office are so rare that they do not know how to do it and have to phone the downtown office. *Id.* at 285–86.

354 White, D.E. 563, p. 277.

355 Mora, D.E. 563, p. 177.

356 *Id.* at 118; White, D.E. 563, pp. 279–80.

357 Mora, D.E. 563, p. 118.

358 *Id.* at 130.

359 *Id.* at 119.

360 *Id.* at 119–20.

361 *Id.* at 118–19.

362 White, D.E. 563, p. 282.

363 Sen. Uresti and Councilman Guzman both testified that many of their constituents are afraid to be near DPS officers or the Sheriff because they owe tickets that they cannot pay or because they are simply intimidated. Uresti, D.E. 569. p. 246; Guzman, D.E. 569, p. 372.

364 Mora, D.E. 563, p. 120; Peters, D.E. 582, pp. 144–45 (confirming that law enforcement is present at DPS offices where driver's licenses and EICs are issued, and that a public perception exists that interactions with DPS will trigger a check for warrants).

365 Peters, D.E. 582, pp. 144–45 (confirming that existing regulations give DPS discretion to take fingerprints); McGeehan, D.E. 578, p. 282; *see* 37 TEX. ADMIN. CODE 15.183(a)(3) (DPS has may re-implement this requirement at any time).

366 Pls.' Ex. 345; Peters, D.E. 582, p. 144.

367 Mora, D.E. 563, p. 131; White, D.E. 563, p. 283.

368 Mora, D.E. 563, pp. 131–32.

369 *Id.* at 133–34.

370 *Id.* at 133; White, D.E. 563, p. 284.

371 Wood, D.E. 563, p. 202 (testimony); Burden, D.E. 569, p. 320 (testimony); Lichtman, D.E. 573, p. 67 (testimony); Anchia, D.E. 573, p. 322; Minnite, D.E. 375, p. 21 (report).

372 Ingram, D.E. 588, pp. 338, 341.

373 Bates, Pls.' Ex. 1090, p. 21; Eagleton, Pls.' Ex. 1095, pp. 10, 12; Benjamin, D.E. 563, p. 292; Gholar, Pls.' Ex. 1092, pp. 60–61; Johnson, D.E. 569, p. 19 ("But if you understand Black American in the terms of Blacks in the south ... going to vote and standing in line to vote is a big deal. It's much more important for an 80–year–old Black woman to go to the voting poll, stand in line, because she remembers when she couldn't do this."); Hamilton, Dep., June 5, 2014, pp. 66–67 (D.E. 592, pp. 221–22 (admitting dep.)) ("[F]or some people who literally fought for the right to vote, there are a lot of seniors ... who do not, women especially, who do not want to vote by mail. They want to go to the polls ... like they've always gone.").

374 Ellis, D.E. 573, p. 157; Washington, Pls.' Ex. 1093, pp. 12, 76.

375 *See* Johnson, D.E. 569, p. 21.

376 F. Carrier, D.E. 561, p. 75; Benjamin, Pls.' Ex. 815; Gandy, Pls.' Ex. 850; Mendez, D.E. 563, p. 98; Taylor, D.E. 569, p. 146; Espinoza, D.E. 582, p. 166; Mar. Lara, D.E. 573, p. 219; Brickner Dep., July 23, 2014, p. 8; Max. Lara, Pls.' Ex. 987.

377 C. Carrier, D.E. 561, pp. 29–31; Benjamin; D.E. 563, p. 292; Gandy Dep., June 11, 2014, pp. 62–63; Mendez, D.E. 563, pp. 100–01; Taylor, D.E. 569, p. 150; Mar. Lara, D.E. 573, p. 220; Max. Lara, D.E. 573, p. 236.

378 Gandy Dep., June 11, 2014, pp. 62–63.

379 Benjamin, D.E. 563, p. 292.

380 C. Carrier, D.E. 561, pp. 29–31.

381 Veasey Dep., June 20, 2014, pp. 84–85 (D.E. 592, pp. 221–22 (admitting dep.)).

382 Veasey Dep., June 20, 2014, pp. 84–85; Hamilton Dep., June 5, 2014, pp. 64–67; *see also* D.E. 592, pp. 221–22 (admitting deps.)

383 Hamilton Dep., *supra* at 64–65, 77.

384 Lydia, D.E. 561, pp. 269–70.

385 Lydia, D.E. 561, p. 270.

386 Green, D.E. 563, pp. 255–58, 261; TLYV, Pls.' Ex. 857 (mission statement).

387 *See* Green, D.E. 563, p. 257.

388 Ortiz Dep., Aug. 14, 2014, pp. 36–45, 49–50 (D.E. 592, pp. 221–22 (admitting dep.)); Pls.' Ex. 006 (Tr. Senate Floor Debate, Jan. 25, 2011).

389 Cox, D.E. 569, pp. 160–61.

390 Cox, D.E. 569, pp. 172–73.

391 *Id.* at 284.

392 Golando, D.E. 561, pp. 281–82.

393 *Id.* at 287–88.

394 Garcia Dep., July 14, 2014, p. 158 (D.E. 592, pp. 221–22 (admitting dep.)).

395 553 U.S. 181, 128 S.Ct. 1610, 170 L.Ed.2d 574 (2008).

396 *See* IND.CODE ANN. § 3–5–2–40.5(a)(3) (West 2014).

397 *Id.* at § 3–11.7–5–2.5 (West 2011).

398 *Crawford,* 553 U.S. at 187–88 & n. 6, 128 S.Ct. 1610. Here lack of information was demonstrated by evidence that, *inter alia:* (1) the Department of Public Service's website was difficult to navigate regarding EICs and places to get EICs in both English and Spanish; (2) registered voters were confused about the requirement and believed that a metro card would be sufficient; (3) mobile EIC locations were determined at the last minute and were poorly advertised; (4) many county offices offering EICs had not posted on their websites any information regarding the ID requirements or the availability of EICs; (5) the availability of birth certificates at a reduced charge was not disclosed at offices capable of issuing those birth certificates; and (6) the form used to request an EIC birth certificate is not available in Spanish. *See* Mora, D.E. 563, pp. 131–32; Rodriguez, D.E. 582, pp. 303–09; Eagleton, Pls.' Ex. 1095, pp. 30–31; Guidry, D.E. 592, pp. 154–65; Peters, D.E. 586, p. 146; Ingram Dep., Apr. 23, 2014, p. 338 (D.E. 592, pp. 221–22 (admitting dep.)); Pls.' Exs. 455–61; Farinelli, D.E. 582, pp. 383–84. Mr. Farinelli testified that there was no public education effort with respect to EIC birth certificates—no posted notices, no press releases, no media campaign, no direct mail to voters, no materials developed for DPS to publicize. Farinelli, D.E. 582, pp. 389–92. Neither were there adequate procedures to make sure EIC rates for birth certificates were ever offered. Farinelli, D.E. 582, pp. 388–89. The DSHS webpage addressing EICs first went live the day before Mr. Farinelli testified in this trial. Farinelli, D.E. 582, p. 392.

399 *Crawford,* 553 U.S. at 187–88, 128 S.Ct. 1610.

400 Ansolabehere, D.E. 600–1, p. 4 (report); *see also* Herron, D.E. 473 (report); Ghitza, D.E. 360–1 (report); Barreto–Sanchez, D.E. 370, 483 (report).

401 *Crawford,* 553 U.S. at 202 n. 20, 128 S.Ct. 1610.

402 *Id.* at 187, 128 S.Ct. 1610.

403 *Id.* at 190, 128 S.Ct. 1610.

404 554 F.3d 1340 (11th Cir.2009).

405 *Id.*

406 *Id.*

407 *Id.*

408 No. 3:14cv1274, 2014 WL 3672127 (M.D.Tenn. July 23, 2014).

409 *Id.* at *4.

410 17 F.Supp.3d 837 (E.D.Wisc.2014), *rev'd,* 768 F.3d 744 (7th Cir.2014).

411 *Id.*

412 *Id.* at 847–50.

413 *Id.* at 849–50.

414 *Id.*

415 *Id.* at 849–51 (citing testimony of Professor Lorraine Minnite, who testified in this case as well).

416 *Id.* at 851–53.

417 *Id.* at 853–63.

418 *Id.* at 878–79.

419 617 Pa. 563, 54 A.3d 1 (2012) (per curiam).

420 *Id.* at 567, 54 A.3d 1.

421 *Id.* at 567–68.

422 *Id.* at 570–71.

423 *Applewhite v. Commonwealth (Applewhite II),* No. 330 M.D. 2012, 2012 WL 4497211, at *3–7 (Pa.Commw.Ct. Oct. 2, 2012).

424 *Id.* at *4.

425 *See Applewhite v. Commonwealth (Applewhite III),* No. 330 M.D. 2012, 2014 WL 184988 (Pa.Commw.Ct. Jan. 17, 2014) (unreported).

426 *Id.* at *56–57.

427 *Id.* at *57.

428 *Id.* at *50–54.

429 546 F.3d 1313 (10th Cir.2008).

430 *Id.* at 1324 (quoting Albuquerque, N.M., City Charter, art. XIII, § 14 (as amended Oct. 4, 2005)).

431 *Id.* at 1316, 1324.

432 *Texas v. Holder* (*Texas v. Holder I*), 888 F.Supp.2d 113 (D.D.C.2012).

433 *Texas v. Holder* (*Texas v. Holder II*), —— U.S. ——, 133 S.Ct. 2886, 186 L.Ed.2d 930 (2013); *see also Shelby Cnty., Ala. v. Holder,* —— U.S. ——, 133 S.Ct. 2612, 186 L.Ed.2d 651 (2013).

434 *Texas v. Holder I,* at 127. While the Court acknowledges the previous Section 5 proceeding, the decision in this case rests solely on the record developed at the trial of this case from September 2 to September 22, 2014.

435 *Texas v. Holder I,* at 140.

436 This claim is brought by all of the private Plaintiffs and Intervenors: (Veasey) Gordon Benjamin, Kenneth Gandy, Anna Burns, Penny Pope, Michael Montez, Congressman Marc Veasey, Sergio DeLeon, Evelyn Brickner, John Mellor–Crummey, Floyd Carrier, Koby Ozias, Oscar Ortiz, and LULAC; (TLYV) Imani Clark and Texas League of Young Voters Education Fund; (HJ & C) Texas Association of Hispanic County Judges and County Commissioners; (NAACP) Texas State Conference of NAACP Branches and Mexican American Legislative Caucus of the Texas House of Representatives; and (Ortiz) Lenard Taylor, Lionel Estrada, Estela Garcia Espinoza, Eulalio Mendez, Margarito Lara, Maximina Lara, and La Union del Pueblo Entero.

437 *See Kusper v. Pontikes,* 414 U.S. 51, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973); *Briscoe v. Kusper,* 435 F.2d 1046, 1053 (7th Cir.1970); *Paul v. State of Ind., Election Bd.,* 743 F.Supp. 616, 623 (S.D.Ind.1990); *Wright v. Mahan,* 478 F.Supp. 468, 473 (E.D.Va.1979), *aff'd,* 620 F.2d 296 (4th Cir.1980); *see also John Doe No. 1 v. Reed,* 561 U.S. 186, 224, 130 S.Ct. 2811, 177 L.Ed.2d 493 (2010) (Scalia, J. concurring) ("We have acknowledged the existence of a First Amendment interest in voting."); *Storer v. Brown,* 415 U.S. 724, 756, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974) (Brennan, J. dissenting) ("The right to vote derives from the right of association that is at the core of the First Amendment."); *Harper v. Va. State Bd. of Elections,* 383 U.S. 663, 665, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966).

438 *See Burdick v. Takushi,* 504 U.S. 428, 433–34, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992); *Anderson v. Celebrezze,* 460 U.S. 780, 786 n. 7, 787, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983); *see also Reynolds v. Sims,* 377 U.S. 533, 554–55, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964); *Yick Wo. v. Hopkins,* 118 U.S. 356, 370, 6 S.Ct. 1064, 30 L.Ed. 220 (1886).

439 *See Obama for Am. v. Husted,* 697 F.3d 423, 428 (6th Cir.2012) (internal citations omitted).

440 *Dunn v. Blumstein,* 405 U.S. 330, 336, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972) (citations omitted).

441 *See Crawford v. Marion Cnty. Election Bd.,* 553 U.S. 181, 189–90, 128 S.Ct. 1610, 170 L.Ed.2d 574 (2008).

442 *Burdick,* 504 U.S. at 434, 112 S.Ct. 2059.

443 *Id.* (quoting *Norman v. Reed,* 502 U.S. 279, 289, 112 S.Ct. 698, 116 L.Ed.2d 711 (1992)).

444 *Obama for Am.,* 697 F.3d at 429.

445 *Wesberry v. Sanders,* 376 U.S. 1, 17, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964) ("Other rights, even the most basic, are illusory if the right to vote is undermined.").

446 *Crawford,* 553 U.S. at 189, 128 S.Ct. 1610.

447 *See id.* at 190, 128 S.Ct. 1610; *Burdick,* 504 U.S. at 434, 112 S.Ct. 2059; *Anderson,* 460 U.S. at 789, 103 S.Ct. 1564.

448 *Burdick,* 504 U.S. at 434, 112 S.Ct. 2059 (quoting *Anderson,* 460 U.S. at 789, 103 S.Ct. 1564; emphasis added).

449 *Anderson,* 460 U.S. at 789, 103 S.Ct. 1564.

450 *Id.*

451 *See Ohio State Conference of the NAACP v. Husted (Ohio NAACP II),* 768 F.3d 524, 543–45 (6th Cir.), *stayed,* 573 U.S. ——, 135 S.Ct. 42, 189 L.Ed.2d 894 (2014); *Frank v. Walker,* 17 F.Supp.3d 837, 845–47 (E.D.Wis.), *rev'd,* 768 F.3d 744 (7th Cir.2014).

452 *Crawford,* 553 U.S. at 201–03, 128 S.Ct. 1610 (Stevens, J., lead opinion).

453 *Crawford,* 553 U.S. at 205, 209, 128 S.Ct. 1610 (Scalia, J. concurring).

454 *See Ohio NAACP II,* 768 F.3d at 544–46; *Frank,* 17 F.Supp.3d at 846–47.

455 Ansolabehere, D.E. 600–1, p. 4 (report); *see also* Herron, D.E. 473 (report); Ghitza, D.E. 360–1 (report); Barreto–Sanchez, D.E. 370, 483 (reports).

456 Hood, D.E. 604–1, p. 4 (report).

457 Sen. Patrick testified that he supported an exemption from ID requirements for the disabled because he knew that the travel distance could be prohibitive. D.E. 588, p. 299; Pls.' Ex. 331.

458 The fingerprinting of EIC applicants was stopped at the request of the SOS, but the law still permits it.

459 *See* TEX. ELEC.CODE ANN. §§ 82.002–.003, 86.001.

460 *See Ohio State Conference of NAACP v. Husted (Ohio NAACP I),* 43 F.Supp.3d 808, 843, 2:14–CV–404, 2014 WL 4377869, at *33 (S.D.Ohio Sept. 4) ("The associated costs and more complex mechanics of voting by mail" along with other factors, including

demographics, "indicate to the Court that voting by mail may not be a suitable alternative for many voters"), *aff'd,* 768 F.3d 524 (6th Cir.), *stayed,* 573 U.S. ——, 135 S.Ct. 42, 189 L.Ed.2d 894 (2014).

461 TEX. ELEC.CODE ANN. § 86.001.

462 Slightly different timelines apply to out-of-state military and overseas voters voting by mail. *See* Military & Overseas Voters, http://votetexas.gov/military-overseas-voters.

463 *See* http://www.votetexas.gov/voting/when.

464 TEX. ELEC.CODE ANN. § 86.008.

465 *Id.* There are at least 13 reasons for which an application for mail-in ballot may be rejected by the early voting clerk. *See Notice of Defective Application for Ballot by Mail, available at* http://www.sos. state.tx.us/elections/forms/pol–sub/5–16f.pdf.

466 The ballot must be received, not merely post-marked, by the deadline. TEX. ELEC.CODE ANN. § 86.007.

467 *See Griffin v. Roupas,* 385 F.3d 1128, 1131 (7th Cir.2004) ("Absentee voters also are more prone to cast invalid ballots than voters who, being present at the polling place, may be able to get assistance from the election judges if they have a problem with the ballot.").

468 Eagleton, Pls.' Ex. 1095, p. 10.

469 *See, e.g., Thompson v. Willis,* 881 S.W.2d 221, 222 (Tex.App.-Beaumont 1994, no writ) (invalidating a local election where the Early Voting Ballot Board improperly marked 120 early/absentee ballots).

470 *See* Veasey, D.E. 561, pp. 251–52; Mendez, D.E. 563, pp. 100–01; Taylor, D.E. 569, p. 150; Bates, Pls.' Ex. 1090, p. 21.

471 Benjamin, D.E. 563, p. 292.

472 C. Carrier, D.E. 561 pp. 29–31.

473 In reviewing the availability of mail-in (or absentee) voting in Georgia, which has significantly less strict timelines for requesting a mail-in ballot than Texas, the court found that "[t]he majority of voters—particularly those voters who lack Photo ID—would not plan sufficiently enough ahead to vote via absentee ballot successfully. In fact, most voters likely would not be giving serious consideration to the election or to the candidates until shortly before the election itself." *Common Cause I,* 406 F.Supp.2d at 1364–65.

474 *See Griffin,* 385 F.3d at 1131 ("[B]ecause absentee voters vote before election day, often weeks before, they are deprived of any information pertinent to their vote that surfaces in the late stages of the election campaign.") (internal citations omitted); *Selph v. Council of City of Los Angeles,* 390 F.Supp. 58, 60 (C.D.Cal.1975) ("Plaintiffs present a strong argument to support their contention that many voters either change their minds as to the manner in which they will vote on candidates and issues in the two or three days preceding Election Day or wait until that period to seriously concentrate on the ballot decisions they must make.").

475 *Dunn,* 405 U.S. at 336, 92 S.Ct. 995 (citations omitted); *accord Obama for Am.,* 697 F.3d at 428.

476 *League of Women Voters v. Brunner,* 548 F.3d 463, 477 (6th Cir.2008) (internal quotations marks omitted) (quoting *Bush v. Gore,* 531 U.S. 98, 104, 121 S.Ct. 525, 148 L.Ed.2d 388 (2000)); *accord Obama for Am.,* 697 F.3d at 428; *see also Baker v. Carr,* 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962) ("Our form of representative democracy is premised on the concept that every individual is entitled to vote on equal terms.").

477 *See* Washington, Pls.' Ex. 1093, pp. 12, 16–17, 75–76; Gholar, D.E. 1092, pp. 60–61; Mendez, D.E. 563, p. 100; Johnson, D.E. 569, p. 19; Mar. Lara, D.E. 573, p. 220; Ellis, D.E. 573, p. 157.

478 Gholar Dep., July 16, 2014, pp. 21, 83 (D.E. 592, pp. 221–22 (admitting dep.)).

479 Gandy Dep., June 11, 2014, pp. 62–63 (D.E. 592, pp. 221–22 (admitting dep.)).

480 Hamilton Dep., June 5, 2014, pp. 66–67 (D.E. 592, pp. 221–22 (admitting dep.)).

481 *See Ohio NAACP II,* 768 F.3d at 541–43; *see also Common Cause I,* 406 F.Supp.2d at 1365 ("[A]bsentee voting simply is not a realistic alternative to voting in person that is reasonably available for most voters who lack Photo ID.").

482 *See ACLU of N.M. v. Santillanes,* 546 F.3d 1313, 1320 (10th Cir.2008) (citing *Ind. Democratic Party v. Rokita,* 458 F.Supp.2d 775, 830–31 (S.D.Ind.2006)); *see also United States v. Texas,* 445 F.Supp. 1245, 1254 (S.D.Tex.1978) (implicitly recognizing that requiring young voters to obtain absentee ballots may constitute a special burden), *aff'd mem. sub nom. Symm v. United States,* 439 U.S. 1105, 99 S.Ct. 1006, 59 L.Ed.2d 66 (1979); *Walgren v. Howes,* 482 F.2d 95, 100, 102 (1st Cir.1973) (implicitly recognizing that absentee voting has inherent burdens, additional procedural requirements, and disadvantages, as compared to in-person voting).

483 *Purcell v. Gonzalez,* 549 U.S. 1, 4, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006) (citation omitted).

484 *Storer,* 415 U.S. at 730, 94 S.Ct. 1274.

485 *Gonzalez v. Arizona (Gonzalez I),* 485 F.3d 1041, 1049 (9th Cir.2007) (internal quotation marks and citations omitted).

486 *See Anderson,* 460 U.S. at 788, 103 S.Ct. 1564.

487 *Crawford,* 553 U.S. at 191, 128 S.Ct. 1610 (quoting *Norman,* 502 U.S. at 288–89, 112 S.Ct. 698).

488 This was the first concern, expressed in 2005 using terms like "a voter fraud epidemic." Anchia, D.E. 573, p. 318.

489 The non-citizen narrative started in 2007. Anchia, D.E. 573, p. 322. Between 2007 and 2009, legislators began conflating the issue of non-citizen voting with illegal immigration, while a 2008 report debunked the prevalence of non-citizen voting. Anchia, D.E. 573, p. 319.

490 *Id.* at 320.

491 *Id.* at 326.

492 Ingram, D.E. 588, p. 375.

493 *Crawford,* 553 U.S. at 196–97, 128 S.Ct. 1610 (voter fraud and confidence in elections); *Texas v. Holder I,* 888 F.Supp.2d at 125 (confidence in elections).

494 *ACLU of N.M.,* 546 F.3d at 1323.

495 Anchia, D.E. 573, p. 323.

496 TEX. TRANSP. CODE § 522.021 (driver's license requirements).

497 The burden created by SB 14 may not be rebutted under Section 2 by positing that this unequal opportunity may be overcome if individuals devote sufficient resources to the task or by positing that the unequal opportunity is somehow a product of individual "choice." *See Teague v. Attala County,* 92 F.3d 283, 293–95 (5th Cir.1996); *Kirksey v. Bd. of Supervisors,* 554 F.2d 139, 145, 150 (5th Cir.1977) (en banc), *cert. denied,* 434 U.S. 968, 98 S.Ct. 512, 54 L.Ed.2d 454 (1977); *United States v. Marengo County,* 731 F.2d 1546, 1568–69 (11th Cir.1984); *Major v. Treen,* 574 F.Supp. 325, 351 n. 31 (E.D.La.1983) (three judge court).

498 The opportunity for in-person voters without SB 14 ID to cast a provisional ballot does not serve as a safe harbor because they still must present that ID within six days after the election. That means that the documentary requirements and any associated fees are obstacles that must still be overcome and few individuals will be able to complete the process and have ID in hand within the short window of time allowed after casting a provisional ballot. Neither is the availability of a mail-in ballot a safe harbor. Absentee ballots are only available to a subset of voters, most of whom are Anglo. TEX. ELEC.CODE §§ 82.001–.004. Because of the requirements for obtaining a mail-in ballot and the risks associated with such ballots, they are not equivalent to voting in person.

499 D.E. 385, pp. 32–34.

500 986 F.2d 728, 759–60 (5th Cir.1993).

501 727 F.2d 364, 373 (5th Cir.1984).

502 This claim is brought by the United States of America and all of the private Plaintiffs and Intervenors: (Veasey) Gordon Benjamin, Kenneth Gandy, Anna Burns, Penny Pope, Michael Montez, Congressman Marc Veasey, Sergio DeLeon, Evelyn Brickner, John Mellor–Crummey, Floyd Carrier, Koby Ozias, Oscar Ortiz, LULAC, (TLYV) Imani Clark, Texas League of Young Voters Education Fund, (TAHCJ) Texas Association of Hispanic County Judges and County Commissioners, (NAACP) Texas State Conference of NAACP Branches, Mexican American Legislative Caucus of the Texas House of Representatives, (Ortiz) Lenard Taylor, Lionel Estrada, Estela Garcia Espinoza, Eulalio Mendez, Margarito Lara, Maximina Lara, La Union del Pueblo Entero.

503 52 U.S.C. § 10301(a), transferred from 42 U.S.C. § 1973(a).

504 S. Rep. No. 97–417, 97th Cong., 2d Sess., at 2 (1982), 1982 U.S.C.C.A.N. 177–179; *Chisom v. Roemer,* 501 U.S. 380, 394 & n. 21, 111 S.Ct. 2354, 115 L.Ed.2d 348 (1991). The legislative history and case opinions issued since the 1982 amendments to Section 2 make it clear that Plaintiffs may bring a claim based on discriminatory voting practices using either the results test or an intentional discrimination test. *See* 52 U.S.C. § 10301(a), transferred from 42 U.S.C. § 1973(a); S.Rep. No. 97–417; *League of United Latin Am. Citizens (LULAC), Council No. 4434 v. Clements,* 986 F.2d 728, 741–42, *on reh'g,* 999 F.2d 831 (5th Cir.1993); *Velasquez v. City of Abilene, Tex.,* 725 F.2d 1017, 1021 (5th Cir.1984).

505 52 U.S.C. § 10301(b), transferred from 42 U.S.C. § 1973(b).

506 *See Ohio NAACP II,* 768 F.3d at 553–54; *League of Women Voters of N.C. v. North Carolina,* 769 F.3d 224, 239–40 (4th Cir.), *stayed,* 574 U.S. ——, 135 S.Ct. 6, 190 L.Ed.2d 243 (2014).

507 *See Thornburg v. Gingles,* 478 U.S. 30, 44, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986) ("the 'right' question ... is whether 'as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice.... In order to answer this question, a court must assess the impact of the contested structure or practice on minority electoral opportunities 'on the basis of objective factors.' ' ") (internal citations omitted); *Gonzalez v. Arizona (Gonzalez II),* 624 F.3d 1162, 1193 (9th Cir.2010).

508 *See Gingles,* 478 U.S. at 46, 106 S.Ct. 2752 ("Plaintiffs must demonstrate that, under the totality of the circumstances, the [practices] result in unequal access to the electoral process."); *Gonzalez II,* 624 F.3d at 1193 ("Rather, pursuant to a totality of the circumstances

analysis, the plaintiff may prove causation by pointing to the interaction between the challenged practice and external factors such as surrounding racial discrimination, and by showing how that interaction results in the discriminatory impact.").

509 *See Gingles,* 478 U.S. at 47, 106 S.Ct. 2752.

510 Even Dr. Hood, Defendants' expert witness, admitted that his findings demonstrated a disproportionate impact with respect to the rate of qualified SB 14 ID possession for African–Americans and Hispanics compared to those of Anglos. Hood, D.E. 588, pp. 179, 194, 230–37 (testimony).

511 Discussed in Section IV(B)(1), *supra.*

512 *Smith v. Salt River Project Agric. Improvement & Power Dist.,* 109 F.3d 586, 595 (9th Cir.1997).

513 *Gingles,* 478 U.S. at 45, 106 S.Ct. 2752 (quoting from S.Rep. 97–417, p. 30, 1982 U.S.C.C.A.N. at 208).

514 *Id.* at 36–37, 106 S.Ct. 2752 (quoting from S.Rep. No. 97–417's non-exhaustive list, at pp. 28–29, 1982 U.S.C.C.A.N. 206–207).

515 *Id.* at 45, 106 S.Ct. 2752.

516 *Frank,* 17 F.Supp.3d at 868–69; *Mississippi State Chapter, Operation Push v. Allain,* 674 F.Supp. 1245, 1263 (N.D.Miss.1987), *aff'd sub nom. Mississippi State Chapter, Operation Push v. Mabus,* 932 F.2d 400 (5th Cir.1991).

517 *Johnson v. Governor of Florida,* 405 F.3d 1214, 1227 n. 26 (11th Cir.2005) (en banc) (citations omitted).

518 "Vote denial" includes not only practices that categorically deny minority citizens the right to vote but, also, those that impose obstacles to voting that disproportionately affect minority voters and deny minority voters an equal electoral opportunity in the totality of the circumstances. *See, e.g., Chisom,* 501 U.S. at 397–98, 111 S.Ct. 2354.

519 *Frank,* 17 F.Supp.3d at 877–78 (citing *Gingles,* 478 U.S. at 47, 106 S.Ct. 2752); *see also N.C. State Conference of NAACP v. McCrory,* 997 F.Supp.2d 322, 348 (M.D.N.C.), *aff'd in part, rev'd in part and remanded on other grounds sub nom. League of Women Voters of N.C. v. North Carolina,* 769 F.3d 224 (4th Cir.), *stayed,* 574 U.S. ——, 135 S.Ct. 6, 190 L.Ed.2d 243 (2014).

520 *Ohio NAACP II,* 768 F.3d at 554–55 (listing cases); *see League of Women Voters of N.C.,* 769 F.3d at 239–41.

521 Burden, D.E. 569, p. 309 (testimony).

522 See Section IV(B)(2)(d), *supra.*

523 This holding applies to the specific photo ID law in this case—SB 14—and does not speak generally to the legality of any other law regarding voter identification requirements that any state, including Texas, may enact.

524 The statutory claim is brought by the United States of America. The statutory claim as well as the constitutional claims are brought by all of the private Plaintiffs and Intervenors: (Veasey) Gordon Benjamin, Kenneth Gandy, Anna Burns, Penny Pope, Michael Montez, Congressman Marc Veasey, Sergio DeLeon, Evelyn Brickner, John Mellor–Crummey, Floyd Carrier, Koby Ozias, Oscar Ortiz, and LULAC; (TLYV) Imani Clark and Texas League of Young Voters Education Fund; (HJ & C) Texas Association of Hispanic County Judges and County Commissioners; (NAACP) Texas State Conference of NAACP Branches and Mexican American Legislative Caucus of the Texas House of Representatives; (Ortiz) Lenard Taylor, Lionel Estrada, Estela Garcia Espinoza, Eulalio Mendez, Margarito Lara, Maximina Lara, and La Union del Pueblo Entero.

525 *See generally Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.,* 429 U.S. 252, 265–68, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977) (constitutional test); *United States v. Brown,* 561 F.3d 420, 433 (5th Cir.2009) (Section 2 test; quoting *Arlington Heights*).

526 *Arlington Heights,* 429 U.S. at 265–66, 97 S.Ct. 555; *Brown,* 561 F.3d at 433.

527 *Personnel Adm'r of Mass. v. Feeney,* 442 U.S. 256, 279, 99 S.Ct. 2282, 60 L.Ed.2d 870 (1979) (internal citations and footnotes omitted).

528 *Brown,* 561 F.3d at 433 (citing *Velasquez v. City of Abilene,* 725 F.2d 1017, 1022 (5th Cir.1984)).

529 See *United States v. O'Brien,* 391 U.S. 367, 383–84, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968); *Florida v. United States,* 885 F.Supp.2d 299, 354 (D.D.C.2012); *Rosenstiel v. Rodriguez,* 101 F.3d 1544, 1552 (8th Cir.1996); *but cf. Busbee v. Smith,* 549 F.Supp. 494, 500–03, 508–09, 516–18 (D.D.C.1982), *aff'd,* 459 U.S. 1166, 103 S.Ct. 809, 74 L.Ed.2d 1010 (1983) (finding discriminatory intent based in part on overt racial statements made by the chairman of the Georgia redistricting committee who "used the full power of his position and personality to insure passage of his desired Congressional plan").

530 *Brown,* 561 F.3d at 433 (internal quotation marks and citations omitted).

531 *Arlington Heights,* 429 U.S. at 266, 97 S.Ct. 555 (referring to disparate impact); *Brown,* 561 F.3d at 433 (referring to the Senate factors as *Zimmer* factors); *see also Terrazas v. Clements,* 581 F.Supp. 1329, 1343, 1347 (N.D.Tex.1984).

532 Some courts additionally consider the comparative nature and weight of the state interest claimed to justify the decision. *See N.C. State Conference of NAACP,* 997 F.Supp.2d at 361; *Florida,* 885 F.Supp.2d at 348, 355.

533 This includes the legislative drafting history, which can offer interpretive insight when the legislative body rejected language or provisions that would have achieved the results sought in Plaintiffs' interest. *See Hamdan v. Rumsfeld,* 548 U.S. 557, 579–80, 126 S.Ct. 2749, 165 L.Ed.2d 723 (2006).

534 *Arlington Heights,* 429 U.S. at 266, 97 S.Ct. 555 (citations omitted).

535 See Section I(A), *supra.*

536 Lichtman, D.E. 374, p. 8 (report).

537 *Id.*

538 *Id.* at 9.

539 *Texas v. United States,* 887 F.Supp.2d 133, 225 (D.D.C.2012), *vacated and remanded on other grounds,* —— U.S. ——, 133 S.Ct. 2885, 186 L.Ed.2d 930 (2013); *see Perez v. Texas,* No. 5:11–cv–360, slip. op. at 6 (W.D.Tex. Mar. 19, 2012) (finding that Texas "may have focused on race to an impermissible degree by targeting low-turnout Latino precincts"), explaining interim plan issued by *Perez v. Texas,* 891 F.Supp.2d 808, 810 (W.D.Tex.2012), *stay denied sub nom. LULAC v. Perry,* —— U.S. ——, 133 S.Ct. 96, 183 L.Ed.2d 735 (2012).

540 *Arlington Heights,* 429 U.S. at 267, 97 S.Ct. 555.

541 *E.g.,* Wood, D.E. 363, pp. 4–5.

542 Hebert Dep., June 17, 2014, pp. 260–61 (D.E. 592, pp. 221–22 (admitting dep.)).

543 Lichtman, D.E. 374, pp. 25–34 (report) (based on information publicly available when the 82nd Legislature passed SB 14).

544 Hebert, D.E. 592, pp. 195–96, 213; Pls.' Ex. 272.

545 See Appendix: Table of Amendments Offered on SB 14.

546 See Section IV(A), *supra.*

547 *Hunter v. Underwood,* 471 U.S. 222, 228, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985).

548 This claim is brought by the Veasey Plaintiffs: Gordon Benjamin, Kenneth Gandy, Anna Burns Penny Pope, Michael Montez, Congressman Marc Veasey, Jane Hamilton, Sergio DeLeon, Evelyn Brickner, John Mellor–Crummey, Floyd Carrier, Koby Ozias, Oscar Ortiz, and LULAC.

549 U.S. Const. amend. XXIV, § 1.

550 *Harman v. Forssenius,* 380 U.S. 528, 540–41, 85 S.Ct. 1177, 14 L.Ed.2d 50 (1965) (internal quotations omitted).

551 *Id.* at 541, 85 S.Ct. 1177.

552 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966).

553 *Id.* at 666, 670, 86 S.Ct. 1079.

554 *Id.* at 668, 86 S.Ct. 1079.

555 *Common Cause/Georgia v. Billups (Common Cause I),* 406 F.Supp.2d 1326, 1369 (N.D.Ga.2005); *Common Cause/Georgia League of Women Voters of Georgia, Inc. v. Billups (Common Cause II),* 439 F.Supp.2d 1294, 1354 (N.D.Ga.2006).

556 406 F.Supp.2d at 1369.

557 *Id.*

558 *See Common Cause I,* at 1370.

559 *See Indiana Democratic Party v. Rokita,* 458 F.Supp.2d 775, 827–28 (S.D.Ind.2006), *aff'd sub nom. Crawford v. Marion Cnty. Election Bd.,* 472 F.3d 949 (7th Cir.2007). When the Supreme Court later reviewed the Indiana law and affirmed the district's court's decision, the Court did not review the issue whether the photo ID law constituted an impermissible poll tax. *See Crawford v. Marion Cnty.,* 553 U.S. 181, 128 S.Ct. 1610, 170 L.Ed.2d 574 (2008).

560 *Rokita,* 458 F.Supp.2d at 827.

561 *Id.*

562 *Id.*

563 *See Common Cause II,* at 1354.

564 *Id.*

565 *Id.* at 1355.

566 *Id.* at 1354 (citing *Rokita,* 458 F.Supp.2d at 827).

567 *Id.* at 1355. In addition to a birth certificate, a multitude of other documents could be presented by an individual in order to receive a Georgia voter ID card, including: a student ID card, a transit card, an employee ID card, a state or federal government benefits card, a copy of the applicant's state or federal tax return, an original Medicare or Medicaid statement, etc. *Id.* at 1310.

568 *Id.*

569 As demonstrated above, an EIC-only birth certificate may be purchased for $2.00–$3.00 if the person applies in person. That fee can be as much as $47.00 if the birth was not previously registered and a delayed birth certificate is required from the DSHS. It may also cost more than the minimum fee if an inaccuracy needs to be corrected and an amended birth certificate is issued.

570 The incidental time and travel costs associated with obtaining an EIC, especially for individuals lacking a birth certificate, can be quite onerous. According to the uncontroverted expert report of Mr. Jewell, the cost of securing an EIC, including the costs of obtaining the underlying documents, the transportation costs, the opportunity/time costs, and the information search costs, approached $100 for some of the named Plaintiffs. D.E. 367, p. 3. In a vacuum, these costs are considerable; for five of the seven Plaintiffs Mr. Jewell studied, who have no household income in excess of poverty guidelines, these costs are extraordinary. *See id.,* pp. 4–5. Dr. Bazelon noted that a poll tax of $1.75 in 1966 was 69% of the average hourly wage. Dr. Bazelon estimated that the average travel cost alone to get an EIC in Texas is $36.23, which is 149% of today's average hourly wage. Bazelon, D.E. 603–1, p. 4. (report).

571 *Harman,* 380 U.S. at 542, 85 S.Ct. 1177.

572 *See Common Cause I,* 406 F.Supp.2d at 1369. Although voters are not required to obtain an EIC in order to vote, and may instead wish to obtain a different form of SB 14 ID, none of the other acceptable forms of ID may be obtained without paying a fee to a government agency (except perhaps for the United States military ID card, which is not available to all individuals).

573 *See Harper,* 383 U.S. at 666, 86 S.Ct. 1079; *Common Cause I,* 406 F.Supp.2d at 1368; *see also Boustani v. Blackwell,* 460 F.Supp.2d 822, 826 (N.D.Ohio 2006) (finding unconstitutional the requirement that some naturalized citizens would be required to pay $220 to the United States Citizenship and Immigration Service for a replacement certificate of naturalization in order to vote); *Milwaukee Branch of NAACP v. Walker,* 2014 WI 98, 357 Wis.2d 469, 851 N.W.2d 262, 277 (2014) (interpreting as unconstitutional the portion of the Wisconsin voter ID law that required payment to a government agency to obtain the underlying documents necessary to receive a Department of Transportation ID for voting because "the State of Wisconsin may not enact a law that requires any elector, rich or poor, to pay a fee of any amount to a government agency as a precondition to the elector's exercising his or her constitutional right to vote").

574 Although the *Crawford* Court discussed the cost of obtaining photo ID, the Court noted that the evidence in the record was insufficient to determine the actual costs borne by individuals, including individual plaintiffs, of obtaining an appropriate form of photo ID. *See* 553 U.S. at 200–02, 128 S.Ct. 1610.

575 Farinelli, D.E. 582, pp. 317–18.

576 *See Harper,* 383 U.S. at 668, 86 S.Ct. 1079. Additionally, the availability of a fee waiver (which may only be requested in person) to reduce the fee for a birth certificate for the purpose of voting to $2.00 is not well publicized and the evidence does not indicate that the State has made an effort to advertise it.

577 Furthermore, nothing in SB 14 eliminates the cost of obtaining a birth certificate issued by other jurisdictions for those who reside in Texas but were not born in Texas. And while Texas clearly cannot control the costs imposed by other jurisdictions, it is no doubt aware that such fees exist.

578 *See Harman,* 380 U.S. at 541, 85 S.Ct. 1177.

579 *See Early Voting,* http://www.votetexas.gov/voting/when# early-voting; TEX. ELEC.CODE ANN. § 86.001 et seq.

580 *See* 380 U.S. at 541, 85 S.Ct. 1177.

581 *See Common Cause I,* 406 F.Supp.2d at 1365; *see also Ohio NAACP II,* 768 F.3d at 541–43.

582 *Wesberry v. Sanders,* 376 U.S. 1, 17, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964).

583 SB 14 includes a severability clause, to which this Court defers, *Leavitt v. Jane L.,* 518 U.S. 137, 139, 116 S.Ct. 2068, 135 L.Ed.2d 443 (1996) (per curiam), and therefore the injunction shall not apply to these provisions of SB 14 that do not relate to voter identification for in-person voting. Accordingly, the injunction to be issued shall not apply to sections 16, 23, and 24 of SB 14.

584 The Senate voted SB 14 out of committee without amendments. References of "S F# " were amendments offered on the floor of the Senate and were disposed of by being tabled immediately. Those beginning with "H # " were disposed of after SB 14 emerged from committee and prior to the full House of Representatives vote and were disposed of by being tabled unless otherwise noted.

585 While those advocating the use of student IDs faulted SB 14 proponents for failing to show that such IDs were ever used fraudulently, Rep. Martinez–Fischer could not state how frequently student IDs were needed as voting ID.

586 According to the State, DPS issues three types of IDs not included in SB 14 and over 90 state agencies use DPS resources to issue secure access cards, including Libraries, the Veterans Commission, university systems, and many other state employers.

587 http://www.lrl.state.tx.us/scanned/82ccrs/sb0014.pdf # navpanes=0, p. 22.

588 Ann McGeehan, overseeing the Elections Division of the Secretary of State's office testified that an expired ID is still capable of establishing identity. D.E. 578, p. 276.

MENU

Texas' Voter ID Defense Has Cost $3.5 Million

> Texas taxpayers are still picking up the tab for defending the nation's strictest voter identification law more than five years after Republicans fast-tracked it through the Legislature.

BY **JIM MALEWITZ** AND **LINDSAY CARBONELL** JUNE 17, 2016 6 AM

Attorney General Ken Paxton and Solicitor General Scott Keller after oral arguments on the voter ID case before the U.S. 5th Circuit of Appeals in New Orleans on May 24, 2016. Cheryl Gerber for The Texas Tribune

More than five years after Republicans fast-tracked legislation limiting the forms of ID accepted to vote in Texas elections, state taxpayers are still picking

up the tab for defending the nation's strictest voter identification law in court.

The state has spent more than $3.5 million defending the law in the five separate lawsuits it has spawned, records obtained from Texas Attorney General Ken Paxton's office show.

Whether that spending is a "shameful waste" or the cost of fending off the federal government depends on whom you ask.

Paxton's legal team is battling the U.S. Department of Justice, minority groups and other opponents who argue — thus far successfully — that Senate Bill 14, passed in 2011, discriminates against minorities, elderly and poor Texans most likely to lack acceptable government-issued IDs.

Paxton, Gov. Greg Abbott and the law's backers say it was needed to protect the integrity of elections by preventing voter fraud, but opponents cite the paucity of proven voter fraud in the state and argue the intent was to disenfranchise certain voters.

The state's legal tab includes court fees, expert witnesses, outside lawyers, travel costs and state employees' time spent working on the flurry of litigation the voter ID law triggered. The costs will only grow, with most new spending attached to *Veasey v. Abbott,* the primary lawsuit, which has been going for three years.

The U.S. 5th Circuit Court of Appeals last month heard oral arguments in that case and is expected to rule by July 20. Voting experts say it's one of two high-profile voter ID-related lawsuits, alongside a broader case in North Carolina that the U.S. Supreme Court may ultimately decide.

> ***"If I were a Texas taxpayer, I'd be outraged by how much money Texas is spending of my tax dollars to defend a discriminatory law."***
>
> — Gerry Hebert, executive director of the Campaign Legal Center and an

attorney in the Texas voter ID litigation

READ MORE *In High-Profile Case, Texas Defends Its Voter ID Law*

Paxton's cost estimates were current as of April. They do not include travel to New Orleans for the recent oral arguments (Paxton was among those who attended), or the month of preparation leading up to them.

Under the law, Texas became one of nine states requiring "strict photo ID," according to the National Conference of State Legislatures, and the Lone Star State's seven-item list of acceptable forms of identification is the narrowest.

Other states have defended voter ID laws in court. Wisconsin and Indiana, for instance, prevailed in cases that reached the U.S. Supreme Court. But Texas, in its particularly convoluted battles, has likely spent far more than those states, said Gerry Hebert, a prominent attorney who is helping plaintiffs in the *Veasey* case.

He called the costs a "shameful waste of taxpayer money."

"If I were a Texas taxpayer, I'd be outraged by how much money Texas is spending of my tax dollars to defend a discriminatory law," Hebert added.

Abbott, who was attorney general when the litigation began, considers the law worthy of defense, and his office blames the federal government for the need to spend money in court.

"With numerous documented cases of voter fraud in Texas, it's unfortunate that the Obama administration has chosen to waste millions of taxpayer dollars fighting a law already found to be Constitutional by the U.S. Supreme Court," spokesman John Wittman said in an email.

The Supreme Court has not weighed in on the constitutionality of SB 14. Thus far, lower courts have found it to be unconstitutional. Wittman later said he was referring to Supreme Court rulings on the Indiana and Wisconsin laws.

READ MORE *Analysis: Scant Evidence for Abbott's "Rampant" Voter Fraud*

The Texas law requires voters to present one of the following forms of photo identification at the polls: a Texas driver's license, state personal identification card, state handgun license, U.S. military identification card, U.S. citizenship certificate or a U.S. passport.

Experts have testified that roughly 600,000 Texans lack such identification, though not all have necessarily tried to vote. Those folks can obtain "election identification certificates" free of charge that would allow them to vote in-person, but only if they present a copy of their birth certificate.

The law sailed through the Republican-dominated legislature in 2011, after Gov. Rick Perry declared it an "emergency item," essentially fast-tracking the bill at a time when lawmakers were also debating how to plug a budget shortfall.

The law's journey through the legal system, however, has been more difficult — and expensive.

It did not immediately take effect. At that time, the U.S. Voting Rights Act required states or counties with a history of discrimination to "pre-clear" changes in their election laws with the U.S. Department of Justice to ensure they did not disproportionally impact certain voting groups.

While SB 14 was awaiting the pre-clearance decision, Abbott sued the federal government in *Texas v. Holder*, hoping a court would step in and speed up the process. That lawsuit cost taxpayers roughly $1.73 million, about half the tab for all voter ID-related litigation, according to the records from Paxton's office.

That case became irrelevant in 2013, when the U.S. Supreme Court, in a separate case, threw out parts of the Voting Rights Act — including the pre-clearance requirement —and the Texas law kicked in.

The law has remained in effect ever since, but it still faces a raft of legal challenges from the federal government, voting rights advocates and minority groups.

So far, the law's opponents have scored notable legal victories, but it's expected that the U.S. Supreme Court will have the final say on SB 14's constitutionality.

Most recently, in the *Veasey* case, a three-judge 5th Circuit panel ruled that the law had a "discriminatory effect on minorities' voting rights." The August 2015 decision came one day before the Voting Rights Act turned 50 years old.

Texas has spent about $1.74 million defending itself in that lawsuit, Paxton's records show. Those costs could rise significantly, particularly if the state ultimately loses the case.

If that happens, the plaintiffs will likely ask a court to make Texas pay their attorneys fees. That's what happened in another complicated and pricey lawsuit that dates back to 2011: the state's defense of its redistricting maps.

Last August, an appeals court ordered Texas to pay the plaintiffs more than $1 million in fees for that case. The U.S. Supreme Court later declined to take up the state's appeal.

"I think ultimately if Texas is unsuccessful, they'll be on the hook for a lot more money," Hebert said, "and probably more than double what they've already spent."

The state has spent more than $42,000 defending itself in three other lawsuits since S.B. 14 kicked in.

Two of them, filed by the federal government and minority groups, have been consolidated into the *Veasey* case. Judge Larry Meyers, a Republican turned Democrat who sits on the Texas Court of Criminal Appeals, filed his own challenge in 2014. He withdrew the suit last May.

Texas Voter ID: A Convoluted Legal History

Texas has spent millions of taxpayer dollars defending a Voter ID law that — depending on whom you ask — either protects the integrity of elections or disenfranchises minority voters. Here is a case-by-case-breakdown of those costs, which include court fees, expert witnesses, travel, staff time and other items. With challenges still winding through the courts, the tab will continue to grow. Texas Attorney General Ken Paxton's office provided spending estimates in response to a public information request. The information is current as of April 2016.

Court Case	Amount Spent
Texas Sues for Fed Approval *Texas v. Holder* With the federal government taking months to "pre-clear" SB 14 under the Voting Rights Act, Texas Attorney General Greg Abbott filed this lawsuit to cut through the bureaucracy. It became irrelevant when the U.S. Supreme Court voided parts of the Voting Rights Act.	**$1.7 million**
Voter ID Critics Sue Texas *Veasey v. Abbott (previously v. Rick Perry et al.)* After a separate Voting Rights Act ruling allowed SB 14 to go into effect, U.S. Rep. Marc Veasey filed this suit in an attempt to block the law, which he alleges is discriminatory.	**$1.7 million**
Feds Sue Texas over Voter ID *U.S.A. v. Texas et al.* The U.S. Department of Justice filed this lawsuit seeking to block the ID law. It was later merged with the Veasey case.	**$5,300**
Minority Groups Challenge Texas Law *Texas NAACP Branches et al. v. Steen et al.* The Texas State Conference of NAACP Branches and the Texas House's Mexican American Legislative Caucus filed this lawsuit against the ID law. It also was later merged with the Veasey case.	**No records found, Attorney General says**
Texas Judge Sues Texas over Voter ID *Meyers v. Texas* Judge Lawrence "Larry" Meyers sued Texas in state courts, claiming that the Texas Constitution allows lawmakers to "detect and punish" voter fraud but does not allow laws aimed specifically at preventing the crime. He later dropped his suit.	**$37,000**

Senate Bill 14 requires voters to present one of seven forms of photo ID at the polls: a Texas driver's license, state personal identification card, state license to carry a handgun, U.S. military identification card, U.S. citizenship certificate, U.S. passport or Texas Election Identification Certificate. The law is considered the nation's strictest because the list of acceptable IDs is narrower than any other state's. Texas has spent more than five years defending the law in court. The timeline below chronicles those battles.

May 27, 2011 Voter ID Signed into Law

Gov. Rick Perry declared voter ID legislation an "emergency item," and SB 14 sailed through the Legislature on the way to his desk. The new law had to receive "pre-clearance" from the U.S. Department of Justice before it could take effect under a section of the Voting Rights Act, the federal law that prohibits racial discrimination in voting. At that time, Texas was on the list of states and counties with a history of discrimination that were subject to federal scrutiny of any changes in voting laws.

Jan. 23, 2012 Texas Sues for Federal Approval

Texas v. Holder

For months, the U.S. Department of Justice refused to render a decision on the law. Aiming to cut through that bureaucracy, Texas Attorney General Greg Abbott sued. Abbott argued that because the U.S. Supreme Court already decided that Indiana's photo ID law passed constitutional muster, the Texas law should be approved — but opponents pointed out that the Texas law is considerably stricter.

Aug. 30, 2012 Federal Judges Reject Texas Law

Texas v. Holder

A panel of judges on the U.S. District Court for the District of Columbia handed Texas its first setback in the case when it rejected the voter ID law, concluding that its requirements would "likely have a retrogressive effect" on minority voting.

June 25, 2013 Texas Voter ID Takes Effect

In a separate voting rights case — Shelby County v. Holder — the U.S. Supreme Court struck down Section 4 of the Voting Rights Act, voiding the formula that put Texas on the list of states needing federal approval for new election laws. That ruling allowed SB 14 to take effect.

June 26, 2013 Voter ID Critics Sue Texas

Veasey v. Abbott (previously v. Rick Perry et al.)

The Shelby County decision prompted of flurry of new challenges to the Texas law, including a lawsuit filed by U.S. Rep. Marc Veasey, who asked federal judges to block SB 14 as the litigation unfolded.

Aug. 22, 2013 U.S. Justice Department Sues Texas as Well

U.S.A. v. Texas et al.

The U.S. Department of Justice joined the legal effort against Texas. “We will not allow the Supreme Court’s recent decision to be interpreted as open season for states to pursue measures that suppress voting rights,” U.S. Attorney General Eric Holder said at the time. The justice department also targeted Texas' redistricting maps.

Sept. 17, 2013 Minority Groups Challenge the Law

Texas NAACP Branches et al. v. John Steen et al.

Two more groups joined the fight against SB 14: the Texas State Conference of NAACP Branches and the Texas House’s Mexican American Legislative Caucus. They filed a federal lawsuit in Corpus Christi.

Sept. 11, 2014 Texas Judge Files His Own Lawsuit

Meyers v. Texas

Judge Lawrence “Larry” Meyers made a different type of argument against the voter ID requirements when he challenged them in Texas courts. In his suit, filed in Dallas County, the Republican-turned-Democrat argued that the Texas Constitution gives lawmakers power to "detect and punish" election fraud only when it has already occurred but and does not mention preventing election fraud among legislative powers.

Oct. 9, 2014 District Judge Strikes Down Requirements

Veasey v. Abbott (previously v. Rick Perry et al.)

After a lengthy trial, opponents of the Texas law scored a victory in a ruling from U.S. District Judge Nelva Gonzales Ramos. Texas imposed the requirements “with an unconstitutional discriminatory purpose," she ruled, and the law "constitutes an unconstitutional poll tax.” The ruling came just two weeks before the start of early voting in a general election featuring a race for governor. She ordered Texas to drop the ID requirements for the elections, and Texas quickly appealed.

Oct. 14, 2014 ID Requirements Reinstated

Veasey v. Abbott (previously v. Rick Perry et al.)

Days later, the 5th U.S. Circuit Court of Appeals overturned the lower court's decision, keeping the rules in place for the 2014 election. "The judgment below substantially disturbs the election process of the State of Texas just nine days before early voting begins," the court wrote of Ramos' ruling. That ruling, however, only answered the immediate question regarding the law's status during the election. A three-judge panel heard oral arguments on the broader issues months later.

Aug. 5, 2015 Appeals Panel Rules Against Texas

Veasey v. Abbott (previously v. Rick Perry et al.)

The 5th Circuit panel handed plaintiffs a victory, but a narrower one than Ramos offered. The law has "discriminatory effect," the judges ruled, but it is not a "poll tax." Texas appealed that ruling.

March 9, 2016 Court Accepts Texas Appeal

Veasey v. Abbott (previously v. Rick Perry et al.)

All 15 judges of the 5th Circuit agreed to hear the state's appeal.

April 29, 2016 Supreme Court Keeps Law Intact — For Now

Veasey v. Abbott (previously v. Rick Perry et al.)

The U.S. Supreme Court denied plantiffs's request to block SB 14 during the next elections but left the door open for them to ask again if the 5th Circuit doesn't rule by July 20.

July 20, 2016 Court Affirms Texas Voting Law Violates Voting Rights Act

Veasey v. Abbott (previously v. Rick Perry et al.)

The U.S. 5th Circuit Court of Appeals affirmed previous rulings that the 2011 voter ID law does not comply with the Voting Rights Act.

Source: Texas Attorney General's Office
Credit: Lindsay Carbonell

769 F.3d 890
United States Court of Appeals,
Fifth Circuit.

Marc VEASEY; Jane Hamilton; Sergio Deleon; Floyd Carrier; Anna Burns; Michael Montez; Penny Pope; Oscar Ortiz; Koby Ozias; League of United Latin American Citizens; John Mellor–Crumley; Dallas County, Texas, Plaintiffs–Appellees
Texas Association of Hispanic County Judges and County Commissioners, Intervenor Plaintiffs–Appellees
v.
Rick PERRY, in his Official Capacity as Governor of Texas; Nandita Berry, in her Official Capacity as Texas Secretary of State; State of Texas; Steve McGraw, in his Official Capacity as Director of the Texas Department of Public Safety, Defendants–Appellants.
United States of America, Plaintiff–Appellee
Texas League of Young Voters Education Fund; Imani Clark, Intervenor Plaintiffs–Appellees
v.
State of Texas; Nandita Berry, in her Official Capacity as Texas Secretary of State; Steve McGraw, in his Official Capacity as Director of the Texas Department of Public Safety, Defendants–Appellants.
Texas State Conference of NAACP Branches; Mexican American Legislative Caucus, Texas House of Representatives, Plaintiffs–Appellees
v.
Nandita Berry, in her Official Capacity as Texas Secretary of State; Steve McGraw, in his Official Capacity as Director of the Texas Department of Public Safety, Defendants–Appellants.
Lenard Taylor; Eulalio Mendez, Jr.; Lionel Estrada; Estela Garcia Espinosa; Margarito Martinez Lara; Maximina Martinez Lara; La Union del Pueblo Entero, Incorporated, Plaintiffs–Appellees
v.
State of Texas; Nandita Berry, in her Official Capacity as Texas Secretary of State; State of Texas; Steve McGraw, in his Official Capacity as Director of the Texas Department of Public Safety, Defendants–Appellants.

No. 14–41127.
|
Oct. 14, 2014.

Synopsis

Background: Advocacy groups and United States brought action alleging that Texas's Voter Identification (ID) law violated Voting Rights Act and Fourteenth and Fifteenth Amendments. After bench trial, the United States District Court for the Southern District of Texas, 2014 WL 5090258, entered final order striking law down. State filed emergency motion for stay pending appeal.

The Court of Appeals, Edith Brown Clement, Circuit Judge, held that stay pending appeal was warranted.

Motion granted.

Gregg Costa, Circuit Judge, concurred in the judgment and filed opinion.

Motion to vacate stay denied, —— U.S. ——, 135 S.Ct. 9, —— L.Ed.2d ——, 2014 WL 5311490.

Attorneys and Law Firms

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Leah Camille Aden, Esq., Natasha M. Korgaonkar, Esq., Christina Swams, Legal Defense & Educational Fund, Inc., New York, NY, Rolando Leo Rios, I, Esq., Law Office of Rolando L. Rios, San Antonio, TX, for Intervenor Plaintiff–Appellee.

Adam Warren Aston, Arthur Cleveland D'Andrea, John Barrett Scott, Office of the Attorney General, Austin, TX, for Defendant–Appellant.

Appeal from the United States District Court for the Southern District of Texas.

Before CLEMENT, HAYNES, and COSTA, Circuit Judges.

Opinion

EDITH BROWN CLEMENT, Circuit Judge:

Early voting in Texas begins on Monday, October 20. On Saturday, October 11—just nine days before early voting begins and just 24 days before Election Day—the district court entered a final order striking down Texas's voter identification laws. By this order, the district court enjoined the implementation of Texas Senate Bill 14 ("SB 14") of the 2011 Regular ***892** Session, which requires that voters present certain photographic identification at the polls. The district court also ordered that the State of Texas ("State") instead implement the laws that were in force before SB 14's enactment in May of 2011. Based primarily on the extremely fast-approaching election date, we STAY the district court's judgment pending appeal.

I.

SB 14 was signed into law on May 27, 2011, and its voter identification requirements became effective on January 1, 2012. 2011 Tex. Sess. Law Serv. Ch. 123 (West) (S.B.14). These requirements have been implemented in at least three prior elections.

On June 26, 2013, this lawsuit challenging SB 14 was filed. On Thursday, October 9, 2014 the district court foreshadowed its ultimate judgment, issuing an opinion saying that it intended to enjoin SB 14. The lengthy, 143–page opinion followed a nine-day bench trial. The district court opined that SB 14 is unconstitutional and violates the Voting Rights Act. But it did not issue a final judgment.

On Friday, October 10, the State filed an advisory requesting that the district court enter a final, appealable judgment. When the district court declined to do so by close of business on Friday, October 10, the State filed a petition for writ of mandamus or, in the alternative, an emergency motion for stay pending appeal. Upon the entry of the district court's final judgment on Saturday, October 11, the State also filed a notice of appeal. Accordingly, we construed the State's motion as an emergency motion for stay pending appeal and ordered that responses be filed within 24 hours. Five responses were filed.

II.

A stay pending appeal "simply suspends judicial alteration of the status quo." *Nken v. Holder,* 556 U.S. 418, 429, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009) (internal quotation marks and alteration omitted). We consider four factors in deciding a motion to stay pending appeal:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id. at 426, 129 S.Ct. 1749. "The first two factors of the traditional standard are the most critical." *Id.* at 434, 129 S.Ct. 1749.

III.

This is not a run-of-the-mill case; instead, it is a voting case decided on the eve of the election. The judgment below substantially disturbs the election process of the State of Texas just nine days before early voting begins. Thus, the value of preserving the status quo here is much higher than in most other contexts.

A.

The Supreme Court has repeatedly instructed courts to carefully consider the importance of preserving the status quo on the eve of an election. In the similar context of determining whether to issue an injunction, [1] the Supreme Court held that, ***893** "[f]aced with an application to enjoin operation of voter identification procedures just weeks before an election, the Court of Appeals was required to weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases and its own institutional procedures." *Purcell v. Gonzalez,* 549 U.S. 1, 4, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006) (per curiam). One of these considerations is that "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Id.* at 4–5, 127 S.Ct. 5. [2]

Further, in the apportionment context, the Supreme Court has instructed that, "[i]n awarding or withholding immediate relief, a court is entitled to and *should* consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles." *Reynolds v. Sims,* 377 U.S. 533, 585, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964) (emphasis added). Accordingly, "under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid." *Id.*

The Supreme Court itself has declined to interfere with a fast-approaching election, even after finding that the ballots unconstitutionally excluded certain candidates. *Williams v. Rhodes,* 393 U.S. 23, 34–35, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968). The Court found on October 15, 1968 that:

> Certainly at this late date it would be extremely difficult, if not impossible, for Ohio to provide still another set of ballots. Moreover, the confusion that would attend such a last-minute change poses a risk of interference with the rights of other Ohio citizens, for example, absentee voters.

Id. at 35, 89 S.Ct. 5.

Here, the district court's decision on October 11, 2014 presents similar logistical problems because it will "be extremely difficult, if not impossible," for the State to adequately train its 25,000 polling workers at 8,000 polling places about the injunction's new requirements in time for the start of early voting on October 20 or even election day on November 4. The State represents that it began training poll workers in mid-September, and at least some of them have already completed their training. The State also represents that it will be unable to reprint the "election manuals that poll workers use for guidance," and so the election laws "will be conveyed by word of mouth alone." This "last-minute change poses a risk of interference with the rights of other [Texas] citizens," *Williams,* 393 U.S. at 35, 89 S.Ct. 5, because ***894** we can easily infer that this late retraining by word of mouth will result in markedly inconsistent treatment of voters at different polling places throughout the State.

In their response brief, the Veasey–LULAC plaintiffs concede that, "[u]nder the district court's injunction, perhaps some poll officials in some isolated precincts might mistakenly turn a registered voter away because the voter fails to comply with SB 14." They discount this concern because "this voter would also be disenfranchised were this Court to issue a stay." But they fail to recognize that inconsistent treatment of voters, even in just "some isolated precincts," raises a significant constitutional concern, particularly when this disparate treatment is virtually guaranteed by the late issuance of the injunction.

B.

The Supreme Court has continued to look askance at changing election laws on the eve of an election. Just this term, the Supreme Court halted three Court of Appeals decisions that would have altered the rules of this fall's general election shortly before it begins. *See Frank v. Walker,* 14A352, ––U.S. ——, 135 S.Ct. 7, —— L.Ed.2d ——, 2014 WL 5039671 (U.S. Oct. 9, 2014); *North Carolina v. League of Women Voters of N. Carolina,* 14A358, ––U.S. ——, 135 S.Ct. 6, —— L.Ed.2d ——, 2014 WL 5026111 (U.S. Oct. 8, 2014); *Husted v. Ohio State Conference of N.A.A.C.P.,* 14A336, ––U.S. ——, 135 S.Ct. 42, —— L.Ed.2d ——, 2014 WL 4809069 (U.S. Sept. 29, 2014).

In *League of Women Voters,* on October 1, the Court of Appeals for the Fourth Circuit reversed the district court's denial of a preliminary injunction against North Carolina's "elimination of same-day registration and prohibition on counting out-of-precinct ballots" that were contained in a law that had been on the books since August of 2013. 14–1845, 769 F.3d 224, 229, 232, 2014 WL 4852113, at *1, 4 (4th Cir. Oct. 1, 2014). The dissent argued that the injunction should not be granted, partly because of the confusion it would cause in the fast-approaching election. *Id.* at 248–52, 2014 WL 4852113 at *21–23 (Motz, J., dissenting). The Supreme Court stayed the resulting October 3rd injunction. *League of Women Voters,* 135 S.Ct. 6, 2014 WL 5026111.

In *Ohio State Conference of N.A.A.C.P. v. Husted,* on September 24, the Court of Appeals for the Sixth Circuit affirmed the district court's September 4th grant of a preliminary injunction ordering "the restoration of additional early in-person ... voting

hours" that had been eliminated by a statute enacted in February of 2014 and effective on June 1, 2014. 14–3877, 768 F.3d 524, 529, 532, 2014 WL 4724703, at *1, 4 (6th Cir. Sept. 24, 2014). The Supreme Court stayed this injunction. 135 S.Ct. 42, 2014 WL 4809069.

In *Frank v. Walker,* on September 12, the Court of Appeals for the Seventh Circuit issued a stay of a district court injunction imposed in April of 2014 that prevented the enforcement of Wisconsin's voter identification laws. 766 F.3d 755 (7th Cir.2014), *reconsideration denied,* 14–2058, 769 F.3d 494, 2014 WL 4827118 (7th Cir. Sept. 26, 2014). Five judges dissented from the denial of rehearing en banc, arguing that changing the rules of the election at that late date was unreasonable, whatever the merits of Wisconsin's voter identification laws. 769 F.3d at 497–501, 2014 WL 4827118, at *3–6 (Williams, J., dissenting from denial of rehearing en banc). The Supreme Court vacated the Court of Appeals' stay of the injunction, pending the outcome of Supreme Court proceedings. *Frank,* 14A352, 135 S.Ct. 7, 2014 WL 5039671.

***895** While the Supreme Court has not explained its reasons for issuing these stays, the common thread is clearly that the decision of the Court of Appeals would change the rules of the election too soon before the election date. The stayed decisions have both upheld and struck down state statutes and affirmed and reversed district court decisions, so the timing of the decisions rather than their merits seems to be the key. [3] Moreover, Justice Alito's dissent from the stay in *Walker* casts some light on the Court's rationale: "There is a colorable basis for the Court's decision due to the proximity of the upcoming general election. It is particularly troubling that absentee ballots have been sent out without any notation that proof of photo identification must be submitted." *Frank,* 135 S.Ct. at 7, 2014 WL 5039671, at *1 (Alito, J., dissenting).

Here, the district court's alterations to the Texas voting laws were made on October 11, 2014, even though the challenged laws became effective on January 1, 2012 and had already been used in at least three previous elections. We must consider this injunction in light of the Supreme Court's hesitancy to allow such eleventh-hour judicial changes to election laws.

IV.

Particularly in light of the importance of maintaining the status quo on the eve of an election, we find that the traditional factors for granting a stay favor granting one here.

A.

First, the State has made a strong showing that it is likely to succeed on the merits, at least as to its argument that the district court should not have changed the voting identification laws on the eve of the election. The court offered no reason for applying the injunction to an election that was just nine days away, even though the State repeatedly argued that an injunction this close to the election would substantially disrupt the election process. As discussed in Section III above, the Supreme Court has instructed that we should carefully guard against judicially altering the status quo on the eve of an election. And, just this term, the Court has stepped in to prevent such alterations several times. We find that the State has made a strong showing that the district court erred in applying the injunction to this fast-approaching election cycle.

The other questions on the merits are significantly harder to decide, given the voluminous record, the lengthy district court opinion, and our necessarily expedited review. But, given the special importance of preserving orderly elections, we find that this factor weighs in favor of issuing a stay.

B.

The State will be irreparably harmed if the stay is not issued. "When a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws." *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott,* 734 F.3d 406, 419 (5th Cir.2013); *accord Maryland v. King,* —— U.S. ——, 133 S.Ct. 1, 3, 183 L.Ed.2d 667 (2012) (Roberts, Circuit Justice, in chambers); *New Motor Vehicle Bd. v. Orrin W. Fox Co.,* 434 U.S. 1345, 1351, 98 S.Ct. 359, 54 L.Ed.2d 439 (1977) (Rehnquist, Circuit Justice, in chambers); ***896** *Voting for Am., Inc. v. Andrade,* 488 Fed.Appx. 890, 904 (5th Cir.2012) (unpublished). If the district court judgment is ultimately reversed, the State cannot run the election over again, this time applying SB 14. Moreover, the State has a significant interest in ensuring the proper and consistent running of its election machinery, and this interest is severely hampered by the injunction, as discussed in Section III above.

C.

The individual voter plaintiffs may be harmed by the issuance of this stay.[4] But we find that this harm does not outweigh the other three factors. *See Planned Parenthood,* 734 F.3d at 419 ("While we acknowledge that Planned Parenthood has also made a strong showing that their interests would be harmed by staying the injunction, given the State's likely success on the merits, this is not enough, standing alone, to outweigh the other factors."). *Cf. Burdick v. Takushi,* 504 U.S. 428, 441, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992) ("[T]he right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system."). Again, the first two factors are the most critical, *Nken,* 556 U.S. at 426, 129 S.Ct. 1749, and we have already determined that these two factors favor granting a stay.

D.

Finally, given that the election machinery is already in motion, the public interest weighs strongly in favor of issuing the stay. As explained in Section III above, the State represents that it will have to train 25,000 polling officials at 8,000 polling stations about the new requirements. Inconsistencies between the polling stations seem almost inevitable given the logistical problem of educating all of these polling officials within just one week. These inconsistencies will impair the public interest.

V.

The State's emergency motion for stay pending appeal is GRANTED, as is its motion to file a brief exceeding page limits.

The State has also moved that we maintain its emergency motion for stay pending appeal under seal. The State's motion contains very few sensitive materials; instead, it cites and quotes a limited number of materials that were filed under seal in the District Court. Rather than maintain the entire motion under seal, the references to the sealed materials should instead be redacted by the State. The State's motion is GRANTED in that the unredacted version of the motion for stay pending appeal shall be maintained under seal. The State is DIRECTED to file a redacted version of its motion by October 15, 2014.

GREGG COSTA, Circuit Judge, concurring in the judgment:
The district court issued a thorough order finding that the Texas voter ID law is discriminatory. We should be extremely reluctant to have an election take place under a law that a district court has found, and that our court may find, is discriminatory. As

always, however, we must follow the dictates of the Supreme Court. In two recent decisions, it stayed injunctions issued based on findings that changes in an election law were discriminatory. *See* ***897** *North Carolina v. League of Women Voters of N. Carolina,* 14A358, —— U.S. ——, 135 S.Ct. 6, —— L.Ed.2d ——, 2014 WL 5026111 (U.S. Oct. 8, 2014); *Husted v. Ohio State Conference of N.A.A.C.P.,* 14A336, —— U.S. ——, 135 S.Ct. 42, —— L.Ed.2d ——, 2014 WL 4809069 (U.S. Sept. 29, 2014). It also lifted the Seventh Circuit's stay of a district court's order in place since the spring that enjoined Wisconsin's voter ID law. *See Frank v. Walker,* 14A352, —— U.S. ——, 135 S.Ct. 7, —— L.Ed.2d ——, 2014 WL 5039671 (U.S. Oct. 9, 2014). I agree with Judge Clement that the only constant principle that can be discerned from the Supreme Court's recent decisions in this area is that its concern about confusion resulting from court changes to election laws close in time to the election should carry the day in the stay analysis. The injunction in this case issued even closer in time to the upcoming election than did the two out of the Fourth and Sixth Circuits that the Supreme Court recently stayed. On that limited basis, I agree a stay should issue.

All Citations

769 F.3d 890

Footnotes

1 *See Nken,* 556 U.S. at 434, 129 S.Ct. 1749 ("[T]here is substantial overlap between [the factors governing stays pending appeal] and the factors governing preliminary injunctions; not because the two are one and the same, but because similar concerns arise whenever a court order may allow or disallow anticipated action before the legality of that action has been conclusively determined." (internal citation omitted)).

2 In *Purcell,* the district court declined to enjoin a voter identification law on September 11, 2006. *Id.* at 3, 127 S.Ct. 5. The plaintiffs appealed and, on October 5, the Court of Appeals issued an injunction pending the outcome of the appeal. *Id.* The Supreme Court vacated the Court of Appeals' injunction on October 20. *Id.* at 5–6, 127 S.Ct. 5. Ultimately, the Supreme Court's action preserved the status quo of the state's voting laws leading up to the election, just as our decision here does today. *See id.* ("Given the imminence of the election and the inadequate time to resolve the factual disputes, our action today shall of necessity allow the election to proceed without an injunction suspending the voter identification rules."); *id.* at 5, 127 S.Ct. 5 ("In view of the impending election, the necessity for clear guidance to the State of Arizona, and our conclusion regarding the Court of Appeals' issuance of the order we vacate the order of the Court of Appeals.")

3 The Court of Appeals' decision in *Husted* was stayed even though it affirmed a district court decision. This fact undermines the plaintiffs' argument that the main concern in *Purcell* was giving proper deference to district court decisions.

4 The State contends that no individual voter plaintiffs would actually be harmed by a stay. But, at this time, we decline to decide the fact-intensive question of which individual voter plaintiffs would be harmed.

End of Document

EXHIBIT F

PRESS RELEASES

DELBERT HOSEMANN
Secretary of State

FOR IMMEDIATE RELEASE: June 25, 2013
CONTACT: Pamela Weaver (/Pages/MailForm.aspx?m=2BA333BD-6878-4377-A658-DE25D645E8F2&pr=422), (601) 270-4100

STATEMENT ON SUPREME COURT VOTING RIGHTS ACT OPINION

"The United States Supreme Court placed Mississippi on equal footing with every other State.

The Court's decision removes requirements for Mississippi to travel through the expensive and time consuming Federal application process for any change to state, county, or municipal voting law.

Mississippi citizens have earned the right to determine our voting processes. Our relationships and trust in each other have matured. This chapter is closed.

The process for implementation of Constitutional Voter Identification begins today. It will be conducted in accordance with the Constitutional Amendment adopted by the electorate, funded by the Legislature, and regulations as proposed by the Secretary of State."

In Shelby County v. Holder, the United States Supreme Court ruled Section 4 of the Voting Rights Act is unconstitutional, and its formula can no longer be used as a basis for subjecting jurisdictions to preclearance. To read the full opinion of the Supreme Court: http://www.supremecourt.gov/ (http://www.supremecourt.gov/)

Print Press Release

EXHIBIT G

POLITICAL PARTICIPATION

Case: Greater Birmingham Ministries V. Alabama

Date Filed: 12/02/2015

On December 2, 2015, the NAACP Legal Defense and Educational Fund, Inc., Covington & Burling, LLP, and local attorney Ed Still filed a lawsuit in the Northern District Alabama challenging Alabama's discriminatory photo ID law, HB 19, under Section 2 of the Voting Rights Act and the United States Constitution. The lawsuit was filed on behalf of Greater Birmingham Ministries and the Alabama NAACP. In this new case, LDF's clients not

CASE UPDATES

APRIL 06, 2017

Federal Court Denies Motion to Dismiss NAACP LDF's Lawsuit Against Discriminatory Alabama Voter ID Law

only seek to block the suppressive photo ID law, but will also petition the court to "bail-in" the State of Alabama for all future voting changes.

Alabama's restrictive photo ID law imposes significant and disproportionate burdens on African-American and Latino voters in the State. Nationally, 25% of African-American and 16% of Latino voting age citizens, but only 8% of white voting age citizens lack a government-issued photo ID. In addition, since last year, LDF has repeatedly warned Alabama in letters that the closure of DMV offices, and the State's interpretation of the law's failsafe as an illegal "voucher" requirement would only worsen this problem.

Press:
Deborah Barfield Berry, Transportation officials probe possible civil rights violations in Alabama, USA Today (Dec 9, 2015)
Brentin Mock, The Department of Transportation Is Now Investigating Alabama's DMV Closings, The Atlantic CityLab (Dec. 9, 2015)
Kent Faulk, NAACP Legal Defense Fund: More than 100,000 Alabama registered voters can't cast a ballot, AL.com (Mar. 5, 2017)

DECEMBER 02, 2015

LDF Files Lawsuit to Challenge Alabama's Racially Discriminatory Photo ID Law

The site is experiencing technical difficulties.

RECENT NEWS

EXHIBIT H

831 F.3d 204
United States Court of Appeals, Fourth Circuit.

NORTH CAROLINA STATE CONFERENCE OF the NAACP; Rosanell Eaton; Emmanuel Baptist Church; Bethel A. Baptist Church; Covenant Presbyterian Church; Barbee's Chapel Missionary Baptist Church, Inc.; Armenta Eaton; Carolyn Coleman; Jocelyn Ferguson–Kelly; Faith Jackson; Mary Perry, Maria Teresa Unger Palmer, Plaintiffs–Appellants,
and
John Doe 1; Jane Doe 1; John Doe 2; Jane Doe 2; John Doe 3; Jane Doe 3; New Oxley Hill Baptist Church; Clinton Tabernacle Ame Zion Church; Baheeyah Madany, Plaintiffs,
v.
Patrick L. MCCRORY, in his official capacity as Governor of the State of North Carolina; Kim Westbrook Strach, in her official capacity as a member of the State Board of Elections; Joshua B. Howard, in his official capacity as a member of the State Board of Elections; Rhonda K. Amoroso, in her official capacity as a member of the State Board of Elections; Joshua D. Malcolm, in his official capacity as a member of the State Board of Elections; Paul J. Foley, in his official capacity as a member of the State Board of Elections; Maja Kricker, in her official capacity as a member of the State Board of Elections; James Baker, in his official capacity as a member of the North Carolina State Board of Elections, Defendants–Appellees.
Constitutional Accountability Center; Stacey Stitt; Maria Diaz; Robert Gundrum; Misty Taylor; Service Employees International Union; Democracy North Carolina; UNC Center for Civil Rights; Pearlein Revels; Louise Mitchell; Eric Locklear; Anita Hammonds Blanks, Amici Supporting Appellants,
Judicial Watch, Incorporated; Allied Educational Foundation; Thom Tillis; Lindsey Graham; Ted Cruz; Mike Lee; Judicial Education Project; Lawyers Democracy Fund; Mountain States Legal Foundation; American Civil Rights Union; State of Indiana; State of Alabama; State of Arizona; State of Arkansas; State of Georgia; State of Kansas; State of Michigan; State of North Dakota; State of Ohio; State of Oklahoma; State of South Carolina; State of Texas; State of West Virginia; State of Wisconsin; Pacific Legal Foundation; Center For Equal Opportunity; Project 21, Amici Supporting Appellees.
League of Women Voters of North Carolina; North Carolina A. Philip Randolph Institute; Unifour OneStop Collaborative; Common Cause North Carolina; Goldie Wells; Kay Brandon; Octavia Rainey; Sara Stohler; Hugh Stohler, Plaintiffs,
Charles M. Gray; Asgod Barrantes; Mary–Wren Ritchie, Intervenors/Plaintiffs,
and
Louis M. Duke; Josue E. Berduo; Nancy J. Lund; Brian M. Miller; Becky Hurley Mock; Lynne M. Walter; Ebony N. West, Intervenors/Plaintiffs–Appellants,
v.
State of North Carolina; Joshua B. Howard, in his official capacity as a member of the State Board of Elections; Rhonda K. Amoroso, in her official capacity as a member of the State Board of Elections; Joshua D. Malcolm, in his official capacity as a member of the State Board of Elections; Paul J. Foley, in his official capacity as a member of the State Board of Elections; Maja Kricker, in her official capacity as a member of the State Board of Elections; Patrick L. McCrory, in his official capacity as Governor of the State of North Carolina, Defendants–Appellees.

Constitutional Accountability Center; Stacey Stitt; Maria Diaz; Robert Gundrum; Misty Taylor; Service Employees International Union; Democracy North Carolina; UNC Center For Civil Rights; Pearlein Revels; Louise Mitchell; Eric Locklear; Anita Hammonds Blanks, Amici Supporting Appellants,
Judicial Watch, Incorporated; Allied Educational Foundation; Thom Tillis; Lindsey Graham; Ted Cruz; Mike Lee; Judicial Education Project; Lawyers Democracy Fund; Mountain States Legal Foundation; American Civil Rights Union; State of Indiana; State of Alabama; State of Arizona; State of Arkansas; State of Georgia; State of Kansas; State of Michigan; State of North Dakota; State of Ohio; State of Oklahoma; State of South Carolina; State of Texas; State of West Virginia; State of Wisconsin; Pacific Legal Foundation; Center For Equal Opportunity; Project 21, Amici Supporting Appellees.

League of Women Voters of North Carolina; North Carolina A. Philip Randolph Institute; Unifour OneStop Collaborative; Common Cause North Carolina; Goldie Wells; Kay Brandon; Octavia Rainey; Sara Stohler; Hugh Stohler, Plaintiffs–Appellants,

and

Louis M. Duke; Charles M. Gray; Asgod Barrantes; Josue E. Berduo; Brian M. Miller; Nancy J. Lund; Becky Hurley Mock; Mary–Wren Ritchie; Lynne M. Walter; Ebony N. West, Intervenors/Plaintiffs,

v.

State of North Carolina; Joshua B. Howard, in his official capacity as a member of the State Board of Elections; Rhonda K. Amoroso, in her official capacity as a member of the State Board of Elections; Joshua D. Malcolm, in his official capacity as a member of the State Board of Elections; Paul J. Foley, in his official capacity as a member of the State Board of Elections; Maja Kricker, in her official capacity as a member of the State Board of Elections; Patrick L. McCrory, in his official capacity as Governor of the State of North Carolina, Defendants–Appellees.

Constitutional Accountability Center; Stacey Stitt; Maria Diaz; Robert Gundrum; Misty Taylor; Service Employees International Union; Democracy North Carolina; UNC Center For Civil Rights; Pearlein Revels; Louise Mitchell; Eric Locklear; Anita Hammonds Blanks, Amici Supporting Appellants,
Judicial Watch, Incorporated; Allied Educational Foundation; Thom Tillis; Lindsey Graham; Ted Cruz; Mike Lee; Judicial Education Project; Lawyers Democracy Fund; Mountain States Legal Foundation; American Civil Rights Union; State of Indiana; State of Alabama; State of Arizona; State of Arkansas; State of Georgia; State of Kansas; State of Michigan; State of North Dakota; State of Ohio; State of Oklahoma; State of South Carolina; State of Texas; State of West Virginia; State of Wisconsin; Pacific Legal Foundation; Center For Equal Opportunity; Project 21, Amici Supporting Appellees.

United States of America, Plaintiff–Appellant,

v.

State of North Carolina; North Carolina State Board of Elections; Kim Westbrook Strach, Defendants–Appellees,

and

Christina Kelley Gallegos–Merrill; Judicial Watch, Incorporated, Intervenors/Defendants.

Constitutional Accountability Center; Stacey Stitt; Maria Diaz; Robert Gundrum; Misty Taylor; Service Employees International Union; Democracy North Carolina; UNC Center For Civil Rights; Pearlein Revels; Louise Mitchell; Eric Locklear; Anita Hammonds Blanks, Amici Supporting Appellant,
Judicial Watch, Incorporated; Allied Educational Foundation; Thom Tillis; Lindsey Graham; Ted Cruz; Mike Lee; Judicial Education Project; Lawyers Democracy Fund; Mountain States Legal Foundation; American Civil Rights Union; State of Indiana; State of Alabama; State of Arizona; State of Arkansas;

State of Georgia; State of Kansas; State of Michigan; State of North Dakota; State of Ohio; State of Oklahoma; State of South Carolina; State of Texas; State of West Virginia; State of Wisconsin; Pacific Legal Foundation; Center For Equal Opportunity; Project 21, Amici Supporting Appellees.

No. 16-1468, No. 16-1469, No. 16-1474, No. 16-1529
|
Argued: June 21, 2016
|
Decided: July 29, 2016

Synopsis

Background: United States and various individuals, churches, and civil rights organizations brought actions against State of North Carolina and various state officials, challenging several provisions of omnibus election reform law as violative of the Fourteenth and Fifteenth Amendments, and the Voting Rights Act (VRA). After actions were consolidated, the United States District Court for the Middle District of North Carolina, Thomas D. Schroeder, J., 997 F.Supp.2d 322, denied plaintiffs' motion for preliminary injunction. Plaintiffs appealed. The Court of Appeals, Wynn, Circuit Judge, 769 F.3d 224, affirmed in part, reversed in part, and remanded with instructions. Following a bench trial, the District Court, 2016 WL 1650774, held that the election reform law did not violate the Fourteenth and Fifteenth Amendments or the VRA. Plaintiffs appealed.

Holdings: The Court of Appeals, Diana Gribbon Motz, Circuit Judge, writing for the court except as to Part V.B., and Wynn, Circuit Judge, writing for the court as to Part V.B., held that:

North Carolina had a history of racial discrimination in voting that weighed in favor of finding the election law was motivated by discriminatory racial intent;

specific sequence of events leading up to the passage of North Carolina's election reform law weighed in favor of finding the election law was motivated by discriminatory racial intent;

legislative history of North Carolina's election reform law weighed in favor of finding the election law was motivated by discriminatory racial intent;

disproportionate impact of North Carolina's election reform law on African Americans weighed in favor of finding the election law was motivated by discriminatory racial intent;

North Carolina's non-racial motivations for passing an election reform law did not explain the passage of the law, thus race constituted a but-for cause of the law;

North Carolina's election reform law was severable; and

the Court would enjoin all challenged provisions, notwithstanding North Carolina's amendment to the election reform law.

Reversed and remanded.

Diana Gribbon Motz, Circuit Judge, filed an opinion dissenting in part.

Procedural Posture(s): On Appeal.

West Codenotes

Held Unconstitutional
N.C. Gen. Stat. Ann. §§ 163-55, 163-82.4(d)(2), 163-82.6A, 163-166.13.

***212** Appeals from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas D. Schroeder, District Judge. (1:13–cv–00658–TDS–JEP; 1:13–cv–00660–TDS–JEP; 1:13–cv–00861–TDS–JEP)

Attorneys and Law Firms

ARGUED: Anna Marks Baldwin, United States Department of Justice, Washington, D.C.; Penda D. Hair, Advancement Project, Washington, D.C.; Allison Jean Riggs, Southern Coalition for Social Justice, Durham, North Carolina, for Appellants. Thomas A. Farr, Ogletree Deakins Nash Smoak & Stewart, PC, Raleigh, North Carolina; Alexander McClure Peters, North Carolina Department Of Justice, Raleigh, North Carolina, for Appellees. ON BRIEF: Denise D. Lieberman, Donita Judge, Caitlin Swain, Advancement Project, Washington, D.C.; Irving Joyner, Cary, North Carolina; Adam Stein, Tin Fulton Walker & Owen, PLLC, Chapel Hill, North Carolina; Daniel T. Donovan, Bridget K. O'Connor, K. Winn Allen, Michael A. Glick, Ronald K. Anguas, Jr., Madelyn A. Morris, Kirkland & Ellis LLP, Washington, D.C., for Appellants North Carolina State Conference of Branches of the NAACP, Rosanell Eaton, Emmanuel Baptist Church, Bethel A. Baptist Church, Covenant Presbyterian Church, Barbee's Chapel Missionary Baptist Church, Inc., Armenta Eaton, Carolyn Coleman, Jocelyn Ferguson–Kelly, Faith Jackson, Mary Perry, and Maria Teresa Unger Palmer. Edwin M. Speas, John O'Hale, Caroline P. Mackie, Poyner Spruill LLP, Raleigh, North Carolina; Joshua L. Kaul, Madison, Wisconsin, Marc E. Elias, Bruce V. Spiva, Elisabeth C. Frost, Amanda Callais, Washington, D.C., Abha Khanna, Perkins Coie LLP, Seattle, Washington, for Appellants Louis M. Duke, Josue E. Berduo, Nancy J. Lund, Brian M. Miller, Becky Hurley Mock, Lynne M. Walter, and Ebony N. West. Dale E. Ho, Julie A. Ebenstein, Sophia Lin Lakin, American Civil Liberties Union Foundation, Inc., New York, New York; Christopher Brook, ACLU of North Carolina Legal Foundation, Raleigh, North Carolina; Anita S. Earls, George Eppsteiner, Southern Coalition for Social Justice, Durham, North Carolina for Appellants League of Women Voters of North Carolina, North Carolina A. Philip Randolph Institute, Unifour Onestop Collaborative, Common Cause North Carolina, Goldie Wells, Kay Brandon, Octavia Rainey, Sara Stohler, and Hugh Stohler. Ripley Rand, United States Attorney for the Middle District of North Carolina, Gill P. Beck, Special Assistant United States Attorney for the Middle District of North Carolina, Gregory B. Friel, Deputy Assistant Attorney General, Justin Levitt, Deputy Assistant Attorney General, Diana K. Flynn, Christine H. Ku, Civil Rights Division, United States Department of Justice, Washington, D.C., for Appellant United States of America. L. Gray Geddie, Jr., Phillip J. Strach, Michael D. McKnight, Ogletree Deakins Nash Smoak & Stewart, PC, Raleigh, North Carolina, for Appellees State of North Carolina and North Carolina State Board of Elections; Karl S. Bowers, Jr., Bowers Law Office LLC, Columbia, South Carolina, Robert C. Stephens, Office of the Governor of North Carolina, Raleigh, North Carolina, for Appellee Patrick L. McCrory. Elizabeth B. Wydra, Brianne J. Gorod, David H. Gans, Constitutional Accountability Center, Washington, D.C., for Amicus Constitutional Accountability Center. Claire Prestel, Ryan E. Griffin, James & Hoffman, P.C., Washington, D.C.; Mary Joyce Carlson, Washington, D.C.; Judith A. Scott, Lauren Bonds, ***213** Katherine Roberson–Young, Service Employees International Union, Washington, D.C., for Amici Stacey Stitt, Maria Diaz, Robert Gundrum, Misty Taylor, and Service Employees International Union. Mark R. Sigmon, Sigmon Law, PLLC, Raleigh, North Carolina, for Amicus Democracy North Carolina. Mark Dorosin, Elizabeth Haddix, Brent Ducharme, UNC Center for Civil Rights, Chapel Hill, North Carolina, for Amicus UNC Center for Civil Rights. Jeanette Wolfley, Assistant Professor, University of New Mexico School Of Law, Albuquerque, New Mexico, Arnold Locklear, Locklear, Jacobs, Hunt & Brooks, Pembroke, North Carolina for Amici Pearlein Revels, Louise Mitchell, Eric Locklear, and Anita Hammonds Blanks. Bradley J. Schlozman, Hinkle Law Firm LLC, Wichita, Kansas; Chris Fedeli, Lauren M. Burke, Judicial Watch, Inc., Washington, D.C.; H. Christopher Coates, Law Office of H. Christopher Coates, Charleston, South Carolina, for Amici Judicial Watch, Inc. and Allied Educational Foundation. Michael A. Carvin, Anthony J. Dick, Stephen A. Vaden, Jones Day, Washington, D.C., for Amici Senators Thom Tillis, Lindsey Graham, Ted Cruz, Mike Lee, and the

Judicial Education Project. Maya M. Noronha, Trevor M. Stanley, E. Mark Braden, Richard B. Raile, Baker & Hostetler LLP, Washington, D.C., for Amicus Lawyers Democracy Fund. Joshua P. Thompson, Christopher M. Kieser, Pacific Legal Foundation, Sacramento, California, for Amici Pacific Legal Foundation, Center for Equal Opportunity, and Project 21. Steven J. Lechner, Mountain States Legal Foundation, Lakewood, Colorado, for Amicus Mountain States Legal Foundation. Joseph A. Vanderhulst, Public Interest Legal Foundation, Plainfield, Indiana, for Amicus American Civil Rights Union. Gregory F. Zoeller, Attorney General of Indiana, Thomas M. Fisher, Solicitor General, Winston Lin, Deputy Attorney General, Office of the Indiana Attorney General, Indianapolis, Indiana; Luther Strange, Attorney General, Office of the Attorney General of Alabama, Montgomery, Alabama; Mark Brnovich, Attorney General, Office of the Attorney General of Arizona, Phoenix, Arizona; Leslie Rutledge, Attorney General, Office of the Attorney General of Arkansas, Little Rock, Arkansas; Sam Olens, Attorney General, Office of the Attorney General of Georgia, Atlanta, Georgia; Derek Schmidt, Attorney General, Office of the Attorney General of Kansas, Topeka, Kansas; Bill Schuette, Attorney General, Office of the Attorney General of Michigan, Lansing, Michigan; Wayne Stenehjem, Attorney General, Office of the Attorney General of North Dakota, Bismarck, North Dakota; Michael DeWine, Attorney General, Office of the Attorney General of Ohio, Columbus, Ohio; E. Scott Pruitt, Attorney General, Office of the Attorney General of Oklahoma, Oklahoma City, Oklahoma; Alan Wilson, Attorney General, Office of the Attorney General of South Carolina, Columbia, South Carolina; Ken Paxton, Attorney General, Office of the Attorney General of Texas, Austin, Texas; Patrick Morrisey, Attorney General, Office of the Attorney General of West Virginia, Charleston, West Virginia; Brad D. Schimel, Attorney General, Office of the Attorney General of Wisconsin, Madison, Wisconsin, for Amici States of Indiana, Alabama, Arizona, Arkansas, Georgia, Kansas, Michigan, North Dakota, Ohio, Oklahoma, South Carolina, Texas, West Virginia, and Wisconsin.

Before MOTZ, WYNN, and FLOYD, Circuit Judges.

***214** Reversed and remanded by published opinion. Judge Motz wrote the opinion for the court, in which Judge Wynn and Judge Floyd joined except as to Part V.B. Judge Wynn wrote the opinion for the court as to Part V.B., in which Judge Floyd joined. Judge Motz wrote a separate dissenting opinion as to Part V.B.

DIANA GRIBBON MOTZ, Circuit Judge, writing for the court except as to Part V.B.:

These consolidated cases challenge provisions of a recently enacted North Carolina election law. The district court rejected contentions that the challenged provisions violate the Voting Rights Act and the Fourteenth, Fifteenth, and Twenty-Sixth Amendments of the Constitution. In evaluating the massive record in this case, the court issued extensive factual findings. We appreciate and commend the court on its thoroughness. The record evidence provides substantial support for many of its findings; indeed, many rest on uncontested facts. But, for some of its findings, we must conclude that the district court fundamentally erred. In holding that the legislature did not enact the challenged provisions with discriminatory intent, the court seems to have missed the forest in carefully surveying the many trees. This failure of perspective led the court to ignore critical facts bearing on legislative intent, including the inextricable link between race and politics in North Carolina.

Voting in many areas of North Carolina is racially polarized. That is, "the race of voters correlates with the selection of a certain candidate or candidates." Thornburg v. Gingles, 478 U.S. 30, 62, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986) (discussing North Carolina). In Gingles and other cases brought under the Voting Rights Act, the Supreme Court has explained that polarization renders minority voters uniquely vulnerable to the inevitable tendency of elected officials to entrench themselves by targeting groups unlikely to vote for them. In North Carolina, restriction of voting mechanisms and procedures that most heavily affect African Americans will predictably redound to the benefit of one political party and to the disadvantage of the other. As the evidence in the record makes clear, that is what happened here.

After years of preclearance and expansion of voting access, by 2013 African American registration and turnout rates had finally reached near-parity with white registration and turnout rates. African Americans were poised to act as a major electoral force.

But, on the day after the Supreme Court issued Shelby County v. Holder, —— U.S. ——, 133 S.Ct. 2612, 186 L.Ed.2d 651 (2013), eliminating preclearance obligations, a leader of the party that newly dominated the legislature (and the party that rarely enjoyed African American support) announced an intention to enact what he characterized as an "omnibus" election law. Before enacting that law, the legislature requested data on the use, by race, of a number of voting practices. Upon receipt of the race data, the General Assembly enacted legislation that restricted voting and registration in five different ways, all of which disproportionately affected African Americans.

In response to claims that intentional racial discrimination animated its action, the State offered only meager justifications. Although the new provisions target African Americans with almost surgical precision, they constitute inapt remedies for the problems assertedly justifying them and, in fact, impose cures for problems that did not exist. Thus the asserted justifications cannot and do not conceal the State's true motivation. "In essence," as in ***215** League of United Latin American Citizens v. Perry (LULAC), 548 U.S. 399, 440, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006), "the State took away [minority voters'] opportunity because [they] were about to exercise it." As in LULAC, "[t]his bears the mark of intentional discrimination." Id.

Faced with this record, we can only conclude that the North Carolina General Assembly enacted the challenged provisions of the law with discriminatory intent. Accordingly, we reverse the judgment of the district court to the contrary and remand with instructions to enjoin the challenged provisions of the law.

I.

"The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem." Shelby Cty., 133 S.Ct. at 2618. Although the Fourteenth and Fifteenth Amendments to the United States Constitution prohibit racial discrimination in the regulation of elections, state legislatures have too often found facially race-neutral ways to deny African Americans access to the franchise. See id. at 2619; Johnson v. De Grandy, 512 U.S. 997, 1018, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994) (noting "the demonstrated ingenuity of state and local governments in hobbling minority voting power" as "jurisdictions have substantially moved from direct, over[t] impediments to the right to vote to more sophisticated devices" (alteration in original) (internal quotation marks omitted)).

To remedy this problem, Congress enacted the Voting Rights Act. In its current form, § 2 of the Act provides:

> No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color....

52 U.S.C. § 10301(a) (2012) (formerly 42 U.S.C. § 1973(a)).

In addition to this general statutory prohibition on racial discrimination, Congress identified particular jurisdictions "covered" by § 5 of the Voting Rights Act. Shelby Cty., 133 S.Ct. at 2619. Covered jurisdictions were those that, as of 1972, had maintained suspect prerequisites to voting, like literacy tests, and had less than 50% voter registration or turnout. Id. at 2619–20. Forty North Carolina jurisdictions were covered under the Act. 28 C.F.R. pt. 51 app. (2016). As a result, whenever the North Carolina legislature sought to change the procedures or qualifications for voting statewide or in those jurisdictions, it first had to seek "preclearance" with the United States Department of Justice. In doing so, the State had to demonstrate that a change had neither

the purpose nor effect of "diminishing the ability of any citizens" to vote "on account of race or color." 52 U.S.C. § 10304 (2012) (formerly 42 U.S.C. § 1973c).

During the period in which North Carolina jurisdictions were covered by § 5, African American electoral participation dramatically improved. In particular, between 2000 and 2012, when the law provided for the voting mechanisms at issue here and did not require photo ID, African American voter registration swelled by 51.1%. J.A. 804 [1] (compared to an increase of 15.8% for white voters). African American turnout similarly surged, from 41.9% in 2000 to 71.5% in 2008 and 68.5% in 2012. J.A. 1196-97. Not coincidentally, during this period North Carolina emerged as a swing state in national elections.

Then, in late June 2013, the Supreme Court issued its opinion in Shelby County. ***216** In it, the Court invalidated the preclearance coverage formula, finding it based on outdated data. Shelby Cty., 133 S.Ct. at 2631. Consequently, as of that date, North Carolina no longer needed to preclear changes in its election laws. As the district court found, the day after the Supreme Court issued Shelby County, the "Republican Chairman of the [Senate] Rules Committee[ ] publicly stated, 'I think we'll have an omnibus bill coming out' and ... that the Senate would move ahead with the 'full bill.' " N.C. State Conf. of the NAACP v. McCrory, —— F.Supp.3d ——, ——, 2016 WL 1650774, at *9 (M.D.N.C. Apr. 25, 2016). The legislature then swiftly expanded an essentially single-issue bill into omnibus legislation, enacting it as Session Law ("SL") 2013–381. [2]

In this one statute, the North Carolina legislature imposed a number of voting restrictions. The law required in-person voters to show certain photo IDs, beginning in 2016, which African Americans disproportionately lacked, and eliminated or reduced registration and voting access tools that African Americans disproportionately used. Id. at —— – ——, ——, ——, ——, 2016 WL 1650774, at *9–10, *37, *123, *127, *131. Moreover, as the district court found, prior to enactment of SL 2013–381, the legislature requested and received racial data as to usage of the practices changed by the proposed law. Id. at —— – ——, 2016 WL 1650774, at *136–38.

This data showed that African Americans disproportionately lacked the most common kind of photo ID, those issued by the Department of Motor Vehicles (DMV). Id. The pre-Shelby County version of SL 2013–381 provided that all government-issued IDs, even many that had been expired, would satisfy the requirement as an alternative to DMV-issued photo IDs. J.A. 2114–15. After Shelby County, with race data in hand, the legislature amended the bill to exclude many of the alternative photo IDs used by African Americans. Id. at ——, 2016 WL 1650774, at *142; J.A. 2291–92. As amended, the bill retained only the kinds of IDs that white North Carolinians were more likely to possess. Id.; J.A. 3653, 2115, 2292.

The district court found that, prior to enactment of SL 2013–381, legislators also requested data as to the racial breakdown of early voting usage. Id. at —— – ——, 2016 WL 1650774, at *136–37. Early voting allows any registered voter to complete an absentee application and ballot at the same time, in person, in advance of Election Day. Id. at —— – ——, 2016 WL 1650774, at *4–5. Early voting thus increases opportunities to vote for those who have difficulty getting to their polling place on Election Day.

The racial data provided to the legislators revealed that African Americans disproportionately used early voting in both 2008 and 2012. Id. at —— – ——, 2016 WL 1650774, at *136–38; see also id. at —— n. 74, 2016 WL 1650774, at *48 n. 74 (trial evidence showing that 60.36% and 64.01% of African Americans voted early in 2008 and 2012, respectively, compared to 44.47% and 49.39% of whites). In particular, African Americans disproportionately used the first seven days of early voting. Id. After receipt of this racial data, the General Assembly amended the bill to eliminate the first week of early voting, shortening the total early voting period from seventeen to ten days. ***217** Id. at ——, ——, 2016 WL 1650774, at *15, *136. As a result, SL 2013–381 also eliminated one of two "souls-to-the-polls" Sundays in which African American churches provided transportation to voters. Id. at ——, 2016 WL 1650774, at *55.

The district court found that legislators similarly requested data as to the racial makeup of same-day registrants. Id. at ——, 2016 WL 1650774, at *137. Prior to SL 2013–381, same-day registration allowed eligible North Carolinians to register in person at an early voting site at the same time as casting their ballots. Id. at ——, 2016 WL 1650774, at *6. Same-day registration provided opportunities for those as yet unable to register, as well as those who had ended up in the "incomplete registration queue" after previously attempting to register. Id. at ——, 2016 WL 1650774, at *65. Same-day registration also provided an easy avenue to re-register for those who moved frequently, and allowed those with low literacy skills or other difficulty completing a registration form to receive personal assistance from poll workers. See id.

The legislature's racial data demonstrated that, as the district court found, "it is indisputable that African American voters disproportionately used [same-day registration] when it was available." Id. at ——, 2016 WL 1650774, at *61. The district court further found that African American registration applications constituted a disproportionate percentage of the incomplete registration queue. Id. at ——, 2016 WL 1650774, at *65. And the court found that African Americans "are more likely to move between counties," and thus "are more likely to need to re-register." Id. As evidenced by the types of errors that placed many African American applications in the incomplete queue, id. at ——, —— & n. 26, 2016 WL 1650774, at *65, *123 & n. 26, in-person assistance likely would disproportionately benefit African Americans. SL 2013–381 eliminated same-day registration. Id. at ——, 2016 WL 1650774, at *15.

Legislators additionally requested a racial breakdown of provisional voting, including out-of-precinct voting. Id. at —— – ——, 2016 WL 1650774, at *136–37. Out-of-precinct voting required the Board of Elections in each county to count the provisional ballot of an Election Day voter who appeared at the wrong precinct, but in the correct county, for all of the ballot items for which the voter was eligible to vote. Id. at —— – ——, 2016 WL 1650774, at *5–6. This provision assisted those who moved frequently, or who mistook a voting site as being in their correct precinct.

The district court found that the racial data revealed that African Americans disproportionately voted provisionally. Id. at ——, 2016 WL 1650774, at *137. In fact, the General Assembly that had originally enacted the out-of-precinct voting legislation had specifically found that "of those registered voters who happened to vote provisional ballots outside their resident precincts" in 2004, "a disproportionately high percentage were African American." Id. at ——, 2016 WL 1650774, at *138. With SL 2013–381, the General Assembly altogether eliminated out-of-precinct voting. Id. at ——, 2016 WL 1650774, at *15.

African Americans also disproportionately used preregistration. Id. at ——, 2016 WL 1650774, at *69. Preregistration permitted 16- and 17-year-olds, when obtaining driver's licenses or attending mandatory high school registration drives, to identify themselves and indicate their intent to vote. Id. at ——, ——, 2016 WL 1650774, at *7, *68. This allowed County Boards of Elections to verify eligibility and automatically register eligible citizens once they reached eighteen. Id. at ——, 2016 WL 1650774, at *7. Although preregistration ***218** increased turnout among young adult voters, SL 2013–381 eliminated it. Id. at ——, ——, 2016 WL 1650774, at *15, *69. [3]

The district court found that not only did SL 2013–381 eliminate or restrict these voting mechanisms used disproportionately by African Americans, and require IDs that African Americans disproportionately lacked, but also that African Americans were more likely to "experience socioeconomic factors that may hinder their political participation." Id. at ——, 2016 WL 1650774, at *89. This is so, the district court explained, because in North Carolina, African Americans are "disproportionately likely to move, be poor, less educated, have less access to transportation, and experience poor health." Id. at ——, 2016 WL 1650774, at *89.

Nevertheless, over protest by many legislators and members of the public, the General Assembly quickly ratified SL 2013–381 by strict party-line votes. Id. at —— – ——, 2016 WL 1650774, at *9–13. The Governor, who was of the same political

party as the party that controlled the General Assembly, promptly signed the bill into law on August 12, 2013. Id. at ——, 2016 WL 1650774, at *13.

That same day, the League of Women Voters, along with numerous other organizations and individuals, filed suit. Id. at ——, 2016 WL 1650774, at *16. These Plaintiffs alleged that the restrictions on early voting and elimination of same-day registration and out-of-precinct voting were motivated by discriminatory intent in violation of § 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments; that these provisions had a discriminatory result in violation of § 2 of the Voting Rights Act; and that these provisions burdened the right to vote generally, in contravention of the Fourteenth Amendment. See id.

Also that same day, the North Carolina State Conference of the NAACP, in conjunction with several other organizations and individuals, filed a separate action. Id. They alleged that the photo ID requirement and the provisions challenged by the League of Women Voters produced discriminatory results under § 2 and demonstrated intentional discrimination in violation of the Fourteenth and Fifteenth Amendments. Id. Soon thereafter, the United States also filed suit, challenging the same provisions as discriminatory in both purpose and result in violation of § 2 of the Voting Rights Act. Id. Finally, a group of "young voters" intervened, alleging that these same provisions violated their rights under the Fourteenth and Twenty-Sixth Amendments. Id. [4] The district court consolidated the cases. Id.

Ahead of the 2014 midterm general election, Plaintiffs moved for a preliminary injunction of several provisions of the law. See N.C. State Conf. of the NAACP v. McCrory, 997 F.Supp.2d 322, 339 (M.D.N.C. 2014). The district court denied the motion. Id. at 383. On appeal, we reversed in part, remanding the case with instructions to issue an order staying the elimination of same-day registration and out-of-precinct voting. League of Women Voters of N.C. v. North Carolina (LWV), 769 F.3d 224, 248–49 (4th Cir. 2014).

***219** Over the dissent of two Justices, the Supreme Court stayed our injunction mandate on October 8, 2014, pending its decision on certiorari. See North Carolina v. League of Women Voters of N.C., —— U.S. ——, 135 S.Ct. 6, 190 L.Ed.2d 243 (2014) (mem.). On April 6, 2015, the Supreme Court denied certiorari. See North Carolina v. League of Women Voters of N.C., —— U.S. ——, 135 S.Ct. 1735, 191 L.Ed.2d 702 (2015) (mem.). This denial automatically reinstituted the preliminary injunction, restoring same-day registration and out-of-precinct voting pending the outcome of trial in this case. North Carolina v. League of Women Voters of N.C., 135 S.Ct. at 6.

That consolidated trial was scheduled to begin on July 13, 2015. N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *18. However, on June 18, 2015, the General Assembly ratified House Bill 836, enacted as Session Law ("SL") 2015–103. Id. at ——, ——, 2016 WL 1650774, at *13, *18. This new law amended the photo ID requirement by permitting a voter without acceptable ID to cast a provisional ballot if he completed a declaration stating that he had a reasonable impediment to acquiring acceptable photo ID ("the reasonable impediment exception"). Id. at ——, 2016 WL 1650774, at *13. Given this enactment, the district court bifurcated trial of the case. Id. at ——, 2016 WL 1650774, at *18. Beginning in July 2015, the court conducted a trial on the challenges to all of the provisions except the photo ID requirement. Id. In January 2016, the court conducted a separate trial on the photo ID requirement, as modified by the reasonable impediment exception. Id.

On April 25, 2016, the district court entered judgment against the Plaintiffs on all of their claims as to all of the challenged provisions. Id. at ——, 2016 WL 1650774, at *171. The court found no discriminatory results under § 2, no discriminatory intent under § 2 or the Fourteenth and Fifteenth Amendments, no undue burden on the right to vote generally under the Fourteenth Amendment, and no violation of the Twenty-Sixth Amendment. See id. at —— – ——, ——, ——, ——, 2016 WL 1650774, at *133–34, *148, *164, *167. At the same time, acknowledging the imminent June primary election, the court temporarily extended the preliminary injunction of same-day registration and out-of-precinct voting through that election. Id. at ——, 2016

WL 1650774, at *167. The photo ID requirement went into effect as scheduled for the first time in the March 2016 primary election, and was again in effect during the June primary election. Id. at ——, ——, 2016 WL 1650774, at *19, *171.

Plaintiffs timely noted this appeal. J.A. 24967, 24970, 24976, 24980. They also requested that we stay the district court's mandate and extend the preliminary injunction, which we did pending our decision in this case. Order Extending the Existing Stay, No. 16–1468 (Dkt. No. 122).

On appeal, Plaintiffs reiterate their attacks on the photo ID requirement, the reduction in days of early voting, and the elimination of same-day registration, out-of-precinct voting, and preregistration, alleging discrimination against African Americans and Hispanics. Because the record evidence is limited regarding Hispanics, we confine our analysis to African Americans. We hold that the challenged provisions of SL 2013–381 were enacted with racially discriminatory intent in violation of the Equal Protection Clause of the Fourteenth Amendment and § 2 of the Voting Rights Act. We need not and do not reach Plaintiffs' remaining claims.

II.

A.

An appellate court can reverse a district court's factual findings only if ***220** clearly erroneous. United States v. U.S. Gypsum Co., 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948). This standard applies to the ultimate factual question of a legislature's discriminatory motivation. See Pullman–Standard v. Swint, 456 U.S. 273, 287–88, 102 S.Ct. 1781, 72 L.Ed.2d 66 (1982); Hunt v. Cromartie (Cromartie I), 526 U.S. 541, 549, 119 S.Ct. 1545, 143 L.Ed.2d 731 (1999). Such a finding is clearly erroneous if review of the entire record leaves the appellate court "with the definite and firm conviction that the [d]istrict [c]ourt's key findings are mistaken." Easley v. Cromartie (Cromartie II), 532 U.S. 234, 243, 121 S.Ct. 1452, 149 L.Ed.2d 430 (2001) (citation and internal quotation marks omitted). This is especially so when "the key evidence consisted primarily of documents and expert testimony" and "[c]redibility evaluations played a minor role." Id.

Moreover, if "the record permits only one resolution of the factual issue" of discriminatory purpose, then an appellate court need not remand the case to the district court. Pullman–Standard, at 292, 102 S.Ct. 1781; see Cromartie II, 532 U.S. at 257, 121 S.Ct. 1452 (reversing, without remanding, three-judge court's factual finding that racial intent predominated in creation of challenged redistricting plan); Hunter v. Underwood, 471 U.S. 222, 229, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985) (affirming Court of Appeals' reversal without remand where district court's finding of no discriminatory purpose was clearly erroneous); Dayton Bd. of Educ. v. Brinkman, 443 U.S. 526, 534, 542, 99 S.Ct. 2971, 61 L.Ed.2d 720 (1979) (affirming Court of Appeals' reversal of finding of no intentional discrimination with remand only to enter remedy order).

In Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977), the Supreme Court addressed a claim that racially discriminatory intent motivated a facially neutral governmental action. The Court recognized that a facially neutral law, like the one at issue here, can be motivated by invidious racial discrimination. Id. at 264–66, 97 S.Ct. 555. If discriminatorily motivated, such laws are just as abhorrent, and just as unconstitutional, as laws that expressly discriminate on the basis of race. Id.; Washington v. Davis, 426 U.S. 229, 241, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976).

When considering whether discriminatory intent motivates a facially neutral law, a court must undertake a "sensitive inquiry into such circumstantial and direct evidence of intent as may be available." Arlington Heights, 429 U.S. at 266, 97 S.Ct. 555. Challengers need not show that discriminatory purpose was the "sole[ ]" or even a "primary" motive for the legislation, just that it was "a motivating factor." Id. at 265–66, 97 S.Ct. 555 (emphasis added). Discriminatory purpose "may often be inferred from

the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another." Davis, 426 U.S. at 242, 96 S.Ct. 2040. But the ultimate question remains: did the legislature enact a law "because of," and not "in spite of," its discriminatory effect. Pers. Adm'r of Mass. v. Feeney, 442 U.S. 256, 279, 99 S.Ct. 2282, 60 L.Ed.2d 870 (1979).

In Arlington Heights, the Court set forth a nonexhaustive list of factors to consider in making this sensitive inquiry. These include: "[t]he historical background of the [challenged] decision"; "[t]he specific sequence of events leading up to the challenged decision"; "[d]epartures from normal procedural sequence"; the legislative history of the decision; and of course, the disproportionate "impact of the official action—whether it bears more ***221** heavily on one race than another." Arlington Heights, 429 U.S. at 266–67, 97 S.Ct. 555 (internal quotation marks omitted).

In instructing courts to consider the broader context surrounding the passage of legislation, the Court has recognized that "[o]utright admissions of impermissible racial motivation are infrequent and plaintiffs often must rely upon other evidence." Cromartie I, 526 U.S. at 553, 119 S.Ct. 1545. In a vote denial case such as the one here, where the plaintiffs allege that the legislature imposed barriers to minority voting, this holistic approach is particularly important, for "[d]iscrimination today is more subtle than the visible methods used in 1965." H.R. Rep. No. 109–478, at 6 (2006), as reprinted in 2006 U.S.C.C.A.N. 618, 620. Even "second-generation barriers" to voting, while facially race neutral, may nonetheless be motivated by impermissible racial discrimination. Shelby Cty., 133 S.Ct. at 2635 (Ginsburg, J., dissenting) (cataloguing ways in which facially neutral voting laws continued to discriminate against minorities even after passage of Voting Rights Act).

"Once racial discrimination is shown to have been a 'substantial' or 'motivating' factor behind enactment of the law, the burden shifts to the law's defenders to demonstrate that the law would have been enacted without this factor." Hunter, 471 U.S. at 228, 105 S.Ct. 1916. When determining if this burden has been met, courts must be mindful that "racial discrimination is not just another competing consideration." Arlington Heights, 429 U.S. at 265–66, 97 S.Ct. 555. For this reason, the judicial deference accorded to legislators when "balancing numerous competing considerations" is "no longer justified." Id. Instead, courts must scrutinize the legislature's actual non-racial motivations to determine whether they alone can justify the legislature's choices. See Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 287, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977); cf. Miss. Univ. for Women v. Hogan, 458 U.S. 718, 728, 102 S.Ct. 3331, 73 L.Ed.2d 1090 (1982) (describing "inquiry into the actual purposes underlying a statutory scheme" that classified based on gender (emphasis added) (internal quotation marks omitted)). If a court finds that a statute is unconstitutional, it can enjoin the law. See, e.g., Hunter, 471 U.S. at 231, 105 S.Ct. 1916; Anderson v. Martin, 375 U.S. 399, 404, 84 S.Ct. 454, 11 L.Ed.2d 430 (1964).

B.

In the context of a § 2 discriminatory intent analysis, one of the critical background facts of which a court must take notice is whether voting is racially polarized. Indeed, to prevail in a case alleging discriminatory dilution of minority voting strength under § 2, a plaintiff must prove this fact as a threshold showing. See Gingles, 478 U.S. at 51, 56, 62, 106 S.Ct. 2752. Racial polarization "refers to the situation where different races ... vote in blocs for different candidates." Id. at 62, 106 S.Ct. 2752. This legal concept "incorporates neither causation nor intent" regarding voter preferences, for "[i]t is the difference between the choices made by blacks and whites—not the reasons for that difference—that results" in the opportunity for discriminatory laws to have their intended political effect. Id. at 62–63, 106 S.Ct. 2752.

While the Supreme Court has expressed hope that "racially polarized voting is waning," it has at the same time recognized that "racial discrimination and racially polarized voting are not ancient history." Bartlett v. Strickland, 556 U.S. 1, 25, 129 S.Ct. 1231, 173 L.Ed.2d 173 (2009). In fact, recent scholarship suggests that, in the years following President Obama's election ***222** in 2008, areas of the country formerly subject to § 5 preclearance have seen an increase in racially polarized voting.

See Stephen Ansolabehere, Nathaniel Persily & Charles Stewart III, Regional Differences in Racial Polarization in the 2012 Presidential Election: Implications for the Constitutionality of Section 5 of the Voting Rights Act, 126 Harv. L. Rev. F. 205, 206 (2013). Further, "[t]his gap is not the result of mere partisanship, for even when controlling for partisan identification, race is a statistically significant predictor of vote choice, especially in the covered jurisdictions." Id.

Racially polarized voting is not, in and of itself, evidence of racial discrimination. But it does provide an incentive for intentional discrimination in the regulation of elections. In reauthorizing the Voting Rights Act in 2006, Congress recognized that "[t]he potential for discrimination in environments characterized by racially polarized voting is great." H.R. Rep. No. 109–478, at 35. This discrimination can take many forms. One common way it has surfaced is in challenges centered on vote dilution, where "manipulation of district lines can dilute the voting strength of politically cohesive minority group members." De Grandy, 512 U.S. at 1007, 114 S.Ct. 2647 (emphasis added); see also Voinovich v. Quilter, 507 U.S. 146, 153–54, 113 S.Ct. 1149, 122 L.Ed.2d 500 (1993). It is the political cohesiveness of the minority groups that provides the political payoff for legislators who seek to dilute or limit the minority vote.

The Supreme Court squarely confronted this connection in LULAC. There, the record evidence revealed racially polarized voting, such that 92% of Latinos voted against an incumbent of a particular party, whereas 88% of non-Latinos voted for him. 548 U.S. at 427, 126 S.Ct. 2594. The Court explained how this racial polarization provided the impetus for the discriminatory vote dilution legislation at issue in that case: "In old District 23 the increase in Latino voter registration and overall population, the concomitant rise in Latino voting power in each successive election, the near-victory of the Latino candidate of choice in 2002, and the resulting threat to the" incumbent representative motivated the controlling party to dilute the minority vote. Id. at 428, 126 S.Ct. 2594 (citation omitted). Although the Court grounded its holding on the § 2 results test, which does not require proof of intentional discrimination, the Court noted that the challenged legislation bore "the mark of intentional discrimination." Id. at 440, 126 S.Ct. 2594.

The LULAC Court addressed a claim of vote dilution, but its recognition that racially polarized voting may motivate politicians to entrench themselves through discriminatory election laws applies with equal force in the vote denial context. Indeed, it applies perhaps even more powerfully in cases like that at hand, where the State has restricted access to the franchise. This is so because, unlike in redistricting, where states may consider race and partisanship to a certain extent, see, e.g., Miller v. Johnson, 515 U.S. 900, 920, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995), legislatures cannot restrict voting access on the basis of race. (Nor, we note, can legislatures restrict access to the franchise based on the desire to benefit a certain political party. See Anderson v. Celebrezze, 460 U.S. 780, 792–93, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983).)

Using race as a proxy for party may be an effective way to win an election. But intentionally targeting a particular race's access to the franchise because its members vote for a particular party, in a predictable manner, constitutes discriminatory purpose. This is so even absent any evidence of race-based hatred and despite ***223** the obvious political dynamics. A state legislature acting on such a motivation engages in intentional racial discrimination in violation of the Fourteenth Amendment and the Voting Rights Act.

III.

With these principles in mind, we turn to their application in the case at hand.

A.

Arlington Heights directs us to consider "[t]he historical background of the decision" challenged as racially discriminatory. 429 U.S. at 267, 97 S.Ct. 555. Examination of North Carolina's history of race discrimination and recent patterns of official discrimination, combined with the racial polarization of politics in the state, seems particularly relevant in this inquiry. The district court erred in ignoring or minimizing these facts.

Unquestionably, North Carolina has a long history of race discrimination generally and race-based vote suppression in particular. Although we recognize its limited weight, see Shelby Cty., 133 S.Ct. at 2628–29, North Carolina's pre-1965 history of pernicious discrimination informs our inquiry. For "[i]t was in the South that slavery was upheld by law until uprooted by the Civil War, that the reign of Jim Crow denied African–Americans the most basic freedoms, and that state and local governments worked tirelessly to disenfranchise citizens on the basis of race." Id. at 2628.

While it is of course true that "history did not end in 1965," id. it is equally true that SL 2013–381 imposes the first meaningful restrictions on voting access since that date—and a comprehensive set of restrictions at that. Due to this fact, and because the legislation came into being literally within days of North Carolina's release from the preclearance requirements of the Voting Rights Act, that long-ago history bears more heavily here than it might otherwise. Failure to so recognize would risk allowing that troubled history to "pick[ ] up where it left off in 1965" to the detriment of African American voters in North Carolina. LWV, 769 F.3d at 242.

In considering Plaintiffs' discriminatory results claim under § 2, the district court expressly and properly recognized the State's "shameful" history of "past discrimination." N.C. State Conf., —— F.Supp.3d at —— – ——, 2016 WL 1650774, at *83–86. But the court inexplicably failed to grapple with that history in its analysis of Plaintiffs' discriminatory intent claim. Rather, when assessing the intent claim, the court's analysis on the point consisted solely of the finding that "there is little evidence of official discrimination since the 1980s," accompanied by a footnote dismissing examples of more recent official discrimination. See id. at ——, 2016 WL 1650774, at *143.

That finding is clearly erroneous. The record is replete with evidence of instances since the 1980s in which the North Carolina legislature has attempted to suppress and dilute the voting rights of African Americans. In some of these instances, the Department of Justice or federal courts have determined that the North Carolina General Assembly acted with discriminatory intent, "reveal[ing] a series of official actions taken for invidious purposes." Arlington Heights, 429 U.S. at 267, 97 S.Ct. 555. In others, the Department of Justice or courts have found that the General Assembly's action produced discriminatory results. The latter evidence, of course, proves less about discriminatory intent than the former, but it is informative. A historical pattern of laws producing discriminatory results provides important context for determining whether the same ***224** decisionmaking body has also enacted a law with discriminatory purpose. See, e.g., Veasey v. Abbott, No. 14–41127, 830 F.3d 216, 2016 WL 3923868 (5th Cir. July 20, 2016) (en banc) (considering as relevant, in intentional discrimination analysis of voter ID law, DOJ letters and previous court cases about results and intent).

The record reveals that, within the time period that the district court found free of "official discrimination" (1980 to 2013), the Department of Justice issued over fifty objection letters to proposed election law changes in North Carolina—including several since 2000—because the State had failed to prove the proposed changes would have no discriminatory purpose or effect. See U.S. Dep't of Justice, Civil Rights Div., Voting Determination Letters for North Carolina (DOJ Letters) (Aug. 7, 2015), https://www.justice.gov/crt/voting-determination-letters-north-carolina; see also Regents of the Univ. of California v. Bakke, 438 U.S. 265, 305, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978) (referring to objections of the Department of Justice under § 5 as "administrative finding[s] of discrimination"). [5] Twenty-seven of those letters objected to laws that either originated in the General Assembly or originated with local officials and were approved by the General Assembly. See DOJ Letters.

During the same period, private plaintiffs brought fifty-five successful cases under § 2 of the Voting Rights Act. J.A. 1260; Anita S. Earls et al., Voting Rights in North Carolina: 1982–2006, 17 S. Cal. Rev. L. & Soc. Just. 577 (2008). Ten cases ended in judicial decisions finding that electoral schemes in counties and municipalities across the state had the effect of discriminating against minority voters. See, e.g., Ward v. Columbus Cty., 782 F.Supp. 1097 (E.D.N.C. 1991); Johnson v. Halifax Cty., 594 F.Supp. 161 (E.D.N.C. 1984) (granting preliminary injunction). Forty-five cases were settled favorably for plaintiffs out of court or through consent degrees that altered the challenged voting laws. See, e.g., Daniels v. Martin Cty. Bd. of Comm'rs., No. 4:89–cv–00137 (E.D.N.C. 1992); Hall v. Kennedy, No. 3:88–cv–00117 (E.D.N.C. 1989); Montgomery Cty. Branch of the NAACP v. Montgomery Cty. Bd. of Elections, No. 3:90–cv–00027 (M.D.N.C. 1990). On several occasions, the United States intervened in cases or filed suit independently. See, e.g., United States v. Anson Bd. of Educ., No. 3:93–cv–00210 (W.D.N.C. 1994); United States v. Granville Cty. Bd. of Educ., No. 5:87–cv–00353 (E.D.N.C. 1989); United States v. Lenoir Cty., No. 87–105–cv–84 (E.D.N.C. 1987).

And, of course, the case in which the Supreme Court announced the standard governing § 2 results claims—Thornburg v. Gingles—was brought by a class of African American citizens in North Carolina ***225** challenging a statewide redistricting plan. 478 U.S. at 35, 106 S.Ct. 2752. There the Supreme Court affirmed findings by the district court that each challenged district exhibited "racially polarized voting," and held that "the legacy of official discrimination in voting matters, education, housing, employment, and health services ... acted in concert with the multimember districting scheme to impair the ability" of African American voters to "participate equally in the political process." Id. at 80, 106 S.Ct. 2752.

And only a few months ago (just weeks before the district court issued its opinion in the case at hand), a three-judge court addressed a redistricting plan adopted by the same General Assembly that enacted SL 2013–381. Harris v. McCrory, No. 1:13–CV–949, 159 F.Supp.3d 600, 603–04, 2016 WL 482052, at *1–2 (M.D.N.C. Feb. 5, 2016), prob. juris. noted, —— U.S. ——, 136 S.Ct. 2512, —— L.Ed.2d ——, No. 15–1262, 2016 WL 1435913 (June 27, 2016). The court held that race was the predominant motive in drawing two congressional districts, in violation of the Equal Protection Clause. Id. at 603–04, 621 & n. 9, 2016 WL 482052, at *1–2, *17 & n. 9. Contrary to the district court's suggestion, see N.C. State Conf., —— F.Supp.3d at —— n. 223, 2016 WL 1650774, at *143 n. 223, a holding that a legislature impermissibly relied on race certainly provides relevant evidence as to whether race motivated other election legislation passed by the same legislature.

The district court failed to take into account these cases and their important takeaway: that state officials continued in their efforts to restrict or dilute African American voting strength well after 1980 and up to the present day. Only the robust protections of § 5 and suits by private plaintiffs under § 2 of the Voting Rights Act prevented those efforts from succeeding. These cases also highlight the manner in which race and party are inexorably linked in North Carolina. This fact constitutes a critical—perhaps the most critical—piece of historical evidence here. The district court failed to recognize this linkage, leading it to accept "politics as usual" as a justification for many of the changes in SL 2013–381. But that cannot be accepted where politics as usual translates into race-based discrimination.

As it did with the history of racial discrimination, the district court again recognized this reality when analyzing whether SL 2013–381 had a discriminatory result, but not when analyzing whether it was motivated by discriminatory intent. In its results analysis, the court noted that racially polarized voting between African Americans and whites remains prevalent in North Carolina. N.C. State Conf., —— F.Supp.3d at —— – ——, 2016 WL 1650774, at *86–87. Indeed, at trial the State admitted as much. Id. at ——, 2016 WL 1650774, at *86. As one of the State's experts conceded, "in North Carolina, African-American race is a better predictor for voting Democratic than party registration." J.A. 21400. For example, in North Carolina, 85% of African American voters voted for John Kerry in 2004, and 95% voted for President Obama in 2008. N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *86. In comparison, in those elections, only 27% of white North Carolinians voted for John Kerry, and only 35% for President Obama. Id.

Thus, whether the General Assembly knew the exact numbers, it certainly knew that African American voters were highly likely, and that white voters were unlikely, to vote for Democrats. And it knew that, in recent years, African Americans had begun registering and voting in unprecedented numbers. Indeed, much of the recent success of Democratic candidates in North ***226** Carolina resulted from African American voters overcoming historical barriers and making their voices heard to a degree unmatched in modern history.

Despite this, the district court took no issue with one of the legislature's stated purposes in enacting SL 2013–381—to "mov[e] the law back to the way it was." N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *111. Rather, the court apparently regarded this as entirely appropriate. The court noted repeatedly that the voting mechanisms that SL 2013–381 restricts or eliminates were ratified "relatively recently," "almost entirely along party lines," when "Democrats controlled" the legislature; and that SL 2013–381 was similarly ratified "along party lines" after "Republicans gained ... control of both houses." Id. at —— – ——, ——, 2016 WL 1650774, at *2–7, *12.

Thus, the district court apparently considered SL 2013–381 simply an appropriate means for one party to counter recent success by another party. We recognize that elections have consequences, but winning an election does not empower anyone in any party to engage in purposeful racial discrimination. When a legislature dominated by one party has dismantled barriers to African American access to the franchise, even if done to gain votes, "politics as usual" does not allow a legislature dominated by the other party to re-erect those barriers.

The record evidence is clear that this is exactly what was done here. For example, the State argued before the district court that the General Assembly enacted changes to early voting laws to avoid "political gamesmanship" with respect to the hours and locations of early voting centers. J.A. 22348. As "evidence of justifications" for the changes to early voting, the State offered purported inconsistencies in voting hours across counties, including the fact that only some counties had decided to offer Sunday voting. Id. The State then elaborated on its justification, explaining that "[c]ounties with Sunday voting in 2014 were disproportionately black" and "disproportionately Democratic." J.A. 22348–49. In response, SL 2013–381 did away with one of the two days of Sunday voting. See N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *15. Thus, in what comes as close to a smoking gun as we are likely to see in modern times, the State's very justification for a challenged statute hinges explicitly on race—specifically its concern that African Americans, who had overwhelmingly voted for Democrats, had too much access to the franchise. [6]

These contextual facts, which reveal the powerful undercurrents influencing North Carolina politics, must be considered in determining why the General Assembly enacted SL 2013–381. Indeed, the law's purpose cannot be properly understood without these considerations. The record makes clear that the historical origin of the challenged provisions in this statute is not the innocuous back-and-forth of routine partisan struggle that the State suggests and that the district court accepted. Rather, the General Assembly enacted them in the immediate aftermath of unprecedented African American voter participation in a state with a troubled racial history and racially polarized voting. The district court clearly erred in ignoring or ***227** dismissing this historical background evidence, all of which supports a finding of discriminatory intent.

B.

Arlington Heights also instructs us to consider the "specific sequence of events leading up to the challenged decision." 429 U.S. at 267, 97 S.Ct. 555. In doing so, a court must consider "[d]epartures from the normal procedural sequence," which may demonstrate "that improper purposes are playing a role." Id. The sequential facts found by the district court are undeniably accurate. N.C. State Conf., —— F.Supp.3d at —— – ——, 2016 WL 1650774, at *8–13. Indeed, they are undisputed. Id. And they are devastating. The record shows that, immediately after Shelby County, the General Assembly vastly expanded an earlier

photo ID bill and rushed through the legislative process the most restrictive voting legislation seen in North Carolina since enactment of the Voting Rights Act of 1965. Id. The district court erred in refusing to draw the obvious inference that this sequence of events signals discriminatory intent.

The district court found that prior to Shelby County, SL 2013–381 numbered only sixteen pages and contained none of the challenged provisions, with the exception of a much less restrictive photo ID requirement. Id. at ——, —— – ——, 2016 WL 1650774, at *8, *143–44. As the court further found, this pre-Shelby County bill was afforded more than three weeks of debate in public hearings and almost three more weeks of debate in the House. Id. at ——, 2016 WL 1650774, at *8. For this version of the bill, there was some bipartisan support: "[f]ive House Democrats joined all present Republicans in voting for the voter-ID bill." Id.

The district court found that SL 2013–381 passed its first read in the Senate on April 25, 2013, where it remained in the Senate Rules Committee. Id. At that time, the Supreme Court had heard argument in Shelby County, but had issued no opinion. Id. "So," as the district court found, "the bill sat." Id. For the next two months, no public debates were had, no public amendments made, and no action taken on the bill.

Then, on June 25, 2013, the Supreme Court issued its opinion in Shelby County. Id. at ——, 2016 WL 1650774, at *9. The very next day, the Chairman of the Senate Rules Committee proclaimed that the legislature "would now move ahead with the full bill," which he recognized would be "omnibus" legislation. Id. at ——, 2016 WL 1650774, at *9. After that announcement, no further public debate or action occurred for almost a month. Id. As the district court explained, "[i]t was not until July 23 ... that an expanded bill, including the election changes challenged in this case, was released." Id. at ——, 2016 WL 1650774, at *144.

The new bill—now fifty-seven pages in length—targeted four voting and registration mechanisms, which had previously expanded access to the franchise, and provided a much more stringent photo ID provision. See 2013 N.C. Sess. Laws 381. Post-Shelby County, the change in accepted photo IDs is of particular note: the new ID provision retained only those types of photo ID disproportionately held by whites and excluded those disproportionately held by African Americans. N.C. State Conf., —— F.Supp.3d at ——, ——, 2016 WL 1650774, at *37, *142. The district court specifically found that "the removal of public assistance IDs" in particular was "suspect," because "a reasonable legislator [would be] aware of the socioeconomic disparities endured by African Americans [and] could have surmised that African Americans would be more likely to ***228** possess this form of ID." Id. at ——, 2016 WL 1650774, at *142.

Moreover, after the General Assembly finally revealed the expanded SL 2013–381 to the public, the legislature rushed it through the legislative process. The new SL 2013–381 moved through the General Assembly in three days: one day for a public hearing, two days in the Senate, and two hours in the House. Id. at —— – ——, 2016 WL 1650774, at *9–12. The House Democrats who supported the pre-Shelby County bill now opposed it. Id. at ——, 2016 WL 1650774, at *12. The House voted on concurrence in the Senate's version, rather than sending the bill to a committee. Id. at ——, 2016 WL 1650774, at *12. This meant that the House had no opportunity to offer its own amendments before the up-or-down vote on the legislation; that vote proceeded on strict party lines. Id.; see J.A. 1299; N.C. H.R. Rules 43.2, 43.3, 44. The Governor, of the same party as the proponents of the bill, then signed the bill into law. N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *13. This hurried pace, of course, strongly suggests an attempt to avoid in-depth scrutiny. See, e.g., Veasey, 830 F.3d at 237, 2016 WL 3923868, at *12 (noting as suspicious voter ID law's "three-day passage through the Senate"). Indeed, neither this legislature—nor, as far as we can tell, any other legislature in the Country—has ever done so much, so fast, to restrict access to the franchise.

The district court erred in accepting the State's efforts to cast this suspicious narrative in an innocuous light. To do so, the court focused on certain minor facts instead of acknowledging the whole picture. For example, although the court specifically found the above facts, it dismissed Plaintiffs' argument that this sequence of events demonstrated unusual legislative speed because the legislature "acted within all [of its] procedural rules." N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *145.

But, of course, a legislature need not break its own rules to engage in unusual procedures. Even just compared to the process afforded the pre-Shelby County bill, the process for the "full bill" was, to say the very least, abrupt.

Similarly, the district court accused Plaintiffs of "ignor[ing] the extensive debate and consideration the initial voter-ID bill received in the spring." Id. at ——, 2016 WL 1650774, at *146. But because the pre-Shelby County bill did not contain any of the provisions challenged here, that debate hardly seems probative. The district court also quoted one senator who opposed the new "full bill" as saying that the legislators had "a good and thorough debate." Id. at ——, ——, 2016 WL 1650774, at *12, *145. We note, however, that many more legislators expressed dismay at the rushed process. Id. at ——, 2016 WL 1650774, at *145. Indeed, as the court itself noted, "[s]everal Democratic senators characterized the bill as voter suppression of minorities. Others characterized the bill as partisan." Id. at ——, 2016 WL 1650774, at *12 (citations omitted). Republican senators "strongly denied such claims," while at the same time linking the bill to partisan goals: that "the bill reversed past practices that Democrats passed to favor themselves." Id.

Finally, the district court dismissed the expanded law's proximity to the Shelby County decision as above suspicion. The Court found that the General Assembly "would not have been unreasonable" to wait until after Shelby County to consider the "full bill" because it could have concluded that the provisions of the "full bill" were "simply not worth the administrative and financial cost" of preclearance. Id. at ——, 2016 WL 1650774, at *144. Although ***229** desire to avoid the hassle of the preclearance process could, in another case, justify a decision to await the outcome in Shelby County, that inference is not persuasive in this case. For here, the General Assembly did not simply wait to enact changes to its election laws that might require the administrative hassle of, but likely would pass, preclearance. Rather, after Shelby County it moved forward with what it acknowledged was an omnibus bill that restricted voting mechanisms it knew were used disproportionately by African Americans, id. at ——, 2016 WL 1650774, at *148, and so likely would not have passed preclearance. And, after Shelby County, the legislature substantially changed the one provision that it had fully debated before. As noted above, the General Assembly completely revised the list of acceptable photo IDs, removing from the list the IDs held disproportionately by African Americans, but retaining those disproportionately held by whites. Id. at ——, ——, 2016 WL 1650774, at *37, *142. This fact alone undermines the possibility that the post-Shelby County timing was merely to avoid the administrative costs.

Instead, this sequence of events—the General Assembly's eagerness to, at the historic moment of Shelby County's issuance, rush through the legislative process the most restrictive voting law North Carolina has seen since the era of Jim Crow–bespeaks a certain purpose. Although this factor, as with the other Arlington Heights factors, is not dispositive on its own, it provides another compelling piece of the puzzle of the General Assembly's motivation.

C.

Arlington Heights also recognizes that the legislative history leading to a challenged provision "may be highly relevant, especially where there are contemporaneous statements by members of the decisionmaking body, minutes of its meetings, or reports." 429 U.S. at 268, 97 S.Ct. 555. Above, we have discussed much of what can be gleaned from the legislative history of SL 2013–381 in the sequence of events leading up to its enactment.

No minutes of meetings about SL 2013–381 exist. And, as the Supreme Court has recognized, testimony as to the purpose of challenged legislation "frequently will be barred by [legislative] privilege." Id. That is the case here. See N.C. State Conf., —— F.Supp.3d at —— n. 124, 2016 WL 1650774, at *71 n. 124. The district court was correct to note that statements from only a few legislators, or those made by legislators after the fact, are of limited value. See id. at ——, 2016 WL 1650774, at *146; Barber v. Thomas, 560 U.S. 474, 485–86, 130 S.Ct. 2499, 177 L.Ed.2d 1 (2010); Hunter, 471 U.S. at 228, 105 S.Ct. 1916. [7]

***230** We do find worthy of discussion, however, the General Assembly's requests for and use of race data in connection with SL 2013–381. As explained in detail above, prior to and during the limited debate on the expanded omnibus bill, members of the General Assembly requested and received a breakdown by race of DMV-issued ID ownership, absentee voting, early voting, same-day registration, and provisional voting (which includes out-of-precinct voting). N.C. State Conf., —— F.Supp.3d at ——– ——, ——, 2016 WL 1650774, at *136–38, *148; J.A. 1628–29, 1637, 1640–41, 1782–97, 3084–3119.

This data revealed that African Americans disproportionately used early voting, same-day registration, and out-of-precinct voting, and disproportionately lacked DMV-issued ID. N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *148; J.A. 1782–97, 3084–3119. Not only that, it also revealed that African Americans did not disproportionately use absentee voting; whites did. J.A. 1796–97, 3744–47. SL 2013–381 drastically restricted all of these other forms of access to the franchise, but exempted absentee voting from the photo ID requirement. In sum, relying on this racial data, the General Assembly enacted legislation restricting all—and only—practices disproportionately used by African Americans. When juxtaposed against the unpersuasive non-racial explanations the State proffered for the specific choices it made, discussed in more detail below, we cannot ignore the choices the General Assembly made with this data in hand.

D.

Finally, Arlington Heights instructs that courts also consider the "impact of the official action"—that is, whether "it bears more heavily on one race than another." 429 U.S. at 266, 97 S.Ct. 555 (internal quotation marks omitted). The district court expressly found that "African Americans disproportionately used" the removed voting mechanisms and disproportionately lacked DMV-issued photo ID. N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *37, *136. Nevertheless, the court concluded that this "disproportionate[ ] use[ ]" did not "significantly favor a finding of discriminatory purpose." Id. at ——, 2016 WL 1650774, at *143. In doing so, the court clearly erred. Apparently, the district court believed that the disproportionate impact of the new legislation "depends on the options remaining" after enactment of the legislation. Id. at ——, 2016 WL 1650774, at *136. Arlington Heights requires nothing of the kind.

The Arlington Heights Court recognized that "[t]he impact of [a governmental] decision" not to rezone for low-income housing "bear[s] more heavily on racial minorities." 429 U.S. at 269, 97 S.Ct. 555. In concluding that the zoning decision had a disproportionate impact, the Court explained that "[m]inorities constitute[d] 18% of the Chicago area population, and 40% of the income groups said to be eligible for" the low-income housing. Id. The Court did not require those minority plaintiffs to show that the Chicago area as a whole lacked low-income housing or that the plaintiffs had no other housing options. Instead, it was sufficient that the zoning decision excluded them from a particular area. Id. at 260, 265–66, 269, 97 S.Ct. 555; see also City of Memphis v. Greene, 451 U.S. 100, 110, 126, 101 S.Ct. 1584, 67 L.Ed.2d 769 (1981) (indicating that closing a street used primarily by African Americans had a disproportionate impact, even though "the extent of the inconvenience [was] not great").

***231** Thus, the standard the district court used to measure impact required too much in the context of an intentional discrimination claim. When plaintiffs contend that a law was motivated by discriminatory intent, proof of disproportionate impact is not "the sole touchstone" of the claim. Davis, 426 U.S. at 242, 96 S.Ct. 2040. Rather, plaintiffs asserting such claims must offer other evidence that establishes discriminatory intent in the totality of the circumstances. Id. at 239–42, 96 S.Ct. 2040. Showing disproportionate impact, even if not overwhelming impact, suffices to establish one of the circumstances evidencing discriminatory intent. [8]

Accordingly, the district court's findings that African Americans disproportionately used each of the removed mechanisms, as well as disproportionately lacked the photo ID required by SL 2013–381, if supported by the evidence, establishes sufficient

disproportionate impact for an Arlington Heights analysis. As outlined above, the record evidence provides abundant support for that holding.

Moreover, the district court also clearly erred in finding that the cumulative impact of the challenged provisions of SL 2013–381 does not bear more heavily on African Americans. See Clingman v. Beaver, 544 U.S. 581, 607–08, 125 S.Ct. 2029, 161 L.Ed.2d 920 (2005) (O'Connor, J., concurring) ("A panoply of regulations, each apparently defensible when considered alone, may nevertheless have the combined effect of severely restricting participation and competition."). For example, the photo ID requirement inevitably increases the steps required to vote, and so slows the process. The early voting provision reduced the number of days in which citizens can vote, resulting in more voters voting on Election Day.[9] Together, these produce longer lines at the polls on Election Day, and absent out-of-precinct voting, prospective Election Day voters may wait in these longer lines only to discover that they have gone to the wrong precinct and are unable to travel to their correct precincts. Thus, cumulatively, the panoply of restrictions results in greater disenfranchisement than any of the law's provisions individually.

The district court discounted the claim that these provisions burden African Americans, citing the fact that similar election laws exist or have survived challenges in other states. See, e.g., N.C. State Conf., —— F.Supp.3d at ——, ——, 2016 WL 1650774, at *45, *139 (photo ID), ——, 2016 WL 1650774, at *46 (early voting), ***232** ——, 2016 WL 1650774, at *57 (same-day registration), ——, 2016 WL 1650774, at *66 (out-of-precinct voting), ——, 2016 WL 1650774, at *69 (preregistration). But the sheer number of restrictive provisions in SL 2013–381 distinguishes this case from others. See, e.g., Crawford v. Marion Cty. Election Bd., 553 U.S. 181, 185, 128 S.Ct. 1610, 170 L.Ed.2d 574 (2008) (challenging only a photo ID requirement); Hunter, 471 U.S. at 223, 105 S.Ct. 1916 (challenging only a felon and misdemeanant disenfranchisement law); Veasey, 823 F.3d at 225, 2016 WL 3923868, at *1 (challenging only a photo ID requirement). Moreover, removing voting tools that have been disproportionately used by African Americans meaningfully differs from not initially implementing such tools. Cf. Harper v. Va. Bd. of Elections, 383 U.S. 663, 665, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) ("[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.").

The district court also erred in suggesting that Plaintiffs had to prove that the challenged provisions prevented African Americans from voting at the same levels they had in the past. No law implicated here—neither the Fourteenth Amendment nor § 2—requires such an onerous showing. Emblematic of this error is the almost dispositive weight the court gave to the fact that African American aggregate turnout increased by 1.8% in the 2014 midterm election as compared to the 2010 midterm election. See N.C. State Conf., —— F.Supp.3d at ——, ——, ——, 2016 WL 1650774, at *18, *122, *132. In addition to being beyond the scope of disproportionate impact analysis under Arlington Heights, several factors counsel against such an inference.

First, as the Supreme Court has explained, courts should not place much evidentiary weight on any one election. See Gingles, 478 U.S. at 74–77, 106 S.Ct. 2752 (noting that the results of multiple elections are more probative than the result of a single election, particularly one held during pending litigation). This is especially true for midterm elections. As the State's own expert testified, fewer citizens vote in midterm elections, and those that do are more likely to be better educated, repeat voters with greater economic resources. J.A. 23801–02; cf. League of Women Voters of North Carolina, 135 S.Ct. at 6–7 (Ginsburg, J., dissenting) (noting that midterm primary elections are "highly sensitive to factors likely to vary from election to election," more so than presidential elections).

Moreover, although aggregate African American turnout increased by 1.8% in 2014, many African American votes went uncounted. As the district court found, African Americans disproportionately cast provisional out-of-precinct ballots, which would have been counted absent SL 2013–381. See N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *63. And thousands of African Americans were disenfranchised because they registered during what would have been the same-day registration period but because of SL 2013–381 could not then vote. See id. at ——, 2016 WL 1650774, at *67. Furthermore,

the district court failed to acknowledge that a 1.8% increase in voting actually represents a significant decrease in the rate of change. For example, in the prior four-year period, African American midterm voting had increased by 12.2%. J.A. 1197.

In sum, while the district court recognized the undisputed facts as to the impact of the challenged provisions of SL 2013–381, it simply refused to acknowledge their import. The court concluded its analysis by remarking that these provisions simply ***233** eliminated a system "preferred" by African Americans as "more convenient." N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *170. But as the court itself found elsewhere in its opinion, "African Americans ... in North Carolina are disproportionately likely to move, be poor, less educated, have less access to transportation, and experience poor health." Id. at ——, 2016 WL 1650774, at *89.

These socioeconomic disparities establish that no mere "preference" led African Americans to disproportionately use early voting, same-day registration, out-of-precinct voting, and preregistration. Nor does preference lead African Americans to disproportionately lack acceptable photo ID. Yet the district court refused to make the inference that undeniably flows from the disparities it found many African Americans in North Carolina experienced. Registration and voting tools may be a simple "preference" for many white North Carolinians, but for many African Americans, they are a necessity.

E.

In sum, assessment of the Arlington Heights factors requires the conclusion that, at least in part, discriminatory racial intent motivated the enactment of the challenged provisions in SL 2013–381. The district court clearly erred in holding otherwise. In large part, this error resulted from the court's consideration of each piece of evidence in a vacuum, rather than engaging in the totality of the circumstances analysis required by Arlington Heights. Any individual piece of evidence can seem innocuous when viewed alone, but gains an entirely different meaning when considered in context.

Our conclusion does not mean, and we do not suggest, that any member of the General Assembly harbored racial hatred or animosity toward any minority group. But the totality of the circumstances—North Carolina's history of voting discrimination; the surge in African American voting; the legislature's knowledge that African Americans voting translated into support for one party; and the swift elimination of the tools African Americans had used to vote and imposition of a new barrier at the first opportunity to do so—cumulatively and unmistakably reveal that the General Assembly used SL 2013–381 to entrench itself. It did so by targeting voters who, based on race, were unlikely to vote for the majority party. Even if done for partisan ends, that constituted racial discrimination.

IV.

Because Plaintiffs have established race as a factor that motivated enactment of the challenged provisions of SL 2013–381, the burden now "shifts to the law's defenders to demonstrate that the law would have been enacted without this factor." Hunter, 471 U.S. at 228, 105 S.Ct. 1916; Arlington Heights, 429 U.S. at 271 n. 21, 97 S.Ct. 555. [10] Once the burden shifts, a court must carefully scrutinize a state's non-racial motivations to determine whether they alone can explain enactment of the challenged law. Arlington Heights, 429 U.S. at 265–66, 97 S.Ct. 555. "[J]udicial deference" to the legislature's stated justifications "is no longer justified." Id.

A court assesses whether a law would have been enacted without a racially discriminatory motive by considering the ***234** substantiality of the state's proffered non-racial interest and how well the law furthers that interest. See Hunter, 471 U.S. at 228–33, 105 S.Ct. 1916; see also Mhany Mgmt., Inc. v. Cty. of Nassau, 819 F.3d 581, 614 (2d Cir. 2016) (considering "whether [non-

racial] concerns were sufficiently strong to cancel out any discriminatory animus" after shifting the burden under Arlington Heights in a Fair Housing Act claim).

Given a state's interest in the fair administration of its elections, a rational justification can be imagined for many election laws, including some of the challenged provisions here. But a court must be mindful of the number, character, and scope of the modifications enacted together in a single challenged law like SL 2013–381. Only then can a court determine whether a legislature would have enacted that law regardless of its impact on African American voters.

In this case, despite finding that race was not a motivating factor for enactment of the challenged provisions of SL 2013–381, the district court addressed the State's justifications for each provision at length. N.C. State Conf., —— F.Supp.3d at —— – ——, ——, 2016 WL 1650774, at *96–116, *147. The court did so, however, through a rational-basis-like lens. For example, the court found the General Assembly's decision to eliminate same-day registration "not unreasonable," and found "at least plausible" the reasons offered for excluding student IDs from the list of qualifying IDs. Id. at ——, ——, 2016 WL 1650774, at *108, *142. But, of course, a finding that legislative justifications are "plausible" and "not unreasonable" is a far cry from a finding that a particular law would have been enacted without considerations of race. As the Supreme Court has made clear, such deference in that inquiry is wholly inappropriate. See Arlington Heights, 429 U.S. at 265–66, 97 S.Ct. 555 (explaining that because "racial discrimination is not just another competing consideration," a court must do much more than review for "arbitrariness or irrationality").

Accordingly, the ultimate findings of the district court regarding the compelling nature of the State's interests are clearly erroneous. Typically, that fact would recommend remand. But we need not remand where the record provides "a complete understanding" of the merits, Tejada v. Dugger, 941 F.2d 1551, 1555 (11th Cir. 1991) (internal quotation marks omitted), and "permits only one resolution of the factual issue," Pullman–Standard, 456 U.S. at 292, 102 S.Ct. 1781. See also Withrow v. Larkin, 421 U.S. 35, 45, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975) (declining to remand where Court "doubt[ed] that such action ... would add anything essential to the determination of the merits"). After a total of four weeks of trial, the district court entered a 479-page order based on more than 25,000 pages of evidence. N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *2. Although the court erred with respect to the appropriate degree of deference due to the State's proffered justifications, that error affected only its ultimate finding regarding their persuasive weight; it did not affect the court's extensive foundational findings regarding those justifications.

These foundational findings as to justifications for SL 2013–381 provide a more than sufficient basis for our review of that law. For we are satisfied that this record is "complete," indeed as "complete" as could ever reasonably be expected, and that remand would accomplish little. Tejada, 941 F.2d at 1555; see Withrow, 421 U.S. at 45, 95 S.Ct. 1456. And, after painstaking review of the record, we must also conclude that it "permits only one resolution of the factual issue." ***235** Pullman–Standard, 456 U.S. at 292, 102 S.Ct. 1781. The record evidence plainly establishes race as a "but-for" cause of SL 2013–381. See Hunter, 471 U.S. at 232, 105 S.Ct. 1916.

In enacting the photo ID requirement, the General Assembly stated that it sought to combat voter fraud and promote public confidence in the electoral system. See 2013 N.C. Sess. Laws 381. These interests echo those the Crawford Court held justified a photo ID requirement in Indiana. 553 U.S. at 194–97, 128 S.Ct. 1610. The State relies heavily on that holding. But that reliance is misplaced because of the fundamental differences between Crawford and this case.

The challengers in Crawford did not even allege intentional race discrimination. Rather, they mounted a facial attack on a photo ID requirement as unduly burdensome on the right to vote generally. The Crawford Court conducted an "Anderson–Burdick" analysis, balancing the burden of a law on voters against the state's interests, and concluded that the photo ID requirement "impose[d] only a limited burden on voters' rights." Crawford, 553 U.S. at 202–03, 128 S.Ct. 1610 (internal quotation marks

omitted). Given that limited burden, the Court deferred to the Indiana legislature's choice of how to best serve its legitimate interests. See id. at 194–97, 203, 128 S.Ct. 1610.

That deference does not apply here because the evidence in this case establishes that, at least in part, race motivated the North Carolina legislature. Thus, we do not ask whether the State has an interest in preventing voter fraud—it does—or whether a photo ID requirement constitutes one way to serve that interest—it may—but whether the legislature would have enacted SL 2013–381's photo ID requirement if it had no disproportionate impact on African American voters. The record evidence establishes that it would not have.

The photo ID requirement here is both too restrictive and not restrictive enough to effectively prevent voter fraud; "[i]t is at once too narrow and too broad." Romer v. Evans, 517 U.S. 620, 633, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996); see Anderson, 460 U.S. at 805, 103 S.Ct. 1564 (rejecting election law as "both too broad and too narrow"). First, the photo ID requirement, which applies only to in-person voting and not to absentee voting, is too narrow to combat fraud. On the one hand, the State has failed to identify even a single individual who has ever been charged with committing in-person voter fraud in North Carolina. See J.A. 6802. On the other, the General Assembly did have evidence of alleged cases of mail-in absentee voter fraud. J.A. 1678, 6802. Notably, the legislature also had evidence that absentee voting was not disproportionately used by African Americans; indeed, whites disproportionately used absentee voting. J.A. 1796–97. The General Assembly then exempted absentee voting from the photo ID requirement. 2013 N.C. Sess. Laws 381, pt. 4. This was so even though members of the General Assembly had proposed amendments to require photo ID for absentee voting, N.C. Gen. Assemb. Proposed Amend. No. A2, H589–AST–50 [v.2] (April 24, 2013), and the bipartisan State Board of Elections [11] specifically requested that the General Assembly remedy the potential ***236** for mail-in absentee voter fraud and expressed no concern about in-person voter fraud, J.A. 1678.

The photo ID requirement is also too broad, enacting seemingly irrational restrictions unrelated to the goal of combating fraud. This overbreadth is most stark in the General Assembly's decision to exclude as acceptable identification all forms of state-issued ID disproportionately held by African Americans. See N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *142. The State has offered little evidence justifying these exclusions. Review of the record further undermines the contention that the exclusions are tied to concerns of voter fraud. This is so because voters who lack qualifying ID under SL 2013–381 may apply for a free voter card using two of the very same forms of ID excluded by the law. See N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *26. Thus, forms of state-issued IDs the General Assembly deemed insufficient to prove a voter's identity on Election Day are sufficient if shown during a separate process to a separate state official. In this way, SL 2013–381 elevates form over function, creating hoops through which certain citizens must jump with little discernable gain in deterrence of voter fraud. [12]

The State's proffered justifications regarding restrictions on early voting similarly fail. The State contends that one purpose of SL 2013–381's reduction in early voting days was to correct inconsistencies among counties in the locations and hours of early voting centers. J.A. 3325; 22348–50. See, e.g., J.A. 3325 (senator supporting the law: "what we're trying to do is put some consistency into the process and allow for the facilities to be similarly treated in one county as in being [sic] all the counties"). In some minor ways, SL 2013–381 does achieve consistency in the availability of early voting within each county. See N.C. Gen. Stat. § 163–227.2(g) (mandating the same days and hours within counties).

But the record does not offer support for the view that SL 2013–381 actually achieved consistency in early voting among the various counties. For example, while the State contends that it meant to eliminate inconsistencies between counties in the availability of Sunday early voting, see, e.g., J.A. 12997–98; 20943–44; 22348–49, SL 2013–381 offers no fix for that. Rather, it permits the Board of Elections of each county to determine, in the Board's discretion, whether to provide Sunday hours during early voting. See J.A. 3325 (senator supporting the law: "[the law] still leaves the county the choice of opening on a Sunday or not opening on Sunday"); cf. N.C. Gen. Stat. § 163–227.2(f) ("A county board may conduct [early voting] during evenings

or on weekends....” (emphasis added)). Moreover, as discussed above, the State explicitly and problematically linked these “inconsistencies” in Sunday early voting to race and party. J.A. 22348–49.

In other ways, the challenged provision actually promotes inconsistency in the availability of early voting across North Carolina. SL 2013–381 mandates that County Boards of Elections offer at least the same number of aggregate hours of ***237** early voting as offered in 2010 for future non-presidential elections and as offered in 2012 for future presidential elections. See N.C. Gen. Stat. § 163–227.2(g2). If, as the State asserts, the 2010 and 2012 elections saw great disparities in voting hours across county lines, SL 2013–381 in effect codifies those inconsistencies by requiring those same county-specific hours for all future elections.

Moreover, in its quest for “consistency” in the availability of early voting, the General Assembly again disregarded the recommendations of the State Board of Elections. The Board counseled that, although reducing the number of days of early voting might ease administrative burdens for lower turnout elections, doing so for high-turnout elections would mean that “North Carolina voters' needs will not be accommodated.” J.A. 1700. The Board explained that reducing early voting days would mean that “traffic will be increased on Election Day, increasing demands for personnel, voting equipment and other supplies, and resulting in likely increases to the cost of elections.” J.A. 1700; see also J.A. 1870–72 (reducing early voting days, according to one County Board of Elections, would lead to “increased costs, longer lines, increased wait times, understaffed sites, staff burn-out leading to mistakes, and inadequate polling places; or, in a worst case scenario, all of these problems together”).

Concerning same-day registration, the State justifies its elimination as a means to avoid administrative burdens that arise when verifying the addresses of those who register at the very end of the early voting period. These concerns are real. Even so, the complete elimination of same-day registration hardly constitutes a remedy carefully drawn to accomplish the State’s objectives. The General Assembly had before it alternative proposals that would have remedied the problem without abolishing the popular program. J.A. 1533–34; 6827–28. The State Board of Elections had reported that same-day registration “was a success.” J.A. 1529. The Board acknowledged some of the conflicts between same-day registration and mail verification, J.A. 1533–34, but clarified that “same day registration does not result in the registration of voters who are any less qualified or eligible to vote than” traditional registrants, J.A. 6826, and that “undeliverable verification mailings were not caused by the nature of same day registration,” J.A. 6827. Indeed, over 97% of same-day registrants passed the mail verification process. J.A. 6826. The State Board of Elections believed this number would have been higher had some counties not delayed the mail verification process in violation of the law. J.A. 6826–28.

Again, the General Assembly ignored this advice. In other circumstances we would defer to the prerogative of a legislature to choose among competing policy proposals. But, in the broader context of SL 2013–381’s multiple restrictions on voting mechanisms disproportionately used by African Americans, we conclude that the General Assembly would not have eliminated same-day registration entirely but-for its disproportionate impact on African Americans.

Turning to the elimination of out-of-precinct voting, the State initially contended that the provision was justified to “move[ ] the law back to the way it was”; i.e., the way it was before it was broadened to facilitate greater participation in the franchise by minority voters. J.A. 3307. Recognizing the weakness of that justification, during the litigation of this case, the State asserted that the General Assembly abolished out-of-precinct voting to “permit[ ] election officials to conduct elections in a timely and efficient manner.” J.A. 22328. ***238** Such post hoc rationalizations during litigation provide little evidence as to the actual motivations of the legislature. See Miss. Univ. for Women, 458 U.S. at 730, 102 S.Ct. 3331 (analyzing whether the State’s recited justification was “the actual purpose” (emphasis added)); United States v. Virginia, 518 U.S. 515, 533, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996) (“The justification must be genuine, not hypothesized or invented post hoc in response to litigation.”).

Finally, the General Assembly’s elimination of preregistration provides yet another troubling mismatch with its proffered justifications. Here, the record makes clear that the General Assembly contrived a problem in order to impose a solution. According to the State, the preregistration system was too confusing for young voters. SL 2013–381 thus sought, in the words

of a sponsor of the law, to "offer some clarity and some certainty as to when" a "young person is eligible to vote," by eliminating preregistration altogether. J.A. 3317. [13] But, as the district court itself noted, that explanation does not hold water. The court found that "pre-registration's removal [ ] ma[d]e registration more complex" and prone to confusion. N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *116 (emphasis added).

In sum, the array of electoral "reforms" the General Assembly pursued in SL 2013–381 were not tailored to achieve its purported justifications, a number of which were in all events insubstantial. In many ways, the challenged provisions in SL 2013–381 constitute solutions in search of a problem. The only clear factor linking these various "reforms" is their impact on African American voters. The record thus makes obvious that the "problem" the majority in the General Assembly sought to remedy was emerging support for the minority party. Identifying and restricting the ways African Americans vote was an easy and effective way to do so. We therefore must conclude that race constituted a but-for cause of SL 2013–381, in violation of the Constitutional and statutory prohibitions on intentional discrimination.

V.

As relief in this case, Plaintiffs ask that we declare the challenged provisions in SL 2013–381 unconstitutional and violative of § 2 of the Voting Rights Act, and that we permanently enjoin each provision. They further ask that we exercise our authority pursuant to § 3 of the Voting Rights Act to authorize federal poll observers and place North Carolina under preclearance. These requests raise issues of severability and the proper scope of any equitable remedy. We address each in turn.

A.

When discriminatory intent impermissibly motivates the passage of a law, a court may remedy the injury—the impact of the legislation—by invalidating the law. See, e.g., Hunter, 471 U.S. at 231, 105 S.Ct. 1916; Anderson, 375 U.S. at 400–04, 84 S.Ct. 454. If a court finds only part of the law unconstitutional, it may sever the offending provision and leave the inoffensive portion of the law intact. Leavitt v. Jane L., 518 U.S. 137, 139–40, 116 S.Ct. 2068, 135 L.Ed.2d 443 (1996). State law ***239** governs our severability analysis. Id. In North Carolina, severability turns on whether the legislature intended that the law be severable, Pope v. Easley, 354 N.C. 544, 556 S.E.2d 265, 268 (2001), and whether provisions are "so interrelated and mutually dependent" on others that they "cannot be enforced without reference to another," Fulton Corp. v. Faulkner, 345 N.C. 419, 481 S.E.2d 8, 9 (1997).

We have held that discriminatory intent motivated only the enactment of the challenged provisions of SL 2013–381. As an omnibus bill, SL 2013–381 contains many other provisions not subject to challenge here. We sever the challenged provisions from the remainder of the law because it contains a severability clause, see 2013 N.C. Sess. Laws 381 § 60.1, to which we defer under North Carolina law. Pope, 556 S.E.2d at 268. Further, the remainder of the law "can[ ] be enforced without" the challenged provisions. Fulton Corp., 481 S.E.2d at 9. Therefore, we enjoin only the challenged provisions of SL 2013–381 regarding photo ID, early voting, same-day registration, out-of-precinct voting, and preregistration.

WYNN, Circuit Judge, with whom FLOYD, Circuit Judge, joins, writing for the court as to Part V.B.:

B.

As to the appropriate remedy for the challenged provisions, "once a plaintiff has established the violation of a constitutional or statutory right in the civil rights area, ... court[s] ha[ve] broad and flexible equitable powers to fashion a remedy that will fully correct past wrongs." Smith v. Town of Clarkton, 682 F.2d 1055, 1068 (4th Cir. 1982); see Greenv. Cty. Sch. Bd., 391 U.S. 430, 437–39 (1968) (explaining that once a court rules that an official act purposefully discriminates, the "racial discrimination [must] be eliminated root and branch"). In other words, courts are tasked with shaping "[a] remedial decree ... to place persons" who have been harmed by an unconstitutional provision "in 'the position they would have occupied in the absence of [discrimination].' " Virginia, 518 U.S. at 547, 116 S.Ct. 2264 (last alteration in original) (quoting Milliken v. Bradley, 433 U.S. 267, 280, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977)).

The Supreme Court has established that official actions motivated by discriminatory intent "ha[ve] no legitimacy at all under our Constitution or under the [Voting Rights Act]." City of Richmond v. United States, 422 U.S. 358, 378, 95 S.Ct. 2296, 45 L.Ed.2d 245 (1975). Thus, the proper remedy for a legal provision enacted with discriminatory intent is invalidation. See id. at 378–79, 95 S.Ct. 2296 ("[Official actions] animated by [a discriminatory] purpose have no credentials whatsoever; for [a]cts generally lawful may become unlawful when done to accomplish an unlawful end." (last alteration in original) (internal quotation marks omitted)); see also Hunter, 471 U.S. at 229, 231–33, 105 S.Ct. 1916 (affirming the invalidation of a state constitutional provision because it was adopted with the intent of disenfranchising African Americans); Washington v. Seattle Sch. Dist. No. 1, 458 U.S. 457, 466, 470–71, 487, 102 S.Ct. 3187, 73 L.Ed.2d 896 (1982) (affirming a permanent injunction of a state initiative that was motivated by a racially discriminatory purpose); Anderson, 375 U.S. at 403–04, 84 S.Ct. 454 (indicating that the purposefully discriminatory use of race in a challenged law was "sufficient to make it invalid"). Notably, the Supreme Court has invalidated a state constitutional provision enacted with discriminatory intent even when its "more blatantly discriminatory" portions had since been removed. ***240** Hunter, 471 U.S. at 232–33, 105 S.Ct. 1916.

Moreover, the fact that the General Assembly later amended one of the challenged provisions does not change our conclusion that invalidation of each provision is the appropriate remedy in this case. Specifically, in 2015, the General Assembly enacted SL 2015–103, which amended the photo ID requirement and added the reasonable impediment exception. See 2015 N.C. Sess. Laws 103 § 8 (codified at N.C. Gen. Stat. §§ 163–82.8, 163–166.13, 163–166.15, 163–182.1B, 163–227.2). Our dissenting colleague contends that even though we all agree that 1) the General Assembly unconstitutionally enacted the photo ID requirement with racially discriminatory intent, and 2) the remedy for an unconstitutional law must completely cure the harm wrought by the prior law, we should remand for the district court to consider whether the reasonable impediment exception has rendered our injunction of that provision unnecessary. But, even if the State were able to demonstrate that the amendment lessens the discriminatory effect of the photo ID requirement, it would not relieve us of our obligation to grant a complete remedy in this case. That remedy must reflect our finding that the challenged provisions were motivated by an impermissible discriminatory intent and must ensure that those provisions do not impose any lingering burden on African American voters. We cannot discern any basis upon which this record reflects that the reasonable impediment exception amendment fully cures the harm from the photo ID provision. Thus, remand is not necessary.

While remedies short of invalidation may be appropriate if a provision violates the Voting Rights Act only because of its discriminatory effect, laws passed with discriminatory intent inflict a broader injury and cannot stand. See Veasey, 830 F.3d at 268, 268 n. 66, 2016 WL 3923868, at *36, *36 n. 66 (distinguishing between the proper remedy for a law enacted with a racially discriminatory purpose and the more flexible range of remedies that should be considered if the law has only a discriminatory effect).

Here, the amendment creating the reasonable impediment exception does not invalidate or repeal the photo ID requirement. It therefore falls short of the remedy that the Supreme Court has consistently applied in cases of this nature.

Significantly, the burden rests on the State to prove that its proposed remedy completely cures the harm in this case. See Virginia, 518 U.S. at 547, 116 S.Ct. 2264 (noting that the defendant "was obliged to show that its remedial proposal 'directly address[ed]

and relate[d] to' the violation" (alterations in original) (quoting Milliken, 433 U.S. at 282, 97 S.Ct. 2749)); Green, 391 U.S. at 439, 88 S.Ct. 1689 (placing the burden on the defendant to prove that its plan would effectively cure the violation). Here, nothing in this record shows that the reasonable impediment exception ensures that the photo ID law no longer imposes any lingering burden on African American voters. To the contrary, the record establishes that the reasonable impediment exception amendment does not so fundamentally alter the photo ID requirement as to eradicate its impact or otherwise "eliminate the taint from a law that was originally enacted with discriminatory intent." Johnson v. Governor of Fla., 405 F.3d 1214, 1223 (11th Cir. 2005) (en banc).

For example, the record shows that under the reasonable impediment exception, if an in-person voter cannot present a qualifying form of photo ID—which "African Americans are more likely to lack"—the voter must undertake a multi-step process. ***241** N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *37. First, the voter must complete and sign a form declaring that a reasonable impediment prevented her from obtaining such a photo ID, and identifying that impediment. [14] N.C. Gen. Stat. § 163–166.15. In addition, the voter must present one of several alternative types of identification required by the exception. Id. § 163–166.15(c). Then, the voter may fill out a provisional ballot, which is subject to challenge by any registered voter in the county. Id. § 163–182.1B. On its face, this amendment does not fully eliminate the burden imposed by the photo ID requirement. Rather, it requires voters to take affirmative steps to justify to the state why they failed to comply with a provision that we have declared was enacted with racially discriminatory intent and is unconstitutional.

In sum, the State did not carry its burden at trial to prove that the reasonable impediment exception amendment completely cures the harm in this case, nor could it given the requirements of the reasonable impediment exception as enacted by the General Assembly. Accordingly, to fully cure the harm imposed by the impermissible enactment of SL 2013–381, we permanently enjoin all of the challenged provisions, including the photo ID provision.

DIANA GRIBBON MOTZ, Circuit Judge, writing for the court:

C.

As to the other requested relief, we decline to impose any of the discretionary additional relief available under § 3 of the Voting Rights Act, including imposing poll observers during elections and subjecting North Carolina to ongoing preclearance requirements. See 52 U.S.C. § 10302(a), (c) (formerly 42 U.S.C. § 1973a). Such remedies "[are] rarely used" and are not necessary here in light of our injunction. Conway Sch. Dist. v. Wilhoit, 854 F.Supp. 1430, 1442 (E.D. Ark. 1994).

To be clear, our injunction does not freeze North Carolina election law in place as it is today. Neither the Fourteenth Amendment nor § 2 of the Voting Rights Act binds the State's hands in such a way. The North Carolina legislature has authority under the Constitution to determine the "times, places, and manner" of its elections. U.S. Const. art. I § 4. In exercising that power, it cannot be that states must forever tip-toe around certain voting provisions disproportionately used by minorities. Our holding, and the injunction we issue pursuant to it, does not require that. If in the future the General Assembly finds that legitimate justifications counsel modification of its election laws, then the General Assembly can certainly so act. Of course, legitimate justifications do not include a desire to suppress African American voting strength.

* * *

It is beyond dispute that "voting is of the most fundamental significance under our constitutional structure." Ill. State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 184, 99 S.Ct. 983, 59 L.Ed.2d 230 (1979). For "[n]o right is more precious

in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." ***242** Wesberry v. Sanders, 376 U.S. 1, 17, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964). We thus take seriously, as the Constitution demands, any infringement on this right. We cannot ignore the record evidence that, because of race, the legislature enacted one of the largest restrictions of the franchise in modern North Carolina history.

We therefore reverse the judgment of the district court. We remand the case for entry of an order enjoining the implementation of SL 2013–381's photo ID requirement and changes to early voting, same-day registration, out-of-precinct voting, and preregistration.

REVERSED AND REMANDED

DIANA GRIBBON MOTZ, Circuit Judge, dissenting as to Part V.B.:
We have held that in 2013, the General Assembly, acting with discriminatory intent, enacted a photo ID requirement to become effective in 2016. But in 2015, before the requirement ever went into effect, the legislature significantly amended the law. North Carolina recently held two elections in which the photo ID requirement, as amended, was in effect. The record, however, contains no evidence as to how the amended voter ID requirement affected voting in North Carolina. In view of these facts and Supreme Court precedent as to the propriety of injunctive relief, I believe we should act cautiously.

The Supreme Court has explained that "[a]n injunction is a matter of equitable discretion; it does not follow from success on the merits as a matter of course." Winter v. Natural Res. Defense Council Inc., 555 U.S. 7, 32, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008); see also Weinberger v. Romero–Barcelo, 456 U.S. 305, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982). Given the "inherent limitation upon federal judicial authority," a court's charge is only to "cure the condition that offends the Constitution." Milliken v. Bradley, 433 U.S. 267, 282, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977) (internal quotation marks omitted).

If interim events have "cured the condition," id. and a defendant carries its "heavy burden" of demonstrating that the wrong will not be repeated, a court will properly deny an injunction of the abandoned practice. United States v. W.T. Grant, 345 U.S. 629, 630–33, 73 S.Ct. 894, 97 L.Ed. 1303 (1953); see Kohl by Kohl v. Woodhaven Learning Ctr., 865 F.2d 930, 934 (8th Cir. 1989) ("A change in circumstances can destroy the need for an injunction."). Thus, a defendant's voluntary cessation of an unconstitutional practice or amendment of an unconstitutional law fundamentally bears "on the question of whether a court should exercise its power to enjoin" the practice or law. City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 288–89, 102 S.Ct. 1070, 71 L.Ed.2d 152 (1982).

The remedy for an unconstitutional law must completely cure the harm wrought by the prior law. But, a superseding statute can have that effect. See id. And, where a governmental body has already taken adequate steps to remedy an unconstitutional law, courts "generally decline to add ... a judicial remedy to the heap." Winzler v. Toyota Motor Sales U.S.A., Inc., 681 F.3d 1208, 1211 (10th Cir. 2012); cf. A. L. Mechling Barge Lines, Inc. v. United States, 368 U.S. 324, 331, 82 S.Ct. 337, 7 L.Ed.2d 317 (1961) ("[S]ound discretion withholds the remedy where it appears that a challenged 'continuing practice' is, at the moment adjudication is sought, undergoing significant modification so that its ultimate form cannot be confidently predicted.").

In 2015, two years after the enactment of the photo ID requirement, but prior to its implementation, the General Assembly added the reasonable impediment exception ***243** to the photo ID requirement. See 2015 N.C. Sess. Laws 103 § 8. The exception provides that a voter without qualifying photo ID may cast a provisional ballot after declaring under penalty of perjury that he or she "suffer[s] from a reasonable impediment that prevents [him] from obtaining acceptable photo identification." N.C. State

Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *36 (internal quotation marks omitted). No party in this case suggests that the legislature acted with discriminatory intent when it enacted the reasonable impediment exception.

The majority maintains, however, that the reasonable impediment exception does not fully remedy the impact of the photo ID requirement. Perhaps not. But, by its terms, the exception totally excuses the discriminatory photo ID requirement. [1] Of course, in practice, it may not do so. But on this record, I believe we cannot assess whether, or to what extent, the reasonable impediment exception cures the unconstitutional 2013 photo ID requirement.

Because the district court failed to find discriminatory intent, it did not consider whether any unconstitutional effect survived the 2015 amendment. Instead, it focused on whether the law, as amended in 2015, burdened voters enough to sustain claims under a § 2 results or an Anderson–Burdick analysis. Id. at ——, ——, 2016 WL 1650774, at *122, *156. Of course, this is not the standard that controls or the findings that bear on whether a court should enjoin an unconstitutional racially discriminatory, but subsequently amended, law. [2]

Moreover, additional information now exists that goes directly to this inquiry. For after trial in this case, the State implemented the reasonable impediment exception in primary elections in March and June of 2016. The parties and amici in this case have urged on us anecdotal extra-record information concerning the implementation of the exception during the March election. For example, Amicus supporting the Plaintiffs reports that, in the March 2016 primary election, poll workers gave reasonable-impediment voters incorrect ballots and County Boards of Elections were inconsistent about what they deemed a "reasonable" impediment. See Br. of Amicus Curiae Democracy North Carolina in Support of Appellants at 8–32, N.C. State Conf., —— F.3d —— (4th Cir. 2016) (No. 16–1468). In response, the State maintains that "the vast majority" of these criticisms "are inaccurate or misleading," in part because Amicus completed its report before the State conducted its final vote count. Appellee's Resp. in Opp'n. to ***244** Mot. for Stay of J. and Inj. Pending Appeal at 3–5, N.C. State Conf., —— F.3d —— (4th Cir. 2016) (No. 16–1468). Of course, these submissions as to the March election do not constitute evidence and we cannot consider them as such. Witters v. Washington Dep't of Servs. for the Blind, 474 U.S. 481, 488 n. 3, 106 S.Ct. 748, 88 L.Ed.2d 846 (1986). And for the June election, we do not even have anecdotal information.

Thus, we are faced with a statute enacted with racially discriminatory intent, amended before ever implemented in a way that may remedy that harm, and a record incomplete in more than one respect. Given these facts, I would only temporarily enjoin the photo ID requirement and remand the case to the district court to determine if, in practice, the exception fully remedies the discriminatory requirement or if a permanent injunction is necessary. In my view, this approach is that most faithful to Supreme Court teaching as to injunctive relief.

All Citations

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Footnotes

1 Citations to "J.A. __" refer to the Joint Appendix filed by the parties in this appeal.

2 The parties and the district court sometimes identify the law at issue in this case as House Bill or HB 589, the initial bill that originated in the House of the North Carolina General Assembly. That bill was amended in the North Carolina Senate and then enacted as SL 2013–381. See H.B. 589, 2013 Gen. Assemb. (N.C. 2013); 2013 N.C. Sess. Laws 381.

3 SL 2013–381 also contained many provisions that did not restrict access to voting or registration and thus are not subject to challenge here. N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *9. Of course, as explained below, our holding regarding discriminatory intent applies only to the law's challenged portions.

4 The complaints also challenged a few other provisions of SL 2013–381 that are not challenged on appeal and so not discussed here. See, e.g., J.A. 16448.

5 Most recently, the Department of Justice objected to a law the General Assembly enacted in 2011, Session Law ("SL") 2011–174. That statute changed the method of election for the school board in Pitt County, North Carolina by reducing the number of members and adding an at-large seat. See Letter from Thomas E. Perez, Assistant Att'y General, Dept. of Just., to Robert T. Sonnenberg, In-house Counsel, Pitt Cty. Sch. (Apr. 30, 2012), at 1, available at https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/1_120430.pdf. The Department of Justice conducted an Arlington Heights analysis and declined to preclear the retrogressive law. Id. at 1–4. Key facts in the discriminatory intent analysis included: that "[t]he county's elections are generally racially polarized," that "African Americans have never elected a candidate of choice to a county-wide office," that "Pitt County has a history of challenges to at-large positions under the Voting Rights Act," that the process for enacting the law represented "a complete departure from the normal procedures," and that the "discriminatory effect was not necessary to achieve the stated goal" of the law. Id. at 2–4.

6 Of course, state legislators also cannot impermissibly dilute or deny the votes of opponent political parties, see Anderson, 460 U.S. at 793, 103 S.Ct. 1564—as this same General Assembly was found to have done earlier this year. See Raleigh Wake Citizens Ass'n v. Wake Cty. Bd. of Elections, No. 16–1270, 827 F.3d 333, 2016 WL 3568147 (4th Cir. July 1, 2016).

7 Some of the statements by those supporting the legislation included a Republican precinct chairman who testified before the House Rules Committee that the photo ID requirement would "disenfranchise some of [Democrats'] special voting blocks [sic]," and that "that within itself is the reason for the photo voter ID, period, end of discussion." See J.A. 1313–14; Yelton testimony, Transcript of Public Hearing of the North Carolina General Assembly, House Elections Committee (Apr. 10, 2013) at 51. Responding to the outcry over the law after its enactment, the same witness later said publicly: "If [SL 2013–381] hurts the whites so be it. If it hurts a bunch of lazy blacks that want the government to give them everything, so be it." See J.A. 1313–14; Joe Coscarelli, Don Yelton, GOP Precinct Chair, Delivers Most Baldly Racist Daily Show Interview of All Time, New York Magazine, Oct. 24, 2013. These statements do not prove that any member of the General Assembly necessarily acted with discriminatory intent. But the sheer outrageousness of these public statements by a party leader does provide some evidence of the racial and partisan political environment in which the General Assembly enacted the law.

8 Interpreting Arlington Heights to require a more onerous impact showing would eliminate the distinction between discriminatory results claims under § 2 of the Voting Rights Act and discriminatory intent claims under § 2 and the Constitution. When plaintiffs contend that a law has a discriminatory result under § 2, they need prove only impact. In that context, of course plaintiffs must make a greater showing of disproportionate impact. Otherwise, plaintiffs could prevail in any and every case in which they proved any impact.

9 The State unpersuasively contends that SL 2013–381's "same hours" provision leaves the opportunity to vote early "materially the same as the early voting opportunities before the bill was enacted," despite the reduction in early voting days. State Br. 51 (internal quotation marks omitted). The same hours provision requires counties to offer the same number of aggregate hours of early voting in midterm and presidential elections as they did in the comparable 2010 midterm or 2012 presidential elections. N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *11. A critical problem with the State's argument is that the law provided that any county could waive out of this requirement, and, in 2014, about 30% of the counties did waive out of the requirement. See J.A. 9541–44. Moreover, longer lines during the reduced number of days in which citizens can vote would necessitate opening new polling sites and placing them in high-demand locations; the law does not require either.

10 We note that at least one of our sister circuits has rejected the second step of this inquiry as inappropriate for intent claims under § 2. See Askew v. City of Rome, 127 F.3d 1355, 1373 (11th Cir. 1997) ("[I]t is not a defense under the Voting Rights Act that the same action would have been taken regardless of the racial motive.").

11 The North Carolina State Board of Elections is the state agency responsible for administering the elections process and overseeing campaign finance disclosure. N.C. Gen. Stat. § 163–19 (2016); see also About Us, North Carolina State Board of Elections, http://www.ncsbe.gov/about-us (last visited July 25, 2016). The Board is composed of five members appointed by the Governor, three of which belong to the same party as the Governor. See N.C. Gen. Stat § 163–19.

12 Tellingly, as discussed above, it was only after Shelby County that the General Assembly removed these IDs, retaining as acceptable ID only those disproportionately held by whites. N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *142. Further, the General Assembly had before it recommendations from the State Board of Elections that the law include some of the excluded IDs. J.A. 6866, 7392. Thus, the record evidence indicates that the General Assembly's decision in the wake of Shelby County to exclude certain IDs had less to do with combating fraud, and more to do with the race of the ID holders.

13 Strangely, the main evidence regarding this asserted confusion appears to be a single senator's testimony regarding the experience of his high-school-aged son. See J.A. 3317 (senator indicating his son was confused about when to vote with pre-registration). But even that testimony does not coherently identify the problem that the law sought to remedy. See J.A. 3335 (same senator indicating his son was not confused about when to vote under pre-SL 2013–381 law).

14 While declaring that a reasonable impediment "prevent[ed]" her from obtaining an acceptable photo ID, the voter must heed the form's warning that "fraudulently or falsely completing this form is a Class I felony" under North Carolina law. J.A. 10368.

1 Recently, a court considering a similar reasonable impediment exception suggested that the exception could remedy an otherwise problematic photo ID requirement. See South Carolina v. United States, 898 F.Supp.2d 30, 35–38 (D.D.C. 2012). In South Carolina, a three-judge panel precleared a photo ID requirement with a reasonable impediment exception after finding that it would not "disproportionately and materially burden racial minorities" as compared to the then-existing identification requirement. Id. at 38. Here, North Carolina's reasonable impediment exception "is effectively a codification of th[at] three-judge panel's holding." N.C. State Conf., —— F.Supp.3d at ——, 2016 WL 1650774, at *12. See also Veasey v. Abbott, Civil Action No. 2:13–cv–193 (S.D. Tex. July 23, 2016).

2 This contrasts with our ability to assess, without remand, whether the State demonstrated that SL 2013–381 would have been enacted without considerations of race. See supra, Part IV. Although the district court did not shift the burden to the State under Arlington Heights, it had already made extensive findings of the relevant foundational facts regarding the State's proffered justifications. We lack the equivalent findings regarding what discriminatory impact less than a "material burden" may survive the reasonable impediment exception.

End of Document

BRENNAN CENTER FOR JUSTICE at New York University School of Law

Published on *Brennan Center for Justice* (https://www.brennancenter.org)

A Familiar Scene in North Carolina as State Lawmakers Introduce New Voting Restrictions

Five years after passing one of the most onerous voting laws in the country — and two years after it was struck down as unconstitutional — lawmakers have quietly introduced elements of their 2013 bill that again threaten the right to vote.

Max Feldman [1]
June 15, 2018

North Carolina lawmakers are at it again.

Five years after passing [3] one of the most onerous voting laws in the country — and two years after it was struck down [4] as unconstitutional — lawmakers have quietly introduced two warmed-over elements of their 2013 bill that again threaten the right to vote in North Carolina.

First, the Speaker of the House filed a constitutional amendment [5] that would require voters to present photo ID at the polls in order to cast a ballot. Then, at 11:35 p.m. Wednesday [6], lawmakers introduced a bill that would eliminate early voting on the last Saturday [7] before Election Day, threatening access to the ballot for hundreds of thousands of people who traditionally turn out to vote on the weekend.

This last-minute attack on voting rights could have devastating effects. The weekend is the most popular time for voters to cast their ballots early – according to Democracy North Carolina [8], nearly 200,000 voters cast ballots on that Saturday in 2016. A disproportionate number of those voters were African-Americans. Similarly, strict voter ID laws have been shown to have a disproportionate effect on communities of color and can prevent people from having their voices heard at the polls. And to make things even more confusing, lawmakers have left the text of the photo ID amendment entirely vague.

The state's history on this issue, however, is instructive. In the course of striking down North Carolina's 2013 voting law, a federal appeals court found that the law targeted African-American voters with "almost surgical precision [4]."

Despite the court's unequivocal decision, some North Carolina lawmakers do not appear to have learned their lesson. Instead of working to prevent individuals from participating in their democracy, they should focus on making it easier for people to register and to vote. And some of them are. For example, the same day that some lawmakers introduced a bill cutting early voting, others proposed a bill [9] that would implement automatic voter registration, or AVR.

AVR is a simple reform that automatically registers voters who interact with government agencies, unless they decline to be registered. The process helps keep rolls accurate and up-to-date, and is more convenient for both voters and election officials. And there's evidence that AVR has a substantial impact on registration and turnout rates. Twelve states and Washington, D.C., have already approved the policy.

Across the country lawmakers recognize that improving the health of our democracy requires more engagement from citizens, not less, and we have seen a surge of energy behind pro-voter policies that expand access to the franchise. North Carolina should follow their lead instead of pushing through measures under-the-radar that would keep people from the polls.

[10]

This post is part of the Brennan Center's work to Protect the Vote [10] in the 2018 midterm elections.

Stay on top of the latest news and learn what you can do to make a difference by signing up [11] for Brennan Center's INSIDER newsletter.

How the 2018 Vote Is At Risk — and What You Can Do to Protect It [12]

Source URL: https://www.brennancenter.org/blog/familiar-scene-in-north-carolina-as-state-lawmakers-introduce-new-voting-restrictions

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[12] https://www.brennancenter.org/protect-the-vote

The News&Observer

POLITICS & GOVERNMENT

NC Senate overrides Cooper's voter ID veto

BY LYNN BONNER

DECEMBER 18, 2018 03:39 PM, UPDATED DECEMBER 18, 2018 09:33 PM

The Poor People's Campaign led by Rev. Willam Barber II condemned the N.C. General Assemby's passage of a vet- proof voter ID bill during a press conference Monday, Dec. 17, 2018 in the Bicentennial Mall in Raleigh.

BY TRAVIS LONG

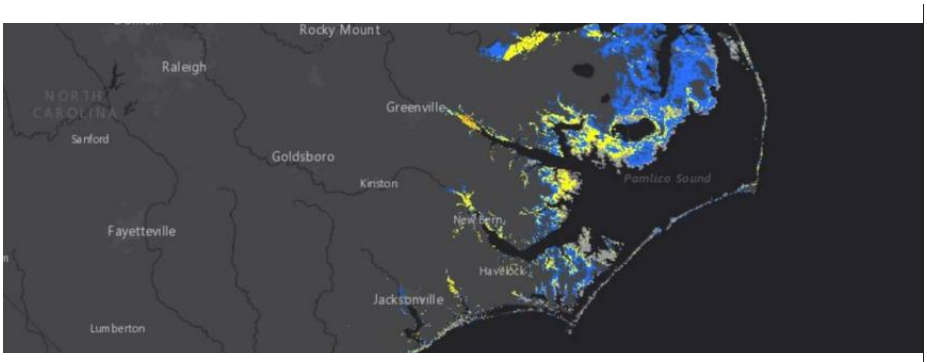
RALEIGH

The state Senate voted Tuesday to override Gov. Roy Cooper's veto of a voter ID bill, one of the final steps needed before the state requires voters to show photo identification at the polls.

The Senate voted 33-12 to override. In order to enact the law over Cooper's objection, the House will also have to vote to override his veto. The House and Senate passed the bill with veto-proof majorities before the Democratic governor vetoed it. The measure would require certain forms of photo ID to vote in person.

Republican legislative leaders said Cooper's veto defied the will of the voters. Photo voter ID was added to the state constitution this year with support from 55 percent of voters.

TOP ARTICLES



Threat of storm surge expands in North Carolina as Dorian nears the coast, maps show

Sen. Joyce Krawiec, a Kernersville Republican, said the bill writers listened to stakeholders, colleges and universities in shaping the proposal.

"We listened to everyone," she said on the Senate floor. "There's not anyone who can say all sides didn't participate."

On Nov. 6, legislators were given "clear direction from the voters of North Carolina," Krawiec said.

Voter ID has long been a Republican goal. A 2013 state law requiring voter ID was overturned by federal courts in 2016.

Cooper called the bill "a solution in search of a problem" in his veto message.

An audit of 2016 general election votes in North Carolina found one case of in-person voter impersonation in 4.8 million votes cast.

Republicans have argued that suspected voter impersonation is under-reported.

In a news conference Tuesday, Cooper said the voter ID should wait until next session and "a more balanced legislature." There will be more Democrats in the House and Senate next session, leaving Republicans without supermajorities.

Republicans who steered the voter ID constitutional amendment onto the November ballot put voters in a corner, Cooper said.

Voters had to decide on the amendment without knowing what the voter ID law would look like, he said.

"What the legislature did is force the voters to give them a blank check," Cooper said. "They filled it out wrong, and that's why I vetoed it."

At a press conference Monday, the Rev. William Barber II, one of the leaders of the Poor People's Campaign, said the legislature should have worked on changes that would help low-income people, such as expanding Medicaid and raising the minimum wage, rather than enacting voter ID.

"We call a special session in the season of Thanksgiving, in the season of Christmas, in the season of Advent, and this legislature could have taken that time to address the needs of poor people and sick people throughout North Carolina," Barber said. "They chose to focus on an unnecessary voter ID bill rather than deal with the real issues that are impacting North Carolinians."

LYNN BONNER

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Lynn Bonner has worked at The News & Observer since 1994, and has written about the state legislature and politics since 1999. Contact her at lbonner@newsobserver.com or (919) 829-4821.

COMMENTS

VIDEOS

State Superintendent: "Charters offer different choices for parents

EXHIBIT I

BRENNAN CENTER FOR JUSTICE at New York University School of Law

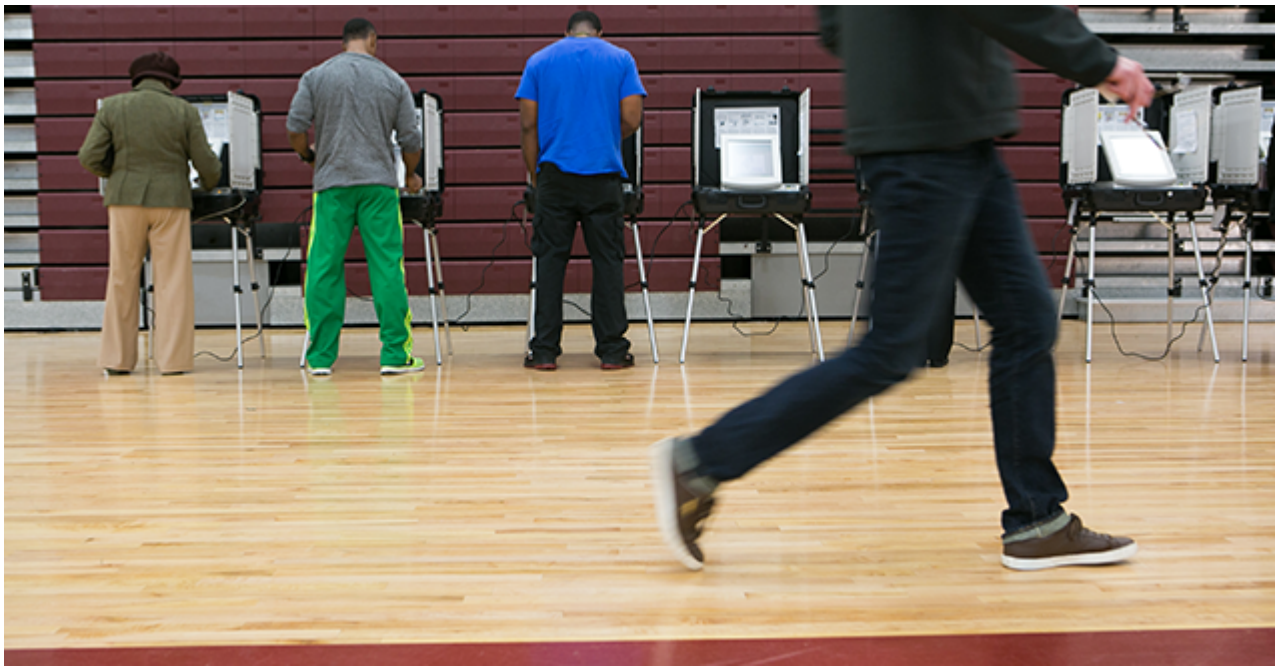
Published on *Brennan Center for Justice* (https://www.brennancenter.org)

What's the Matter with Georgia?

With early voting starting Monday, a range of efforts to restrict voting in the Peach State could cause big problems at the polls. We explain what's going on.

Jonathan Brater [1], Rebecca Ayala [2]

October 12, 2018



Reports that Georgia is keeping 53,000 voter registrations on hold because of minor discrepancies have received widespread attention since Monday. But in fact, the state has recently adopted a range of controversial voting practices. The combined effect is to put voters — especially racial minorities — at risk of disenfranchisement as the state's hotly contested governor's race approaches. Early voting begins Monday.

Below is a summary of the four major voting issues that have contributed to problems in the Peach State.

"Exact Match" Policy: In 2017, Georgia passed legislation [4] requiring that information on voter registration forms match exactly with existing state records. Even a single digit or a misplaced hyphen could be enough to prevent registration and instead put the application on "pending" status. Georgia

previously had a different version of this exact match process but agreed in 2017 [5] to discontinue the practice after civil rights groups brought suit — only to reinstate a different version of exact match later that year.

Reports indicate [6] that approximately 53,000 people are now on pending status — and a vastly disproportionate number of them are African-American: seventy percent of the pending list, compared to 32 percent of the population. Civil rights groups filed a lawsuit [7] against the policy Thursday.

What does being on pending status mean for voters? If they do not provide the additional information needed to resolve the discrepancies within 26 months, their pending registrations will be canceled. Importantly, voters who show up on Election Day *should be allowed to vote a regular ballot* by providing ID at the polls and thus should not give up on voting just because their status is pending; however, the requirement could cause confusion on Election Day if voters are wrongly given provisional ballots or given other misinformation. The ID requirement could also cause problems for voters trying to vote by absentee ballot. For those voters who do not cast ballots in 2018, they are at risk of removal prior to 2020 if they do not get off pending status within 26 months of registering.

Aggressive Voter Purges: A recent Brennan Center report [8] on purges nationwide found Georgia to be one of the most aggressive purgers. Between the 2012 and 2016 elections, it purged 1.5 million voters — twice as many as in the 2008 and 2012 cycles. All but three of the state's 159 counties saw purge rates increase. And we recently released new data [9] showing that the trend has continued over the past two years, during which the state has purged 10.6 percent of its voters.

Purge rates do not prove voters are being removed erroneously. But we also found that provisional ballots went up as the purge rate increased in Georgia, as well as in other jurisdictions that used to get extra scrutiny under the Voting Rights Act. This suggests more voters are showing up to the polls after having been purged because voters in those situations often get provisional ballots.

Voter Registration Drives Restricted: The governor's race — which pits Secretary of State Brian Kemp against former state legislator Stacey Abrams — also recalls a controversial episode involving the secretary of state's office and the New Georgia Project (NGP), a civic group founded by Abrams in 2013. Prior to the 2014 election, Kemp's office launched an investigation [10] into voter registration forms submitted by NGP. After investigating approximately 87,000 forms, NGP was eventually cleared of wrongdoing — but not until after the group's voter registration drive was disrupted. The group filed a lawsuit [11] against Kemp for failing to process approximately 40,000 voter registration forms submitted by the group. The lawsuit was dismissed in part because Kemp promised to ensure registration applications would be sent to counties.

Kemp, a Republican, was also criticized for political statements about voter registration drives. "[Y]ou know the Democrats are working hard, and all these stories about them, you know, registering all these minority voters that are out there and others that are sitting on the sidelines," he said [12] at the time. "If they can do that, they can win these elections in November."

Polling Place Closures: Majority-black Randolph County, Georgia was sued for attempting [13] to close seven of its nine polling sites. The county claimed a consultant had recommended the closures because of disability compliance issues. After a lawsuit, the county reversed course and kept the sites open.

The proposed polling place closures in a minority county were particularly concerning because in the past, similar tactics have been used to suppress minority votes. Prior to 2013, polling place changes in Georgia (and other areas with a history of discrimination) had to be precleared by the Department of Justice or a federal court to make sure they did not result in a rollback of minority voting rights. But after the Supreme Courts' 2013 *Shelby County* decision, that protection no longer exists.

* * *

The competitive governor's race will strain Georgia's election system. Election officials should be transparent about what voters need to do to ensure their votes are counted – particularly those voters who are on pending status. If voters encounter problems, they can call 866-OUR-VOTE or go to 866OURVOTE.ORG to get help from Election Protection, a nonpartisan voter hotline.

(Image: Jessica McGowan/Getty)

Restricting the Vote [14]

Links

[1] https://www.brennancenter.org/expert/jonathan-brater
[2] https://www.brennancenter.org/expert/rebecca-ayala
[3] https://www.brennancenter.org/print/20609
[4] https://www.brennancenter.org/analysis/voting-laws-roundup-2017
[5] https://lawyerscommittee.org/press-release/voting-advocates-announce-settlement-exact-match-lawsuit-georgia/
[6] https://apnews.com/fb011f39af3b40518b572c8cce6e906c
[7] https://lawyerscommittee.org/press-release/civil-rights-groups-sue-georgia-secretary-of-state-brian-kemp-to-cease-discriminatory-no-match-no-vote-registration-protocol/
[8] https://www.brennancenter.org/sites/default/files/publications/Purges_Growing_Threat_2018.pdf
[9] http://www.brennancenter.org/blog/florida-georgia-north-carolina-still-purging-voters-high-rates
[10] https://www.ajc.com/news/state--regional-govt--politics/georgia-gets-forms-fraud-probe-stacey-abrams-voter-registration-group/cww2jBoqgjkySI2twq9zOK/
[11] https://lawyerscommittee.org/wp-content/uploads/2015/07/0439.pdf
[12] https://newrepublic.com/article/121715/georgia-secretary-state-hammers-minority-voter-registration-efforts
[13] https://www.nytimes.com/2018/08/23/us/randolph-county-georgia-voting.html
[14] https://www.brennancenter.org/issues/restricting-vote

EXHIBIT J

Voting Advocates Announce a Settlement of "Exact Match" Lawsuit in Georgia

February 10, 2017 by dc (https://lawyerscommittee.org/author/2dogsmedia/)

Voting Advocates Announce a Settlement of "Exact Match" Lawsuit in Georgia

Minor Typos and Data Entry Errors will No Longer Deny Eligible Georgians the Right to Register and Vote

Washington, D.C. – *The Lawyers' Committee for Civil Rights Under Law, Project Vote, Campaign Legal Center, Voting Rights Institute at the Georgetown University Law Center, along with the New York City office of Hughes Hubbard & Reed LLP and*

Atlanta-based firm of Caplan Cobb LLP, acting as pro bono counsel, announced a

settlement (https://lawyerscommittee.org/wp-content/uploads/2017/02/Executed-Settlement-Agreement.pdf) today in a lawsuit filed on behalf Asian Americans Advancing Justice – Atlanta, the Georgia Coalition for the Peoples' Agenda and the Georgia State Conference of the NAACP, which challenged Georgia's exact-match voter registration verification scheme. The suit alleged Georgia's "exact match" system violated Section 2 of the Voting Rights Act of 1965 and deprived eligible Georgians of their fundamental right to vote under the First and Fourteenth Amendments to the United States Constitution, and resulted in Georgia restoring more than 42,000 previously purged voters to the rolls.

"This important victory ensures that tens of thousands of voters will not be disenfranchised by Georgia's "no match, no vote" policy, which unnecessarily denied people the opportunity to register to vote" said Kristen Clarke, president and executive director of the Lawyers' Committee for Civil Rights Under Law. "We will continue to fight ongoing voting discrimination and barriers to the ballot box. Now is the time for focus on policies that can help make voting easier in Georgia and across the nation."

The complaint, which was filed in September 2016 in the United States District Court for the Northern District of Georgia, concerned Georgia's voter registration verification process. Since 2010, Georgia required all of the letters and numbers in the applicant's name, date of birth, driver's license number or last four digits of the Social Security number to exactly match the information in the state's Department of Drivers Service (DDS) or Social Security Administration (SSA) databases. If even a single letter, number, hyphen, space, or apostrophe

did not exactly match the database information, and the applicant failed to correct the mismatch within 40 days, the application was automatically rejected and the applicant was not placed on the registration rolls – even if they were eligible to vote.

This flawed process led to the cancellation of tens of thousands of applications from eligible

applicants, with African American, Latino, and Asian American applicants being rejected at rates significantly higher than White applicants. For example, of the approximately 34,874 voter registration applicants whose applications were cancelled between July 2013 and July 15, 2016, approximately 22,189 (63.6 percent) identified as Black, 2,752 (7.9 percent) identified as Latino, 1,665 (4.8 percent) identified as Asian-American, and 4,748 (13.6 percent) identified as White.

Under the terms of the settlement agreement, the Secretary of State agreed to implement reforms to help ensure that eligible Georgians will no longer be denied the right to register and vote as a result of data entry errors, typos and other database matching issues that do not bear upon the applicant's eligibility to vote. Some of the reforms agreed to by the Secretary of State pursuant to the terms of the settlement include:

- Georgia will no longer automatically cancel voter registration applications where the information on the application fails to exactly match the applicant's data on the Georgia Department of Drivers Services (DDS) or Social Security Administration (SSA) databases;
- If the data on a voter registration application fails to exactly match data on the DDS or SSA databases, applicants will be added to the rolls as "pending," with no deadline to correct the mismatch;

- Such registrants will be able to present their Georgia driver's license, State ID card or other forms of appropriate ID at the polling place and be able to cast a ballot;
- In cases where the applicant is a U.S. citizen, but the DDS database contains an error or out of date information showing the applicant is not a citizen, those individuals will be able to show proof of their citizenship – up to and including on Election Day – to complete the registration process and cast a ballot.
- The full details are set forth in the attached Settlement Agreement.

These reforms, which were partly implemented before the November 8, 2016 general election, gave more than 42,000 previously disqualified applicants, who were otherwise eligible to vote, an opportunity to complete the registration process and cast a ballot.

The settlement will also result in giving thousands of additional applicants whose applications were rejected as a result of the "exact match" system between October 1, 2013 and October 1, 2014 the opportunity to now finalize their voter registration and be able to cast ballots in this year's elections and elections in the future.

"Asian Americans are the fastest growing immigrant population in Georgia. Our communities are naturalizing in increasing numbers, and we will continue to see more New Americans exercise their right to vote," said Stephanie Cho, executive director, Asian Americans

Advancing Justice – Atlanta. "We are pleased that this decision increases access to voting for immigrants and people of color."

"The fundamental right to vote should never hinge on data entry errors and technicalities. Our systems can and must do better," said Danielle Lang, deputy director of Voting Rights at the Campaign Legal Center. "Thanks to this settlement, and our partners who led this effort, tens of thousands of eligible Georgia voters will be restored to the rolls."

"This settlement is an important recognition that as sacred as the vote may be in democracy; the vote cannot protect itself," said Francys Johnson, Georgia NAACP President. "This is not the work of government alone. It takes a vigilance from engaged citizens to protect and defend our fundamental values. These reforms at the heart of this settlement are strong indications that our democracy works."

"This case illustrates the importance of careful, sensible registration procedures," said Michelle Kanter Cohen, election counsel for Project Vote. "No American citizen should be denied their fundamental right to vote because of discriminatory practices or bureaucratic mistakes."

"This settlement brings an end to Georgia's onerous exact match requirement and instills important protections for voters in our state," said Helen Butler, executive director of the

Georgia Coalition for the Peoples' Agenda. "Voters deserve an election system that enables participation, not one that creates barriers and forces voters to jump through unnecessary hoops."

About the Lawyers' Committee for Civil Rights Under Law

The Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee), a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. Formed over 50 years ago, we continue our quest of "Moving America Toward Justice." The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law, particularly in the areas of fair housing and community development; economic justice; voting; education; and criminal justice. For more information about the Lawyers' Committee, visit www.lawyerscommittee.org (http://www.lawyerscommittee.org/).

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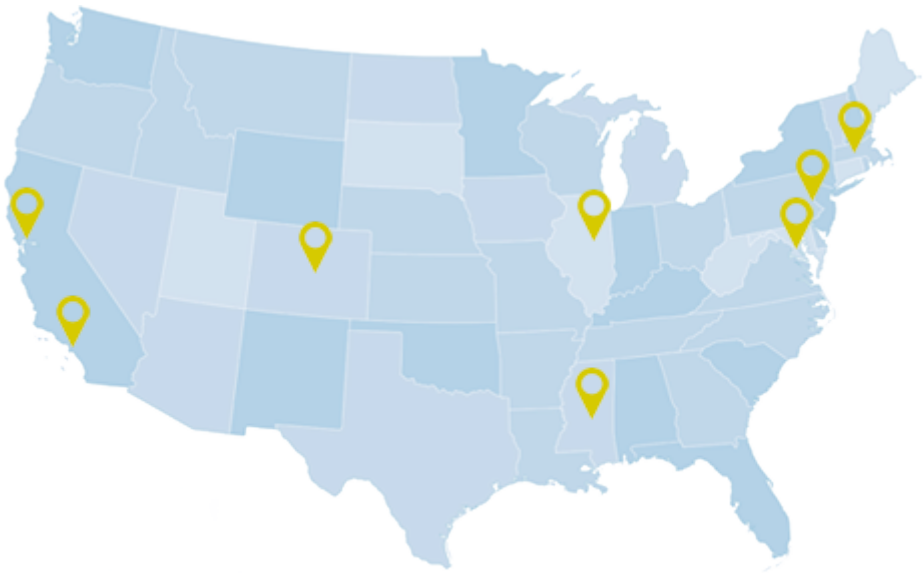
LOCAL LAWYERS' COMMITTEE LOCATIONS



347 F.Supp.3d 1251
United States District Court, N.D. Georgia, Atlanta Division.

GEORGIA COALITION FOR the PEOPLE'S AGENDA, INC., as an Organization, et al., Plaintiffs,
v.
Brian KEMP, in His Official Capacity as Secretary of State for the State of Georgia, Defendant.

1:18-CV-04727-ELR
|
Signed 11/02/2018

Synopsis

Background: Voting rights organizations sued Secretary of State for State of Georgia, in his official capacity, claiming violation of Voting Rights Act, First and Fourteenth Amendments pursuant to § 1983, and National Voter Registration Act after State of Georgia flagged 51,111 voter registration applicants as ineligible to vote due to lack of exact match in their voter registration information on Georgia's computerized statewide voter registration system implemented under Help America Vote Act (HAVA) and Georgia election statute. Organizations filed emergency motion for preliminary injunction seeking targeted relief for approximately 3,141 applicants flagged and placed in pending status by State of Georgia as alleged noncitizens of United States and thus ineligible to vote in upcoming election.

Holdings: The District Court, Eleanor L. Ross, J., held that:

organizations had standing to seek emergency injunctive relief;

doctrine of laches did not bar emergency motion;

organizations had substantial likelihood of success on merits of constitutional claim;

organizations would suffer irreparable harm absent injunctive relief;

balance of harms favored grant of emergency injunction; and

public interest supported issuance of emergency injunction.

Motion granted.

Procedural Posture(s): Motion for Preliminary Injunction.

Attorneys and Law Firms

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ORDER

Eleanor L. Ross, United States District Judge Northern District of Georgia

***1255** Presently before the Court is Plaintiffs' Emergency Motion for Preliminary Injunction. [Doc. 17]. For the reasons set forth below, the Court grants Plaintiffs' Motion.

I. Background

This case is about the right to vote for approximately 51,111 individuals who have been flagged by the State of Georgia as ineligible to vote due to alleged errors with their voter registration information. While the case as a whole seeks to redress the alleged violation of rights for all of these 51,111 individuals, Plaintiffs' Emergency Motion for a Preliminary Injunction seeks targeted relief for approximately 3,141 individuals who have been flagged by the State as non-citizens of the United States, and therefore, ineligible to vote in the upcoming November 6, 2018 election.

As background, on October 19, 2018, Plaintiffs Georgia Coalition for the Peoples' Agenda, Inc.; Asian Americans Advancing Justice-Atlanta, Inc.; Georgia State Conference of the NAACP; New Georgia Project, Inc.; Georgia Association of Latino Elected Officials, Inc.; ProGeorgia State Table, Inc.; The Joseph and Evelyn Lowery Institute for Justice and Human Rights, Inc.; and Common Cause filed an amended complaint against Defendant Brian Kemp, in his official capacity as Secretary of State for the State of Georgia. [Doc. 15]. Plaintiffs bring three (3) Counts against Defendant in their amended complaint as follows:

- Count I: Violation of Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301 – for the denial or abridgment of the right to vote on account of race, color, or membership in a language minority group;
- Count II: Violation of the First and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C. § 1983 – for the protection of the right to vote as a fundamental right; and
- Count III: Violation of Section 8 of the National Voter Registration Act of 1993, 52 U.S.C. § 20507(a)(1) – for preventing voter registration applicants who submit timely, facially complete and accurate voter registration forms from being registered as active voters on the Georgia voter registration list for upcoming elections.

Also on October 19, 2018, Plaintiffs Georgia Coalition for the Peoples' Agenda, Inc.; Asian Americans Advancing Justice-Atlanta, Inc.; Georgia State Conference of the NAACP; Georgia Association of Latino Elected Officials, Inc.; and ProGeorgia State Table, Inc. [1] filed an Emergency Motion for Preliminary Injunction. [Doc. 17]. Defendant filed a response and Plaintiffs filed a reply, and the Court heard argument on Plaintiffs' Motion on October 29, 2018. Accordingly, Plaintiffs' Motion is now ripe for the Court's review.

A. The Exact Match Process in Georgia

1. General Overview of the Exact Match Process

In sum, and in very general terms, when a person in Georgia registers to vote and submits a voter registration application, county election officials input the information from the application into a statewide computer voter registration system called ***1256** "Enet." The Enet system then checks the application information against files from the Georgia Department of Driver Services ("DDS") or files from the Social Security Administration ("SSA"). If the application information in the Enet system does not match the DDS or SSA files, then the voter registration application is placed in "pending status," and the person may not vote until the person corrects the information. The burden is on the applicant to take the next steps to correct any information and/or present the necessary proof required to the appropriate officials to become a Georgia voter. If the applicant does not take the appropriate steps to correct the information within 26 months, then the voter application is rejected, and the individual must start over with a new voter registration application.

2. Underlying Law of the Exact Match Process

Pursuant to the Help America Vote Act of 2002 ("HAVA"), Georgia is required to implement a single, centralized computerized statewide voter registration list containing the name and registration information of every legally registered voter in the State. 52 U.S.C. § 21083(a)(1)(A). The above-mentioned "Enet" is Georgia's computerized statewide voter registration system. Pursuant to HAVA, the State must enter into an agreement with DDS to match information in the Enet system against information in DDS files in order to verify the accuracy of voter registration information. Id. at § 21083(a)(5)(B)(i). Furthermore, the Commissioner of Social Security must enter into an agreement with DDS also for the purpose of verifying voter registration information for those applicants who provide the last 4 digits of their social security number. Id. at § 21083(a)(5)(B)(ii); see also 42 U.S.C. § 405(r)(8).

In 2017, House Bill 268 was enacted governing elections to, *inter alia*, revise the types of identification acceptable for voting and to require certain information for voter registration. H.B. 268, 154th Gen. Assemb., Reg. Sess. (Ga. 2017). HB 268 is now codified at O.C.G.A. § 21-2-210, *et seq.* Building upon HAVA, HB 268 requires that any individual desiring to vote in Georgia must be registered to vote and a citizen of the United States. O.C.G.A. § 21-2-216(a)(1)-(2).

When an individual in Georgia wishes to register to vote, the applicant fills out a voter registration application. Id. at § 21-2-220(a). The parties do not dispute that local county election officials take the information from the voter registration application and put it into the Enet system. The voter registration application will only be accepted as valid after the board of registrars has verified the applicant's identity. O.C.G.A. § 21-2-220.1(c). Additionally, the applicant must submit satisfactory evidence of United States citizenship. Id. at § 21-2-216(g)(1). To verify the applicant's identity, including citizenship, the Enet system matches the voter application information against the files of DDS or SSA.[2] Id. at § 21-2-220.1(c)(1).

When information in the Enet system does not exactly match with information either from the files of DDS or SSA, this creates a "non-match," and the individual is flagged and placed in "pending status." County registrars are then required to send a letter to the flagged applicants notifying them of their pending status and the ways to remedy the issue. Applicants have 26 months following the date of their ***1257** voter registration application to remedy the issue and verify their identity by presenting sufficient evidence of identity to the board of registrars. Id. at § 21-2-220.1(d)(4). Failure to cure the issues before 26 months results in the individual's voter registration application being rejected and the individual having to submit a new application. Id.

A "flag," resulting in an individual being placed in "pending status," can occur for various reasons, but for purposes of this lawsuit and particularly Plaintiffs' Emergency Motion, the flags can be broken down into two categories: (1) flags for citizenship and (2) flags for any other non-matching information, such as a misspelled name. This lawsuit focuses on both (1) and (2), challenging the matching process as a whole. However, Plaintiffs' Emergency Motion and this order address (1), individuals

who have been flagged and placed into pending status due to citizenship, and the hurdles these individuals face as they relate to voting in the upcoming election.

B. How to Vote in the November 6, 2018 Election with a Non-Match Flag for a Reason Other than Citizenship

As just stated, while Plaintiffs' Motion is only about those individuals placed in pending status for citizenship, in light of the confusion about the matching process, the Court will set forth below how individuals who have been flagged and placed in pending status for reasons *other than citizenship* may still vote in the November 6, 2018 election. The Court takes no opinion as to whether this process for voting is sufficient, as this issue is not before the Court at this time. To be clear, the Court is merely reiterating the process as set forth by Defendant Kemp in an effort to help clarify how voting may occur.

Elections Division Director Chris Harvey posted to an online bulletin board an Official Election Bulletin dated October 23, 2018, to County Election Officials and County Registrars (hereinafter "October 23 Memorandum"). [Doc. 27-1]. This Memorandum explains how those individuals flagged and placed in pending status can vote in the November 6, 2018 election. As to those voter applicants placed in pending status due to a flag for any non-matching information *other than citizenship*, these individuals may still vote in the November 6, 2018 election as follows:

> Pending applicants whose information (other than citizenship status) did not match are eligible to vote during early voting or on Election Day and must be allowed to vote a regular ballot if they show one of the following forms of identification and there are no other issues that would require the voter to vote a provisional ballot (i.e. wrong county, wrong precinct, already voted, etc.):
>
> (1) A Georgia driver's license (including an expired Georgia driver's license);
>
> (2) A valid Georgia voter identification card or other valid photo identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States which is authorized by law to issue personal identification. This includes a valid student photo ID card issued by a Georgia public college, university, or technical school; a valid out-of-state driver's license; public transit issued photo ID card; and any other federal or state agency or government issued photo ID card;
>
> (3) A valid United States passport;
>
> (4) A valid employee photo identification card issued by any branch, department, agency, or entity of the United States government, this state, ***1258** or any county, municipality, board, authority, or other entity of this state;
>
> (5) A valid United States military photo identification card; or
>
> (6) A valid tribal photo identification card.

Oct. 23 Mem. at 1 [Doc. 27-1]. Defendant's Memorandum makes clear that these applicants may present proof of identity as explained above to a **poll worker**. Id. at 5 (explaining that the poll worker can check identity and create a voter access card). Moreover, the poll worker "must simply confirm that the voter is the same person as the applicant." Id. at 3. Once a poll worker verifies the applicant's identity, the individual is "given credit for voting," and their Enet status should be updated from "pending" to "active." Id.

II. Plaintiffs' Emergency Motion for a Preliminary Injunction

The Court now turns to Plaintiffs' Emergency Motion for a Preliminary Injunction, which seeks relief for those individuals who have been flagged and placed in pending status due to citizenship.

A. Standing

Plaintiffs argue that they have organizational standing to seek relief in their Emergency Motion. Defendant did not address Plaintiffs' argument on standing. "An organization has standing to sue when a defendant's illegal acts impair the organization's ability to engage in its own projects by forcing the organization to divert resources in response." Arcia v. Fla. Sec'y of State, 772 F.3d 1335, 1341 (11th Cir. 2014). Plaintiffs argue that they participate in voter registration activities and must divert resources to educate voters about Georgia's exact match verification protocol, assist voters inaccurately flagged as non-citizens, and resolve issues these voters may face when attempting to prove their citizenship. Plaintiffs submit the declarations of the Executive Directors or President for each of their organizations in support. See Pls.' Mem. of Law in Supp. of Pls.' Emergency Mot. for Prelim. Inj. at 19 [Doc. 17-1]. Based on the evidence presented by Plaintiffs, the Court finds that Plaintiffs have organizational standing because these organizations will have to divert personnel and resources to educate individuals about the exact match process and assist those who have been flagged and placed into pending status, including helping to resolve issues surrounding citizenship before Election Day. See Fla. State Conference of NAACP v. Browning, 522 F.3d 1153, 1165 (11th Cir. 2008) (organization had standing to challenge election law by showing that they would have to divert personnel and time to educating potential voters on compliance with the laws and assisting voters who might be affected by the challenged election law).

B. Doctrine of Laches

Defendant argues that Plaintiffs' Motion is barred by the doctrine of laches. "To establish laches, [Defendant] must demonstrate (1) there was a delay in asserting a right or a claim, (2) the delay was not excusable, and (3) the delay caused [Defendant] undue prejudice." United States v. Barfield, 396 F.3d 1144, 1150 (11th Cir. 2005). Defendant argues that Plaintiffs have been fully cognizant of Georgia's citizenship verification procedures for a considerable period of time. Defendant asserts that HAVA and the matching process are not new, and that some of the Plaintiffs in this suit challenged this matching process, in substance, two (2) years ago in NAACP v. Kemp, No. 2:16-cv-00219-WCO (N.D. Ga. 2017). Specifically, Defendant contends that Plaintiffs have been aware of the citizenship mismatch issue and how to remedy it because these were topics covered by the Settlement ***1259** Agreement in NAACP v. Kemp. Despite knowing of these issues for some time, Defendant argues that Plaintiffs waited to file their amended complaint and Emergency Motion less than a month before the November 6, 2018 election and three (3) days after Georgia had already begun early voting. Defendant asserts that Plaintiffs' last-minute challenge prejudices Defendant, who must administer and supervise the elections, as well as the public, because Defendant must ensure the uniformity, fairness, accuracy, and integrity of Georgia's elections.

In response, Plaintiffs argue that O.C.G.A. § 21-2-216(g), which is the part of HB 268 that addresses the documentary proof for citizenship and is discussed below, was not yet implemented at the time of the Settlement Agreement in NAACP v. Kemp and was exempted from the Settlement Agreement in NAACP v. Kemp. Moreover, the settling parties agreed that Plaintiffs could challenge this statute in the future. The Court agrees with Plaintiffs' arguments. See Decl. of Chris Harvey, Ex. A, Settlement Agreement at 1(a) [Doc. 22-1].

Plaintiffs also assert that they did not delay in bringing this action because this case is based on new facts that Plaintiffs have developed over time, including individual stories that were not necessarily indicative of a policy problem until Plaintiffs could gather sufficient data to identify a pattern. The Court finds this argument certainly plausible, as evidenced by the Declaration of Mr. Yotam Oren, discussed below, who encountered hurdles while trying to vote as recently as October 16-17, 2018. Therefore, to the extent Plaintiffs delayed in seeking relief in this suit, the Court finds that this delay was excusable. See SunAmerica Corp. v. Sun Life Assur. Co. of Canada, 77 F.3d 1325, 1345 (11th Cir. 1996) (Birch, J., concurring) (when determining whether delay was excusable, court should not rely solely on the time period involved but also examine the reasons for any delay).

Additionally, the Court does not find that granting Plaintiffs injunctive relief this close to Election Day will cause undue prejudice to Defendant or the public, particularly where the relief sought by Plaintiffs is very limited and targeted. As recently recognized by this Court, "multiple courts within the Eleventh Circuit have granted injunctive relief against election officials in close temporal proximity to an election despite recognizing the administrative burden inherent in such relief." Martin v. Kemp, No. 1:18-CV-4776-LMM, 341 F.Supp.3d 1326, 1336 n.6, 2018 WL 5276242, at *6 n.6 (N.D. Ga. Oct. 24, 2018) (collecting cases).

Finally, the defense of laches is dependent on the specific facts of a case. Id. at 1334–36, at *6 (citing Coca-Cola Co. v. Howard Johnson Co., 386 F.Supp. 330, 334 (N.D. Ga. 1974)). Due to this, "courts have been hesitant to bar claims under a laches defense when there is limited factual information available," as is the case here. Martin, 341 F.Supp.3d at 1336, 2018 WL 5276242, at *6 (citation omitted). Therefore, the Court finds that Plaintiffs are not barred by the doctrine of laches in seeking relief because Plaintiffs' delay was excusable, Defendant will not suffer undue prejudice, and there is a limited factual record at this early stage of the case.

C. The Merits of Plaintiffs' Emergency Motion for a Preliminary Injunction

Plaintiffs' Emergency Motion for a Preliminary Injunction seeks limited and targeted relief for those individuals who are in pending status because their citizenship information did not match. To better understand the relief Plaintiffs seek in their ***1260** Motion, the Court will provide additional information about the matching process to prove citizenship. As already noted, voter registration application information input into the Enet system is checked against either DDS or SSA files. Only the DDS files indicate citizenship. One need not be a United States citizen to hold a Georgia driver's license. Ga. DDS Rule § 375-3-1-.02(6). After becoming a citizen, a person may update citizenship information with DDS but need not do so. Id. at § 375-3-1-.13(1). Therefore, if a person receives a Georgia driver's license based on lawful status in the United States but is not yet a citizen, the DDS files will reflect that the person is not a citizen. If that person then becomes a naturalized citizen and submits a voter registration application stating that he or she is a citizen, when Enet checks the voter registration application against the DDS files, there will be "no match" because the DDS files will indicate that the person is not a citizen based on outdated information. Herein lies the source of the problem.

Now the Court turns to the merits of Plaintiffs' Motion. A plaintiff seeking a preliminary injunction must demonstrate that: (1) there is a substantial likelihood of success on the merits; (2) it will suffer irreparable injury if relief is not granted; (3) the threatened injury outweighs any harm the requested relief would inflict on the non-moving party; and (4) entry of relief would serve the public interest. See, e.g., KH Outdoor, LLC v. City of Trussville, 458 F.3d 1261, 1268 (11th Cir. 2006). The decision as to whether a plaintiff carried this burden "is within the sound discretion of the district court and will not be disturbed absent a clear abuse of discretion." Int'l Cosmetics Exch., Inc. v. Gapardis Health & Beauty, Inc., 303 F.3d 1242, 1246 (11th Cir. 2002) (quoting Palmer v. Braun, 287 F.3d 1325, 1329 (11th Cir. 2002)) (internal quotation marks omitted).

1. Substantial Likelihood of Success on the Merits

Plaintiffs seek a preliminary injunction on their claims that Defendant is infringing upon Plaintiffs' fundamental right to vote. The parties do not dispute, and the Court agrees, that the following framework is appropriate for evaluating Plaintiffs' claims.

> When deciding whether a state election law violates First and Fourteenth Amendment associational rights, we weigh the character and magnitude of the burden the State's rule imposes on those rights against

> the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary.

Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997) (quotation omitted).

Stated differently, the Court

> must first "consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendment." [Anderson v. Celebrezze,] 460 U.S. 780, 789, 103 S.Ct. 1564 [75 L.Ed.2d 547] (1983). Then the court must "identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule." Id. Finally, the court must "determine the legitimacy and strength of each of those interests," while also considering "the extent to which those interests make it necessary to burden the Plaintiff's rights." Id.

Stein v. Ala. Sec'y of State, 774 F.3d 689, 694 (11th Cir. 2014).

> "[I]f the state election scheme imposes "severe burdens" on the plaintiffs' constitutional rights, it may survive only if ***1261** it is "narrowly tailored and advance[s] a compelling state interest." Timmons, 520 U.S. at 358, 117 S.Ct. 1364. But when a state's election law imposes only "reasonable, nondiscriminatory restrictions" upon a plaintiff's First and Fourteenth Amendment rights, "a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." Id. (quotations omitted). In short, the level of the scrutiny to which election laws are subject varies with the burden they impose on constitutionally protected rights—"Lesser burdens trigger less exacting review." Id.

Stein, 774 F.3d at 694. Therefore, the "Supreme Court has rejected a litmus-paper test for constitutional challenges to specific provisions of a State's election laws and instead has applied a flexible standard." Common Cause/Georgia v. Billups, 554 F.3d 1340, 1352 (11th Cir. 2009) (quotation omitted).

Thus, the Court begins by evaluating the burden the election scheme places on Plaintiffs' First and Fourteenth Amendment rights. To evaluate this burden, the Court must clarify the facts as presented by the parties. Plaintiffs, relying on information from a Georgia Poll Worker Manual for 2018, assert that on Election Day, there is only one way that an individual in pending status for citizenship can vote in the upcoming election and that this way is severely burdensome. In response, Defendant presented five (5) Options that such an individual could vote in the upcoming election, as supported by the Declaration of Chris Harvey. The evidence presented by Defendant shows that Plaintiffs' contention is incorrect, as the evidence from Mr. Harvey is more thorough and up to date than the Poll Worker Manual.

Accordingly, these are the five (5) Options that an individual in pending status for citizenship may vote in the upcoming election as argued by Defendant and as supported by Mr. Harvey's October 23 Memorandum:

1. When applicants receive a letter from their county registrar notifying them of the mismatch, they may provide the county registrar with a document that shows they are a United States citizen via personal delivery, mail, email as an attachment, or facsimile.

2. Applicants may produce one of the forms of acceptable proof of citizenship to a deputy registrar when they appear to vote at a polling location.

3. If a deputy registrar is not present, then applicants may present proof of their citizenship to the poll manager, who shall transmit a copy of the applicant's proof of citizenship to the county registrar's office via text message, email or fax. At

that time, the country [sic] registrar will update the applicant's citizenship status, and the applicant will be permitted to cast a regular ballot.

4. If the [deputy registrar[3]] cannot be reached (or the requisite technology is not available), then the applicant shall be offered the opportunity to cast a provisional ballot. In such a situation, the provisional ballot should be marked by the poll manager ... to confirm that the applicant presented one of the forms of acceptable proof of citizenship and ID at the time the ballot was cast, ***1262** and the provisional ballot shall be counted as a vote without requiring any further action.

5. Finally, if the applicant is unable to present one of the accepted forms of proof of citizenship, then the applicant shall be offered the opportunity to cast a provisional ballot. The applicant must then present proof of citizenship in person, via fax, email or text to the county registrar before the close of the provisional ballot period on the Friday following the election.

Def.'s Resp. in Opp'n to Pls.' Emergency Mot. for Prelim. Inj. at 14-15 [Doc. 24-1] (quotations and citations omitted).

Defendant maintains that these five (5) Options are currently being implemented and will be in effect on Election Day. However, Plaintiffs cite to evidence that shows otherwise. Plaintiffs present the declaration of Yotam Oren, who states that he legally obtained a Georgia driver's license in 2010 and renewed his license as a non-citizen, legal permanent resident several times to keep it active. On December 18, 2017, Mr. Oren became a naturalized citizen of the United States, and after the naturalization ceremony, he completed a Georgia voter registration form and included a copy of his naturalization certificate with his form. Mr. Oren further states that he does not recall ever being informed that he needed to update his records with DDS to reflect the change in his citizenship after becoming a naturalized citizen. Sometime after submitting his voter registration application, he received a letter from the Fulton County voter registration office indicating that his voter registration was in pending status due to citizenship and that he would need to show proof of citizenship to vote. Mr. Oren understood from the letter that he could bring proof of citizenship to the polling station at the time he voted.

Prior to voting early in the November 6, 2018 election, Mr. Oren checked Defendant Kemp's Secretary of State website, which informed Mr. Oren that he could vote if he brought proof of citizenship to the polling station. On October 16, 2018, Mr. Oren went to his designated early-voting polling location in Fulton County. He checked in with a poll worker and showed her his valid United States passport as proof of citizenship. The poll worker directed Mr. Oren to another election official, who informed Mr. Oren that she would need to call yet another person to change his status from “pending” to “active” so that he could vote. While Mr. Oren waited, the official was unable to reach the intended person on the phone and informed Mr. Oren that he could continue to wait or come back another time to vote. No one offered Mr. Oren an option to cast a provisional ballot. Mr. Oren did not want to wait any longer and left.

The following day, Mr. Oren called the Fulton County voter registration office to learn how he could resolve the issue, and he was provided with a name and phone number to call when he returned to his polling location. Later that day, Mr. Oren returned to the same polling location as the previous day, checked in again with a poll worker showing his passport, and he was again directed to another election official. This time, however, he provided the election official with the name and telephone number he had received from the Fulton County voter registration office, and the election official was able to speak with this person via telephone. Mr. Oren's status was changed from pending to active, and he was finally able to cast his first vote as a United States citizen. See generally Decl. of Yotam Oren [Doc. 27-2]. The evidence from Mr. Oren contradicts Defendant's ***1263** position that the five (5) Options to prove citizenship and vote in the upcoming election are being implemented. At a minimum, of the five (5) Options, Mr. Oren was not offered Options 3, 4, or 5.

In response, Defendant has submitted the Declaration of Rick Barron, the Director of Elections for the Fulton County Board of Elections and Registration, who attests that Fulton County has deputy registrars available at each polling location for both early voting and Election Day who can verify proof of citizenship. But at least for Mr. Oren, this was not true. Mr. Barron also

states that Fulton County has a process in place to update a voter's status when they show proper proof of citizenship so that they can cast a regular ballot, which might "take a few minutes." Decl. of Rick Barron at ¶ 4 [Doc. 29-1]. However, Mr. Barron does not say what this process is and whether it aligns with the five (5) Options Defendant has presented to the Court. Finally, Mr. Barron boldly states that Mr. Oren "was able to present proof of citizenship at the polls and cast a regular ballot." Id. at ¶ 5. Indeed, Mr. Oren was able to do so, after two trips to his polling location, looking up information on Defendant's website, placing his own call to the Fulton County voter registration office, and providing election officials with a name and telephone number to call to help change his status. Mr. Barron seems to overlook the hurdles Mr. Oren jumped.

There are additional problems with Defendant's position. First, the October 23 Memorandum was simply posted to an online bulletin board for election officials, where, according to Mr. Harvey, county election and registration officials regularly communicate regarding election matters, but it was not sent directly to anyone. Second, the Georgia Poll Worker Manual is incomplete, leaving out Options 3 and 4 for voting and leaving out information about how to convert a provisional ballot in Option 5 into a non-provisional ballot. Ga. Poll Worker Manual (2018 ed.) at 42 [Doc. 17-9]. This indicates a lack of training to poll workers about the citizenship verification process. Finally, Defendant's website titled, "Information for Pending Voters," merely says that an individual in "pending status" due to citizenship may "show acceptable proof of citizenship when you go to vote or when you request an absentee ballot."[4] The site further provides that to specifically vote in the November 6, 2018 election, the individual will need to show proof of citizenship to a deputy registrar. This confusing information does not match the five (5) Options Defendant has presented to the Court as to how these individuals can vote on Election Day.

Additionally, Plaintiffs argue that the citizenship verification procedure has a disparate impact on minority voters. Plaintiffs rely on the declaration of Michael McDonald, Associate Professor of Political Science at the University of Florida, who states that Asian applicants constitute 27.0 percent of those flagged as non-citizens even though they comprise only 2.1 percent of Georgia's registered voter pool; Latino applicants constitute 17.0 percent of those flagged as non-citizens even though they comprise 2.8 percent of Georgia's registered voter pool; and white applicants constitute only 13.7 percent of those flagged as non-citizens even though they comprise 54.0 percent of Georgia's registered voter pool. Decl. of Michael McDonald at 7-8 [Doc. 17-11]. Plaintiffs argue that this disparate impact "matters" when evaluating the severity of the burden on individuals' constitutional right to vote. See ***1264** League of Women Voters of Fla., Inc. v. Detzner, 314 F.Supp.3d 1205, 1216-20 (N.D. Fla. 2018) (disparate impact "matters" in the balancing test to evaluate whether the effects of a facially neutral and nondiscriminatory law are unevenly distributed across identifiable groups). Defendant did not respond to Plaintiffs' argument on disparate impact.

Based on this evidence, the Court must assess the burden on the constitutional right to vote for those individuals who have been flagged and placed into pending status due to citizenship. "Ordinary and widespread burdens, such as those requiring nominal effort of everyone, are not severe." Crawford v. Marion Cty. Election Bd., 553 U.S. 181, 205, 128 S.Ct. 1610, 170 L.Ed.2d 574 (2008) (Scalia, J., concurring) (quotation omitted). But burdens "are severe if they go beyond the merely inconvenient." Id. Based on the limited factual record before the Court, including the uncontested evidence of disparate impact on a particular class of individuals, as well as the parties' arguments presented on an emergency basis, the Court finds that Plaintiffs have shown a substantial likelihood of success that the burden is severe for those individuals who have been flagged and placed in pending status due to citizenship. As shown at least by Mr. Oren's experience, it was not a nominal effort for him to vote; it was a burdensome process requiring two trips to the polls, his own research, and his hunting down a name and telephone number to give to election officials so that his citizenship status could be verified, all after he had already submitted proof of citizenship with his voter registration application. This is beyond the merely inconvenient.

Next, the Court must identify the precise interests put forward by Defendant to justify the severe burdens on these individuals. Defendant asserts that the State's regulatory interest is in assuring that voters are United States citizens, which the Court finds to be compelling.

Therefore, the process of verifying proof of citizenship may only survive if it is narrowly tailored and advances a compelling state interest. Timmons, 520 U.S. at 358, 117 S.Ct. 1364. In their Reply, Plaintiffs argue two ways in which Defendant Kemp's five (5) Options for verifying proof of citizenship severely burden the right to vote of eligible Georgians who have been inaccurately flagged as non-citizens without advancing any state interest, much less a narrowly tailored, compelling state interest. First, Plaintiffs contend that Defendant is burdening the right to vote for these individuals by placing newly naturalized United States citizens into pending status based on a reliance of DDS files, even when they have submitted proof of citizenship with their voter registration application. In their filings before the Court, Plaintiffs did not seek relief that would address relieving this burden nor did Plaintiffs' counsel at the hearing specifically ask for this relief, even when the Court asked counsel to state precisely the relief sought. Nevertheless, to the extent that Plaintiffs are asking the Court to issue relief that would require the county registrars of the 159 counties in Georgia to review the voter registration applications for all individuals placed in pending status due to citizenship, by checking to see if these individuals submitted proof of citizenship with their applications, all before November 6, 2018, is impractical, overly burdensome to Defendant, and will inject chaos into an election already fraught with challenges. [5]

***1265** The second way that Plaintiffs contend Defendant has severely burdened the right to vote of eligible Georgians who have been inaccurately flagged due to citizenship without advancing a narrowly tailored, compelling state interest is by placing needless hurdles in front of voters when they bring documentary proof of citizenship with them to vote. As noted above, Defendant has proposed five (5) Options for these individuals to vote in the upcoming election. All of these Options, except Option 4, require proof of citizenship to a deputy registrar. In response, Plaintiffs argue that Defendant's requirement that proof of citizenship may be accepted only by a deputy registrar cannot survive any level of scrutiny because Defendant has not offered any legitimate justification for why deputy registrars, and not poll workers or managers, can accept documentary proof of citizenship.

Defendant's justification at the hearing for why deputy registrars must verify proof of citizenship was because the law requires deputy registrars to do so. Indeed, O.C.G.A. § 21-2-216(g)(1) provides that "[t]he board of registrars shall not determine the eligibility of the applicant until and unless satisfactory evidence of citizenship is supplied by the applicant." See also id. at § 21-2-216(g)(2) (satisfactory evidence of citizenship includes photocopies of a birth certificate, United States passport, and United States naturalization documents presented to the board of registrars).

The Court must now evaluate "the extent to which [the state interest of ensuring that only United States citizens vote] make it necessary to [severely] burden [Plaintiffs'] rights." Stein, 774 F.3d at 694. The Court finds that § 21-2-216(g)(1)-(2), requiring that the board of registrars determine whether the individual has supplied satisfactory evidence of citizenship, as well as Defendant's implementation of HB 268, for the upcoming election on November 6, 2018, burden the constitutional right of individuals flagged and placed into pending status due to citizenship more than is necessary. Therefore, § 21-2-216(g)(1)-(2) and Defendant's implementation of HB 268 are not narrowly tailored to serve the compelling state interest of ensuring that only United States citizens are voting.

The legislative history of § 21-2-216(g)(1)-(2) does not explain why the board of registrars must verify proof of citizenship. Additionally, Defendant makes the leap from allowing the board of registrars, as required by the law, to verify proof of citizenship, to allowing a deputy registrar to do so, without any explanation. While "[t]he board of registrars in each county may appoint deputy registrars to aid them in the discharge of their duties," it is unclear if the board can discharge its duty to verify proof of citizenship. See O.C.G.A. at § 21-2-213. Further, Defendant has not explained why a deputy registrar has been selected as the person who can verify citizenship. Defendant has presented no information about a deputy registrar's particular qualifications or training that make these registrars more qualified than anyone else to accept proof of citizenship.

Importantly, Defendant's requirement that a deputy registrar must verify citizenship crumbles when the Court reviews Defendant's own proposals. As set forth above, Defendant proposes five (5) Options for verifying proof of citizenship in the ***1266** upcoming election. Again, Option 4 is as follows:

> 4. If the [deputy registrar] cannot be reached (or the requisite technology is not available), then the applicant shall be offered the opportunity to cast a provisional ballot. In such a situation, the provisional ballot should be marked by the poll manager ... to confirm that the applicant presented one of the forms of acceptable proof of citizenship and ID at the time the ballot was cast, and the provisional ballot shall be counted as a vote without requiring any further action.

Def.'s Resp. in Opp'n to Pls.' Emergency Mot. for Prelim. Inj. at 15 [Doc. 24-1] (quotations and citations omitted). Option 4 does not require that a deputy registrar verify proof of citizenship. At the hearing, Defendant explained that under Option 4, the provisional ballot envelopes will have notations from the poll manager, which will become "self-authenticating" regarding the citizenship verification. If a poll manager can verify proof of citizenship only when a deputy registrar is not available or the technology for sending proof of citizenship to a deputy registrar is not available, then this begs the question of why a poll manager cannot verify all proofs of citizenship and why a provisional ballot needs to be cast in the first place. Thus, Defendant's own solution in Option 4 demonstrates that requiring a deputy registrar to verify proof of citizenship unnecessarily burdens these individuals' right to vote more than necessary. Such a hurdle need not be jumped. See Fla. Democratic Party v. Scott, 215 F.Supp.3d 1250, 1257 (N.D. Fla. 2016) (finding that it was wholly irrational for a state to refuse to extend a voter registration deadline when the state already allows the Governor to do so); Green Party of Ga. v. Kemp, 171 F.Supp.3d 1340, 1365 (N.D. Ga. 2016) (petition requirement was not narrowly tailored where a lower number of signatures to access the general election ballot would have eased the burden on voters' and political bodies' rights while still serving the state's interests). [6]

All of the five (5) Options derive from the Settlement Agreement in NAACP v. Kemp. However, the Settlement Agreement does not tie this Court's hands on the proof of citizenship issue. As the Court has explained above, the Settlement Agreement specifically exempted O.C.G.A. § 21-2-216(g), which is the part of HB 268 that addresses the documentary proof for citizenship. This law was not yet implemented at the time of the Settlement Agreement and became enacted months later. Moreover, not all parties in this suit were part of the Settlement Agreement.

In addition, Defendant's method for checking the proof of identity for those who have been flagged and placed into pending status based on information other than citizenship also belies Defendant's claim that a deputy registrar must verify proof of citizenship. As explained above, Defendant has publicized that if an individual is in pending status for a mismatch for information other than citizenship, the individual need only go to a polling location and present proof of identity to a **poll worker**. See Oct. 23 Mem. at 1 [Doc. 27-1]. However, to verify identity, the law requires that an individual must provide "sufficient evidence to the board of registrars." O.C.G.A. § 21-2-220.1(c)(2); see also ***1267** id. at § 21-2-220.1(c)(1). Defendant has not explained why he is willing to ignore the law's requirement of proving identity to a board of registrars for individuals flagged for reasons other than citizenship but intends to enforce the law against individuals flagged for citizenship. This raises grave concerns for the Court about the differential treatment inflicted on a group of individuals who are predominantly minorities.

The requirement that a deputy registrar verify proof of citizenship is also overly broad because poll managers are capable of verifying proof of citizenship. Allowing poll managers to verify proof of citizenship would alleviate the severe burden placed on individuals who have been flagged and placed in pending status for citizenship while still serving the State's interest of ensuring that only United States' citizens are voting. See Fla. Democratic Party, 215 F.Supp.3d at 1257; Green Party of Ga., 171 F.Supp.3d at 1365. Allowing a poll manager to verify proof of citizenship is a practical and viable alternative for several reasons.

First, Mr. Harvey attests that each polling place has one poll manager. See O.C.G.A. §§ 21-2-2(11), 21-2-90. Second, Defendant proposed under Option 4 that a poll manager would be able to self-authenticate proof of citizenship for a provisional ballot. Third, pursuant to the October 23 Memorandum, the poll manager has authority to override the status using their password for a voter flagged as a possible non-citizen. Oct. 23 Mem. at 4. The poll manager can change the voter status, such that a poll worker could then issue a voter access card. Id. Fourth, the Court finds that a poll manager can actually look at citizenship documents and verify them; poll managers are required to be "judicious, intelligent, and upright citizens of the United States." O.C.G.A. § 21-2-92(a). Lastly, poll managers are already tasked with verifying identity documents. As mentioned above, Defendant has presented no argument that deputy registrars possess additional training or skills that make them superiorly qualified to check citizenship documents.

For all of these reasons, the Court concludes that the specific requirements of § 21-2-216(g)(1)-(2) – that proof of citizenship be verified by a board of registrars, which Defendant has implemented as verification by a deputy registrar – as well as Defendant's five (5) Options for allowing individuals with flags for citizenship to vote in the upcoming election, sweep broader than necessary to advance the State's interest, creating confusion as Election Day looms. See Norman v. Reed, 502 U.S. 279, 290, 112 S.Ct. 698, 116 L.Ed.2d 711 (1992) (finding law for gathering signatures for a new party was not narrowly tailored when it swept broader than necessary to advance the state's interest). As a result, the Court invalidates the requirement that proof of citizenship be verified *only* by a board of registrars or a deputy registrar for the November 6, 2018 election for a regular ballot. [7] Thus, Plaintiffs have shown a substantial likelihood of success on the merits of their claim that Defendant has violated the right to vote for individuals placed in pending status due to citizenship.

2. Irreparable Harm

Defendant argues that Plaintiffs cannot show that irreparable harm will result in the absence of a preliminary injunction because Plaintiffs' alleged harm about individuals flagged as non-citizens losing a right to vote is conjectural and hypothetical. However, as Mr. Oren's experience ***1268** indicates, there is a very substantial risk of disenfranchisement. Additionally, in light of the Court invalidating the requirement that a deputy registrar must verify proof of citizenship, there is misleading information at least on the Secretary of State's website about how to prove citizenship at the polls and there has been a lack of training of election officials for verifying citizenship at the polls, all of which could lead to these individuals not being able to cast a vote in the upcoming election. [8]

Defendant further argues that Plaintiffs' delay in bringing this suit indicates an absence of irreparable harm. However, Plaintiffs' facts for this case developed over time, including gathering evidence like the experience of Mr. Oren, which would have been unknown to Plaintiffs until Mr. Oren attempted to vote on October 16, 2018. Plaintiffs had no other way of knowing whether Defendant was actually implementing the citizenship verification procedure at the polls as Defendant claimed it was until that procedure was tested. Therefore, if a preliminary injunction is not granted, the loss of a right to vote cannot be remedied.

Moreover, the Court finds that Plaintiffs, as organizations, will also suffer irreparable injury distinct from the injuries of eligible voters. Without an injunction to address the citizenship verification procedure, Plaintiffs' organizational missions, including registration and mobilization efforts, will continue to be frustrated and organization resources will be diverted to assist with the citizenship mismatch issue. Such mobilization opportunities cannot be remedied once lost. See League of Women Voters of Fla. v. Cobb, 447 F.Supp.2d 1314, 1339 (S.D. Fla. 2006) (finding irreparable harm to community organizations engaged in collecting and submitting voter registration applications, where their voter registration operations had been interrupted and they were losing valuable time to engage in core political speech and association and to add new registrants to the election rolls). Therefore, the Court finds that Plaintiffs have shown they will suffer irreparable harm if an injunction does not issue.

3. Balance of Harms & Public Interest

The Court finds that the threatened injury to Plaintiffs as organizations and to the individuals flagged as non-citizens outweighs any harm Plaintiffs' requested relief would inflict on Defendant. The Court recognizes the administrative burden the Court's order may place on Defendant, particularly this close to the election. However, the Court finds that this burden – disseminating information about who may check proof of citizenship and training poll managers how to do so, as set forth below – is minimal compared to the potential loss of a right to vote altogether by a group of people. Moreover, Defendant's harm appears to be minimal given that Defendant proposed having poll managers verify proof of citizenship in Option 4. Finally, granting Plaintiffs the relief they seek would be in the public's interest to ensure that there is a procedure in place to allow every eligible Georgia citizen to register and vote.

D. Bond

Federal Rule of Civil Procedure 65(c) provides that a "court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in ***1269** an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." FED. R. CIV. P. 65(c). In its discretion, the Court waives the bond requirement. See BellSouth Telecoms., Inc. v. MCIMetro Access Transmission Serv., LLC, 425 F.3d 964, 971 (11th Cir. 2005) ("[I]t is well-established that the amount of security required by [Rule 65(c)] is a matter within the discretion of the trial court, and the court may elect to require no security at all.") (internal citation and punctuation omitted).

E. Summary

In sum, the Court finds that Plaintiffs have met their burden to grant a preliminary injunction. Plaintiffs have standing to pursue this relief, and the relief they seek is not barred by the doctrine of laches. Plaintiffs have shown a substantial likelihood of success on the merits of their claim that Defendant is violating the right to vote, as guaranteed by the First and Fourteenth Amendments to the United States Constitution, for individuals Defendant has flagged and placed into pending status due to citizenship. The election scheme here places a severe burden on these individuals. The specific requirements of § 21-2-216(g)(1)-(2), that citizenship must be verified by only a board of registrars, and Defendant's proposed five (5) Options for verifying proof of citizenship are not narrowly tailored to advance a compelling state interest. These individuals will suffer irreparable harm if they lose the right to vote, this harm outweighs any harm to Defendant, and granting an injunction is in the public's interest.

As set forth below, because Plaintiffs have met their burden to warrant the issuance of a preliminary injunction, the Court will direct Defendant to allow county election officials to permit individuals flagged and placed in pending status due to citizenship to vote a regular ballot by furnishing proof of citizenship to poll managers or deputy registrars. To be clear, once an individual's citizenship has been verified by a deputy registrar or a poll manager, that individual may cast a regular ballot and the vote counts.

III. Conclusion

For the foregoing reasons, the Court **GRANTS** Plaintiffs' Emergency Motion for Preliminary Injunction [Doc. 17]; and **GRANTS** Defendant's Motion for Leave to File Corrected Brief [Doc. 24].

The Court **DECLARES** as follows:

For individuals who have been flagged and placed in pending status due to citizenship, these individuals may vote in the November 6, 2018 election in these ways:

1. Prior to voting, and pursuant to the instructions in the notification letter the individual received from the county board of registrars, the individual may provide the county registrar with a document showing that the individual is a United States citizen via personal delivery, mail, email as an attachment, or a fax.

2. At a polling location, the individual may provide proof of identity and acceptable proof of citizenship to a poll manager or a deputy registrar, and after verification, cast a regular ballot.

3. At a polling location, if the applicant is unable to present one of the accepted forms of proof of citizenship at a polling location, then the applicant (a) may return to the polling location with sufficient proof of citizenship and follow (2) above, or (b) shall be offered the opportunity to cast a provisional ballot. If the applicant casts a provisional ballot, the ***1270** applicant must then present proof of citizenship in person, or via fax, email or text message to the county registrar before the close of the provisional ballot period on the Friday following the election.

The Court **ISSUES** the following **INJUNCTION**:

The Court **HEREBY DIRECTS** Brian Kemp, in his official capacity as the Secretary of State, to act immediately, as follows:

1. Allow county election officials to permit eligible voters who registered to vote, but who are inaccurately flagged as non-citizens to vote a regular ballot by furnishing proof of citizenship to poll managers or deputy registrars.

2. Update the “Information for Pending Voters” on the Secretary of State's website so that it provides (a) clear instructions and guidance to voters in pending status due to citizenship and (b) a contact name and telephone number that individuals may call with questions about the pending status due to citizenship.

3. Direct all county registrars, deputy registrars, and poll managers on how to verify proof of citizenship to ensure that they can properly confirm citizenship status consistent with this order.

4. Issue a press release (a) accurately describing how an individual flagged and placed in pending status due to citizenship may vote in the upcoming election, as set forth herein; and (b) providing a contact name and telephone number that individuals may call with questions about the pending status due to citizenship.

5. Direct the county boards of elections to post a list of acceptable documentation to prove citizenship, which includes a naturalization certificate, birth certificate issued by a state or territory within the United States, U.S. passport, and other documents or affidavits explicitly identified by Georgia law and listed on the Georgia Secretary of State's website, at polling places on Election Day.

SO ORDERED, this 2nd day of November, 2018.

All Citations

347 F.Supp.3d 1251

Footnotes

1 While these are “the moving Plaintiffs” for Plaintiffs' Emergency Motion, the Court will refer to these moving Plaintiffs simply as “Plaintiffs” throughout the order.

2 The information provided in the application determines whether DDS or SSA files are checked, for example, depending on whether the applicant provided a social security number.

3 The Court has quoted the five (5) Options from Defendant's Response. In this original quote, Defendant has stated that if a "poll manager" cannot be reached. However, at other times throughout his brief and at the hearing, Defendant refers to Option 4 as whether the "deputy registrar" is not available.

4 GEORGIA SECRETARY OF STATE, Information for Pending Voters, http://sos.ga.gov/index.php/general/information_for_pending_voters (last visited Oct. 31, 2018).

5 There may be substantial merit to Plaintiffs' argument that county registrars failed to review proof of citizenship submitted with voter registration applications. But this is an issue for another day, one that cannot be resolved before the November 6, 2018 election. Moreover, the Court's remedy in this order effectively reaches the same result – allowing individuals flagged due to citizenship to be able to vote on November 6, 2018.

6 Similarly, the experience of Mr. Oren further demonstrates that a deputy registrar need not necessarily verify proof of citizenship. It has not been presented to the Court whether the person who eventually verified Mr. Oren's proof of citizenship via a phone call was a deputy registrar.

7 As set forth below, the Court finds that if an individual arrives at a polling location but cannot show sufficient proof of citizenship, that individual may return to the poll with valid proof of citizenship or cast a provisional ballot.

8 The misleading information on the Secretary of State's website and the lack of training for election officials was true even before the Court invalidated the deputy registrar requirement.

Georgia Largely Abandons Its Broken “Exact Match” Voter Registration Process

April 5, 2019 by Stanley Augustin (https://lawyerscommittee.org/author/saugustin/)

Georgia voters inaccurately flagged as non-citizens will still face problems when registering to vote

ATLANTA, GA – On Tuesday, after three federal lawsuits in 2008, 2016 and 2018, Georgia Governor Brian Kemp signed House Bill 316, largely ending the onerous ‘exact match’ system that has failed Georgia voters for the past 12 years.

The ‘exact match’ system placed more than 50,000 voter registrations—disproportionately those of voters of color—on hold before the 2018 elections because of discrepancies

between government records. Thousands of the applicants were also put on hold because

they were flagged as potential non-citizens when their applications were matched against outdated DDS records. A coalition of Georgia civil rights groups—represented by Lawyers’ Committee for Civil Rights Under Law, Campaign Legal Center, Asian Americans Advancing Justice – Atlanta, Hughes Hubbard & Reed LLP, and The Law Office of Bryan L. Sells—sued prior to the 2018 election and that lawsuit is ongoing.

Litigation around the state’s process for verifying voter registration applications started over a decade ago. After the initial 2008 litigation that challenged the first implementation of the verification process, then-Secretary of State Kemp implemented an exact match process in 2010. That version was ended by a settlement after a lawsuit filed in 2016. In 2017, the legislature revived the failed program despite knowing it had a disparate impact on voters of color. After the current lawsuit was filed in 2018, the Georgia legislature and Governor Kemp have now largely ended this discriminatory system.

However, the Georgia applicants who are incorrectly marked as non-citizens under the ‘exact match’ system, will continue to face issues when registering to vote. “While this is a step in the right direction, Georgia is continuing to match voter registration data against outdated Department of Drivers Services (DDS) record,” said **Julie Houk, Managing Counsel for Election Protection for the Lawyers’ Committee for Civil Rights Under Law.** “Georgians who are United States citizens will continue to be inaccurately flagged as non-citizens if they obtained a Georgia driver’s license prior to attaining citizenship or because of other deficiencies in the database matching process. A result, eligible Georgia citizens will continue to be unreasonably burdened by having their voter registration applications put on hold or even canceled.”

“Voters in Georgia should feel relief today that minor discrepancies or typos on government documents will not deny them the right to vote,” said **Danielle Lang, co-director, voting rights and redistricting at CLC**. “Georgia’s abandonment of this failed program is long overdue. Georgia should also abandon its reliance on unreliable data to impose additional burdens on registration for naturalized citizens.”

“Many of the voters who will continue to be affected by the citizenship issue are Asian American,” said **Stephanie Cho, Executive Director of Asian Americans Advancing Justice – Atlanta.** “Asian Americans already historically have low levels of civic engagement, and burdens to voting like this only make that worse. We will continue to work with our communities on the ground to let them know about this law change and provide support for the burden the system continues to place on naturalized citizens.”

The failed exact match program put voters’ registrations in jeopardy for reasons as benign as hyphenated last names, minor typos or data entry errors. Voters will no longer have their registration canceled because of such minor discrepancies; they will be fully registered and treated exactly the same as other voters. Under the new law, voter registration applicants flagged for discrepancies between DMV and voting records will be fully registered to vote but must produce proof of identity to a poll official before voting. Like all Georgia voters on Election Day, this means they must show photo ID to a poll official before they cast a ballot.

About the Lawyers’ Committee for Civil Rights Under Law

The Lawyers’ Committee for Civil Rights Under Law, a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. Now in its 56th year, the Lawyers’ Committee for Civil Rights Under Law is continuing its quest to “Move America Toward Justice.” The principal mission of the Lawyers’ Committee for Civil Rights Under Law is to secure, through the rule of law, equal justice for all, particularly in the areas of criminal justice, fair housing and community development, economic justice, educational opportunities, and voting rights.

About Campaign Legal Center

Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization based in Washington, D.C. CLC is adamantly nonpartisan, holding candidates and government officials accountable regardless of political affiliation. CLC was founded in 2002 and is a recipient of the

prestigious MacArthur Award for Creative and Effective Institutions. Our work today is more critical than ever as we fight the current threats to our democracy in the areas of campaign finance, voting rights, redistricting and ethics. CLC watchdogs government officials, provides expert analysis and helps journalists uncover violations. CLC also participates in legal proceedings across the country to defend the right to vote and ensure fair redistricting.

About Asian Americans Advancing Justice-Atlanta

Asian Americans Advancing Justice Atlanta (Advancing Justice-Atlanta) is a nonpartisan, nonprofit organization dedicated to protecting and promoting the civil rights of Asian Americans and Pacific Islanders (“AAPIs”) and other immigrant and refugee communities in Georgia through policy advocacy, legal services, impact litigation, and civic engagement.

About Hughes Hubbard & Reed LLP

Hughes Hubbard & Reed LLP is a New York City-based international law firm with a relentless focus on providing quality service to our clients and delivering successful results in the most complex matters. With a powerful combination of scale and agility, we offer clients innovative and effective solutions, while remaining flexible to adapt to their needs and market developments. Known for a collaborative culture, as well as our diversity and pro bono achievements, Hughes Hubbard has a distinguished history dating back more than a century. For more information, visit hugheshubbard.com.

About The Law Office of Bryan L. Sells, LLC

The Law Office of Bryan L. Sells is a boutique civil rights law firm based in Atlanta, Georgia, specializing in voting rights, election law, and redistricting.

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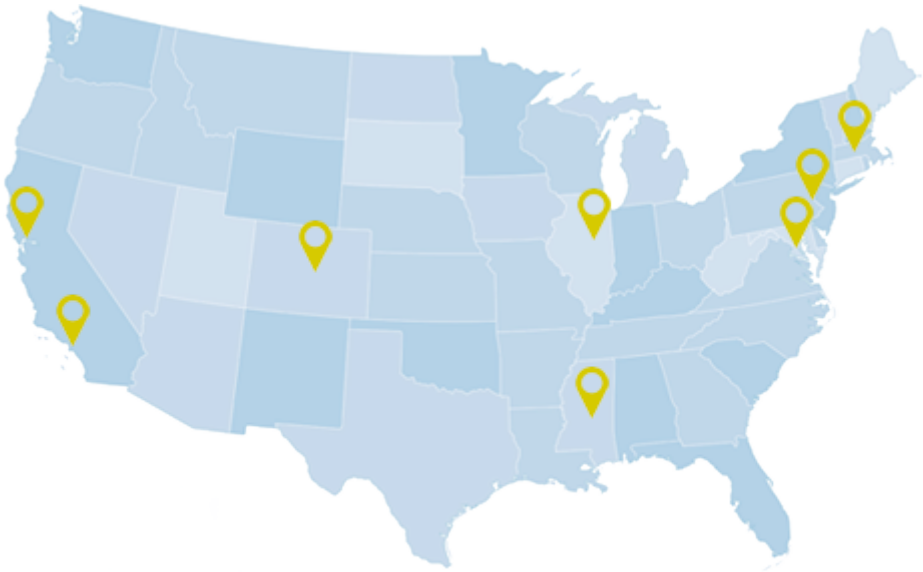

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGIA COALITION FOR THE PEOPLES' AGENDA, INC., as an organization; ASIAN AMERICANS ADVANCING JUSTICE-ATLANTA, INC., as an organization; GEORGIA STATE CONFERENCE OF THE NAACP, as an organization; NEW GEORGIA PROJECT, INC., as an organization; GEORGIA ASSOCIATION OF LATINO ELECTED OFFICIALS, INC., as an organization; PROGEORGIA STATE TABLE, INC., as an organization; THE JOSEPH AND EVELYN LOWERY INSTITUTE FOR JUSTICE AND HUMAN RIGHTS, INC, as an organization; and COMMON CAUSE, as an organization;

Plaintiffs,

v.

BRIAN KEMP, in his official capacity as Secretary of State for the State of Georgia,

Defendant.

Civil Action
Case No. 1:18-cv-04727-ELR

AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Section 2 of the Voting Rights Act of 1965 (52 U.S.C. § 10301); Section 8 of the National Voter Registration Act of 1993 (52 U.S.C. § 20507); First and Fourteenth Amendments to the United States Constitution

INTRODUCTION

1. In 2017, Georgia Governor Nathan Deal signed into law House Bill 268, which codified a voter registration database "exact match" protocol that had been already shown to disproportionately and negatively impact the ability of voting-eligible African-American, Latino and Asian-American applicants to register to vote.

2. The protocol codified by HB 268, and implemented by Georgia's Secretary of State, Defendant Brian Kemp, requires county registrars to enter information from a voter registration form into Georgia's statewide voter registration system known as "Enet." That information is then matched against records on file with the Georgia Department of Drivers Services (DDS) or Social Security Administration (SSA). If the information entered into "Enet" does not exactly match the applicant's identity data on file with DDS or SSA, the application is placed in "pending" status. HB 268 places the burden upon the applicant to then cure the no match result within 26 months. If this deadline is not met, or the application is cancelled, and the applicant must start the voter registration application process anew.

3. Under this "exact match" protocol, the transposition of a single letter or number, deletion or addition of a hyphen or apostrophe, the accidental entry of

an extra character or space, and the use of a familiar name like "Tom" instead of "Thomas" will cause a no match result. HB 268 imposes no requirement upon county registrars to check whether the information from the registration form was accurately entered into the "Enet" system or to perform any other quality review to determine whether the no match result was caused by a common error before relegating the application to "pending" status and putting the burden on the applicant to cure the no match—even when the no match result was caused through no fault of the applicant.

4. Applicants are also put into pending status if the DDS or SSA records flag the applicant as a potential non-citizen. United States citizens are routinely erroneously flagged as non-citizens because the system relies upon citizenship data in DDS records that are not automatically updated to reflect that an applicant has attained U.S. citizenship after having previously obtained a driver's license or state ID as a non-citizen. Plaintiff organizations have found that registrars often place such applicants in pending status and send notices demanding they provide proof of citizenship even when the applicants included their naturalization certificate with their initial registration.

5. HB 268 contains no requirement that county registrars examine whether proof of citizenship documents were submitted with the registration before

placing a voter in pending status, despite this known issue caused by outdated DDS citizenship data. The result is an additional burden on citizens who already took affirmative steps to prove their citizenship status with their registration.

6. HB 268's matching protocol holds voter registration applicants to a strict "exact match" standard, even though the matching protocol itself is not a model of strict accuracy and is prone to erroneous, inconsistent results that are often not the fault of the applicant. In fact, the SSA Help America Vote Verification ("HAVV") database is widely known to routinely produce false no match and inconsistent results. The error-prone nature of the SSA HAVV matching process was the subject of an evaluation report by the office of the SSA's Inspector General which found, among other things, that the "HAVV program provided the States with responses that may have prevented eligible individuals from registering to vote and allowed ineligible individuals to vote."

7. HB 268 was introduced in 2017 on the heels of the settlement of a lawsuit filed the previous year, which challenged a substantially similar voter registration database matching protocol that had been implemented administratively by Defendant Kemp. HB 268 was a transparent effort by the Georgia General Assembly and Secretary of State's office to undermine reforms achieved by that settlement. Governor Deal, the Georgia General Assembly, and

Defendant Kemp were all on notice that HB 268 would impose severe burdens on applicants' right to vote and have a severe discriminatory impact on African-American, Latino and Asian-American applicants.

8. Since the enactment of HB 268, the voter registration verification process and its implementation by the Georgia Secretary of State's Office have continued to produce a high rate of erroneous "no-matches" that disproportionately impacts African-American, Latino and Asian-American applicants.

9. A preliminary review of data produced by the Georgia Secretary of State's Office on July 4, 2018 indicates that approximately 51,111 voter registration applicants were in "pending" status for reasons related to the "exact match" protocol, i.e., the purported failure to verify against DDS or SSA identity or citizenship data. Approximately 80.15% of those pending applications were submitted by African-American, Latino and Asian-American applicants. Only 9.83% of the "pending" for failure to verify applications were submitted by applicants identifying as White.

10. Because of the errors and limitations inherent in the "exact match" protocol, the 26-month cancellation requirement for "pending" applicants will undoubtedly result in the cancellation of pending applications that are facially complete and accurate before the 2020 Presidential election cycle.

11. Unless the Court grants the relief requested herein by Plaintiffs, this protocol will continue to have a discriminatory impact on African-American, Latino and Asian-American applicants and will continue to impose severe burdens on voting-eligible Georgians' fundamental right to vote that are not justified by any rational or compelling state interest.

JURISDICTION AND VENUE

12. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1343(a) because it seeks to redress the deprivation, under color of state law, of rights, privileges and immunities secured by the Voting Rights Act and 28 U.S.C. § 1331, because it arises under the laws of the United States.

13. This Court has jurisdiction to grant both declaratory and injunctive relief, pursuant to 28 U.S.C. §§ 2201 and 2202.

14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claims occurred in this district.

PARTIES

15. Plaintiff THE GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC. ("GCPA") is a Georgia nonprofit corporation with its principal

place of business located in Atlanta, Georgia. The GCPA is a coalition of more than 30 organizations, which collectively have more than 5,000 individual members. The organization encourages voter registration and participation, particularly among Black and other underrepresented communities. The GCPA's support of voting rights is central to its mission. The organization has committed, and continues to commit, time and resources to conducting voter registration drives, voter education, voter ID assistance, Souls to the Polls, and other get out the vote ("GOTV") efforts in Georgia that seek to encourage voter participation. Applicants who have submitted voter registration forms through voter registration drives conducted by the GCOA have had their applications put into "pending" status due to the "exact match" registration protocol, including the nephew of the organization's executive director whose application was put into pending status as a result of a clerical error by the Fulton County registrar's office. Georgia's "exact match" registration protocol is causing and will continue to cause harm to the GCPA's mission of encouraging minority voter registration and participation. The protocol will cause GCPA to divert a portion of its financial and other organizational resources to educating voters about the protocol and assisting potential voters whose applications have been cancelled or put into "pending" status limbo. As a result, the GCPA has, and will continue to have, fewer resources

to dedicate to its other organizational activities, including voter registration drives and GOTV efforts, unless the "exact match" registration protocol of HB 268 is enjoined.

16. Plaintiff ASIAN AMERICANS ADVANCING JUSTICE – ATLANTA, INC. ("Advancing Justice – Atlanta") is a non-partisan, nonprofit organization that was founded in 2010 and is located in Norcross, Georgia. Advancing Justice – Atlanta protects and promotes the civil rights of Asian Americans and Pacific Islanders ("AAPIs") and other immigrant and refugee communities in Georgia through policy advocacy, legal services, impact litigation, and civic engagement. As part of its civic engagement efforts, Advancing Justice – Atlanta engages in voter registration, voter education, and GOTV efforts in Georgia, with a particular focus on AAPI voters, including newly naturalized citizens. Upon information and belief, persons of color who attempted to register to vote through Advancing Justice – Atlanta's voter registration drives have had their applications put into "pending" status due to the "exact match" registration protocol. Georgia's "exact match" registration protocol is causing and will continue to cause harm to Advancing Justice – Atlanta's mission to promote the rights of the AAPI community. The protocol will cause Advancing Justice – Atlanta to divert a portion of its financial and other organizational resources to

educating voters about the protocol and its impact on the registration process. As a result, Advancing Justice – Atlanta has, and will continue to have, fewer resources to devote to its other organizational activities, including voter registration drives and GOTV efforts, unless the "exact match" registration protocol of HB 268 is enjoined.

17. PROGEORGIA STATE TABLE, INC. ("PROGEORGIA") is a 501(c)(3) nonprofit organization founded in 2012. Its mission is to coordinate the civic engagement efforts of its nonprofit member groups. PROGEORGIA aims to increase voter engagement among historically underrepresented voters by supplying field coordination for voter education and voter mobilization efforts. Among other activities, PROGEORGIA offers voter registration opportunities at naturalization ceremonies and facilitates voter registration drives by its member organizations. Upon information and belief, minority applicants who attempted to register to vote through registration drives organized by PROGEORGIA have had their applications put into "pending" status due to the "exact match" registration protocol. Georgia's "exact match" registration protocol is causing and will continue to cause harm to PROGEORGIA's mission of encouraging minority voter registration and participation. The protocol will cause PROGEORGIA to divert a portion of its financial and other organizational resources to educating voters about

the protocol and assisting potential voters whose applications have been cancelled or put into pending status. As a result, PROGEORGIA is limited, and will continue to be limited, to devoting fewer resources to its other organizational activities, including voter registration efforts. Unless the enforcement of HB 268 is enjoined, the "exact match" registration protocol will impair PROGEORGIA's voter registration projects by causing the organization to divert personnel and time to assisting its member organizations whose efforts to register voters and civic engagement programs are hindered and made more difficult because of the "exact match" protocol.

18. Plaintiff GEORGIA STATE CONFERENCE OF THE NAACP ("Georgia NAACP") is a non-partisan, interracial, nonprofit membership organization that was founded in 1941. Its mission is to eliminate racial discrimination through democratic processes and ensure the equal political, educational, social, and economic rights of all persons, in particular African Americans. It is headquartered in Atlanta and currently has approximately 10,000 members. The Georgia NAACP works to protect voting rights through litigation, advocacy, legislation, communication, and outreach, including work to promote voter registration, voter education, get out the vote efforts, election protection, and census participation. The Georgia NAACP regularly conducts voter registration

drives and has submitted many voter registration applications to elections officials throughout Georgia. Upon information and belief, voter registration applications filled out by voting-eligible Georgia NAACP members and other voting-eligible Georgians who submit registration forms through the Georgia NAACP's voter registration drives have, and will be, put into pending status and risk having their applications cancelled as a result of the "exact match" registration protocol mandated by HB 268. The HB 268 "exact match" protocol has caused, and will cause, the Georgia NAACP to divert a portion of its financial and other organizational resources to educating voters about the protocol and assisting applicants whose applications have been cancelled or put into pending status as a result of the "exact match" protocol. As a result, the Georgia NAACP has, and will continue to have, fewer resources to devote to its civic engagement and other programs, including voter registration drives and GOTV efforts, unless the "exact match" registration protocol of HB 268 is enjoined.

19. Plaintiff, the NEW GEORGIA PROJECT, INC. ("NGP"), is a Georgia 501(c)(3) not-for-profit corporation. NGP's mission is to civically engage Georgians in underrepresented communities. NGP regularly conducts voter registration drives throughout Georgia. Voter registration drives are a substantial component of its civic engagement mission. On information and belief, eligible

minority applicants who attempted to register to vote through registration drives conducted by NGP have had their applications placed into pending status due to the voter registration verification protocol mandated by HB 268. Georgia's exact match protocol is causing and will continue to cause harm to NGP's mission of encouraging voter registration and participation among minority applicants and underserved communities. The protocol will cause NGP to divert a portion of its financial and other organizational resources to educating voters about the protocol and assisting potential voters whose applications have been cancelled or put into pending status. As a result, NGP is limited, and will continue to be limited, to devoting fewer resources to its other organizational activities, including voter registration drives, unless the "exact match" protocol mandated by HB 268 is enjoined.

20. Plaintiff GEORGIA ASSOCIATION OF LATINO ELECTED OFFICIALS, INC. ("GALEO") is a non-partisan and nonprofit organization founded in Georgia under § 501(c)(6) of the Internal Revenue Code. It was established to increase representation of Latino elected and appointed officials, to proactively address issues and needs facing the Latino community, and to engage Georgia's Latino community in the democratic and political process. It does so through (1) television, radio and print media Spanish public service

announcements; (2) widespread distribution of literature regarding voter registration and other voting-related issues (in both English and Spanish); (3) administration of a voter information hotline and website (in both English and Spanish); (4) provision of electronic access to legislative voting records; and (5) voter mobilization efforts that include voter registration drives, "get out to vote" phone calls and transporting voters to the polls. Upon information and belief, voter registration applications filled out by eligible GALEO members and persons whom GALEO assists in registering to vote will be put into pending status and risk being cancelled as a result of the voter registration verification protocol mandated by HB 268. Additionally, upon information and belief, minority applicants who attempted to register to vote through registration drives conducted by GALEO have had their applications put into "pending" status. Georgia's "exact match" protocol is causing and will continue to cause GALEO to divert a portion of its financial and other organizational resources to educating voters about the protocol and assisting potential voters whose applications have been cancelled or put into pending status. As a result, GALEO has, and will be, forced to divert resources away from other organizational activities, including voter registration drives and GOTV efforts because of the "exact match" protocol mandated by HB 268 unless the Court grants the remedial relief herein requested.

21. Plaintiff THE JOSEPH AND EVELYN LOWERY INSTITUTE FOR JUSTICE AND HUMAN RIGHTS ("Lowery Institute") is a non-partisan, nonprofit organization that was founded in 2001 and is located in Atlanta, Georgia. The vision of the Lowery Institute is to ensure that everyone has a political voice and has the tools to be change agents in their community. The Institute serves its mission by focusing on civil and human rights, social justice, education, and community health. As part of its civic engagement efforts, the Lowery Institute conducts voter registration efforts in Georgia focused on college students and younger voters of color. Upon information and belief, persons of color who attempt to register through the Lowery Institute's voter registration drives have had their applications put into "pending" status due to the "exact match" registration protocol. Georgia's "exact match" registration protocol is causing and will cause harm to the Lowery Institute's mission to promote the rights of college students and younger voters of color. The protocol will cause the Lowery Institute to divert a portion of its financial and other organizational resources to educating voters about the protocol and its impact on the registration process. As a result, the Lowery Institute has, and will continue to have, fewer resources to devote to its other organizational activities, including its civic engagements efforts, unless the "exact match" registration protocol of HB 268 is enjoined.

22. Plaintiff COMMON CAUSE is a nonprofit corporation organized and existing under the laws of the District of Columbia. It is one of the nation's leading grassroots democracy-focused organizations and has over 1.2 million members nationwide and chapters in 35 states, including 18,785 members and supporters in Georgia. Since its founding in 1970, Common Cause has been dedicated to the promotion and protection of the democratic process, including the right of all citizens to vote in fair, open, and honest elections. Common Cause, at the national level and in Georgia, conducts significant nonpartisan voter-protection, advocacy, education, and outreach activities to endure that voters are registered and have their ballots counted as cast. From Georgia, over the last five years, its efforts have increased in the areas of election protection, voter education, and grassroots mobilization around voting rights in the state. Common Cause works on election administration issues with its coalition, much of which is represented by the other plaintiffs in the instant lawsuit. As of 2017, Common Cause, alongside its partners at New Georgia Project, Asian Americans Advancing Justice, ACLU of Georgia, and Spread the Vote, created a program to help recruit volunteers to monitor local board of elections meetings through the Peanut Gallery program. Common Cause also works with these partners in election protection efforts during both midterm and presidential elections. Through its volunteer recruitment for poll monitors, Common

Cause Georgia is on track to help monitor an average of five polling locations in 22 counties for a total of 110 polling places. Common Cause Georgia additionally engages in online petition drives, soliciting signatures from its members and supporters urging government officials to take certain actions. For example, it urged the Randolph County Board of Elections to vote against polling place closures (the petition drew 13,840 signatures). And just last week, Common Cause informed its membership that the Georgia Secretary of State was holding up roughly 53,000 voter registration applications due to the "exact match" law; as of October 14, 2018, 53,476 members and supporters signed a petition asking the Secretary of State to cease this unconstitutional practice. Indeed, the practice of using an "exact match" system impacts Common Cause's work, as its election protection program focuses on providing resources that enable voters to participate and be educated on the questions they should ask if their registration status is pending on the voter rolls. Common Cause now must double its efforts to counter this latest challenge where tens of thousands of Georgians could be impacted. As a result, Common Cause has, and will continue to have, fewer resources to devote to its other organizational activities unless the "exact match" registration protocol of HB 268 is enjoined.

23. Defendant BRIAN KEMP is being sued in his official capacity as Georgia's Secretary of State. Secretary Kemp's responsibilities include maintaining the state's official list of registered voters and preparing and furnishing information for citizens pertaining to voter registration and voting. Ga. Code Ann. §§ 21-2- 50(a), 21-2-211. Defendant Kemp also serves as the Chairperson of Georgia's State Election Board, which promulgates and enforces rules and regulations to obtain uniformity in the practices and proceedings of election officials and is responsible for promoting the fair, legal, and orderly conduct of all primaries and elections in the state. *Id*. §§ 21-2-30(d), 21-2-31, 21-2-33.1. Finally, Defendant Kemp is the chief election official responsible for the coordination of Georgia's list maintenance responsibilities under the National Voter Registration Act of 1993 (NVRA) and the Help America Vote Act of 2002 (HAVA). *Id*. §§ 21-2-210, 21-2-50.2.

FACTS AND BACKGROUND

Voter Registration in Georgia under State and Federal Law

24. A voter must be registered as an elector in Georgia to cast a ballot that counts in any election held in the state. Ga. Code Ann. § 21-2-216(a)(1).

25. Pursuant to HAVA, the State of Georgia must maintain a centralized, computerized, statewide voter registration database as the single system for storing

and managing Georgia's official list of registered voters. 52 U.S.C. § 21083(a)(1)(A). The registration database must be coordinated with other agency databases within the state. *Id*; *see also* Ga. Code Ann. § 21-2-216(g)(7).

26. This allows matching across databases, where possible, to alleviate other voter identification requirements under HAVA, as described below.

27. HAVA imposes certain identification requirements for first-time voters. 52 U.S.C. § 21083(a)(5). Voter registration applicants who have been issued a current and valid driver's license must provide their driver's license number on the application. 52 U.S.C. § 21083(a)(5)(A). Applicants who lack a current driver's license must provide the last four digits of their social security number. *Id.* If an applicant does not have either, the state must assign the applicant a unique identifier for voter registration purposes. *Id*.

28. HAVA requires that Georgia's chief election official enter into an agreement with the Georgia Department of Driver Services (DDS) "to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration." 52 U.S.C. § 21083(a)(5)(B). Further, DDS

must enter into an agreement with the Commissioner of Social Security for the same purpose. *Id*.

29. But the HAVA matching protocol is just one potential voter identification method under HAVA. HAVA does not mandate that voter registration applications be put into "pending" status or canceled if the information contained on the application fails to exactly match fields in the DDS or SSA databases. To the contrary, under the NVRA and HAVA, all eligible applicants that submit complete, accurate registration forms must be registered to vote in federal elections.

30. All applicants who register by mail and have not previously voted in a federal election must provide proof of identification either with their registration application or when voting for the first time. 52 U.S.C. § 21083(b). Satisfactory proof of identification (HAVA ID) includes a match with DDS or SSA records but also includes a copy of a current utility bill, bank statement, government check, paycheck, other government document showing the name and address of the voter, or any current and valid photo identification. 52 U.S.C. § 21083(b)(2)(A).

31. First-time voters can submit a copy of their HAVA ID along with their ballot if they choose to vote by mail. 52 U.S.C. § 21083(b)(2)(A)(ii). If they choose to vote in person, first-time voters can present their current and valid photo

identification or a copy of other HAVA ID to the election official or poll worker. 52 U.S.C. § 21083(b)(2)(A)(i).

32. Thus, HAVA does not mandate that states cancel voter registration applications or put applications in pending status when they fail to exactly match the applicant's records on file with DDS or SSA. Rather, the SSA and DDS matching is just one of several options for identification for first-time voters. If there is no match, the NVRA still requires eligible voters to be registered, and HAVA only requires that applicants show a form of HAVA ID when they vote for the first time if they registered by mail.

HB 268's Exact Match Registration Protocol

33. HB 268's "exact match" registration protocol turns HAVA matching on its head by making a proper "match" a requirement that can lead to the cancellation or rejection of registration rather than one of several options for proving identity when voting for the first time. The protocol is unlawful because it imposes unnecessary and discriminatory burdens on the voter registration process.

34. HB 268 states that "a voter registration application may be accepted as valid only after the board of registrars has verified the authenticity of the Georgia driver's license number, the identification card number of an identification card

issued pursuant to Article 5 of Chapter 5 of Title 40, or the last four digits of the social security number provided by the applicant."

35. It further provides that the authenticity of the Georgia driver's license number, state identification card number of last four digits of the social security number provided by the applicant may be accomplished by two methods:

> (1) The board of registrars matching the Georgia driver's license number, identification card number of an identification card issued pursuant to Article 5 of Chapter 5 of Title 40, or the last four digits of the social security number provided by the applicant with the applicant's record on file with the Department of Driver Services or the federal Social Security Administration; or
>
> (2) The applicant providing sufficient evidence to the board of registrars to verify the applicant's identity, which sufficient evidence includes, but is not limited to, providing one of the forms of identification listed in subsection (a) of Code Section 21-2-417."

36. If the application is not "verified" by one of these methods within 26 months, the voter's registration application must be rejected, even if it is facially complete and accurate.

37. The "exact match" registration protocol in Georgia predates HB 268. It was first implemented in approximately 2009 via an administrative policy of Defendant Kemp.

38. The "exact match" registration protocol under HB 268 functions in a very similar manner to Defendant Kemp's prior failed "exact match" administrative policy. Upon information and belief, HB 268 is enforced as follows.

39. First, the automated system matches voter registration data to the DDS or SSA databases. When matching registration data against the DDS database, it compares the following fields: first name, last name, date of birth, driver's license or state ID number, and citizenship status. When matching registration data against the SSA database, it compares the following fields: first name, last name, date of birth, and last four digits of the social security number.

40. In the common event that the data in one of the fields of the DDS or SSA databases does not match *exactly* with the information provided on the voter registration application, the ENET system sends a report to the local registrar. The report identifies whether the information in the application failed to match with information in the DDS or the SSA database.

41. If a "no-match" applicant provided a driver's license or state ID number on the voter registration application, and information in one of the data fields fails to match the information in the DDS database, the report produced by ENET identifies the exact fields that failed to match.

42. If a "no-match" applicant provided the last four digits of a social security number on the voter registration application, and information in one of the data fields failed to match the information in the SSA database, the report produced by ENET does not provide any details to the local registrar about which fields failed to match. The report to the local registrar only returns a code "Z," which indicates that the information from any or all of the data fields did not match to one or more records in the SSA database.

43. County election officials from all 159 Georgia counties enter data into ENET. Unsurprisingly, clerical errors often occur at the county level that lead to "no-match" results and voters being placed in "pending" status and at risk of having their applications cancelled after 26 months. HB 268 does not require county registrars to investigate the reasons for a verification failure and, where appropriate, resolve the issue without placing the burden on the applicants.

44. Any data entry errors that occur when applicants' personal information is entered into the DDS or SSA databases will similarly lead to false "no-match" errors.

45. The SSA database is particularly prone to errors. In 2009, the Social Security Administration Office of the Inspector General produced a report assessing the accuracy of its "Help America Vote Verification program" (HAVV), the

matching program upon which HB 268 relies. A copy of this report is attached and incorporated herein by reference as Exhibit 1.

46. The Inspector General report concluded that "the HAVV program may indicate a no-match when a match does in fact exist in SSA records" due to "the limitations of the matching criteria" and that "the high no-match response rate and the inconsistent verification responses could hinder the States' ability to determine whether applicants should be allowed to vote." *Id*.

47. The report also indicated that the HAVV program's "no-match response rate was 31 percent, while the no-match response rate for other verification programs used by States and employers ranged from 6 to 15 percent." *Id*.

48. Because of the flaws that cause erroneous no match results from "exact match" voter registration protocols like the one required by HB 268 and the consequent burden on applicants, a number of states have declined to enact or enforce existing "exact match" laws. For example, Virginia Governor, Terry McAuliffe vetoed Virginia Senate Bill 1581 during the Commonwealth's 2017 legislative session. Senate Bill 1581 would have imposed an "exact match" voter registration requirement on Virginians when they registered to vote. The Virginia Senate sustained the veto.[1] Wisconsin also scrapped plans to adopt an "exact match"

[1] http://lis.virginia.gov/cgi-bin/legp604.exe?171+sum+SB1581

voter registration protocol after four of the six judges charged with overseeing the state's elections failed the exact match protocol in a test run.[2]

49. Washington State settled a legal challenge to its "exact match" voter registration protocol by agreeing to provisionally register applicants to vote who failed the state's "exact match" voter registration process.[3] Once provisionally registered, the voters are placed on the state's voter list but are required to show ID when they vote in order to have their ballots count.[4]

50. As a result of a legal challenge to its "exact match" law,[5] Florida also made changes to make the process less burdensome on applicants. For example, Florida's Bureau of Voter Services (BVS) must review every application that fails the matching process to determine whether the matching failure can be explained by common errors that are readily correctable by the BVS without burdening the

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[2] Adam Skaggs, Brennan Center for Justice, *"No Match" Dropped after 4 of 6 Judges Fail:* https://www.brennancenter.org/blog/no-match-dropped-after-4-6-judges-fail.

[3] *Washington Ass'n of Churches v. Reed*, 492 F. Supp. 2d 1264 (W.D. Wash. 2 006); see also id., No. CV06-0726RSM, slip op. at 3 (W.D. Wash. March 16, 2007), available at: http://moritzlaw.osu.edu/electionlaw/litigation/documents/STIPULATEDFINALORDERANDJUDGMENTbyJudgeRicardoSMartinez.pdf

[4] *Id.*

[5] *Florida State Conference of the NAACP v. Browning*, 569 F. Supp. 2d 1237 (N.D. Fla. 2008), *rev'd in part and remanded*, 522 F.3d 1153 (11th Cir. 2008).

applicant or county supervisors of elections.[6] If the BVS cannot resolve the matching issue, BVS forwards the matter to the county supervisor of elections who then issues a letter to the applicant explaining that he or she will need to show ID in order to complete the registration process and vote.[7] Unlike HB 268, Florida law does not mandate the cancellation of applications that fail the matching protocol after a specified period of time.[8]

51. Unlike HB 268, New York law requires that voter registration applicants be given at least two written notices when the Board of Elections is unable to verify the identity of a voter registration applicant by matching their application data against motor vehicle, Social Security or other lawful available source. The notices inform the applicants that if they fail to supply information to correct inaccuracies in the application or provide additional information to the Board of Elections before they vote, they may be requested to produce identification at the polls.[9] Unlike HB 268, New York's law does not impose any deadline by which applicants must resolve the matching issue to avoid cancellation of their voter registration application.[10]

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[6] Fla. Administrative Code r.1S-2.039(5)(a)(1)-(5).
[7] *Id.*
[8] F.S.A. § 97.053(6).
[9] McKinney's N.Y. Election Law § 5-210(8)-(9).
[10] *Id.*

52. The primary difference between Defendant Kemp's prior failed policy and HB 268 is the amount of time voters are given to "cure" the mismatch. Under Defendant Kemp's prior administrative process, the protocol required that election officials cancel a failure to verify application after 40 days if the applicant did not "cure" the matching issue prior to that time. The result was disenfranchisement of tens of thousands of applicants.

53. When Defendant Kemp settled the prior litigation challenging his administrative "exact match" voter registration process, Defendant Kemp agreed that no outside deadline would be imposed upon applicants to "cure" a matching issue, thus implicitly recognizing that such a deadline was not required by HAVA or existing Georgia law.

54. Under HB 268, the "exact match" registration protocol is nearly identical in its flagging of tens of thousands of eligible applicants, the majority of whom are minority applicants, for potential cancellation. The primary difference is that HB 268 allows applicants a longer time period—26 months—to "cure" the "no-match." But eligible applicants who turn in complete and accurate registration forms should not be at risk of cancellation regardless of whether they are given 40 days or 26 months to "cure" an error that is often not of their own making.

55. Once a voter registration application has been cancelled as a result of the "exact match" protocol, the applicant must register anew prior to the fifth Monday before an election in order to vote in that election. If the applicant's voter registration application is cancelled by the "exact match" protocol close in time to the voter registration deadline, the applicant may not be able to submit another timely application prior to the election and will be disenfranchised.

56. An additional risk is posed to voters in "pending" status because HB 268 does not mandate that they be informed of when the cancellation period begins or ends. Consequently, Defendant Kemp's office has drafted notice letters that are issued to applicants in "pending" status that fail to inform applicants when the cancellation period begins or ends. This is especially problematic because with Defendant Kemp's implementation of HB 268, the cancellation period begins running when a county registrar prints the notice letter to the applicant from the registrar's computer system - a date which is not known to the applicant. Thus, applicants run the risk of having their applications cancelled because the notice letters fail to provide them with any notice of when they must act to avoid having their applications cancelled. Since no subsequent warnings or notices are given to the applicants in pending status, there is a very real danger that the applicants will

have no idea what the actual deadline is by which they need to "cure" the exact match failure before the application is canceled.

57. Finally, there is an immediate risk that voters casting absentee ballots will be disenfranchised under the regime created by H.B. 268. Previously, pursuant to Georgia law and the Help America Vote Act, voters could cast an absentee ballot if they submit a copy of a current utility bill, bank statement, government check, paycheck, or other government document showing the name and address of the voter. 52 U.S.C.A. § 21083(b)(2)(A)(ii); O.C.G.A. § 21-2-417(c).

58. H.B. 268 prevents first-time absentee voters who are inaccurately flagged as a non-match from presenting the non-photographic forms of identification that were permitted by HAVA. Under H.B. 268, applicants prove their identity to local election officials by "providing one of the forms of identification listed in subsection (a) of Code Section 21-2-417," not subsection (c). O.C.G.A. § 21-2-220.1(c)(2). Subsection (a) refers solely to six forms of photographic identification. O.C.G.A. § 21-2-417(c).

59. Voters who submit copies of non-photographic forms of identification with their absentee ballots are at imminent risk being disenfranchised in the November 2018 election and beyond due to H.B. 268.

Defendant Kemp's Failure to Provide Safeguards for Naturalized Citizens Who Enclose Proof of Citizenship with Registration Records

60. Defendant Kemp's unyielding application of HB 268 has been especially pernicious in the context of naturalized citizens because of the failure to put into place proper safeguards for naturalized citizens who submit proof of their citizenship with their initial application.

61. Many naturalized citizens receive assistance when registering to vote at naturalization ceremonies in Georgia and regularly include copies of their naturalization certificates or other proof of citizenship when they submit voter registration applications.

62. For newly naturalized citizens, the HB 268 matching protocol can result in a flag for non-citizenship. This can occur if an individual was not a citizen at the time he or she obtained a driver's license because DDS records do not automatically update citizenship status after naturalization. Many naturalized citizens are thus placed into "pending" status by county registrars for purportedly failing to verify for citizenship and are subject to having their applications cancelled after 26 months.

63. These citizens receive notices informing them that they must prove their citizenship despite enclosing precisely that proof with their original registration applications.

64. Upon information and belief, Secretary Kemp has no procedures in place to require election officials to check applicants' submissions for proof of identity or citizenship before placing applicants in "pending" status and demanding that applicants re-submit that same documentation.

65. For naturalized citizens, this failure is particularly onerous because a citizenship status issue will not always be resolvable at the polls. Therefore, eligible naturalized citizens that submit valid and accurate voter registrations, *including* proof of citizenship, are at risk of having their right to vote denied on election day.

66. Voter registration applicants who are inaccurately flagged as a non-match based on citizenship are differently situated than applicants who are in pending status due to a non-match based on another field, such as name or driver's license number. Applicants who are in pending status due to a non-match based on another field should be permitted to cast a regular ballot if they provide proof of identity to a poll worker, whereas voters in a pending status due to a non-match based on citizenship must provide proof of identity to a "deputy registrar" – and most poll workers in Georgia are not deputy registrars. These applicants might therefore be required to take a trip to the county board of elections on Election Day to find such an individual. Moreover, upon information and belief, such applicants

who seek to vote by mail because of temporary absence from the state have been told they must provide their proof of citizenship in person—something that is physically impossible given their absence. The primary risk to applicants in pending status due to a non-match based on fields other than citizenship is that they will not vote in an election cycle and be completely purged from the rolls once the 26-month window passes, oftentimes without their knowledge.

The Exact Match Registration Protocol Disproportionately Impacts Minority Voters

67. The General Assembly enacted HB 268 with ample notice that it would sharply and disproportionately impact the ability of African-American, Latino, and Asian-American applicants to complete the voter registration process.

68. Defendant Kemp's administrative "exact match" protocol resulted in the cancellation of tens of thousands of voter registration applications between 2010 and 2016. Between July 2013 and July 2015 alone, approximately 34,874 voter registration applications were cancelled as a result of a "no-match" against DDS and SSA records. Approximately 76.3% of the canceled applications were submitted by applicants who identified as African-American, Latino or Asian-American applicants while only 13.6% were submitted by applicants identifying as White.

69. Since the enactment of HB 268, the voter registration verification process and its implementation by the Georgia Secretary of State's Office have

continued to produce a high rate of erroneous "no-matches" that disproportionately impacts African-American, Latino and Asian-American applicants.

70. A preliminary review of data produced by the Georgia Secretary of State's Office on July 4, 2018 indicates that approximately 51,111 voter registration applicants are in "pending" status for reasons related to the failure to verify against DDS or SSA identity or citizenship data. Approximately 80.15% of those pending applications were submitted by African-American, Latino and Asian-American applicants. Only 9.83% of the "pending" for failure to verify applications were submitted by applicants identifying as White.

71. Thus, the voter registration verification process mandated by HB 268 is continuing to disproportionately and negatively impact the ability of minority applicants to complete the voter registration process so that they can exercise their right to vote.

HB 268's Disparate Burdens on Minority Applicants Are Linked to Social and Historical Conditions of Discrimination

72. Georgia's voter registration verification process under HB 268 works in concert with historical, socioeconomic, and other electoral conditions in Georgia to deny African-American, Latino, and Asian-American voter registration

applicants an equal opportunity to register to vote and participate in the political process, in violation of Section 2 of the Voting Rights Act.

73. Persistent and significant disparities in socioeconomic status and voter participation among minority communities in Georgia are the result of Georgia's unfortunate history of pervasive racial discrimination. Because of these disparate social and economic conditions, including poverty, unemployment, lower educational attainment, and lack of access to transportation, African-American, Latino and Asian-American applicants are disproportionately burdened by the Georgia exact match protocol.

74. According to the 2016 American Community Survey five-year estimate ("ACS"), there are significant racial disparities in income levels. The median income in Black households in Georgia is $37,887; in Latino households, $41,157; and in White households, $59,595. U.S. Census Bureau, 2012-16 American Community Survey 5-Year Estimates, Tables B19013B, B19013H, and B19013I.

75. The 2016 ACS also indicates that 26 percent of Georgia's Black residents live in poverty, while the poverty rate is 27 percent among Latino residents, 13 percent among Asian-American residents, and 12 percent among

White residents. U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates, Tables B17001B, B17001D, B17001H, B17001I.

76. There are racial disparities in language proficiency rates in Georgia as well. While 38.1 percent of Latino residents and 36 percent of Asian residents speak English less than "very well," less than 1 percent of non-Hispanic White residents are estimated to speak English less than "very well." U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates, Tables B16005D, B16005H, B16005I.

77. Racial disparities also persist in education levels. For example, 2012-2016 ACS data indicate that 15.1 percent of Black residents, 40 percent of Latino residents and 14.1 percent of non-Hispanic White residents in Georgia did not graduate from high school. And 22.1 percent of Black residents, 14.2 percent of Latino residents, and 31.5 percent of non-Hispanic White residents graduated from college. U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates, Tables C15002B, C15002H, C15002I.

78. There is also a racial disparity in vehicle ownership rates. The percentage of households without a vehicle is 13.3 percent in Georgia among Black households, 8.7 percent among Latino households, and 4.5 percent among Asian-American households. Only 3.5 percent of White households are without a

vehicle. U.S. Census Bureau, 2006-2010 American Community Survey 5-Year Estimates, Table DP04.

79. These socioeconomic disparities, caused by the continuing effects of historical and modern racial discrimination, are directly linked to the disparate burdens HB 268 imposes on minority applicants.

80. First, a history of discrimination and resulting socioeconomic disparities in Georgia has led to a disparity in driver's license and Georgia ID ownership rates between White and Black voters. In 2006, the Secretary of State of Georgia issued a report revealing that 676,246 registered Georgia voters either had no record of a Georgia driver's license or ID issued, or had their licenses revoked, suspended, canceled, denied, or surrendered. *Common Cause/Ga. v. Billups*, 439 F.Supp.2d 1294, 1311 (N.D. Ga. 2006). While 27.8 percent of the voters on the registration list were Black, 35.6 percent of voters who lacked a driver's license or Georgia ID card were Black. *Id*.

81. Because Black voter registration applicants are less likely than White applicants to own a Georgia driver's license or state ID card, they are more likely to have to provide the last four digits of their social security number for verification and, as noted above, applicants using the last four digits of their Social Security number to register to vote are submitted for matching through the SSA's

HAVV database which has been demonstrated to have a high no-match rate, produces inconsistent results and can cause eligible applicants to be erroneously denied the right to vote.

82. The Georgia exact match protocol also turns the act of filling out a voter registration application into an unduly challenging exercise. The protocol imposes an additional requirement on applicants who make a minor mistake by requiring them to contact election officials and provide updated information to complete their application. These insubstantial errors will lead to a mismatch under the current protocol, requiring voters to "update" their information without clear guidance or identification of the initial error.

83. Eligible voter registration applicants with lower levels of educational attainment, a lower level of proficiency in English, or less familiarity with bureaucratic procedures are more likely than other applicants to make minor, insubstantial mistakes when completing their voter registration applications or driver's license or other /Georgia ID applications than other applicants.

84. These same factors also make it more difficult for these voters to navigate the bureaucratic process after they have been placed into pending status and are sent a notification letter.

85. Notification letters, other than those sent in Gwinnett County—which is a covered jurisdiction for Spanish language access under Section 203 of the Voting Rights Act—are provided only in English. Applicants who are limited English proficient have more difficulty understanding the notification letter. They also face additional challenges when communicating with election officials and completing other tasks required to remedy the problem with their registration status.

86. In addition, minority applicants are more likely than White applicants to work multiple jobs, have inflexible schedules, maintain irregular work hours, lack access to transportation, or suffer from financial hardship or economic displacement. It is more difficult for these applicants to follow up with election officials in a timely manner than those who have access to transportation, can afford to take time off from work, and have a flexible schedule.

Racial Discrimination in Voting in Georgia

87. There is a long—and well-documented—history of voting-related discrimination against Blacks in Georgia. *See Georgia State Conference of the NAACP v. Fayette County Bd. of Comm'rs,* 950 F.Supp.2d 1294, 1314-16 (N.D. Ga. 2013); *see also Johnson v. Miller*, 864 F. Supp. 1354, 1379-80 (S.D. Ga. 1994), *aff'd and remanded*, 515 U.S. 900 (1995) (noting that "we have given

formal judicial notice of the State's past discrimination in voting, and have acknowledged it in the recent cases").

88. And discrimination in voting is not a relic of Georgia's past. Modern examples of discrimination in voting in Georgia are also well-documented, including in the congressional record supporting the 2006 reauthorization of the Voting Rights Act.

89. For example, in 2005, Georgia adopted a strict photo identification requirement for voting. The 2005 photo ID law required individuals lacking photo ID to pay $20 for a photo ID card or to sign an affidavit declaring indigency. Only after a federal court enjoined its original photo ID bill did the Georgia Legislature revise its photo ID law in 2006 to allow for more equal access to the necessary photo ID.

90. The Georgia Secretary of State's office also has a history of hostility toward third-party voter registration activity.

91. Organizations that serve communities of color are responsible for a substantial portion of the third-party voter registration activity in Georgia.

92. In 2005, a charitable and educational organization affiliated with the predominantly African-American Alpha Phi Alpha fraternity and a voter were forced to file suit against former Georgia Secretary of State Cathy Cox because her

office refused to accept 64 completed voter registration applications submitted by the organization. The organization prevailed in its lawsuit. *Charles H. Wesley Education Foundation v. Cox*, 408 F.3d 1349 (11th Cir. 2005).

93. In 2010, the Georgia Secretary of State's office aggressively pursued an investigation of a dozen Black voting organizers in Brooks County that led to a criminal prosecution. The investigation followed the election of the county's first-ever majority-Black school board, which was catalyzed by the get-out-the-vote activists. None of the organizers were convicted even though they were initially charged with more than 100 election law violations and more than 1,000 combined years in prison. The Georgia Attorney General subsequently issued an opinion saying that the organizers' alleged crime—mailing absentee ballots by a third party—is permissible under state law.

94. In 2016, the Georgia Senate passed Senate Resolution 675 ("SR 675"), which sought to amend the Georgia Constitution to make English the state's official language and prohibit the use of any language other than English in any Georgia state or local government document, proceeding, or publication. SR 675 would have prohibited the dissemination of ballots and other election-related documents in any language other than English in violation of federal law. After more than 200 ethnic business groups, churches, and other organizations

condemned or lobbied against SR 675, the House did not pass SR 675 prior to the end of the legislative session.

95. The origins of the "exact match" registration protocol are part and parcel of this history of modern discrimination in voting.

96. The Georgia Secretary of State's office began implementing a predecessor version of the current "exact match" protocol shortly before the 2008 presidential election without first obtaining preclearance. The U.S. District Court for the Northern District of Georgia held that doing so violated Section 5 of the Voting Rights Act. *Morales v. Handel*, 2008 WL 9401054, C.A. No. 1:08-CV-3172 (N.D. Ga. 2008).

97. After the Secretary of State finally did submit the protocol for preclearance, the U.S. Department of Justice ("DOJ") objected to Georgia's submission of the 2008 "exact match" protocol. The DOJ concluded that the initial version of the program relied on an error-laden and "possibly improper" usage of the Social Security Administration's HAVV system and outdated Georgia Department of Driver Services data in an attempt to find non-citizens. Letter from Loretta King, Acting Asst't Att'y Gen., Dep't of Justice, to Ga. Att'y Gen. Thurbert E. Baker, May 29, 2009, *available at* http://www.justice.gov/crt/voting-determination-letters-georgia. It caused thousands of legitimately naturalized

citizens (as well as many natural-born citizens) to be incorrectly flagged as ineligible non-citizens.

98. The letter concluded that the "flawed system frequently subjects a disproportionate number of African-American, Asian, and/or Hispanic voters to additional and, more importantly, erroneous burdens on the right to register to vote." *Id*. at 4.

99. While a later iteration of the "exact match" protocol was precleared in 2010, it is not apparent that the Secretary of State ever followed the safeguards promised in the preclearance submission that led to its approval.

100. Moreover, since implementing the "exact match" protocol in 2010, the Georgia Secretary of State's office was made aware repeatedly by the Department of Justice and concerned individuals and organizations that its registration protocol, in practice, disproportionately burdens eligible minority applicants.

101. Nevertheless, HB 268 was signed into law, codifying an error-prone "exact match" process that has predictably continued to cause tens of thousands of prospective Georgia applicants—the vast majority of whom identify as African-American, Latino and Asian-American—to be placed in "pending" status limbo with a risk of their application being cancelled after 26 months. Neither Secretary

Kemp, nor the Georgia Legislature, appear concerned about the disproportionate impact this "exact match" protocol is having on the ability of African-American, Latino and Asian-American applicants to complete the voter registration process. While other states have abandoned or reformed similar registration verification processes to limit the burden on their citizens, Defendant Kemp has failed to take any steps to ameliorate HB 268's disproportionate burden on minority applicants.

Other Factors Relevant to the Totality of Circumstances in Georgia

102. There is a majority vote requirement in all elections in Georgia, which makes it more difficult for Black, Latino, and Asian-American voters to elect candidates of choice because they comprise a minority of the electorate.

103. Voting patterns in Georgia are racially polarized. Courts have repeatedly held that racially polarized voting exists at the statewide, county, and local levels. *See*, *e.g.*, *Georgia v. Ashcroft*, 195 F.Supp.2d 25, 88 (D.D.C. 2002), *rev'd on other grounds*, 539 U.S. 461 (2003); *Georgia State Conference of the NAACP v. Fayette County Bd. of Comm'rs,* 950 F.Supp.2d 1294, 1314-16 (N.D. Ga. 2013), *vacated and remanded on other grounds*, 775 F.3d 1336 (11th Cir. 2015).

104. Blacks, Latinos, and Asian-Americans have not been elected to public office in Georgia at a rate that is commensurate with their share of the population.

All of the current statewide elected officials are White, and non-White Georgians are underrepresented in the Georgia House of Representatives and Senate, as well as in the state's congressional delegation.

105. Voter fraud is extremely rare in Georgia.

106. The Georgia "exact match" registration protocol is tenuously, if at all, related to the goal of preventing voter fraud. It adds nothing to the identification procedures of HAVA but endangers the valid registration of tens of thousands of eligible Georgia voters.

COUNT ONE
VIOLATION OF SECTION 2 OF THE VOTING RIGHTS ACT OF 1965

107. Plaintiffs repeat and re-allege each and every allegation contained in Paragraphs 1 to 104 above, as if fully set forth herein.

108. Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, protects Plaintiffs from denial or abridgment of the right to vote on account of race, color, or membership in a language minority group. Section 2 provides, in relevant part:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United State to vote on account of race or color, or [membership in a language minority group].

> (b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

109. HB 268's "exact match" voter registration protocol constitutes a qualification or prerequisite to voting within the meaning of Section 2 of the Voting Rights Act and results in the denial or abridgement of the right to vote of Georgia citizens on account of their race or color in violation of Section 2.

110. It imposes a substantial, unwarranted, and disproportionate burden on Black, Latino, and Asian-American voters and denies them equal opportunity to register and to vote in Georgia elections.

111. The Georgia voter registration verification protocol interacts with historical, socioeconomic, and other electoral conditions in Georgia to prevent Black, Latino, and Asian-American applicants from having an equal opportunity to register and vote. *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).

112. In this case, the following circumstances are present: (1) a history of discrimination related to voting; (2) racially polarized voting patterns; (3) members of the impacted minority group bear the effects of discrimination in such areas as

education, employment, and health; (4) members of the impacted minority group are underrepresented among Georgia's elected officials; (5) a lack of responsiveness to the needs of the impacted minority community; and (6) an arbitrary policy underlying the HB 268 "exact match" protocol that is tenuously related to its stated purpose, which is to assure the identity and eligibility of voters and prevent fraudulent or erroneous registrations.

113. As a result of the enactment of HB 268 and under the totality of the circumstances, the political process in Georgia is not equally open to participation by Black, Latino, or Asian-American citizens insofar as they have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

114. Plaintiffs will continue to suffer the violation of their rights as alleged in the Complaint absent relief granted by the Court.

COUNT TWO
42 U.S.C. § 1983
(VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS)

115. Plaintiffs repeat and re-allege each and every allegation contained in Paragraphs 1 to 112 above, as if fully set forth herein.

116. The First and Fourteenth Amendments of the United States Constitution protect the right to vote as a fundamental right. The First Amendment's guarantees of freedom of speech and association protect the right to vote and to participate in the political process. The right to vote is a fundamental constitutional right also protected by both the due process and equal protection clauses of the Fourteenth Amendment. *See*, *e.g.*, *Bush v. Gore*, 531 U.S. 98, 104-05 (2000); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966) (Virginia's poll tax violates the Equal Protection Clause); *Anderson v. Celebrezze*, 460 U.S. 780, 786-87 (1983) (the right to vote is incorporated into the Due Process Clause).

117. By preventing applicants from fully registering to vote until certain application information exactly matches with corresponding fields in the DDS or SSA databases, the Georgia voter registration process mandated by HB 268 imposes severe burdens on the fundamental right to vote of Georgia citizens. The "exact match" protocol, along with its 26-month cancellation period, are not narrowly drawn to advance any state interest sufficiently compelling to justify the imposition of such severe burdens.

118. While the burdens of this process are undeniably severe, the process cannot pass muster even under the less restrictive *Anderson-Burdick* balancing test

for more ordinary voting regulations. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (holding that courts "must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiffs rights'" (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983))).

119. There is no sufficient state interest justifying this "exact match" process and 26-month cancellation period that is not already adequately protected by preexisting criminal laws and election procedures, particularly given Georgia's strict voter ID law.

120. If enforcement of the statute is not enjoined or otherwise modified to ameliorate the severe burdens it imposes, HB 268's "exact match" protocol will continue to indefinitely impose severe burdens on citizens' right to vote, requiring Plaintiff organizations to divert resources in an attempt to remedy the deprivation.

121. Defendant Kemp, acting in his capacity as Georgia's Secretary of State, is acting under color of state law to deprive Plaintiffs of the rights, privileges, and immunities secured to them by the First and Fourteenth

Amendments to the United States Constitution and protected under 42 U.S.C. § 1983.

122. Plaintiffs will continue to suffer the violation of their rights as alleged in the Complaint absent relief granted by the Court.

COUNT THREE
VIOLATION OF SECTION 8 OF THE NATIONAL VOTER REGISTRATION ACT OF 1993, 52 U.S.C. § 20507(a)(1)

123. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 120 above, as if fully set forth herein.

124. Section 8 of the NVRA, 52 U.S.C. § 20507(a)(1) requires each state to:

> (1) *ensure* that any eligible applicant is registered to vote in an election—
>
> A) in the case of registration with a motor vehicle application under section 20504 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;
>
> (B) in the case of registration by mail under section 20505 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;
>
> (C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

> (D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

52 U.S.C. § 20507(a)(1)(Emphasis added).

125. Congress' purpose in passing the NVRA was to "increase the number of eligible citizens who register to vote in elections"; "enhance[] the participation of eligible citizens as voters"; and protect the active role that community-based voter registration groups play in the registration process. 52 U.S.C. § 20501.

126. The NVRA was intended to "ensure that no American is denied the ability to participate in Federal elections because of real or artificial barriers . . . [and] to make voter registration an inclusive, rather than an exclusive opportunity in the United States." 139 Cong. Rec. H495-04 (1993) (statement of Rep. Martin Frost).

127. HB 268's "exact match" voter registration protocol violates Section 8 of the NVRA because it prevents voter registration applicants who submit timely, facially complete and accurate voter registration forms from being registered as active voters on the Georgia voter registration list for upcoming elections. In other words, Georgia is failing to *ensure* that those applicants are registered to vote for elections as required by Section 8 of the NVRA.

128. Thus, HB 268's "exact match" protocol and Defendant Kemp's implementation of it will continue to negatively impact the ability of voting-eligible Georgians to complete the voter registration process in violation of Section 8 of the NVRA unless the Court orders relief to enjoin enforcement of this process.

129. On July 18, 2018, Plaintiffs' counsel served Defendant Kemp with notice of the violation of Section 8 of the NVRA. A copy of said written notice is attached and incorporated herein by reference as Exhibit 2. To date, Defendant Kemp has not responded to Plaintiffs' counsel with any evidence that he has implemented, or will implement, remedial action. Therefore, Plaintiffs have no recourse by to commence litigation to obtain remedial relief from the Court.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully pray that the Court:

1. Enter judgment in favor of Plaintiffs and against Defendant Kemp on the claims for relief as alleged in this Complaint;

2. Enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that HB 268's "exact match" protocol for voter registration (a) violates Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, (b) violates the fundamental right to vote under the First and Fourteenth Amendments and (c)

violates Section 8 of the National Voter Registration Act of 1993, 52 U.S.C. § 20507.

3. Grant Plaintiffs preliminary and/or permanent injunctive relief by enjoining the enforcement of HB 268 and by ordering Defendant Kemp, his employees, agents, servants and his successors to undertake the following remedial actions:

a. Enjoin enforcement of the 26-month cancellation period mandated by HB 268;

b. Place, in active status, all applicants who are either (1) currently in "pending" status due to a failure to match or (2) had their voter registration applications cancelled as a result of a failure to match based on DDS, SSA or citizenship information since November 17, 2016;

c. Require the voter registration applicants referenced in paragraph (b) to produce the following when they attempt to vote, if they have not already submitted HAVA ID or evidence of their citizenship at the time they submitted their registration form:

i. an acceptable form of HAVA ID, by giving it in person to a poll worker when they vote for the first time, or by sending a

copy of it in the mail if they are requesting an absentee ballot; or

ii. if a voter registration applicant is inaccurately flagged as a non-citizen, evidence of their United States citizenship;

d. Allow county election officials to permit eligible voters who registered to vote, but who are inaccurately flagged as non-citizens to vote a regular ballot by furnishing proof of citizenship to poll workers or deputy registrars;

e. Permit voter registration applicants inaccurately flagged as non-citizens who wish to vote by mail to furnish their proof of citizenship electronically, by mail, or by fax;

f. Require Defendant to transmit any Order of this Court granting preliminary or final injunctive relief to county boards of elections;

g. Require Defendant to cause the counties to post a list of acceptable documentation to prove citizenship, which includes a naturalization certificate, birth certificate issued by a state or territory within the United States, U.S. passport, and other documents or affidavits explicitly identified by Georgia law and listed on the Georgia Secretary of State's website, at polling places on Election Day;

h. Require Defendant to conduct training of poll workers to ensure they understand and can properly confirm citizenship status consistent with Georgia law;

i. Count, in the November 2018 election and all future elections, (1) all absentee ballots cast by Georgia voters using non-photographic forms of identity pursuant to O.C.G.A. § 21-2-417(c), and (2) all provisional ballots cast by Georgia voter registration applicants who are in pending status because they have been inaccurately flagged as a potential "non-citizen";

j. Enforce a strict protocol that when voter registration applicants are flagged as "non-citizen" by DDS or produce "no-match" from the DDS or SSA databases, before contacting the applicant about the issue, registrars must check the initial registration. If proof of citizenship or identity was provided, voters should mark those requirements as met.

4. Order that Defendant Kemp, his employees, agents, servants and successors maintain, preserve, and not destroy until after December 31, 2028, any and all records relating to HB 268 and its implementation.

5. Order that the Court shall retain jurisdiction over the Defendant and his successors for such period of time as may be appropriate to ensure compliance with relief ordered by this Court;

6. Award Plaintiffs their reasonable attorneys' fees and costs pursuant to statute; and

7. Grant Plaintiffs such other and further relief as may be just and equitable.

Dated: October 19, 2018

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ALTANTA DIVISION

GEORGIA COALITION FOR THE PEOPLES' AGENDA, INC., et al.,	*	
Plaintiffs,	*	Civil Action No.: 1:18-cv-04727-ER
vs.	*	
ROBYN A. CRITTENDEN, in her official capacity as Secretary of State for the State of Georgia,	*	
Defendant.	*	

Comes Now, Defendant Secretary of State Robyn A. Crittenden[1], by and through the Attorney General for the State of Georgia, and files this Answer and Defenses to the allegations of Plaintiffs' Complaint as follows:

FIRST DEFENSE

Plaintiffs' Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

[1] Plaintiffs' original Complaint and First Amended Complaint named former Secretary of State and Governor-Elect Brian Kemp as the party defendant. Pursuant to Fed. R. Civ. P. 25(d), Secretary Crittenden is automatically substituted as the party defendant.

SECOND DEFENSE

Defendant denies that Plaintiffs have been subjected to the deprivation of any right, privilege, or immunities under the Constitution or laws of the United States.

THIRD DEFENSE

Some of Plaintiffs' claims may be barred by the doctrines of collateral estoppels and res judicata.

RESPONSES

Answering the specific allegations of the Complaint, Defendant responds as follows:

1. Defendant admits only that Governor Deal signed HB 268 into law in 2017 but denies all remaining allegations.

2. Defendant admits that the process codified by HB 268 includes compliance with the Help American Vote Act (HAVA), 52 U.S.C. § 21083(a)(5)(B), which requires States to "match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration." Defendant further admits that Georgia's statewide voter registration system is Enet. Defendant

further admits that when information on the applicant's voter registration application does not match the data on file with DDS or SSA, the application is put in a pending status, allowing the applicant up to 26 months to verify the accuracy of the information they have provided, including by verifying their identity at the polls. Defendant denies that the match with DDS is an "exact match" as described by Plaintiffs.

3. Defendant denies that the HAVA match is an "exact match" as described by Plaintiffs. More specifically, the match on the applicant's first name only requires that the first letter match. Defendant admits that the applicant's last name must match on every letter. The remaining allegations in paragraph 3 are legal conclusions to which no response is required. To the extent that a response is required, Defendant responds that the statute speaks for itself. Additionally, Defendant responds further stating that mandatory training by the Secretary of State's office *does* instruct election officials to check for data entry errors.

4. Defendant admits that if DDS reports that the applicant has identified themselves to DDS as a non-citizen, the voter registration application will be flagged for a check of the applicant's citizenship status. There is no citizenship information provided in the match with SSA. Defendant admits that a few registrars, contrary to training, have placed applicants in pending status for

citizenship despite the applicant's submission of proof of citizenship with their application. Defendant denies all remaining allegations.

5. The allegations in the first sentence of paragraph 5 are legal conclusions to which no response is required. To the extent that a response is required, Defendant responds that the statute speaks for itself. Additionally, Defendant responds further stating that mandatory training by the Secretary of State's office *does* instruct election officials to check their files for proof of citizenship documents that may have been submitted with the application. Defendant denies all remaining allegations.

6. Defendant denies that the match process with DDS is an "exact match" as defined by Plaintiffs. Defendant states that the Inspector General's report speaks for itself. Defendant denies any remaining allegations.

7. Defendant admits only that HB 268 was introduced and signed into law in 2017. Defendant denies that HB 268 is a substantially similar HAVA verification process to the process that was the subject of the 2016 litigation. In particular, the prior process provided voters only a 40 day window to correct a no-match. HB 268 provides registration applicants 26 months, thereby including at least one federal election wherein applicants can verify their identity while voting and move from pending status to active status. Defendant denies all remaining allegations.

8. Defendant denies that the HAVA verification process produces a "high rate of erroneous 'no-matches,'" and therefore lacks sufficient information to admit or deny any alleged disproportionate racial impact.

9. Defendant admits that pursuant to the HAVA verification process in place between 2013 and 2016, approximately 38,000 voter registration applications were cancelled and then returned to pending status as part of the settlement in *NAACP v. Kemp*, CA No. 2:16cv219-WCO. Defendant lacks knowledge or information sufficient to respond to the racial breakdown of the exact voter applicant pool described by Plaintiffs, but admits that the racial breakdown of the pool of voter applicants cancelled and returned to pending status is roughly as alleged by Plaintiffs.

10. Defendant denies these allegations. The 26-month clock was not implemented until Feb. 18, 2018, and therefore it will not result in the rejection of *any* pending applications prior to the 2020 Presidential election.

11. Defendant denies these allegations.

12. Defendant admits these allegations.

13. Defendant admits these allegations.

14. Defendant admits these allegations.

15. Defendant admits that Plaintiff is a Georgia nonprofit corporation. Defendant lacks knowledge or information sufficient to respond to the remaining allegations contained in paragraph 15.

16. Defendant admits that Plaintiff is a Georgia nonprofit corporation. Defendant lacks knowledge or information sufficient to respond to the remaining allegations contained in paragraph 16.

17. Defendant admits that Plaintiff is a nonprofit organization. Defendant lacks knowledge or information sufficient to respond to the remaining allegations contained in paragraph 17.

18. Defendant admits that Plaintiff is a nonprofit organization. Defendant lacks knowledge or information sufficient to respond to the remaining allegations contained in paragraph 18.

19. Defendant admits that Plaintiff is a nonprofit organization. Defendant lacks knowledge or information sufficient to respond to the remaining allegations contained in paragraph 19.

20. Defendant admits that Plaintiff is a nonprofit organization. Defendant lacks knowledge or information sufficient to respond to the remaining allegations contained in paragraph 20.

21. Defendant admits that Plaintiff is a nonprofit organization. Defendant lacks knowledge or information sufficient to respond to the remaining allegations contained in paragraph 21.

22. Defendant admits that Plaintiff is a nonprofit organization. Defendant lacks knowledge or information sufficient to respond to the remaining allegations contained in paragraph 22.

23. Defendant admits that at the time this complaint was filed, Brian Kemp was Georgia's Secretary of State. Robyn A. Crittenden is currently Georgia's Secretary of State. She is automatically substituted as a Defendant by operation of Rule 25(d), Fed. R. Civ. Proc. The remaining allegations characterizing Defendant's statutory duties are conclusions of law and Defendant responds that the statutes speak for themselves.

24. The allegation in paragraph 24 is a legal conclusion to which no response is required. To the extent that a response is required, Defendant responds that the statute speaks for itself.

25. The allegations in Paragraph 25 purport to characterize the requirements and meaning of a federal statute, and the meaning of a statute is a conclusion of law as to which no response is required. To the extent that a response is required, the Secretary responds that the statute speaks for itself.

26. The allegations Paragraph 26 are too vague to permit response because it is not clear what Plaintiffs mean by "alleviate other voter identification requirements."

27. The allegations in Paragraph 27 purport to characterize the requirements and meaning of a federal statute, and the meaning of a statute is a conclusion of law as to which no response is required. To the extent that a response is required, the Secretary responds that the statute speaks for itself.

28. The allegations in Paragraph 28 purport to characterize the requirements and meaning of a federal statute, and the meaning of a statute is a conclusion of law as to which no response is required. To the extent that a response is required, the Secretary responds that the statute speaks for itself.

29. The allegations in Paragraph 29 purport to characterize the requirements and meaning of two federal statutes, and the meaning of a statute is a conclusion of law as to which no response is required. To the extent that a response is required, the Secretary responds that the statutes speak for themselves.

30. The allegations in Paragraph 30 purport to characterize the requirements and meaning of a federal statute, and the meaning of a statute is a conclusion of law as to which no response is required. To the extent that a response is required, the Secretary responds that the statute speaks for itself.

31. The allegations in Paragraph 31 purport to characterize the requirements and meaning of a federal statute, and the meaning of a statute is a conclusion of law as to which no response is required. To the extent that a response is required, the Secretary responds that the statute speaks for itself.

32. The allegations in Paragraph 32 purport to characterize the requirements and meaning of a federal statute, and the meaning of a statute is a conclusion of law as to which no response is required. To the extent that a response is required, the Secretary responds that the statute speaks for itself.

33. Defendant denies these allegations.

34. The allegations in Paragraph 34 purport to characterize the requirements and meaning of a state statute, and the meaning of a statute is a conclusion of law as to which no response is required. To the extent that a response is required, the Secretary responds that the statute speaks for itself.

35. The allegations in Paragraph 35 purport to characterize the requirements and meaning of a state statute, and the meaning of a statute is a conclusion of law as to which no response is required. To the extent that a response is required, the Secretary responds that the statute speaks for itself.

36. Defendant admits only that applications are rejected after twenty-six (26) months if the applicant fails to complete all steps in the registration process, including verification of identity.

37. Defendant admits only that Georgia has had a HAVA verification process prior to HB 268. *See Morales v. Handel*, 2008 U.S. Dist. LEXIS 124182, *25 (N.D. Ga. 2008) (describing that "Georgia only began to comply with the voter verification provisions of HAVA in March of 2007, when the Secretary entered into an information-sharing agreement with the DDS.").

38. Defendant denies these allegations. *See* Response to paragraph 7 above.

39. Defendant denies that the match with DDS compares the entire first name as all that is required is a match on the first letter of the first name. Defendant denies that the match with SSA compares the entire date of birth as all that is compared is the month and year of birth. Defendant admits the remaining allegations in paragraph 39.

40. Defendant denies that a non-match is a "common event" and, as described in paragraph 39 above, denies that an "exact match" is needed as to the first name. Defendant admits the remaining allegations in paragraph 40.

41. Defendant denies that an "exact match" is needed as to the first name. Defendant admits the remaining allegations in paragraph 41.

42. Defendant admits these allegations.

43. Defendant admits the first sentence in paragraph 43. Defendant denies that clerical errors "often occur," as alleged in the second sentence. The third sentence in paragraph 43 is a legal conclusion as to which no response is required. To the extent that a response is required, the Secretary responds that the statute speaks for itself.

44. Defendant denies that the applicant's first name must match on anything more than the first letter of the first name when matching the DDS database, and therefore data entry errors on the first name would only lead to a non-match if the error was in the first letter. Defendant admits that if the DDS or SSA database contain incorrect information on one of the matching fields, an application with the correct information would not match.

45. Defendant lacks knowledge and information sufficient to form an opinion as to whether the SSA database is prone to errors. Defendant admits that Exhibit 1 to the complaint is a report from the Social Security Office of the Inspector General. Defendant responds further that the report speaks for itself.

46. The allegations in paragraph 46 characterize the content of a report from the Social Security Administration, Office of the Inspector General and therefore

need no response. To the extent a response if needed, Defendant states that the report speaks for itself.

47. The allegations in paragraph 47 characterize the content of a report from the Social Security Administration, Office of the Inspector General and therefore need no response. To the extent a response if needed, Defendant states that the report speaks for itself.

48. Defendant lacks knowledge or information sufficient to respond to the allegations in paragraph 48.

49. Defendant lacks knowledge or information sufficient to respond to the allegations in paragraph 49. To the extent the allegations in paragraph 49 seek legal conclusions as to a settlement agreement, Defendant states that no response is needed as the settlement speaks for itself.

50. Defendant lacks knowledge or information sufficient to respond to the allegations in paragraph 50. To the extent the allegations in paragraph 50 seek legal conclusions as to Florida state law, Defendant states that no response is needed as the statutes and regulations speak for themselves.

51. Defendant lacks knowledge or information sufficient to respond to the allegations in paragraph 51. To the extent the allegations in paragraph 51 seek

legal conclusions as to New York state law, Defendant states that no response is needed as the statutes speak for themselves.

52. Defendant admits only that one difference between HB 268 and the HAVA verification process precleared by the Department of Justice in August, 2010, is that under HB 268 the voter has 26 months to complete their voter registration application and under the prior precleared policy the voter had only 40 days. Defendant denies all remaining allegations in this paragraph.

53. To the extent the allegations in paragraph 53 seek to describe the settlement agreement in *NAACP v. Kemp*, CA No. 2:16cv219-WCO, Defendant states that no response is needed as the document speaks for itself. A copy is attached hereto as Exhibit 1. Defendant denies all remaining allegations in paragraph 53.

54. Defendant lacks knowledge or information sufficient to respond to the allegations regarding the number of "eligible" applicants that are flagged by the HAVA verification process. Defendant admits that one primary difference between HB 268 and the prior HAVA verification process, that was precleared in 2010, is that pursuant to HB 268 no voter registration applicant can be rejected until after twenty-six (26) months have passed, including one federal election cycle. Defendant denies all remaining allegations.

55. Defendant admits that if a voter registration applicant is a non-match with DDS or SSA and then fails to complete the registration process for twenty-six (26) months, the application will be rejected and the voter must then submit a new application, subject to all the same timeliness requirement as all other registration applicants.

56. Defendant denies the allegations in paragraph 56.

57. Defendant denies the allegations in the first sentence of paragraph 57. The second sentence in paragraph 57 is a legal conclusion as to which no response is required. To the extent that a response is required, the Secretary responds that the federal statute speaks for itself.

58. The allegations in paragraph 58 are legal conclusions as to which no response is required. To the extent that a response is required, the Secretary responds that the federal statute speaks for itself.

59. Defendant denies these allegations.

60. Defendant denies these allegations.

61. Defendant lacks knowledge or information sufficient to respond to the allegations regarding what assistance "many" naturalized citizens receive and what information these citizens include with their voter registration applications that are sent to their county registrar.

62. Defendant admits the first and second sentence of paragraph 62. The allegations in the third sentence of paragraph 62 are too vague to permit response because it is not clear what Plaintiffs mean by "[m]any."

63. Defendant admits only that in the past some county registrars have incorrectly placed naturalized citizens in pending status, and sent them notices, despite the submission of proof of citizenship by those applicants.

64. Defendant denies these allegations.

65. Defendant denies these allegations.

66. Defendant denies these allegations as stated. Defendant admits that registration applicants that are flagged as non-citizens must provide proof of citizenship at the polls, but deny that such voters are "required to take a trip to the county board of election on Election Day." Defendant denies that applicants in pending status must provide proof of citizenship in person. Defendant lacks knowledge and information about what any individual voter may have been told. Defendant admits that voter registration applicants that do not respond to requests to complete the registration process are rejected after twenty-six (26) months. Defendant denies all remaining allegations.

67. Defendant denies these allegations.

68. Defendant admits that pursuant to the HAVA verification process in place between 2013 and 2016, approximately 38,000 voter registration applications were cancelled and then returned to pending status as part of the settlement in *NAACP v. Kemp*, CA No. 2:16cv219-WCO. Defendant lacks knowledge or information sufficient to respond to the racial breakdown of the exact voter applicant pool described by Plaintiffs, but admits that the racial breakdown of the pool of voter applicants cancelled and returned to pending status is roughly as alleged by Plaintiffs.

69. Defendant lacks knowledge or information sufficient to determine how many non-matches are "erroneous," and lacks information sufficient to determine any disproportionate impact.

70. Defendant admits that after returning just over 38,000 cancelled voter registrations to pending status as a result of the *NAACP v. Kemp* litigation, and agreeing that said applicants will remain in pending status indefinitely unless the applicant completes the registration process thereby being moved to active status, by July 2018, there were approximately 51,111 voter applicants in pending status. Defendant lacks knowledge or information sufficient to respond to the racial breakdown of the exact voter applicant pool described by Plaintiffs, but admits that the racial composition of the current voter pool, including all applicants that were

part of the *NAACP v. Kemp* settlement class, approximates the racial breakdowns alleged by Plaintiffs.

71. Defendant denies these allegations.

72. Defendant denies these allegations.

73. Defendant denies these allegations.

74. Defendant lacks knowledge or information sufficient to respond to these allegations. Defendant responds further that the allegations in paragraph 74 of the complaint purport to report data from the 2016 American Community Survey (ACS) and the ACS report speaks for itself.

75. Defendant lacks knowledge or information sufficient to respond to these allegations. Defendant responds further that the allegations in paragraph 75 of the complaint purport to report data from the 2016 American Community Survey (ACS) and the ACS report speaks for itself.

76. Defendant lacks knowledge or information sufficient to respond to these allegations. Defendant responds further that the allegations in paragraph 76 of the complaint purport to report data from the 2016 American Community Survey (ACS) and the ACS report speaks for itself.

77. Defendant lacks knowledge or information sufficient to respond to these allegations. Defendant responds further that the allegations in paragraph 77 of the

complaint purport to report data from the 2016 American Community Survey (ACS) and the ACS report speaks for itself.

78. Defendant lacks knowledge or information sufficient to respond to these allegations. Defendant responds further that the allegations in paragraph 78 of the complaint purport to report data from the 2016 American Community Survey (ACS) and the ACS report speaks for itself.

79. Defendant denies the allegations in paragraph 79.

80. Defendant lacks knowledge or information sufficient to respond to the allegations in the first sentence of paragraph 80. Defendant admits only that Plaintiffs have accurately reported information included in the district court's opinion. *Common Cause/Ga. v. Billups*, 439 F. Supp. 2d 1294, 1311 (N.D. Ga. 2006). Defendant lacks knowledge or information sufficient to form a belief as to the existence of any current disparities.

81. Defendant lacks knowledge or information sufficient to respond to the allegations in paragraph 81.

82. Defendant denies the allegations in paragraph 82 as stated. Defendant admits that where an applicant has provided incorrect identifying information on their voter registration application, Georgia's HAVA verification process will

require the voter to correct the information. Defendant denies that applicants are not provided clear guidance.

83. Defendant lacks knowledge or information sufficient to respond to these allegations.

84. Defendant lacks knowledge or information sufficient to respond to these allegations.

85. Defendant admits the allegation in the first sentence of paragraph 85. Defendant lacks knowledge or information sufficient to respond to the remaining allegations.

86. Defendant lacks knowledge or information sufficient to respond to these allegations.

87. The allegations in paragraph 87 of the complaint purport to quote and characterize certain court decisions and Defendant responds that the contents of these decisions speak for themselves.

88. Defendant denies the first sentence in paragraph 88 of the complaint. The remaining allegation in paragraph 88 characterizes the congressional record supporting the reauthorization of the Voting Rights Act and Defendant responds that the congressional record speaks for itself.

89. The allegations in paragraph 89 purport to characterize the requirements of a 2005 state law and therefore seeks a legal conclusion to which no response is needed. To the extent a response is needed Defendant states that the former state law speaks for itself.

90. Defendant denies these allegations.

91. Defendant admits this allegation.

92. The allegations in paragraph 92 of the complaint seek to characterize the nature and content of a published court decision and Defendant responds that he court decision speaks for itself.

93. Defendant denies the characterization of the efforts of the Office of the Secretary of State in the first sentence of paragraph 93. Defendant admits only that in 2010 there was an investigation into alleged election code violations involving a number of African-American voters in Brooks County. Defendant admits further that the Brooks County District Attorney made an independent decision to criminally prosecute some voters for election code violations and that none of the voters were convicted. The last sentence in paragraph 93 characterizes an Official Opinion of the Attorney General and Defendant responds that the Opinion speaks for itself.

94. Defendant admits only that in 2016 legislation was introduced in the Georgia Senate to make English the state's official language and the measure was not enacted. Defendant denies Plaintiffs' characterization of the effect of the proposed measure on federal law and further states that, in 2016, federal law did not require bi-lingual ballots in *any* Georgia jurisdiction. Defendant lacks knowledge or information sufficient to respond to the allegation in the last sentence of paragraph 94.

95. Defendant denies these allegations.

96. Defendant denies these allegations as stated. The initial effort to comply with the verification requirements of HAVA began in October, 2007. *See Morales v. Handle*, 2008 U.S. Dist. LEXIS 124182, *25, CA No. 1:08-CV-3172 (N.D. Ga. 2008) (describing that "Georgia only began to comply with the voter verification provisions of HAVA in March of 2007, when the Secretary entered into an information-sharing agreement with the DDS."). The allegation in the second sentence of paragraph 96 characterizes a court opinion and Defendant responds that the court opinion speaks for itself.

97. Defendant admits only that in 2008 the U.S. Department of Justice interposed an Objection, under Sec. 5 of the Voting Rights Act, to a prior effort by Georgia to comply with the HAVA verification requirements. The remaining

allegations in paragraph 97 describe the letter from the Department of Justice and Defendant responds that the letter speaks for itself.

98. Defendant admits that in 2008 the U.S. Department of Justice objected to Georgia's submission of the state's initial process seeking to comply with HAVA's verification requirements. The remaining allegations in paragraph 98 are characterizations of the Department of Justice's objection letter and Defendant responds that the letter speaks for itself.

99. The allegations Paragraph 99 are too vague to permit response because it is not clear what Plaintiffs mean by "safeguards promised in the preclearance letter." Defendant responds further that she lacks knowledge and information sufficient to respond as to the motivation of the U.S. Department of Justice.

100. Defendant denies that the current HAVA match verification process has a disproportionate burden on minority applicants.

101. Defendant denies these allegations.

102. Defendant admits only that Georgia has a majority vote requirement for all elections. Defendant lacks sufficient knowledge and information to form an opinion as to the remaining allegations in paragraph 102.

103. Defendant lacks knowledge or information sufficient to respond to the allegations in the first sentence of paragraph 103. Defendant responds further that

the remainder of paragraph 103 is a characterization of reported court cases and Defendant responds that these cases speak for themselves.

104. Defendant admits that currently all statewide elected officials are white, although Defendant Crittenden is African-American, she was appointed to the office of Secretary of State. Defendant denies that, as of 2019, African-American voters are underrepresented in the Georgia House of Representatives and the U.S. House of Representatives. Defendant lacks knowledge and information sufficient to respond to all remaining allegations.

105. Defendant admits that due to safeguards that are in place, voter fraud is rare in Georgia.

106. Defendant admits only that the primary purpose of the data verification process is to comply with HAVA and federal and state law to verify data provided by voter registration applicants with data provided to DDS. Under the provisions of HAVA, this verification process is designed to assure the identity and eligibility of voter registration applicants and to prevent fraudulent or erroneous registrations. Defendant denies all remaining allegations.

107. No response is needed for paragraph 107 of the complaint.

108. Defendant admits only that the quoted text accurately quotes Sec. 2 of the Voting Rights Act. Plaintiffs' characterizations of the protections of Sec. 2 are legal conclusions and Defendant responds that the statute speaks for itself.

109. Defendant denies these allegations.

110. Defendant denies these allegations.

111. Defendant denies these allegations.

112. Defendant denies these allegations.

113. Defendant denies these allegations.

114. Defendant denies these allegations.

115. No response is needed for paragraph 115 of the complaint.

116. The allegations in paragraph 116 of the complaint are legal conclusions regarding certain constitutional protections and Defendant responds that the constitutional provisions and cases cited speak for themselves.

117. Defendant denies these allegations.

118. Defendant denies these allegations.

119. Defendant denies these allegations.

120. Defendant denies these allegations.

121. Defendant denies these allegations.

122. Defendant denies these allegations.

123. No response is needed for paragraph 123 of the complaint.

124. Defendant admits only that the quoted text accurately quotes certain language in the NVRA. No further response is required and to the extent that further response is deemed required, Defendant responds that the statute speaks for itself.

125. The allegations in paragraph 125 of the complaint are legal conclusions and Defendant responds that the NVRA speaks for itself.

126. The allegations in paragraph 126 of the complaint are legal conclusions and Defendant responds that the NVRA and congressional record speak for themselves.

127. Defendant denies these allegations.

128. Defendant denies these allegations.

129. Defendant admits only the first three sentences in paragraph 129 of the complaint. Defendant denies all remaining allegations.

130. Defendant denies any and all other allegations in the Complaint not referred to herein specifically, denies all prayers of the complaint, and denies that Plaintiffs are entitled to any relief in this case.

WHEREFORE, Defendant respectfully requests that the Court dismiss this action in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2018, I electronically filed DEFENDANT'S ANSWER with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

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This 17th day of December, 2018.

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EXHIBIT K

BRENNAN CENTER FOR JUSTICE at New York University School of Law

Gruver v. Barton (consolidated with Jones v. DeSantis)

August 3, 2019

On November 6, 2018, nearly 65 percent of Florida voters approved Amendment 4 [2], a constitutional amendment that automatically restored voting rights to as many 1.4 million Floridians, except those convicted of murder or a felony sexual offense, who had completed the terms of their sentence including parole or probation.

Prior to Amendment 4, Florida's constitution permanently disenfranchised all citizens who had been convicted of any felony offense unless the Board of Clemency restored their voting rights. Kentucky and Iowa have similar disenfranchisement policies, however, Florida disenfranchised more than four times as many citizens [3] as those two states combined: between 2010 [4] and 2016 [5], the number of disenfranchised Floridians grew by nearly 150,000 to an estimated total of 1,686,000. In 2016, more than one in five [6] of Florida's Black voting-age population was disenfranchised.

The process for restoring voting rights in Florida was determined by clemency rules established by the state's governor. Former Gov. Rick Scott's clemency rules, issued in 2011, were significantly more restrictive [7] than previous administrations, and by December 2015, his administration had only restored voting rights to less than 2,000 returning citizens [8], while over 20,000 applications remained outstanding.

On January 8, 2019, Amendment 4 became effective.

On May 3, 2019, the Florida legislature voted along party lines to pass SB7066 [9], which prohibits returning citizens from registering to vote unless they pay off all legal financial obligations ("LFOs") imposed by a court pursuant to a felony conviction, including those LFOs converted to civil obligations, even if they cannot afford to pay.

On June 28, 2019, SB7066 was signed into law by Gov. Ron DeSantis.

On June 28, 2019, the Brennan Center, the ACLU, the ACLU of Florida, and the NAACP Legal Defense and Education Fund filed [10] a lawsuit in the U.S. District Court for the Northern District of Florida on behalf of individual returning citizens, the Florida NAACP, and the League of Women Voters of Florida. Plaintiffs allege that by conditioning the right to vote on payment of LFOs, SB7066 violates fundamental fairness and unconstitutionally burdens the right to vote under the Fourteenth Amendment, discriminates on the basis of wealth in violation of the Equal Protection Clause, violates the prohibition against poll taxes enshrined in the Twenty-Fourth Amendment, and imposes punitive sanctions in violation of the Ex Post Facto Clause. Plaintiffs allege that SB7066 is unconstitutionally vague in violation of the Due Process Clause because Florida fails to provide returning citizens with sufficient information to determine whether LFOs continue to disqualify them from voting. Plaintiffs further allege that SB7066 chills the League and Florida NAACP's voter registration activities in violation of the First Amendment. Finally, Plaintiffs allege that SB7066 intentionally discriminates on the basis of race.

On June 30, 2019, several challenges to SB 7066 – *Jones v. DeSantis* (4:19-cv-300), *Raysor v. Lee* (4:19-cv-301), *Gruver v. Barton* (4:19-cv-302), *McCoy v. DeSantis* (4:19-cv-304), and *Mendez v. DeSantis* (4:19-cv-272) – were consolidated for case management purposes on the *Jones v. DeSantis* common docket.

On August 2, 2019, Plaintiffs submitted a brief [11] to the Court requesting a preliminary injunction to halt the implementation of SB7066. The same day, Defendants filed two [12] motions [13] to dismiss the case. On August 15, 2019, the Court denied the Motion to Dismiss filed by the Supervisors of Elections Defendants and scheduled a hearing on Plaintiffs' preliminary injunction motion for October 7, 2019.

Documents

- Complaint (June 28, 2019) [14]
- Plaintiffs' Motion for Expedited Discovery (July 3, 2019) [15]
- Supervisors of Elections' Consolidated Motion to Dismiss Plaintiffs' Complaints (August 2, 2019) [12]
- Florida Governor's and Florida Secretary of State's Joint Motion to Dismiss Plaintiffs' Complaints (August 2, 2019) [16]
- Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Injunction (August 2, 2019) [17]
- Expert Report of Daniel A. Smith, Ph.D. (August 2, 2019) [18]
- Order Setting a Preliminary Injunction Schedule and Denying Supervisor of Elections' Motion to Dismiss (August 15, 2019) [19]
- Plaintiffs' Memorandum in Opposition to Florida Governor's and Florida Secretary of State's Joint Motion to Dismiss Plaintiffs' Complaints (August 29, 2019) [20]

Related Blogs and Reports

- Eliza Sweren-Becker, Florida Law Throws Voter Rights Restoration into Chaos [21], July 11, 2019
- Kevin Morris, Thwarting Amendment 4 [22], May 9, 2019
- Makeda Yohannes, Florida Lawmakers Attempt to Weaken Voter Rights Restoration [23], March 20, 2019
- Erika L. Wood, Florida: An Outlier in Denying Voting Rights [24], December 16, 2016
- Rebekah Diller, The Hidden Costs of Florida's Criminal Justice Fees [25], March 23, 2010
- Alicia Bannon et al., Criminal Justice Debt: A Barrier to Reentry [26], October 4, 2010
- Racial Bias in Florida's Electoral System [27], Brennan Center for Justice & Florida Rights Restoration Coalition, January 2006

Related Press Releases

- Groups Sue to Block New Florida Law That Undermines Voting Rights Restoration [28], June 28, 2019
- Groups File Motion for Preliminary Injunction to Block SB7066 [29], August 3, 2019

Restoring Voting Rights [30]

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[4] http://sentencingproject.org/wp-content/uploads/2016/01/State-Level-Estimates-of-Felon-Disenfranchisement-in-the-United-States-2010.pdf
[5] http://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf
[6] https://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf
[7] https://www.brennancenter.org/blog/turning-back-clock-florida
[8] http://www.npr.org/2015/12/11/459365215/ex-felons-fight-to-restore-their-right-to-vote
[9] https://www.flsenate.gov/Session/Bill/2019/7066/BillText/er/PDF
[10] http://www.brennancenter.org/sites/default/files/legal-work/Gruver%20v.%20Barton%20Complaint.pdf
[11] http://www.brennancenter.org/sites/default/files/events/98-1%20Proposed%20Memo%20in%20Support%20of%20PI%20Mtn.pdf
[12]
https://www.brennancenter.org/sites/default/files/events/96%20Motion%20to%20Dismiss%20for%20Failure%20to%20State%20a%20Claim%20by%20Super
[13] http://www.brennancenter.org/sites/default/files/events/097%20State%20Defs%20MTD.pdf
[14] https://www.brennancenter.org/sites/default/files/legal-work/Gruver%20v.%20Barton%20Complaint.pdf
[15] https://www.brennancenter.org/sites/default/files/legal-
work/036%20Gruver%20v%20Barton%20Plaintiffs%20Motion%20to%20Expedite%20Discovery.pdf
[16] https://www.brennancenter.org/sites/default/files/events/097%20State%20Defs%20MTD.pdf
[17] https://www.brennancenter.org/sites/default/files/events/98-1%20Proposed%20Memo%20in%20Support%20of%20PI%20Mtn.pdf
[18] https://www.brennancenter.org/sites/default/files/events/98-3%20Memo%20Ex%20A%20Dan%20Smith%20Rep_.pdf
[19] https://www.brennancenter.org/sites/default/files/legal-work/107%20Scheduling%20Order_Order%20Denying%20SOE%20MTD%20and%20MTS.pdf
[20] https://www.brennancenter.org/sites/default/files/legal-
work/121%20Plaintiffs%27%20Memorandum%20in%20Opposition%20to%20Defendants%27%20Motion%20to%20Dismiss.pdf
[21] https://www.brennancenter.org/blog/florida-law-throws-voter-rights-restoration-chaos
[22] https://www.brennancenter.org/analysis/thwarting-amendment-4
[23] https://www.brennancenter.org/blog/florida-lawmakers-attempt-weaken-voter-rights-restoration
[24] https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf
[25] https://www.brennancenter.org/sites/default/files/legacy/Justice/FloridaF%26F.pdf?nocdn=1
[26] http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf
[27] https://www.brennancenter.org/sites/default/files/legacy/d/download_file_9477.pdf
[28] https://www.brennancenter.org/press-release/groups-sue-block-new-florida-law-undermines-voting-rights-restoration
[29] https://www.brennancenter.org/press-release/groups-file-motion-preliminary-injunction-block-sb7066
[30] https://www.brennancenter.org/issues/restoring-voting-rights

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
Gainesville Division

JEFF GRUVER, EMORY MARQUIS "MARQ" MITCHELL, BETTY RIDDLE, KRISTOPHER WRENCH, KEITH IVEY, KAREN LEICHT, RAQUEL WRIGHT, STEVEN PHALEN, CLIFFORD TYSON, JERMAINE MILLER, FLORIDA STATE CONFERENCE OF THE NAACP, ORANGE COUNTY BRANCH OF THE NAACP, AND LEAGUE OF WOMEN VOTERS OF FLORIDA,

Plaintiffs,

v.

KIM A. BARTON, in her official capacity as Supervisor of Elections for Alachua County, PETER ANTONACCI, in his official capacity as Supervisor of Elections for Broward County, MIKE HOGAN, in his official capacity as Supervisor of Elections for Duval County, CRAIG LATIMER, in his official capacity as Supervisor of Elections for Hillsborough County, LESLIE ROSSWAY SWAN in her official capacity as Supervisor of Elections for Indian River County, MARK EARLEY in his official capacity as Supervisor of Elections for Leon County, MICHAEL BENNETT, in his official capacity as Supervisor of Elections for Manatee County, CHRISTINA WHITE, in her official capacity as Supervisor of Elections for Miami-Dade County, BILL COWLES, in his official capacity as Supervisor of Elections for Orange County, RON TURNER, in his official capacity as Supervisor of Elections for Sarasota County, and LAUREL M. LEE, in her official capacity as Secretary of State of the State of Florida,

Defendants.

Complaint

No: _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

This lawsuit challenges Florida's new law, SB7066, which unconstitutionally denies the right to vote to returning citizens with a past felony conviction based solely on their inability to pay outstanding fines, fees, or restitution.[1] Plaintiffs allege as follows:

PRELIMINARY STATEMENT

1. On November 6, 2018, a supermajority of nearly 65 percent of Florida voters—more than 5 million people—approved one of the largest expansions of voting rights in the United States since the passage of the Voting Rights Act of 1965. In enacting the Voting Restoration Amendment, known as Amendment 4, voters revised the Florida Constitution to abolish permanent disenfranchisement of nearly all citizens convicted of a felony offense. Amendment 4 automatically restored voting rights to over a million previously disenfranchised Floridians who had completed the terms of their sentences including parole or probation—ending a broken system that disenfranchised more than 10 percent of *all* of the state's voting-age population and more than 20 percent of its African American voting-age population, *Hand v. Scott*, 285 F. Supp. 3d 1289, 1310 (N.D. Fla. 2018). Its passage was a historic achievement for American

[1] This document refers to persons with felony convictions as "returning citizens" throughout.

democracy and made clear that Florida voters intended to end lifetime disenfranchisement and give their fellow citizens a voice in the political process.

2. Florida's prior disenfranchisement provision originated in the 1860s, as part of Florida's prolonged history of denying voting rights to Black citizens and using the criminal justice system to achieve that goal. From the shadow of that history, voters overwhelmingly chose to expand the franchise to persons previously excluded. Floridians recognized, as the United States Supreme Court has, that "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

3. This action challenges the attempt by certain Florida lawmakers to vitiate Amendment 4's enfranchising impact by making restoration of voting rights contingent on a person's wealth. Amendment 4's language is clear and simple—individuals with a conviction for any felony other than murder or a sexual offense will have their voting rights "restored upon completion of all terms of sentence including parole or probation." Yet, on June 28, 2019, Governor Ron DeSantis signed legislation—which the Senate and House ultimately passed along party line votes—that attempts to drastically claw back the voting rights conferred by Amendment 4 and retract Plaintiffs' right to vote. SB7066 provides that returning

citizens are not eligible to register or vote until they settle *any* form of legal financial obligation ("LFO") that arises from their conviction—even if those returning citizens will never be able to pay outstanding balances, and even where their outstanding debt has been converted to a civil lien.

4. SB7066 conditions Plaintiffs' right to vote on their wealth and penalizes returning citizens who are unable to pay, in violation of the First, Fourteenth, Fifteenth, and Twenty-Fourth Amendments and the Ex Post Facto Clause of the U.S. Constitution. If not enjoined, the law will have a massive disenfranchising effect, and result in sustained, and likely permanent, disenfranchisement for individuals without means.[2] It creates two classes of returning citizens: those who are wealthy enough to vote and those who cannot afford to. This disenfranchisement will be borne disproportionately by low-income individuals and racial minorities, due to longstanding and well-documented racial gaps in poverty and employment.

[2] The Florida Clerk of the Courts Association anticipates that 83 percent of all legal financial obligations will remain unpaid, due to the payor's financial status. *See* Daniel Rivero, *Felons Might Have to Pay Hundreds of Millions Before Being Able to Vote in Florida*, WLRN Public Radio and Television (Jan. 20, 2019), https://www.wlrn.org/post/felons-might-have-pay-hundreds-millions-being-able-vote-florida. Similarly, the Florida Circuit Criminal Courts failed to collect nearly 80 percent of all fines and fees in 2018. Fines & Fees Justice Center, *Annual Assessments and Collections Report [Florida, 2013-2018]* (Sep. 30, 2018) https://finesandfeesjusticecenter.org/articles/annual-assessments-and-collections-report-florida-2013-2018/.

5. SB7066 is further unlawful because it was motivated, at least in part, by a racially discriminatory purpose. It is well-established that people with felony convictions in Florida are disproportionately Black—a product of higher rates of police stops, arrest, prosecution, and conviction of Black citizens in the criminal justice system. It is also well-established that a large majority of returning citizens have LFOs they cannot pay now or in the foreseeable future. In addition, Black Floridians with a felony conviction face intersecting barriers to paying off their LFOs due to hurdles to employment and long-standing racial disparities in wealth and employment across the state. Yet, notwithstanding this disproportionate impact on Black returning citizens, before SB7066 was enacted, lawmakers expressly refused to consider evidence about the racial and socioeconomic impacts of the law and the foreseeable harm to Black communities, and rejected ameliorative amendments that they were advised could have lessened the law's impact on Black returning citizens. There is a strong inference that the law was motivated by discriminatory purposes in violation of the Fourteenth and Fifteenth Amendments to the U.S. Constitution in light of: the history of racial discrimination underlying Florida's felony disenfranchisement regime; the sequence of events and procedural irregularities leading to SB7066's enactment; the reasonably foreseeable and known discriminatory impact; and the tenuousness of the stated justifications for SB7066.

6. SB7066 will also prevent or at least chill voter registration and voting among returning citizens because Florida has no unified system to accurately record data on LFOs, and no system to access data on federal or out-of-state financial obligations, leaving returning citizens without any reasonable or accessible method of determining if they would violate the law by registering to vote, or means to defend against challenges to their eligibility to vote based on LFOs. Such a scheme violates the Fourteenth Amendment of the U.S. Constitution.

7. SB7066 will also significantly impede organizational Plaintiffs' ability to engage in voter registration activities and thus directly burdens fundamental First Amendment speech and associational rights, which are inseparable and intertwined aspects of those activities. Organizational Plaintiffs' members and volunteers must hesitate in conducting their core voter registration activities due to the risk of creating legal liability for returning citizens who have no means to determine whether their LFOs would make them ineligible to register. As a result, members have been deterred from registering voters. The need to inquire into the status of potential applicants' LFOs has undermined the feasibility of organizational Plaintiffs' voter registration drives.

8. Floridians spoke loud and clear last November by amending their constitution by citizen initiative, "the most sacrosanct of all expressions of the people," *Fla. Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478, 485–86 (Fla. 2008).

It was regularly reported that Amendment 4 would restore voting rights to roughly 1.4 million people in Florida, reflecting the public's understanding that restoration of voting rights would not be contingent on one's wealth.

9. SB7066 reinstates a system of lifetime disenfranchisement for a large number of returning citizens—imposing precisely the unjust system that Floridians overwhelmingly rejected through Amendment 4. The Florida Legislature's attempt to retract voting rights and revert to a system of permanent disenfranchisement for the large class of citizens who cannot afford to pay LFOs—and who are disproportionately people of color—is an affront to the U.S. Constitution. It cannot stand.

PARTIES

10. Plaintiff JEFF GRUVER is a U.S. citizen and Florida resident. Mr. Gruver, a 33-year-old white man, works at Grace Marketplace, a facility for the homeless in Gainesville, where he is the director of shelter services assisting shelter residents to access treatment, employment, and permanent housing. He just completed his first semester of a Master of Social Work degree at Florida State University. Nearly ten years ago, Mr. Gruver was struggling with addiction. He was convicted of possession of cocaine in 2008 and was assessed $801 in LFOs—including a court attorney and indigent application fee, court costs, and a fine. Mr. Gruver is unable to pay his outstanding LFOs. Mr. Gruver's voting rights were

restored on January 8, 2019, by operation of Amendment 4. He registered to vote on February 19, 2019, and voted in the Gainesville regular election in March 2019. Mr. Gruver is worried that he will lose his right to vote, and that he might be removed from the voter registration rolls because of his inability to pay his outstanding LFOs.

11. Plaintiff EMORY MARQUIS "MARQ" MITCHELL is a U.S. citizen and Florida resident. Mr. Mitchell, a 29-year-old Black man, is the president and founder of Chainless Change Inc., a non-profit organization that is committed to reducing recidivism by providing resources and support to individuals and families who are impacted by the criminal justice system. Additionally, Mr. Mitchell serves as: a trained Peer Support Specialist at the South Florida Wellness Network, which assists young people and families with co-occurring disorders; a mentor with an employment-readiness nonprofit; and a member of two subcommittees on the Broward County Reentry Coalition. Mr. Mitchell devotes significant time and resources to his public interest endeavors, for which he does not receive a salary. He recently qualified for food assistance benefits. Mr. Mitchell grew up in the foster care system and was in and out of Department of Juvenile Justice custody after the age of twelve. He was convicted of felony escape from a Department of Juvenile Justice facility for an offense he committed at the age of sixteen. He was sentenced to 8 months and 1 day in jail.

Weeks after aging out of the foster-care system, he went on to attend Florida Memorial University. At twenty-one, he was convicted of battery, a third-degree felony, arising out of an incident in which he was abused by campus security officers while he was a student. Mr. Mitchell had his voting rights restored on January 8, 2019, by operation of Amendment 4. He registered to vote in Broward County on March 9, 2019. Mr. Mitchell has outstanding LFOs stemming from his two felony convictions—a combination of court costs and fines—in the amount of $2,143. He was unaware of his court costs and fines until he received a notice from the Miami-Dade Clerk of Court earlier this year, soon after registering to vote. Mr. Mitchell fears he might be removed from the registration rolls and denied the right to vote because he is unable to pay his outstanding LFOs.

12. Plaintiff BETTY RIDDLE is a U.S. citizen and Florida resident. Ms. Riddle is a 61-year-old Black woman. She is mother to four adult children, grandmother to twenty-four grandchildren, and great-grandmother to eight. She works as a communications assistant for the Public Defender of Sarasota. She dropped out of high school at the age of sixteen, and was convicted of a felony in at the age of seventeen. She spent 22 years caught in a cycle of addiction that led her to a series of convictions, mostly for possession of controlled substances and offenses related to supporting her conviction. At the age of fifty-two, in recovery from her addiction, Ms. Riddle went back to school, earning a degree from the

State College of Florida. On January 8, 2019, she became eligible to register to vote for the first time in her life. She was one of the first people to submit her registration form to the Sarasota Supervisor of Elections on January 8, and is now registered to vote. Having her citizenship recognized was one of the proudest moments of her life, and she celebrated the occasion with her daughter. Ms. Riddle still has over $1,000 in outstanding court costs and fees. Because she cannot afford to pay her LFOs, Ms. Riddle fears that she might be removed from the voter registration rolls and deprived of her first opportunity to cast a ballot in Florida, where she has lived her entire life.

13. Plaintiff KAREN LEICHT is a U.S. citizen and Florida resident. Ms. Leicht, a 62-year-old white woman, lives in Miami-Dade County, where she works full-time as a senior paralegal at a civil rights law firm that specializes in disability rights work. She is also the main caregiver for her mother, who suffers from Parkinson's disease. On April 7, 2010, she pled guilty to conspiracy to commit insurance and wire fraud and provided substantial assistance to prosecutors in the case. The court sentenced her to a term of incarceration and ordered her to pay $59,136,990.19 in restitution, which includes the full judgment of restitution ordered against her ten co-defendants—who are jointly and severally liable—even though she played only a minor role in the crime. She fulfilled all terms of probation and was released from supervision on January 1, 2013. Within one week

of being transferred from federal prison to a Miami-based residential reentry facility, Ms. Leicht had secured full-time employment at her law firm, where she has worked full-time ever since. Ms. Leicht dutifully makes monthly restitution payments towards the shared $59 million obligation, but has no ability to satisfy the outstanding amount in her lifetime. Ms. Leicht's voting rights were restored pursuant to Amendment 4 on January 8, 2019. On April 29, 2019, she registered to vote.

14. Plaintiff KEITH IVEY is a U.S. citizen and Florida resident. Mr. Ivey, a 46-year-old Black man, lives in Jacksonville, Florida, where he manages a car dealership, supervising some 10–20 people he contracts with at his business. He qualified for early release after serving eight-and-a-half years of a ten-year sentence for violating Florida's RICO statute. Even while still incarcerated, Mr. Ivey was a part of a Duval County entrepreneurship and mentorship program, and while at the Transition House in Kissimmee, Florida, he was elected Community Coordinator at the facility. One week after he was released from prison, Mr. Ivey had already enrolled in community college, before beginning his current role managing the car dealership in Jacksonville. Mr. Ivey has conducted speaking engagements to motivate and connect with at-risk youth in Florida and wants to help fellow returning citizens become productive members of society as he has done for himself. He had no probation or parole associated with his sentence, but

has $400 in outstanding costs from more than 15 years ago. Mr. Ivey was not even aware of these costs until a reporter notified him of them in 2019. Mr. Ivey's voting rights were restored pursuant to Amendment 4 on January 8, 2019. He registered to vote on that day and, as a registered voter, subsequently voted on two occasions: once in the March 2019 Duval County election and then in the May 2019 runoff election.

15. Plaintiff KRISTOPHER WRENCH is a U.S. citizen and Florida resident. Mr. Wrench, a 42-year-old white man, has struggled with addiction and has been convicted of felony offenses for acts related to his addiction, such as possession of controlled substances and driving with a suspended license. He has been in recovery, and sober, since January 4, 2012. He is now a productive member of his community and takes twelve-step programs into prisons to support those who are still struggling with addiction. Mr. Wrench attended Santa Fe College, where he studied for a degree in bio-medical engineering technology. He works as a painter while his wife is studying for her master's degree. They are expecting their first child later this year. His voting rights were restored on January 8, 2019, by operation of Amendment 4. He submitted an online voter registration application and was registered to vote in Alachua County on May 4, 2019. Mr. Wrench owes approximately $3,000 in court costs and fines, as a result of his past convictions. Mr. Wrench fears he might be removed from the Alachua County

voter registration rolls or denied the right to vote because he is unable to pay his outstanding costs and fines.

16. Plaintiff RAQUEL L. WRIGHT is a U.S. citizen and Florida resident. She is a 44-year-old Black woman and mother to a 13-year-old daughter. Ms. Wright works part-time as a legal assistant to the Special Counsel to the Florida State Conference of the NAACP and part-time as the Assistant Secretary of the Indian River County Branch of the NAACP. She has a college degree, student loan and other debt, and aspires to go to law school. She was convicted of drug trafficking in 2011. Before this conviction, Ms. Wright had been a teacher for more than 14 years. Following her conviction, the State of Florida permanently revoked her teaching certificate and prohibited Ms. Wright from teaching in a Florida public school. After completing the first seven months of her sentence in prison, Ms. Wright served the remaining twenty-two months on a work-release program. During such time, she tutored more than 80 women who passed their GED exams. On January 8, 2019, Ms. Wright's voting rights were automatically restored through operation of Amendment 4. Soon thereafter, Ms. Wright registered to vote at the Indian River County Supervisor of Elections Office. Having her voting rights restored has been one of her proudest accomplishments. Ms. Wright has outstanding LFOs stemming from her sole felony conviction—a combination of court costs and a fine that has been converted to a civil lien—in the amount of at

least $50,000. Because of Ms. Wright's inability to fully pay these monetary obligations, she fears she might be removed from the voter registration rolls and barred from participating in the democratic process. Ms. Wright wishes to vote in future elections to have a voice in who represents her, to illustrate to her daughter the importance of political participation, and to exercise a fundamental right of American citizenship.

17. Plaintiff STEVEN PHALEN, a 36-year-old white man, is a U.S. citizen and Florida resident. In 2005, Mr. Phalen resided in Wisconsin and was convicted of arson and public endangerment by a Wisconsin state court. The court sentenced him to a term of probation and payment of approximately $150,000 in restitution and court costs and fees, of which he still owes approximately $110,000. Since that time, Mr. Phalen has earned a Ph.D. in organizational and relational communication and established his career doing HVAC logistics for a multinational manufacturer and distributor. In 2015, he moved with his wife to Florida. On November 18, 2017, a Wisconsin court discharged Mr. Phalen from supervision and converted his outstanding LFOs to civil liens. Wisconsin restores voting rights to its residents with a past conviction upon completion of their supervision, irrespective of their outstanding financial obligations. As a Florida resident, Mr. Phalen had his rights restored on January 8, 2019, when Amendment 4 became effective. He registered to vote on February 26, 2019. Mr.

Phalen makes monthly payments towards his outstanding LFOs, but cannot afford to complete payment at present. He fears he might be removed from the registration rolls as a result of SB7066.

18. Plaintiff CLIFFORD TYSON is a U.S. citizen and Florida resident. He is a 62-year-old Black man and a Pastor. He has been convicted of three felonies related to theft or robbery— in 1978, he was sentenced to a 15-year term of probation and ordered to pay $2.00 in court costs and $10.00 per month towards the cost of his supervision; in 1997, he was ordered to pay $1,337.94 in restitution and $259.00 in court costs and fees; and in 1998, he was sentenced to a period of community control and probation and ordered to pay $530 in restitution, along with court costs and fees that appear to total to $661.00 (records of the costs and fees assessed for Pastor Tyson's 1998 conviction are difficult to parse, particularly because two Hillsborough County records reflect differing amounts). He fulfilled all terms of community control and probation and was released from supervision on October 6, 2003. Pastor Tyson is a productive member of his community and provides pastoral care in prisons across the state. His voting rights were restored on January 8, 2019, by operation of Amendment 4. He registered to vote that day in Hillsborough County and, as a registered voter, subsequently voted on two occasions: March 3, 2019 and April 23, 2019. Pastor Tyson has paid off his restitution obligations, but is unable to pay the costs imposed as part of his felony

sentences. He was unaware those costs remained unpaid until he was notified by counsel, and it is unclear from records or officials how much he actually has outstanding. Because of Pastor Tyson's inability to fully pay these monetary obligations, he fears he might be removed from the voter registration rolls or denied the right to vote.

19. Plaintiff JERMAINE MILLER is a U.S. citizen and Florida resident. He is a 28-year-old Black man, community advocate, and graduate of Tallahassee Community College. Mr. Miller was convicted of a robbery and trespass in 2015, sentenced to prison, followed by a term of probation, and ordered to pay $223.80 in restitution and $1,221.25 in court costs and fines. Mr. Miller's probation was terminated on October 31, 2016. His voting rights were restored on January 8, 2019, by operation of Amendment 4. Mr. Miller registered to vote in Leon County on January 21, 2019. Although Mr. Miller has paid $242 in restitution—$18.20 more than the amount ordered—the Florida Department of Corrections contends that he owes a balance of $1.11 because of the 4% surcharge charged on the restitution payments he has made. Mr. Miller still owes $1,221.25 in court costs and fines, and he is unable to pay these outstanding LFOs. Because of Mr. Miller's inability to pay off these monetary obligations, he fears that he might be removed from the voter registration rolls or denied the right to vote.

20. Plaintiff FLORIDA STATE CONFERENCE OF BRANCHES AND YOUTH UNITS OF THE NAACP ("Florida NAACP") is a nonprofit, nonpartisan civil rights membership organization in Florida. Florida NAACP is a state conference of branches of the national NAACP ("NAACP"). The NAACP was formed in 1909, to remove all barriers of racial discrimination through democratic processes and through the enactment and enforcement of federal, state, and local laws securing civil rights, including laws relating to voting rights. The Florida NAACP's members are predominantly African American and other minority residents, who reside throughout Florida. The Florida NAACP also has local branch units throughout Florida, including the Orange County Branch NAACP ("Orange County NAACP"), discussed in more detail below, which themselves are membership organizations. Members of a branch are also members of the Florida NAACP. For example, Plaintiff Wright is a member of the Florida NAACP and the Indian River County Branch of the NAACP.

21. The Florida NAACP and its local units have been heavily involved in voter registration and voter education activities for decades and have been credited with registering thousands of voters in the state. The organization conducts statewide voter protection on election days (including the operation, in 2018, of six "satellite centers"). Many members of the state and local branches, including the Orange County NAACP, had their rights restored on January 8, 2019, by operation

of Amendment 4. Some members of the state and local NAACPs, including the Orange County NAACP, as well as members of the communities that they serve, include low-income people with felony convictions, who will be permanently disenfranchised by operation of SB7066. Many of these impacted people are unable to determine the full amount of the LFOs that they may owe, cannot afford to fully pay all of their LFOs, and are at risk of being purged from the registration rolls when SB7066 becomes effective. SB7066—which amends Florida's voter registration form to require that individuals identify as having been convicted of a felony, and the means by which their voting rights were restored—will stigmatize members of the state and local NAACPs, including the Orange County NAACP, and individuals that they serve.

22. Moreover, as a result of SB7066, Florida NAACP and its local units, including the Orange County NAACP, will have to expend much-needed resources identifying people with felony convictions to determine whether they are eligible to register, and the extent of any LFOs that they may owe. Were it not for SB7066, the Florida NAACP, and local units including the Orange County NAACP, would otherwise be spending these resources on its regular activities, such as registering voters, getting out the vote, and conducting statewide voter protection on election days.

23. Plaintiff ORANGE COUNTY BRANCH OF THE NAACP ("Orange County Branch NAACP" or "Branch"), which was established in 1942, is a nonprofit, nonpartisan civil rights membership organization in Florida and local branch of the Florida NAACP, with the same mission, objectives, and voting-related activities, as the Florida NAACP. The Orange County NAACP has been heavily involved in voter registration and voter education activities for years, including being credited with registering thousands of voters in Orange County. Members of the Florida NAACP residing in Orange County, who also are members of the Orange County NAACP, will be affected by SB7066 as described above.

24. Plaintiff LEAGUE OF WOMEN VOTERS OF FLORIDA (the "LWVF" or "League") is the Florida affiliate of the national League of Women Voters (the "National League"). LWVF is a nonpartisan, not-for-profit corporation organized under the laws of Florida, and a tax-exempt charity pursuant to section 501(c)(4) of the Internal Revenue Code.

25. The mission of LWVF is to promote political responsibility by encouraging informed and active citizen participation in government, including by registering citizens to vote and influencing public policy through education and advocacy. LWVF has thousands of members in Florida and an even greater number of supporters and volunteers, who receive regular communications from

the League. The National League has conducted voter registration nationwide since 1920, and LWVF has conducted voter registration in Florida since before 1939. In the past, LWVF has conducted voter registration drives through the auspices of its 29 local Leagues located in cities and counties throughout Florida.

26. Registering new voters is the core mission of LWVF, and an important part of accomplishing the League's goal of increasing political participation by underrepresented and disenfranchised communities, particularly residents of low-income, African American, and Hispanic/Latinx communities. LWVF assists voters in filling out voter registration applications, and then collects and submits them to the Supervisors of Elections. LWVF finds that this collection and submission are necessary to the success of its voter registration drives. Absent this assistance, LWVF has found that applicants are confused about how to properly fill out their applications and are unsure where and how to submit them, which results in incomplete, and therefore ineffective, registrations that later cause confusion at the polls when would-be voters find out they are not on the rolls. LWVF's success in registering new voters depends on its ability to not only persuade others of the importance of registering to vote, but also on its ability to assist others to fill in forms properly, to collect the forms, and to deliver completed forms to the appropriate State offices.

27. LWVF volunteers: (i) generally discuss the importance of voting and of civic engagement; (ii) inform other citizens about important issues that will be decided in upcoming elections, such as ballot initiatives and referenda; and (iii) urge other citizens to associate with LWVF and with one another by registering to vote and engaging in meaningful collective action, described above, to advance shared political or social objectives.

28. SB7066 significantly impedes LWVF's ability to engage in voter registration activities and thus directly burdens LWVF's fundamental speech and associational rights, which are inseparable and intertwined aspects of those activities. LWVF is careful to avoid inadvertently helping someone register to vote who is ineligible. Some volunteers will not engage in registration activities at all because of their concerns about SB7066. Because SB7066 renders LWVF volunteers unable to determine the eligibility of some returning citizens, it prevents LWVF from registering returning citizens who are in fact eligible to vote and whom LWVF would otherwise help register.

29. As a result, LWVF has been forced to divert substantial time and resources away from registration activities to, *inter alia*: explain the complicated provisions of SB7066 to potential registrants; field inquiries from members and volunteers who cannot determine who is eligible to register under Amendment 4;

and develop new training materials for its volunteers and new educational materials for returning citizens.

30. Defendant Secretary of State LAUREL M. LEE is sued in her official capacity as Secretary of State of the State of Florida. The Department of State ("DOS") "shall have general supervision and administration of the election laws." Fla. Stat. § 15.13. As Florida's "chief election officer," the Secretary must "[o]btain and maintain uniformity in the interpretation and implementation of the election laws." *Id.* § 97.012(1). She is responsible for "enforc[ing] the performance of any duties of a county supervisor of elections." *Id.* § 97.012(14). She is also responsible for providing "written direction and opinions to the supervisors of elections on the performance of their official duties with respect to the Florida Election Code or rules adopted by the Department of State." *Id.* §§ 97.012(4)–(5), (16). She is responsible for ensuring state compliance with all election laws. *See Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318 (11th Cir. 2019) ("Because the Secretary is the state's chief election officer with the authority to relieve the burden on Plaintiffs' right to vote, she was appropriately sued for prospective injunctive relief.") (citing Fla. Stat. § 97.012); *see also Ex parte Young*, 209 U.S. 123 (1908) (permitting injunctive relief against individual state officers in their official capacities).

31. Defendant KIM A. BARTON is the Supervisor of Elections for Alachua County, Defendant PETER ANTONACCI is the Supervisor of Elections for Broward County, Defendant MIKE HOGAN is the Supervisor of Elections for Duval County, Defendant CRAIG LATIMER is the Supervisor of Elections for Hillsborough County, Defendant LESLIE ROSSWAY SWAN is the Supervisor of Elections for Indian River County, Defendant MARK EARLEY is the Supervisor of Elections for Leon County, Defendant MICHAEL BENNETT is the Supervisor of Elections for Manatee County, Defendant CHRISTINA WHITE is the Supervisor for Elections for Miami-Dade County, and Defendant BILL COWLES is the Supervisor of Elections for Orange County, Defendant RON TURNER is the Supervisor of Elections for Sarasota County. These Defendants are responsible for conducting elections and voter registration in their respective counties. SB7066 gives local Supervisors of Elections ("SOEs") more front-end responsibility for registration, requiring them to "verify and make a final determination . . . regarding whether the person who registers to vote is eligible pursuant to [Amendment 4] and this section." Fla. Stat. § 98.0751(3)(b). While the SOE "may request additional assistance from the [Department of State] in making the final determination," *id.* § 98.0751(3)(c), the bill does not give SOEs any additional resources for this new responsibility.

JURISDICTION

32. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the United States Constitution.

33. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States, and because Plaintiffs bring this action to redress the deprivation, under color of state law, of rights, privileges, and immunities secured by the Constitution of the United States and federal law.

34. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

35. Venue is proper in this District under 28 U.S.C. § 1391(b) because all Defendants reside in Florida, and Defendant Barton has her principal place of business in this District.

36. Under Northern District of Florida Local Rule 3.1(A)–(B), this case is properly filed in the Gainesville Division of this District because Defendant Barton has her principal place of business in a county included in the Gainesville Division.

STATEMENT OF FACTS

I. Background on the Passage of Amendment 4

37. On November 6, 2018, Florida voters resoundingly and decisively approved Amendment 4 to the Florida Constitution with 64.55 percent in support. 5,148,926 Floridians of every race and political party voted in favor of Amendment 4, reflecting the clear will of the people that individuals with felony convictions should re-join the electorate once they complete their sentence. Fla. Div. of Elections, *Voting Restoration Amendment 14-01*, https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64388 &seqnum=1 (last visited May 24, 2019).

38. The full text of the Amended Article VI, Section 4 (Disqualifications), reads:

> (a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability. Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and *voting rights shall be restored upon completion of all terms of sentence including parole or probation*.
>
> (b) No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.

Fla. Const., Art. VI, § 4 (italics added).

39. Amendment 4's language is clear and simple—the constitutional amendment ensures that individuals with a felony conviction, for a felony crime other than murder or a sexual offense, will have their voting rights "restored upon completion of all terms of sentence including parole or probation." *Id.* The Florida Supreme Court, in approving the title and summary of the amendment in 2017, declared that Amendment 4 conveyed to voters "that the chief purpose of the amendment is to *automatically* restore voting rights to felony offenders, except those convicted of murder or felony sexual offences, upon completion of all terms of their sentence." *Advisory Opinion to the Attorney Gen. Re: Voting Restoration Amendment*, 215 So. 3d 1202, 1208 (Fla. 2017) (emphasis added).[3]

40. "[T]he power of the people to amend their state constitution by initiative is an integral part of Florida's lawmaking power." *Brown v. Sec'y of State of Fla.*, 668 F.3d 1271, 1281 (11th Cir. 2012). The Elections Clause of the U.S.

[3] There is a presumption that provisions of the Florida Constitution are self-executing, *see, e.g.*, *Browning v. Fla. Hometown Democracy, Inc.*, 29 So. 3d 1053, 1064 (Fla. 2010), because "in the absence of such presumption the legislature would have the power to nullify the will of the people expressed in their constitution, the most sacrosanct of all expressions of the people," *Fla. Hosp. Waterman v. Buster*, 984 So. 2d 478, 485–86 (Fla. 2008) (quoting *Gray v. Bryant*, 125 So. 2d 846, 851 (Fla. 1960)). The Supreme Court's determination that Amendment 4 confers *automatic* rights restoration clarifies that the constitutional amendment does not require legislation and is self-executing. *See Gray*, 125 So. 2d at 851 (determining that a constitutional provision is self-executing if the right conferred "may be determined, enjoyed, or protected without the aid of legislative enactment.").

Constitution permits citizens, through the initiative process, to regulate elections as a lawmaking apparatus of a state. *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2677 (2015). Floridians' initiative power permits them to constrain the state legislature's *own* authority, by amending the state constitution. *Brown*, 668 F.3d at 1278. They did so in Amendment 4.

41. Self-executing constitutional provisions constrain the Legislature's authority. While the Legislature may "supplement, protect, or further the availability of the constitutionally conferred right . . . the Legislature may not modify the right in such a fashion that it alters or frustrates the intent of the framers and the people." *Browning v. Fla. Hometown Democracy, Inc.*, 29 So. 3d 1053, 1064 (Fla. 2010). As such, the Legislature cannot pass any legislation that would reduce (a) the rights guaranteed under Amendment 4, or (b) the number of people to whom they are guaranteed. *See id.*

42. Amendment 4 was passed on November 6, 2018, and became effective on January 8, 2019.

43. Returning citizens, like individual Plaintiffs and members of organizational Plaintiffs Florida NAACP and Orange County NAACP, began registering to vote on January 8, 2019, and subsequently voted in local elections

across Florida.[4] Just months after it was enacted, Amendment 4 had already made Florida's electorate more representative of its voting-age population by reinstating the voting rights of many people of color and less affluent individuals. More than 2,000 formerly incarcerated Floridians registered to vote between January and March 2019, about 44 percent of whom were Black people. Kevin Morris, *Analysis: Thwarting Amendment 4*, Brennan Ctr. for Just. 2–3 (May 9, 2019) https://www.brennancenter.org/sites/default/files/analysis/2019_05_FloridaAmendment_FINAL-3.pdf. Similarly, the average income of formerly incarcerated Floridians who registered to vote during that time period was $14,000 below the average Florida voter. *Id.*

[4] Mainstream and widespread media coverage of the Amendment 4 campaign estimated that it would restore rights to between 1.2 and 1.6 million people in Florida. *See, e.g.*, Steve Bousquet, Connie Humburg & McKenna Oxenden, *What's Riding on Amendment 4 and Voting Rights for Convicted Felons*, Tampa Bay Times (Nov. 2, 2018), https://www.tampabay.com/florida-politics/buzz/2018/11/02/amendment-4-democrats-and-blacks-more-likely-to-have-lost-voting-rights-than-republicans-and-whites/ (citing an estimated 1.2 million people affected by Amendment 4); Samantha J. Gross & Elizabeth Koh, *What is Amendment 4 on Florida ballot? It Affects Restoration of Felons' Voting Rights*, Miami Herald (Oct. 5, 2018), https://www.miamiherald.com/news/politics-government/election/article219547680.html (estimated 1.6 million); Steven Lemongello, *Floridians Will Vote This Fall on Restoring Voting Rights to 1.5 Million Felons*, Fla. Sun Sentinel (Jan. 23, 2018), https://www.sun-sentinel.com/news/politics/os-florida-felon-voting-rights-on-ballot-20180123-story.html (estimated 1.5 million). These estimates included returning citizens with outstanding LFOs, reflecting the common understanding—including by the Floridians who voted for it—that Amendment 4 was not intended to condition voting rights on ability to pay LFOs.

44. Florida has been an ignominious outlier among states because of the breadth of, and racial disparities present in, its disenfranchisement. Prior to Amendment 4's passage, Florida was one of just four states that permanently disenfranchised its citizens for committing a single felony offense. Br. for The Sentencing Project as Amicus Curiae ("Brief for Sentencing Project"), *Hand v. Scott*, No. 18-11388, 2018 WL 3328534, at *5 (11th Cir. June 28, 2018). Florida disenfranchised a higher percentage of its citizens than any other state in the United States and was responsible for more than 25 percent of all U.S. citizens disenfranchised nationwide. *Id.* at *14–*15. As of November 2016, more than 1.6 million Floridians—about 92 percent of whom had already completed their terms of sentence, *id.*, were disenfranchised on account of a felony conviction, comprising "[m]ore than *one-tenth* of Florida's voting population," *Hand*, 285 F. Supp. 3d at 1310 (emphasis in original).

45. The racial disparities within the disenfranchised community are pervasive and deeply entrenched.[5] Prior to Amendment 4's passage, "[m]ore than

[5] There was widespread and mainstream media coverage of these racial disparities during the Amendment 4 campaign. *See, e.g.*, Gabby Deutch, *Florida Felons Want Their Voting Rights Restored*, The Atlantic (Sept. 13, 2018), https://www.theatlantic.com/politics/archive/2018/09/florida-felons-want-their-voting-rights-restored/570103/; *see also* Steve Bousquet et al., *1.2 Million Floridians Have a Lot Riding on Passage of Amendment 4*, Miami Herald (Nov. 2, 2018), https://www.miamiherald.com/news/politics-government/state-politics/article221021940.html.

one in five of Florida's African American voting-age population" could not vote. *Id.* One reason for this staggering percentage is that Black Floridians are more likely to be arrested, charged, convicted, and face harsher sentences than white Floridians. *See Racial Bias in Florida's Electoral System*, Brennan Ctr. for Just. & Fla. Rights Restoration Coal. (Jan. 2006), https://www.brennancenter.org/sites/default/files/legacy/d/download_file_9477.pdf; *see also* Nick Petersen et. al, *Unequal Treatment: Racial and Ethnic Disparities in Miami-Dade Criminal Justice* at 5, ACLU of Fla. – Greater Miami Chapter (July 2018), https://www.aclufl.org/sites/default/files/aclufl_unequaltreatmentreport2018.pdf. While Black people comprised 16 percent of Florida's population in 2016, they made up nearly 33 percent of all those disenfranchised by a felony conviction. Erika L. Wood, *Florida: An Outlier in Denying Voting Rights* ("Wood") 1, 3 Brennan Ctr. for Just. (2016), https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf.

46. Florida has a long, troubling history with voter suppression tactics, many explicitly motivated by racial discrimination—including the very felony disenfranchisement provision revised by Amendment 4. In its 1865 constitution, Florida "explicitly limited the right to vote to 'free white males.'" *Id.* at 4. A year later, Florida became one of ten former Confederate states to reject the Fourteenth Amendment to the U.S. Constitution, and thus, the constitutional mandate that no

state can deny any person the equal protection of the laws. *Id.* In 1868, after Congress mandated that Florida adopt a constitution without an explicitly racially discriminatory suffrage rule, Florida ratified a constitution that permanently banned individuals with felony convictions from voting, a provision that Florida paired with the Black Codes, which increased the number of felonies and "increased prosecution . . . for certain crimes the legislature believed were more likely to be committed by freed blacks." *Id.* at 4–5.[6] The intent of these measures, which came in the immediate aftermath of the abolition of slavery, "was quite clear: to eliminate as many black voters as possible." Tim Elfrink, *The Long, Racist History of Florida's Now-Repealed Ban on Felons Voting*, Wash. Post (Nov. 7. 2018), https://www.washingtonpost.com/nation/2018/11/07/long-racist-history-floridas-now-repealed-ban-felons-voting/?utm_term=.aa37bdf36300 (quoting Darryl Paulson, emeritus professor of government at the University of South Florida). In 1889, Florida became the first state to adopt a poll tax, followed shortly after by other Jim Crow voter suppression tactics such as literacy tests and residency requirements. *See id*. Florida's voter suppression tactics effectuated their purpose; in 1940, only 3 percent of Florida's Black population was registered to

[6] *See Timbs v. Indiana*, 139 S. Ct. 682, 689–90 (2019) ("Among these laws' provisions were draconian fines for violating broad proscriptions on 'vagrancy' and other dubious offenses. When newly freed [enslaved people] were unable to pay imposed fines, States often demanded involuntary labor instead.") (citations omitted).

vote. *Id*. The history of discrimination and vestiges of Jim Crow underlying Florida's felon disenfranchisement statute were known and expressly acknowledged by Florida lawmakers during the legislative debate over SB7066. *See, e.g.*, Video: April 24, 2019 House Sess. ("April 24 House Hearing") at 5:25:05, https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2019041282 (testimony from Rep. Jacquet) ("In 1868, we decided in order to limit the voice of certain communities, to set aside a certain population, this was the strategy.").

47. The ramifications of this history continue into the present. Wealth disparities persist for Black and Latinx families in Florida as compared to white families. Alan J. Aja et al., *The Color of Wealth*, The Kirwan Institute, Samuel DuBois Cook Center on Social Equity, and Insight Center for Community Economic Development 1, 7—10 (2019), http://kirwaninstitute.osu.edu/wp-content/uploads/2019/02/The-Color-of-Wealth-in-Miami-Metro.pdf; *How Families of Color are Faring in Florida*, Corp. for Enterprise Dev. (Jan. 2016), https://catalystmiami.org/wp-content/uploads/2016/02/racial-disparity-FL.pdf. The Black unemployment rate is twice as high in Florida when compared to the white unemployment rate. Aja at 39–40.

48. There are a multitude of collateral consequences triggered by a felony conviction, including ineligibility for federally subsidized housing, driver's

license suspension, and employment barriers. These collateral consequences make the financial circumstances of returning citizens far less tenable, hampering reentry and leaving them with limited resources to pay outstanding LFOs.

II. Florida's Voter Registration Process

49. Once Amendment 4 became effective, Floridians who had their rights restored by operation of the amendment could register to vote using the same process as all other voters.

50. Before SB7066, to register to vote, an individual must first obtain a voter registration form in hard copy or online. *See* Fla. Stat. §§ 97.052; 97.0525. This form is statewide and is currently Form DS-DE #39, R1s-2.040, F.A.C., *available at* https://dos.myflorida.com/media/693757/dsde39.pdf (last visited May 24, 2019).

51. The form gave the applicant the option to check a box with the following statement: "I affirm that I am not a convicted felon, *or if I am, my right to vote has been restored*." *Id.* (emphasis added).

52. Voter registration forms were "designed so that convicted felons whose civil rights have been restored . . . are not required to reveal their prior conviction or adjudication." Fla. Stat. § 97.052(2)(u).

53. SB7066 amends Florida's voter registration form to give returning citizens three options—one stating that an individual has "never been convicted of

a felony," a second stating that an individual's "voting rights have been restored by the Board of Executive Clemency," and a third stating that an individual's "voting rights have been restored pursuant to [Amendment 4]." *Id.* § 97.052(2)(t). There is *no* box for individuals who lose their voting rights due to a felony conviction in another state and have their rights restored by that state before moving to Florida. *See* Dep't of State Advisory Opinion 04-05, 2–3 (May 27, 2004), *available at* http://opinions.dos.state.fl.us/searchable/pdf/2004/de0405.pdf ("Those persons convicted of felonies outside of Florida whose voting rights were restored by the state wherein the felony was committed, may register to vote in Florida. No evidence of the civil rights restoration is required at the time of registration.").

54. Applicants with a prior felony conviction who have completed "all terms of sentence" need *not* provide affirmative evidence that their voting rights have been restored beyond these affirmations. As the Florida Department of State, Division of Elections explained in a formal Advisory Opinion:

> Felons who have had their rights restored, whether they were convicted in Florida or in another state, do not need to present evidence of restoration of rights at the time of application for voter registration. Checking the appropriate box on the voter registration application representing that although they are convicted felons, their civil rights have been restored, and signing the oath included in the application affirming that the information provided is correct, is sufficient. Such representations are all that is required under the Florida election laws.

Id. at 2.

55. Florida SOEs are required to accept voter registration applications from all applicants in their county offices. Fla. Stat. § 97.053(1). An application is complete, and should be approved, (a) when "all information necessary to establish the applicant's eligibility pursuant to § 97.041 is received by a voter registration official," and (b) when that information is "verified pursuant to" *Id.* § 97.053(6). *Id.* § 97.053(2).

56. All voter registration applications received by a voter registration official must be entered into the statewide registration system within 13 days of receipt, at which point it "shall be immediately forwarded to the appropriate supervisor of elections." *Id.* § 97.053(7). Upon receipt of a voter registration application, the SOE "must notify [the] applicant of the disposition of the . . . application within 5 business days after voter registration information is entered into the statewide voter registration system." *Id.* § 97.073(1).

57. The SOE's notification "must inform the applicant that the application has been approved, is incomplete, has been denied, or is a duplicate of a current registration." *Id.* The mailing of a voter information card "constitutes notice of approval of registration." *Id.* "If the application is incomplete, the supervisor must request that the applicant supply the missing information using a voter registration application signed by the applicant." *Id.*

58. The voter registration process is a uniquely effective way for third-party voter registration organizations to communicate nonpartisan political messages and encourage fellow citizens to participate in the political process. Voter registration activities provide the opportunity for organizational Plaintiffs' members and volunteers, and other third-party voter registration organizations, to exercise their First Amendment rights.

III. Challenged Provisions of SB7066

59. SB7066 creates two classes of citizens: those who can afford to have their voting rights restored and those who are too poor to vote, a disproportionate number of whom are racial minorities.

60. In practice, SB7066 would maintain long-term—and in many cases permanent—disenfranchisement for a large majority of returning citizens. Many individuals with debt incurred as a result of a conviction are indigent and will not have the means to pay their LFOs immediately (or ever). *See* Alicia Bannon et al., *Criminal Justice Debt: A Barrier to Reentry*, Brennan Ctr. for Just. 1, 4 (2010), http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf (An estimated "80–90 percent of those charged with criminal offenses qualify for indigent defense."). And even for those returning citizens who are not indigent, many have incurred massive fines, fees, or restitution obligations

that they cannot pay in full immediately, which means that they would be disenfranchised in election after election due to their inability to pay.

61. Even though many returning citizens in Florida have been convicted in federal or out-of-state courts, the LFOs imposed under Florida law provide important context for understanding the burdens imposed by SB7066. Persons convicted in Florida state courts can be assessed fines, fees, costs, and restitution. Courts assess fines in addition to, or, where authorized by statute, in lieu of, other penalties, including incarceration. *See* Fla. Stat. § 775.083(1). "If a defendant is unable to pay a fine, the court may defer payment of the fine to a date certain." *Id*. Fines are deposited by the clerk of the court in the county's fine and forfeiture fund. *Id*.

62. In Florida, court costs are often mandatory, and offset the costs of maintaining the criminal justice system.[7] *See* Fla. Stat. Ch. 938. The sentencing

[7] The Supreme Court has recently observed that state and local governments have an incentive to generate revenue by imposing abusive LFOs on individuals in the criminal justice system. *See Timbs*, 139 S. Ct. at 689 ("[F]ines may be employed 'in a measure out of accord with the penal goals of retribution and deterrence,' for 'fines are a source of revenue,' while other forms of punishment 'cost a State money.'" (quoting *Harmelin v. Michigan*, 501 U.S. 957, 979, n.9 (1991)); *id*. ("Perhaps because they are politically easier to impose than generally applicable taxes, state and local governments nationwide increasingly depend heavily on fines and fees as a source of general revenue.") (quoting Brief of the Am. Civil Liberties Union et al. as Am. Curiae, *Timbs v. Indiana*, No. 17-1091, 2018 WL 4462202, at *7 (Sep. 10, 2018)). In Florida, between 1996 and 2010, the legislature added more than 20 new categories of LFOs for criminal defendants while simultaneously eliminating most exemptions for those unable to pay. Rebekah

court has jurisdiction to ensure compliance with court cost obligations. *Id.* § 938.30(1). Certain costs are statutorily required, irrespective of a defendant's indigence and inability to pay. *See, e.g.*, *id.* § 938.27(2)(a) ("The court shall impose the costs of prosecution and investigation notwithstanding the defendant's present ability to pay."); § 938.29(1)(b) ("Upon entering a judgment of conviction, the defendant shall be liable to pay the attorney's fees and costs in full . . . The court shall impose the attorney's fees and costs notwithstanding the defendant's present ability to pay."). A court may defer certain costs after determining a person's inability to pay or order compliance with a payment schedule. *See id.* § 938.30(9)-(10). A court may also enforce LFOs in the manner allowed in civil cases, including as a lien against property, which secures the judgment amount as well as interest and costs. *See id.* § 938.30(6).

63. Florida courts order restitution pursuant to Fla. Stat. §§ 960.29(3)(a)–(b), typically based on the amount of loss sustained by the victim as a result of a defendant's actions. *Id.* § 775.089(6)(a). When determining whether to order restitution and its amount, a trial court "shall consider the amount of the loss sustained by any victim as a result of the offense." *Id.* "[T]he defendant's financial resources or ability to pay does not have to be established when the trial court

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Diller, *The Hidden Cost of Florida's Criminal Justice Fees* 1, 1 Brennan Ctr. for Just. (2010), https://www.brennancenter.org/sites/default/files/legacy/Justice/FloridaF&F.pdf?nocdn=1 ("Diller Report").

assesses and imposes restitution." *Noel v. State*, 191 So.3d 370, 375 (Fla. 2016) (quotation marks omitted).

64. A criminal court may require that a defendant make restitution within a specified period or in specified installments. *Id.* § 775.089(3)(b).

65. A court may convert an outstanding restitution from a criminal to a civil obligation if full payment is not made within a given period. *See id.* § 775.089(3)(d).[8]

66. SB7066 states that, to complete "all terms of sentence," there must be "[f]ull payment of restitution ordered to a victim by the court as part of the sentence." *Id.* § 98.075(2)(a)(5)(a). SB7066 also requires "[f]ull payment of fines or fees ordered by the court as a part of the sentence or that are ordered by the court as a condition of any form of supervision. *Id.* § 98.0751(2)(a)(5)(b). The bill specifies that these financial obligations "include only the amount specifically ordered by the court as part of the sentence and do not include any fines, fees, or costs that accrue after the date the obligation is ordered as a part of the sentence." *Id.* § 98.0751(2)(a)(5)(c). SB7066 then specifies that "[t]he requirement to pay any

[8] Restitution is also reduced to a civil judgment if the court does not order supervision. *See* Fla. Stat. § 775.089(3)(d). If restitution claims are transferred to a civil lien, victims or the state may enforce that civil restitution lien in the same manner as a judgment in a civil action. *Id.* § 960.294(2).

financial obligation specified . . . is not deemed completed upon conversion to a civil lien." *Id.* at § 98.0751(2)(a)(5)(e)(III).

67. In other words, SB7066 requires that returning citizens pay *all* financial obligations specified within a sentencing document before registering to vote, even if the obligation has been converted to a civil judgment, and without requiring *any* determination that they can pay those financial obligations. Indeed, SB7066 requires full payment of LFOs even in cases where returning citizens have *no* ability to pay outstanding financial obligations. This requirement is perversely punitive if a court has converted LFOs from criminal to civil obligations. SB7066 also erroneously attempts to redefine LFOs that have been converted to civil liens as a term of a criminal sentence for purposes of extending individuals' disenfranchisement.[9]

68. Many returning citizens have outstanding financial obligations that they cannot pay. The Florida Circuit Criminal Courts in 2018 reported that "the collections rate for fines and fees was just 20.55%." Fines & Fees Justice Center,

[9] At a joint House committee hearing, Frederick Lauten, Chief Judge of Florida's Ninth Judicial Circuit, testified that "enforcement []post-sentence" is a "judicial obligation," and that "when the lawful authority to detain or supervise a person comes to an end, the sentence is completed in the view of [FDOC], regardless of how that authority came to an end." Video: Feb. 14, 2019, Jnt. House Meeting of the Criminal J. Subcomm. & the Judiciary Comm. at 1:03:00–1:04:32 https://thefloridachannel.org/videos/2-14-19-joint-house-meeting-of-the-criminal-justice-subcommittee-and-the-judiciary-committee/ (last visited May 26, 2019).

Annual Assessments and Collections Report [Florida, 2013–2018] (Sept. 30, 2018), https://finesandfeesjusticecenter.org/articles/annual-assessments-and-collections-report-florida-2013-2018/. This suggests that the vast majority of Floridians cannot fully pay their outstanding LFOs and that SB7066 would have a massive disenfranchising effect. Indeed, more than 83 percent of all court-related fines and fees are labeled as "minimal collections expectations." *Id.* This means the Clerk of the Courts Association does not anticipate receiving a payment on the debt because of the person's financial status. *Id.*[10]

69. In a superficial response to sustained public criticism of SB7066's disenfranchising impact, the bill sponsors purported to add a failsafe that would allow returning citizens to fulfill their LFOs without full payment *if* a court modifies their sentence. *See* Fla. Stat. § 98.0751(5)(e)(III). But the putative failsafe is fatally inadequate and ineffectual for multiple reasons.

[10] Mainstream media has reported on this reality. One news report, for example, found that between 2013 and 2018 alone, Florida had issued more than $1 billion in felony fines, only 19 percent of which has been paid back per year. Daniel Rivero, *Felons Might Have to Pay Hundreds of Millions Before Being Able to Vote in Florida*, WLRN Public Radio and Television (Jan. 20, 2019), https://www.wlrn.org/post/felons-might-have-pay-hundreds-millions-being-able-vote-florida. In Miami-Dade County, there are more than $278 million in outstanding court fines from felony convictions; in Palm Beach County, more than $195.8 million in outstanding court fines from felony convictions (including interest) remain outstanding. *Id.*

70. First, for residents with *out-of-state*[11] or *federal* convictions, like Plaintiffs Leicht and Phalen, Florida courts have no jurisdiction to modify or terminate their sentences. In addition, Florida criminal courts may not have authority to waive financial obligations once those obligations are converted to civil liens. *See* Video: May 3, 2019 House Sess. Part 2 ("May 3 House Hearing") at 1:24:47, https://thefloridachannel.org/videos/5-3-19-house-session-part-2/ (in which Representative Joe Geller states that "once [a financial obligation] can no longer be enforced by contempt . . . it is no longer part of a criminal sentence") (last visited May 7, 2019); *see also supra* note 9.

71. Second, even for in-state convictions, SB7066 permits modification only in two scenarios that are plainly not viable in the vast majority of cases: (1) if a third-party *payee* approves "through appearance in open court" or "production of notarized consent" the termination of a returning citizen's LFOs and a court approves, or (2) if a court exercises its discretion to "convert[] the financial obligation to community service," and the individual completes that community service obligation. *Id.* § 98.0751(2)(a)(5)(e).

72. Under the first scenario, third party payees—including insurance companies, for-profit debt collection agencies, and private individuals—appear to

[11] House bill sponsor Representative James Grant conceded as much when testifying before the state House, stating that the modification remedy "probably doesn't help" returning citizens with out-of-state convictions. May 3 House Hearing at 13:48. "There's nothing we can really do about that," he added. *Id.*

have absolute discretion to grant or deny a person's request for approval to terminate LFOs, for any reason, no reason, or based on personal whims. *Id.* § 98.0751(2)(e)(II). SB7066 provides no standard or guidance to courts or state agencies on whether to approve termination of LFOs when acting as a payee, thereby inviting arbitrary determinations. And, SB7066 provides no mechanism for approval if a payee is unavailable or non-responsive.

73. Under the second scenario, conversion of LFOs to community service is discretionary: courts are under no obligation to provide an opportunity for a returning citizen to convert her LFOs into a community service obligation, even if that court finds that the individual has no ability to pay. *See id.* § 938.30(2); *see also* Video: May 3, 2019 House Sess. Part 2 ("May 3 House Hearing") at 37:33, https://thefloridachannel.org/videos/5-3-19-house-session-part-2/ (House sponsor Representative James Grant testifying that SB7066 did not require that any courts or circuits have a community service conversion program, stating only that circuits could follow whatever practices they currently undertake).

74. Community service conversion is also rare in practice—the Florida Clerks of Court found in 2008 that "only 16 of 67 counties reported converting any mandatory LFOs imposed in felony cases to community service," and "[o]f those 16 that did report using community service, 10 converted less than $3000 of mandatory LFOs to community service in one year." Diller Report at 23. House

sponsor Representative James Grant conceded that the bill did not require that any courts or circuits have a community service conversion program, stating only that circuits could follow whatever practices they currently undertake. May 3 House Hearing at 37:33.[12] Further, Florida law requires that individuals performing court-ordered community service get paid at the federal minimum hourly wage, *see* Fla. Stat. §§ 938.30(2), 318(18)(a)–(b), currently $7.25 per hour—meaning that it will take any returning citizens with more than *de minimis* financial obligations exceedingly lengthy periods of time to regain their right to vote via community service. When Representative Anna Eskamani raised this latter point—that lower-income returning citizens would not have a pathway to rights restoration because the hourly rates for community service are so low—House sponsor Representative Grant said only: "that's not a concern." May 3 House Hearing at 1:02.

75. Ultimately, in both design and effect, SB7066 disqualifies individual Plaintiffs and members of organizational Plaintiffs Florida NAACP and Orange County NAACP, who have completed the terms of their sentence including

[12] The bill sponsor, Senator Jeff Brandes, also acknowledged "there is no definitive standard" but it is simply an option for returning citizens to return to court to petition that their financial hardship be a basis for conversion. Video: May 2 Senate Hearing ("May 2 Senate Hearing") at 6:30:41, https://www.flsenate.gov/media/VideoPlayer?EventID=2443575804_2019051020&Redirect=true (testimony from Sen. Brandes).

probation or parole, from eligibility to vote because of outstanding financial obligations that they are unable to pay.

IV. Legislative History of SB7066

76. After Amendment 4's passage, the House and Senate held hearings related to HB7089, SB7086, and SB7066, discussed in more detail below. Even though these hearings were truncated because sponsors openly refused to consider key information, the record revealed three overriding flaws with the Legislature's alteration of the rights guaranteed by Amendment 4. First, the hearings showed that it will be practically impossible for Florida officials to determine who is, and is not, automatically restored and eligible to register under SB7066. For example, Lee Adams, Chief of FDOC's Bureau of Admission and Release, testified that FDOC in many cases "has no way of knowing" if an individual has not completed her financial obligations after termination of supervision. Video: Feb. 14, 2019, Jnt. House Meeting of the Criminal J. Subcomm. & the Judiciary Comm. at 1:18, https://thefloridachannel.org/videos/2-14-19-joint-house-meeting-of-the-criminal-justice-subcommittee-and-the-judiciary-committee/ (last visited May 7, 2019). Carolyn Timmann, Martin County Clerk of Court, stated that county clerks have "some [] limitations" in their data on returning citizens, the biggest one being restitution, and "in the majority [of cases], we do not [have restitution information]." *Id.* at 29:56, 54:18. Timmann testified that courts often order

individuals to pay restitution directly to victims, for which there are no receipts or documentation. *Id* at 54:18.

77. Representative Grant, who sponsored HB7089, conceded that there is no existing database or repository that conclusively provides SOEs with information about whether a returning citizen paid all LFOs. Video: Apr. 23, 2019, House Floor Hearing ("April 23 Hearing") at 7:04:00–7:04:07, https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2019041264 ("There is no stakeholder in the State of Florida that can serve as a source of truth that somebody completed all terms of their sentence."); *see also* Video Feb. 14, 2019, House Comm. Joint Hearing at 1:03:30–1:04:05, https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2019021160; May 3 House Hearing at 42:49 (stating that there were "data . . . spread out all over government," and that there was no "efficient or effective" way for Florida officials to compile that data in one place).

78. Additionally, SB7066 fails to provide any criteria or guidelines for how an SOE is supposed to "verify and make a final determination . . . regarding whether the person who registers to vote is eligible pursuant" to Amendment 4, Fla. Stat. § 98.0751(3)(b) (2019), or to evaluate evidence presented at a hearing to determine the eligibility of a returning citizen when the evidence is questioned or challenged.

79. Second, legislators heard from returning citizens who were permitted to testify at some committee hearings, all of whom testified that provisions enacted in SB7066 would permanently disenfranchise them based on their inability to pay outstanding LFOs. Legislators heard from Plaintiff Karen Leicht, who testified that she had $58 million in outstanding restitution obligations despite dutifully making monthly payments. Video: Mar. 25, 2019, Hearing of Senate Comm. on Criminal J. ("March 25 Hearing") at 1:31, https://thefloridachannel.org/videos/3-25-19-senate-committee-on-criminal-justice (last visited May 7, 2019). Ms. Leicht testified that at the time her probation officially ended, "it was my complete and total understanding that at that point, when I signed that paper, I was free," *id.* at 1:32, but that at first she was too "timorous" to register to vote because she did not "want to be considered to have committed any crime," *id.* at 1:36. After her testimony, Senator Jason Pizzo, who represents Ms. Leicht's state senate district, told her to "go register to vote" and that she would not be prosecuted. *Id.* at 1:38.[13] Legislators also heard from Erica Racz, a returning citizen who spent 13 years in

[13] Nothing about Senator Pizzo's recommendation prevents Florida from attempting to purge Ms. Leicht or any of the other individual Plaintiffs from the voter rolls based on outstanding LFOs. Nothing about Senator Pizzo's recommendation prevents the State from prosecuting returning citizens with outstanding LFOs who believe that their rights were restored under Amendment 4 and register to vote after July 1, 2019. Senator Brandes stated as much: it would "depend on individual facts" and be "up to the discretion of the prosecutor." May 2 Senate Hearing at 7:16:28–7:16:51 (colloquy between Senator Rodriquez and Senator Brandes).

prison and four years on probation, who testified that she "cannot afford" her $57,000 in outstanding financial obligations as a single mother: "You want me to pay the government $57,000 to vote?" Video: Apr. 4, 2019, Hearing of House Comm. on State Affairs ("April 4 Hearing") at 3:42, https://thefloridachannel.org /videos/4-4-19-house-state-affairs-committee/ (last visited May 7, 2019). And legislators heard from Coral Nichols, a returning citizen who now runs a nonprofit called Empowered to Change, who testified that she has $190,000 in outstanding restitution. "At $100 a month, I will be 190 years old before I am eligible to vote," she testified. Video: Apr. 9, 2019, Hearing of House Comm. on Judiciary at 3:24, https://thefloridachannel.org/videos/4-9-19-house-committee-on-judiciary/ (last visited May 7, 2019).

80. Public debate among legislators showed that they were plainly aware that SB7066 would disenfranchise voters. At one hearing, for example, Representative Adam Hattersley stated, "we'd create two classes of returning citizens. . . . There would be a minority of well-off individuals who would be able to repay their fines quickly and regain the right to vote; then, there'd be indigent citizens." April 4 Hearing at 3:49. Representative Michael Grieco warned that the proposed legislation would not be faithful to "the will of the voters," which was "very clear" that "1.4 million Floridians or more" would have their voting rights restored. Video: Mar. 19, 2019, Hearing of House Subcomm. on Criminal J. at

1:41, https://thefloridachannel.org/videos/3-19-19-house-criminal-justice-subcommittee/ (last visited May 7, 2019).

81. Third, the sponsors of the House and Senate legislation willfully refused to empirically study or determine how many people would be disenfranchised on account of their legislation. In the House, sponsor Representative Grant said that he did not know or care how many people would be disenfranchised if the legislation passed: "I was asked, have I done a study to know how many people are impacted by this. I said no. They said, are you willing to take a study. I said no. And here's why. I'm happy to review when we're done, members. But members, I don't want to know the impact of this. Because it's irrelevant." April 4 Hearing at 3:57. A month later, he told the full House that he "intentionally stayed blind to the data of the affected classes." May 3 House Hearing at 1:06.

82. In the Senate, when asked how many Floridians have outstanding financial obligations, bill co-sponsor Senator Keith Perry said that he did not know. March 25 Hearing at 35:07. These statements suggest that legislators deliberately chose not to consider specific data documenting the fact that the law will disenfranchise hundreds of thousands of returning citizens because they are experiencing poverty, with a stark disproportionate impact based on race. But the U.S. Supreme Court has recognized that lawmakers may be presumed to be

familiar with the demographics and socioeconomics of their state. *Cf. Shaw v. Reno*, 509 U.S. 630, 646 (1993) ("[T]he legislature always is *aware* of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic factors."). This presumption should be particularly salient in this context, given that HB7089 and SB7086 arose in the House and Senate's respective Criminal Justice Subcommittees, where members are aware of the racial and socioeconomic demographics of the Florida and federal criminal systems, including the rates of felony disenfranchisement by race, discussed *supra*. These members are aware that people with felony convictions commonly have LFOs following completion of incarceration and supervision, that the vast majority of LFOs go uncollected by the state because many people cannot pay them, and that persistent wealth disparities exist between Black and non-Black individuals and families in Florida.

83. Similarly, willful avoidance of inconvenient information does not preclude knowledge of such facts, particularly when they are a matter of "common sense." *See United States v. Schaffer*, 600 F.2d 1120, 1122 (5th Cir. 1979) ("[D]eliberate ignorance is the equivalent of knowledge."). The Legislature presumptively knew that SB7066 would disproportionately harm Black citizens.

84. Based on the likely racial and socioeconomic impact of the proposed laws and the difficulties that many returning citizens have in paying LFOs,

advocates urged both chambers to study the racial and other impact of the bills. *See, e.g.*, Letter from Leah Aden et al., Deputy Dir. of Litig., LDF, to the Fla. Senate (Apr. 30, 2019), https://www.naacpldf.org/wp-content/uploads/NAACP-LDF-and-FLorida-NAACP-Opposition-to-SB-7086.pdf; Letter from Leah Aden et al., Deputy Dir. of Litig., LDF, to the Fla. House of Representatives (Apr. 22, 2019), https://www.naacpldf.org/wp-content/uploads/House-of-Representatives_2019-04-22_NAACP-LDF-and-FL-NAACP-Opposition-to-HB-7089_final.pdf.

85. Members of the Black caucus inquired about the racial impact of the bills. *See, e.g.*, April 23 Hearing at 7:05:31-7:05:40, (colloquy between Rep. Driskell and Rep. Grant). As discussed above, Representative Grant went on to state that: "I have intentionally not looked at the numbers." *Id*. at 7:06:00–7:06:40.

V. Specific Sequence of Events Leading to SB7066's Passage

86. During consideration of HB7089 and SB7086, House and Senate members proposed amendments to each bill that would have mitigated the restrictive and discriminatory impacts of the proposed legislation. Both chambers, however, rejected significantly ameliorative amendments, such as one introduced by Representative McGhee, who is Black, that would have removed the requirement to pay *all* LFOs. *Id.* at 8:21:45.

87. On April 29, 2019, Senator Brandes introduced a strike-all amendment to the House bill, HB7089, that included the harshest LFO

requirements and imposed burdens on SOEs to verify eligibility.[14] The strike-all amendment also included new language that was not in previous versions of the House and Senate bills, including changes to the uniform voter registration form, as discussed above.

88. Without further debate on SB7086, on May 2, 2019, Senator Brandes introduced a new strike-all amendment to an entirely separate Senate elections bill—SB7066.

89. This strike-all amendment was a hybrid of the most restrictive aspects of HB7089 and SB7086 and mandated new burdens, discussed *supra*. These aspects include: requiring the payment of all LFOs, including those converted to civil obligations; placing unfunded mandates and burdens on SOEs; and forcing returning citizens to reveal their felony conviction on the voter registration form.

90. There was no need for such a restrictive LFO requirement. The disconnect between the provisions of SB7066 and the issues it purports to address

[14] Tellingly, in a colloquy between Senator Pizzo and Senator Brandes on May 2, Senator Brandes conceded that alternative, less restrictive iterations of the Senate Bill from weeks past effectuated the "will of the electorate," particularly with respect to those versions' treatment of the terms of sentence provision. May 2 Senate Hearing at 6:35:50–6:38:38 (colloquy between Senator Pizzo and Senator Brandes).

support the inference that the proffered justifications are pretext for an impermissible motive.

CLAIMS FOR RELIEF

COUNT ONE

Fourteenth Amendment to the U.S. Constitution, as enforced by 42 U.S.C. § 1983 Violation of Fundamental Fairness

91. Plaintiffs re-allege and incorporate by reference each allegation contained in the preceding paragraphs as though fully set forth herein.

92. Section 1 of the Fourteenth Amendment to the U.S. Constitution bars states from depriving "any person of . . . liberty . . . without due process of law" and from depriving "any person within its jurisdiction the equal protection of the laws."

93. The Due Process and Equal Protection Clauses of the Fourteenth Amendment prohibit states from imposing punishment for non-payment of LFOs without a prior determination that the individual was able to pay and willfully refused to do so. The Fourteenth Amendment's doctrine of fundamental fairness prevents states from punishing individuals if they fail to do the impossible—satisfy legal financial obligations when they do not have the means to do so. *See, e.g.*, *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996); *Bearden v. Georgia*, 461 U.S. 660 (1983); *Tate v. Short*, 401 U.S. 395 (1971); *Mayer v. City of Chicago*, 404 U.S. 189

(1971); *Williams v. Illinois*, 399 U.S. 235 (1970); *Griffin v. Illinois*, 351 U.S. 12 (1956).

94. Plaintiffs have completed all of the terms of their sentences including parole or probation.

95. Plaintiffs have outstanding civil obligations for court costs, fees, fines, and restitution resulting from a conviction.

96. Mr. Gruver owes $801 in court costs and fees as a result of felony convictions. Mr. Mitchell owes approximately $2,143 in court costs and fees as a result of a felony conviction fourteen years ago when he was seventeen years old. Ms. Riddle owes approximately $1,800 in court costs and fees as a result of felony convictions. Mr. Wrench owes $3,000 in court costs and fees as a result of felony convictions. Ms. Wright owes at least $50,000 in court costs and a fine as a result of a felony conviction. Ms. Leicht owes approximately $58 million in outstanding restitution jointly and severally with her former co-defendants as a result of a conviction. Mr. Phalen owes about $110,000 in outstanding restitution and court costs and fees. Mr. Miller owes $1,221.25 in outstanding court costs and fines. Pastor Tyson owes court costs and fees, though Florida records are unclear about how much he has outstanding. Plaintiffs are unable to pay these obligations.

97. SB7066 violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment by disqualifying Plaintiffs from voting solely for failure to

pay outstanding LFOs despite the fact that (1) they are unable to pay, and (2) there has been no prior determination that they willfully refused to pay.

98. SB7066 violates the Fourteenth Amendment by conditioning Plaintiffs' right to vote on payment of LFOs that Plaintiffs cannot pay.

COUNT TWO

Fourteenth Amendment to the U.S. Constitution,
as enforced by 42 U.S.C. § 1983
Unconstitutional Discrimination in Violation of Equal Protection

99. Plaintiffs re-allege and incorporate by reference each allegation contained in the preceding paragraphs as though fully set forth herein.

100. SB7066 invidiously discriminates between Florida citizens with a prior felony who can pay their LFOs, and Florida citizens with a prior felony who cannot pay.

101. It is well established that "a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972); *see Bush v. Gore*, 531 U.S. 98, 104–05 (2000) ("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another.").

102. A state "violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an

electoral standard." *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966); *see also Johnson v. Governor of State of Fla.*, 405 F.3d 1214, 1216 n.1 (11th Cir. 2005) ("Access to the franchise cannot be made to depend on an individual's financial resources.") (quoting *Harper*, 383 U.S. at 668)).

103. The Equal Protection Clause applies to felony disenfranchisement and rights-restoration laws. *See Johnson*, 405 F.3d at 1230 ("Plaintiffs have a remedy if the state's [felony disenfranchisement] provision violates the Equal Protection Clause.").

104. SB7066 unconstitutionally conditions exercise of Plaintiffs' voting rights on their ability to pay outstanding LFOs, even after Plaintiffs have completed the terms of their sentences and probation.

105. Plaintiffs are not able to pay their outstanding LFOs.

106. There is no rational, let alone compelling, basis for disenfranchising Plaintiffs when they cannot pay LFOs or when they are paying LFOs but cannot afford to complete payment immediately.

107. Plaintiffs' ability to pay these financial obligations is not germane to their qualification to participate in elections.

108. SB7066 would keep Plaintiffs in limbo and deprived of the right to vote for election after election—often for life—based solely on their lack of wealth, an arbitrary and unconstitutional distinction.

109. SB7066 serves no legitimate state purpose because it disenfranchises Plaintiffs solely due to inability to pay their LFOs, a distinction not at all connected to participation in elections.

110. For those who cannot pay, disenfranchisement will not foster their payment.

111. Denying the right to vote does not and cannot incentivize payment of LFOs that a person cannot pay.

COUNT THREE

Fourteenth Amendment to the U.S. Constitution, as enforced by 42 U.S.C. § 1983 Unconstitutional Burden on the Fundamental Right to Vote

112. Plaintiffs re-allege and incorporate by reference each allegation contained in the preceding paragraphs as though fully set forth herein.

113. The Fourteenth Amendment safeguards the "precious" and "fundamental" right to vote, *Harper*, 383 U.S. at 670, and prohibits any encumbrance on the right to vote that is not adequately justified by valid and specific state interests, *Anderson v. Celebrezze*, 460 U.S. 780, 788–89 (1983).

114. Courts reviewing a challenge to a law that burdens the right to vote "must weigh 'the character and magnitude of the asserted injury to the right[]'" to vote "against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those

interests make it necessary to burden the plaintiff's rights.'" *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson*, 460 U.S. at 789).

115. Plaintiffs are registered voters and have the fundamental right to vote.

116. Defendants confirmed Plaintiffs' eligibility to vote and added Plaintiffs to the registration rolls.

117. As an eligible registered voter, Mr. Gruver voted in the March 2019 Gainesville municipal election.

118. As an eligible registered voter, Mr. Ivey voted in the March and May 2019 Duval County elections.

119. As an eligible registered voter, Pastor Tyson voted in March and April 2019 Tampa municipal elections.

120. SB7066 imposes a severe burden on Plaintiffs' right to vote. Plaintiffs will be completely, and likely permanently, disenfranchised by Fla. Stat. §§ 98.0751(1)–(2)(a).

121. The severity of SB7066's burden is heightened because the barrier to the franchise disparately affects those citizens who are already among the most vulnerable: people with a past conviction who lack the means to pay outstanding LFOs.

122. Plaintiffs' disenfranchisement under SB7066 does not serve any of the rationales advanced by the Legislature to justify passage, or any other legitimate state interest.

123. Disenfranchising Plaintiffs does not serve to collect debt because SB7066 cannot incentivize payment of a debt that Plaintiffs cannot afford to pay.

124. It is unconstitutionally burdensome for the state to condition Plaintiffs' fundamental voting rights on their ability to pay the entirety of their LFOs, which they are unable to pay.

125. In addition, due to the lack of accurate, centralized information on outstanding LFOs, it is difficult—if not impossible—for potential registrants to determine whether their debt would disqualify them under SB7066.

126. In order to determine their eligibility, Plaintiffs would have to contact numerous agencies and conduct research of court records. Even with these efforts, it may be impossible for many to determine their eligibility.

127. SB7066 thereby places an unnecessary burden on the right to vote without advancing a valid state interest.

COUNT FOUR

Twenty-Fourth Amendment to the U.S. Constitution, as enforced by 42 U.S.C. § 1983 Unconstitutional Poll Tax

128. Plaintiffs re-allege and incorporate by reference each allegation contained in the preceding paragraphs as though fully set forth herein.

129. SB7066 violates the prohibition against poll taxes enshrined in the Twenty-Fourth Amendment.

130. The Twenty-Fourth Amendment guarantees that the right to vote "shall not be denied or abridged . . . by reason of failure to pay any poll tax or other tax." U.S. Const. Am. XXIV.

131. SB7066 requires LFO payment as a condition for exercising the right to vote and without regard to whether Plaintiffs are able to pay.

132. SB7066 excludes returning citizens with outstanding restitution obligations from all means of restoration. Returning citizens cannot apply for restoration through clemency unless they have completed their restitution obligations. Bd. of Exec. Clemency, Rule 9.A. The Florida Supreme Court understood Amendment 4 to limit the Clemency Board's case-by-case restoration review to "only for those persons convicted of murder or felony sexual offenses, rather than for all felony offenders[.]" Advisory Opinion to the Attorney General, 215 So. 3d at 1207.

133. Excluding Plaintiffs entirely from any chance at restoration imposes an unconstitutional poll tax on Plaintiffs and other returning citizens.

COUNT FIVE

**Fourteenth Amendment to the U.S. Constitution,
as enforced by 42 U.S.C. § 1983
Vagueness and Violation of Procedural Due Process**

134. Plaintiffs re-allege and incorporate by reference each allegation contained in the preceding paragraphs as though fully set forth herein.

135. A law is unconstitutionally vague in violation of the Due Process Clause if it either (1) "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits," *Hill v. Colorado*, 530 U.S. 703, 732 (2000), or (2) fails to "provide explicit standards for those who apply" the law such that "arbitrary and discriminatory enforcement" is authorized or even encouraged, *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). *See also League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1160–61 (N.D. Fla. 2012) (finding a "virtually unintelligible" voter registration regulation that is accompanied by substantial penalties is void for vagueness).

136. Florida lacks any accurate or centralized data on outstanding LFOs that prospective voter registrants may access.

137. Officials from Florida agencies tasked with implementation of Amendment 4 have testified that they do not have sufficient information to carry out SB7066's requirements.

138. Without a centralized, up-to-date database, returning citizens are often unaware of whether they have any outstanding LFOs or how much LFO debt they owe.

139. For example, Mr. Ivey has outstanding LFOs incurred more than 15 years ago but was unaware of the remaining debt until a reporter informed him of it in 2019.

140. Mr. Mitchell had outstanding LFOs incurred over a decade ago when he was a juvenile, but was unaware of the debt until the Miami-Dade Clerk of Court sent him a notice of the debt at his registration address soon after he registered to vote.

141. Mr. Tyson incurred his LFOs decades ago, but only became aware that some were outstanding after being notified recently by counsel.

142. Though SB7066 specifies that returning citizens need only repay LFOs that were originally imposed by a court as part of sentence, returning citizens may not be able to tell whether outstanding LFOs fall into this category. Charges, including interest, collection fees, and other assessments charged after the fact, are not disaggregated by the courts.

143. Furthermore, while SB7066 delineates LFOs in terms of the type of fines, fees, and restitution incurred and owed for offenses adjudicated in Florida courts, it provides no information or guidance on analogous financial obligations or civil debt incurred in other states that would be disqualifying for purposes of SB7066.

144. SB7066 violates procedural due process by failing to provide prospective registrants sufficient information or fair warning regarding whether LFOs continue to disqualify them from voting. The absence of this information impermissibly chills Plaintiffs' exercise of their fundamental right to register and vote.

145. SB7066 violates procedural due process by failing to provide any standards or factors under which an SOE can "verify and make a final determination . . . regarding whether the person who registers to vote is eligible pursuant to [Amendment 4] and this section," therefore ensuring arbitrary and discriminatory enforcement. Fla. Stat. § 98.0751(3)(b) (2019).

146. SB7066 violates procedural due process by failing to provide any standards or factors under which a prospective voter registrant would be able to seek, or a court would grant, termination of LFOs or conversion to community service hours pursuant to Fla. Stat. § 98.0751(2)(a)(5)(e)(II–III), therefore ensuring arbitrary and discriminatory enforcement.

147. SB7066 violates procedural due process by failing to provide any mechanism or standard by which a prospective registrant would be able to appeal an adverse determination on a request for termination of financial obligations or conversion to community service.

148. SB7066 violates procedural due process by failing to provide any process for individuals with convictions in other states to seek waiver, termination, or conversion to community service.

COUNT SIX

First and Fourteenth Amendments to the U.S. Constitution, as enforced by 42 U.S.C. § 1983 Burden on Core Political Speech and Associational Rights

149. Plaintiffs re-allege and incorporate by reference each allegation contained in the preceding paragraphs as though fully set forth herein.

150. LWVF has a First Amendment right to speak, associate, and act collectively with others in order to register voters.

151. LWVF cannot determine whether many potential registrants have satisfied their LFOs. LWVF volunteers do not have access to state data to help potential registrants determine whether all terms of their sentences are complete. Some volunteers will not engage in registration activities because of their concerns.

152. SB7066 also limits the ability of individual Floridians, without specialized training, to assist returning citizens with registering to vote, a civic service that many of LWVF's members and volunteers have routinely performed of their own accord.

153. SB7066 thus violates LWVF's constitutional rights to speech and association because the law deters LWVF from engaging in protected voter registration activity. The law prevents LWVF from registering returning citizens who are in fact eligible to vote because LWVF volunteers lack certainty that registrants can affirm that they have completed all terms of their sentences.

154. The success of LWVF's voter registration drives is severely undermined by uncertainty as to whether a potential registrant has satisfied all LFOs imposed as part of a criminal sentence.

155. As alleged above, SB7066 does not advance any legitimate, much less compelling, state interest.

COUNT SEVEN

Article I, § 10 of the U.S. Constitution, as enforced by 42 U.S.C. § 1983 Retroactive Punishment in Violation of Ex Post Facto Clause

156. Plaintiffs re-allege and incorporate by reference each allegation contained in the preceding paragraphs as though fully set forth herein.

157. Article 1, Section 10, of the United States Constitution provides that "[n]o state shall . . . pass any . . . ex post facto law" that retroactively punishes or extends sanctions imposed on any citizen.

158. Plaintiffs were each convicted of crimes prior to the passage of SB7066.

159. Plaintiffs' voting rights were automatically restored by Amendment 4 on January 8, 2019.

160. Plaintiffs were registered to vote pursuant to Article VI, Section 4 of the Florida Constitution prior to the enactment of SB7066.

161. SB7066's requirement of full payment of all LFOs despite inability to pay is punitive in both intent and effect.

162. State lawmakers referenced the punitive purpose of LFOs in debate and discussion over SB7066. For instance, House sponsor Representative Grant referred to "fines, fees, [and] court costs" as "punishment for a crime." Apr. 4 Hearing at 2:58. In announcing his decision to sign the bill, Gov. DeSantis stated that, "The only reason you're paying restitution is because you were convicted of a felony." News Service of Florida, *Amendment 4 Bill: DeSantis Says He's Ready to Sign*, Tampa Bay Times (May 8, 2019), https://www.tampabay.com/florida-politics/buzz/2019/05/08/amendment-4-bill-desantis-says-hes-ready-to-sign/?template=amp/.

163. Florida's felony disenfranchisement law has been used for nearly two centuries as a form of criminal punishment.

164. The sanction of disenfranchisement involves an affirmative restraint on Plaintiffs' right to vote. There is no alternative, non-punitive purpose for disenfranchising individuals who are unable to pay.

165. SB7066 imposes and extends punitive sanctions on Plaintiffs in violation of the Ex Post Facto Clause.

COUNT EIGHT

Fourteenth and Fifteenth Amendments to the U.S. Constitution, as enforced by 42 U.S.C. § 1983 Intentional Race Discrimination

166. Plaintiffs re-allege and incorporate by reference each allegation contained in the preceding paragraphs as though fully set forth herein.

167. The Equal Protection Clause of the Fourteenth Amendment prohibits intentional discrimination on the basis of race. U.S. Const. amend. XIV. The Fifteenth Amendment forbids the denial or abridgment of the right to vote on account of race or ethnicity. U.S. Const. amend. XV. Both constitutional protections guard against any deprivation of the right to vote that is motivated by race. *Rogers v. Lodge*, 458 U.S. 613, 621–25 (1982).

168. Because a discriminatory motive may hide behind legislation that "appears neutral on its face," the U.S. Supreme Court articulated several non-

exhaustive factors to inform an analysis of discriminatory intent: (1) evidence that defendants' decision bears more heavily on one race than another; (2) the historical background of the decision; (3) the specific sequence of events leading up to the decision; (4) departures from the normal procedural sequence; (5) substantive departures; and (6) legislative history, including "contemporary statements by members of the decision making body, minutes of its meetings, or reports." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266–28 (1977).

169. An official action taken for the purpose of discriminating on account of race has no legitimacy under the U.S. Constitution. *City of Richmond, Va. v. U.S.*, 422 U.S. 358, 378–79 (1975).

170. Demonstrating intentional discrimination "does not require a plaintiff to prove that the challenged action rested solely on racially discriminatory purposes." *Arlington Heights*, 429 U.S. at 265. Instead, the plaintiff's burden is to show that the discriminatory purpose was a motivating factor, rather than the primary or sole purpose. *Id*. at 265–66.

171. Applying the *Arlington Heights* factors to the evidence reveals that SB7066 was enacted, at least in part, with a racially discriminatory intent to discriminate against Black returning citizens in violation of the U.S. Constitution.

172. The history underlying Florida's felony disenfranchisement regime, the known and reasonably foreseeable discriminatory impact of SB7066, the

sequence of events and substantive departures from the normal legislative process which resulted in the enactment of SB7066, and the tenuousness of the stated justifications for SB7066 raise a strong inference of a discriminatory purpose in violation of the Fourteenth and Fifteenth Amendments.

REQUEST FOR RELIEF

WHEREFORE Plaintiffs respectfully request the following relief:

a) Declare Fla. Stat. §§ 98.0751(1)–(2)(a), as amended by SB7066, unconstitutional in derogation of the First, Fourteenth, Fifteenth, and Twenty-Fourth Amendments and the Ex Post Facto Clause of the United States Constitution;

b) Temporarily, preliminarily, and permanently restrain and enjoin the State of Florida from enforcing the provision of Fla. Stat. §§ 98.0751(1)–(2)(a);

c) Award Plaintiffs' attorneys' fees in this action pursuant to 42 U.S.C. § 1988(b);

d) Award Plaintiffs their costs of suit; and

e) Grant such other and further relief as this Court deems just and proper in the circumstances.

Dated: June 28, 2019

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2019, I electronically filed the foregoing with the Clerk of Court by using CM/ECF, which automatically serves all counsel of record for the parties who have appeared.

Additionally, the parties are concurrently being served via email and physical service of summons and complaint at the following addresses:

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EXHIBIT L

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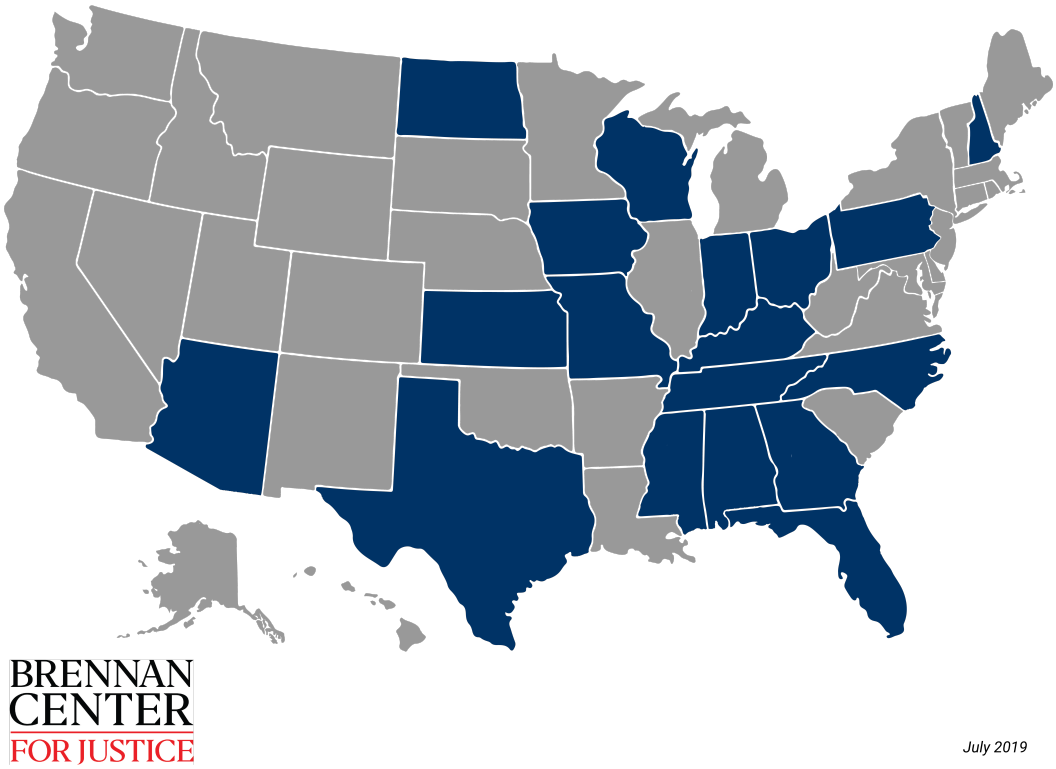
The State of Voting Rights Litigation (July 2019)

Here are the significant voting rights lawsuits in the states that we're keeping our eyes on.

Max Feldman [1], Peter Dunphy [2]

July 31, 2019

States with Ongoing Litigation Against Voting Restrictions



Below are significant challenges to restrictive voting practices in the states that we're keeping our eyes on. For additional context, click here [4] to review our report on the State of Voting of 2018 and related update.

ALABAMA

Greater Birmingham Ministries v. Merrill [5] (N.D. Ala., No 2:15-cv-02193; 11th Cir., No. 18-10151)

In December 2015, Greater Birmingham Ministries and the Alabama NAACP filed suit challenging Alabama's voter ID law, which requires voters to present a photo ID to vote, but allows election officials to vouch for the identity of a voter without ID. They argue that the state's photo ID law has a disproportionate impact on minority voters in violation of the Voting Rights Act and the U.S. Constitution.

In January 2018, a federal district court granted the defendant's motion for summary judgment and dismissed the case. The plaintiffs appealed to the Eleventh Circuit, which heard oral argument on July 27, 2018. The parties are awaiting a decision.

League of Women Voters v. Newby [6] (D.D.C, No. 1:16-cv-00236; D.C. Cir. No. 16-5196)

See Georgia below.

Thompson v. Alabama [7] (M.D. Ala., No. 2:16-cv-00783)

In September 2016, Greater Birmingham Ministries and individuals who were disenfranchised as a result of a felony conviction in their past brought a lawsuit challenging the state's disenfranchisement process. The plaintiffs argue that the state's disenfranchisement of individuals convicted of a "felony involving moral turpitude" and its conditioning of restoration of the right to vote on full payment of all fines, court costs, fees, and restitution violate the U.S. Constitution and section 2 of the Voting Rights Act.

In May 2017, the Alabama Legislature passed a law defining crimes of moral turpitude, which addressed part of the plaintiffs' complaint. In an opinion issued in December 2017, a federal district court granted in part and denied in part the state's motion to dismiss the complaint. The court permitted the plaintiffs to proceed on their claims that the "moral turpitude" provision of the Alabama Constitution violates the Eighth, Fourteenth, and Fifteenth Amendments and the Ex Post Facto clause of the U.S. Constitution, and that the fees and fines provision of state law violates the Fourteenth Amendment. The case is proceeding in the district court.

ARIZONA

Navajo Nation v. Hobbs [8] (D. Ariz. No. 3:18-cv-08329)

On November 18, 2018, the Navajo Nation and tribal members filed a complaint against the Secretary of State and elections officials in three counties, alleging that the defendants' failure to provide sufficient language assistance, in-person early voting locations, or voter registration locations on the Navajo Indian Reservation resulted in more than one hundred absentee ballots cast by tribal members being rejected in the 2018 election and will continue to have a discriminatory impact on tribal members' voting rights. The plaintiffs argue that the defendants' failure to provide adequate resources violates the equal protection clause of the Fourteenth Amendment, section 2 of the Voting Rights Act, the First Amendment's protection of political association, and the Arizona state constitution.

On December 24, 2018, the parties filed a joint motion for a temporary stay of 120 days to facilitate settlement negotiations. On April 23, 2019, the parties filed a second joint motion for a temporary stay for another 120 days, which the court granted.

Democratic National Committee v. Reagan (9th Cir. No. 18-15845; D. Ariz. No. 2:16-cv-01065)

In April 2016, the Democratic National Committee, the Democratic Senatorial Campaign Committee, and the Arizona Democratic Party (with others) filed a challenge to Arizona's policy of not counting provisional ballots cast in the wrong precinct and to HB 2023, a 2016 law that criminalized third-party collection of completed absentee ballots. The plaintiffs claimed that these policies violate section 2 of the Voting Rights Act and the First and Fourteenth Amendments to the U.S. Constitution, and that HB 2023 also violates the Fifteenth Amendment.

The plaintiffs filed motions for preliminary injunction against these policies, which were the subject of extensive skirmishing in the district court, the Ninth Circuit Court of Appeals, and the U.S. Supreme Court. Ultimately, these policies were permitted to stand for the 2016 election.

The litigation continued in the district court. In May 2018, following a ten-day bench trial, the court ruled in favor of the defendants on all of the plaintiffs' claims.

The plaintiffs appealed. On September 18, 2018, a Ninth Circuit panel affirmed the district court in a 2-1 decision. The plaintiffs petitioned for the Ninth Circuit to hear the case *en banc*, however, and on January 2, 2019, the petition was

granted. Oral argument was held on March 27, 2019.

FLORIDA

League of Women Voters of Florida v. L [9]*ee* [9] (N.D. Fl., No. 4:18-cv-00251)

In May 2018, the League of Women Voters, the Andrew Goodman Foundation, and several students filed a lawsuit challenging the Secretary of State's determination that early voting sites could not be located on state university campuses.

On July 24, 2018, a federal district court issued a preliminary injunction, striking down the Secretary's determination, and holding that it was intentionally discriminatory on account of age, in violation of the 26th Amendment. The decision restored discretion to election supervisors to designate early voting sites on campuses, and on July 21, 2018, the Secretary issued a directive to election supervisors in accord with the decision. In August 2018, the court stayed further proceedings in the case until after the November midterms.

On January 21, 2019, the court directed the parties to file briefs explaining whether or not the Secretary's July 27 directive mooted the case. On February 22, 2019, the plaintiffs filed a motion for summary judgement to convert the preliminary injunction to a permanent injunction.

On June 17, 2019, the plaintiffs filed an emergency motion to continue a hearing on the motion for summary judgment set for June 19. The plaintiffs argued that a bill recently passed by the Florida Legislature (SB 7066) contained provisions intended to evade the court's preliminary judgment and advised the court that, if the bill were signed or became law without gubernatorial action, they would consider withdrawing their summary judgment motion and seek leave to amend their complaint. On June 18, 2019, the court granted the motion and took the hearing off calendar.

On June 28, 2019, the bill was signed into law. On July 8, 2019, the plaintiffs filed a motion for leave to file a supplemental complaint, including a new First and Fourteenth Amendment claim and a new 26th Amendment claim challenging the contested provisions of SB 7066, as well as new factual allegations and plaintiffs. The motion is pending.

Hand v. Scott [10] (N.D. Fl., No. 4:17-cv-00128; 11th Cir., No. 18-11388)

In March 2017, the Fair Elections Legal Network and Cohen Milstein Sellers & Toll PLLC filed a class action complaint on behalf of individuals who were disenfranchised as a result of felony convictions in their past. The plaintiffs argue that the unfettered discretion given to Florida's Executive Clemency Board to determine whether or not to restore individuals' voting rights violated the U.S. Constitution.

In February 2018, a federal district court ruled that the Clemency Board's unfettered discretion violates both the First and Fourteenth Amendments of the U.S. Constitution. In March 2018, the court ordered the defendants to create a new voting rights restoration process.

The state appealed to the Eleventh Circuit and requested a stay of the district court's order, pending resolution of the appeal. On April 25, 2018, the Eleventh Circuit granted the request and halted the district court's order. Oral argument on the merits appeal was held on July 25, 2018.

On November 20, 2018, the Court of Appeals directed the parties to brief whether the passage of Amendment 4 [11] mooted the case, and the parties have filed supplemental briefs in response.

Democratic Executive Committee of Florida v. Ertel [12] (N.D. Fl., No. 4:18-cv-00520, 11th Cir., No. 18-14758)

On November 8, 2018, the Democratic Executive Committee of Florida and the Bill Nelson for U.S. Senate campaign filed suit against the Florida Secretary of State seeking to enjoin Florida from rejecting vote-by-mail and provisional ballots on the basis of a standardless signature matching process. The plaintiffs argue that local canvassing boards decide whether to accept and count vote-by-mail and provisional ballots on a standardless and inconsistent signature

process. Furthermore, the plaintiffs argue that this process has a disproportionate impact on minorities as well as young, first-time voters.

The plaintiffs contend that Florida's signature matching process violates the First and Fourteenth Amendments of the Constitution. The plaintiffs filed an emergency motion for temporary injunction and restraining order, and on November 15, 2018, the district court granted the motion.

On February 15, 2019, the Eleventh Circuit denied the defendant's motion to stay the district court's preliminary injunction. On the same day, the district court denied the defendant's motion to dismiss the case as moot.

On May 6, 2019, the court ordered the parties to brief what effect, if any, certain legislation (SB 7066) would have on the litigation, within ten days of it being signed into law. On May 29, 2019, the court stayed discovery, and it repeatedly extended the stay. On July 2, 2019 the plaintiffs filed a motion to dismiss the case voluntarily without prejudice, in light of the passage of SB 7066. On July 29, 2019, the court granted the motion and dismissed the case without prejudice. The Eleventh Circuit appeal has not been dismissed.

Jones v. DeSantis [13] (N.D. Fl., No. 4:19-cv-300) (Previously *Gruver v. Barton*)

On June 28, 2019, the Brennan Center, the ACLU, the ACLU of Florida, and the NAACP Legal Defense and Education Fund filed a lawsuit on behalf of individual returning citizens, the Florida NAACP, and the League of Women Voters of Florida against ten local supervisors of elections and Florida Secretary of State Laurel Lee. The plaintiffs challenge SB7066, Florida's newly enacted voting rights restoration law.

On November 6, 2018, nearly 65 percent of Florida voters approved Amendment 4, a constitutional amendment that automatically restored voting rights to as many 1.4 million Floridians, except those convicted of murder or a felony sexual offense, who had completed the terms of their sentence including parole or probation. On May 3, 2019, however, the Florida legislature voted along party lines to pass SB7066, which prohibits returning citizens from registering to vote unless they pay off all legal financial obligations ("LFOs") imposed by a court as part of a sentence for a felony conviction, including those LFOs converted to civil obligations, even if they cannot afford to pay.

The plaintiffs allege that by conditioning the right to vote on payment of LFOs, SB7066 violates fundamental fairness and unconstitutionally burdens the right to vote under the Fourteenth Amendment, discriminates on the basis of wealth in violation of the Equal Protection Clause, violates the prohibition against poll taxes enshrined in the Twenty-Fourth Amendment, and imposes punitive sanctions in violation of the Ex Post Facto Clause. The plaintiffs allege that SB7066 is unconstitutionally vague in violation of the Due Process Clause because Florida fails to provide returning citizens with sufficient information to determine whether LFOs continue to disqualify them from voting. The plaintiffs further allege that SB7066 chills the League and Florida NAACP's voter registration activities in violation of the First Amendment. Finally, the plaintiffs allege that SB7066 intentionally discriminates on the basis of race.

On June 30, 2019, several challenges to SB 7066 – *Jones v. DeSantis* (4:19-cv-300), *Raysor v. Lee* (4:19-cv-301), *Gruver v. Barton* (4:19-cv-302), *McCoy v. DeSantis* (4:19-cv-304), and *Mendez v. DeSantis* (4:19-cv-272) – were consolidated for case management purposes on the *Jones v. DeSantis* common docket.

GEORGIA

League of Women Voters v. Newby [6] (D.D.C, No. 1:16-cv-00236; D.C. Cir. No. 16-5196)

In February 2016, the Brennan Center, Stroock & Stroock & Lavan LLP, and Kirkland & Ellis LLP filed suit on behalf of the League of Women Voters and state affiliates. The suit challenges letters sent by Election Assistance Commission ("EAC") Executive Director Brian Newby in January 2016 to the secretaries of state of Alabama, Georgia, and Kansas. Without explanation, he allowed the three states to require that applicants using the federal voter registration form provide documentary proof of citizenship.

The suit asserts that Newby lacked the authority to make this decision, and that issuing the letters violated both EAC policy and federal law. On June 29, 2016, the district court ruled that Alabama, Georgia, and Kansas could implement their proof of citizenship requirements for the 2016 election. The plaintiffs appealed this decision to the D.C. Circuit.

On September 9, 2016, the D.C. Circuit preliminarily enjoined the EAC from changing the federal voter registration form to allow Kansas, Alabama, and Georgia to require documentary proof of citizenship. That means documentary proof of citizenship is not on the federal form.

On February 24, 2017, the district court remanded the matter to the EAC. Judge Richard Leon instructed the Commission to determine whether Executive Director Newby had authority to allow the three states to require proof of citizenship on the federal form. The preliminary injunction remains in place.

Georgia Coalition for the Peoples' Agenda v. [14]*Raffensperger* [14] (N.D. Ga. No. 1:18-cv-04727)

On October 11, 2018, a coalition of civil rights groups brought a challenge to Georgia's "no-match, no vote" system, which requires an exact match between information on the voter registration form and information about the applicant in the state's databases in order to complete the registration process. The plaintiffs argue that the system is discriminatory and constitutes an undue burden on the right to vote in violation of the Voting Rights Act and the U.S. Constitution. The plaintiffs also argue that the system violates Section 8 of the National Voter Registration Act because it fails to ensure that voters who submit timely and accurate voter registration forms are registered as active voters.

On November 2, 2018, the district court entered a preliminary injunction with respect to these voting rules for the approximately 3,141 individuals whose voter registrations have been placed in "pending" status because their citizenship information did not match. The court observed that a mismatch could occur when a person obtains a Georgia driver's license prior to becoming a citizen, then becomes a naturalized citizen, and then submits a voter registration application claiming citizenship.

The court ordered the Secretary of State to allow county election officials to permit people placed in "pending" status because of citizenship to vote a regular ballot by providing proof of citizenship to poll managers or deputy registrars. Prior to the order, if these voters wanted to present proof of citizenship at the polls, they had to have their proof reviewed by a deputy registrar. The court credited evidence that deputy registrars were not always available at poll places and determined that the state's system constituted a severe burden on the right to vote.

The case has proceeded to discovery, which is scheduled to end on September 3, 2019.

Ebenezer Baptist Church of Atlanta, Georgia, Inc v. Raffensperger (previously Fair Fight Action v. Raffensperger [15]*)* (N.D. Ga., 1:18-cv-05391-SCJ)

On November 27, 2018, Fair Fight Action and Care in Action filed a lawsuit against the Georgia Secretary of State and the State Election Board. The plaintiffs allege that the defendants are responsible for a host of election related offenses, including failing to provide absentee ballots and improperly handling completed absentee ballots; failing to train local election officials; failing to properly maintain the voter registration list; improperly blocking registrations and purging voters; improperly preventing voters from using provisional ballots; improperly allowing long lines at polling locations; and failing to provide a sufficient number of paper ballots at polling places.

Collectively, the plaintiffs argue that these actions violate the First, Fourteenth, and Fifteenth Amendments of the U.S. Constitution, section 2 of the Voting Rights Act, and the Help America Vote Act.

The state defendants filed a motion to dismiss on March 5, 2019. On May 30, 2019, the court dismissed certain claims against the State Election Board based on sovereign immunity. However, the court denied the state's motion to dismiss the Voting Rights Act claim against the State Election Board as well as all claims against the Secretary of State. On June 13, 2019, the defendants filed an answer to the complaint.

Georgia Shift v. Gwinnett County [16] (N.D. Ga. 1:19-cv-01135)

On March 11, 2019, Georgia Shift, a civic organization representing marginalized young people, filed a lawsuit against Gwinnett, Fulton, Dekalb, and Cobb counties – the four most populous counties in Georgia. The plaintiff alleges that, in recent elections, these counties failed to provide sufficient polling places, voting machines, and elections staff. The plaintiff argues that this failure constitutes an undue burden on the right to vote in violation of the Fourteenth Amendment to the U.S. Constitution, and asks the court to order the defendants to provide sufficient resources for the

2020 election, including enough polling places, voting machines, and election staff to prevent unreasonably long lines on Election Day and to process all registration forms and absentee ballot applications within one day.

On April 18, 2019, the defendants filed motions to dismiss. On May 30, 2019, the plaintiff filed an amended complaint, and responses to the amended complaint are due on August 5, 2019.

INDIANA

Indiana NAACP v. Lawson [17] (S.D. Ind., No. 1:17-cv-02897; 7th Cir., No. 18-2492)

In August 2017, the Brennan Center filed a lawsuit on behalf of the Indiana NAACP and League of Women Voters, challenging the state's new voter purge process. The law provides for use of the error-prone Crosscheck Program to remove voters without the notice and waiting period required by the National Voter Registration Act.

On June 8, 2018, a federal district court issued a preliminary injunction, blocking the law. The court held that the plaintiffs were likely to succeed in showing that Indiana's laws violated the National Voter Registration Act. The state appealed the court's order to the Seventh Circuit. Oral argument was held on January 14, 2019, and the parties are awaiting a decision. Discovery is proceeding in the district court.

Frederick v. Lawson [18] (S.D. Ind. No. 1:19-cv-1959)

On May 16, 2019, Common Cause Indiana and several Indiana voters filed a class action lawsuit against the Indiana Secretary of State and the St. Joseph's County Election Board, challenging certain signature-matching provisions of Indiana's absentee ballot laws. The plaintiffs allege that Indiana law requires election officials to determine whether the voter's signature on a mail-in absentee ballot envelope is genuine in order to count the ballot, but does not set forth any criteria for making this determination or offer officials training in handwriting analysis, does not require notification to the voter if the ballot is rejected, and makes election officials' determinations final and unreviewable. As a result of this system, the plaintiffs allege that at least several hundred mail-in absentee ballots were not counted in the 2018 election.

The plaintiffs argue that this system violates the Fourteenth Amendment because it deprives them of their right to vote without due process of law and constitutes an undue and inconsistently applied burden on the right to vote. They ask the court to issue an injunction prohibiting the rejection of absentee ballots based solely on a purported signature mismatch in future federal elections.

On July 11, 2019, the county defendants moved to dismiss the plaintiffs' amended complaint – that motion is pending. On July 17, 2019, the Secretary of State answered the complaint.

IOWA

League of United Latin American Citizens v. Pate [19] (Polk County Dist. Ct., No. CVCV056403; Iowa Sup. Ct., No. 18-1276)

On May 30, 2018, LULAC Iowa and an Iowa voter filed a lawsuit challenging HF 516, a 2017 law that, among other things, cut back on early voting days, made it harder to cast absentee ballots, and implemented new voter ID requirements in elections after 2018.

In July 2018, a state district court issued temporary injunction, blocking parts of the law making it more difficult to apply for an absentee ballot and cutting back on the early/absentee voting period. The court also prohibited state officials from advertising that ID was required to vote this November in connection with the state's "soft rollout" of its new voter ID law.

On August 10, 2018, the Iowa Supreme Court affirmed the district court's temporary injunction in part, but it reversed the injunction with respect to the absentee/early voting period, restoring the state's cutback. The case was remanded to the district court. A trial was held from June 24 to June 29, 2019.

KANSAS

Fish v. Kobach [20] (D. Kan. No. 2:16-cv-02105; 10th Cir. No. 16-3147)

Bednasek v. Kobach [20] (D. Kan. No. 2:15-cv-09300; 10th Cir., No. 18-3186)

In February 2016, the ACLU brought suit on behalf of affected would-be voters alleging that Kansas violated the National Voter Registration Act by requiring Kansans who attempt to register to vote while applying for or renewing a driver's license to produce documentary proof of citizenship. In a separate case – *Bednasek v. Kobach* – would-be voters brought suit arguing that the documentary proof of citizenship requirement constituted an undue burden on their right to vote in violation of the Fourteenth Amendment.

A federal district court consolidated the cases for trial and held a bench trial in March 2018. After trial, the district court struck down the law. The state appealed to the Tenth Circuit, and the case was argued on March 18, 2019.

League of Women Voters v. Newby [6] (D.D.C, No. 1:16-cv-00236; D.C. Cir. No. 16-5196)

See Georgia above.

KENTUCKY

Harbin v. Bevin [21](E.D. Ky. No. 6:18-cv-00277)

On January 4, 2019, four Kentuckians with previous felony convictions filed a complaint challenging Kentucky's voting rights restoration policy. (One of the plaintiffs had previously filed a complaint and an amended complaint, *pro se*, on October 29, 2018 and November 2, 2018, respectively.) The plaintiffs claim that Kentucky's policy, which the plaintiffs allege permanently disenfranchises individuals with felonies unless the Governor restores their rights and grants the Governor unfettered discretion to decide whether or not to do so, violates their rights under the First Amendment of the U.S. Constitution. The plaintiffs ask the court to issue a permanent injunction replacing the current system with a system that restores the right to vote based upon neutral, objective, uniform rules.

On February 15, 2019, the defendant filed a motion to dismiss. That motion is pending.

MISSISSIPPI

O'Neil v. Hosemann [22] (S.D. Miss. No. 3:18-cv-00815)

On November 21, 2018, the Mississippi State Conference of the NAACP and three Mississippi voters filed a challenge to Mississippi's absentee ballot procedures, claiming that those procedures constitute an undue burden on the right to vote in violation of the First and Fourteenth Amendments to the U.S. Constitution. According to the plaintiffs, the state allows a voter to use an absentee ballot only if the voter meets one of a limited number of excuses and requires the voter to get both the request form and the ballot itself notarized. The relevant forms are not available online and cannot be photocopied. And Mississippi is one of three states to require that absentee ballots be received before Election Day.

The plaintiffs further alleged that these procedures were even more burdensome in the context of the November 27, 2018 runoff election, because county clerks only started sending out ballots on November 17th, so voters would have to complete all of the required steps in about a week and might also be required to pay for overnight shipping in order to get their ballot counted.

On November 26, 2018, the plaintiffs filed a motion for a temporary restraining order and preliminary injunction, seeking an extension of the deadline for absentee ballots to be returned for the runoff. On November 27, the court denied the motion.

The litigation is ongoing. A settlement conference was held on July 19, 2019. Following the conference, the court stayed all discovery, instructed the parties to continue settlement discussions, and set a status conference for August 9, 2019.

MISSOURI

Missouri NAACP v. State of Missouri [23] (Cole County Cir. Court, No. 17AC-CC00309; Western District Court of Appeals, No. WD81484)

In June 2017, the Missouri NAACP and League of Women voters brought suit, challenging the state's new voter ID law. The plaintiffs argue that the manner in which the state has implemented the law violates state law and the state Constitution.

In January 2018, the trial court granted the defendants' motion for judgment on the pleadings and dismissed the case. The plaintiffs appealed, and on October 30, 2018, the Missouri Court of Appeals reversed [24] the district court's decision, and sent the case back to the district court for further proceedings. Discovery is ongoing.

Priorities USA v. State of Missouri [25] (Cole County Circuit Court, No. 18AC-CC00226)

In June 2018, Priorities USA and an individual voter brought a lawsuit challenging the state's voter ID law. The plaintiffs argue that the law violates the state Constitution.

In September 2018, the court held a trial. On October 9, 2018, the court issued an order striking down part of the voter ID law. Specifically, the court permanently enjoined the state from requiring otherwise-qualified voters that lacked photo ID to execute an affidavit in order to vote. In addition, the court enjoined the state from disseminating misleading materials suggesting that voters without photo ID could not vote. On October 19, 2018, the Missouri Supreme Court denied the defendants' request for a stay of the trial court's order. On November 9, 2018, the defendants filed a notice of appeal.

NEW HAMPSHIRE

League of Women Voters v. Gardner [26] (Superior Court, Hillsborough Northern District, No. 226-2-17-CV-00432 and -00433)

In August 2017, the League of Women Voters of New Hampshire (along with certain individual plaintiffs) and the New Hampshire Democratic Party filed complaints challenging Senate Bill 3, a voter registration law that critics claim was designed to make it more difficult for students to vote.

The trial court held a weeks-long preliminary injunction hearing that concluded in early September 2018. On October 22, 2018, the trial court issued a preliminary injunction, partially blocking SB3. Specifically, the court enjoined the state's use of a new affidavit for voters registering within 30 days of the election without documentation proving domicile.

On October 26, 2018, the New Hampshire Supreme Court stayed the trial court's preliminary injunction until after the November 6 election. A bench trial is scheduled to begin on December 2, 2019.

Casey v. Gardner [27] (D.N.H. 1:19-cv-00149)

On February 13, 2019, two New Hampshire college students filed a challenge to HB 1264 – a 2018 law that changed the legal definition of residence. The plaintiffs allege that this change imposes significant costs on some voters because it effectively requires anyone with a driver's license or car who registers to vote in New Hampshire to obtain a New Hampshire driver's license and register that car in New Hampshire.

The plaintiffs claim that the law imposes an undue burden on the right to vote in violation of the First and Fourteenth Amendments to the U.S. Constitution, that it has the purpose and effect of abridging the right to vote on account of age in violation of the 26th Amendment, and that it constitutes a poll tax in violation of the 24th Amendment. And the plaintiffs ask the court to declare HB 1264 unconstitutional and to strike the law down.

On April 10, 2019, the trial court consolidated *Casey* with the case *New Hampshire Democratic Party v. Gardner* [28] (D.N.H. 1:19-cv-00201), which challenged HB 1264 on similar grounds.

NORTH CAROLINA

Holmes v. Moore [29] (Wake Cty. Sup. Ct. 18-cvs-15292)

In the November 2018 election, North Carolina voters passed a ballot measure that amended the state Constitution to add a photographic voter ID requirement. In the lame-duck session following the election, the North Carolina legislature passed enabling legislation (SB 824), over Governor Roy Cooper's veto.

On December 18, 2018, several North Carolina voters filed a state court challenge to SB 824, alleging that the law violates a variety of provisions of the state Constitution, including because it is discriminatory and constitutes a significant burden on the right to vote and the right to free speech and assembly. The plaintiffs also filed a request that the case be heard by a three-judge panel, arguing that state law requires that they be assigned to such a panel because their claims are facial challenges to the validity of an act of the legislature.

On January 22, 2019, the individual state legislator defendants filed a motion to dismiss the case. On February 21, 2019, the State and the State Board of Elections also filed a motion to dismiss (along with an answer to the complaint).

On March 13, 2019, the Court issued an order largely denying the legislators' motion to dismiss and transferring the case to a three-judge panel.

On June 28, 2019, the Superior Court held oral argument in the case. On July 19, 2019, the court denied the plaintiffs' motion for a preliminary injunction.

North Carolina State Conference of the NAACP v. Cooper [30] (M.D.N.C. No. 1:18-cv-01034)

On December 20, 2018, the North Carolina State Conference of the NAACP, along with local NAACP chapters, sued the Governor, the Secretary of State, and the members of the State Board of Elections, challenging SB 824, North Carolina's new voter photo ID law. The plaintiffs argue that the law violates the Fourteenth and Fifteenth Amendments to the U.S. Constitution and section 2 of the Voting Rights Act. In addition to asking the court to enjoin the law, they request that the court bail the state into pre-clearance under section 3(c) of the Voting Rights Act.

On January 14, 2019, the President Pro Tempore of the North Carolina Senate and the Speaker the North Carolina House moved to intervene in opposition to the challenge to SB 824 – that motion was denied on June 3, 2019.. On February 28, 2019, the State Board of Elections defendants and the Governor filed separate motions to dismiss. On July 2, 2019the court denied the State Board defendants' motion and granted the Governor's motion, dismissing him from the case.

North Carolina State Conference of the NAACP v. Moore [31] (Wake Cty. Sup. Ct. 18-cvs-9806, NC Supreme Ct. No. 261P18-2)

On August 6, 2018 the North Carolina NAACP and Clean Air Carolina filed suit in state court, challenging the validity of four proposed constitutional amendments that were to be put on the November 2016 ballot, including a new voter ID requirement. The plaintiffs sought to prevent the amendments from being included on the ballot, arguing that the measures were misleadingly worded and that they had been passed by an illegally gerrymandered legislature and so were invalid.

A three-judge panel hearing the case granted a partial preliminary injunction, holding that two of the amendments (not the voter ID amendment) were misleading or inadequately informative. (The legislature subsequently re-wrote the amendments, which were then included on the ballot.) The panel found that it did not have jurisdiction to review the plaintiffs' claim that the amendments were invalid because the legislature was unlawfully constituted.

On October 11, 2018, the plaintiffs filed an amended complaint before a single-judge court, and on November 2, 2018, the plaintiffs filed a motion for partial summary judgment on their claim that the amendments were invalid because the legislature was unlawfully constituted. On November 6, 2018, North Carolina voters passed two of the challenged amendments, including the voter ID amendment.

On February 22, 2019, the Wake County Superior Court struck down the two amendments. The Court held that because the legislature that passed the amendments was illegally gerrymandered, it did not represent the people of the state, and therefore lacked the power to pass legislation amending the state constitution.

The defendants have appealed. On March 21, 2019, the Court of Appeals issued a stay of the Superior Court's order, pending resolution of the appeal. On April 29, 2019, plaintiffs petitioned the North Carolina Supreme Court to take direct review of the appeal. On June 11, 2019, the Supreme Court denied the petition.

NORTH DAKOTA

Brakebill v. Jaeger [32] (D.N.D., No. 1:16-cv-08; 8th Cir. No. 18-1725; U.S. Sup. Ct., No. 18A335)

In January 2016, seven Native American plaintiffs filed suit under the Voting Rights Act and the U.S. and North Dakota Constitutions, challenging the state's strict photo ID law and arguing that it disproportionately denies Native American citizens the right to vote. On August 1, 2016, a federal trial court issued a preliminary injunction ordering North Dakota to provide a "fail-safe" option for voters without photo ID if it intends to enforce the ID requirement.

In April 2017, North Dakota passed a revised voter ID law, and the plaintiffs filed a motion to enjoin the new law. In April 2018, the district court issued a preliminary injunction, temporarily halting the state from enforcing parts of the new law that could disenfranchise significant numbers of Native Americans. The state appealed to the Eighth Circuit and requested a stay of part of the district court's injunction, which required the state to accept voter ID that includes a current mailing address rather than a current residential street address.

On September 24, 2018, the Eighth Circuit granted the state's request for a stay of the district court's injunction with respect to the residential street address requirement, pending appeal. On October 9, 2018, the U.S. Supreme Court denied plaintiffs' application to vacate the Eighth Circuit's stay. The merits appeal has been fully briefed and submitted to the Eighth Circuit.

Update Aug. 1, 2019: On July 31, 2019, the Eighth Circuit vacated the district court's preliminary injunction, holding that the plaintiffs' alleged burdens did not justify a statewide injunction.

Spirit Lake Tribe v. Jaeger [33] (D.N.D. No. 1:18-cv-00222)

On October 30, 2018, the Spirit Lake Tribe and individual Native American voters brought a challenge to North Dakota's requirement that voter IDs include the voter's residential street address. This lawsuit followed on the Eighth Circuit's September 24, 2018 stay order in *Brakebill v. Jaeger* (see above), which indicated that while that court would not uphold the district court's *statewide* injunction of the residential address requirement at that juncture, voters impacted by the requirement could bring targeted challenges to the law based on its impact on them.

The plaintiffs argue that this requirement imposes an undue burden on their right to vote in violation of the First and Fourteenth Amendments to the U.S. Constitution. They ask the court to bar the state from enforcing the residential street address requirement against Native American voters living on reservations or alternatively, to allow those voters to identify their residences on the precinct map in order to verify their eligibility to vote in the precinct.

On October 31, 2018, the plaintiffs filed a motion for a temporary restraining order against the voter ID requirement. On November 1, 2018, the district court denied the motion.

On June 20, 2019, the plaintiffs filed a second amended complaint. On July 17, the defendant filed a motion to dismiss.

OHIO

Ohio A. Philip Randolph Institute v. LaRose [34] (6th Cir. No. 18-03984; S.D. Oh. No. 2:16-cv-00303)

On June 11, 2018, the U.S. Supreme Court upheld [35] a controversial Ohio purge practice in a 5-4 decision in *Husted v. A. Phillip Randolph Institute (APRI)*. Under the challenged law, voters in Ohio who miss a single federal election are flagged to receive a confirmation notice, and if they fail to respond to that notice (or engage in other defined activities) in the next four years, they are removed from the voter rolls.

Following the Supreme Court's decision, the district court lifted a stay it had previously entered and proceeded to consideration of the remaining issues in the case. Most critically, the plaintiffs argued that the form of the confirmation

notice described above violated federal law, and they sought a permanent injunction to remedy the alleged violation. On October 10, 2018, the district court denied the plaintiffs' motion for permanent injunction with respect to the form of the confirmation notice.

On October 12, 2018, the plaintiffs appealed, and on October 15, 2018, they filed an emergency motion for injunction, pending appeal. On October 31, 2018, the Sixth Circuit granted [36] the plaintiffs' emergency motion, in part. The court ordered Ohio to count ballots cast by voters who had been purged between 2011 and 2015 through the failure-to-vote process, as long as the purged voter casts his or her ballot at the correct polling place, continues to reside in the same county where he or she had been registered, and has not become ineligible to vote due to a felony conviction, mental incapacity, or death.

On March 11, 2019, the district court extended that relief to the May 7, 2019 primary, pursuant to a joint stipulation of the parties.

On March 15, 2019, the Sixth Circuit's mediation office became involved in the appeal, and the briefing schedule has been repeatedly extended.

PENNSYLVANIA

Adams Jones et al. v. Boockvar [37] (Commonwealth Court of Pa., No. 717 MD 2018)

On November 13, 2018, the ACLU of Pennsylvania along with other civil rights organizations filed a lawsuit challenging the Commonwealth's deadline for submitting absentee ballots. Among the plaintiffs are nine individuals who applied for an absentee ballot on time but received the ballot either too close to or after Pennsylvania's deadline for returning ballots (by 5 p.m. on the Friday before Election Day). According to the plaintiffs' complaint, the state's deadline for returning absentee ballots is the earliest in the nation. The plaintiffs are asking the court to establish a new deadline, arguing that the early deadline for returning absentee ballots violates both the U.S. and the Pennsylvania Constitution.

The defendants have filed motions to dismiss (or "preliminary objections"), which are pending. Oral argument on the motions was held on June 5, 2019.

TEXAS

Allen v. Waller County [38] (S.D. Tex. No. 4:18-cv-3985)

On October 22, 2018, several students of color at Prairie View A&M University (PVAMU), a historically Black university, filed suit, alleging that Waller County elections officials refused to provide them with early voting opportunities equal to those provided to non-Black, non-student voters in the county, in violation of Section 2 of the Voting Rights Act, and the Fourteenth, Fifteenth, and 26th Amendments to the U.S. Constitution. This lawsuit is a continuation of a decades-long fight against discriminatory voting practices in Waller County. On October 24, 2018, the plaintiffs filed a motion for a temporary restraining order ("TRO").

On October 25, 2018, Waller County took steps to expand [39] early voting opportunities for PVAMU students – adding a day of early voting at a location in the city of Prairie View (which surrounds PVAMU) and extending early voting hours at the PVAMU campus center. On October 26, 2018, the plaintiffs moved to withdraw their TRO motion without prejudice, and on October 30, the court granted the motion to withdraw.

On April 26, 2019, the plaintiffs filed an amended complaint, and on May 10, 2019, the defendants filed a motion to dismiss, which is pending.

TENNESSEE

Tennessee State Conference of the NAACP v. Hargett [40] (M.D. Tenn. No. 3:19-cv-00365)

On May 2, 2019, the Tennessee State Conference of the NAACP, Democracy Nashville-Democratic Communities, the Equity Alliance, and the Andrew Goodman Foundation filed a lawsuit challenging a newly enacted law on third-party

voter registration. The law imposes a variety of new restrictions, including registration and training requirements for organizations conducting voter registration drives (and criminal penalties for failure to comply with the requirements), penalties for filing a certain number of "incomplete" voter registration applications, and a prohibition on any public communication regarding registration status by a political committee or organization that does not display a disclaimer that the communication is not authorized by the Secretary of State. The law exempts volunteers and organizations that use only volunteers to conduct registration drives from most of these requirements.

The plaintiffs argue that the law's vagueness violates the Fourteenth Amendment's due process clause; that its imposition of burdens on paid registration workers violates their First Amendment rights; that its disclaimer requirement compels speech in violation of the First Amendment; and that its provisions regarding "incomplete" voter registration applications constitute an undue burden on political speech and association in connection with the right to vote in violation of the First and Fourteenth Amendments.

On June 3, 2019, the defendants filed a motion to dismiss, which is pending.

League of Women Voters of Tennessee v. Hargett [41] (M.D. Tenn. No. 3:19-cv-00385)

On May 9, 2019, the League of Women Voters of Tennessee, League of Women Voters of Tennessee Education Fund, American Muslim Advisory Council, Mid-South Peace & Justice Center, Rock the Vote, and Spread the Vote filed a lawsuit challenging the same third-party voter registration law at issue in *Tennessee State Conference of the NAACP v. Hargett*. The plaintiffs argue that the law burdens their political expression rights, compels speech, and is substantially overbroad in violation of the First Amendment, that it is void for vagueness under the Fourteenth Amendment, and that it constitutes an undue burden on political speech and association in connection with the right to vote in violation of the First and Fourteenth Amendments.

On June 7, 2019, the defendants filed a motion to dismiss, which is pending.

WISCONSIN

Frank v. Walker [42] (E.D. Wis., No. 11-cv-1128; 7th Cir., Nos. 14-2058, 15-3582, 16-3003; U.S. Sup. Ct. No. 14A352)

In December 2011, several Wisconsin voters brought suit, challenging Wisconsin's strict photo ID law as discriminatory against African-American and Hispanic voters and a denial of the vote, bringing claims under the U.S. Constitution and section 2 of the Voting Rights Act.

In April 2014, the trial court struck down the law; the state appealed to the Seventh Circuit, which overturned the trial court's decision and upheld the law. However, after the Supreme Court stepped in, the law was not in effect for the November 2014 election. It went into effect in April 2015, after the Supreme Court declined to reconsider the Seventh Circuit's ruling upholding the law.

The plaintiffs undertook a second stage of litigation, in which they argue that the strict photo ID law is unconstitutional for those who cannot get ID. In July 2016, the trial court issued an order instructing that voters who lack photo ID must be able to cast a regular ballot in the November 2016 elections after completing an affidavit.

Wisconsin filed an emergency appeal of this decision with the Seventh Circuit and on August 10, 2016, the Seventh Circuit stayed the district court's order. On August 26, 2016, the full Seventh Circuit declined to reconsider this decision. Because of the Seventh Circuit's order, Wisconsin's law was in effect without the affidavit alternative for those without ID during the 2016 elections.

After the Seventh Circuit issued the emergency stay of the district court's order, the case proceeded to the Seventh Circuit on appeal. Oral argument was held on February 24, 2017. The parties are awaiting a decision.

One Wisconsin Inst., Inc. v. Nichol [43] (W.D. Wis., No. 15-cv-324; 7th Cir., No. 16-3091)

In May 2015, One Wisconsin Institute, affected voters, and Wisconsin Citizen Action brought suit to challenge various election law policies, including the voter ID provision and legislative restrictions on early voting opportunities, under the

U.S. Constitution and Section 2 of the Voting Rights Act.

On July 29, 2016, the trial court blocked many of the challenged restrictive voting provisions. The trial court ruled, among other things, that Wisconsin could not maintain its voter ID law without creating a functional safety net for those without ID and permitting students to use expired but otherwise valid student IDs. The court also found that the limitations on in-person absentee voting were intentionally racially discriminatory. The decision was appealed to the Seventh Circuit.

On August 22, 2016, a panel of the Seventh Circuit denied Wisconsin's request to put the trial court's decision on hold in advance of the November election. On August 26, 2016, the full Seventh Circuit declined to reconsider this decision.

On September 30, the district court ordered state officials to investigate whether DMV clerks were properly instructing voters on the process to obtain ID for voting, after recordings of applicants receiving incorrect information were made public. The court held a hearing on the issue on October 13th, and issued an order finding that Wisconsin had failed to sufficiently inform the public about ID options and had failed to sufficiently train DMV officials on how to issue IDs for voting. The court ordered the state to increase its education efforts, retrain DMV officials, and submit weekly progress reports to the court up until the election, but declined to enjoin the voter ID law for the November 2016 election.

The case is currently on appeal with the Seventh Circuit. Oral argument was held on February 24, 2017. The parties are awaiting a decision.

In December 2018, Wisconsin passed a new law imposing early voting and voter IDs restrictions (among other measures). On December 17, 2018, the plaintiffs filed a motion arguing that the new measures violated the district court's injunctions, and on January 17, 2019, the Court granted the motion, enjoining the challenged provisions.

Common Cause v. Thomsen [44] *(W.D. Wis. No. 3:19-cv-00323)*

On April 23, 2019, Common Cause, Common Cause Wisconsin, and a Wisconsin student filed a lawsuit challenging provisions of Wisconsin's voter ID law that require student IDs to bear an issuance date, an expiration date not more than two years after the issuance date, and the student's signature in order to be used to vote. The plaintiffs note that, in *One Wisconsin Institute* (described above), the court previously enjoined Wisconsin's requirement that student IDs be unexpired, but did not address these additional requirements because the plaintiffs in *One Wisconsin Institute* did not ask that they be enjoined. The plaintiffs argue that the challenged provisions constitute an undue burden on the right to vote in violation of the First and Fourteenth Amendments.

On July 19, 2019, the Court stayed proceedings in the case until the appeal in *One Wisconsin Institute* resolved.

Voting Rights & Elections [45]

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EXHIBIT M

2019 Ariz. Legis. Serv. Ch. 15 (S.B. 1072) (WEST)

ARIZONA 2019 LEGISLATIVE SERVICE

First Regular Session of the Fifty-Fourth Legislature

Additions are indicated by **Text**; deletions by
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CHAPTER 15
S.B. 1072
VOTERS AND VOTING—IDENTITY AND IDENTIFICATION

AN ACT AMENDING SECTIONS 16–411 AND 16–542, ARIZONA REVISED STATUTES; RELATING TO EARLY VOTING.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 16–411, Arizona Revised Statutes, is amended to read:

<< AZ ST § 16–411 >>

§ 16–411. Designation of election precincts and polling places; voting centers; electioneering; wait times

A. The board of supervisors of each county, on or before December 1 of each year preceding the year of a general election, by an order, shall establish a convenient number of election precincts in the county and define the boundaries of the precincts. The election precinct boundaries shall be so established as included within election districts prescribed by law for elected officers of the state and its political subdivisions including community college district precincts, except those elected officers provided for in titles 30 and 48.

B. Not less than twenty days before a general or primary election, and at least ten days before a special election, the board shall designate one polling place within each precinct where the election shall be held, except that:

1. On a specific finding of the board, included in the order or resolution designating polling places pursuant to this subsection, that no suitable polling place is available within a precinct, a polling place for that precinct may be designated within an adjacent precinct.

2. Adjacent precincts may be combined if boundaries so established are included in election districts prescribed by law for state elected officials and political subdivisions including community college districts but not including elected officials prescribed by titles 30 and 48. The officer in charge of elections may also split a precinct for administrative purposes. The polling places shall be listed in separate sections of the order or resolution.

3. On a specific finding of the board that the number of persons who are listed as permanent early voters pursuant to section 16–544 is likely to substantially reduce the number of voters appearing at one or more specific polling places at that election, adjacent precincts may be consolidated by combining polling places and precinct boards for that election. The board of supervisors shall

ensure that a reasonable and adequate number of polling places will be designated for that election. Any consolidated polling places shall be listed in separate sections of the order or resolution of the board.

4. On a specific resolution of the board, the board may authorize the use of voting centers in place of or in addition to specifically designated polling places. A voting center shall allow any voter in that county to receive the appropriate ballot for that voter on election day **after presenting identification as prescribed in section 16–579** and **to** lawfully cast the ballot. Voting centers may be established in coordination and consultation with the county recorder, at other county offices or at other locations in the county deemed appropriate.

C. If the board fails to designate the place for holding the election, or if it cannot be held at or about the place designated, the justice of the peace in the precinct, two days before the election, by an order, copies of which the justice of the peace shall immediately post in three public places in the precinct, shall designate the place within the precinct for holding the election. If there is no justice of the peace in the precinct, or if the justice of the peace fails to do so, the election board of the precinct shall designate and give notice of the place within the precinct of holding the election. For any election in which there are no candidates for elected office appearing on the ballot, the board may consolidate polling places and precinct boards and may consolidate the tabulation of results for that election if all of the following apply:

1. All affected voters are notified by mail of the change at least thirty-three days before the election.

2. Notice of the change in polling places includes notice of the new voting location, notice of the hours for voting on election day and notice of the telephone number to call for voter assistance.

3. All affected voters receive information on early voting that includes the application used to request an early voting ballot.

D. The board is not required to designate a polling place for special district mail ballot elections held pursuant to article 8.1 of this chapter, but the board may designate one or more sites for voters to deposit marked ballots until 7:00 p.m. on the day of the election.

E. Except as provided in subsection F of this section, a public school shall provide sufficient space for use as a polling place for any city, county or state election when requested by the officer in charge of elections.

F. The principal of the school may deny a request to provide space for use as a polling place for any city, county or state election if, within two weeks after a request has been made, the principal provides a written statement indicating a reason the election cannot be held in the school, including any of the following:

1. Space is not available at the school.

2. The safety or welfare of the children would be jeopardized.

G. The board shall make available to the public as a public record a list of the polling places for all precincts in which the election is to be held.

H. Except in the case of an emergency, any facility that is used as a polling place on election day or that is used as an early voting site during the period of early voting shall allow persons to electioneer and engage in other political activity outside of the seventy-five foot limit prescribed by section 16–515 in public areas and parking lots used by voters. This subsection shall not be construed to permit the temporary or permanent construction of structures in public areas and parking lots or the blocking or other impairment of access to parking spaces for voters. The county recorder or other officer in charge of elections

shall post on its website at least two weeks before election day a list of those polling places in which emergency conditions prevent electioneering and shall specify the reason the emergency designation was granted and the number of attempts that were made to find a polling place before granting an emergency designation. If the polling place is not on the website list of polling places with emergency designations, electioneering and other political activity shall be permitted outside of the seventy-five foot limit. If an emergency arises after the county recorder or other officer in charge of elections' initial website posting, the county recorder or other officer in charge of elections shall update the website as soon as is practicable to include any new polling places, shall highlight the polling place location on the website and shall specify the reason the emergency designation was granted and the number of attempts that were made to find a polling place before granting an emergency designation.

I. For the purposes of this section, a county recorder or other officer in charge of elections shall designate a polling place as an emergency polling place and thus prohibit persons from electioneering and engaging in other political activity outside of the seventy-five foot limit prescribed by section 16–515 but inside the property of the facility that is hosting the polling place if any of the following occurs:

1. An act of God renders a previously set polling place as unusable.

2. A county recorder or other officer in charge of elections has exhausted all options and there are no suitable facilities in a precinct that are willing to be a polling place unless a facility can be given an emergency designation.

J. The secretary of state shall provide through the instructions and procedures manual adopted pursuant to section 16–452 the maximum allowable wait time for any election that is subject to section 16–204 and provide for a method to reduce voter wait time at the polls in the primary and general elections. The method shall consider at least all of the following for primary and general elections in each precinct:

1. The number of ballots voted in the prior primary and general elections.

2. The number of registered voters who voted early in the prior primary and general elections.

3. The number of registered voters and the number of registered voters who cast an early ballot for the current primary or general election.

4. The number of election board members and clerks and the number of rosters that will reduce voter wait time at the polls.

Sec. 2. Section 16–542, Arizona Revised Statutes, is amended to read:

<< AZ ST § 16–542 >>

§ 16–542. Request for ballot; civil penalties; violation; classification

A. Within ninety-three days before any election called pursuant to the laws of this state, an elector may make a verbal or signed request to the county recorder, or other officer in charge of elections for the applicable political subdivision of this state in whose jurisdiction the elector is registered to vote, for an official early ballot. In addition to name and address, the requesting elector shall provide the date of birth and state or country of birth or other information that if compared to the voter registration information on file would confirm the identity of the elector. If the request indicates that the elector needs a primary election ballot and a general election ballot, the county recorder or other officer in charge of elections shall honor the request. For any partisan primary election, if the elector is not registered as a member of a political party that is entitled to continued representation on the ballot pursuant to section 16–804, the elector shall designate the ballot of only one of the

political parties that is entitled to continued representation on the ballot and the elector may receive and vote the ballot of only that one political party, which also shall include any nonpartisan offices and ballot questions, or the elector shall designate the ballot for nonpartisan offices and ballot questions only and the elector may receive and vote the ballot that contains only nonpartisan offices and ballot questions. The county recorder or other officer in charge of elections shall process any request for an early ballot for a municipal election pursuant to this subsection. The county recorder may establish on-site early voting locations at the recorder's office, which shall be open and available for use beginning the same day that a county begins to send out the early ballots. The county recorder may also establish any other early voting locations in the county the recorder deems necessary. **Any on-site early voting location or other early voting location shall require each elector to present identification as prescribed in section 16–579 before receiving a ballot. Notwithstanding section 16–579, subsection A, paragraph 2, at any on-site early voting location or other early voting location the county recorder or other officer in charge of elections may provide for a qualified elector to update the elector's voter registration information as provided for in the secretary of state's instruction and procedures manual adopted pursuant to section 16–452.**

B. Notwithstanding subsection A of this section, a request for an official early ballot from an absent uniformed services voter or overseas voter as defined in the uniformed and overseas citizens absentee voting act of 1986 (P.L. 99–410; 52 United States Code section 20310) or a voter whose information is protected pursuant to section 16–153 that is received by the county recorder or other officer in charge of elections more than ninety-three days before the election is valid. If requested by the absent uniformed services or overseas voter, or a voter whose information is protected pursuant to section 16–153, the county recorder or other officer in charge of elections shall provide to the requesting voter early ballot materials through the next regularly scheduled general election for federal office immediately following receipt of the request unless a different period of time, which does not exceed the next two regularly scheduled general elections for federal office, is designated by the voter.

C. The county recorder or other officer in charge of elections shall mail the early ballot and the envelope for its return postage prepaid to the address provided by the requesting elector within five days after receipt of the official early ballots from the officer charged by law with the duty of preparing ballots pursuant to section 16–545, except that early ballot distribution shall not begin more than twenty-seven days before the election. If an early ballot request is received on or before the thirty-first day before the election, the early ballot shall be distributed not earlier than the twenty-seventh day before the election and not later than the twenty-fourth day before the election.

D. Only the elector may be in possession of that elector's unvoted early ballot. If a complete and correct request is made by the elector within twenty-seven days before the election, the mailing must be made within forty-eight hours after receipt of the request. Saturdays, Sundays and other legal holidays are excluded from the computation of the forty-eight hour period prescribed by this subsection. If a complete and correct request is made by an absent uniformed services voter or an overseas voter before the election, the regular early ballot shall be transmitted by mail, by fax or by other electronic format approved by the secretary of state within twenty-four hours after the early ballots are delivered pursuant to section 16–545, subsection B, excluding Sundays.

E. In order to be complete and correct and to receive an early ballot by mail, an elector's request that an early ballot be mailed to the elector's residence or temporary address must include all of the information prescribed by subsection A of this section and must be received by the county recorder or other officer in charge of elections no later than 5:00 p.m. On the eleventh day preceding the election. An elector who appears personally no later than 5:00 p.m. On the Friday preceding the election at an on-site early voting location that is established by the county recorder or other officer in charge of elections shall be given a ballot **after presenting identification as prescribed in section 16–579** and **shall be** permitted to vote at the on-site location. **Notwithstanding section 16–579, subsection A, paragraph 2, at any on-site early voting location the county recorder or other officer in charge of elections may provide for a qualified elector to update the elector's voter registration information as provided for in the secretary of state's instruction and procedures manual adopted pursuant to section 16–452.** If an elector's request to receive an early ballot is not complete and correct but complies with all other requirements

of this section, the county recorder or other officer in charge of elections shall attempt to notify the elector of the deficiency of the request.

F. Unless an elector specifies that the address to which an early ballot is to be sent is a temporary address, the recorder may use the information from an early ballot request form to update voter registration records.

G. The county recorder or other officer in charge of early balloting shall provide an alphabetized list of all voters in the precinct who have requested and have been sent an early ballot to the election board of the precinct in which the voter is registered not later than the day before the election.

H. As a result of an emergency occurring between 5:00 p.m. on the second Friday preceding the election and 5:00 p.m. on the Monday preceding the election, qualified electors may request to vote early in the manner prescribed by the county recorder of their respective county. For the purposes of this subsection, "emergency" means any unforeseen circumstances that would prevent the elector from voting at the polls.

I. A candidate, political committee or other organization may distribute early ballot request forms to voters. If the early ballot request forms include a printed address for return, the addressee shall be the political subdivision that will conduct the election. Failure to use the political subdivision as the return addressee is punishable by a civil penalty of up to three times the cost of the production and distribution of the request.

J. All original and completed early ballot request forms that are received by a candidate, political committee or other organization shall be submitted within six business days after receipt by a candidate, political committee or other organization or eleven days before the election day, whichever is earlier, to the political subdivision that will conduct the election. Any person, political committee or other organization that fails to submit a completed early ballot request form within the prescribed time is subject to a civil penalty of up to ~~twenty-five dollars~~ **$25** per day for each completed form withheld from submittal. Any person who knowingly fails to submit a completed early ballot request form before the submission deadline for the election immediately following the completion of the form is guilty of a class 6 felony.

Approved by the Governor, March 22, 2019.
Filed in the Office of the Secretary of State, March 22, 2019.

End of Document

2019 Ariz. Legis. Serv. Ch. 107 (S.B. 1090) (WEST)

ARIZONA 2019 LEGISLATIVE SERVICE

First Regular Session of the Fifty-Fourth Legislature

Additions are indicated by **Text**; deletions by
~~Text~~ .
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~**Text**~~ .

CHAPTER 107
S.B. 1090
VOTERS AND VOTING—EMERGENCIES

AN ACT AMENDING SECTIONS 16–246, 16–411, 16–542 AND 16–549, ARIZONA REVISED STATUTES; RELATING TO ELECTIONS AND ELECTORS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 16–246, Arizona Revised Statutes, is amended to read:

<< AZ ST § 16–246 >>

§ 16–246. Early balloting; satellite locations; additional procedures

A. Within ninety-three days before the presidential preference election and not later than 5:00 p.m. on the eleventh day preceding the election, any elector who is eligible to vote in the presidential preference election may make a verbal or signed, written request for an official early ballot to the county recorder or other officer in charge of elections for the county in which the elector is registered to vote. If the request is verbal, the requesting elector shall provide the date of birth and birthplace or other information that if compared to the voter registration records for that elector would confirm the identity of the elector.

B. Absent uniformed services voters or overseas voters who are otherwise eligible to vote in the election may vote as prescribed by sections 16–543 and 16–543.02.

C. The county recorder or other officer in charge of elections may establish on-site early voting locations at the office of the county recorder or at other locations in the county deemed necessary or appropriate by the recorder. Early voting shall begin within the time limits prescribed in section 16–542 unless otherwise prescribed by this section.

D. The county recorder or other officer in charge of elections shall send by nonforwardable mail that is marked with the statement required by the postmaster to receive an address correction notification any early ballots that are requested pursuant to subsections A and B of this section and shall include a preaddressed envelope for the elector to return the completed ballot.

E. The county recorder or other officer in charge of elections shall provide to each election board an appropriate alphabetized list of voters who have requested and have been sent an early ballot. Any person who is on that list of voters and who was sent an early ballot shall not vote at the polling place for that election precinct except as prescribed by section 16–579, subsection B.

F. The county recorder or other officer in charge of elections may provide for any of the following in the same manner prescribed by law for other elections:

1. Special election boards.

2. Emergency balloting for persons who experience an emergency after 5:00 p.m. on the Friday preceding the presidential preference election and before 5:00 p.m. on the Monday immediately preceding the presidential preference election. **Before receiving a ballot pursuant to this paragraph, a person who experiences an emergency shall provide identification as prescribed in section 16–579 and shall sign a statement under penalty of perjury that states that the person is experiencing or experienced an emergency after 5:00 p.m. on the Friday immediately preceding the election and before 5:00 p.m. on the Monday immediately preceding the election that would prevent the person from voting at the polls. Signed statements received pursuant to this subsection are not subject to inspection pursuant to title 39, chapter 1, article 2.**

G. Notwithstanding section 16–579, subsection A, paragraph 2, for emergency balloting pursuant to subsection F, paragraph 2 of this section, the county recorder or other officer in charge of elections may allow a qualified elector to update the elector's voter registration information as provided for in the secretary of state's instructions and procedures manual adopted pursuant to section 16–452.

~~G.~~ **H.** Sections 16–550, 16–551 and 16–552 govern the use of early balloting for the presidential preference election.

Sec. 2. Section 16–411, Arizona Revised Statutes, is amended to read:

<< AZ ST § 16–411 >>

§ 16–411. Designation of election precincts and polling places; voting centers; electioneering; wait times

A. The board of supervisors of each county, on or before December 1 of each year preceding the year of a general election, by an order, shall establish a convenient number of election precincts in the county and define the boundaries of the precincts. The election precinct boundaries shall be so established as included within election districts prescribed by law for elected officers of the state and its political subdivisions including community college district precincts, except those elected officers provided for in titles 30 and 48.

B. Not less than twenty days before a general or primary election, and at least ten days before a special election, the board shall designate one polling place within each precinct where the election shall be held, except that:

1. On a specific finding of the board, included in the order or resolution designating polling places pursuant to this subsection, that no suitable polling place is available within a precinct, a polling place for that precinct may be designated within an adjacent precinct.

2. Adjacent precincts may be combined if boundaries so established are included in election districts prescribed by law for state elected officials and political subdivisions including community college districts but not including elected officials prescribed by titles 30 and 48. The officer in charge of elections may also split a precinct for administrative purposes. The polling places shall be listed in separate sections of the order or resolution.

3. On a specific finding of the board that the number of persons who are listed as permanent early voters pursuant to section 16–544 is likely to substantially reduce the number of voters appearing at one or more specific polling places at that election, adjacent

precincts may be consolidated by combining polling places and precinct boards for that election. The board of supervisors shall ensure that a reasonable and adequate number of polling places will be designated for that election. Any consolidated polling places shall be listed in separate sections of the order or resolution of the board.

4. On a specific resolution of the board, the board may authorize the use of voting centers in place of or in addition to specifically designated polling places. A voting center shall allow any voter in that county to receive the appropriate ballot for that voter on election day and lawfully cast the ballot. Voting centers may be established in coordination and consultation with the county recorder, at other county offices or at other locations in the county deemed appropriate.

5. On a specific resolution of the board of supervisors that is limited to a specific election date and that is voted on by a recorded vote, the board may authorize the county recorder or other officer in charge of elections to use emergency voting centers as follows:

(a) The board shall specify in the resolution the location of the emergency voting centers and the hours of operation.

(b) A qualified elector voting at an emergency voting center shall provide identification as prescribed in section 16–579, except that notwithstanding section 16–579, subsection A, paragraph 2, for any voting at an emergency voting center, the county recorder or other officer in charge of elections may allow a qualified elector to update the elector's voter registration information as provided for in the secretary of state's instructions and procedures manual adopted pursuant to section 16–452.

(c) If an emergency voting center established pursuant to this section becomes unavailable and there is not sufficient time for the board of supervisors to convene to approve an alternate location for that emergency voting center, the county recorder or other officer in charge of elections may make changes to the approved emergency voting center location and shall notify the public and the board of supervisors regarding that change as soon as practicable. The alternate emergency voting center shall be as close in proximity to the approved emergency voting center location as possible.

C. If the board fails to designate the place for holding the election, or if it cannot be held at or about the place designated, the justice of the peace in the precinct, two days before the election, by an order, copies of which the justice of the peace shall immediately post in three public places in the precinct, shall designate the place within the precinct for holding the election. If there is no justice of the peace in the precinct, or if the justice of the peace fails to do so, the election board of the precinct shall designate and give notice of the place within the precinct of holding the election. For any election in which there are no candidates for elected office appearing on the ballot, the board may consolidate polling places and precinct boards and may consolidate the tabulation of results for that election if all of the following apply:

1. All affected voters are notified by mail of the change at least thirty-three days before the election.

2. Notice of the change in polling places includes notice of the new voting location, notice of the hours for voting on election day and notice of the telephone number to call for voter assistance.

3. All affected voters receive information on early voting that includes the application used to request an early voting ballot.

D. The board is not required to designate a polling place for special district mail ballot elections held pursuant to article 8.1 of this chapter, but the board may designate one or more sites for voters to deposit marked ballots until 7:00 p.m. on the day of the election.

E. Except as provided in subsection F of this section, a public school shall provide sufficient space for use as a polling place for any city, county or state election when requested by the officer in charge of elections.

F. The principal of the school may deny a request to provide space for use as a polling place for any city, county or state election if, within two weeks after a request has been made, the principal provides a written statement indicating a reason the election cannot be held in the school, including any of the following:

1. Space is not available at the school.

2. The safety or welfare of the children would be jeopardized.

G. The board shall make available to the public as a public record a list of the polling places for all precincts in which the election is to be held.

H. Except in the case of an emergency, any facility that is used as a polling place on election day or that is used as an early voting site during the period of early voting shall allow persons to electioneer and engage in other political activity outside of the seventy-five foot limit prescribed by section 16–515 in public areas and parking lots used by voters. This subsection shall not be construed to permit the temporary or permanent construction of structures in public areas and parking lots or the blocking or other impairment of access to parking spaces for voters. The county recorder or other officer in charge of elections shall post on its website at least two weeks before election day a list of those polling places in which emergency conditions prevent electioneering and shall specify the reason the emergency designation was granted and the number of attempts that were made to find a polling place before granting an emergency designation. If the polling place is not on the website list of polling places with emergency designations, electioneering and other political activity shall be permitted outside of the seventy-five foot limit. If an emergency arises after the county recorder or other officer in charge of elections' initial website posting, the county recorder or other officer in charge of elections shall update the website as soon as is practicable to include any new polling places, shall highlight the polling place location on the website and shall specify the reason the emergency designation was granted and the number of attempts that were made to find a polling place before granting an emergency designation.

I. For the purposes of this section, a county recorder or other officer in charge of elections shall designate a polling place as an emergency polling place and thus prohibit persons from electioneering and engaging in other political activity outside of the seventy-five foot limit prescribed by section 16–515 but inside the property of the facility that is hosting the polling place if any of the following occurs:

1. An act of God renders a previously set polling place as unusable.

2. A county recorder or other officer in charge of elections has exhausted all options and there are no suitable facilities in a precinct that are willing to be a polling place unless a facility can be given an emergency designation.

J. The secretary of state shall provide through the instructions and procedures manual adopted pursuant to section 16–452 the maximum allowable wait time for any election that is subject to section 16–204 and provide for a method to reduce voter wait time at the polls in the primary and general elections. The method shall consider at least all of the following for primary and general elections in each precinct:

1. The number of ballots voted in the prior primary and general elections.

2. The number of registered voters who voted early in the prior primary and general elections.

3. The number of registered voters and the number of registered voters who cast an early ballot for the current primary or general election.

4. The number of election board members and clerks and the number of rosters that will reduce voter wait time at the polls.

Sec. 3. Section 16–542, Arizona Revised Statutes, is amended to read:

<< AZ ST § 16–542 >>

§ 16–542. Request for ballot; civil penalties; violation; classification

A. Within ninety-three days before any election called pursuant to the laws of this state, an elector may make a verbal or signed request to the county recorder, or other officer in charge of elections for the applicable political subdivision of this state in whose jurisdiction the elector is registered to vote, for an official early ballot. In addition to name and address, the requesting elector shall provide the date of birth and state or country of birth or other information that if compared to the voter registration information on file would confirm the identity of the elector. If the request indicates that the elector needs a primary election ballot and a general election ballot, the county recorder or other officer in charge of elections shall honor the request. For any partisan primary election, if the elector is not registered as a member of a political party that is entitled to continued representation on the ballot pursuant to section 16–804, the elector shall designate the ballot of only one of the political parties that is entitled to continued representation on the ballot and the elector may receive and vote the ballot of only that one political party, which also shall include any nonpartisan offices and ballot questions, or the elector shall designate the ballot for nonpartisan offices and ballot questions only and the elector may receive and vote the ballot that contains only nonpartisan offices and ballot questions. The county recorder or other officer in charge of elections shall process any request for an early ballot for a municipal election pursuant to this subsection. The county recorder may establish on-site early voting locations at the recorder's office, which shall be open and available for use beginning the same day that a county begins to send out the early ballots. The county recorder may also establish any other early voting locations in the county the recorder deems necessary.

B. Notwithstanding subsection A of this section, a request for an official early ballot from an absent uniformed services voter or overseas voter as defined in the uniformed and overseas citizens absentee voting act of 1986 (P.L. 99–410; 52 United States Code section 20310) or a voter whose information is protected pursuant to section 16–153 that is received by the county recorder or other officer in charge of elections more than ninety-three days before the election is valid. If requested by the absent uniformed services or overseas voter, or a voter whose information is protected pursuant to section 16–153, the county recorder or other officer in charge of elections shall provide to the requesting voter early ballot materials through the next regularly scheduled general election for federal office immediately following receipt of the request unless a different period of time, which does not exceed the next two regularly scheduled general elections for federal office, is designated by the voter.

C. The county recorder or other officer in charge of elections shall mail the early ballot and the envelope for its return postage prepaid to the address provided by the requesting elector within five days after receipt of the official early ballots from the officer charged by law with the duty of preparing ballots pursuant to section 16–545, except that early ballot distribution shall not begin more than twenty-seven days before the election. If an early ballot request is received on or before the thirty-first day before the election, the early ballot shall be distributed not earlier than the twenty-seventh day before the election and not later than the twenty-fourth day before the election.

D. Only the elector may be in possession of that elector's unvoted early ballot. If a complete and correct request is made by the elector within twenty-seven days before the election, the mailing must be made within forty-eight hours after receipt of the request. Saturdays, Sundays and other legal holidays are excluded from the computation of the forty-eight hour period prescribed by this subsection. If a complete and correct request is made by an absent uniformed services voter or an overseas

voter before the election, the regular early ballot shall be transmitted by mail, by fax or by other electronic format approved by the secretary of state within twenty-four hours after the early ballots are delivered pursuant to section 16–545, subsection B, excluding Sundays.

E. In order to be complete and correct and to receive an early ballot by mail, an elector's request that an early ballot be mailed to the elector's residence or temporary address must include all of the information prescribed by subsection A of this section and must be received by the county recorder or other officer in charge of elections no later than 5:00 p.m. on the eleventh day preceding the election. An elector who appears personally no later than 5:00 p.m. on the Friday preceding the election at an on-site early voting location that is established by the county recorder or other officer in charge of elections shall be given a ballot and permitted to vote at the on-site location. If an elector's request to receive an early ballot is not complete and correct but complies with all other requirements of this section, the county recorder or other officer in charge of elections shall attempt to notify the elector of the deficiency of the request.

F. Unless an elector specifies that the address to which an early ballot is to be sent is a temporary address, the recorder may use the information from an early ballot request form to update voter registration records.

G. The county recorder or other officer in charge of early balloting shall provide an alphabetized list of all voters in the precinct who have requested and have been sent an early ballot to the election board of the precinct in which the voter is registered not later than the day before the election.

H. As a result of **experiencing** an emergency ~~occurring~~ between 5:00 p.m. on the ~~second~~ Friday preceding the election and 5:00 p.m. on the Monday preceding the election, qualified electors may request to vote ~~early~~ in the manner prescribed by the ~~county recorder~~ **board of supervisors** of their respective county. **Before voting pursuant to this subsection, an elector who experiences an emergency shall provide identification as prescribed in section 16–579 and shall sign a statement under penalty of perjury that states that the person is experiencing or experienced an emergency after 5:00 p.m. on the Friday immediately preceding the election and before 5:00 p.m. on the Monday immediately preceding the election that would prevent the person from voting at the polls. Signed statements received pursuant to this subsection are not subject to inspection pursuant to title 39, chapter 1, article 2.** For the purposes of this subsection, "emergency" means any unforeseen circumstances that would prevent the elector from voting at the polls.

I. Notwithstanding section 16–579, subsection A, paragraph 2, for any voting pursuant to subsection H of this section, the county recorder or other officer in charge of elections may allow a qualified elector to update the elector's voter registration information as provided for in the secretary of state's instructions and procedures manual adopted pursuant to section 16–452.

~~I.~~ **J.** A candidate, political committee or other organization may distribute early ballot request forms to voters. If the early ballot request forms include a printed address for return, the addressee shall be the political subdivision that will conduct the election. Failure to use the political subdivision as the return addressee is punishable by a civil penalty of up to three times the cost of the production and distribution of the request.

~~J.~~ **K.** All original and completed early ballot request forms that are received by a candidate, political committee or other organization shall be submitted within six business days after receipt by a candidate, political committee or other organization or eleven days before the election day, whichever is earlier, to the political subdivision that will conduct the election. Any person, political committee or other organization that fails to submit a completed early ballot request form within the prescribed time is subject to a civil penalty of up to ~~twenty-five dollars~~ **$25** per day for each completed form withheld from submittal. Any person who knowingly fails to submit a completed early ballot request form before the submission deadline for the election immediately following the completion of the form is guilty of a class 6 felony.

Sec. 4. Section 16–549, Arizona Revised Statutes, is amended to read:

<< AZ ST § 16–549 >>

§ 16–549. Special election boards; voting procedure for ill electors or electors with disabilities; expenses

A. The county recorder or other officer in charge of elections, for the purpose of making it possible for qualified electors who are ill or have a disability to vote, may appoint such number of special election boards as needed. In a partisan election, each such board shall consist of two members, one from each of the two political parties ~~which~~ **that** cast the highest number of votes in the state in the last preceding general election. The county chairman of each such party shall furnish, within sixty days ~~prior to~~ **before** the election day, the county recorder or other officer in charge of elections with a list of names of qualified electors within the chairman's political party, and such additional lists as may be required, from which the county recorder or other officer in charge of elections shall appoint members to such special election boards. The county recorder or other officer in charge of elections may refuse for cause to appoint or may for cause remove a member of this board. A person who is a candidate for an office other than precinct committeeman is not eligible to serve on the special election board for that election.

B. Members of special election boards appointed under ~~the provisions of~~ this section shall be reimbursed for travel expenses in the manner provided by law and shall also receive such compensation as the board of supervisors or the governing body prescribes, all of which shall be paid by the county or other political subdivision.

C. In lieu of the mailed early ballot procedure, any qualified elector who is confined as the result of a continuing illness or physical disability and is, therefore, not able to go to the polls on the day of the next election and who does not wish to vote by the mailed early ballot procedure, may make a verbal or a signed written request to the county recorder or other officer in charge of elections to have a ballot personally delivered to the elector by the special election board at the elector's place of confinement within the county or other political subdivision. The ballot shall be delivered to the elector in person by a special election board as provided in this section. Such requests must be made by 5:00 p.m. on the second Friday before the election.

D. Qualified electors who become ill or become a person with a disability after the second Friday before the election may nevertheless request personal ballot delivery pursuant to this section, and the county recorder or other officer in charge of elections shall when possible honor such requests up to and including the last day before the election. Qualified electors who are admitted to a hospital after 5:00 p.m. on the second Friday preceding the election and before 5:00 p.m. on election day may request the county recorder or other officer in charge of elections to provide a special election board with a ballot at the elector's place of confinement. If the county recorder or other officer in charge of elections is able to accommodate the request, the voted ballot of the elector shall be sealed in an envelope and shall be processed as a provisional ballot pursuant to section 16–584. **Before receiving a ballot pursuant to this subsection, a qualified elector shall provide identification as prescribed in section 16–579 and shall sign a statement under penalty of perjury that states that the person is experiencing or experienced an emergency after 5:00 p.m. on the Friday immediately preceding the election and before 5:00 p.m. on the Monday immediately preceding the election that would prevent the person from voting at the polls. Signed statements received pursuant to this subsection are not subject to inspection pursuant to title 39, chapter 1, article 2.**

E. The manner and procedure of voting shall be as provided in section 16–548, except that the marked ballot in the sealed envelope shall be handed by the elector to the special election board and shall be delivered by the board to the county recorder or other officer in charge of elections.

Approved by the Governor, April 17, 2019.
Filed in the Office of the Secretary of State, April 17, 2019.

GOVERNOR'S APPROVAL MESSAGE

STATE OF ARIZONA

April 17, 2019
Dear Secretary Hobbs:
Today, I signed S.B. 1090.

In Arizona, we are fortunate to have one of the most accessible election systems in the country. In our state, Election Day isn't just one day — it begins 27 days before the date of the election. Through early voting, voters can vote in-person or by mail almost a month in advance of Election Day, and even have the ability to sign up for the permanent early voting list to receive a ballot automatically. We are lucky to have an election system that values convenience and fosters participation for all Arizona voters, whether they reside in Coconino County or Santa Cruz County.

I signed S.B. 1090, because voters deserve consistency. An Arizona voter who resides in one county should not be treated any differently than their fellow Arizonan in another county — this legislation brings consistency across the state, regardless of county, when determining how county election officials administer emergency voting.

Some have suggested that broadening emergency voting is a way to bypass existing law and extend in-person early voting beyond the current deadline of Friday immediately preceding Election Day. If that is the intent, let's have that debate — let's not redefine emergency voting in a way that creates confusion and inconsistencies for voters.

Sincerely,
/s/ Douglas A. Ducey
Governor

EXHIBIT N

BREAKING NEWS

Records: 17 nabbed on felony DWI charges in Brazoria County

Popular Houston radio host leaving 94.5 The Buzz

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https://www.chron.com/news/politics/texas/article/Texas-is-purging-95-000-voters-suspected-to-be-13562186.php

Texas moves to purge 95,000 voters suspected to be non-US citizens

By Jeremy Wallace **Updated 10:16 am CST, Saturday, January 26, 2019**

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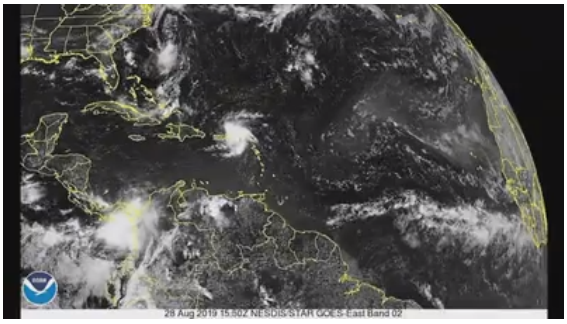

IMAGE 1 OF 14

A resident arrives for early voting at a polling location in San Antonio, Texas, U.S., on Monday. Oct. 22, 2018.

>>Here's what else you might want to keep in mind in order to not run afoul of state election laws...

Texas officials have launched a purge of 95,000 people from the voter rolls, saying they do not appear to be U.S. citizens — just the beginning of a wider, more frequent purging that will happen monthly from now on.

Texas Secretary of State David Whitley said working with the Department of Public Safety, his office has been able to identify the potential non-citizens among those registered to vote, including 58,000 who have cast ballots before in Texas elections.

“Integrity and efficiency of elections in Texas require accuracy of our state's voter rolls, and my office is committed to using all available tools under the law to maintain an accurate list of registered voters," Whitley said.

Voter advocacy groups pointed out Friday that none of the state's suspicions have been confirmed yet, and objected to the method used to identify the suspected non-citizen voters. They noted that 50,000 Texans become naturalized citizens each year.

The Secretary of State cannot remove the voters from the rolls. That is up to county elections officials. But Whitley has recommended counties take action by sending notices that would give the people who have been flagged 30 days to prove they are eligible to vote by presenting a birth certificate, passport, or certificate of naturalization. If they fail to respond, their registrations will be canceled by the county voter registrar.

The Secretary of State's Office said Friday it was not prepared to release a list of how many voters per county are affected, but verified that Harris County has the most.

Texas Take: **Get political headlines from across the state sent directly to your inbox**

Already, the list of 58,000 people suspected to have voted despite being non-citizens is being forwarded to Texas Attorney General Ken Paxton for potential legal action. It is a felony to vote in Texas when you know you are not eligible.

“Nothing is more vital to preserving our Constitution than the integrity of our voting process, and my office will do everything within its abilities to solidify trust in every election in the state of Texas,” Paxton, a Republican, said in a statement to the media.

The news is almost certain to buoy conservatives from President Donald Trump to Gov. Greg Abbott who have alleged illegal voting and voter fraud are rampant.

Abbott, who made voter fraud a priority item for the Texas Legislature in 2017, said Friday that “illegal voting in Texas will not be tolerated, and as governor, I will continue root it out and punish it.

If the 58,000 voters in fact turn out to have wrongly cast ballots, Texas would give Trump his clearest backing yet on claims of mass voter fraud that he says cost him the popular vote in the 2016 presidential election. Though Trump won the Electoral College, he lost the popular vote by a wide margin.

"In addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted illegally," Trump said in a November 2016 tweet.

After being elected, Trump **set up a voter fraud commission** that ultimately disbanded with no clear evidence of widespread wrongdoing.

It took little time for Republicans to cite the state's preliminary findings in fundraising pleas: "We knew it was happening and now we have proof," said an email blast sent three hours after Paxton's press release.

But voter advocacy groups warn that Friday's announcement is an attempt to intimidate voters, and the contention that voter fraud is rampant has been repeatedly discounted.

"There is no credible data that indicates illegal voting is happening in any significant numbers, and the Secretary's statement does not change that fact," said Beth Stevens, Voting Rights Legal Director with the Texas Civil Rights Project.

Stevens said she is concerned about how the state identified the suspected non-citizen voters.

The Secretary of State's office relied on documents that the voters themselves submitted to DPS when they were trying to obtain drivers licenses. Non-citizens, such as temporary residents, asylum seekers and refugees, are eligible to get a Texas drivers license, but they are not allowed to register to vote unless they become U.S. citizens.

"It is important to note that we are not using information self-reported by the person regarding citizenship status; rather, we are using documents provided by the person to show they are lawfully present in the United States," wrote the state's director of elections, Keith Ingram, in a notice to registrars in all 254 Texas counties.

Stevens said that could be a problem. About 50,000 Texas residents become naturalized citizens every year.

She's not alone in that concern.

"I hope that the Secretary of State and the Attorney General are extremely careful to ensure that they make accurate matches and do not unnecessarily alarm the public or falsely accuse people who are eligible to vote," said state Sen. Jose Rodriguez, D-El Paso. "For example, a legal permanent resident with a driver's license who becomes a citizen is not required to go back to DPS and change their status. So just because someone is listed as a non-citizen in DPS records, that does not mean they still are."

On Monday, counties are expecting a list from the state of suspected non-citizens on their voter rolls, said Williamson County Voter Registration Supervisor Julie Seippel.

Seippel said Williamson County will then review the list, looking for possible errors, before sending letters to registered voters giving them 30 days to prove their citizenship. Those that don't, or can't, will be removed from the rolls.

"If they get a letter and they are a citizen, it's important they provide documentation or mail it out to us. That way we can keep them on our rolls," she said.

Bexar County Elections Administrator Jacque Callanen said typically the county is alerted to possible non-citizen voters through the jury summons process, though it's not a frequent occurrence.

The state flags a few dozen voters a month statewide who are disqualified from jury duty because they declare they are non-citizens, said Sam Taylor, a spokesman for the Secretary of State's Office. The state then compares those names to the

voter rolls and forwards the information to counties.

But the new purge is part of larger effort as the state's technology allows it to better compare voter rolls with drivers license records. The state now can compare names, Social Security numbers, dates of birth and election ID numbers to identify potentially ineligible voters.

This is just the beginning. Taylor called the 95,000 names the "initial backlog." Going forward, the Secretary of State's office will use information from DPS on a monthly basis to cross reference the voter registration database to identify potential non-citizens who have registered to vote.

Stevens said the latest efforts — and the overzealous celebration from Paxton and others — are concerning because the next step will be that "the state is going to use this highly suspect 'investigation' to try to pass laws that will make it harder for eligible Texas voters to cast a ballot that counts."

Texas has already been aggressive in passing laws aimed at alleged voter fraud over the past decade, many of which critics say have reduced access to the ballot box. For instance, **the state has adopted voter ID laws** and restricted voter registration drives. More recently, in 2017, **it passed tougher penalties** for people who wrongly handle absentee ballots.

Austin Bureau reporter Allie Morris contributed to this report.

MENU

Some Texas voters already are being asked to prove their citizenship after state's announcement

The Texas Tribune reached out Monday to 13 of the 15 counties with the most registered voters; only Galveston County indicated it would immediately send out letters asking voters for proof of citizenship.

BY **ALEXA URA** JAN. 28, 2019 7 PM

Galveston County voters who receive letters have 30 days to provide proof of citizenship. Waylon Cunningham for the Texas Tribune

After the state's announcement that it was flagging tens of thousands of registered voters for possible citizenship checks, some Texas voters could be receiving requests to prove their citizenship this week.

Local election officials have received lists of individuals whose citizenship status the state says counties should consider checking. Officials in some of Texas' biggest counties said Monday they were still parsing through thousands of records and deciding how best to verify the citizenship status of those flagged by the state. But in Galveston County, the first batch of "proof of citizenship" letters were scheduled to be dropped in the mail Monday afternoon.

Those notices start a 30-day countdown for a voter to provide proof of citizenship such as a birth certificate, a U.S. passport or a certificate of naturalization. Voters

who don't respond will have their voter registration canceled.

The Texas Tribune reached out Monday to 13 of the 15 counties with the most registered voters; Galveston was the only one that indicated it would immediately send out letters, even as more than a dozen civil rights groups warned the state and local election officials that they risked violating federal law by scrutinizing the voters flagged by the state.

Cheryl Johnson, who oversees the voter rolls in Galveston County as its tax assessor-collector, said she was simply following state law by starting to send letters to the more than 830 people the state flagged.

Those people are among the approximately 95,000 registered voters whom the state said provided the Texas Department of Safety with some form of documentation, such as a green card or a work visa, that showed they were not citizens when they obtained driver's licenses or ID cards.

It's unclear exactly how many of them are not U.S. citizens. Legal permanent residents, also known as green card holders, who become naturalized citizens after obtaining driver's licenses are not required to update DPS on their citizenship status, according to voting rights lawyers.

Past reviews of the voter rolls by other states ultimately found that a much smaller number of the thousands of voters initially flagged were actually noncitizens. Civil rights groups have pointed to Florida, where a similar methodology was used to create a list of approximately 180,000 registered voters that officials claimed were noncitizens. The number ultimately was reduced to about 85 voters. Amid a court fight, Florida eventually agreed to reinstate 2,600 voters who were mistakenly removed from the rolls because the state classified them as noncitizens.

Bruce Elfant, Travis County's tax assessor-collector and voter registrar, indicated he was concerned about the accuracy of the data because the county previously received data from DPS that was "less than pristine." County officials vowed to review the list they received of 4,547 registered voters but were still trying to convert the data into a usable format.

He said he also wanted more information about the methodology the Texas Secretary of State's office used to compile the list, pointing out that naturalized citizens may have obtained their driver's licenses before becoming citizens.

"The state is responsible for vetting for citizenship" during the voter registration process, Elfant said. "I would be surprised if that many people got through it."

Other county officials echoed Elfant's point about naturalized citizens. Collin County's election administrator, Bruce Sherbert, said the county had received a list of approximately 4,700 names and would consider them on a case-by-case basis, checking for situations in which a voter already might have already some form of proof of citizenship.

"It can be a process that takes several months to go through," Sherbert said. "We're just at the front side of it."

Facing a list of 2,033 individuals, Williamson County officials said they were considering ways in which they could determine citizenship without sending notices to voters. Chris Davis, the county's election administrator, said some naturalized citizens could have registered to vote at naturalization ceremonies in other counties, so their files might indicate their registration applications were mailed in from there.

"We want to try to avoid sending notices to folks if we can find proof of their citizenship, thereby they don't have to come in and prove it themselves or mail it," Davis said.

Election officials in Fort Bend County said they had received a list of about 8,400 voters, but they noted some may be duplicates. El Paso County officials said their list had 4,152 voters.

Harris County officials did not provide a count of voters the state flagged on its rolls, but Douglas Ray, a special assistant county attorney, said they were treading carefully because of previous missteps by the state.

"To be quite frank, several years ago the secretary of state did something very similar, claiming there were people who were deceased," Ray said. "They sent us a list and the voter registrar sent confirmation notices, and it turned out a lot of people identified on the list were misidentified. A lot of the people who received notices were very much alive."

Ray said the county plans to examine the identities of voters on the list, reviewing registration information on file and proceeding with the confirmation process if they have "serious questions" about a voter.

"We don't want noncitizens voting any more than anyone else does," Ray said. "What we're skeptical of is the quality of information we're being given."

Election officials in Dallas, Tarrant, Bexar, Hidalgo, Montgomery and Cameron counties did not respond to questions about the lists they received. The state declined to provide specifics about the list on Friday and directed the Tribune to file an open records request.

Fort Worth Star-Telegram

TEXAS POLITICS

Nearly 20 percent of Tarrant voters flagged for citizenship scrutiny didn't belong on list

BY ANNA M. TINSLEY

JANUARY 29, 2019 04:10 PM, UPDATED JANUARY 29, 2019 11:52 PM

Hundreds of EEC (Election Equipment Carrier) voting machines, colored red and blue, are readied every year to be sent to polling places throughout Tarrant County and the state.
PAUL MOSELEY *PMOSELEY@STAR-TELEGRAM.COM*

FORT WORTH

Nearly 20 percent of the names of registered voters given to Tarrant County election officials to determine if they are U.S. citizens should not have been on the list.

Tarrant County Elections Administrator Heider Garcia said he learned from the Texas Secretary of State's Office Tuesday that 1,100 of the 5,800 people whose names were given to him for citizenship reviews had already proved they were U.S. citizens.

"This is a complex project," Garcia said. "We will wait and let it play out a little bit."

This is the latest development in the effort announced last week by Texas Secretary of State David Whitely to purge a list of nearly 100,000 people registered to vote who might not be U.S. citizens.

Whitley's advisory stated that around 58,000 of the people flagged for review voted in at least one Texas election between 1996 and 2018.

Garcia and countless other election officials in Texas were notified by state election officials Tuesday that some of the names on their lists didn't belong there. Apparently some voters who showed citizenship papers to the Texas Department of Public Safety had not been removed from the list.

A spokesman at the Secretary of State's Office didn't answer Tuesday when asked how many names were wrongly on the list. Instead, he released a statement.

"As part of the process of ensuring that no eligible voters are impacted by any list maintenance activity, we are continuing to provide information to the counties to assist them in verifying eligibility of Texas voters," the statement said. "This is to ensure that any registered voters who provided proof of citizenship at the time they registered to vote will not be required to provide proof of citizenship as part of the counties' examination."

Civil Rights groups are among those who have asked Whitley to retract his advisory.

"Secretary Whitley's advisory is causing confusion and uncertainty among county officials tasked with carrying out his recommendations," said Beth Stevens, the voting rights legal director for the Texas Civil Rights Project. "We now know with certainty that the 98,000 number originally released by the Secretary is 100 percent inaccurate and founded on bad methodology."

Illegally voting is a second-degree felony, punishable by two to 20 years in prison.

In 2017, a Grand Prairie mother of four, Rosa Maria Ortega, made national news when she was sentenced to eight years in prison for illegally voting. Ortega, who has a green card and isn't a U.S. citizen, lost an appeal to the 2nd Court of Appeals late last year. It is uncertain if she plans to appeal that verdict.

TARRANT REVIEW

Whitley's advisory suggested that names on the list be checked to determine people's citizenship.

The reason: Some people showed identification such as a green card to the DPS while they were getting a driver's license or identification card. Some may have later gained citizenship, registered to vote and actually voted, but ended up on the list because they initially presented a green card to DPS.

Election officials across Texas on Monday began receiving data from the state about people in their areas that may or may not be eligible voters.

In Tarrant County, election officials received data Monday afternoon and began the slow process of sifting through it to determine if any local voters are not U.S. citizens.

Corrected data was provided Tuesday.

"Now we have 4,700 names to look at," Garcia said.

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Election officials have some discretion while reviewing data, such as if they catch typos or the mislabeling of fathers and sons who share the same names, differentiated only by a Sr. or Jr.

If there still are questions about whether a person is eligible to vote, election officials may send out notices asking for a person's proof of citizenship within 30 days.

There are more than 15.8 million voters across Texas, including more than 1.1 million in Tarrant County.

It could take months in Tarrant County to determine if any "non-U.S. citizens" cast a ballot.

Critics are calling the state out for mistakes made in this process.

"Texans expect their government to do their due diligence before releasing incorrect and faulty data that could affect tens of thousands of people," Stevens said Tuesday. "This confusion could have been avoided if the Secretary and other state officials stopped their dangerous crusade to drum up support for their voter suppression agenda.

"Texans expect better from their government."

In a jailhouse interview with the Star-Telegram, Rosa Ortega said she has lost custody of her children and will likely be deported when her eight-year sentence is up.
By Brandon Wade

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Some names in list of 98,000 potential non-citizen voters included 'in error,' county officials say, citing state

The Texas secretary of state's asked at least four county elections offices Tuesday to hold off on demanding proof of citizenship from people on a state list of 98,000 potential non-U.S. citizen voters because the data may be flawed.

Dallas County Elections Administrator Toni Pippins-Poole said she doesn't know how many of the 9,938 Dallas County voters on the state's list of potential non-U.S. citizen voters may be there in error. She said a separate, preliminary review by her office that matched names on the state list against county records showed some of those people had registered to vote at naturalization ceremonies. (2018 File Photo / Vernon Bryant)

By Julieta Chiquillo, James Barragán and Robert T. Garrett
6:49 PM on Jan 29, 2019

Updated at 5:30 p.m: *Revised to include new information throughout*

The Texas secretary of state's office asked several county elections offices Tuesday to hold off on demanding proof of citizenship from people on a state list of 98,000 potential non-U.S. citizen voters because the data may be flawed.

Dallas County Elections Administrator Toni Pippins-Poole said her office got a call from a state official Tuesday asking her to not send any notices to the nearly 10,000 county voters who appear on the list. Pippins-Poole said the state official told her office that some names on the list had provided proof of citizenship to the Texas Department of Public Safety, which also facilitates voter registrations.

Remi Garza, the county elections administrator for Cameron County in the Rio Grande Valley, said the secretary of state's office gave his office information on Tuesday morning that suggested the numbers they were originally provided "may have been overstated" and that "individuals that had already provided proof of citizenship to the DPS office had been included in the original list provided to the county."

The state initially told Cameron County that about 1,500 of the nearly 1,600 names on their list had been placed there in error. The state then called Cameron County and said they had given them the wrong number, Garza said.

In all, about 300 of the names on Cameron County's list were put there in error, Garza said.

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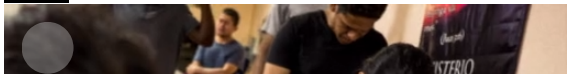

“At this point we have asked that they recreate the report and the correct information sent,” Garza said. “It is troubling for me to proceed with a list that is this inaccurate.”

On Friday, Secretary of State David Whitley, who is the state's top elections official, announced his office was flagging about 95,000 people who had received driver licenses while not citizens and who also appear on Texas voter rolls. On Monday, **he increased the number to 98,000 names**, after his office issued an advisory to county officials about potential ineligible voters. Whitley's office said 58,000 of those people had cast ballots in an election between 1996 and 2018.

Critics quickly pointed out that the state data didn’t appear to account for people who had become naturalized citizens after getting or renewing their driver’s licenses with a green-card or visa. Immigrants are required to show proof that they’re in the U.S. legally to obtain a Texas driver’s license or state ID card, but they’re not mandated to update DPS on their citizenship status.

"DPS included names of voters, that have already shown proof of Citizenship, in error," Pippins-Poole told other county officials across the state Tuesday, using a list-serve group email hosted by the Texas Association of Counties.

Others who received calls from the secretary of state’s office included officials with Tarrant, Collin and Travis counties.

After reporters contacted the secretary of state's office on Tuesday, it issued a statement noting that it continues to provide information to counties to help them verify voter eligibility.

"This is to ensure that any registered voters who provided proof of citizenship at the time they registered to vote will not be required to provide proof of citizenship as part of the counties' examination," the statement reads.

The office has not specified whether it has produced a new tally of potentially ineligible voters after finding errors in its original list. It also hasn't answered questions about how people can find out if they're on the state's list, or how counties should respond to voters requesting that information.

Counties wait for state to provide information

Collin County elections administrator Bruce Sherbet said his office is in "a holding pattern" while it waits to see if the state will provide additional information.

"We got a phone call today from the state basically telling us that there were some records that were included in that file that was sent to us that wouldn't be ones that fit into the category of questionable citizenship," he said. "In particular, it was records on there that were generated through DPS when a person was getting their driver's license and also registering to vote at the same time."

Such records are called "code 64 records," Sherbet said.

Unlike his counterpart in Cameron County, Sherbet said he was not told and does not know how many of the names on Collin County's list — about 4,700 — fall into the category of being code 64.

"Here's the question," he said. "Are they going to be able to take their files and re-do them again to remove those, and then send us ones without those records on them? Or are they going to give us some other directions on processing them?"

Tarrant County Elections Administrator Heider Garcia told the ***Fort Worth Star-Telegram*** that he learned from the state that nearly 20 percent of the 5,800 names flagged in his county shouldn't have been on the list. Garcia didn't return a call Tuesday.

Pippins-Poole said in an interview that she doesn't know how many of the 9,938 Dallas County voters on the state's list may be there in error. She said a separate, preliminary review by her office that matched names on the state list against county records showed some of those people had registered to vote at naturalization ceremonies.

Pippins-Poole said her office has not yet sent any notices to voters asking for proof of citizenship because it's waiting for a legal opinion from the Dallas County district attorney's office on how to proceed. She said the state official had

asked that “corrective” letters be sent in case any notices had already been mailed out to those people.

Beth Stevens, an official with the Texas Civil Rights Project, criticized the state's "bad methodology" in producing the list.

"Texans expect their government to do their due diligence before releasing incorrect and faulty data that could affect tens of thousands of people," she said in a prepared statement Tuesday. "This confusion could have been avoided if the Secretary and other state officials stopped their dangerous crusade to drum up support for their voter suppression agenda. Texans expect better from their government."

Among those who celebrated Whitley's original announcement on Friday was Texas Attorney General Ken Paxton, who stressed that he has authority to prosecute election crimes, and promised his office would work "to solidify trust" in state elections. An email sent by Paxton's campaign Monday referenced the list produced by Whitley under the title "VOTER FRAUD ALERT."

President Donald Trump also seized on Whitley's advisory, claiming without proof that "58,000 non-citizens voted in Texas" in a Sunday tweet.

Donald J. Trump
@realDonaldTrump

58,000 non-citizens voted in Texas, with 95,000 non-citizens registered to vote. These numbers are just the tip of the iceberg. All over the country, especially in California, voter fraud is rampant. Must be stopped. Strong voter ID! @foxandfriends

136K 9:22 AM - Jan 27, 2019

79.1K people are talking about this

Federal lawsuit filed

On Tuesday, the League of United Latin American Citizens — or LULAC, a national advocacy group — filed a federal lawsuit against Whitley and Paxton, alleging that U.S.

citizens, particularly Latinos, were being targeted as part of a "witch hunt."

"It is, in short, a plan carefully calibrated to intimidate legitimate registered voters from continuing to participate in the election process and to enlist the broader public into joining the two officials into concentrated pressure against such continued participation," the lawsuit reads.

Even if the state is revising its list, LULAC intends to push forward with the lawsuit filed in a San Antonio court, said Dallas attorney Domingo Garcia, the organization's national president.

Garcia said state officials thought "they might be able to get away" with announcing the news of potential fraudulent voters on a Friday afternoon, after state offices had closed.

"They knew, and they tried to pull a fast one on the citizens of Texas," Garcia said.

The nonpartisan Voter Participation Center, which has sought to increase voter registration among single women, minorities and young people, suggested former Democratic U.S. Rep. Beto O'Rourke's strong showing against incumbent GOP Sen. Ted Cruz in November's midterms has gotten state GOP leaders' attention.

"It's no coincidence that many of the same Texas voters who nearly propelled an underdog to victory in a statewide race for the first time in more than two decades are the ones whose citizenship is under scrutiny," the group said in a written statement.

The secretary of state's office said in its Friday advisory that it had been working with DPS on refining data for voter list maintenance since early March.

Staff writer Obed Manuel in Dallas contributed to this report. Julieta Chiquillo reported from Dallas; James Barragán and Robert T. Garrett reported from Austin.

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MENU

Texas quietly informs counties that some of the 95,000 voters flagged for citizenship review don't belong on the list

County officials said the number mistakenly flagged is "significant."

BY **ALEXA URA** JAN. 29, 2019 1 PM

According to election officials, some counties are being instructed to consider certain voters on the list as citizens. Bob Daemmrich for The Texas Tribune

Texas Voting Rights

Whether it's a botched voter citizenship review, legal battles over how the state draws its political maps, or the efforts to remove barriers to casting ballots, voting rights issues are the source of constant debate in Texas. Read The Texas Tribune's comprehensive coverage of voting rights issues and tell us if you've encountered problems while trying to vote in Texas. MORE IN THIS SERIES →

After flagging tens of thousands of registered voters for citizenship reviews, the Texas secretary of state's office is now telling counties that some of those voters don't belong on the lists it sent out.

Officials in five large counties — Harris, Travis, Fort Bend, Collin and Williamson — told The Texas Tribune they had received calls Tuesday from the secretary of state's office indicating that some of the voters whose citizenship status the state said counties should consider checking should not actually be on those lists.

The secretary of state's office incorrectly included some voters who had submitted their voting registration applications at Texas Department of Public Safety offices, according to county officials. Now, the secretary of state is instructing counties to remove them from the list of flagged voters.

"We're going to proceed very carefully," said Douglas Ray, a special assistant county attorney in Harris County, where 29,822 voters were initially flagged by the state. A "substantial number" of them are now being marked as citizens, Ray said.

It's unclear at this point how many counties have received these calls. County officials said Tuesday they had not received anything in writing about the mistake. It's also unclear how many people will be removed from the original list of approximately 95,000 individuals flagged by the state. The secretary of state's office did not respond to questions Tuesday about how much this would reduce the initial count.

In a statement Tuesday, Sam Taylor, a spokesman for the secretary of state, said the state was providing counties with information as "part of the process of ensuring no eligible voters were impacted by any list maintenance activity."

"This is to ensure that any registered voters who provided proof of citizenship at the time they registered to vote will not be required to provide proof of citizenship as part of the counties' examination," Taylor said.

Over the weekend and on Monday, counties started receiving lists of registered voters whom the state said provided DPS with some form of documentation, such as a green card or a work visa, that showed they were not citizens when they obtained driver's licenses or ID cards.

Most of the counties with the most registered voters in the state said they were holding off on sending "proof of citizenship" letters to the voters who were flagged. Just Galveston County officials said they were dropping some letters in the mail Monday, starting a 30-day countdown for voters to provide proof of citizenship such as a birth certificate, a U.S. passport or a certificate of

naturalization. Voters who don't respond will have their voter registration canceled.

Galveston County officials did not respond to a request for comment Tuesday.

Elections administrators in Williamson County and Travis County said they received calls from the secretary of state's office, too.

Chris Davis, Williamson County's elections administrator, said the counties were now being instructed to consider certain voters on the list as citizens. Both Davis and Bruce Elfant, Travis County's tax assessor-collector and voter registrar, said that would likely cause a "significant" drop in the number of registered voters flagged by the state. Williamson initially received a list of 2,033 individuals from the state. Travis was facing a list of 4,547 registered voters for review.

John Oldham, elections administrator in Fort Bend, said he also received a call from the secretary of state's office indicating that some of the names on the initial list of 8,035 individuals it received from the state should not be there.

His office hadn't determined how many voters would be removed from the list of flagged voters, but he noted officials had found two noncitizens on the rolls. In both of those cases, the individuals had indicated they were not citizens on their voter registration applications but were mistakenly added to the voter rolls, Oldham said.

"That happens," Oldham said.

State officials announced they were sending the list in a press release from the secretary of state's office that emphasized the number of voters who had been flagged. Since then, top Republican officials, including President Donald Trump and Attorney General Ken Paxton, have pointed to the numbers to raise unsubstantiated claims of voter fraud. But election officials have pointed out that it's possible that many of the individuals could have become naturalized citizens since they obtained their driver's licenses or ID cards.

At least one lawsuit has been filed against the state over its efforts to flag voters for citizenship checks. The League of United Latin American Citizens' national and Texas arms are suing the state over what they say is is an "election-related 'witch hunt'" designed to intimidate legitimately registered voters by asking them to prove their citizenship.

Other civil rights groups have warned that the state's recommended procedure for verifying voters' citizenship status could violate federal law, and several are considering litigation against the state.

"Texans expect their government to do their due diligence before releasing incorrect and faulty data that could affect tens of thousands of people," said Beth Stevens, voting rights legal director with the Texas Civil Rights Project, one of the groups that issued the warning. "This confusion could have been avoided if the secretary and other state officials stopped their dangerous crusade to drum up support for their voter suppression agenda."

BRENNAN CENTER FOR JUSTICE at New York University School of Law

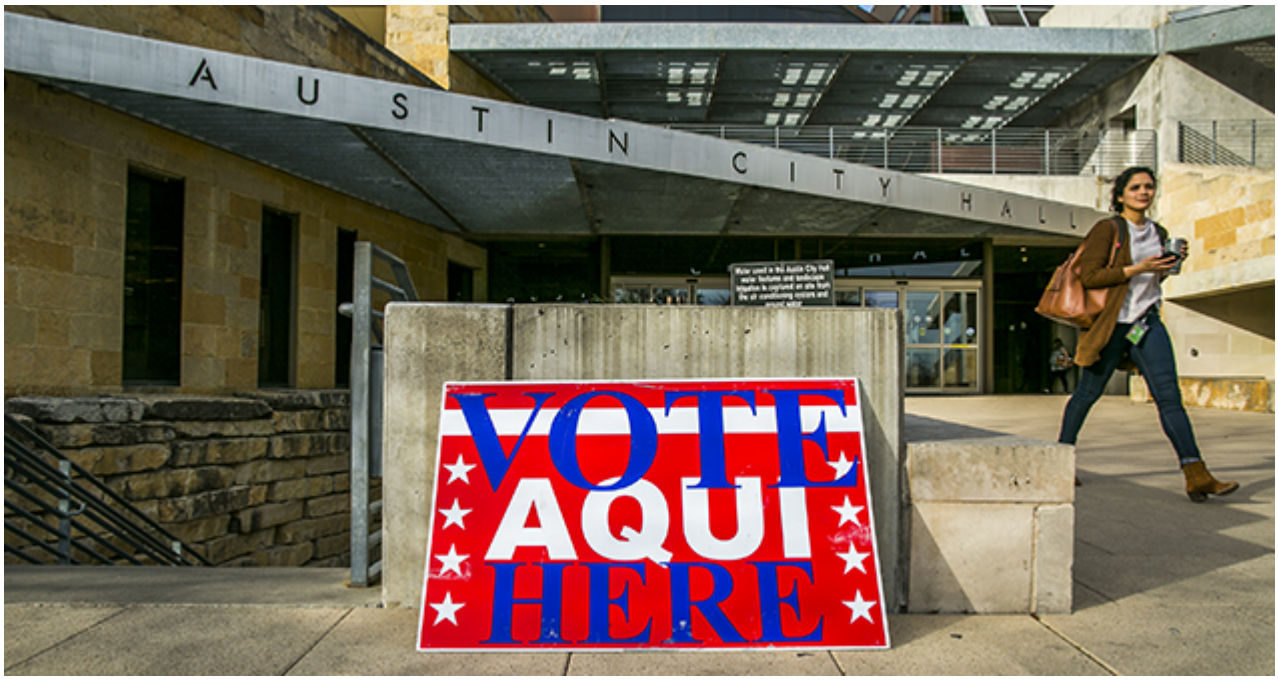
Published on *Brennan Center for Justice* (https://www.brennancenter.org)

There's Good Reason to Question Texas' Voter Fraud Claims

Friday's claim of thousands of non-citizen voters is likely false. Here's why.

Sean Morales-Doyle [1], Rebecca Ayala [2]

January 29, 2019



Here we go again.

On Friday, Texas' secretary of state declared that 95,000 non-citizens were on the state's voter registration lists – and suggested that 58,000 of them had cast ballots in at least one election. Two days later, President Trump falsely tweeted [4]: "These numbers are just the tip of the iceberg." Nothing could be further from the truth.

This latest (and likely erroneous) claim from Texas is part of a larger pattern of vote suppressors making outlandish claims of voter fraud – only to have them thoroughly and exhaustively debunked. It would be funny if such claims weren't being used to deprive eligible citizens of their right to vote.

First, let's examine what exactly Texas Secretary of State David Whitley did to come up with his exaggerated numbers. He has yet to provide much more than a breathless statement [5] to the press,

but we do know he compiled his list of supposed non-citizens by comparing driver's license application records against the state's voter registration database. We've seen this game before. Here's why it doesn't pass the smell test:

1. It is very likely that many if not most of these people became naturalized citizens since the last time they renewed their driver's license.

2. Large-scale database matching has been proven to be notoriously unreliable.

3. Similar claims made by states in the past—including Texas—have been debunked.

Point one: the data Whitley used only shows if someone wasn't a citizen the last time they renewed their driver's license. But Texans only have to renew their licenses every six years. And since 55,000 Texans take the oath of citizenship every year, it stands to reason that many of these phantom non-citizen voters are now citizens. In fact, according to the U.S. Department of Homeland Security, there were 348,552 Texans naturalized in the last six years. So even if we assume that all of the matches made by the Secretary of State are accurate, it is likely that many if not all of the 95,000 people identified have since been naturalized.

Point two: large-scale database comparisons are often inaccurate. When comparing records from databases as large as these—there are 16 million registered voters in Texas—past experience suggests a significant likelihood of false positive matches. Secretary of State Whitley's own guidance to county officials even acknowledges as much: he instructed [6] county registrars to consider the matches between the driver's license database and the voter registration database to be "WEAK" matches (capitalization his).

In the run-up to the 2012 [7] election, Texas election officials used similar "weak" matches to claim that 80,000 people on the voter rolls were dead. Just as they've been instructed to do this time around, election officials were told to send notices to these voters requiring a response within 30 days – or else they'd be deleted from the voter rolls. As a result, the state repeatedly flagged living, eligible voters for removal, a process that disproportionately impacted [8] people of color. After subsequent litigation and settlement, election officials were barred from using the failure to reply to these notices as a reason for removal.

And point three: Texas is not alone in this pattern of bold claims of voter fraud that are later debunked. In fact, nearly every instance of such claims is thoroughly disproven.

In 2012, Florida officials conducted a similar weak match with driver's license records that indicated that as many as 180,000 non-citizens were on the state's rolls. As in Texas, that number made for some splashy headlines [9], but after accounting for the fact that people may have become citizens after renewing their licenses, the number was whittled down to 2,600 cases. Even that turned out to be a drastic overstatement, as in the end just 85 voters were identified as non-citizens and removed [10] from the rolls.

That same year, the then-director of South Carolina's DMV used a similar "weak-match" method to claim ineligible individuals voted in previous elections. He claimed [11] that 950 dead people had voted since they died. After a review of the records in question by South Carolina officials [12], it was determined that no one had cast a ballot from the grave – or had used a dead person's identity to vote.

After the 2016 election, a weak-match system identified 94,610 New Hampshire voters that were supposedly registered in another state. President Trump claimed he lost the state because "thousands" of people came into the state by bus to vote against him. A follow-up review by the New Hampshire secretary of state ruled out all but 142 of those matches as possibly legitimate cases of double-voting, and only referred 51 of those cases to the state's attorney general for further investigation.

We have seen similarly bold but false claims later disproven in New Mexico and Colorado. And Georgia's recent move to place thousands of voters on "pending" status because of matches using a driver's license database is currently the subject of ongoing litigation. But the fact is that study after study has shown that there is no evidence [13] of widespread non-citizen voting or any other type of in-person voter fraud in the United States.

Of course, President Trump has a penchant for making and amplifying such false claims. He famously invented millions of votes cast by ineligible voters to explain why he lost the popular vote in the 2016. He then created a commission dedicated to investigating this non-existent problem, which ultimately imploded after states pushed back against intrusive attempts to inspect voter information and after the commission was ultimately unable to find any evidence of widespread voter fraud. Even Trump's own Republican colleagues refute [14] his baseless claims.

With all of this history in mind, these kinds of alarmist statements and actions are particularly offensive. But Secretary of State Whitley's actions will also likely have immediate consequences for real voters.

Texas has a history of using faulty claims of fraud to justify onerous voter ID laws. In 2011, Texas passed the country's strictest voter ID law, suggesting it was necessary to prevent supposedly rampant voter fraud. After the Brennan Center and others sued to prevent the implementation of that law (and won), it became clear that the state had virtually no evidence of voter impersonation at the polls. In ruling on the case, the court noted that in the ten years preceding the law's passage, though there were 20 million votes cast in the state, only two instances of in-person voter impersonation were prosecuted to conviction.

Further, the secretary of state has now advised local election officials to send supposed non-citizens a notice requiring them to prove their citizenship within 30 days. If they fail to meet the deadline, they can be removed from the voter rolls. This means that there may be thousands of recently naturalized citizens purged from Texas's voter rolls simply because they do not notice the mailer or they do not respond in time. As in previous cases, this sort of inappropriate voter purge is likely to have a much more significant impact on people of color, particularly Latinos, who make up a significant portion of naturalized citizens in Texas.

Just six years ago, before the Supreme Court gutted core provisions of the 1965 Voting Rights Act that required certain jurisdictions to seek federal government approval in changes of voting procedures, Texas probably would have been prevented from these kinds of shenanigans. But now it will be up to voting rights advocates to hold Texas accountable, expending time and energy to debunk false claims that are ultimately used to rob eligible citizens of their right to vote.

(Image: Drew Anthony Smith/Stringer)

Voting Rights & Elections [15], Restricting the Vote [16], Myth of Voter Fraud [13], Restoring Voting Rights [17]

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NEWS › POLITICS

Tens of thousands removed from potential non-citizen voters list after counties find flawed data

More than half of the supposedly suspect names in Harris, Williamson counties -- and nearly one-fifth in Dallas -- are no longer being pursued, officials say

Confusion reigned Wednesday over data used to compile a list of potential non-citizen voters that was released by Texas Secretary of State David Whitley. Dallas County Elections Administrator Toni Pippins-Poole said the county's voter-roll database vendor has identified 1,715 people as being incorrectly placed on an initial list of 9,938 registered voters sent to the county over the weekend. (2018 File Photo / Irwin Thompson)

By James Barragán, Robert T. Garrett and Julieta Chiquillo
7:45 PM on Jan 30, 2019

Updated at 6:52 p.m.: *Revised with new information throughout*

AUSTIN -- At least 20,000 people whom state officials put on a list of potential non-citizen voters have now been removed from those lists after the state told counties that data it provided were flawed, local officials said on Wednesday.

And Secretary of State David Whitley, whose office has gone silent in giving direction to county election administrators and responding to the news media, told civil rights groups late Wednesday that he'll respond to them "within the next week." The 13 groups have asked Whitley, a recent appointee of Gov. Greg Abbott, to withdraw his request for counties to review nearly 100,000 Texans' eligibility to vote.

Amid widespread confusion, only fragmentary information on Whitley's flawed data could be learned.

Dallas County Elections Administrator Toni Pippins-Poole said the county's voter-roll database vendor has identified 1,715 people as being incorrectly placed on an initial list of 9,938 registered voters sent to the county over the weekend.

The share that was flawed, 17 percent, hasn't been confirmed by state officials yet but could climb if the

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officials flag more people as being on the list erroneously, she said.

Officials in Collin and Denton counties said they don't yet know what percentage of the names they were sent shouldn't have been on the list.

In some big urban counties, though, the magnitude of error appeared massive.

Harris County officials told the ***Houston Chronicle*** that 60 percent -- or about 18,000 -- of the nearly 30,000 people the state had originally put on their list would have to be removed.

Williamson County's Chris Davis, president of the Association of Texas Elections Administrators, said that more than half of the 2,033 voters on his county's list were being removed after the state's revision.

"We've removed over half of the names" from the secretary of state's original list, Davis said in an email. "No numbers yet, as we're still working hard to vet the remaining names."

In Travis County, Tax Office spokeswoman Tiffany Seward said the culling will continue and take some time. But so far, she said, 634 -- or 14 percent -- of the people the state identified for review in Travis County over the weekend have been removed.

Fast-moving developments

On Friday, Whitley's office sent an advisory to counties saying that about 95,000 people who received driver licenses -- while legally in the country, but not U.S. citizens -- also appeared on Texas voter rolls. Of them, 58,000 voted in one or more elections between 1996 and 2018, Whitley's office said. It asked counties to review the eligibility of people on the list.

The announcement was celebrated by staunch conservatives who for years have sought a tightening of voter-eligibility requirements. Democrats and voting rights advocates, though, denounced Whitley's move as a partisan push by state GOP leaders to purge minorities from the voter rolls. Opponents also questioned the methodology Whitley's office used, dismissing the process as "woefully inadequate."

By Tuesday, the state quietly started to backtrack. Whitley aides began calling individual counties, advising that numbers supplied Saturday night were incorrect. That's because some people on the list already satisfied the Department of Public Safety they were U.S. citizens while registering to vote through the Texas driver's license process.

The biggest burden of removing people from Whitley's original lists will fall on the counties with the biggest populations.

That's because of the peculiar way in which Texas counties transmit voter applicants' information to Whitley's office, with major urban counties required to batch up their applications, officials explained.

On Wednesday, confusion reigned.

In Austin, Travis County Tax Collector Bruce Elfant's office posted on its website a statement recounting that when it received its call from the state Tuesday, the prospect was raised that some people on the list were non-citizens at the time they obtained driver's licenses. But they've been naturalized since, said the site of Elfant, who is Travis County's top election official.

"During this call, the secretary of state's office confirmed that the records we received may include voters who were

not citizens at the time they applied for a driver's license but have since become citizens," it said. "There is no code on these records to help us identify them for removal from the list."

Many counties have asked the state to provide them with a new list of numbers that removes the names of people who registered while obtaining driver's licenses. They have also asked the secretary of state's office to provide a written update to its initial advisory. Whitley's office has not responded publicly to those requests.

On Wednesday, Whitley spokesman Sam Taylor declined to respond to queries. On Tuesday, he initially declined to comment on the advisory and subsequent miscues, citing a lawsuit filed against the office and Attorney General Ken Paxton by the League of United Latin American Citizens. Later in the day, he issued a prepared statement saying that the office would continue to provide counties with information to verify voter eligibility.

In the suit by the Hispanic civil-rights organization, filed in federal court in San Antonio, the group alleged that U.S. citizens, particularly Latinos, are being targeted as part of a "witch hunt."

Despite the missteps, some statewide Republican leaders have remained supportive of the secretary of state's advisory.

Although non-citizens have to prove they're in the country legally to obtain a Texas driver's license, the Republican Attorneys General Association said erroneously in a Wednesday news release that "Paxton recently announced thousands of registered illegal immigrants on voter rolls, many of which voted."

"Every single instance of illegal voting threatens democracy in our state and deprives individual Texans of their voice," Paxton said in a **statement issued Friday.**

Abbott, who has been Whitley's boss for many years, both in the governor's office and the attorney general's office, has not weighed in on the controversy.

Abbott spokesman John Wittman did not respond Wednesday to a request for comment about mistakes in the

list and critics' claims that Whitley's actions are a prelude to an unfair purge of voter rolls that will suppress minorities' participation in Texas elections.

On Monday, Wittman declined to say whether Abbott, who in the past has stressed his high concern that ineligible people are voting in Texas, would mention the topic in his state of the state speech next week. In the speech on Tuesday, the Republican governor is expected to declare several "emergency" items, which lets lawmakers vote more quickly on bills on those topics.

"We're not going to discuss any emergency items prior to the actual announcement," Wittman said.

County election officials, who generally are circumspect in discussing their state partners, couldn't completely stifle hints of frustration.

"Williamson County has also received NO written instructions after yesterday morning's call from the" secretary of state, Davis wrote in an email.

Denton County Elections Administrator Frank Phillips, when reached by phone, said: "I'm not doing anything until the state sends me an updated list removing those" voters, he said, referring to the ones who satisfied DPS they were citizens while obtaining driver's licenses.

In Collin County, local elections administrator Bruce Sherbet said he's seen markings indicating such citizens are on his county's list of 4,699 voters, received from Whitley's office Saturday. But he said the Collin office hasn't counted them.

"I don't have anything definitive," Sherbet said. "We just started."

'Where is the fire?'

Leaders with the Mexican American Legislative Caucus condemned the state's release of flawed data to local elections administrators, calling the information a "misleading" effort to try to suppress the votes of minorities.

“What is most callous is that these are not trivial rights that we’re talking about,” said Dallas Rep. Rafael Anchia, a Democrat who is the chairman of the caucus. “This is a voting right. This is a cornerstone of our democracy.”

The caucus formed a policy committee that will investigate the release of the “non-citizen voter” list and will monitor suspicions that the secretary of state coordinated with outside conservative grassroots groups on the release of the data. The committee will be led by Austin Democrat Eddie Rodriguez and will include Dallas Democrat Victoria Neave and Fort Worth Democrat Ramon Romero.

Rodriguez said he would ask Whitley to meet with the committee. Officials said they had also asked Whitley’s office to preserve written communications between his office and Paxton’s office as well as “outside groups” that are pertinent to this issue.

“There’s a lot of mistakes here and we want to be able to look at that,” he said.

Austin Democrat Celia Israel called the release of flawed data a “sham” and questioned the motives of the state officials who released the data.

“Where is the fire? Where is this coming from? I can only point to a historic election. Why the new processes and procedure? Why now?” she said.

Anchia said legislators were still trying to glean more information but that if officials had participated in a coordinated effort to fool Texans into believing large numbers of non-citizens voted “then people are going to have to answer for violation of protocols and of rules potentially.

“If we have to ask people to step down, we will,” he said.

Staff writers James Barragán and Robert T. Garrett reported from Austin, and Julieta Chiquillo reported from Dallas.

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POLITICS

Texas Officials Begin Walking Back Allegations About Noncitizen Voters

January 30, 2019 · 3:13 PM ET

ASHLEY LOPEZ

FROM KUT 90.5

People lined up to vote early at a Houston polling place in October 2018.

Loren Elliott/Getty Images

Texas officials are taking a step back on their claim they found 95,000 possible noncitizens in the state's voter rolls. They say it is possible many of the people on their list should not be there.

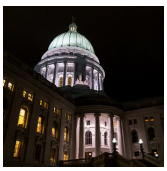
POLITICS

Democrats Pick Georgia's Stacey Abrams To Give Response To Trump's State Of The Union

In a statement Tuesday, the Texas Secretary of State's office said they "are continuing to provide information to the counties to assist them in verifying eligibility of Texas voters."

Last Friday, Texas Secretary of State David Whitley sent an advisory to local registrars asking them to look at their voter rolls. Whitley said his office flagged the names of 95,000 people who at one point in the past 22 years had identified as noncitizens with the Texas Department of Public Safety. In that time span, officials said, they also registered to vote.

Voting rights groups have said the state's list is likely a list of naturalized citizens who recently got the right to vote.



POLITICS

Federal Judge Strikes Down Lame-Duck Changes To Wisconsin Voting Laws

The state has provided little information about the methodology it used to compile the list, which has concerned both local election officials and voting rights groups.

"I don't know how they crafted their list," said Travis County's Tax Assessor-Collector Bruce Elfant, who manages the county's voter rolls.

Elfant says he has been holding off contacting voters on the original list of alleged noncitizens that the state gave him. He says the list had the names of about 4,500 people who live in Travis County, which includes the city of Austin and its suburbs.

On Tuesday, he told state and other local officials that they should remove a group of voters who were erroneously on their first list.

"The list will shrink significantly from the original 4,500 we received," he said.

Elfant said it's unclear how large the new number will be or whether the updated list will be any more reliable.

POLITICS

Ahead Of The 2018 Election, Texas AG Ramps Up Voter Fraud Prosecutions

"It would have nice if they would have vetted this more carefully before they sent it out to the election administrators," he says. "But it is what it is, I am glad they gave us guidance yesterday because it's going to be less ... difficult for valid voters."

James Slattery, a staff attorney with the Texas Civil Rights Project, says Whitley should rescind the advisory altogether.

"At this point, you have to say the whole process is tainted from the start. We now have very big obvious flaws in the methodology by which this advisory was disseminated," he says. "And it's not just me saying it. It's apparently the Secretary of State's office saying that to county election officials himself."

The state's push comes as Republican-dominated Texas shows signs of becoming increasingly competitive politically. Last fall, Democrats flipped two GOP-controlled House districts and came close to winning a Senate race for the first time in more than two decades.

"The timing of the Texas Secretary of State's announcement — falsely claiming that there are tens of thousands noncitizens on the rolls — we think is directly related to the very high number of Latinos who were registered and were voting in the most recent election," said Nina Perales of MALDEF, a Latino legal defense group.

LULAC, a Latino civil rights group, filed a lawsuit in a federal court in San Antonio on Tuesday. They say the state is violating the Voting Rights Act and intimidating new

voters.

"We are going to be able to show that at the end that all of these were legitimate U.S. voters," Domingo Garcia, the national president of LULAC, said. "In the end, this is really about voter suppression, not voter fraud."

Other states, including Florida and Colorado, have tried a similar voter purges aimed at alleged noncitizens. Before the 2012 election, Florida compiled a list of roughly 180,000 names. After local officials combed through it, only 85 people were removed from the rolls.

The focus on possible voting violations comes as Texas lawmakers have just begun their legislative session. One bill under consideration would require people to show proof of citizenship when they register to vote.

voting rights civil rights texas

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Non-citizen voter registration in Texas

Non-citizen voter registration in Texas

Non-citizen voter registration in Texas

Posted: Thu 9:51 PM, Jan 31, 2019 | Updated: Fri 5:02 AM, Feb 01, 2019

LAREDO,Texas(KGNS)- The Webb County Elections Administration has received notice that there are over one-thousand non-citizen voters in the county.

The advisory comes after Texas Secretary of State David Whiteley announced their evaluation of voter registration maintenance activity.

Whiteley announced that his office has been working with the Department of Public Safety to cross-check state voting records with data from DPS' driver's license bureau.

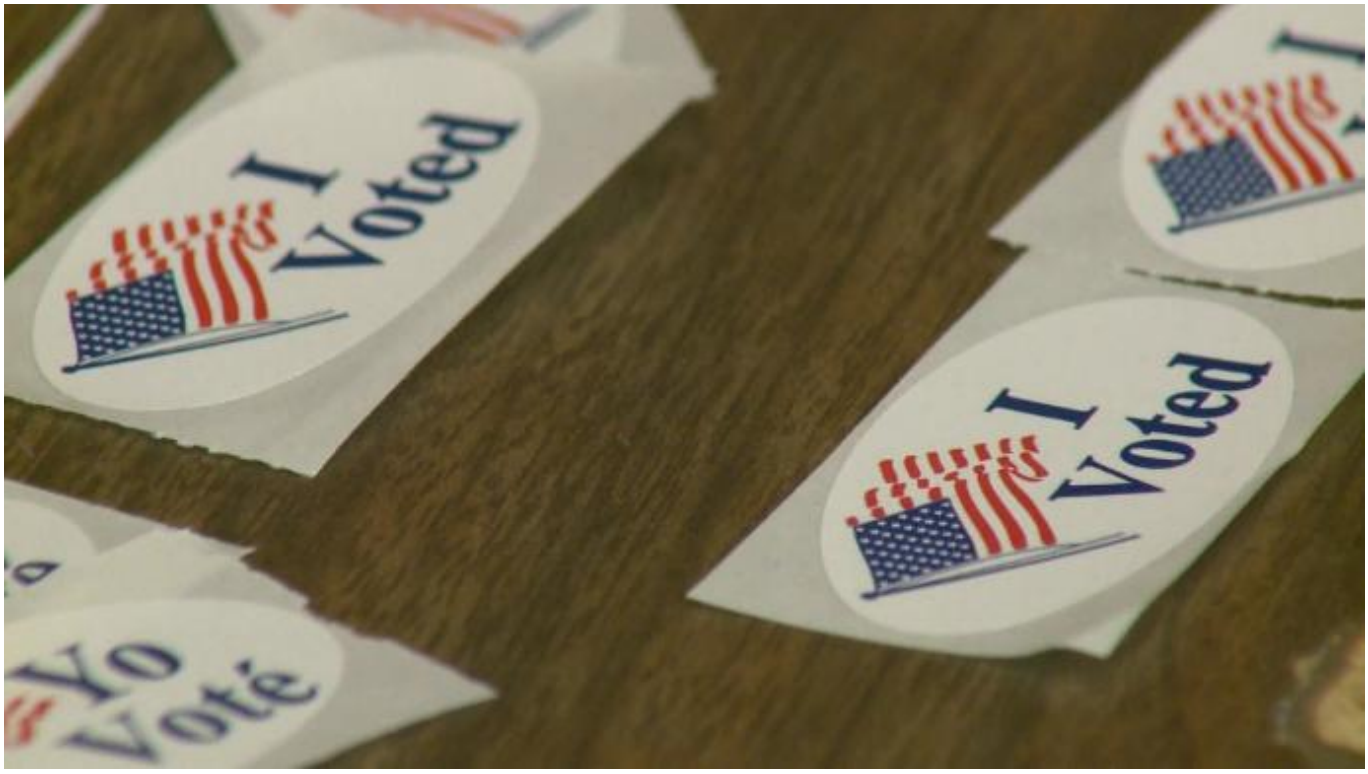
What they found was that approximately 95-thousand people in Texas were identified by DPS as non-citizens who have matching voter registration records. Of those nearly 58-thousand have voted in one or more Texas elections.

The Texas Secretary of State's office has provided each County Elections Administrator with the list of these individuals.

Interim Elections Administrator Jose Salvador Tellez says DPS has identified over 1,400 in Webb County.

Tellez says that the advisory is asking that elections administrators handle investigations.

The Texas State Secretary's office says these measures are being made to ensure that only qualified voters are



registered to vote in Texas elections.

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Starr elections office sent notices to voters

Letters sent in response to state advisory

Berenice Garcia - February 1, 2019

Starr County

Along with other counties along the Rio Grande Valley, Starr County is dealing with a notice from the Texas Secretary of State's Office that flagged potential non-citizens on its list of registered voters.

John Rodriguez, director of Starr County elections, said his office received a list of more than 250 registered voters last week that were flagged by the state as potential non-U.S. citizens.

The list contained 282 voters, according to information sent to the Hidalgo County elections office that included information for neighboring counties.

On Tuesday, though, the state retracted some of those names, leaving about 211 voters on the Starr County list, according to Rodriguez.

"I'm surprised," Rodriguez said of the current number. "But nothing's set yet. They're just possible non-citizens; we can't say that they are."

But while elections departments from Hidalgo and Cameron counties have held off on sending notices to those individuals, Rodriguez said his office already sent out letters to them, informing them they must report to the office with proof of citizenship within 30 days lest their registration be cancelled.

Rodriguez explained his staff sent out the notices to voters before they were aware that doing so was at their discretion.

The advisory from the secretary of state's office, which was sent to counties throughout the state, led to an immediate backlash from civil rights groups.

Thirteen groups — including the Texas Civil Rights Project and the ACLU of Texas — penned a letter to Secretary of State David Whitley demanding that he rescind the advisory.

"The methodology your office apparently employed to identify such voters looks deeply flawed, and its origins and intent are highly suspect," they wrote. "As a result, we demand that you immediately rescind the advisory before counties take action on it."

The groups criticized the state's methodology, which used documents submitted to DPS that indicated the person was not a U.S. Citizen at the time they obtained a driver's license or a personal ID card.

They argued that method was flawed because it didn't take into account the possibility that those people became naturalized citizens afterward.

Additionally, they warned that they believed any actions taken based on the list would likely violate the National Voter Registration Act which prohibits performing list maintenance in a non-discriminatory fashion.

Since the notices were sent out, Rodriguez said that about 30 to 35 people have come to his office to verify their citizenship.

Had his staff been aware that sending them out was an option, they would have looked into what resources were at their disposal to verify citizenship prior to sending them, Rodriguez said.

However, he cited the number of voters that have reported to the office in response to the notice.

"We haven't had any problems or issues by them following what they have to do, coming to the office," Rodriguez said, adding that they explain what the letter is about if the voter doesn't understand.

"We haven't had any issues at the moment," he said.

Berenice Garcia

Berenice Garcia covers Western Hidalgo County and Starr County for The Monitor. She can be reached at bereniceg@themonitor.com or (956) 683-4432.

POLITICS 02/01/2019 05:45 am ET | **Updated** Feb 01, 2019

Texas Governor Abbott Is Fine With His State's Disastrous Voter Probe

Citizens fear they've been wrongly flagged, while legal groups and Democratic legislators work to get it halted.

By Roque Planas

adding, "It's important to let the data speak for itself."

So far, the data indicate that state leaders jumped the gun.

A List Riddled With False Positives

ASSOCIATED PRESS

Texas Gov. Greg Abbott, middle, isn't worried about his state's disastrous citizenship probe.

noncitizens who had registered to vote, including about 58,000 who had cast a ballot at some time over the last two decades. Republican Attorney General Ken Paxton echoed the announcement, tagging it on Twitter with the words "VOTER FRAUD ALERT." By Sunday, President Donald Trump added to the uproar, baselessly calling it the "tip of the iceberg" and demanding "strong voter ID" — despite the fact that Texas already requires photo ID to cast a ballot.

Critics and legal groups contested the allegations, noting that the state had culled the list primarily by checking voter registration records against those maintained by the Texas Department of Public Safety, which issues driver's licenses and ID cards. That agency belongs to the state and doesn't keep updated citizenship records — it only requires proof of citizenship when people apply for state IDs. That leaves open the possibility that people who naturalized after obtaining or renewing their identification cards would still be flagged.

That's exactly what's happening. With each passing day, it becomes clearer that the secretary of state's list is riddled with tens of thousands of false positives.

The office has made lurching and inconsistent steps to solve the problem it created. On Monday, facing a storm of criticism, the secretary of state's office recalculated the list of suspected noncitizen voters, arriving at a higher figure of 98,000. But a day later, it backtracked, quietly notifying county registrars that thousands of the people named were in fact citizens, the Texas Tribune first reported.

The secretary of state's office did not respond to a request for an updated list. But Harris County, which encompasses Texas's largest city of Houston, so far has struck nearly two-thirds of the 29,341 names from its list of suspected noncitizen voters because they turned out to be citizens, according to County Attorney Douglas Ray. The list also included about 400 duplicates.

The list sent to El Paso County included a naturalized citizen who works at that county office, election official Lisa Wise told HuffPost. In McLennan County, home to the city of Waco, every one of the 366 original names turned out to be a

And Galveston County sent out letters this week to 163 suspected noncitizen voters, giving them 30 days to provide proof of citizenship — only to discover before receiving responses that at least 58 of them were incorrectly identified by the secretary of state's office. In those 58 cases, county officials sent new letters telling the voters to disregard the first one.

Requests For Information Met With Crickets

Both the Mexican American Legislative Caucus and a coalition of legal and activist groups demanded that the Republican leadership of Texas rescind the list, without success. The League of United Latin American Citizens filed a federal lawsuit to block the probe Tuesday, and other legal groups are considering litigation.

Democratic state lawmakers have also used legislative privilege to demand more information about how the secretary of state's office came up with the list. Those requests are typically filled within a couple of days, but the office has yet to comply, state Rep. Celia Israel (D-Austin) told HuffPost.

The state's House Committee on Elections will likely call Whitley to testify within the coming weeks.

"I want to talk to the secretary of state in a public forum and the attorney general, and his staff, and say: How did you cook this idea up?" Israel said. "Where did it come from? There seems to be some synchronicity to how you guys are messaging."

Israel noted that she and her chief of staff met with Whitley the day before he announced the voter probe. But he failed to mention that it was coming.

The voter investigation came three months after the midterm elections, which saw major gains for Democrats in a majority-minority state where Republicans have long held firm control, despite their demographic disadvantage.

political stunt aimed at making naturalized citizens fearful of registering to vote.

Some 78 percent of the 98,000 suspected noncitizen voters identified by the Texas Secretary of State in Monday's list live in counties that voted Democrat in the 2018 U.S. Senate election.

As the slow-moving debacle over the suspected noncitizen voter probe moves forward with the governor's blessing, naturalized citizens across the state are left wondering if their voter registrations will be questioned before the next election deadline on April 6.

Naturalized Citizens Left In Limbo

María García was born in Durango, Mexico, but has lived in the United States since she was 3 months old. She was naturalized as a U.S. citizen last May — in time to cast her first ballot in November's midterm elections.

"I was super excited, but I was also very nervous," García said. "I don't know how fast the system picks up on the registration. I had tried to confirm — I was checking on the site every day. When I showed up at the polling booth, I had the little receipt that you get. I had any type of documentation they would possibly ask for."

With the deadline to register for the next Texas election only three months away, she now worries that the state's faulty probe might leave her sitting out the next election — not only because she is recently naturalized but also because her name might get confused with someone else's.

> **"I know there are other people who might receive these letters and might receive these calls, and they'll think they did something wrong and they'll be scared to vote again.**

"My name is María García, which is the most Latino name to have," she said. "Is that going to put me at risk for the next elections coming up? We have mayoral elections in Dallas coming up and local positions that are important to me."

Julieta Garibay of Austin also voted for the first time last year after naturalizing. Fearing the secretary of state might have flagged her, she sent an email to the Travis County voter registrar.

By Wednesday she got the answer. A county election official called to confirm the list included her name. The official didn't ask whether Garibay was a citizen.

That doesn't mean the county is contesting her registration. Officials in Travis County have already struck 634 people from the list of 4,558 suspected noncitizen voters provided by the state and are investigating further, spokeswoman Tiffany Seward said. Officials aren't contacting voters about the list yet unless they ask.

"I'm feeling really mad," Garibay told HuffPost. "I know there are other people who might receive these letters and might receive these calls, and they'll think they did something wrong and they'll be scared to vote again."

Sam Levine contributed reporting.

This article was updated to provide a more detailed account of the county breakdown of the suspected noncitizen voter list.

Do you have information you want to share with HuffPost? Here's how.

"Someone did not do their due diligence": How an attempt to review Texas' voter rolls turned into a debacle

Texas officials flagged 95,000 voters for citizenship reviews. But after thousands have already been cleared, questions are being raised about how they handled the process.

BY **ALEXA URA** FEB. 1, 2019 10 AM

"What they have set in motion is going to disenfranchise U.S. citizens and it's going to infringe on their right to vote," said state Rep. Rafael Anchia, D-Dallas. Michael Stravato for The Texas Tribune

Texas Voting Rights

Whether it's a botched voter citizenship review, legal battles over how the state draws its political maps, or the efforts to remove barriers to casting ballots, voting rights issues are the source of constant debate in Texas. Read The Texas Tribune's comprehensive coverage of voting rights issues and tell us if you've encountered problems while trying to vote in Texas. MORE IN THIS SERIES →

into question the citizenship of 95,000 registered voters in Texas. Soon after, Democratic lawmakers and advocacy groups were raising serious questions about how many people on that list were actually noncitizens who are ineligible to vote.

But before those doubts emerged, Whitley, the top election officer in the state, had handed over information about those registered voters to the Texas attorney general, which has the jurisdiction to prosecute them for felony crimes.

So as Anchia sat at the end of his green, glass-topped conference table, he wanted to know: Did Whitley know for sure that any of the names on his list had committed crimes by voting as noncitizens?

"No," Whitley answered, according to Anchia.

"And I said, 'Well, isn't it the protocol that you investigate and, if you find facts, you turn it over to the AG?"

"I do not have an answer for that," Whitley responded, according to Anchia's recollection of the Monday meeting.

By then, Whitley's press release had already been signal-boosted by top Republican officials — including President Donald Trump — who slapped on unsubstantiated claims of voter fraud and illegal voter registration and pointed to it as proof that voter rolls needed to be purged. And county election officials across the state had gone to work parsing through the records of thousands of registered voters whose citizenship status the state said they should consider verifying. Some counties were even in the process of sending letters to voters ordering them to prove they were citizens.

Soon after, the citizenship review effort buckled, revealing itself as a ham-handed exercise that threatened to jeopardize the votes of thousands of legitimate voters across the state. The secretary of state's office eventually walked back its initial findings after embarrassing errors in the data revealed that tens of thousands of the voters the state flagged were citizens. At least one lawsuit was filed to halt the review, and others were likely in the pipeline. And a week into the review, no evidence of large-scale voter fraud had emerged.

But at their Monday meeting, Whitley argued that his office was following the normal course of upkeep of the voter rolls. That didn't make Anchia — who chairs the Texas House's Mexican American Legislative Caucus — feel much better.

"What they have set in motion is going to disenfranchise U.S. citizens, and it's going to infringe on their right to vote," he said days later. "The damage that this is doing … to legitimate U.S. voters is substantial."

"Lawful presence list"

The citizenship check effort went public this week, but the seeds for it were planted in 2013. That year, Texas lawmakers quietly passed a law granting the secretary of state's office access to personal information maintained by the Department of Public Safety.

During legislative hearings at the time, Keith Ingram, director of elections for the secretary of state's office, told lawmakers that the information would help his office verify the voter rolls. The state had had a recent misstep when it tried to remove dead people from the rolls and ended up sending "potential deceased" notices to Texans who were still alive.

One of the DPS records the secretary of state's office was granted access to under the 2013 law was a list of people who had turned in documentation — such as a green card or a work visa — that indicated they weren't citizens when they obtained a driver's license or a state ID card.

But it appears that the secretary of state's office held off for years before comparing that list with its list of registered voters. Former Secretary of State Carlos Cascos, a self-proclaimed skeptic of Republican claims of rampant voter fraud, said he had no memory of even considering using the DPS data when he served from 2015-17.

"I don't recall it ever coming to my desk," Cascos said. "I don't even recall having any informal discussions of that."

And there was reason to be careful with the "lawful presence list." Driver's licenses don't have to be renewed for several years. In between renewals, Texans aren't required to notify DPS about changes in citizenship status. That means many of the people on the list could have become citizens and registered to vote without DPS knowing.

Other states learned the hard way that basing similar checks on driver's license data was risky.

In 2012, Florida officials drew up a list of about 180,000 possible noncitizens. It was later culled to about 2,600 names, but even then that data was found to include errors. Ultimately, only about 85 voters were nixed from the rolls.

Around the same time, officials in Colorado started with a list of 11,805 individuals on the voter rolls who they said were noncitizens when they got their driver's licenses. In the end, state officials said they had found about 141 noncitizens on the rolls — 35 of whom had a voting history — but that those still needed to be verified by local election officials.

It was under the helm of former Secretary of State Rolando Pablos, who took over in 2017, that Texas began processing the DPS list. That happened even though at least some people in the office knew the risk. Officials in the secretary of state's office early last year told The Texas Tribune that similar checks in other states using driver's license data had run into issues with naturalized citizens. Pablos didn't respond to requests for comment.

Still, on Dec. 5, Betsy Schonhoff, voter registration manager for the secretary of state's office, told local officials that her office had been working with DPS "this past year" to "evaluate information regarding individuals identified by DPS to not be citizens." In a mass email sent to Texas counties — and obtained by the Tribune — Schonhoff informed them that the secretary of state's office would be obtaining additional information from DPS in monthly files and sending out lists of matches starting in mid-January.

The next day, Pablos announced he would resign after two years in office. In his place, Republican Gov. Greg Abbott appointed Whitley, a longtime Abbott aide who at the time served as the governor's deputy chief of staff.

"VOTER FRAUD ALERT"

A secretary of state's advisory about the list had landed in his inbox earlier that day, but it didn't include any numbers. He knew the reported total of 95,000 likely included naturalized citizens from the get-go.

But misinformation spread quickly. Some of the statements released about the list were misleading. Others were downright inaccurate. Texas Attorney General Ken Paxton, a Republican, took to Twitter within the hour and prefaced the news with the words "VOTER FRAUD ALERT." At that point, none of the counties had any data to verify.

Also on Twitter, Abbott thanked Paxton and Whitley "for uncovering and investigating this illegal vote registration." Later that afternoon, the Republican Party of Texas sent out a fundraising email with the subject line "BREAKING: 95,000 Non-Citizens Registered to Vote?!"

The next day, the president chimed in, claiming on Twitter that "58,000 non-citizens voted in Texas" and adding the unsupported claim that "voter fraud is rampant" across the country.

"We had a naturalization party for her," Wise said. "She had gone and gotten her driver's license, I think, four years ago."

The errors didn't end there. By Tuesday morning, secretary of state officials had started calling counties across the state to inform them that they had made a mistake. The office had incorrectly included some voters who had submitted their voting registration applications at DPS offices and had been confirmed to be citizens since then, county officials said.

Things grew even more confusing for Remi Garza, elections administrator in Cameron County. He had originally received a list with just more than 1,600 people to review. When someone from the secretary of state's office called Tuesday, Garza was told that weeding out applications labeled as "source code 64" — the code that indicates the origin of the application was a DPS office — would remove "well over" 1,500 names from his list, leaving him with just 30 individuals to investigate.

But his staff was only able to find 300 people whose applications were labeled as such, Garza said. After another call with the secretary of state's office, Garza said he was told that the 1,500 number had also been incorrect. Now, he said, he's left with about 85 percent of his list.

"That's a level of accuracy I'm not comfortable with," Garza said Tuesday. "We're going to be moving through it very cautiously and slowly. We're talking about the franchise, and I'm not in any way going to jeopardize someone's ability to vote unless I have a very serious concern."

After the secretary of state's calls, the number of registered voters flagged by the state began to plummet. In Harris County alone, the state's flub translated to about 18,000 voters — about 60 percent of the original list — whose citizenship status shouldn't have been questioned.

In Travis County, officials dropped 634 voters off their original list of 4,558. Dallas County's original list of 9,938 dropped by more than 1,700 voters. In Tarrant County, about 1,100 voters were cleared from the original 5,800.

The secretary of state's office told the McLennan County elections office to disregard its entire list of 366 voters, the *Waco-Tribune Herald* reported.

But the state's calls came a day too late in Galveston County, where Cheryl Johnson, who oversees the voter rolls as the county's tax assessor-collector, had already sent off the first batch of "proof of citizenship" letters to voters who were on her initial list of more than 830 people.

On Monday, her office had mailed 92 notices that told voters their registration would be canceled if they didn't prove their citizenship within 30 days. That warning applied to citizens who missed the notice in the mail or didn't gather their documentation in time. On Tuesday, Johnson learned from the state that 62 of those letters never should have been sent out. She spent Wednesday preparing follow-up letters to inform those voters that their registration was safe.

When she finally took her oath of citizenship in a federal building in San Antonio last April, she let only two days go by before registering to vote in Austin, her adopted hometown. She excitedly cast a ballot in November.

But she's been stewing since last Friday when she heard about the secretary of state's announcement. Garibay last renewed her driver's license in 2017 — before she became a U.S. citizen — so she was sure she was on the list. A Travis County official called her to confirm her suspicions Wednesday, after Garibay reached out.

Travis County election officials suspected people like Garibay would be on their list. And state officials confirmed to them Tuesday that the records they provided might include voters who were not citizens when they applied for a driver's license but had since become naturalized citizens, said Bruce Elfant, the county's tax assessor-collector and voter registrar.

But the secretary of state's office has not confirmed that publicly, and it has not responded to questions about whether it will send updates to the attorney general's office to clear individuals who were on the original list.

Amid the silence, civil rights groups and members of the Mexican American Legislative Caucus have raised questions about whether the secretary of state's office publicized its numbers knowing naturalized citizens would be included — or worse, that it published them because naturalized citizens could be purged from the rolls in the process.

For Cascos, a Republican who said he long struggled to toe the party line when it came supporting claims that voter fraud was "rampant," it's been problematic to watch how the secretary of state's initial announcement seemed to confirm the beliefs of many Republicans.

"I think there's a problem here, and the problem is that, in my opinion, someone did not do their due diligence before they let these numbers out," Cascos said.

On Thursday, Abbott — whose initial reaction to the numbers went as far as vowing a legislative fix — attempted to recast the secretary of state's announcement as a work in progress.

"They were reaching out to counties saying, 'Listen, this isn't a hard-and-fast list," Abbott said at an unrelated press conference. "This is a list that we need to work on together to make sure that those who do not have the legal authority to vote are not going to be able to vote."

But while some election officials are looking for ways to clear naturalized citizens without asking them to verify their citizenship, others are unlikely to follow suit. For instance, Johnson in Galveston County says she has no way to determine whether the people on her list are citizens other than sending them notices that start the 30-day clock for them to provide proof to avoid getting kicked off the rolls.

far as to express interest in how locals were identifying naturalized citizens on the list.

On Tuesday, the civil rights group League of United Latin American Citizens filed a lawsuit that argued that forcing naturalized citizens to prove they are legitimate voters amounts to a "witch hunt" and a "plan carefully calibrated to intimidate legitimate registered voters from continuing to participate in the election process."

To Democratic state Rep. Victoria Neave of Dallas — who is on the Mexican American Legislative Caucus committee created to scrutinize the citizenship review — the whole effort is "nothing short of a political attack on Latino naturalized citizens."

But Garibay, the Mexican immigrant, sums it up as irresponsible and frustrating.

"I think to many of us, especially when the journey has been so long ... [voting] is something so important," Garibay said. "For someone to say you did something wrong when it's your right to do it, I don't even have words."

NEWS

Dozens of East Texans heading to county elections offices showing proof of citizenship

Dozens of East Texans heading to county elections offices showing proof of citizenship

By Khyati Patel | February 4, 2019 at 6:29 PM CST - Updated February 4 at 8:23 PM

NACOGDOCHES, TX (KTRE) - Dozens of East Texans have been stopping by county elections offices this week to prove their citizenship.

This all began last week after, the Texas Secretary of State issued an advisory to county voter registrars.

That advisory said that the Department of Public Safety found the names of 95,000 non-U.S citizens with matching voter registration record in Texas.

Now, more than 25,000 names have been removed from that list, with dozens more being removed daily.

County elections offices mailed the letter last Thursday telling recipients they must prove their citizenship within 30 days or lose their voting privileges.

The Texas Secretary of State notified 297 names in Smith County. In turn, the Smith County verified 58 names and removed them before sending the letters. They sent out 239 last Thursday.

In Angelina, letters were mailed to 60 to 70 people, but they were notified of 96 names.

In Gregg County, 99 letters were sent and Gregg County Elections Administration Office said “about a handful” of of people have shown up and proven their U.S. citizenship as of Monday.

But the names of several hundred people on the list last week are no longer there.

Elections Administrators in nearly every county said they’ve seen at least half a dozen people providing proof of citizenship.

Liliana Ayala said she received the letter last week and is concerned her naturalization status is being questioned.

“I don’t know. I’ve never received something like this before. We came to vote, everything was fine. They didn’t ask anything and then all of sudden we get a card in the mail, and it’s honestly kind of scary,” Ayala said.

The form letter states that the recipient has 30 days to provide proof of citizenship. On Monday, we learned from election administrators that this citizenship check will now be routine.

Voter Registration could be cancelled if those those who receive a letter from their county elections office do not provide proof of citizenship.

Previous story: Civil rights group says Texas voter citizenship checks ‘unacceptable’

LOCAL

Harris County Halts Investigation Of Voters Flagged By Secretary Of State

County officials say they want to wait until the lawsuits filed against the state are resolved.

ALVARO 'AL' ORTIZ | FEBRUARY 8, 2019, 4:46 PM

Al Ortiz/Houston Public Media

A Harris County election clerk works at a polling location at McNabb Elementary School, in Spring.

Harris County is halting its investigation of individuals flagged by the Texas Secretary of State as potential non-citizen voters.

Harris County Special Assistant Attorney Douglas Ray told Houston Matters this week that the original list the county received had 2 names.

The number of names decreased to 11,555 after following instructions from the Secretary of State to remove people who had registe the Department of Public Safety, presented evidence of citizenship, or had registered to vote at a naturalization ceremony.

At that point, county officials conducted an audit of 150 randomly picked names and “of those 150 names, we were able to affirmativ confirm that 51 of them were American citizens,” Ray told News 88.7 on Friday.

The county has now suspended its review of the list indefinitely.

Three lawsuits have been filed against the Texas Secretary of State over the statewide list, which some have categorized as an atte purge the voter rolls.

The lawsuits allege that people on the list are being unfairly and illegally targeted in violation of the Voting Rights Act and the Constit

“The most prudent thing for us to do at that point is to stop our review of the list all together and to wait for the outcome of the litigatic said.

Harris County didn’t send any notices to challenge the voter eligibility of the individuals on the list. But other counties, such as Galve send notices and have been sued.

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Alvaro 'Al' Ortiz

DIGITAL NEWS PRODUCER

Alvaro 'Al' Ortiz is originally from Madrid (Spain). He worked for several years in his home country and gained experie all platforms of journalism, from wire services to print, as well as broadcast and digital reporting. In 2001, Al came to tl United States to pursue a Master's degree...

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DAILY NEWS

Texas Secretary of State Defends Voter Purge Fiasco

Whitley ducks blame during contentious confirmation hearing

BY MARY TUMA, 12:00PM, FRI. FEB. 8, 2019

Rather than tuck his tail between his legs, promise to do better next time, and humbly apologize for the **"voter fraud" fiasco** he unleashed across the state, Texas Secretary of State **David Whitley** doubled down on his defense during a hearing before the **Senate Nominations Committee** on Thursday, Feb. 7.

Texas Secretary of State David Whitley is shocked, shocked *to discover voter suppression in here.*

The list Whitley sent to all 254 Texas counties nearly two weeks ago included 95,000 registered voters who the SoS said were potentially not U.S. citizens (58,000 of whom have voted in past elections), sparking condemnation from civil rights and voter advocacy groups and spurring three lawsuits, including **one co-filed by an Austin resident**, that charge the SoS with intimidating naturalized citizens. Fraught with errors, the list – pulled from **Texas Department of Public Safety** data – included the names of thousands of Texans who had become naturalized citizens after obtaining a driver's license or ID card.

Gov. **Greg Abbott** appointed Whitley to succeed **Rolando Pablos** in December, but he still needs confirmation from the Senate. The Nominations Committee has not yet voted to send Whitley's confirmation to the full Senate, and advocacy groups including **Progress Texas** and **Common Cause** have called for senators to reject his confirmation. While Nominations Chair Sen. **Dawn Buckingham**, R-Lakeway, had said the committee would take a vote on the nomination this week, she since has punted the decision into the future without explanation.

Reticent to go on record with the media after the voter list debacle, Whitley had no choice Thursday morning but to face the wrath of Nominations Vice Chair Sen. **Kirk Watson**, D-Austin. When asked point-blank if he was "willing to admit" to any mistakes made in the voter list, Whitley, formerly an aide to Abbott, placed the blame on "trusting" DPS data. "We can always improve the process, but the data is what the data is," he said, amid reports from several counties claiming thousands of erroneous names.

Harris County has flagged some 18,000 names (out of about 30,000) that should never have been on the list, while **Travis County** (still in the process of review) has removed at least 1,600 (out of more than 4,500) names as of Thursday, according to **updated county data**. Whitley did admit to not even looking over the DPS data before blasting out his advisory to counties to investigate potential illegal voting – which spurred Texas Attorney

General **Ken Paxton**, the state GOP (in a fundraising appeal), and then **President Trump** to hit the panic button on social media.

When asked by Watson if the release "creates the appearance" of accusing people of voter fraud, Whitley pleaded that his office has no investigative or prosecuting authority. Yet instead of allowing counties to vet the data first, Watson noted, Whitley "immediately" sent the list to the AG's office; Whitley said he simply wanted to get the data "in the hands of someone who could do something with it."

In a particularly awkward exchange, Sen. **Royce West**, D-Dallas, asked Whitley, as the state's head elections officer, to define the term "voter suppression." Visibly uncomfortable and clearly seeking to avoid the question, Whitley retorted that the definition was somehow "irrelevant." "You are the secretary of state," West responded flatly. "It is relevant to me if I'm going to vote for your confirmation."

Sen. **Carol Alvarado**, D-Houston, pointed out that Whitley's list targets Latino voters, whether intentionally or unintentionally. "There seems to have been a lack of due diligence," said Alvarado. "The conclusion I'm drawing is that either you or someone in your office didn't check your work product, or someone intentionally allowed information that was inaccurate to go out. That's what I'm trying to figure out."

The **Texas Civil Rights Project**, which is leading one of the three lawsuits against Whitley, said the hearing only "deepened" its concerns regarding the flawed voter purge list. "Instead of taking full responsibility for this debacle, he passed the buck to the previous secretary [Pablos] and the Department of Public Safety," said TCRP's **Beth Stevens**.

"Most alarming for voters, [he] admitted that he sent this list of individuals to county officials and the Attorney General before knowing all of the facts to determine voter eligibility," Stevens continued. "As a result of this reckless action, tens of thousands of Texans might be unjustly purged from the rolls and become targets for investigation and prosecution."

On Monday, adding more fuel to the fire, **Keith Ingram**, SoS director of elections, went before the **House Elections Committee** and seemed to contradict Whitley, saying the office was indeed aware the list could have likely included naturalized citizens. "We understood that there was a significant possibility that some of those folks had since become naturalized," he said.

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MORE **VOTER SUPPRESSION**

Voter Purge Debacle Cont.

"They basically accused me of committing fraud"

MARY TUMA, FEB. 5, 2019

County officials continue to eliminate eligible voters from list

Miguel Roberts, The Brownsville

Cameron County Elections Administrator Remi Garza is seen inside the Constantino Zarate Records Building and Warehouse Wednesday morning in downtown Brownsville.

Posted: Saturday, February 9, 2019 9:45 pm

By Mark Reagan Staff Writer

A little more than two weeks after the Secretary of State's office released a list of thousands of people it said may be ineligible to vote, the Cameron County Elections Office continues to eliminate people erroneously included in numbers sent to the county.

On Jan. 25, Texas Secretary of State nominee David Whitley released a list of nearly 100,000 registered voters whom he said may not be U.S. citizens and turned those names over to the Texas Attorney General's Office, which investigates voter fraud.

Whitley utilized data from the Texas Department of Public Safety for registered voters who applied for a driver's license or identification card and indicated they were not citizens dating back to 1996. However, Whitley's office never verified how many of those people later became citizens and registered to vote—a task left to county officials, like Cameron County Elections Administrator Remi Garza.

Garza said on Jan. 28 that Whitley's office initially provided a list of a little more than 1,600 names of people who may be illegally registered to vote, but, after some conflicting information from the Secretary of State's office on the total number, Garza said Cameron County was reviewing 1,300 names.

Since then, Garza said nearly 400 more people have been removed from the list, leaving approximately 900 registered voters to review.

Garza was able to initially remove the 300 from the list through what's called "source code 64," which indicated those registered voters originated from DPS. Confusingly, on Jan. 28, Whitley's office called to say that 1,500 names rooted from "source code 64," but then called back to say that was incorrect, leaving Garza with 1,592 registered voters to review, which Garza was able to whittle down to that 1,300 number.

Since then, Garza said his office has been reviewing the names of people who were registered to vote by voluntary deputy registrars, who are required and trained to ask people whether they are citizens when registering them to vote.

"Essentially, we believe that interaction with the volunteer deputy registrar eliminates the question of whether they were citizens or not at the time of registering because the volunteer deputies are more assertive in making sure people are aware of the citizenship requirement," Garza said.

As of last week, Garza's office was still reviewing registered voters who fit into that category.

"The next step is looking for records of individuals who submitted their paperwork to DPS before they had registered to vote and look at their applications and if I'm satisfied with their affirmative declaration of citizenship happened after they had been at DPS, then we will probably remove them from the list," Garza said.

He believes this process, though time consuming, will leave his office with a smaller number of voters leftover from the Secretary of State's list.

"If I do that, it will leave me with approximately 298 individuals to review in greater detail," Garza said.

That last step, however, is approximately two weeks away.

And Garza said if he does find something questionable in someone's voter registration, he will initiate an informal request for clarification on citizenship.

"If there's no response to the informal request then we'll go to formal with a request for proof of citizenship and then once we get that information, if there is something actionable, we will refer it to the DA's office," Garza said.

That process includes a formal letter being mailed to the voter in question asking for proof of citizenship and if that particular voter doesn't provide proof within 30 days, Texas law requires they be removed from the voter list.

Whitley, who appeared before lawmakers in Austin for a confirmation hearing Thursday, faced tough questions from Democrats who questioned why he released an inaccurate list, which he turned over to the Texas Attorney General for investigation.

The Texas Tribune reported that Whitley defended his decision, saying he told county elections officials that the list may be inaccurate and that he turned it over to the Texas Attorney General's Office because the Secretary of State's Office has no investigative authority.

Meanwhile, the list has now resulted in Texas being targeted by three separate lawsuits.

As for Garza, he has said he felt the release of the inaccurate release is troubling and wished Whitley's office had consulted with counties before releasing the list.

"I think one of the unintended consequences of this list is that people are questioning their own registration status, which I think is an outrage," Garza said.

He said he also felt that the list's release might be a sign of more to come.

"I am concerned about which source of information they will access next to raise questions about people's registration," Garza said.

mreagan@brownsvilleherald.com

Posted in Local News on *Saturday, February 9, 2019 9:45 pm.*

MENU

Texas will end its botched voter citizenship review and rescind its list of flagged voters

The state had questioned the citizenship status of almost 100,000 registered voters, but many on the list turned out to be naturalized citizens.

BY **ALEXA URA** APRIL 26, 2019 2 PM

Secretary of State David Whitley's office will instruct local elections officials to take no further action on the names of people it had classified as "possible non-U.S citizens." Bob Daemmrich for The Texas Tribune

Texas Voting Rights

Whether it's a botched voter citizenship review, legal battles over how the state draws its political maps, or the efforts to remove barriers to casting ballots, voting rights issues are the source of constant debate in Texas. Read The Texas Tribune's comprehensive coverage of voting rights issues and tell us if you've encountered problems while trying to vote in Texas. MORE IN THIS SERIES →

Three months after first questioning the citizenship status of almost 100,000 registered voters, the Texas secretary of state has agreed to end a review of the voter rolls for supposed noncitizens that was flawed from the start.

The deal was announced Friday as part of an agreement to settle three legal challenges brought by more than a dozen naturalized citizens and voting rights groups against the state. The groups alleged that the voter citizenship review, which was launched in late January, was unconstitutional and violated federal protections for voters of color.

Secretary of State David Whitley — who has yet to be confirmed by the Texas Senate amid the fallout over the review — agreed to scrap the lists of registered voters his office had sent to county voter registrars for examination. Whitley's office will instruct local officials to take no further action on the names of people it had classified as "possible non-U.S citizens," and county officials will be charged with notifying voters who received letters demanding they prove their citizenship that their registrations are safe.

The state is also on the hook for $450,000 in costs and attorney fees for the plaintiffs' lawyers.

The federal judge overseeing the case still must approve the agreement, and the state will have five days after the judge dismisses the plaintiffs' legal claims to officially rescind the list. But the settlement amounts to a profound defeat for the state leaders who defended the review even though it had jeopardized the voting rights of tens of thousands of naturalized citizens.

"Today's agreement accomplishes our office's goal of maintaining an accurate list of qualified registered voters while eliminating the impact of any list maintenance activity on naturalized U.S. citizens," Whitley said in a statement Friday. "I will continue to work with all stakeholders in the election community to ensure this process is conducted in a manner that holds my office accountable and protects the voting rights of eligible Texans."

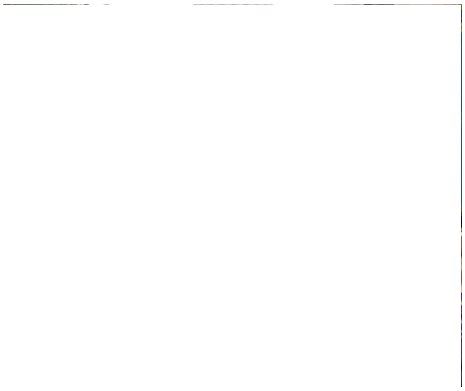
The original review had been mired in controversy since day one, largely because of the faulty methodology the state used to compile the list and the fanfare with which it was announced.

Top Republican leaders, including Gov. Greg Abbott and President Donald Trump, took to Twitter to falsely tout the list as proof of illegal registrations and voting in Texas. In reality, the secretary of state's office matched the voter rolls with data it requested from the Texas Department of Public Safety for individuals who at some point in the last few years told the department they were not citizens when they obtained a driver's license or ID card. But the review did not

account for people who could've become naturalized citizens since then and weren't required to update DPS.

The settlement does not prohibit the secretary of state from screening the state's massive voter registration database for possible noncitizens, but state officials agreed they would rework their methodology to only flag voters who provided DPS with documentation showing they were not citizens after they were registered to vote.

It's unclear how that will shrink the original list of voters whose citizenship was questioned. Officials agreed to provide the plaintiffs with that number as well as three more updates once the state begins compiling weekly lists to send out to county officials.



Those changes are expected to address the issues at the heart of the state's first botched attempt at reviewing the voter rolls, which unraveled within days of announcing the effort when state workers began quietly informing local election officials that thousands of the names on the list shouldn't have been there. A top election official in the secretary of state's office later acknowledged that his office had overstated the number of flagged voters by about 25,000 names because of the mistake. And local officials quickly noted they had been able to verify that hundreds of other individuals on the list were naturalized citizens.

"After months of litigation, the state has finally agreed to do what we've demanded from the start — a complete withdrawal of the flawed and discriminatory voter purge list, bringing this failed experiment in voter suppression to an end," said Andre Segura, legal director for the American Civil Liberties Union of Texas, which represented plaintiffs in the case. "The right to vote is sacrosanct, and no eligible voter should have to worry about losing that right."

In court in February, lawyers for the plaintiffs in the three lawsuits zeroed in on state officials' admissions that they knew naturalized citizens would be affected by the review. Despite those admissions and errors in the data, state officials continued to stand by the review as routine list maintenance and a good faith effort to maintain the integrity of the voter rolls. They also went as far as blaming individual county officials for acting too quickly to question voters on their lists, even though those local officials followed the state's instructions for reviewing the eligibility of those voters.

Under the settlement, the state agreed to provide local officials with new training materials. The plaintiffs and the state reached the settlement agreement two months after District Judge Fred Biery signaled his displeasure with the way Texas handled the review. In temporarily putting the effort on hold after three days of testimony in San Antonio, Biery chided state officials for putting "perfectly legal naturalized Americans" on a path to receiving "ham-handed and threatening" letters that demanded they prove their citizenship to avoid getting kicked off the rolls.

In a scathing four-page order, Biery wrote that the letters exemplified "the power of government to strike fear and anxiety to intimidate the least powerful among us."

"No native born Americans were subjected to such treatment," Biery said.

State attorneys indicated to Biery in late March that they had proposed a deal to end the litigation. Despite early reports of an agreement, it took several weeks to iron out a deal in which the plaintiffs agreed to rescind their legal claims against the state and their requests for documents. (The plaintiffs indicated in the settlement agreement that they are not conceding that the state's review efforts comply with federal law, leaving them room to take the state back to court if they're troubled by subsequent reviews.)

The debacle prompted a congressional inquiry as part of a larger investigation into voter suppression in various states. Congressional investigators have requested documents and communications related to the review. But the state so far has mostly denied those requests, only handing over documents that were already public.

It remains unclear what the settlement means for the registered voters whose names were referred to Attorney General Ken Paxton, who has the authority to prosecute claims of voter fraud. In announcing the original review, Whitley noted his office had immediately handed over the list of names to the attorney general. Since then, Paxton's office has offered mixed messages on whether it has begun to criminally investigate voters.

On Friday, the groups and lawyers who sued the state celebrated the settlement but lamented the confusion and frustration the review effort caused.

"State officials have wasted hundreds of thousands of dollars and struck fear and confusion into thousands of voters in order to pursue their voter suppression agenda," said Beth Stevens, voting rights legal director with the Texas Civil Rights Project, which was also involved in the lawsuit. "We are glad that this particular effort was stopped in its tracks, and we will remain vigilant to ensure that not one single voter loses their right to vote due to the actions of state officials."

Disclosure: The Texas Secretary of State has been a financial supporter of The Texas Tribune, a nonprofit, nonpartisan news organization that is funded in part by donations from members, foundations and corporate sponsors. Financial supporters play no role in the Tribune's journalism. Find a complete list of them here.

Politics

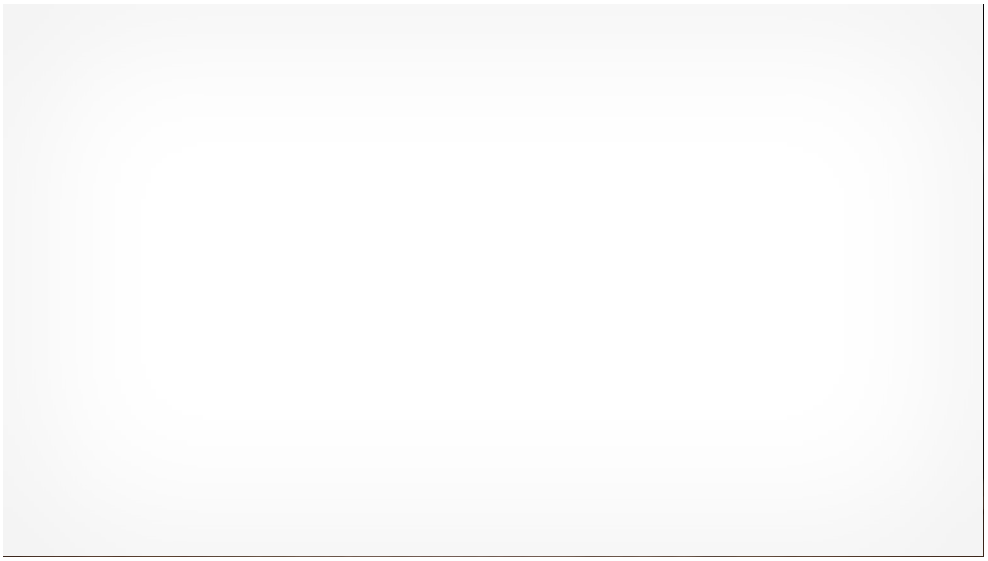
Texas Settles Non-Citizen Voter Purge Fight With Latinos

Laurel Brubaker Calkins
April 26, 2019, 3:46 PM EDT
Updated on April 26, 2019, 4:56 PM EDT

- Judge had faulted election officials for 'threatening' letters
- State will scrap list of 98,000 suspected non-citizen voters

Texas has agreed to scrap a list of 98,000 suspected non-citizen voters, thousands of whom became naturalized U.S. citizens before they voted, to settle a court challenge brought by Latino groups who said a threatened purge unfairly disenfranchised law-abiding immigrants.

The state will discard the list of individuals who identified as non-citizen legal immigrants when they applied for drivers' licenses during the past 20 years and then later registered to vote, according to statements issued by several groups who challenged the measure.



State election officials admitted they failed to properly cross-reference the list with databases of naturalized citizens, which caused county registers to challenge these individuals' citizenship and jeopardize their right to vote. At least 25,000 naturalized citizens were sent letters in January demanding they prove their citizenship or their voter registrations would be cancelled.

Texas Voter 'Witch Hunt' Alleged by Latinos Suing to Stop Purge

President Donald Trump and Texas Governor Greg Abbott fueled the controversy by touting the data as proof of "rampant" illegal voting.

Texas also referred about 58,000 of the suspected non-citizen voters to law enforcement officials for potential prosecution, but challengers won a court order blocking the state's voter purge campaign in February.

U.S. District Judge Fred Biery ordered the state in February to stop sending letters demanding proof of citizenship from the people, calling them "ham-handed and threatening." The San Antonio judge said the state's initiative was "a solution looking for a problem," adding that evidence presented in the case proves there "is no widespread voter fraud" in Texas.

Under terms of a settlement document provided by the Texas League of United Latin American Citizens, the state will coordinate with the Latino and voters-rights groups to ensure its methods don't unfairly target naturalized citizens.

Texas Attorney General Ken Paxton confirmed that a settlement has been reached with all parties in a court filing Friday afternoon. The settlement must be approved by Biery.

The case is Texas League of United Latin American Citizens v David Whitley, 5:19-074, U.S. District Court, Western District of Texas (San Antonio).

(Updates with background on dispute in third paragraph.)

In this article

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POLITICS 04/26/2019 04:52 pm ET

Texas To Halt Botched Effort To Find Noncitizens On Its Voter Rolls, Implement Fixes

Texas officials said they suspected nearly 100,000 noncitizens were on state voter rolls in January. But that conclusion was based on flawed data.

By Sam Levine

"Are Republicans Trying To Stop The Latino Vote In Texas?" will play after the ad

Texas officials agreed Friday to end a controversial review of state voter rolls targeting noncitizens after it was revealed the project was based on flawed data. The agreement

groups and naturalized citizens.

A federal judge in February temporarily ordered the state not to cancel anyone's voter registration based on the data and criticized the state's "ham-handed" effort to identify noncitizens.

Friday's settlement permanently blocks the state from using the information it made public in January to cancel anyone's voter registration.

Texas officials announced in January that nearly 100,000 noncitizens could be on state voter rolls and that 58,000 of them may have voted in one or more election. But after those claims got widespread attention, including from President Donald Trump, officials acknowledged the numbers were based on flawed data.

Acting Texas Secretary of State David Whitley (R) compared voter registration information to records from the Department of Public Safety and flagged instances in which a registered voter had also indicated they were a noncitizen when they applied for a driver's license. Whitley's office advised election officials they could investigate those voters and cancel their registrations if they confirmed they were, in fact, noncitizens.

Civil rights groups quickly pointed out the data likely included people who were noncitizens when they applied for driver's licenses but then later registered to vote after becoming naturalized citizens. At least 20,000 people appear to have been incorrectly placed on the list.

advisory and instruct local officials to immediately reinstate any voter registrations that were canceled as part of the process.

The Texas Secretary of State's office also agreed to rework the way it compares voter registration records with information from the Department of Public Safety. Under the agreement, officials say they will only flag individuals who have registered to vote and then gone on to say they are a noncitizen when getting a driver's license. The Texas Secretary of State's office also agreed to regularly update lawyers for the civil rights groups on how many people have their voting status flagged for review.

The state also agreed to pay $450,000 in legal fees as part of the settlement.

"Three months after the State released a discriminatory and flawed voter purge list, they have finally agreed to completely withdraw the Advisory that risked throwing tens of thousands of potentially eligible voters off the rolls," said Beth Stevens, voting rights legal director with the Texas Civil Rights Project, one of the groups that brought the lawsuit, in a statement.

"State officials have wasted hundreds of thousands of dollars and struck fear and confusion into thousands of voters in order to pursue their voter suppression agenda," Stevens said.

The settlement represents a "profound retreat" from the original program Texas officials were using, said Danielle Lang, an attorney at Campaign Legal Center who also represented some of the plaintiffs in the suit.

Whitley said in a statement that the agreement would allow Texas to maintain accurate lists while making sure naturalized U.S. citizens aren't removed from the rolls.

"I will continue to work with all stakeholders in the election community to ensure this process is conducted in a manner that holds my office accountable and protects the voting rights of eligible Texans," he said.

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Politics

Texas agrees to stop effort to purge voter rolls

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By Amy B Wang
April 26

Texas state officials have agreed to stop efforts to investigate and purge tens of thousands of supposed noncitizens from the state's voter rolls, part of a settlement reached Friday with numerous civil rights groups.

In January, Texas's acting secretary of state David Whitley claimed state officials had identified nearly 100,000 people on their voter rolls as possible non-U.S. citizens. Whitley's office subsequently provided lists of those voters to county election officials and directed them to "review" them for potential removal.

The American Civil Liberties Union of Texas, along with several other civil rights groups, filed a lawsuit against Whitley and other state elections officials, claiming that officials were aware the lists included naturalized citizens who were eligible to vote.

In February, a federal judge blocked the state's efforts to remove people from its voter rolls, calling them "ham-handed" and "threatening."

On Friday, the state agreed to rescind its efforts to investigate and remove any voters on those lists. Texas officials also agreed to a new process for maintaining its voter rolls, according to a copy of the settlement agreement.

The state will also be responsible for covering $450,000 in legal fees related to the lawsuit.

“After months of litigation, the state has finally agreed to do what we’ve demanded from the start — a complete withdrawal of the flawed and discriminatory voter purge list, bringing this failed experiment in voter suppression to an end,” Andre Segura, legal director for the ACLU of Texas, said in a statement. “The right to vote is sacrosanct, and no eligible voter should have to worry about losing that right."

Segura said the group would continue to monitor “any future voter purge attempt” by the state.

In a statement about the settlement, Whitley said it had been a “collaborative” process and vowed to protect voting rights of eligible Texans in the future.

“It is of paramount importance that Texas voters can have confidence in the integrity, accuracy and efficiency of the electoral system in which they participate,” he said. “Today’s agreement accomplishes our office’s goal of maintaining an accurate list of qualified registered voters while eliminating the impact of any list maintenance activity on naturalized U.S. citizens.”

Texas is just one of many states that has tried to show significant numbers of noncitizens are registered to vote, as The Washington Post’s Amy Gardner reported in February:

In North Carolina, legislative leaders said in 2014 that more than 10,000 suspected noncitizens were registered to vote, but state election officials found that number was vastly overstated and determined that only 11 noncitizens voted that fall. In Florida in 2012, a list of 180,000 possible noncitizens ultimately led to the removal of 85 voters from the rolls. Similar claims have been made in Colorado, Indiana and Kansas.

Those touting the large numbers, almost all Republicans, say the hunt for evidence of voter fraud is necessary to protect the integrity of elections. But the pattern of overblown proclamations also shows the data is easily misinterpreted — prompting voting rights activists to accuse Republicans of using the numbers to discourage eligible voters to cast ballots.

Texas Democrats attacked the attempted voter purge as “flawed, illegal and racist” and called on Texas Gov. Greg Abbott (R) to withdraw Whitley’s nomination for secretary of state.

“The work here is not done. We must remain vigilant,” Texas Democratic Party Chairman Gilberto Hinojosa said in a statement after the settlement. “The Texas Senate deserves the opportunity to vet a new secretary of state.”

Read more:

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Judge blocks GOP effort to purge voting rolls in Texas, saying it is ‘ham-handed’ and ‘threatening’

In N.C., a surprise: In the end, everyone agreed it was election fraud

Amy B Wang
Amy B Wang is a national politics reporter covering 2020 presidential campaigns. She joined The Washington Post in 2016 as a general assignment reporter after seven years with the Arizona Republic. Follow

The New York Times

Texas Ends Review That Questioned Citizenship of Almost 100,000 Voters

By Liam Stack

April 26, 2019

The Texas secretary of state agreed Friday to rescind an advisory issued by his office in January that questioned the citizenship status of almost 100,000 registered voters. The agreement will formally end a review of the voter rolls that a federal judge said unfairly targeted naturalized American citizens.

The announcement by the secretary of state, David Whitley, about the review, which was halted by a federal judge in February, came as part of a legal settlement that will end three lawsuits brought by civil rights groups and naturalized citizens against Texas officials. Mr. Whitley also unveiled a new review process that litigants said they hoped would not unduly burden foreign-born citizens.

“It is of paramount importance that Texas voters can have confidence in the integrity, accuracy, and efficiency of the electoral system in which they participate,” Mr. Whitley said in a statement. “Today’s agreement accomplishes our office’s goal of maintaining an accurate list of qualified registered voters while eliminating the impact of any list maintenance activity on naturalized U.S. citizens.”

Mr. Whitley will have five days to rescind the advisory once the agreement has been approved by the judge overseeing the case. The state also agreed to pay $450,000 for the plaintiffs’ legal fees.

The announcement of the January advisory, which included lists of suspected noncitizen voters sent to local election officials, added kindling to a partisan firestorm over voter fraud. Republicans have claimed that voter fraud is rampant in America, but Democrats dismiss that notion as absurd. An investigatory commission that was started (and angrily disbanded) by President Trump found no evidence of widespread electoral fraud.

Ken Paxton, the Texas attorney general, who has aggressively prosecuted voter fraud cases, amplified the release of the lists with a vow to investigate all 98,000 people named on them. But those investigations never materialized; a representative for his office did not immediately respond to a request for comment on Friday.

The effort to purge noncitizens from the voter rolls was plagued by chaos from the start. Within days of the advisory, Mr. Whitley’s office said that 25,000 of the listed names had been added by mistake.

Local election officials balked at the advisory, which advised them to confirm the citizenship status of listed people in their jurisdictions, and complained that the so-called lists were delivered to them as a disorganized jumble of documents. Within a week, they said many of the listed people were known to be United States citizens.

In his February ruling that halted the review, Fred Biery of the United States District Court in San Antonio derided the process as a “mess” that began as a “good faith effort” but mutated into “a solution looking for a problem.”

In the end, he said the process meant “perfectly legal naturalized Americans were burdened with what the Court finds to be ham-handed and threatening correspondence from the state which did not politely ask for information but rather exemplifies the power of government to strike fear and anxiety and to intimidate the least powerful among us.”

The judge also said that evidence presented in the case showed “no widespread voter fraud,” which he described as an “infinitesimal” problem.

The lists released in January were based on data from the Department of Public Safety, which is responsible for law enforcement, vehicle registration and the issuance of driver’s licenses, akin to the Department of Motor Vehicles in other states.

Andre Segura, the legal director for the American Civil Liberties Union of Texas, which filed one of the lawsuits that is to be settled, said the voter review had been based on a backward-looking process.

If someone identified as a noncitizen when applying for a driver’s license, for example, and then registered to vote at a later date, the process made no allowance for the possibility that the person had become a citizen in the intervening months or years, he said.

“We know that tens of thousands of people naturalize each year,” Mr. Segura said. “What we argued is that this proves the process was essentially designed to target naturalized citizens.”

The Texas Secretary of State’s office said the new process would flag only people who registered to vote and then later identified themselves as noncitizens to the Department of Public Safety when they applied for a driver’s license or a personal identification card.

“This will ensure that naturalized U.S. citizens who lawfully registered to vote are not impacted by this voter registration list maintenance process,” the office said in a statement.

Texas has a long history of voting improprieties and public corruption scandals, and has taken an aggressive stance on electoral fraud. Mr. Paxton’s election fraud unit prosecuted 33 defendants in the 2018 fiscal year, and there are currently more than 70 investigations statewide.

On Thursday, the mayor of the South Texas border city of Edinburg and his wife were arrested on charges that they had orchestrated an illegal voting scheme that recruited residents of nearby towns to vote for him.

POLITICS

Texas Voting Chief Who Led Botched Voter Purge Resigns

May 28, 2019 · 2:01 PM ET

ASHLEY LOPEZ

FROM KUT 90.5

Texas Secretary of State David Whitley resigned on the last day of the state Legislature's session as part of the fallout from an unsuccessful effort to remove alleged noncitizens from the state's voter rolls.

Eric Gay/AP

A version of this story *was first posted by* member station KUT *in Austin.*

Texas Secretary of State David Whitley, who was behind the botched effort to remove alleged noncitizens from the state's voter rolls, resigned Monday as the Texas Legislature's session came to a close.

POLITICS

Texas Officials Begin Walking Back Allegations About Noncitizen Voters

Whitley, who was appointed by Gov. Greg Abbott in December, needed a two-thirds vote from the state Senate to be permanently confirmed to the position, but voting-rights groups put pressure on Texas Democrats to stop the confirmation following his voter purge efforts.

This year, Whitley's office sent local election officials a list of more than 90,000 people on the voter rolls that it suspected might not be citizens. Whitley, the state's chief elections officer, asked officials to vet the list and possibly remove those names from voter rolls.

The list was compiled by flagging the names of people who at one point told the Texas Department of Public Safety that they were not citizens and then also registered to vote within several years.

POLITICS

After Democrats Surged In 2018, Republican-Run States Eye New Curbs On Voting

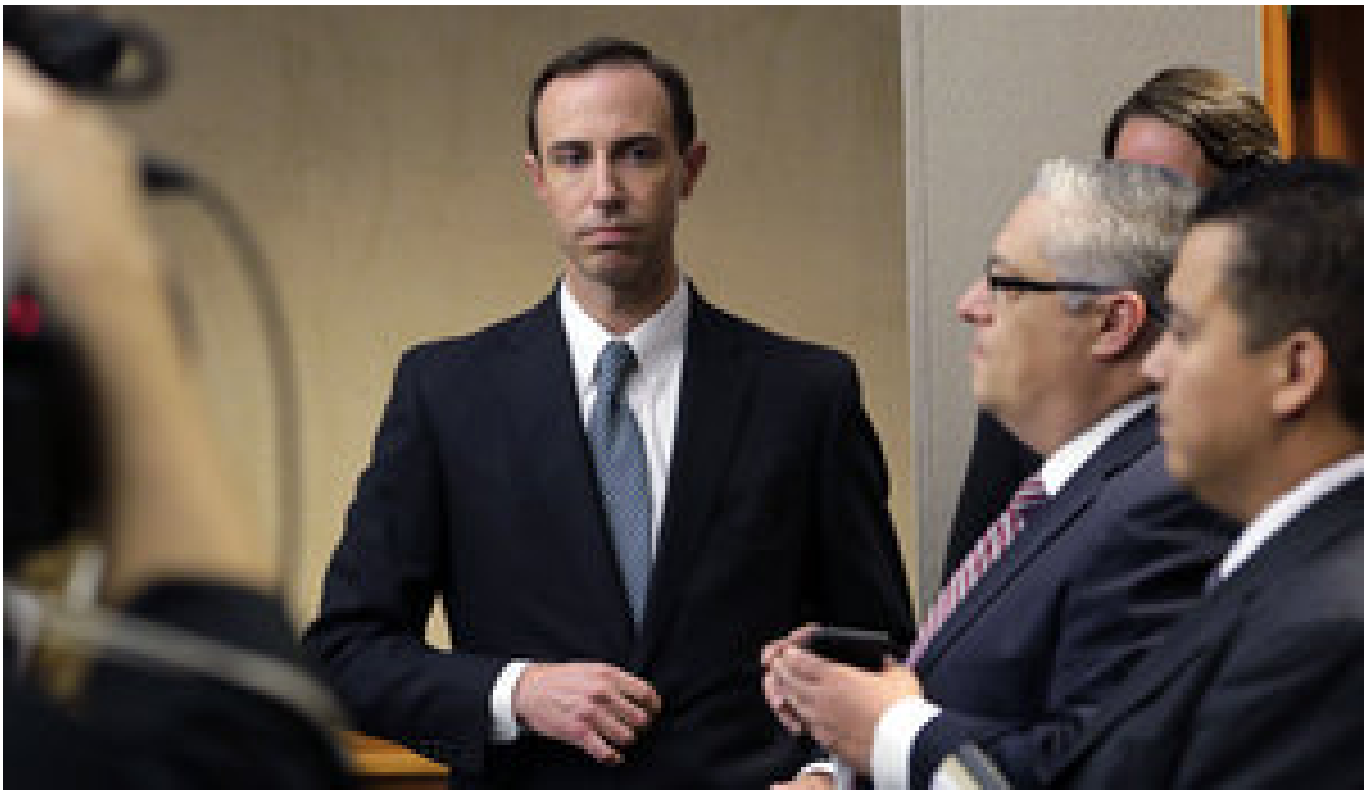
Immigrant-rights groups and voting-rights groups accused the state of intentionally targeting recently naturalized citizens, who have the right to vote.

In his resignation letter, Whitley alluded to controversy around his tenure, writing, "I built a bridge for opposing voices to engage in dialogue to improve election integrity and access."

Under the Texas Constitution, lawmakers must confirm appointments before the legislative session officially ends. If they don't, the appointee has to immediately

vacate the position, and the governor must choose someone else. That person serves in the position until lawmakers weigh in during a regular session.

Resistance from Democrats presumably held up Whitley's confirmation vote in the Texas Senate.



David Whitley, pictured arriving for his confirmation hearing on Feb. 7, resigned as Texas secretary of state on Monday.
Eric Gay/AP

In the final days of the session, a coalition of voting-rights groups, civil rights groups and immigrant-rights groups sent a letter to Texas Democrats urging them to "turn the page on the Whitley purge scandal by continuing to remain united against Mr. Whitley's confirmation."

"No one can trust that Mr. Whitley will act any differently than these initial revealed instincts once this layer of accountability — the confirmation process — is removed," the groups said in a statement on Friday.

Whitley's voter-removal effort was halted by a federal court in February. State officials eventually settled the matter with voting-rights groups and Texas voters. The state is now prohibited from attempting a similar voter purge.

Voting-rights groups say they are also relieved that Texas lawmakers did not pass a sweeping voting bill that would have potentially increased criminal penalties for voting errors, such as putting incorrect information on a voter registration form. Groups say those penalties could have also affected voters who make simple mistakes at the polls, among other things.

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The New York Times

David Whitley, Texas Secretary of State, Resigns After Questioning Voters' Citizenship

By Jacey Fortin

May 29, 2019

David Whitley, who served as the Texas secretary of state for about five months and was the face of a failed attempt to review the citizenship status of nearly 100,000 registered voters, resigned from his post Monday.

Mr. Whitley was appointed by Texas Gov. Greg Abbott, a Republican, in December, but he was never officially confirmed as the secretary of state by the Texas Senate because all 12 Democrats refused to approve him.

Absent that confirmation, according to state regulations, the end of the legislative session Monday would have marked the end of his tenure.

Mr. Whitley stirred up controversy in January when his office warned county officials that the Texas Department of Public Safety had identified about 95,000 registered voters as potential noncitizens, adding that 58,000 of those had voted in one or more elections in the state.

His efforts to review the voter rolls reignited highly partisan national debates over the prevalence of voter fraud. President Trump tweeted about Mr. Whitley's advisory, wrongly saying that "58,000 noncitizens voted in Texas" and adding that "voter fraud is rampant."

Academic and government studies carried out over years — including a voter fraud commission Mr. Trump started (and later abruptly disbanded) — have repeatedly found scant evidence of widespread voter fraud.

In Texas, the effort to identify noncitizen voters quickly began to fall apart. Days after the list was announced, local election officials said that many of the people on it were known to be United States citizens. Mr. Whitley and other state leaders faced at least three lawsuits, and in February, a federal judge halted the effort to review voters' citizenship status, calling the process "ham-handed."

"Notwithstanding good intentions, the road to a solution was inherently paved with flawed results, meaning perfectly legal naturalized Americans were burdened with what the Court finds to be ham-handed and threatening correspondence from the state," Judge Fred Biery, of the United States District Court in San Antonio, said in his ruling.

Last month, Mr. Whitley formally agreed to rescind the January advisory. The lawsuits were settled, and the state agreed to pay $450,000 for the plaintiffs' legal fees.

"From the beginning, this process was designed to be collaborative, and today's agreement reflects a constructive collaboration among all stakeholders," Mr. Whitley said in a statement about the agreement. "It is of paramount importance that Texas voters can have confidence in the integrity, accuracy, and efficiency of the electoral system in which they participate."

But on Monday, Mr. Whitley's time was essentially up.

State Senator José Rodríguez, the chairman of the Texas Senate Democratic Caucus, said he had been opposed to the voter review from the beginning and urged his fellow Democrats to stand firm against Mr. Whitley's confirmation, which would have required two-thirds of the 31-member Republican-controlled Senate to vote in Mr. Whitley's favor.

Mr. Rodríguez added that the effort to purge voter rolls came from state leaders — including Governor Abbott and Attorney General Ken Paxton — and not from Mr. Whitley alone.

"We all felt that this was an orchestrated effort on the part of the highest levels of Texas government to point to voter fraud in the state," he said. "And it quickly began to unravel."

Representatives for Mr. Whitley, Mr. Abbott, Mr. Paxton and the Texas Department of Public Safety did not respond to requests for comment on Tuesday evening. The Austin American-Statesman reported that Mr. Whitley delivered his resignation letter to the governor just before the Senate session ended on Monday and thanked Mr. Abbott, who accepted and praised Mr. Whitley for his "moral character and integrity."

The League of United Latin American Citizens, which sued Mr. Whitley over his advisory in January, said in a statement following his resignation that Texas has a long history of voter suppression and that the situation was far from resolved.

"The big lie just keeps being repeated over and over again that there's voter fraud, when the only real voter fraud is voter suppression," Domingo Garcia, the president of the organization, said in an interview on Tuesday. "They're basically trying to rig the system to keep power because they're concerned that Texas is on the verge of becoming a purple state."

A version of this article appears in print on May 30, 2019, Section A, Page 10 of the New York edition with the headline: Texas Secretary of State Who Questioned Citizenship of Voters Steps Down

POLITICS 06/04/2019 09:25 pm ET | **Updated** Jun 04, 2019

Texas Governor Asked Officials To Hunt For Noncitizen Voter Records Before Botched Purge

New emails show the governor's office put in an "urgent" request to identify noncitizen voter records shortly before the 2018 midterm elections.

By Sam Levine

The emails, obtained by the Campaign Legal Center as part of litigation over the purge effort, provide the first look behind the scenes into a highly controversial state effort to identify noncitizens on Texas' voter rolls. The state has refused to comply with a congressional request to turn over communications and documents related to the January incident.

The saga began in May 2018, when DPS sent then-Texas Secretary of State Rolando Pablos (R) a list of every adult Texan whose driver's license records indicated they were not a U.S. citizen. But because many people become citizens after they obtain their driver's licenses, that information wasn't enough to tell whether a person was actually a noncitizen.

emailed other employees at his agency in late August saying there was an urgent request from the governor's office to send driver's license data to the secretary of state's office so that officials could try to identify noncitizens on the voter rolls.

"The governor is interested in getting the information as soon as possible," Amanda Arriaga, the director of DPS' driver's license division, added in a follow-up email.

But there was a complication. The secretary of state's office wanted more information than what it was given in May. Specifically, officials in the secretary of state's office wanted DPS to provide identifying immigration information for noncitizens, such as alien numbers, that they could use to run Texans' information against a Department of Homeland Security database to accurately identify noncitizens. Taking that extra step would allow officials to identify people who got a driver's license when they were noncitizens but had since become citizens, Tony Rodriguez, a DPS employee, wrote in an email. But DPS wasn't able to immediately produce the sought immigration information.

Eventually Skylor Hearn, another DPS official, told Arriaga to simply send the secretary of state's office an updated version of what was provided in May. It's also unclear why the matter was so urgent. Federal law prohibits states from systematically removing people from the voting rolls within 90 days of an election, and the officials were emailing in that window.

A few days later, Arriaga emailed colleagues again asking how long it would take to run records from the secretary of state's office through the Department of Homeland Security database. She was unsure if the office could even run a name through the database on its own. "Don't we need a document?" she wrote.

Keith Ingram, the state's election director, sent Arriaga an email that same day thanking her for providing new information. He explained the state office was seeking driver's license information as well as immigration information it could run through the federal DHS database.

But by January, the secretary of state's office seemed to have abandoned its effort to use the DHS database to verify citizenship. Instead, it matched DPS records from people who indicated they were noncitizens only against the voter rolls and concluded that nearly 100,000 noncitizens could be registered. It is not clear from the emails why the state did not ultimately use the DHS database to verify the status of suspected noncitizens.

state's office admitted errors in its analysis. The list it compiled included people who were noncitizens when they got their driver's licenses but had since become citizens. The state eventually settled with civil rights groups who sued the state over its review and agreed not to cancel anyone's voter registration based on the analysis. Civil rights groups say the entire episode was an effort to intimidate Latino and naturalized citizens from voting.

David Whitley, who previously served as an Abbott aide, was the acting secretary of state who oversaw the botched review. Texas Democrats refused to confirm him to the role because of the debacle. He resigned his position in late May.

John Wittman, a spokesman for the governor, denied Abbott had any role in the botched January effort.

"This is patently false. Neither the Governor, nor the Governor's office had spoken with DPS until after the issue surfaced. No one speaks for the Governor's office, but the Governor's office," he said in a statement.

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BEFORE YOU GO

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TEXAS LEAGUE OF UNITED LATIN AMERICAN CITIZENS,

and

NATIONAL LEAGUE OF UNITED LATIN AMERICAN CITIZENS,

and

JULIE HILBERG, individually and on behalf of others similarly situated,

Plaintiffs,

v.

DAVID WHITLEY, in his official capacity as Secretary of State for the State of Texas,

and

KEN PAXTON, in his official capacity as Attorney General for the State of Texas,

Defendants.

Civil Action
Case No. 5:19-cv-00074-FB

FIRST AMENDED CLASS-ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. Plaintiffs bring this action to vindicate the right of newly naturalized citizens to vote under the First and Fourteenth Amendments to the United States Constitution, and to assert their right to be free from voter intimidation, threats, or coercion under Section 11(b) of the Voting Rights Act.

2. Newly naturalized citizens have the same right to vote as all other citizens, and states may not impose undue burdens on that right or target those citizens for suspicion, intimidation, threats, or coercion. But Defendants Whitley and Paxton have done just that, devising, implementing, and loudly trumpeting a voter purge program that is guaranteed to discriminatorily target newly naturalized citizens and inaccurately label them "noncitizens" based upon stale data, which Defendants admit constitutes "WEAK" evidence. Despite that admission, Defendants Whitley and Paxton have publicly threatened criminal prosecutions, and Defendant Whitley has advised county voter registrars and Elections Administrators to offer a mere 30 days to voters to prove their citizenship or have their registrations canceled.

3. The voter purge program is deeply flawed, as Defendants have been forced to admit. This should have been obvious at the outset. Texas driver licenses are valid for six years. Over the past six years, nearly 350,000 Texas residents over the age of 18 have become newly naturalized citizens. It is no surprise then that driver license applications from up to six years ago are an exceptionally poor source of current citizenship information.

4. It should also be no surprise that this voter purge scheme is discriminatory and unlawful, because a nearly identical program was deemed unlawful by a federal district court in Florida, and abandoned by the Florida Secretary of State in 2012.

5. Notwithstanding the obvious flaws—which likely make the vast majority of the 95,000 people wrongly targeted—and notwithstanding a federal court decision declaring the same methodology unlawful, Defendant Whitley proceeded to advise county registrars and Elections Administrators to send voters notices providing 30 days to prove their citizenship lest their registrations be canceled.

6. As if it were not enough to proceed with a plan to cancel tens of thousands of registrants based on flimsy and outdated evidence, he chose to publicly raise the specter of criminal prosecutions and voter fraud.

7. Defendant Paxton loudly proclaimed on his personal and official twitter accounts that VOTER FRAUD was afoot and that 95,000 noncitizens had registered to vote and 58,000 had in fact voted. He then issued a press release warning of voter fraud and crimes and threatening prosecutions. He nowhere acknowledged what he knew to be true—the numbers offered "WEAK" evidence and were likely wildly overstated.

8. This voter purge program targets, based upon flimsy and incorrect data, newly naturalized citizens who are lawfully registered to vote. It requires those eligible voters to prove their citizenship within 30 days in order to avoid cancelation and criminal investigations. This program constitutes an undue burden on the right to vote under the First and Fourteenth Amendments. The irresponsible and knowingly inaccurate publicity and unfounded threats of prosecution and investigations by Defendants Whitley and Paxton constitutes unlawful effort to intimidate, threaten, and coerce eligible voters to avoid registration and voting in violation of the Voting Rights Act.

9. Defendants must be enjoined from taking any further steps to implement this unconstitutional voter purge program, and must be enjoined from unlawfully intimidating and threatening newly naturalized citizens who have a constitutionally guaranteed right to vote.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

11. This Court has personal jurisdiction over Defendant Secretary of State Whitley and Defendant Ken Paxton, officials for the State of Texas and residents of the State of Texas.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

13. This Court has authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

14. Plaintiff League of United Latin American Citizens–National ("LULAC") is the oldest and largest national Latino civil rights organization in the United States. It is a non-profit membership organization with a presence in most of the fifty states, including Texas. LULAC has over 125,000 members nationwide. LULAC was founded with the mission of protecting the civil rights of Latinos, including voting rights. LULAC participates in voter registration throughout the United States.

15. LULAC has been recognized and accepted as an organizational plaintiff protecting Latino rights in federal courts across the country, including the United States Supreme Court and the Western District of Texas.

16. Plaintiff Texas League of United Latin American Citizens ("Texas LULAC") is the Texas chapter of LULAC. LULAC was founded in Texas in 1929. LULAC has over 20,000 members in Texas, and over 1,000 members in Bexar County.

17. Voter registration activity is key to LULAC's mission of increasing civic participation of its members. Texas LULAC commits time, personnel, and resources to voter registration drives throughout Texas.

18. If Defendant Whitley continues to engage in this unlawful voter purge program, Texas LULAC will be forced to commit resources to educating the Latino community about this

unlawful voter purge program and assisting its members and Latinos throughout the state to respond to improper notices threatening cancellation of their voter registration. Moreover, Texas LULAC's ability to encourage voter registration by eligible newly naturalized citizens is likely to be hampered by Defendants' unlawful intimidation and threats—the loudly trumpeted and unwarranted claims of voter fraud and the specter of unfounded criminal investigations that have accompanied the rollout of the voter purge program.

19. Plaintiff Julie Hilberg is a 54-year-old citizen of the United States and resident of the state of Texas. She is currently a registered voter in Atascosa County. Plaintiff Hilberg is originally from the United Kingdom. She is married to a United States citizen and retired U.S. Navy officer and became a naturalized citizen on April 16, 2015. She voted in both the 2016 and 2018 elections in Atascosa County. Upon information and belief, Plaintiff Hilberg is one of the registered voters on Defendant Whitley's list of alleged non-citizens on Texas's voter registration list.

20. Plaintiff Julie Hilberg seeks to represent a Plaintiff Class defined as: All eligible Texas registered voters who appear on Defendant Whitley's list of approximately 95,000 alleged non-citizens and all eligible Texas registered voters who may appear on the forthcoming monthly lists to be prepared pursuant to the voter purge program announced in Election Advisory 2019-02 (the "Advisory").

21. Upon information and belief, if Defendant Whitley continues to engage in this unlawful voter purge program, Texas LULAC's voter registration activity may be less successful because many of its registrants (often naturalized citizens) will be flagged for cancellation under this program.

22. Defendant David Whitley is the Texas Secretary of State, a statewide public officer appointed by the Governor, and is the chief election officer for the state of Texas; Defendant Whitley is named in his official capacity.

23. Defendant Ken Paxton is the Texas Attorney General, a statewide elected public officer, and is named in his official capacity.

FACTS

Defendant Whitley's "Advisory"

24. On January 25, 2019, the Secretary of State's office issued the Advisory announcing a new voter purge program. The Advisory is attached hereto as Exhibit A.

25. The Advisory instructs voter registrars that the Secretary of State's office had worked with the Department of Public Safety ("DPS") to "obtain and use information regarding individuals who provided documentation to DPS showing that the person is not a citizen of the United States during the process of obtaining or acquiring a Texas Driver License or Personal Identification Card from DPS." The Secretary explained that his office would be matching this data set against the current voter registration list to produce "actionable information" for list maintenance.

26. The Advisory instructs registrars that the data the Secretary of State's office would provide beginning January 26 "can be acted on in nearly all circumstances," despite the fact that the Secretary's Advisory had identified these records as "WEAK" matches.

27. The Advisory instructs registrars that they could use these matches to send the registered voter a Proof of Citizenship Letter (Notice of Examination) ("NCE") and *cancel* the voter's registration if: (1) the individual did not provide proof of citizenship (in the form of a certified copy of a birth certificate, passport, or naturalization certificate) within 30 days from

when the NCE was sent; or (2) the NCE was returned as undeliverable without forwarding information.

28. The Advisory also explains that, going forward, the Secretary of State's office intends to run this "match" on a monthly basis and provide this "actionable data" to registrars and that registrars should proceed in the same manner with respect to these subsequent monthly matches.

29. On January 25, Defendant Whitley issued a press release to announce the Advisory. The press release, attached hereto as Exhibit B, identifies the voters targeted by this process as "persons identified to not be citizens of the United States" despite knowledge that the DPS database has stale information and that the vast majority of the identified individuals are likely naturalized citizens.

30. Indeed, the press release asserted that the Secretary of State's office "discovered that a total of approximately **95,000** individuals identified by DPS as non-U.S. citizens have a matching voter registration record in Texas, approximately **58,000** of whom have voted in one or more Texas elections."[1]

31. The press release also states that every person identified on this list "should receive" an NCE and that their registration will be cancelled if the person fails to provide proof of citizenship within 30 days.

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[1] Defendant Whitley has not publicly explained the methodology of this matching, including the time period of DPS data that it used. Upon information and belief, the 58,000 estimate of alleged non-citizen voters was generated based on voting records dating back to 1996.

A Fatally Flawed Process

32. While Defendant Whitley has disclosed little information about the methodology behind his list, the information available thus far makes clear that this list of 95,000 alleged non-citizens is fatally flawed and the vast majority of these individuals are likely naturalized U.S. citizens like Plaintiff Hilberg.

33. The Advisory explains that the matching process relies on records submitted to DPS at the time a person obtained their state-issued driver's license or personal identification card. This data provides little to no information about the current citizenship status of individuals on the voter registration list.

34. Data from the U.S. Department of Homeland Security show that between 50,000 and 65,000 Texas residents over the age of 18 become naturalized citizens every year. *See* U.S. Dep't of Homeland Sec., *Profiles on Naturalized Citizens*, https://www.dhs.gov/profiles-naturalized-citizens.

35. Over the most recent six years of data—the lifespan of a Texas driver license—348,552 Texas residents have become newly naturalized citizens. *Id.*

36. If even one-third of those newly naturalized citizens with driver licenses or state-issued identification cards registered to vote upon their naturalization,[2] they would significantly outnumber the total number of alleged non-citizen voter registrants on Defendant Whitley's list.

[2] A Census Bureau report suggests that first-generation Americans (naturalized citizens) report registering to vote 61.7 percent of the time. U.S. Census Bureau, Voting and Registration in the Election of November 2016, Table 11 (2017), https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html (last visited Feb. 1, 2019). Other studies have suggested that first-generation Americans register at a rate of approximately 50 percent. *See, e.g.*, Ctr. for the Study of Immigrant Integration, *Rock the (Naturalized) Vote: The Size and Location of the Recently Naturalized Voting Age Citizen Population*, USCDornsife (2012), https://dornsife.usc.edu/assets/sites/731/docs/Naturalization_and_Voting_Age_Population_web.pdf.

37. The fundamentally flawed nature of this new voter purge program is not only obvious but has already been found unlawful by a federal court when a Florida Secretary of State engaged in a nearly identical practice.

38. In 2012, Florida's Secretary of State compiled a list of 180,000 registered voters whose driver license applications disclosed that they were non-citizens at the time of the application, and advised county Election Supervisors to provide those registered voters 30 days to prove their citizenship to avoid cancelation of their registration. *See United States v. Florida*, 870 F. Supp. 2d 1346, 1347-48 (N.D. Fla. 2012).

39. The court explained that there were "major flaws" with this program because "[t]he Secretary compiled the list in a manner certain to include a large number of citizens." *Id.* at 1347. That was so, the court explained, because 240,000 Floridians became newly naturalized citizens over just a three-year period, while, like in Texas, Florida Driver's Licenses have a six-year renewal period. Thus, the Court found that the entire list of 180,000 could consist of people who were, in fact, newly naturalized citizens who were properly registered to vote.

40. The court held that the program likely violated the National Voter Registration Act ("NVRA") because it would target naturalized citizens and "[a] state cannot properly impose burdensome demands in a discriminatory manner." *Id.* at 1350.[3]

41. Out of 185,000 registrants identified by Florida's program, less than .05% could lawfully be removed. *See* Steve Bousquet & Amy Sherman, Florida Suspends Non-citizen Voter

[3] On February 1, 2019, Plaintiffs sent a notice letter to Defendant Whitley outlining the NVRA violations created by this new voter purge program. If the violations are not cured within the required notice period, Plaintiffs intend to amend their complaint to include those NVRA claims as well. Defendant has thus far refused to make the list of alleged noncitizen voters public. Upon analysis of the list, Plaintiffs suspect that the disparate impact on the Latino community will be plain and give rise to an additional claim under Section 2 of the Voting Rights Act.

Purge Efforts, Miami Herald (March 27, 2014), https://www.miamiherald.com/news/politics-government/article2087729.html.

42. Initial reports from county registrars demonstrate that Defendant Whitley's list is equally deficient in identifying non-citizen registrants. Election administrators across the state have reported identifying thousands of citizens in their counties that appear on the list. Indeed, in McLennan County, the Elections Administrator Kathy Van Wolfe has indicated that 100% of the 366 registered voters on the list in that county had *already proven* their citizenship. Cassie L. Smith, State: *All 366 on Local List of Potential Noncitizen Voters Are Citizens*, Waco Tribune-Herald (Jan. 30, 2019), https://www.wacotrib.com/news/elections/state-all-on-local-list-of-potential-noncitizen-voters-are/article_20771942-538d-506d-bcad-7e7ca79e261d.html.

43. On information and belief, Defendant Whitley's office has acknowledged to county officials that the list includes voters who were not citizens at the time they applied for a driver's license, but who have since become naturalized. *See* Alexa Ura, "Someone did not do their due diligence." How an attempt to review Texas' voter rolls turned into a debacle, Texas Tribune (Feb. 1, 2019), https://www.texastribune.org/2019/02/01/texas-citizenship-voter-roll-review-how-it-turned-boondoggle/.

44. Defendant Whitley's voter purge program is not only likely to flag tens of thousands of eligible citizens for removal from the voter registration list but will do so in a discriminatory fashion.

45. As the district court in Florida explained, such a program is not reasonably designed to identify noncitizen voters but is remarkably well crafted to identify and penalize newly naturalized citizens who choose to exercise their right to vote. These discriminatory burdens placed on naturalized citizens cannot be justified.

46. And given that the largest group of naturalized citizens in Texas are of Hispanic or Latino heritage, Defendant Whitley's new voter purge program will have a sharply discriminatory racial impact as well.

47. Defendant Whitley compounded the fatal flaws in generating this list by suggesting that registrars use this faulty data to send notices to all of these voters and then *cancel* them if they do not respond within 30 days or if the notice is returned without a forwarding address.

48. This is a system designed to remove as many registered individuals as possible, not to simply ensure that the potential stray noncitizen voter on the list is not permitted to vote.

49. Providing a single notice with a short 30-day time limit for a response with proof of citizenship is exceedingly strict and unlikely to result in a significant response rate from the many eligible voters on this list. According to data reported by Texas to the Elections Assistance Commission, only 14 percent of NVRA notices sent to voters between the November 2014 and November 2016 Elections were returned by the recipients. U.S. Elections Assistance Comm'n, 2016 Election Administration and Voting Survey. In contrast, 13 percent were returned undeliverable, and 63% simply were not returned. *Id.* In addition, mailings addressed to Latinos are disproportionately likely to be returned as undeliverable. *See* Robert Walters and Mark Curriden, *A Jury of One's Peers? Investigating Underrepresentation in Jury Venires*, 43 Judges' J.17, 19-20 (2004) (finding that a disproportionate number of jury summons returned as undeliverable were addressed to Latinos).

50. Once removed from the registration rolls, these eligible voters will be forced to start the process of registering to vote from the beginning with no assurance that they will not be flagged for removal *again* based on outdated data.

51. If they do not discover their removal until after the registration deadline (30 days before an election) or at the polls when they appear to vote, they will lose the right to vote altogether.

52. Some of these notices have already been mailed to registered voters in Texas as early as January 28. Those individuals could face removal from the registration list as early as February 27. For example, the Galveston County tax assessor-collector set out 92 notices as of Monday, January 28, only to later learn that at least 62 of those notices went to eligible voters. *See* Alexa Ura, "Someone did not do their due diligence." How an attempt to review Texas' voter rolls turned into a debacle, Texas Tribune (Feb. 1, 2019), https://www.texastribune.org/2019/02/01/texas-citizenship-voter-roll-review-how-it-turned-boondoggle/.

53. It is well recognized that the duty to register—and in this case re-register—is the primary obstacle to voting. H.R. Rep. No. 103-9, at 3 ("Public opinion polls, along with individual testimony . . . , indicate that failure to become registered is the primary reason given by eligible citizens for not voting. It is generally accepted that over 80 percent of those citizens who are registered vote in Presidential elections."). Indeed, registration problems are routinely among the top problems reported on Election Day to election protection hotlines.

54. The burdens of re-registration fall unevenly on those voters already facing substantial obstacles to voting, including people with limited access to technology, limited literacy or English language skills, people experiencing homelessness, and people with disabilities.

An Effort to Stoke Unjustified Fears and Intimidate Voters

55. Despite the obviously—and previously litigated—flaws in Defendant Whitley's voter purge program, Defendant Whitley's public statements never acknowledge the likelihood or even the possibility that the individuals identified in his "list" are recently naturalized citizens.

56. Defendant Whitley's highly publicized statements have prompted a cascade of false accusations of illegal noncitizen voting from Texas Attorney General Paxton, Texas Governor Abbott, President Donald Trump, and many others.

57. These false allegations cast a pall of suspicion on the democratic process and stoke public fears of noncitizen voting.

58. Moreover, Defendant Whitley's public statements have specifically invoked the likelihood of law enforcement action against these individuals. Defendant Whitley's press release stresses that voting while ineligible to vote is a "second-degree felony" and that he "immediately provided the data in its possession to the Texas Attorney General's office." Meanwhile, the Advisory states that "[t]here is likely to be a law enforcement interest in the data."

59. The Advisory also instructs the registrars not to provide any information to the public about this data but instead to contact their local prosecutor and Attorney General Paxton in response to any requests from the public.

60. On January 25, Attorney General Paxton relied on the Advisory to issue a press release warning seven times of "fraud" and of "illegal voting," "crimes against the democratic process," and "election crimes." He also tweeted a "VOTER FRAUD ALERT" within hours of the release of the Advisory.

61. These intimidating and well-publicized statements have created a hostile environment for newly naturalized voters—a population that is largely Latino—who wish to exercise their right to vote but fear unwarranted law enforcement investigation and harassment.

62. Upon information and belief, Defendant Whitley's office has admitted to various county election officials that the list is seriously flawed and may even include thousands of individuals who have already provided proof of citizenship to DPS when updating their driver's license.

63. Nonetheless, Defendant Whitley has thus far refused to rescind the list and Advisory or make any public statements acknowledging these egregious errors.

Plaintiff Hilberg's Experience Is Illustrative

64. Plaintiff Hilberg's experience demonstrates the fundamental failure of this new voter purge program.

65. Julie Hilberg is a naturalized citizen and eligible Texas voter living in Poteet, Texas in Atascosa County.

66. She most recently renewed her Texas driver's license in 2014, when she was still a legal permanent resident. Her driver license does not expire until 2020.

67. On April 16, 2015, she became a United States citizen at a naturalization ceremony in Bexar County. She completed a voter registration form at the ceremony and she was told her voter registration form would be sent to her registrar in Atascosa County.

68. In June 2015, Ms. Hilberg had not yet received a voter registration card.

69. Concerned about her voter registration status, she went to her local voter registrar's office to re-register. At that time, she showed the election official at the office her

naturalization certificate and completed a voter registration form. She became a registered voter in Texas on June 26, 2015.

70. Since registering to vote, Ms. Hilberg has voted in primary, general, and special elections in 2016 and 2018.

71. After Defendant Whitley issued the Advisory, Ms. Hilberg became concerned that she may appear on this "list" of alleged noncitizens and could be removed from the voter registration list.

72. On January 31, 2019, Ms. Hilberg visited the Elections Administrator's office and spoke to Janice Ruple, Atascosa County's Elections Administrator. Ms. Ruple confirmed to Ms. Hilberg that her name was on the list provided by Defendant Whitley pursuant to the Advisory.

73. Although Ms. Ruple knows Ms. Hilberg personally (including her citizenship status), Ms. Ruple was unable or unwilling to give Ms. Hilberg any information or assurances about whether her registration would be in jeopardy because her name was on Defendant Whitley's list.

CLASS ALLEGATIONS

74. Upon information and belief, Defendant Whitley's list of 95,000 voters includes tens of thousands of eligible Texan voters with stories just like Ms. Hilberg's.

75. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff Hilberg brings this action on behalf of herself and all other similarly situated persons. Plaintiff Hilberg does not seek claims for compensatory relief. Instead, Plaintiff seeks only declaratory and injunctive relief broadly applicable to members of the Plaintiff Class, as defined above. The requirements of Rule 23, and in particular Rule 23(b)(2), are met with respect to the Plaintiff Class, defined as: All eligible Texas registered voters who appear on Defendant Whitley's list of approximately

95,000 alleged non-citizens and all eligible Texas registered voters who may appear on the forthcoming monthly lists to be prepared pursuant to the voter purge program announced in Advisory 2019-02 (the "Advisory").

76. The members of the Plaintiff Class are so numerous—up to approximately 95,000—that joinder is impracticable. The members of the Plaintiff Class are also plainly ascertainable since Defendant Whitley has already gathered the relevant list of affected registrants.

77. The questions of law and fact common to the Plaintiff Class and Plaintiff Subclasses predominate over questions affecting only individual class members, and include, but are not limited to, the following:

a. Whether Defendant Whitley's voter purge program imposes an unconstitutionally burdensome obstacle to voting in violation of affected eligible voters' 14th Amendment rights;

b. Whether Defendant Whitley's voter purge program imposes an unconstitutionally burdensome obstacle to voting in violation of affected eligible voters' 1st Amendment rights;

c. Whether Defendant Whitley's voter purge program imposes unconstitutional discrimination in access to voting in violation of affected eligible voters' 14th Amendment rights;

d. Whether Defendant Whitley's and Defendant Paxton's actions constitute unlawful voter intimidation in violation of Section 11(b) of the Voting Rights Act.

78. Plaintiff Hilberg's claims are typical of the Plaintiff Class and Plaintiff Hilberg is not aware of any conflict between her interests and that of the Plaintiff Class she seeks to represent.

79. Plaintiff Hilberg can fairly and adequately represent the interests of the Plaintiff Class because she is similarly situated with members of the Plaintiff Class. Plaintiff Hilberg has retained counsel experienced in class-action litigation and voting rights litigation to represent her and the Plaintiff Class for the purpose of this litigation.

80. Defendant Whitley has acted on grounds generally applicable to the entire class, and final injunctive relief and corresponding declaratory relief are appropriate respecting the classes as a whole.

81. A class action is superior to other available means for the fair and efficient adjudication of the Plaintiff Class members' claims.

CLAIMS

Count 1: Unconstitutional Discriminatory Burden on the Right to Vote, 14th Amendment (against Defendant Whitley in his official capacity) (42 U.S.C. § 1983)

82. Plaintiffs reallege the facts set forth in paragraphs 1-81 above.

83. "There is no right more basic in our democracy than the right to participate in electing our political leaders." *McCutcheon v. FEC*, 572 U.S. 185, 191 (2014). The Supreme Court has recognized that "voting is of the most fundamental significance under our constitutional structure" and the right to an effective vote is protected by the Equal Protection Clause of the Fourteenth Amendment. See *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). Indeed, the right to vote is the "fundamental political right . . . preservative of all rights." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (quoting *Yick Wo v. Hopkins,* 118 U.S. 356, 370 (1886)).

84. When analyzing the constitutionality of a restriction on voting, the Court "must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Burdick*, 504 U.S. at 434 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

85. When a burden on the right to vote is severe or discriminatory, the regulation must be "narrowly drawn to advance a state interest of compelling importance." *Id.* (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)).

86. The burden imposed by Defendant Whitley's new voter purge program—both the current list of 95,000 registrants flagged for potential removal and the plan to continue this practice on a monthly basis—imposes a severe and plainly discriminatory burden on naturalized citizens who wish to exercise their right to vote.

87. Given the extraordinarily improper methodology used by the voter purge program, Defendant Whitley cannot meet his burden of justifying the program as promoting any state interest that makes it "necessary to burden" these eligible voters' rights.

88. This voter purge program cannot survive even rational basis review and certainly cannot survive the more exacting review given to severe and discriminatory voting restrictions.

Count 2: Unconstitutional Discriminatory Burden on the Right to Vote, 1st Amendment (against Defendant Whitley in his official capacity) (42 U.S.C. § 1983)

89. Plaintiffs reallege the facts set forth in paragraphs 1-88 above.

90. Voting and participating in the election process is a form of speech and expression. It is the ultimate form of political speech and association and is entitled to First Amendment protection.

91. As unjustified restrictions on access to the right to vote, Defendant Whitley's new voter purge program violates the First Amendment.

Count 3: Voter Intimidation
Section 11(b) of the Voting Rights Act,
(52 U.S.C. § 10307) (against Defendants Whitley and Paxton in their official capacities)

92. Plaintiffs allege the facts set forth in paragraphs 1-91 above.

93. Section 11(b) of the Voting Rights Act prohibits any person, whether acting under color of law or otherwise, from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce any person for voting or attempting to vote. 52 U.S.C. § 10307(b).

94. Defendant Whitley coordinated a highly publicized press campaign to assert that he had identified nearly 100,000 ineligible noncitizens on the voter registration rolls, that nearly 60,000 of those individuals had unlawfully voted, and that he was passing this information on to law enforcement for criminal investigation.

95. This conduct is objectively intimidating to the tens of thousands of naturalized citizens that are currently on Defendant Whitley's "list" of allegedly suspect voters and those who worry they may be included on that list.

96. While intent is not a required element, Defendant Whitley had every reason to know that his list was fatally flawed and yet continued to make these assertions and coordinate them with Attorney General Paxton to create fear of unwarranted criminal investigation and stoke public anxiety about noncitizen voting.

97. Since the January 25 public announcement, reporting from election officials has made plain that this list is comprised largely of eligible Texan voters and yet Defendant Whitley has refused to rescind his Advisory, apologize for his errors, or take any concrete public steps to ensure that the registrations of these eligible Texas voters are not endangered.

98. Defendant Whitley has engaged in unlawful intimidation of eligible naturalized citizen voters in Texas in violation of Section 11(b) of the Voting Rights Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

a. Certify the Plaintiff Class;

b. Issue a declaratory judgment that Defendant Whitley's new voter purge program violates the First and Fourteenth Amendments;

c. Issue a declaratory judgment that Defendant Whitley's Advisory and Defendant Whitley's and Defendant Paxton's accompanying public statements constitute unlawful voter intimidation in violation of Section 11(b) of the Voting Rights Act;

d. Order Defendant Whitley to rescind Election Advisory No. 2019-02 and direct election officials to take no action pursuant to the program identified in Election Advisory No. 2019-02 and rescind any notifications sent to voters pursuant to Election Advisory No. 2019-02;

e. Enjoin Defendant Whitley from taking any further action pursuant to the program identified in Election Advisory No. 2019-02;

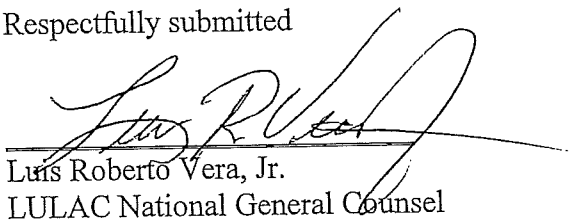
f. Award Plaintiffs their costs, expenses, and reasonable attorneys' fees incurred in the prosecution of this action, as authorized by the Voting Rights Act and the

Civil Rights Attorneys Fees Awards Act, 52 U.S.C. § 10310(e) and 42 U.S.C § 1988;

g. Grant such other equitable and further relief as the Court deems just and proper.

February 1, 2019

Respectfully submitted



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Counsel for Plaintiffs

Exhibit A

Election Advisory No. 2019-02

To: Voter Registrars/Elections Administrators

From: Keith Ingram, Director of Elections

Date: January 25, 2019

RE: Use of Non-U.S. Citizen Data obtained from the Department of Public Safety

Pursuant to Section 730.005, Transportation Code, personal information obtained by the Department of Public Safety (DPS) in connection with a motor vehicle record shall be disclosed and used for any matter of voter registration or the administration of elections by the secretary of state. The secretary of state has been working with DPS to obtain and use information regarding individuals who provided documentation to DPS showing that the person is not a citizen of the United States during the process of obtaining or acquiring a Texas Driver License or Personal Identification Card from DPS. The initial set of information provided by DPS is being compared to the voter registration rolls, and we are providing information relating to matches out to counties beginning tomorrow.

Background: Beginning in early March 2018, our office began working with DPS to review and refine the data able to be provided by DPS for use in this list maintenance process. The goal was to produce actionable information voter registrars could use to assist in their list maintenance responsibilities. In keeping with general guidelines set out under Section 18.0681, Election Code, our office sought to create the strongest matching criteria that produces the least possible impact on eligible Texas voters while fulfilling the responsibility to manage the voter rolls. To that end, our office and DPS spent time evaluating the data and refining the query to limit the information being provided to us for use in this list maintenance exercise to individuals who provided valid documents indicating the person is not a citizen of the United States at the time the person obtained a Driver License or Personal Identification Card. It is important to note that we are not using information self-reported by the person regarding their citizenship status; rather, we are using documents provided by the person to show they are lawfully present in the United States. As part of the processing for issuing a card, these documents would have been validated by DPS against the Systematic Alien Verification for Entitlements (SAVE) Database, which is administered by the U.S. Citizenship and Immigration Services, a component of the Department of Homeland Security. Once a person's document is validated through SAVE and a card is issued, then the individual's information will be provided to our office in the next data file to be supplied. Our office has obtained the preliminary data file for all current (unexpired) Driver License and Personal Identification cards that meet this criteria, and we will run that set of information tomorrow evening. After that initial data set has been run, DPS will provide information to our office on a monthly basis of individuals obtaining a Driver License of Personal Identification card since the last data file has been provided. We will run those as they are received by our office.

There is likely to be a law enforcement interest in the data that we are providing to you. If you receive any requests from the public for the information, please contact your local prosecutor and the attorney general, who have jurisdiction over such matters.

Impact of Data being obtained: It should be noted that the additional source of data being obtained from DPS does not change or modify the voter registrar's rights or responsibilities under Section 16.033, Election Code. The voter registrar has the right to use any lawful means to investigate whether a registered voter is currently eligible for registration in the county. This section **does not** authorize an investigation of eligibility that is based solely on residence. If the registrar **has reason to believe** that a voter is no longer eligible for registration, the registrar shall deliver written notice to the voter indicating that the voter's registration status is being investigated by the registrar. The notice shall be delivered by **forwardable mail to the mailing address** on the voter's registration application **and to any new address** of the voter known to the registrar. If the secretary of state has adopted or recommended a form for a written notice, the registrar must use that form. The obtaining of information from DPS and providing matching data to the voter registrar merely expands the resources available to the registrar for use in list maintenance. The registrar, ultimately, is responsible for determining whether or not the information provides the registrar with reason to believe the person is no longer eligible for registration. If the registrar determines this standard has been met, the registrar should send a Notice of Examination for Citizenship (Proof of Citizenship) (PDF) Letter.

Matching Information: This DPS non-U.S. Citizen data is matched against the TEAM system, and information will be provided to counties if/when a match is identified between the DPS data and a registered voter in the county. Records are identified as Possible Non U.S. Citizens when one of the following combinations matches between a voter record and the DPS data:

- Last Name (including Former Last Name on the Voter Record), First Name, and Full Social Security Number (SSN) (9 digits);
- Last Name (including Former Last Name on the Voter Record), First Name, and Texas Department of Public Safety (DPS)-Issued Driver License, Personal Identification Card, or Election Identification Certificate Number; or
- Last Name (including Former Last Name on the Voter Record), First Name, Last Four Digits of the SSN, and Date of Birth.

These are some of the strongest possible matching criteria used in TEAM and are the current matching criteria used when determining whether or not to transfer a voter to an Offline County when the Offline County submits a new registration application. A match to a new voter registration application submitted by an Offline County to an existing voter using the above listed criteria will result in the transfer of the voter record. The point of this is to emphasize that our goal was to produce actionable information for voter registrars while producing the least possible impact on eligible voters, meaning we believe the data we are providing can be acted on in nearly all circumstances.

All records submitted through this process will need to be treated as WEAK matches, meaning that the county may choose to investigate the voter, pursuant to Section 16.033, Election Code, or take no action on the voter record if the voter registrar determines that there is no reason to believe the voter is ineligible. The county **may not cancel** a voter based on the information provided without first sending a Notice of Examination (Proof of Citizenship Letter) (PDF) and following the process outlined in the letter. In order to help counties make a determination regarding whether or not to send a Notice of Examination or close the task without taking further action, information provided by DPS will be provided to each county for further review and comparison against the voter record.

Workflow for Possible Non-U.S. Citizen Investigation: Again, counties are **not** permitted, under current Texas law, to immediately cancel the voter as a result of any non-U.S. Citizen matching information provided. This is applicable to notifications received from jury summons responses, as well as the dataset discussed in this advisory: possible non-U.S. Citizen notifications coming from DPS.

- For matching notifications coming from Jury Summons response devices, the county **must** send the voter a Proof of Citizenship Letter (Notice of Examination).
- For the matching notifications originating from DPS data, the county user has the choice to either:
    1. Send a Proof of Citizenship Letter (Notice of Examination) to the voter; thereby starting the 30-day countdown clock before cancellation, or
    2. Take no action on the voter record and simply close the task as RESOLVED.

A voter may only be cancelled based on possible non-U.S. Citizen matching information if a Proof of Citizenship Letter (Notice of Examination) (PDF) was sent to the voter **and**:

1. The voter responded to the Notice in under 30 days indicating the voter is **not** in fact a U.S. Citizen (you would cancel for not being a citizen – Cancel Reason: Non U.S. Citizen);
2. The voter failed to respond to the Notice within 30 days and is being cancelled for failure to respond to the notice (Cancel Reason: Failure to respond to Notice of Investigation); **or**
3. The notice was mailed and returned as undeliverable to the registrar with no forwarding information available (Cancel Reason: Failure to respond to Notice of Investigation).

To aid in this process, new Dashboard options will be available within the Possible Non U.S. Citizen Dashboard task and a new Event Type has been developed for Offline counties. We are not able to leverage the current Non U.S. Citizen Notification task, which is currently created when a match identifies a voter having responded to a jury summons that he/she is not a United States citizen. We cannot use the current Dashboard line item task/event type because counties are required (by current law) to investigate those records identified as a response to the jury summons response device under the current process. Counties are not, however, required (by current law) to investigate the new DPS data matches if they do not believe that a voter is ineligible to vote. However, our office will provide the data obtained from DPS in order to allow counties all the information necessary to make the determination regarding whether or not to investigate the voter.

Response needed from the voter: Once a Notice of Examination for Citizenship (Proof of Citizenship) Letter (PDF) has been issued to a voter, the voter is required to provide proof of citizenship as outlined under Section 16.0332, Election Code. This includes:

- A certified copy of the voter's birth certificate,
- United States passport, or
- Certificate of naturalization

A copy of one of these documents (including a copy of the passport) being returned to the registrar is sufficient to meet the proof requirement. The registrar is required to retain a copy of the notice mailed and any proof of citizenship received by the voter. If the voter comes in person and provides proof, then the registrar should make a copy of the document provided and retain it, along with a copy of the notice that was mailed, with the application file for the voter.

For more information, please contact the Elections Division at 1-800-252-VOTE(8683).

KI:BS

Exhibit B

Secretary Whitley Issues Advisory On Voter Registration List Maintenance Activity

"Integrity and efficiency of elections in Texas require accuracy of our state's voter rolls"

Janauary 25, 2019
Contact: Sam Taylor
512-463-6116

AUSTIN – Texas Secretary of State David Whitley today issued an advisory to county voter registrars regarding voter registration list maintenance activities, which include identifying any non-U.S. citizens registered to vote in the State of Texas. For the past year, the Texas Secretary of State's office has worked closely with the Texas Department of Public Safety (DPS) to evaluate information regarding persons identified to not be citizens of the United States. This voter registration list maintenance activity is being conducted in accordance with federal and state law to ensure that only qualified voters - who must first and foremost be U.S. citizens - are registered to vote in Texas elections.

Through this evaluation, the Texas Secretary of State's office discovered that a total of approximately **95,000** individuals identified by DPS as non-U.S. citizens have a matching voter registration record in Texas, approximately **58,000** of whom have voted in one or more Texas elections. Voting in an election in which the person knows he or she is not eligible to vote is a second-degree felony in the State of Texas. Upon receipt of this information, the Texas Secretary of State's office immediately provided the data in its possession to the Texas Attorney General's office, as the Secretary of State has no statutory enforcement authority to investigate or prosecute alleged illegal activity in connection with an election.

Secretary Whitley issued the following statement:

"Integrity and efficiency of elections in Texas require accuracy of our state's voter rolls, and my office is committed to using all available tools under the law to maintain an accurate list of registered voters. Our agency has provided extensive training opportunities to county voter registrars so that they can properly perform list maintenance activities in accordance with federal and state law, which affords every registered voter the chance to submit proof of eligibility. I would like to thank the Department of Public Safety for providing us with this valuable information so that we can continue to guarantee the right to vote for all eligible Texas voters, who should not have their voices muted by those who abuse the system."

Going forward, the Texas Secretary of State's office will use information it obtains from DPS on a monthly basis to cross-reference with Texas' statewide voter registration database and match potential non-U.S. citizens who have registered to vote. Once a voter registration is identified as a match, the Texas Secretary of State's office will notify the county in which the person is registered so that the county voter registrar can take action.

The following combinations of matches between information in DPS-provided data and the statewide voter registration database are used to identify possible non-U.S. citizens registered to vote:

- Last Name, First Name, and Full Social Security Number;
- Last Name, First Name, and DPS-issued Driver License, Personal Identification Card, or Election Identification Certificate Number; or
- Last Name, First Name, Last Four Digits of Social Security Number, and Date of Birth

If a registered voter is identified as a non-U.S. citizen, he or she should receive a Notice of Examination (PDF) from the county voter registrar indicating that his or her registration status is being examined on the grounds that he or she is not a U.S. citizen. The registered voter will then be required to provide proof of citizenship in order to stay registered, which may be done by submitting to the voter registrar a copy of one of the following documents:

- A certified copy of the voter's birth certificate
- United States passport; or
- Certificate of naturalization (Citizenship certificate)

If the person responds indicating he or she is not a U.S. citizen, or fails to respond to the Notice within 30 days, then the voter registration will be cancelled by the county voter registrar. County voter registrars have been provided with numerous training opportunities to ensure that list maintenance activities are conducted in accordance with state and federal law so as to not affect eligible voters.

Texas voters who wish to check their registration status can visit the Texas Secretary of State's "Am I Registered?" tool online or contact the voter registrar in their county of registration.

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EXHIBIT O

The New York Times

Routine Voter Purge Is Cited in Brooklyn Election Trouble

By Vivian Yee

April 22, 2016

The mysterious loss of roughly 125,000 Democratic voters from the election rolls in Brooklyn for one of the most hard-fought presidential primaries in years seemed to have occurred during what should have been a routine removal of residents who were ineligible to vote.

Something went wrong in that purge, according to multiple election law experts and others familiar with the winnowing process. Amid investigations into the New York City Board of Elections and widespread complaints about voters being turned away from the polls on Tuesday, it now seems likely that many legitimate voters were mistakenly disenfranchised.

“This happens every presidential election — the boards all over the state start purging voters,” said City Councilman Ben Kallos, chairman of the committee that oversees the board. Mr. Kallos noted that Brooklyn had historically eliminated more voters than other boroughs during periodic sweeps.

“But this would be the largest number of Democrats who were taken off the rolls in recent memory,” he said.

After flagging voters who do not cast ballots in two consecutive federal elections, the Board of Elections mails notices to determine whether voters still live at the address where they are registered. If no confirmation comes back, a voter can be deleted from the rolls. Board positions are equally split between Republicans and Democrats; each voter removal must be approved by both a Republican and a Democratic employee, according to the rules.

It remained unclear at what point employees at the Brooklyn office stumbled, or who was at fault. One possibility was that the notices to voters were mailed incorrectly, or not at all. Another was that once the notices were returned, the computerized database that held voter lists was mishandled.

On Thursday, the Board of Elections announced that it had suspended a longtime employee, Diane Haslett-Rudiano, the chief clerk at the Brooklyn office and a Republican appointee. Ms. Haslett-Rudiano’s Democratic counterpart, Betty Ann Canizio, who would, by the rules, be required to sign off on any voter removals, remained in her post. Board officials have declined to say why Ms. Haslett-Rudiano was disciplined, saying at the same time that “no voters were disenfranchised.”

“There was criticism that the voter rolls had people who were dead, and so on,” said Frank Seddio, the chairman of the Brooklyn Democratic Party, who said he had discussed the apparent mistake with Board of Elections officials. “That began a citywide review of who’s on the voter rolls and who should be removed. And there’s a possibility that people were taken off the rolls that shouldn’t have been taken off the rolls.”

It is only the latest trouble of many for the board, a frequent target of elected officials, government watchdog groups and election law experts, who say blunders are inevitable when an organization is run from top to bottom by political patronage appointees and party members, as the board is. A 2013 report from the New York City Investigation Department found that the board was plagued by nepotism, badly trained poll workers and error-prone voter-removal procedures.

Mr. Seddio, a longtime friend of Ms. Canizio who pushed her appointment to the deputy clerkship, said this particular voter purge occurred before Ms. Canizio arrived in 2014. But that contradicted the time frame supplied by Michael J. Ryan, the board’s executive director, who said in an interview this week that approximately 125,000

voters were removed from the rolls since fall 2015. (Some 63,000 were added in the same period, he said.)

Reached by phone, Ms. Canizio said she could not comment on what happened, but added, “I didn’t sign off on anything.”

Ms. Haslett-Rudiano, who had her own political sponsor for several years — State Senator Martin J. Golden, Brooklyn’s most powerful Republican official — did not respond to messages on Thursday or Friday.

A version of this article appears in print on April 23, 2016, Section A, Page 16 of the New York edition with the headline: Routine Voter Purge Cited in Brooklyn Election Woes

PBS NEWS HOUR WEEKEND

Officials investigating why 126,000 voters were purged from NY rolls

Politics Apr 23, 2016 5:42 PM EDT

Multiple investigations were launched and a top election official was suspended this week after tens of thousands of registered voters were found to be missing from the rolls during **Tuesday's Democratic primary in New York**.

The purge drew the attention of city and state officials and raised concerns in a state already under fire for years over its election practices.

Officials were particularly focused on the New York City Board of Election's removal of roughly 126,000 registered Democrats in **Brooklyn**, during what the board said was routine maintenance of voter registration lists.

By Thursday the board had **suspended its chief clerk in Brooklyn.**

New York State Attorney General Eric Schneiderman said he would open an inquiry after his office received more than 1,000 complaints on Tuesday alone, a number that rose significantly from the 2012 election cycle.

"By most accounts, voters cast their ballots smoothly and successfully," Schneiderman said in a **statement** issued on Wednesday. "However, I am deeply troubled by the volume and consistency of voting irregularities, both in public reports and direct complaints to my office's voter hotline."

Meanwhile, in a move backed by Mayor Bill de Blasio, City Comptroller Scott M. Stringer said he plans to audit the Board of Elections.

A person sits while completing a ballot at the polling center at the James Weldon Johnson Community Center during the New York primary elections in the East Harlem neighborhood of New York City, U.S., April 19, 2016. Photo by Andrew Kelly/Reuters

Michael J. Ryan, who is executive director of the board and oversees approximately 1,200 polling places stretching across the city, told local media the board removed people who had moved out of the borough, had not responded to the board's mailers requesting updated information, had not voted during the last two federal election cycles or were convicted of a felony.

"We send you a notice in the mail saying, 'Hey, we're going to cancel your voter registration if you don't respond back to us," Ryan **told NY1** this week. "Only those individuals who did not respond back to our intent to cancel notice were ultimately archived."

About 12,000 had moved out of the borough, another 44,000 people were moved from active to inactive voters and an additional 70,000 people were taken off the inactive voter list, the board said.

But many voters who called in to local radio shows, contacted elections officials and spoke to the volley of journalists covering the hard-fought New York state primary said they did not fit under any of those parameters and were still taken off the rolls.

Others complained about long lines, shuttered polling locations and inexperienced polling-place employees. Entire blocks and buildings of voters in some districts were purged from the voter rolls, **de Blasio said**.

New York state has been the target of criticisms for years over its primary and general elections protocols, which critics say are one reason why the state lags behind much of the nation in voter turnout.

People line up to check into their voting station at Public School 321 on April 19, 2016 in the Brooklyn borough of New York City. Long lines were among a volley of complaints against the New York City Board of Elections. Stephanie Keith/Getty Images

The city had a “historic low” turnout of 20 percent for the November 2014 elections, while the state ranked 46th in the nation for that election cycle, according to the **U.S. Election Assistance Commission**, which called the state’s practices “restrictive.”

Stringer, the city comptroller, said with several more elections coming up this year, his office would quickly delve into the audit of the city’s Board of Elections. He also issued a **letter** to Mr. Ryan, laying out his concerns.

“There is nothing more sacred in our nation than the right to vote, yet election after election, reports come in of people who were inexplicably purged from the polls, told to vote at the wrong location or unable to get in to their polling site,” Stringer said in a **statement** released Tuesday. “The people of New York City have lost confidence that the Board of Elections can effectively administer elections and we intend to find out why the BOE is so consistently disorganized, chaotic and inefficient.”

By – **Michael D. Regan**

Michael D. Regan is an Associate Multimedia Producer for PBS NewsHour Weekend.

@mdregan

Published by
WNYC News

Brooklyn Voter Purge Hit Hispanics Hardest

Listen 7 min Queue ...

Congresswoman Nydia Velazquez (center, in hat) marches in the Sunset Park Puerto Rican Day Parade surrounded by supporters
(Brigid Bergin)

Jun 21, 2016 · by **Brigid Bergin**, **John Keefe**, **Jenny Ye** and **Clarisa Diaz**

Queue

Ever since New York State's presidential primary in April, officials from the city Board of Elections have been trying to explain what led to two illegal voter purges that removed more than 120,000 voters from the rolls.

Board officials have said repeatedly that the purges were a mistake. The two top clerks at the Brooklyn office have been suspended without pay since shortly after the primary. Executive Director Michael Ryan announced earlier this month that the board would return all the purged voters to the rolls in time for Tuesday's congressional primary.

Ryan has apologized publicly, but he's also tried to debunk claims that any specific group of voters was unduly effected by the purge. Testifying under oath at a City Council hearing last month, Ryan said that "a broad cross-section of voters [was] removed from the voter rolls."

But a WNYC analysis found something very different. Under the state Freedom of Information Law, WNYC obtained the list of every voter the board says was removed from the books in a major purge over two days last summer. When mapped by election district, our analysis shows that Hispanic voters were disproportionately purged from the rolls when compared to all other groups.

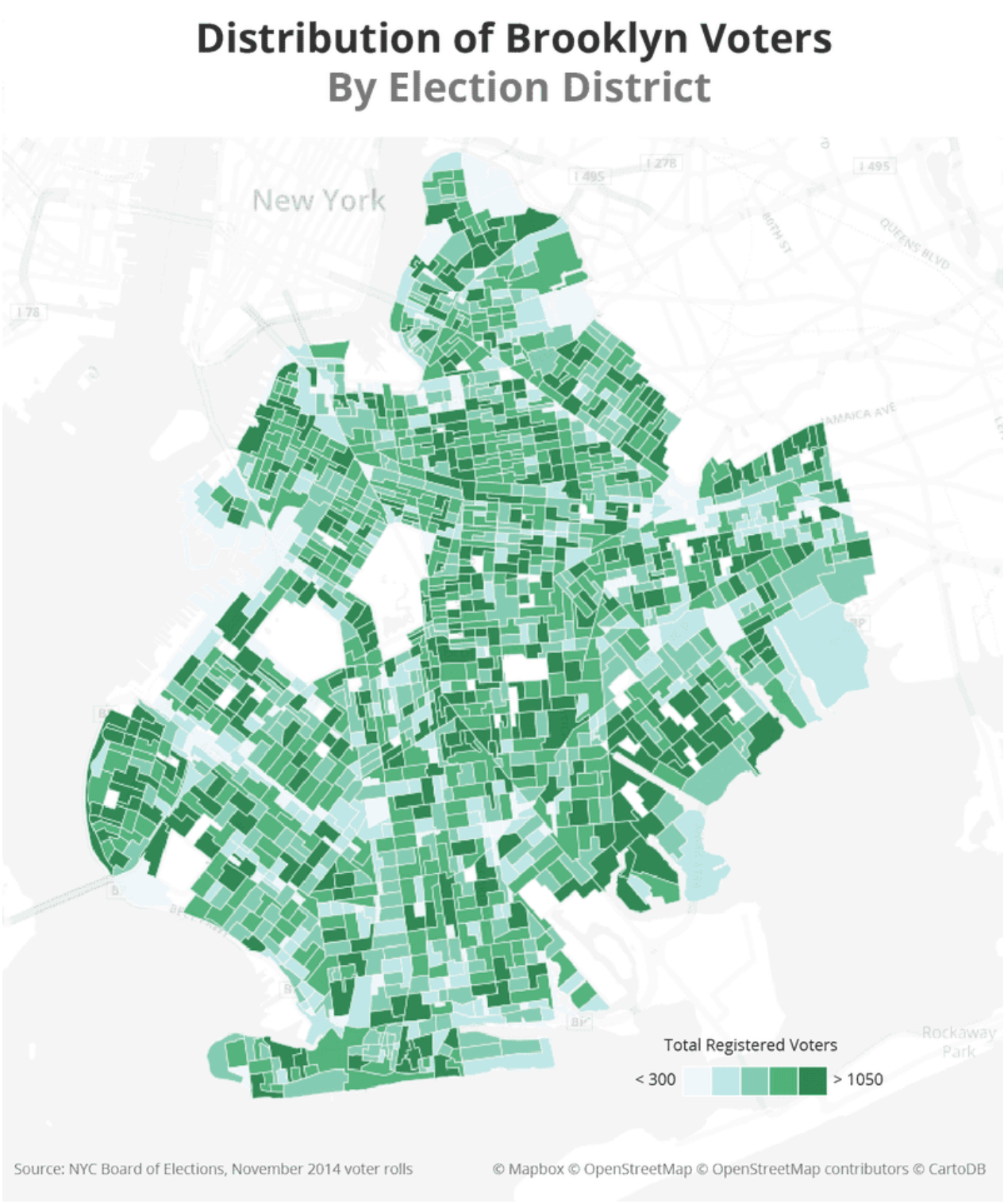
The election districts with the largest number of purged voters are heavily concentrated in the neighborhoods of Sunset Park, East New York, and parts of Bushwick and Williamsburg — largely within the bounds of the 7th congressional district, whose incumbent, Democrat Nydia Velázquez, faces a primary challenge later this month from two candidates.

According to New York State election law, there are legitimate reasons why voters should be removed from the rolls — they move, they die, they are convicted of felonies. But the distribution of these voter purges raises a series of troubling questions about how the board performs some of its most basic and essential functions, and whether the weakening of the

federal Voting Rights Act in 2013 allowed the board's misconduct to slip under the radar.

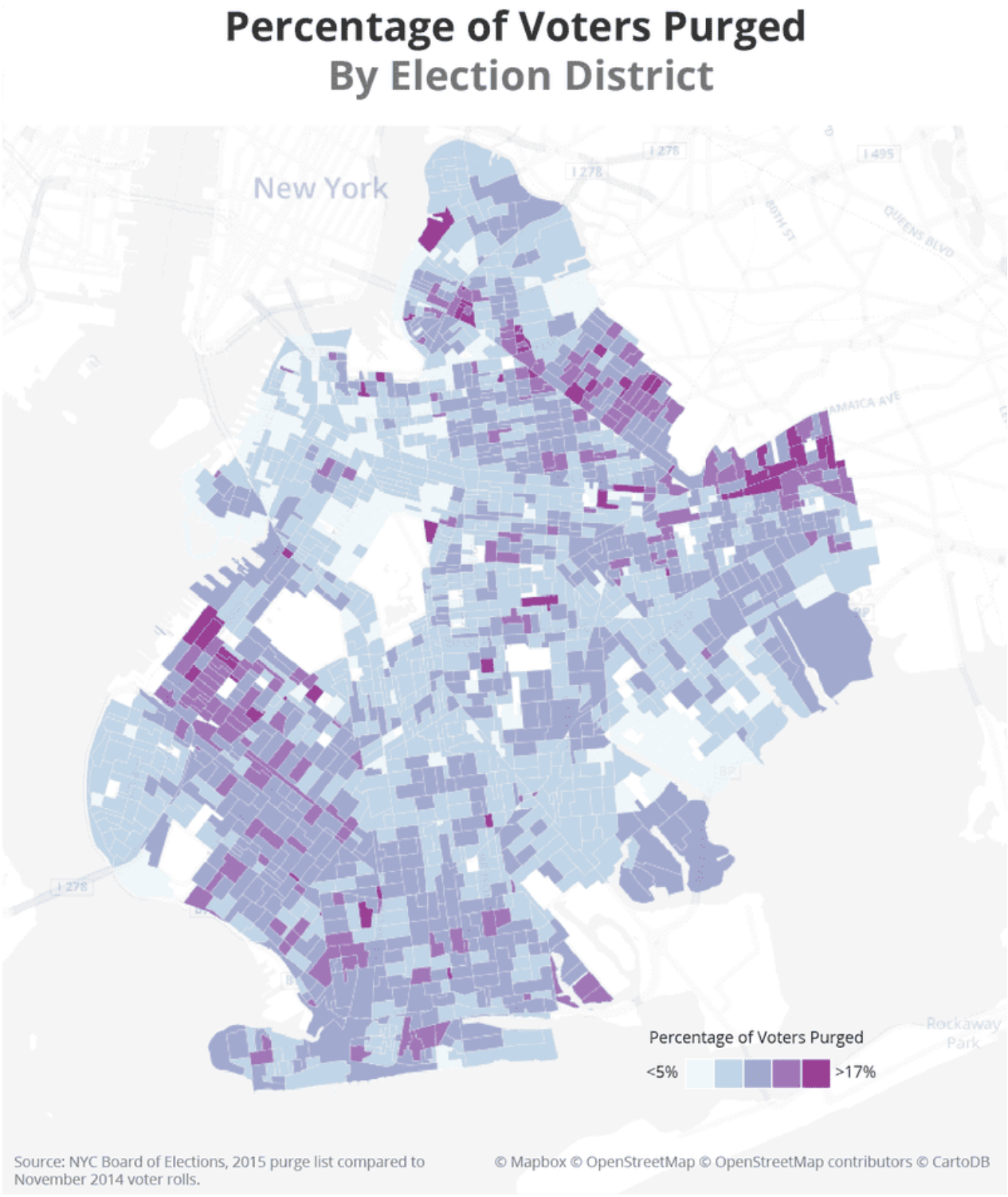
WHERE PEOPLE WERE PURGED

Before the purge, as of November 2014, there were 1,308,871 voters registered in Brooklyn. The distribution of registered voters, by individual election district, looked like this:



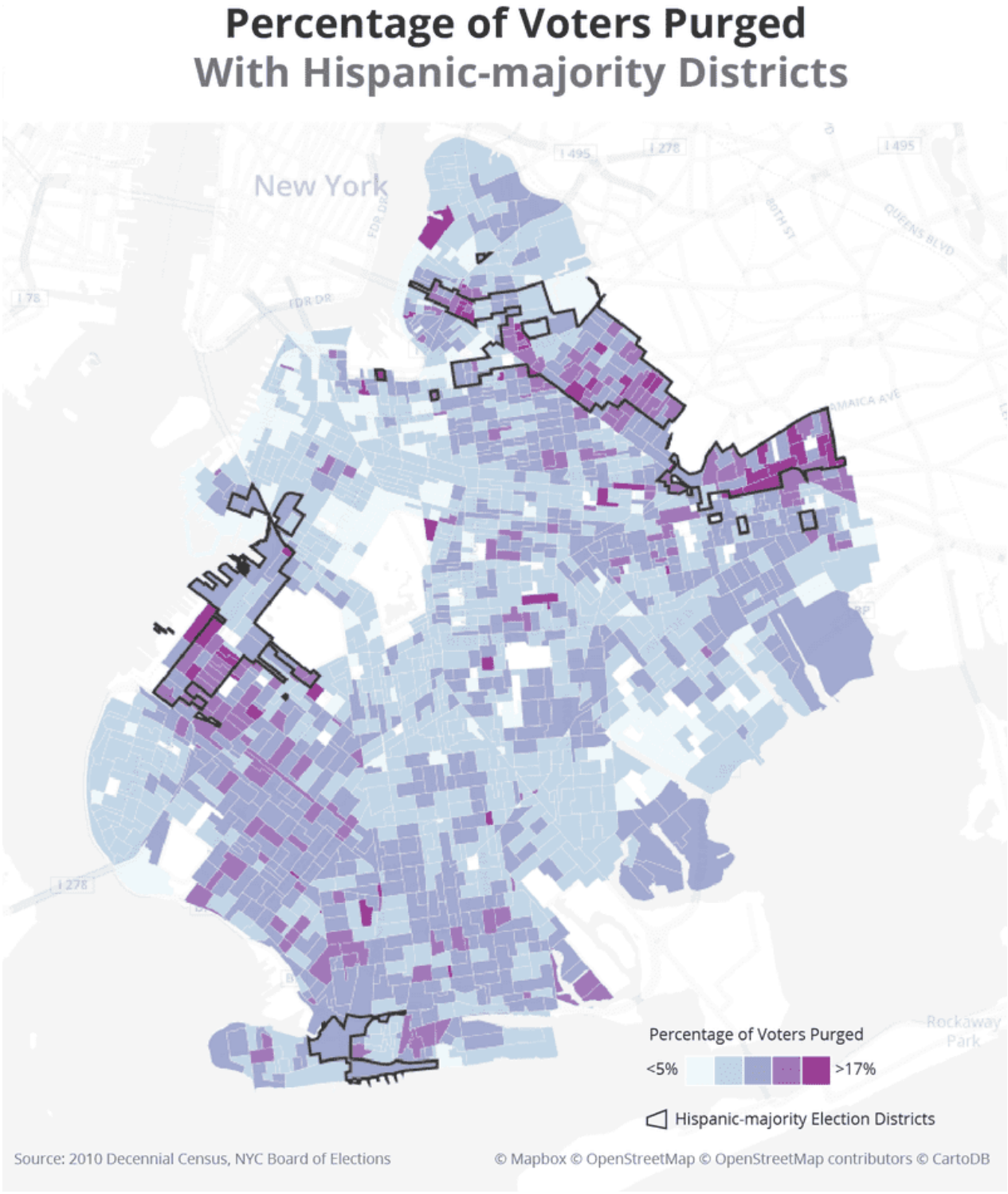
(Clarisa Diaz, **WNYC using CartoDB**)

On two dates — June 18 and July 5, 2015 — a total of 122,454 voters were removed from the rolls of registered voters in Brooklyn. This map shows the percentage of registered voters purged in each election district:



(Clarisa Diaz, **WNYC using CartoDB**)

The concentrations of purged voters generally align with election districts where the majority of the population is Hispanic, based on the population of individual blocks that make up each election district in the 2010 Census.



(Clarisa Diaz, **WNYC with CartoDB**)

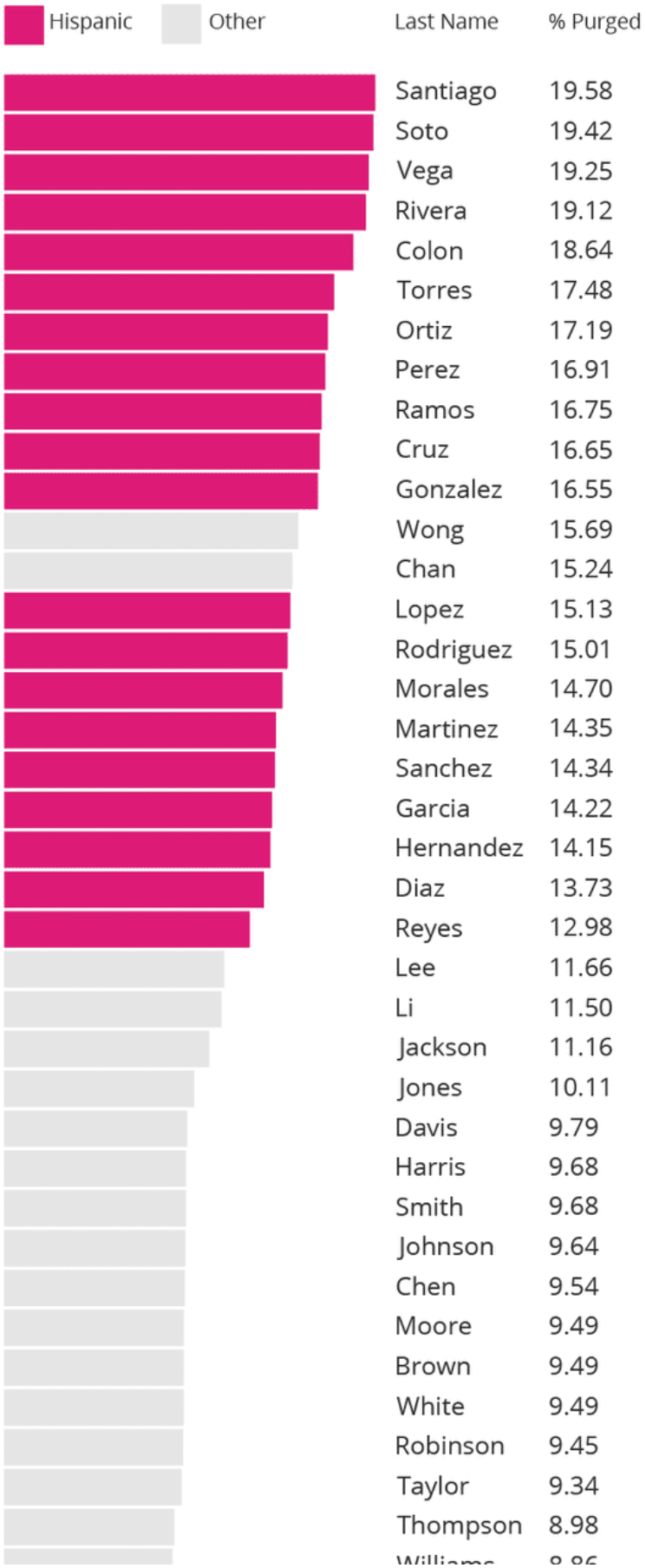
In fact, 13.9 percent of voters in Hispanic-majority election districts were purged, compared to 8.7 percent of voters in all other election districts. [1] That means voters in Hispanic-majority election districts were removed at a rate about 60 percent greater than everyone else.

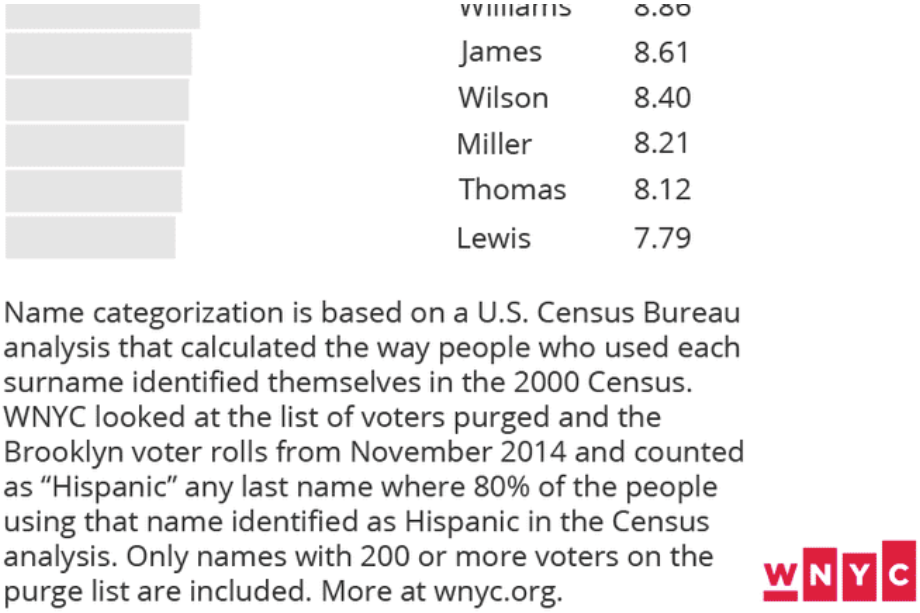
THE NAMES OF THOSE PURGED

Public voter roll records, and the list of purged voters obtained by WNYC, include each voter's name. To estimate the racial and ethnic makeup of that list, we worked from a U.S. Census Bureau analysis that calculated the way people who used each surname identified themselves in the 2000 Census.

By our calculations, 15.2 percent of people with last names that are used mainly by Hispanic people were purged from the Brooklyn rolls, compared to 9.5 percent of everyone else. [2] That means those with typically Hispanic last names were purged at a rate 60 percent greater than everyone else — about the same as the rate geographically.

Top Names Purged in Brooklyn





(Clarisa Diaz, WNYC)

HOW IT HAPPENED: RYAN'S INITIAL EXPLANATION

So far, Executive Director Michael Ryan of the Board of Elections has placed blame squarely on the staff at the Brooklyn borough office. In response to a scathing city Department of Investigation report that criticized the board's failure to remove ineligible people from the rolls, Ryan said the Brooklyn staff took it upon themselves to clean up the rolls.

That report was published in December 2013. A few months later, staff at the Brooklyn office began a process of flagging people who had not voted since 2008 or earlier, Ryan said. Then, he said, the board mailed all the people on that list a notice telling them the board was going to cancel their registration, a so-called "intent to cancel" notice. Voters who did not contact the board after receiving the notice were purged on two dates in 2015 — June 18 and July 5.

Ryan has been clear that the Brooklyn staff made a critical error. No voter should have been removed from the rolls before that voter was first designated "inactive" - a classification strictly delineated by election law. voter is classified as inactive only if the post office returns the annual

notice, and then the voter does not participate in two subsequent federal elections. The board is only supposed to send an intent to cancel notice to voters who are already on the inactive list. The Brooklyn staff skipped the inactive voter step when it conducted the 2015 purge, Ryan has said.

Testifying before the City Council, Ryan called the staff's decision to pick an arbitrary date "improper" and stressed that staff at the Brooklyn office took these actions on their own without informing the executive management.

"Look, what happened in Brooklyn should not have happened," Ryan told reporters after the hearing. But he also sought to dismiss concerns raised specifically by supporters of Sen. Bernie Sanders, some of whom were protesting New York's closed primary system, which requires voters to be registered either as a Democrat or Republican up to six months ahead of the primary election.

"Although there was an otherwise political narrative out there and that fire was already stoked, by the action in Brooklyn, we added gasoline to that fire and we contributed to the lack of confidence on our own," said Ryan. "That is regrettable. It will not happen again on my watch, and quite frankly, I understand why people are concerned."

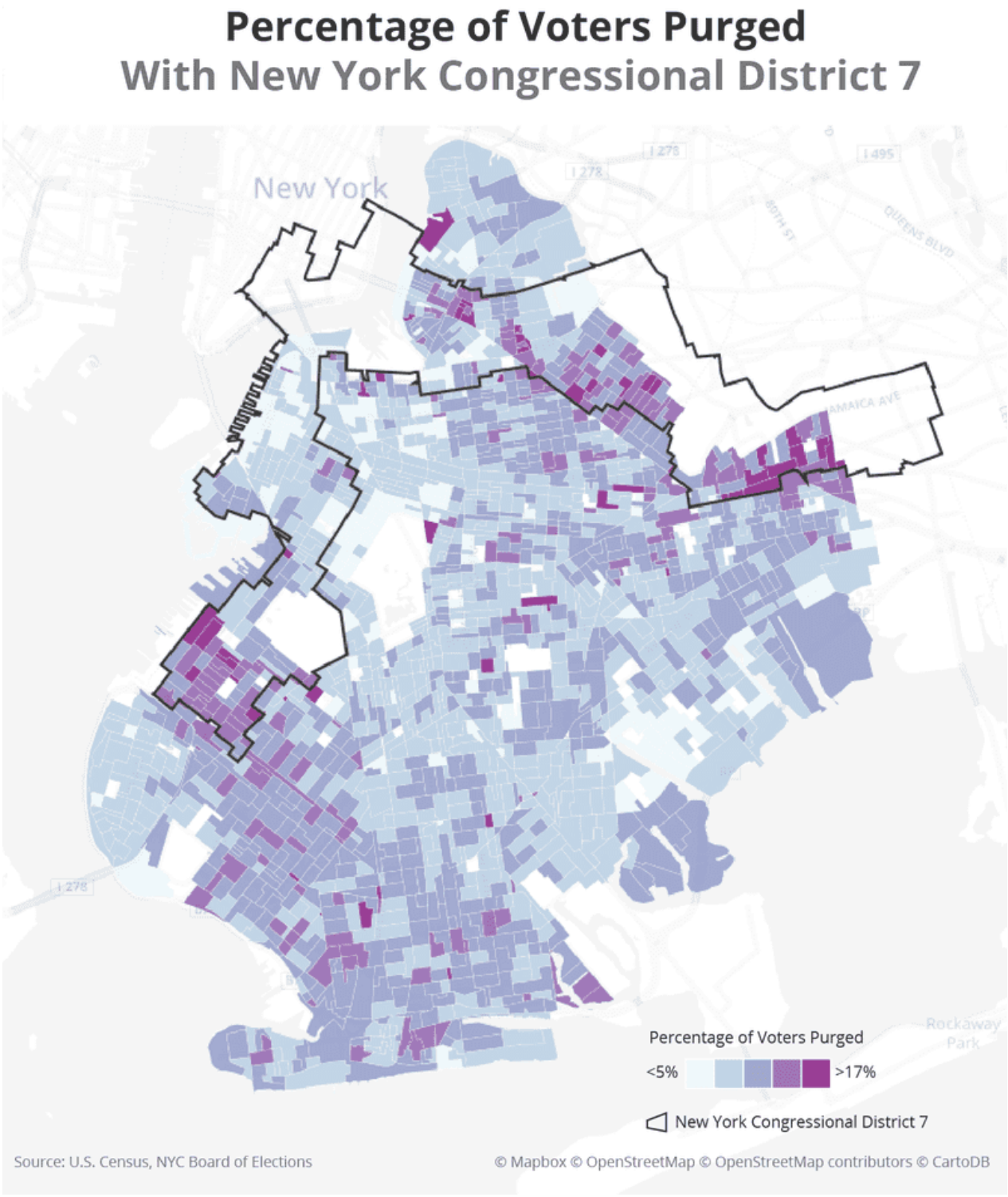
WOULD A STRONGER VOTING RIGHTS ACT HAVE PREVENTED THE PURGE?

Rep. Velázquez has been asking her own questions about the purge for weeks. She held a town hall meeting in Manhattan's Chinatown last month, along with Reps. Grace Meng and Hakeem Jeffries. The event was billed as a chance to talk about election administration in the wake of the U.S. Supreme Court's landmark 2013 decision in *Shelby County v. Holder*, which struck down portions of the federal Voting Rights Act requiring localities to get "pre clearance" for changes in certain election operations.

She asked Ryan if the board would have been required to clear the purge with the Justice Department if Section 4(b), which made Brooklyn a protected jurisdiction, were still intact. Ryan equivocated.

“With respect to the purge, there was clear employee error on a misinterpretation of the law, and it’s difficult for me to say whether 4(b) was still intact whether that mistake still would have occurred,” Ryan said. “A mistake is a mistake.”

The Voting Rights Act prohibits practices or procedures that disproportionately affect a minority group, whether those actions are intentional or not. But that "mistake" shows up starkly when the Brooklyn purge is mapped according to election district. The purge is heavily concentrated in Velazquez's 7th Congressional District, where large numbers of Brooklyn's Latino voters live.



(Clarisa Diaz, **WNYC using CartoDB**)

"That's [my] congressional district, almost exclusively," Velazquez said when WNYC shared the map during an interview at her district office in Williamsburg last week. "It's Sunset Park, both the Latino and the Asian communities. Then East New York, going into Cypress Hill."

Velázquez's district saw a larger purge than other congressional districts in Brooklyn, both by raw percentage and, more starkly, when weighted by the district's proportion of total Brooklyn voters. [3]

As Velazquez studied the map, her reaction shifted from shock to outrage.

"I do not want to think that it was deliberate, you know, because that would be voter suppression, and at a time when the Voting Rights Act is under attack in Washington, to have this type of action in a city and state like New York, a Democratic city, it's just beyond any comprehension," she said.

Velazquez has been in Congress since 1992 and faces two long-shot challengers in the congressional primary on June 28 — Yungman Lee, a businessman, and Jeff Kurzon, a lawyer. The winner will face Republican and Conservative Allan Romaguera in the general election in November.

"How could they purge 120,000 and no one knew that this was happening?" she said. "It's just, by looking at that map I could say, 'Hey, I've been targeted or my district has been targeted,' just by looking at it. By looking at the numbers. We'll see. But it's not going to end here."

Velázquez said she wants her staff to corroborate WNYC's findings, "because I will ask for the Department of Justice to look into this."

We need to get to the root cause," she added, noting that she has frequently fought with the Brooklyn Democratic party machine without explicitly accusing her opponents of having a hand in the purge.

"I am not satisfied with an explanation or an acknowledgement on the part of the executive director that this was a mistake. This is serious business. This is about democracy and about the voting rights of individuals to participate."

VOTING RIGHTS FIGHTS

Back in 1981, shortly before another New York City primary, advocates scored a major court victory arguing that the city was in violation of the Voting Rights Act. The primary for Mayor, Comptroller, City Council and a handful of other offices was scheduled for Sept. 10. But the night before the primary, **a panel of federal judges** ruled that the city had failed to secure the necessary clearance from the Justice Department before drawing new Council district lines and changing poll site locations.

"The Board of Elections was in disbelief that the Voting Rights Act could really affect them and make them do things differently," said Esmeralda Simmons, executive director for the Center for Law and Social Justice at Medgar Evers College, and one of the attorneys on that case.

The primary was rescheduled for later in the month.

In 1989, Simmons and her colleagues used another argument based on the Voting Rights Act on behalf of some 300,000 voters the Board of Elections had purged because they hadn't voted in the previous four years.

The plaintiffs argued the purge was discriminatory "because the process disproportionately affected minority-group members," according to .

A federal court judge ordered the board to return all the purged voters to the rolls. "I note that the Voting Rights Act does not require a finding of intent to discriminate against minorities to be operative here," Judge Charles J. Sifton was quoted saying in *The Times* after his ruling. "It simply requires an adverse racial impact."

Since the 2013 Supreme Court ruling in *Shelby*, Simmons said it's fallen on advocates and watchdogs to appeal to elected officials and the Board itself to act in the best interest of voters. "I don't think it's working," she said.

In the case of the most recent purge, the board never told the Justice Department that it was removing names based on new criteria, a step that might have caught the fact that the Board was following its own process incorrectly.

When Simmons reviewed WNYC's maps of the the purged voters, she observed, unprompted, "That looks like Nydia Velazquez's district....Wow."

She said the map also made it look like the purge targeted Asian and Hispanic voters, adding of Velazquez, "I do not want to be in a room with her right now."

HOW TO FIX IT

"I am personally aggrieved. I feel like I've been purged," Simmons said. She also said that simply returning the purged voters to the rolls may not fix the problem. "It's not something that is so easily corrected. When people are turned away from the polls once, what makes you think they are going to go back?"

That question will be answered partially next Tuesday, when voters head to the polls for the congressional primary. But it will only be a partial test — unlike the presidential primary, turnout in congressional primaries tends to be far lower.

When WNYC shared its analysis with Board of Elections chief Ryan, he said, "Anytime there is a problem with the voter registration system, I'm alarmed and we're not happy about it."

But Ryan would not comment on the specifics. "I can't speak to a demographic analysis that I didn't participate in and, quite frankly, we don't know what the real effect of that is," he said.

Ryan also said there may be an honest explanation for why Hispanic vo were caught up in the purge at a rate so much higher than any other

group. He said some neighborhoods may be better organized for voter registration, even if those new voters don't plan to participate. So if aggressive efforts added people to the rolls who then did not vote, they would then have fallen victim to the inappropriate purge.

He also said the board has taken steps to ensure nothing like this ever happens again. Besides returning all the purged voters to the rolls, Ryan said the board has disabled the manual function that allowed staff to flag voters one by one to be removed from the system.

“All of that said, it should have never happened,” Ryan added, “and whomever it affected, it should not have affected those individuals.”

EXPLORE THE PURGE MAP

[1] 17,392 of the purged voters fall into majority Hispanic districts, 102,593 of the purged voters fall into all other districts. 125,420 of registered voters were in majority Hispanic districts and 1,183,451 were in all other other Brooklyn election districts as of November 2014. About 2,500 people on

the purged list, or about 2 percent, could not be matched to a Brooklyn election district.

[2] Using the Census analysis, we counted as “Hispanic” any last name where 80 percent of the people in the U.S. who used that name identified as Hispanic in the 2000 Census. By that measure, 23,012 Brooklyn registered voters with typically Hispanic last names were purged. These last names appeared 151,654 times in the pre-purge voter roll. 79,679 other purged voters had last names that appeared in the 2000 Census. These last names appeared 789,587 times in the pre-purge voter roll. We weren't able match about 16 percent of the purged voters to last names in the 2000 Census. This leaves about 20 percent of people on the Brooklyn registered voter list with last names that were not in the voter purge.

[3] 27,586 of the purged voters were in Congressional District 7, representing about 11 percent of the 253,107 registered voters there as of November 2014. That’s the highest percentage among the six congressional districts that include Brooklyn, and a rate about 25 percent greater than the rest of Brooklyn, which had 8.8 percent of voters purged.

11 Comments

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WNYC News

The Brooklyn Voter Purge: By Age, Registration and Sanders Districts

Multilingual "Vote here" signs outside of a polling site in Dyker Heights, Brooklyn.
(Shumita Basu / WNYC)

Jun 22, 2016 · by **John Keefe**, **Jenny Ye** and **Brigid Bergin**

WNYC's analysis **that Hispanics were disproportionally removed from Brooklyn voter rolls** in 2015 has led to many more questions about the list of purged voters, which was obtained by WNYC under the state

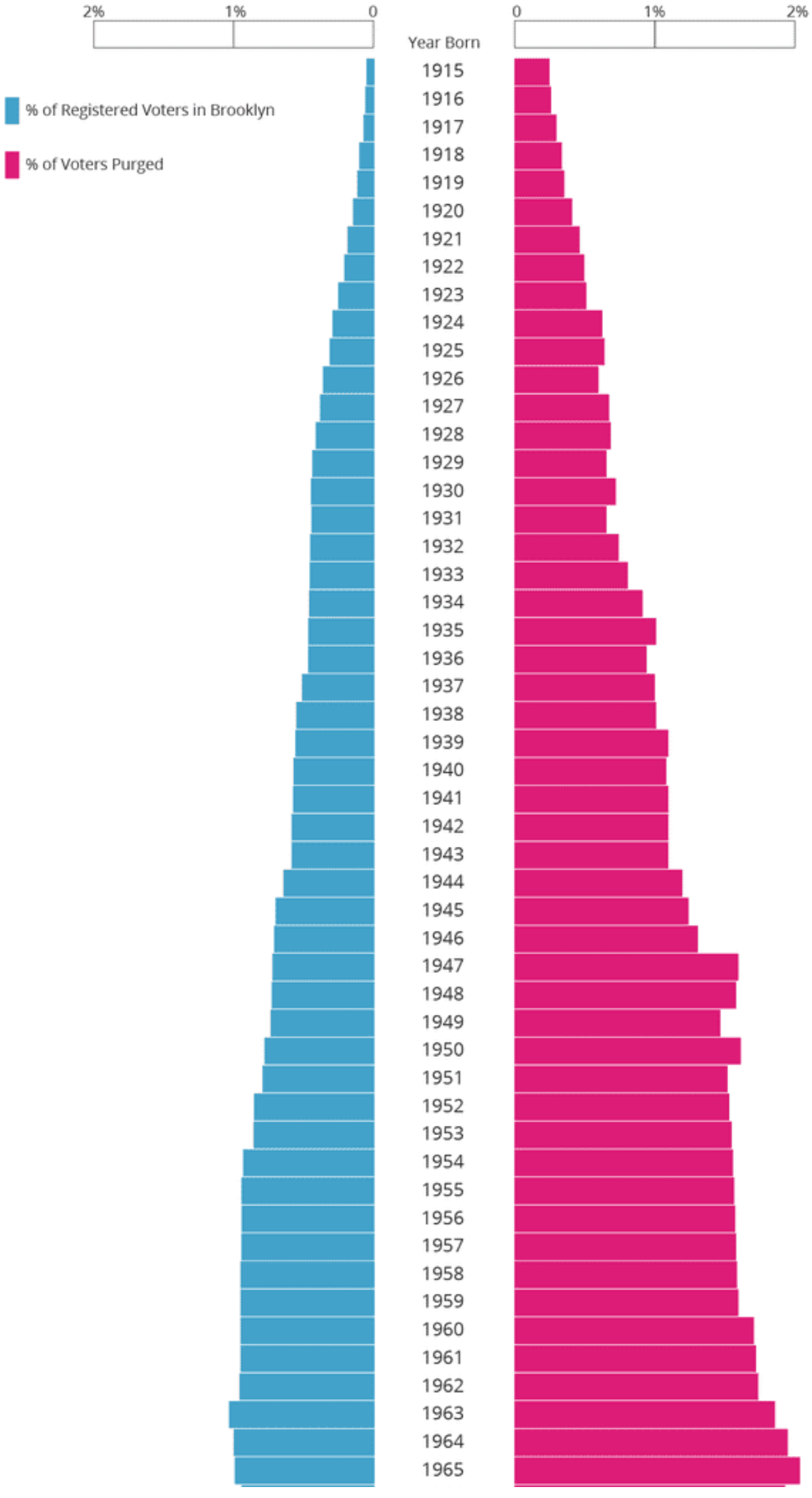
Freedom of Information Law. Here are some of those questions, and some answers.

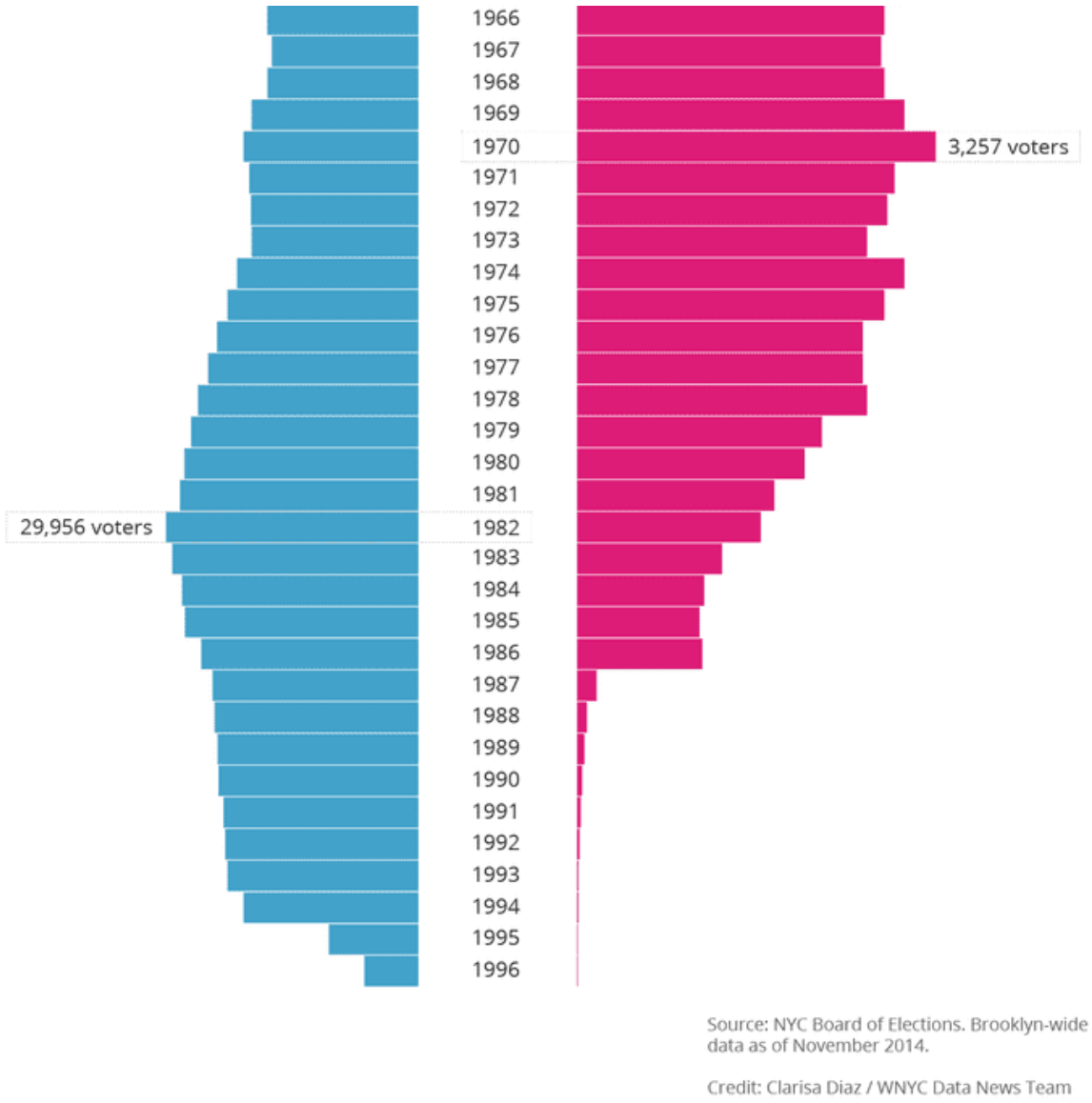
What is the age breakdown of people who were purged?

Election officials initially suggested that the purge cleaned the rolls of hundreds of people who were older than 80, suggesting that they may have died. But 88 percent of the 122,454 people purged were younger than 80 years old at the time of the purge. The median age of those purged was 53.

Among the youngest registered voters, just 1 percent of those on the purge list were under 30, compared to about 15 percent of registered voters under 30 borough-wide as of November 2014.

The Brooklyn Voter Purge, By Birth Year





(WNYC)

For the Brooklyn voter rolls as a whole, the median age was 47. So overall, those purged skewed slightly older than average.

What criteria were used for the purge?

Board of Elections Executive Director Michael Ryan told WNYC he's doesn't know what criteria were used by people in the Brooklyn office to mark names for purging, and that further information about the methods used likely won't be available while state and federal investigations are under way.

He did, however, offer an initial theory: "Near as I can figure it out, the standard was voter inactivity for a period of time and some combination of age."

Looking at the purge list, WNYC found that 96 percent of the people on the list registered by 2008 and either last voted in 2008 or earlier or never voted.

Another 100,000 or so registered voters who also fit those criteria were *not* purged. WNYC looked at the demographics of this set of "unpurged" voters and found they lined up closely with the demographics of those purged. That is, it includes a disproportionate number of Hispanic people.

So if the criteria was people who "registered by 2008 and last voted in 2008 or earlier or never voted," then that criteria appears not to have been applied consistently.

Were the purged voters all Democrats?
No.

Among the purged voters, 64.1 percent (78,536 voters) were Democrats, 10.5 percent (12,821 voters) were Republicans and the rest were registered to other parties or no party.

The makeup of the Brooklyn voter rolls in November 2014, before the purge, was 71.4 percent Democrats and 8.7 percent Republicans.

Did the purge have an impact on Clinton or Sanders voters?
Apparently, yes. Equally.

Maybe.

Here's the deal: We know where Clinton and Sanders won. And we know how many Democrats were purged in each of those election districts. But we don't know *who* the purged voters would have voted for, and we can't be certain how many tried to vote.

All of that said, the Democrats were purged at similar rates in election districts where Clinton won (8.2 percent purged) and where Sanders won (8.4 percent).

In raw numbers, 60,523 Democrats were purged in districts that went for Clinton, and 15,527 were purged where Sanders won.

(Our totals don't account for every Democratic purged voter because some couldn't be matched to any Brooklyn election district, some matched districts where there were no votes in the primary and some were in districts where the candidates tied.)

Clinton beat Sanders in Brooklyn by 57,909 votes, and won New York State by 290,614 votes.

The New York Times

Justice Dept. Seeks to Join Suit Over 117,000 Purged Brooklyn Voters

By Vivian Yee

Jan. 12, 2017

The Justice Department announced on Thursday that it had filed a motion to join a lawsuit against the New York City Board of Elections, alleging that the board's Brooklyn office violated federal voter registration law by erasing more than 117,000 Brooklyn voters from the rolls before the primary election simply because they had not voted in previous elections.

The filing accused the board of failing to take several steps that are normally required before a voter's name is removed, and also raised concerns about how the board oversaw the Brooklyn office's handling of the voter rolls.

The petition by the Justice Department to intervene in a lawsuit filed in November by Common Cause New York, a good-government organization, lends significant muscle to an effort to hold the agency responsible for a chaotic Primary Day in April, when many voters in Brooklyn were surprised and infuriated to learn that their voter registrations had been canceled.

With the filing on Thursday, the Justice Department becomes perhaps the most potent of the government players trying to force changes at the board. The city comptroller, Scott M. Stringer, and the state attorney general, Eric T. Schneiderman, both opened inquiries into the board's procedures after its bungled Primary Day performance, and Mayor Bill de Blasio has called for spending $20 million to improve city voting procedures.

The fallout has already affected one Board of Elections employee: the board's chief clerk in Brooklyn, Diane Haslett-Rudiano, who was suspended shortly after the primary election.

The Justice Department's legal complaint describes how Ms. Haslett-Rudiano's attempt to perform a routine winnowing of the Brooklyn voter rolls went awry: Starting in late 2013 or early 2014, it says, staff members scrubbed the office's voter database for people who had not voted since 2008, neglecting to check whether the voters had died or moved away, as is required by federal law. And more than 4,100 of the flagged voters had, in fact, voted at least once since 2008, according to the complaint.

Ultimately, more than 122,000 voters were flagged for removal, according to the complaint. About 4,470 responded to mailed notices informing them they were about to be purged, leaving about 117,000 voters whom the board went on to remove from the rolls.

Yet another problem followed, the complaint said: The Brooklyn voter database did not sync properly with the state voter database for about six months, leading voters who looked up their registration status in the state database to believe that they were still registered, even though their names had been erased from the Brooklyn list.

Still, the board's director, Michael J. Ryan, insisted soon after the election that no voters had been disenfranchised, through he pledged to cooperate with the investigations.

"Federal law demands careful maintenance of the voter rolls to ensure lists are kept accurate, without unjustifiably and unlawfully purging eligible citizens," Vanita Gupta, the head of the Justice Department's civil rights division, said in a statement in submitting the complaint. "The department appreciates the continued cooperation of the New York City Board of Elections, including proactive steps taken to start remedying violations that have occurred — but more is necessary to reach full compliance with the law."

According to the complaint, also submitted by Robert L. Capers, the United States attorney for the Eastern District of New York, Mr. Ryan has testified that the board is moving toward reinstating the approximately 117,000 people removed from the rolls.

“We are reviewing the issues raised in this litigation and will work with the Department of Justice toward a resolution,” said Nick Paolucci, a spokesman for the city’s Law Department, which is representing the Board of Elections in the lawsuit.

A version of this article appears in print on Jan. 13, 2017, Section A, Page 23 of the New York edition with the headline: Justice Department Seeks to Join Lawsuit Over the Purge of 117,000 Brooklyn Voters

NEWS [/NEWS]

A.G. Schneiderman: Over 220,000 Voters Were Improperly Purged Ahead Of The 2016 Presidential Primary

BY NATHAN TEMPEY [/STAFF/NATHAN-TEMPEY]

JAN. 27, 2017 3:27 P.M. • 85 COMMENTS

Attorney General Eric Schneiderman. EDUARDO MUNOZ ALVAREZ/GETTY

The state Attorney General's Office is asking to join a lawsuit against the city Board of Elections (http://www.gothamist.com/tags/boardofelections), alleging that election officials purged more than 220,000 voters citywide in the two-year period leading up to last April's presidential primary, a figure substantially higher than the 117,000 previously identified purged voters, and a scope more widespread than what was reported earlier, which was confined to Brooklyn. Far from facilitating a massive voter fraud (http://www.gothamist.com/tags/voterfraud) conspiracy of the type fantasized about by our new president (http://www.gothamist.com/tags/donaldtrump), the alleged illegal voter roll excisions seem to have disenfranchised New Yorkers on a massive scale.

Attorney General Eric Schneiderman (http://www.gothamist.com/tags/ericschneiderman) made the filing on Thursday, making him the latest official seeking to weigh in on the allegedly illegal purges after the Justice Department threw its hat in the ring earlier this month (http://gothamist.com/2017/01/13/doj_sues_boe_brooklyn_voter_rolls.php), alleging that the Brooklyn deletions violated the National Voter Registration Act. The filings are part of a lawsuit originally brought by a coalition of civil rights and good-government groups.

Federal and state investigators say administrators at the Brooklyn BOE office removed 117,000 voters without checking to see if they had died or moved away, as required, solely because they had failed to vote since 2008. Schneiderman goes further, saying that similar purges took place at varying scales in all five boroughs, with the full knowledge of senior staff in the BOE central office in lower Manhattan, and that the actions violated state laws as well.

The motion also accuses the Manhattan and Queens borough offices of carrying out a similar purge to the one in Brooklyn, based solely on people's voter activity.

The allegedly wanton voter list pruning followed a scathing December 2013 report (http://www1.nyc.gov/assets/doi/downloads/pdf/2013/dec13/BOE_Unit_Report12-30-2013.pdf) by the Department of Investigation that showed, among other things, that the voter rolls included numerous people who had died, moved, or lost voter eligibility because of a felony conviction. In January 2014, Queens BOE officials allegedly subscribed to Ancestry.com to try to identify voters who had died, and though they allegedly informed top election officials, no one told them to stop.

Also, citywide purges in 2014 and 2015 allegedly claimed at least 103,000 voters who were listed in the postal service's change of address database. According to the state filing, the BOE purged them without a required multi-year notification and check-in process, instead sending them intent-to-cancel notices with a 14-day deadline to avert being purged. Each time, according to the motion, an employee in the BOE information systems office objected to this, once asking in an email, "Are we changing the law?" And each time, officials in the citywide office allegedly ignored him.

AG's Office investigators described several voters whose attempts to vote in the primary were frustrated by these purges, including a Bronx voter erroneously listed in the change of address database. The voter had voted in every election since at least 2000, the filing said, but was purged in 2015 and his affidavit ballot in the primary was ruled invalid, as were 90,000 others (http://gothamist.com/2016/05/10/affidavit_ballots_rejected.php) of the 121,000 cast.

(Scott Lynch/Gothamist)

The Board of Elections is a highly unregulated patronage mill, and it's unsurprising that investigators found that the borough clerks and others charged with managing voter rolls have no formal training in administering the databases or complying with the complex state and federal election laws. On the other hand, probers allege that both party-appointed BOE commissioners and the top executives in their staff at the citywide BOE office had full knowledge of the various purge efforts—the Brooklyn debacle, carried out over two and a quarter years, was dubbed the Brooklyn Project, according to the legal papers—and got periodic updates on each, never stopping to address the projects' illegality.

Two clerks at the Brooklyn office have been suspended without pay in response to the purges there. According to Schneiderman, more than 20 staffers worked on the improper culling.

The proposed Attorney General lawsuit seeks declarations that the BOE violated state and federal law, and orders requiring an audit of cancelled registrations; the creation of training programs and oversight policies; the barring of the use of intent-to-cancel letters without documentation of a voter's ineligibility; and the appointment of a new head of voter registration. The current head, Elizabeth Fossella, is the mother of former Staten Island congressman Vito Fossella (http://gothamist.com/tags/vitofossella), who declined to seek reelection in 2009 after a drunk-driving arrest and the revelation that he had a love child. Beth Fossella has worked at the BOE since 2001, according to WNYC (http://www.wnyc.org/story/attorney-general—schneiderman-negligence-board-elections), and her Linkedin lists several politics-related skills, but none having to do with data administration. She made $116,000 last year, according to payroll records.

Fossella declined to comment, as did a BOE spokeswoman, citing the pending litigation.

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PBS NEWS HOUR

Purge outdated voter rolls? NYC tried it, with bad results

Politics Feb 14, 2017 10:25 AM EDT

NEW YORK — Whether or not you believe that voting fraud is a problem in the U.S., one thing is certain: Tidying up outdated voter rolls is sometimes easier said than done. Just ask election officials in the nation's largest city.

After an independent review found that New York City's voting lists contained people who were dead or in prison, elections officials began an aggressive purge in 2014 and 2015 that eliminated more than 200,000 supposedly invalid registrations.

The result? A record number of complaints during the 2016 presidential primary from legal voters who turned up to cast a ballot, but found that they were no longer registered.

"Democracy itself is under attack," New York Attorney General Eric Schneiderman, a Democrat, declared last week after announcing plans to join a federal lawsuit over the way the purge was handled.

New York City's bungled purge offers a cautionary tale for elected officials, led by President Donald Trump, who warn that inaccurate voter rolls are leading to voter fraud across America.

READ MORE: Trump to launch investigation into unsubstantiated claims of voter fraud

Trump has vowed to establish a commission to examine the situation. Senior policy adviser Stephen Miller sounded the alarm again on Sunday.

"You have millions of people who are registered in two states or who are dead who are registered to vote. And you have 14 percent of noncitizens, according to academic research, at a minimum, are registered to vote, which is an astonishing statistic," Miller said, using a statistic hotly contested by many academics.

He also claimed, without offering evidence, that voters from Massachusetts were illegally bused into New Hampshire during the last election — an allegation denied by New Hampshire Republicans.

It's unclear exactly how many people are registered to vote in America who shouldn't be.

AP report: Trump advances false claim that 3-5 million voted illegally

Federal law requires election officials to remove people after they die or move, but that doesn't always happen in a timely way.

In New York City, the lawsuit said the Board of Elections disregarded several rules governing the maintenance of voter lists.

People who hadn't voted since the 2008 presidential election were sent letters demanding that they verify their status. If they didn't respond within two weeks in some cases, their registration was canceled. City researchers took other unorthodox steps, too, like buying a subscription to the genealogy site Ancestory.com to help verify identities.

Trump and his representatives have repeatedly cited a 2012 Pew Center study that revealed 24 million voter registrations in the U.S. were not valid or "significantly inaccurate." That included 1.8 million dead people listed as eligible to vote.

The study's author David Becker, however, found no evidence of actual voter fraud.

A woman arrives to cast her ballot Nov. 8 during the 2016 U.S. presidential election at a polling station in the Bronx, New York City. , Photo by REUTERS/Saul Martinez.

He says voter registration lists have improved since the report was released. The U.S. Election Assistance Commission reported that nearly 14.8 million names were removed from voter rolls in 2014 for reasons such as death, felony convictions, having moved or failing to respond to confirmation notices.

“The lists are as good as they’ve ever been,” Becker told The Associated Press.

Still, he encouraged election officials to eliminate ineligible registrations. If nothing else, he said, improved voter rolls help to improve confidence in the electoral system.

New York City is hardly alone in its push to root out ineligible voters.

WATCH: Will Trump talk of voter fraud threaten legitimate voter rights?

Republican election officials in Florida and Colorado launched aggressive efforts to eliminate noncitizens and otherwise ineligible voters from their rolls before the 2012 election. But after warning that tens of thousands of noncitizens may have been registered, 141 cases were confirmed in Colorado and 207 in Florida.

“It is to everyone’s benefit to have our rolls clean. But it’s also to our benefit to make sure we’re doing so in a way that doesn’t disenfranchise eligible voters,” said Myrna Perez, deputy director of the Brennan Center’s Democracy program, who authored an extensive study of voter purges in 2008.

Leaving them in a messy state can also undermine confidence. New York Republican Party chairman Ed Cox is among those who are sure it could lead to fraud.

“I think they’re perfectly happy to let some of these names just be on here so they can use them with respect to people voting who shouldn’t vote,” he told The Associated Press. “In an important election they will bring in buses of people from New Jersey and they will take them from poll place to poll place if we don’t have good poll watchers and a good ballot security in place.”

By – **Steve Peoples, Associated Press**

POLITICS

NYC's Board of Elections will admit it purged more than 200,000 voters from city rolls

By ANDREW KESHNER
NEW YORK DAILY NEWS | OCT 24, 2017

State Attorney General Eric Schneiderman (r.) said the city's Board of Elections "illegally purged over 200,000 New Yorkers from the rolls, violating the law and New Yorkers' trust in the institutions meant to protect their rights." (Jefferson Siegel/New York Daily News)

New York City's Board of Elections will acknowledge it broke the law and be making serious changes in its practices, according to the proposed settlement of a legal fight over the purge of more than 200,000 voters from city rolls.

After many Brooklyn residents arrived at the polls during last year's presidential primary to learn they were deemed ineligible to vote, the good government group Common Cause New York filed suit. State Attorney General Eric Schneiderman and the Brooklyn U.S. Attorney's office joined the litigation.

But rather than slug it out in Brooklyn federal court, the sides have been working on a settlement for months.

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Now, a proposed pact slated for filing Wednesday would mandate reforms in the city election agency.

According to WNYC, which first reported the proposed deal, the terms include the Board of Elections acknowledging it broke state and federal law with the purge, and scrutinizing every voter registration removed since July 2013. Another term is the board devising a plan in 90 days for the maintenance of voter rolls.

A proposed pact will mandate reforms in the election agency as well as acknowledgement of their illegal actions. (ANGELA WEISS/AFP/Getty Images)

In a statement, Schneiderman said the city's Board of Elections "illegally purged over 200,000 New Yorkers from the rolls, violating the law and New Yorkers' trust in the institutions meant to protect their rights."

Schneiderman said the proposed settlement "would overhaul NYCBOE's practices for maintaining voter rolls, ensuring that the issues that led to the purges are addressed, and establishing frequent monitoring and oversight. My office will continue to protect all voters' access to the polls and continue to fight to expand voting rights."

A Board of Elections spokeswoman said she could not comment on the matter until a

judge signed off on the settlement.

Topics: eric schneiderman

Published by
WNYC News

City Board of Elections Admits It Broke the Law, Accepts Reforms

Sign directing voters to poll site.
(**Mark Lennihan**) / AP Photo)

Oct 24, 2017 · by **Brigid Bergin**

The New York City Board of Elections is admitting it broke state and federal law when it improperly removed voters from the rolls ahead of the presidential primary last spring, including more than 117,000 voters in Brooklyn.

That's according to a draft consent decree announced Tuesday— nearly a year after the Board was sued in federal court for violating the National Voter Registration Act and state election law.

The Brooklyn voter purge was **first reported** by **WNYC** just days before last spring's primary election.

As a part of the settlement, the Board agreed to a series of remedial measures that will be in place at least through the next presidential election, November 2020 — pending court approval. The deal restores the rights of improperly purged voters and establishes a comprehensive plan to prevent illegal voter purges in future elections.

"I see their willingness to grapple with this problem as a significant step forward," said Susan Lerner, head of the good government group Common Cause New York, the lead plaintiff in the case.

The lawsuit was **originally filed** in November 2016 by the Lawyers Committee for Civil Rights Under the Law, Latino Justice/PRLDEF and Dechert LLP on behalf of Common Cause New York and several individual plaintiffs. In early 2017, both the **Justice Department** and **New York State Attorney General's office** made motions to join the lawsuit.

"The suit was commenced because there were real problems," said Ezra Rosenberg, with the Lawyers' Committee for Civil Rights Under the Law. "People were being kicked off the voter list even though they were eligible to vote in New York City."

The consent decree requires the board to submit a plan to fix how it manages its voter rolls within 90 days. That includes documenting all the procedures associated with list maintenance and identifying specific staff at the central office and in the boroughs to oversee these functions.

The Board must also review every voter registration removed from its lists dating back to July 1, 2013, to identify any voter who was removed in violation of state and federal law. Those voters will be restored to the rolls unless their voter registration has already been updated.

For voters, the Board must also establish a complaint intake process where it records, tracks, investigates, resolves and responds to complaints about voter registration status submitted by voters. The Board will also be subject to monthly and annual reporting requirements, along with semi-annual audits.

All the components of the remedial plan will be subject to input and oversight from the Justice Department, the New York Attorney General's office and the private plaintiffs. If they can't reach an agreement on an adequate plan, any party can return to court to seek relief.

"The right to vote is sacred to our democracy. Yet the NYC Board of Elections illegally purged over 200,000 New Yorkers from the rolls, violating the law and New Yorkers' trust in the institutions meant to protect their rights," New York Attorney General Eric Schneiderman said in statement.

"This proposed settlement would overhaul NYCBOE's practices for maintaining voter rolls, ensuring that the issues that led to the purges are addressed, and establishing frequent monitoring and oversight. My office will continue to protect all voters' access to the polls and continue to fight to expand voting rights," he added.

The Board of Elections declined to comment pending court approval of the consent decree.

46 Comments

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NEWS [/NEWS]

NYC Board Of Elections Admits Wrongdoing In 2016 Election Purge, Agrees To Consent Decree

BY DAVID COLON [/STAFF/DAVID-COLON]

OCT. 25, 2017 9:08 A.M. • 22 COMMENTS

*Voting subject to federal consent decree. CHRISTIAN HANSEN/GOTHAMIST

New York City voters who were purged from voter rolls ahead of the 2016 presidential primary won a court victory on Tuesday as the city Board of Elections agreed to federal oversight following the lawsuit (http://gothamist.com/2017/01/13/doj_sues_boe_brooklyn_voter_rolls.php) over a mass purge of voter rolls that resulted in over 200,000 voters stripped of the right to vote (http://gothamist.com/2017/01/27/schneiderman_boe_200000_purged.php) before that year's primary.

WNYC reports that the city's BOE admitted wrongdoing in the voter purge and agreed to a series of fixes following the mass purge that kicked 120,000 Democratic voters off the rolls (http://gothamist.com/2016/04/19/twice_as_many_brooklyn_democrats_we.php) in Brooklyn alone.

The NYC BOE now has 90 days to submit a plan to the federal government outlining how they'll improve the management of their voter rolls, including the list of staff who will oversee maintenance of the rolls and the procedural steps that will go into said maintenance. Every voter stricken from the rolls since July 1st, 2013 is now subject to a review by the BOE, and unless the voter registration information was already updated, they must be restored to the rolls if their removal violated state and federal laws.

In addition to having to answer monthly and annual reporting requirements on their overhaul efforts, the BOE has to "establish a complaint intake process where it records, tracks, investigates, resolves and responds to complaints about voter registration status submitted by voters."

The changes appear to end a saga that began in April 2016 when voters began finding (http://gothamist.com/2016/04/06/voter_confusion_primary_ny.php) that they had been removed from the state's voter rolls, ahead of the presidential primary. Thousands of would-be voters reported showing up to their polling places only to find themselves left off the voter rolls (http://gothamist.com/2016/04/19/brooklyn_boe_court.php) and either not allowed to vote or forced to fill out affidavit ballots (http://gothamist.com/2016/04/27/ny_primary_disenfranchised.php).

After the group Election Justice USA sued New York State (http://gothamist.com/2016/04/18/voter_registration_lawsuit.php) over the mass purges, the Justice Department joined a suit filed by good government group Common Cause, charging the city BOE with numerous violations of the rules regarding voter list maintenance outlined in the National Voter Registration Act of 1993. Attorney General Eric Schneiderman backed up the DOJ's assessment and joined the suit against the BOE two weeks later. After the story of the settlement came out, Schneiderman tweeted that his office will be (https://twitter.com/AGSchneiderman/status/922921486217650176) "closely monitoring" the BOE's attempts to reform its procedures.

Regardless of the changes the city Board of Elections makes going forward, New York State still has some of the most restrictive voting laws in the country (http://gothamist.com/2017/09/26/ny_party_voter_registration_primary.php), including a lack of same day registration and early voting. In addition, the opportunity to change parties ahead of 2018's pivotal Democratic primary, which will see both Governor Andrew Cuomo and numerous local state Senators up for reelection, passed two weeks ago. The city saw low turnout (http://gothamist.com/2017/09/12/nyc_primary_voting_snafus.php) in this year's local primary, but even the lack of participation still led to issues with voters being told they couldn't be found on the rolls.

#VOTING RIGHTS (/TAGS/VOTING-RIGHTS) **#VOTER PURGE (/TAGS/VOTER-PURGE)**

Do you know the scoop? Comment below or Send us a Tip (mailto:tips@gothamist.com)

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ASIAN AMERICA

New York City Board of Elections Settles Lawsuit Over Voter Purge

The board must review every registration removed from its lists beginning July 1, 2013, identify those improperly purged and reinstate their registrations.

Nov. 2, 2017, 2:17 PM EDT / Updated Nov. 2, 2017, 2:17 PM EDT

By Chris Fuchs

The New York City Board of Elections has agreed to settle a lawsuit that alleged it violated federal law by removing more than 117,000 voters, including Asian Americans and Latinos, from voter rolls because they hadn't cast ballots in past elections.

The consent decree, filed on Tuesday in Brooklyn federal court, requires that the board review every voter registration removed from its lists beginning July 1, 2013, identify those improperly purged, and reinstate their registrations. The board must also devise a plan to address its violations of election law.

File photo of a polling station in New York City, April 19, 2016. ANDREW KELLY / Reuters

It will have 90 days to take these steps from the date the agreement becomes effective.

“The improper removal of voters from the rolls deprives voters of their voice in choosing elected representatives,” acting U.S. Attorney Bridget M. Rohde of the Eastern District of New York said in a statement Tuesday. “The settlement in this case restores that voice and ensures that eligible voters will be heard in the future.”

Common Cause New York, the group that filed the suit, signed off on the settlement, along with the New York State Attorney General’s office and the Justice Department, which both joined the lawsuit. It still requires a judge’s approval.

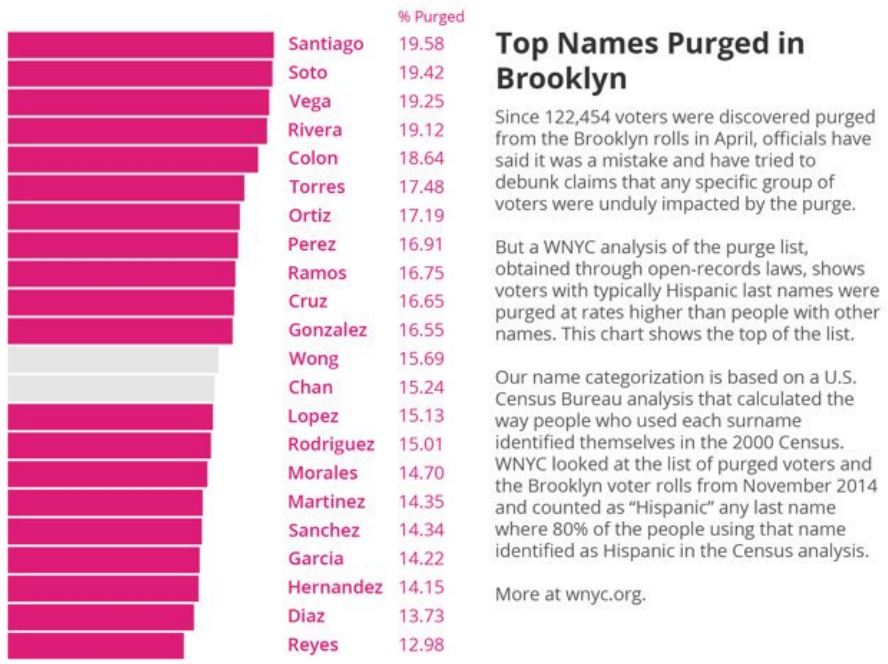
“Voting should be an easily accessible right instead of subject to unnecessary obstacles,” Susan Lerner, executive director of Common Cause New York, said in a statement.

The purge, which came to light in news reports in April 2016 after New York’s presidential primary, was an attempt to “clean up” voter rolls in Brooklyn, according to court filings. Beginning in late 2013 or early 2014, officials sought to remove active-status voters who hadn’t voted since 2008 and whose registration records had no activity since that year, court documents said.

But New York state election law prohibits eliminating voters from registration rolls simply for not voting – unless they’ve been marked as “inactive” for two federal general elections, according to court papers.

The National Voter Registration Act of 1993, which the Justice Department accused the board of violating, also says boards of election “may not remove voters solely by reason of a voter’s failure to vote.”

WNYC EXCLUSIVE: April's voter purge in Brooklyn hit Hispanics the hardest. wny.cc/KjKh301tlK5



18 10:20 AM - Jun 21, 2016

37 people are talking about this

An analysis published in June by radio station WNYC showed that a disproportionate number of cancelled voters were Hispanic. Also high on the list were voters surnamed Wong and Chan, the report found, which are common Chinese last names.

New York's 7th Congressional District bore the brunt of the purge, according to WNYC. Asian Americans make up around 19 percent of the district and Hispanics 39 percent, according to the U.S. Census.

In its wake, several top Brooklyn elections officials were suspended without pay, and board executive director Michael Ryan publicly apologized for the mistake last May.

The board in its settlement agreed, among other things, to establish policies and procedures to ensure voters are not purged from registration lists simply for failing to vote.

It must also submit to semi-annual audits by the New York State Attorney General's Office and provide voter registration data every month to Common Cause New York, the state attorney general, and the federal government, the agreement said.

"Voters across the City will benefit from the improved maintenance of the City's voter rolls the Board of Elections agreed to in this settlement," a city Law Department spokeswoman told NBC News in an email.

A voicemail and email left with the city Board of Elections were also not returned.

Follow NBC Asian America on Facebook, Twitter, Instagram, and Tumblr.

Chris Fuchs

Chris Fuchs is a freelance journalist based in New York. His articles have appeared in *Foreign Policy*, the *Taipei Times,* and in Chinese on ETToday.net, a popular Taiwanese news website.

U.S.

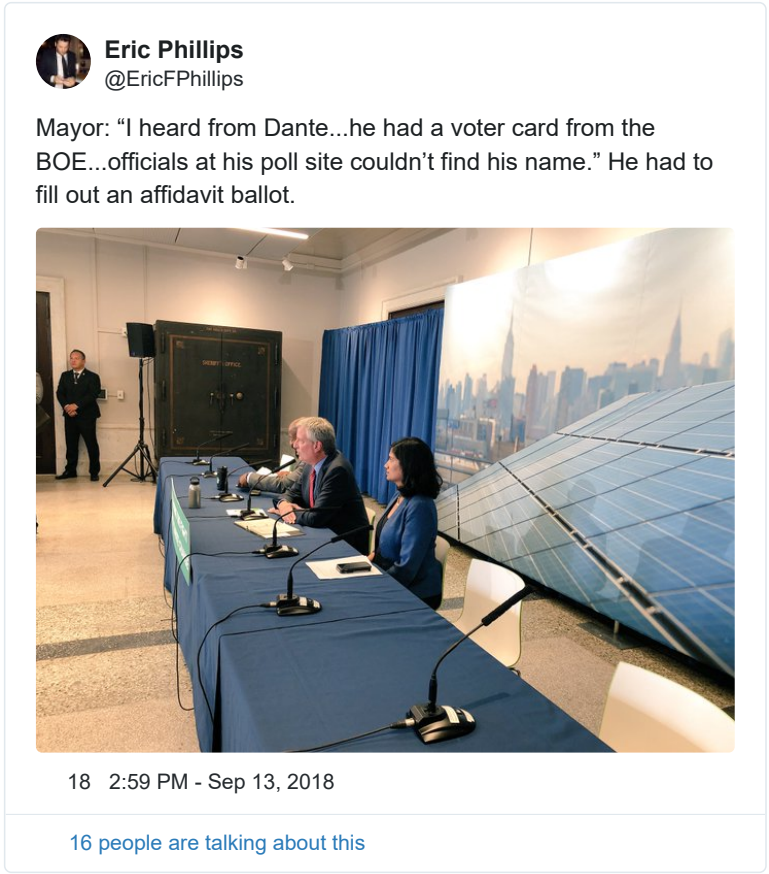
BILL DE BLASIO'S SON AND DOZENS MORE REPORTEDLY PURGED FROM NEW YORK ROLLS

BY DANIEL MORITZ-RABSON ON 9/13/18 AT 5:49 PM EDT

U.S. VOTERS SETTLEMENTS PRIMARIES ELECTIONS

Reports of voter roll purges emerged in New York as residents took to the polls
Dozens of voters said they were forced to cast an affidavit ballot after being t
to the New York State Attorney General's Office and Common Cause.

secretary.



The Attorney General's Office had received 40 calls about on its hotline by 12:00 p.m., Communications Director and Senior Policy Advisor Amy Spitalnick told *Newsweek*. "The majority [of calls] involve voters not being in the rolls," she said.

New York City Board of Elections (BOE) spokeswoman Valerie Vazquez-Diaz told *Newsweek* that the BOE could not verify the grievances without names of claimants. She said the issue was not that voters had been purged, but that people were not registered as Democrats or Republicans, preventing them from casting a ballot in New York primaries. "For me to do it anecdotally, it's impossible. The names that I've been looking up, they're not registered," she said.

A woman arrives at a polling station on New York state's primary election day on September 13. The New York State Attorney General's Office had received 40 calls about voting difficulties by 12:00p.m.

DREW ANGERER/GETTY IMAGES

Common Cause New York Executive Director Susan Lerner rejected those stateme
Election Protection Hotline contradicted Vazquez-Diaz's statements. "We're hearing
registered who voted in the June primary," she said. "We are hearing from people w
sometimes poll workers simply overlook names on their roll lists.

Last year, the NYC BOE reached a settlement after being sued in federal court for
inactivity. The voter purge violated both the 1993 National Voter Registration Act ar

RELATED STORIES

New York Primary Overshadowed by Voting Irregularities

Progressive Ayanna Pressley Hoping to Win Big

Ocasio-Cortez Criticized For Excluding Media

Lerner told *Newsweek* that the number of people indicating their registration had been invalidated was not higher than recent elections. But she described the reported purges "disappointing and concerning," considering the legal agreement, which was intended to rectify New York's burdensome voting process.

"The whole point of the settlement with the board was to prevent these problems," she said. "I would expect to see the number of people improperly removed decrease as a result of our settlement."

Voters in New York documented other issues plaguing the elections, as well. Stony Brook University professor Stephanie Kelton tweeted that voters at her polling station had received misprinted ballots, causing voting machines to reject them. Her post did not indicate where she was voting.

Vox

Why New York City voters rolls were missing names again, explained

"This is a perennial problem."

By Ella Nilsen | ella.nilsen@vox.com | Sep 13, 2018, 3:30pm EDT

Photo by Drew Angerer/Getty Images

As New Yorkers go to the polls to vote in state primary elections Thursday, some voters are finding there's no record of their registration.

That includes some prominent media figures: New York Magazine writer Rebecca Traister and HuffPost Editor in Chief Lydia Polgreen were among those who tweeted their names were missing from the rolls at their local polling places — meaning they can't cast a regular ballot.

Rebecca Traister
@rtraister

Guess who wasn't on the rolls this morning at the polling place I've voted for four years?

4,050 9:07 AM - Sep 13, 2018

1,782 people are talking about this

> Happened to me too. **https://t.co/fUW0J31FJo**
>
> — Lydia Polgreen (@lpolgreen) September 13, 2018

They were far from the only ones. **Others tweeted** about their experiences having to sign an affidavit and cast a provisional ballot for the first time in years. Local New York publication **Gothamist reported "mass confusion"** at some polling stations.

The stakes are high this year — there are contested primaries for major statewide offices, including governor, lieutenant governor, and attorney general. People whose names aren't found on the rolls can still vote, they just have to sign a sworn affidavit validating their identify before they can cast a provisional ballot.

It's tough to know how widespread the problems are. As of noon, **the voting hotline set up by the attorney general's office** had received 40 calls and emails, according to Amy Spitalnick, communications director for the attorney general's office. That number suggests today's issues are not as widespread as they were in the 2016 presidential primary.

The latest reports are a reminder, though, that many voters still don't trust the New York election system. The New York City Board of Elections **illegally purged about 200,000 voters off the city's rolls in 2014 and 2015**, an issue discovered during the 2016 elections. Suspicion around that purge has loomed over every election since, even after the board of elections agreed to clean up its act and institute reforms. And every time there are problems at the polls, this spurs concern and frustration that the city's voting systems are still not up to par.

"This is a perennial problem," said Susan Lerner, executive director of voting rights organization Common Cause New York. "It's very hard to maintain an active voter roll, but in New York City it's particularly challenging because of the large number of voters, the way people move around readily and the fact systems are not user friendly."

The purge in 2014-2015 was massive — and created suspicion

In 2016, the New York Attorney General's office and voting rights groups discovered something alarming; the city board of elections had purged over 200,000 names from the rolls in 2014 and 2015.

The majority of the purged names came from Brooklyn, and **was first reported when local public radio station WNYC**, which found the borough was mysteriously missing 63,558 Democratic voters — about 7 percent of its overall share of Democrats. No other borough had such a significant drop.

After an investigation, the attorney general's office detailed separate purges in a **complaint against the City Board of Elections**; first, the board manually identified and purged the records of over 100,000 voters who had failed to vote or update their forms since 2008, which is illegal under state and federal law.

Second, the board looked addresses in the National Change of Address database, and removed another 100,000 voters from the rolls it suspected to have moved outside of the city. But they did this after giving these voters just 30 days notice, when they were required by state and federal law to keep voters on the rolls for at least two more federal elections after notifying them.

"It was pretty clear that it was frankly, incompetence, on the part of the Brooklyn Board of Election Management," said Lerner. She believes the board undertook the purges as a far-reaching overcorrection after the release of a report showing they had too many voters who had died or moved out of the city.

"In an overreaction to that assertion, the people in charge in Brooklyn went overboard, did not follow the appropriate procedure and took a bunch of people off the rolls," she said.

After investigating, the city and the attorney general's office settled fairly quickly in 2017, and the board of elections agreed to a correction plan it would implement in the years leading up to 2020.

As part of this, the board agreed to restore the voting rights of purged voters, be more transparent, and put down a plan to prevent further unlawful purges. Lerner said she believes the board and the city have put forward a good faith effort to try to correct the issue, but the fact remains such a massive purge leaves suspicion whenever similar problems arise.

Voters whose names were purged from the rolls can still vote — as long as they sign a sworn affidavit to prove their identities, they can file a provisional ballot. Voting rights advocates and the AG's office are urging people to stay in line and go through this process, rather than walking out of their polling booth in frustration.

"Affidavit ballots, every single one is examined," said Lerner. "Every absentee ballot is counted. "In an election like today's election when it seems like many of these races are going to be close, the affidavit and absentee ballots are essential."

WOULD-BE WEATHER FIGHTERS

JURISPRUDENCE

Why Voting in New York Is So Horrifically Screwed Up

Blame a dysfunctional state government, technophobia, and illegal purges.

By MARK JOSEPH STERN
SEPT 13, 2018 • 5:37 PM

A voter enters a Brooklyn polling station on Thursday to vote in New York state's primary election.
Drew Angerer/Getty Images

Slate's expanded voting rights coverage is made possible by the support of Slate Plus members and readers like you.

Voting Rights

Did you show up to vote in New York's primary on Thursday only to be told you were mysteriously missing from the rolls? You're not alone. Throughout the day, New Yorkers reported on Twitter that they were forced to cast provisional ballots because their names weren't on the books at their normal polling places. In an era of widespread voter suppression, it's impossible not to wonder: Have New York's voters been intentionally disenfranchised?

The short answer is yes—but it's not the kind of naked assault on suffrage that we're used to seeing in the South. Rather, New York suppresses the franchise through inertia and bureaucratic incompetence that state legislators in both parties (but mostly Republicans) refuse to fix. The system is designed to maximize errors and confusion, which often collide on Election Day to frustrate qualified voters. If you are one of those unlucky individuals, you can probably still make your vote count. It might just require a herculean effort.

As HuffPost's Sam Levine recently explained, the fundamental flaw in New York's voting system is patronage-fueled gridlock. Each county board of elections, as well as the state board of elections, has four commissioners—two Democrats and two Republicans. These county boards, which set voting procedures for each individual county's elections, are selected for their political loyalty, not their competence. Commissioners often fear that any changes to voting procedures will favor the other party, so they stymie proposed reforms. This scheme was created in 1894, and it's a major reason why elections in the state remain so dysfunctional.

Another problem: New York's voting procedures are startlingly technophobic. Under federal law, the state is obligated to maintain an electronic database of registered voters. Many other states transmit this information to poll workers in the form of electronic poll books. In New York, election officials send the information to a printer, which produces a paper-based book that must be searched manually. Susan Lerner, executive director of Common Cause New York and an expert on the state's voting laws, told me that information may be "lost in translation" on the journey from "electronic database to a paper-based book." Your registration may also have been entered into the system incorrectly, since "it's humans who are entering the information" and "human systems are imperfect."

In addition to these technological and political problems, the state has also illegally targeted voters for mass purges. Common Cause New York sued the state board of elections in 2016 for unlawfully purging about 120,000 Brooklyn voters, a disproportionate number of whom were Hispanic. (Further investigation revealed that the board had illegally purged 200,000 voters since 2014.) Eventually, the board admitted that it broke the law and agreed to adopt remedial measures to prevent a repetition of the chaotic 2016 primary.

Given the tumult on Thursday, however, it's unclear if this settlement really resolved much. Lerner told me she was "expecting fewer problems with people removed from the rolls" as a result of the Common Cause lawsuit, but that as she monitored the situation, it felt like nothing had changed. The root cause of these issues won't be clear, though, unless there's a post-election investigation.

One major obstacle to fixing these recurring issues is the legislature's refusal to pass a suite of reforms known as the New York Votes Act. Ideally, the state would pass automatic voter registration, which registers residents who interact with government agencies unless they opt out. It could also enact same-day registration as well as portable registration, which ensures that a voter stays registered when she moves within the state. At a minimum, New York could catch up with most of the rest of the country and

implement early voting, as well as no-excuse absentee voting. (Right now, voters cannot get an absentee ballot unless they provide a good reason why they can't go the polls on Election Day.)

Instead, the legislature has done nothing. Democratic Gov. Andrew Cuomo purports to support these reforms, but he has declined to fight for them in Albany. Without his vigorous backing, activists say they will never be able to push any legislation through. (To his credit, the governor did launch online voter registration and restored voting rights to some formerly incarcerated citizens.)

In the meantime, if you are one of the many active, registered New York voters who showed up to your polling place on Thursday only to be told that you are not on the rolls, what should you do?

The first step is to ask for the poll worker to check again; she may have simply missed your name when poring over the books. If that doesn't work, you have two options. First, you can fill out a provisional ballot, called an "affidavit ballot" in New York. If election officials later determine that you were removed from the rolls in error, your vote will be counted. If they determine that you were not properly registered, the affidavit ballot will serve as your registration form, and you will be registered for the next election.

Second, you can go to the county board of elections (in New York City, there's one in each borough) and demand to see an election judge. You must tell the judge why you believe you're entitled to vote—because, for instance, you've always voted in this location; you haven't moved; you voted in June's congressional primary, and you're certain you should be in the voter book. The judge can then order that you be allowed to cast a regular ballot, which will be counted. Lerner told me that it doesn't typically take very long to get before a judge, and once you do, "the probability that you will cast a regular ballot is high." But it may be a schlep to trek down to the board on a weekday.

Experts at the national election hotline 1-866-OUR-VOTE are available all day to walk voters through these steps. But there is one important caveat

here: Because New York lacks same-day registration, new voters had to register by Aug. 19, 2018, or mail in their forms by that date if they didn't register in person. Previously registered voters who recently moved had to notify the state of their new addresses by Aug. 24, 2018. (The New York state Constitution provides for a more generous registration cutoff of 10 days before an election, but election officials need more time than that because they have to print out the poll books.)

If you're frustrated with these roadblocks, you could vote out the lawmakers who allow them to remain in place. But you can't do that if you're not allowed to vote. That vicious circle is exactly how New York's awful system has resisted reform all these years. It is a neat illustration of a bug in American democracy: The more a state disenfranchises its residents, the harder it becomes to fight back.

The New York Times

400,000 New Yorkers Were Told Their Voter Registrations Were Inactive. Oops.

By William Neuman

Oct. 16, 2018

Hundreds of thousands of New Yorkers got a letter in recent days warning them of possible problems with their voter registration — sowing confusion and leading many to think the letter was part of a voter suppression scheme.

The letter was actually an initiative by Mayor Bill de Blasio to encourage voting — one of the few new initiatives of his second term.

“You were marked as an inactive voter by the New York City Board of Elections,” the letter said, “but you may still be eligible to vote in the upcoming election.”

It went on to say that inactive voters had until Wednesday to rectify their status by submitting an address-confirmation notice to the Board of Elections or by filling out a new voter registration form.

Many of the people who got the letter, however, were regular voters whose registrations were not inactive. They reacted with alarm and suspicion, saying the letter was confusing and that it was unclear who had sent it.

Jessica Apgar, 40, of Manhattan, had just voted in the primary election last month, so she was suspicious when she received the letter on Monday. She checked the Board of Elections website and saw that it listed her as an active voter.

Then she took to Twitter to inquire if others “got this mistake.” She worried that others might get the letter and be discouraged from voting.

“It wasn’t just panic from my voting rights, it was panic that other people were going to take this and not look into it and maybe just say, ‘Oh well, I just won’t vote.’”

The Board of Elections replied, confirming her active status and distancing itself from the letter.

“This letter was created by an outside entity,” the board said in a Twitter post. “Not sure where they got their info from.”

Mr. de Blasio, who has criticized the Board of Elections in the past for incorrectly purging voters from the rolls and for inefficiency, announced in August that the city would conduct “extensive, nonpartisan outreach to more than 561,000 inactive voters to ensure that they remain registered and to avoid any possibility of removing eligible voters from voter rolls.”

“The Board of Elections has not done a good enough job at communicating with voters,” Mr. de Blasio said at the time on NY1. “The City of New York is going to do that now more and more.” He added that the city had purchased a list of inactive voters that it was using to identify who to reach out to.

On Tuesday, the mayor’s office said that the list came from Civis Analytics, a business and political consultant. Such companies typically buy raw voter data from elections boards and sort and analyze it for their clients.

Efforts to reach Civis officials were unsuccessful. And the mayor’s office sought to blame the Board of Elections on Tuesday.

“It has come to our attention that a very small group of active voters may have received inaccurate letters from the city identifying them as inactive voters,” the mayor’s press secretary, Eric F. Phillips, said in a statement. “We’re working to get to the bottom of why the mailing list used, which originated with the city Board of Elections, seems to have led to this error.”

He acknowledged that people who got the letter might be “understandably confused” and encouraged them to check their registration status online. Raul Contreras, a mayoral spokesman, said that the letter was sent to more than 400,000 people.

The mayor’s office did not explain why the letter went out so close to the apparent deadline for inactive voters to change their status.

It was also not clear whether the mayor’s newly appointed chief democracy officer, Ayirini Fonseca-Sabune, was involved in drafting and sending the letter. Mr. de Blasio announced in February that he was creating the position so someone could lead his efforts to improve the city’s voting system and encourage more New Yorkers to vote and participate in politics; Ms. Fonseca-Sabune was not named to the post until this month.

Michael Ryan, the executive director of the New York City Board of Elections, said on Tuesday that the board had received about 1,100 calls from people inquiring about the letter.

“We were not consulted with respect to the contents of the letter; we were not notified that the letter was going out,” Mr. Ryan said.

“Let’s be clear, a private vendor purchased this list,” he said. “What they do with the data once it’s in their hands is their business, so how they crafted a list of 400,000 people is anybody’s guess.”

Voters can be listed as inactive if mail sent to them is returned to the Board of Elections by the post office because it could not be delivered. Inactive voters are still registered and can vote on Election Day on Nov. 6 with an affidavit ballot.

A version of this article appears in print on Oct. 17, 2018, Section A, Page 22 of the New York edition with the headline: Letter Sent to 400,000 ‘Inactive’ New York Voters

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

COMMON CAUSE NEW YORK, as an organization and on behalf of its members; **BENJAMIN BUSCHER**; **SEAN HENNESSEY**; **REBECCA LIBED**; **ANDREW GERALD**; **SUSAN MILLER**; and **SARAH MILAM**;

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

BOARD OF ELECTIONS IN THE CITY OF NEW YORK; **MARIA R. GUASTELLA**, **FREDERIC M. UMANE**, **JOSE MIGUEL ARAUJO**, **JOHN FLATEAU**, **LISA GREY**, **MICHAEL MICHEL**, **MICHAEL A. RENDINO**, **ALAN SCHULKIN**, **SIMON SHAMOUN**, **ROSANNA VARGAS**, in their official capacities as Commissioners of the Board of Elections in the City of New York; and **MICHAEL J. RYAN**, in his official capacity as the Executive Director of the Board of Elections in the City of New York,

Defendants.

Case No. 1:16-cv-06122-NGG-VMS

[PROPOSED] COMPLAINT IN INTERVENTION

The United States of America, as Plaintiff-Intervenor, alleges:

1. The Attorney General hereby files this complaint on behalf of the United States of America to enforce the provisions of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 52 U.S.C. § 20510(a) and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 112(c) and 1391(b).

PARTIES

4. Plaintiff-Intervenor United States of America seeks declaratory and injunctive relief pursuant to Section 11 of the NVRA, which authorizes the Attorney General to bring suit to enforce this federal statute. 52 U.S.C. § 20510(a).

5. Defendant Board of Elections in the City of New York ("the NYCBOE") is the Board of Elections for the five counties which comprise New York City. The NYCBOE is responsible for activities undertaken in its borough offices in each of those counties and for ensuring that those activities are conducted in compliance with federal and state laws. N.Y. Elec. Law §§ 3-200, 3-212, 3-214, 3-216, 3-300.

6. The NYCBOE is responsible for, among other things, voter registration, voter enrollment, and cancellation of registration. N.Y. Elec. Law §§ 5-200 *et seq.*, 5-300 *et seq.*, 5-400 *et seq.*, 5-500 *et seq.*, 5-600 *et seq.*, 5-700 *et seq*. Adding, changing, canceling, or removing voter registration records is conducted in New York only by local boards of elections, such as the NYCBOE. N.Y. Elec. Law § 5-614(4). The NYCBOE is obligated to comply with the NVRA. 52 U.S.C. § 20507.

7. Defendant Frederic M. Umane is the President of the NYCBOE and a Commissioner of Elections for the NYCBOE and is named only in his official capacity.

8. Defendant Rosanna Vargas is the Secretary of the NYCBOE and a Commissioner of Elections for the NYCBOE and is named only in her official capacity.

9. Defendants Jose Miguel Araujo, John Flateau, Lisa Grey, Michael Michel, Michael A. Rendino, Alan Schulkin, Simon Shamoun, and Maria Guastella are Commissioners of Elections for the NYCBOE and are named only in their official capacities.

10. Defendant Michael J. Ryan is Executive Director of the NYCBOE and is named only is his official capacity.

CAUSE OF ACTION: VIOLATIONS OF SECTION 8 OF THE NATIONAL VOTER REGISTRATION ACT, 52 U.S.C. § 20507

Voter List Maintenance Requirements under the NVRA

11. The NVRA was enacted in 1993 "to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal Office" while "ensur[ing] that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b)(1), (4).

12. Section 8 of the NVRA ("Section 8") addresses state voter list maintenance procedures for federal elections. It prescribes the conditions under which voters may be removed and the procedures states must follow before making those removals. 52 U.S.C. § 20507.

13. Programs to maintain accurate and current voter registration lists must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965. 52 U.S.C. § 20507(b)(1).

14. Programs to maintain accurate and current voter registration lists may not remove voters solely by reason of a voter's failure to vote. 52 U.S.C. § 20507(b)(2).

15. Section 8 permits States to remove the name of a person from the voter registration rolls upon the request of the registrant, and, if State law so provides, for mental incapacity or for criminal conviction. 52 U.S.C. § 20507(a)(3)(A)-(B).

16. Section 8 also requires States to conduct a general voter registration list maintenance program that makes a reasonable effort to remove ineligible persons from the voter rolls by reason of the person's death, or a change in the residence of the registrant outside of the jurisdiction, in accordance with procedures set forth in the NVRA. 52 U.S.C. § 20507(a)(4).

17. Section 8 further specifies the two circumstances under which a state may remove persons from the voter rolls by reason of a change of residence of the registrant outside the jurisdiction. 52 U.S.C. § 20507(d)(1).

18. First, a State can remove the name of a person from the voter registration list on grounds of change of residence based upon the voter's written first-hand confirmation of a change of address to a location outside of the registrar's jurisdiction. 52 U.S.C. § 20507(d)(1)(A).

19. Second, a State can remove the name of a person from the voter registration list on grounds of change of residence based upon reliable second-hand information indicating a change of address outside of the jurisdiction, but may do so only after two other conditions are met:

a. The person fails to respond to a specific confirmation notice sent by the State. 52 U.S.C. § 20507(d)(1)(B)(i). Such confirmation notice must be a postage prepaid and preaddressed return card sent by forwardable mail, on which the registrant may state his or her current address, and which contains specific instructions and information. 52 U.S.C. § 20507(d)(2); and,

b. The person then fails to vote or appear to vote during the period ending on the day after the second federal general election subsequent to the confirmation notice being sent. 52 U.S.C. § 20507(d)(1)(B)(ii).

20. Section 8 provides an example of a source of reliable second-hand information indicating a change of address outside the jurisdiction: change of address information supplied by the United States Postal Service through its National Change of Address ("NCOA") program. 52 U.S.C. § 20507(c)(1)(A). Other possible examples of reliable second-hand information indicating a change of address could include States undertaking a uniform mailing of a voter registration card, sample ballot, or other election mailing to all voters in a jurisdiction, for which the State could use information obtained from returned non-deliverable mail.

21. Section 8 requires States to complete any program, the purpose of which is to systematically remove the names of ineligible voters from the official list of eligible voters, not later than 90 days prior to the date of a primary election or general election for federal office. 52 U.S.C. § 20507(c)(2)(A).

Voter List Maintenance Requirements under New York State Law

22. Under New York Election Law, there are three relevant voter registration statuses assigned to each voter registration record: active, inactive, and purged. N.Y. Comp. Codes R. & Regs. tit. 9, § 6217.9(a)(1)-(3). Active voters are listed in the official pollbook at the voter's polling place and may vote a regular ballot. *Id.* § 6217.9(a)(1). Inactive voters are not listed in the pollbook, but may cast affidavit ballots (and should lawfully be restored to active status as a result). *Id.* § 6217.9(a)(2). Finally, "purged" or "cancelled" voters are not qualified to vote. *Id.* § 6217.9(a)(3).

23. A purged or cancelled voter is a voter who has been removed from the voting rolls for purposes of Section 8 of the NVRA.

24. New York Election Law provides that a board of elections shall cancel a voter's registration if, since the time of his or her last registration, the voter has died or has moved his residence outside the city or county in which he or she is registered. N.Y. Elec. Law § 5-400(a), (e).

25. New York Election Law does not permit boards of elections to remove a voter from the voter registration rolls for failure to vote unless the voter had been in "inactive" status for two federal general elections. N.Y. Elec. Law § 5-400(f). Further, a board of elections may only place a voter in "inactive" status after sending the voter a confirmation notice, which, in turn, may only be sent to voters after the board of elections receives certain types of second-hand information—such as returned mail or a NCOA notice—indicating that the voter's address has changed to an address outside of the city or county in which he or she is registered. N.Y. Elec. Law §§ 5-213(1); 5-712(1)-(2).

Ad Hoc Voter Removal Project in Brooklyn Borough Office, 2013-2015

26. In December 2013, the New York City Department of Investigation ("DOI") reported that some deceased persons, felons, and nonresidents remained on NYCBOE voter rolls even though they were no longer eligible to vote in New York City.

27. The DOI report criticized some of NYCBOE's list maintenance practices and recommended that the NYCBOE review existing cancellation procedures to see if those procedures could be improved.

28. In late 2013 or early 2014, the Chief Clerk of the Brooklyn Borough Office of the NYCBOE ("the Chief Clerk"), met with the Deputy Clerk and other supervisory staff members of the Brooklyn Borough Office to devise a plan to "clean up" the voter rolls in Kings County.

29. The Chief Clerk initiated this "clean up" plan with the intent to remove from the voting rolls any active status voters who had not voted since 2008 and whose voter registration record contained no other activity since 2008.

30. The Brooklyn Borough Office obtained an electronic file containing a list of all registered voters in Kings County from the NYCBOE Management Information Systems Department ("MIS"), which serves as the NYCBOE's information technology department.

31. At the direction of the Chief Clerk, the list of registered voters in Kings County was filtered to include voters who had not voted since 2008. The filtered list – which contained more than 122,000 voters – was then exported into a printable format.

32. Supervisory staff members of the Brooklyn Borough Office distributed printed portions of that filtered list to Brooklyn Borough Office staff members. Using those lists, a Brooklyn Borough Office staff member who was a member of one major political party would search for a voter's name in the NYCBOE's local computerized voter registration database, called Archival for Voter Images and Data ("AVID").

33. Within the AVID system, the staff member looked for any recent activity in the voter's record, such as a change of address, or a change of name, or a request for an absentee ballot.

34. If there was no recent activity in the voter's record, that staff member would mark the voter to be "flagged." A staff member who was a member of the other major political party would then review the first staff member's determination.

35. Where the staff members of the two major political parties agreed there was no activity in a voter's registration record since 2008, the second staff member would "flag" the voter within the AVID system using an application called INFO66 ITC.

36. "Flagging" a voter using INFO66 ITC indicated that the individual voter's registration would later be cancelled by the MIS Department.

37. Upon information and belief, many of the voters flagged for removal were in active registration status and had therefore never been sent a confirmation notice since the time of their last registration.

38. Upon information and belief, the criteria that the Chief Clerk and other Brooklyn Borough Office staff members used to target voters for cancellation did not include the number of federal elections that had taken place since the sending of a confirmation notice predicated on reliable second-hand information of a relevant change of address.

39. Upon information and belief, the Chief Clerk and other Brooklyn Borough Office staff members did not conduct any individualized determinations of whether any of the targeted voters had died or moved out of the jurisdiction based upon reliable first-hand information.

40. Upon information and belief, most of the voters targeted had not voted in any election since 2008. However, over 4,100 of the voters targeted had in fact voted since 2008, indicating that they were targeted based upon other unknown criteria, or were inadvertently targeted.

41. Brooklyn Borough Office staff members carried out this process—which included a staff member of one major political party searching for a voter's record, locating the record, and flagging the record for removal after obtaining agreement from a staff member of the other

major political party as to the lack of activity by the voter since 2008—for over 122,000 voters, one voter at a time, on a daily basis for over a year.

42. Flagging a voter using INFO66 ITC did not immediately cancel a voter's registration in the AVID system. Instead, each voter flagged was first sent an Intent to Cancel ("ITC") notice.

43. New York Election Law requires boards of elections to mail an ITC notice to a voter in certain situations. An ITC notice states that the NYCBOE intends to cancel the voter's registration and gives the voter 14 days to respond. N.Y. Elec. Law § 5-402(2).

44. An ITC notice does not meet the requirements for a confirmation notice as set forth in Section 8 of the NVRA. 52 U.S.C. § 20507(d)(2).

45. An ITC notice is not a "confirmation notice" under New York State law. N.Y. Elec. Law § 5-712.

46. Although the Brooklyn Borough Office staff members manually "flagged" over 122,000 voters for cancellation using the INFO66 ITC application throughout 2014 and into the spring of 2015, the NYCBOE did not mail any ITC notices for these flagged voters until after the May 2015 federal special election held in Brooklyn.

47. On May 26, 2015, the NYCBOE sent ITC notices to a subset of the list of flagged voters in Brooklyn.

48. In or around June of 2015, the NYCBOE sent ITC notices to another subset of flagged voters.

49. Brooklyn Borough Office staff members did not mail the ITC notices to these flagged voters. Instead, due to the unusually large number of ITC notices to be mailed, the MIS

department and staff members working in the Voter Registration Department of the central office of the NYCBOE were responsible for handling these bulk mailings.

50. In total, approximately 4,470 voters of the approximately 122,000 voters who were sent an ITC notice in May and June of 2015 responded to the ITC notice. Brooklyn Borough Office staff members processed these responses, and removed these voters from the list of flagged voters. Accordingly, this group of voter registrations targeted by the Brooklyn Borough Office was not cancelled.

51. Once the ITC mailings were complete, the MIS Department performed a global bulk update of each flagged voter's registration status in AVID, which updated these voters' registration statuses to cancelled.

52. Voters who did not respond to the May 26, 2015 ITC notice were cancelled through a global bulk update on June 18, 2015. Voters who did not respond to the June 2015 ITC notice were cancelled through a global bulk update on July 5, 2015.

53. In total, approximately 117,000 voters did not respond to the ITC notices and had their status changed to "cancelled" in the AVID database on June 18 and July 5, 2015.

54. Once the global bulk update of the 117,000 AVID records was complete, under the normal AVID process, all of these voter status changes should have been sent to NYSVoter, New York's statewide voter registration database.

55. NYSVoter is a "bottom-up" statewide voter registration database administered by the New York State Board of Elections ("SBOE"). That system permits each New York county to conduct list maintenance activities within its local voter registration database (such as AVID in New York City), then transfer data to NYSVoter, the statewide registration database.

56. New York Election Law's implementing regulations require that county voter registration systems must synchronize with NYSVoter at least every 24 hours. N.Y. Comp. Codes R. & Regs. tit. 9, § 6217.4(b).

57. Instead, all but a small number of these 117,000 voter registration status changes in AVID failed to timely upload to NYSVoter.

58. It was not until at least six months later, in the first quarter of 2016, that NYCBOE and SBOE officials discovered this discrepancy between the voters' registration statuses in the AVID database and the NYSVoter database. The NYCBOE and SBOE then took steps to remedy the failure of approximately 117,000 voter registration status changes in AVID to upload to NYSVoter.

59. As a result, for more than six months, the AVID and NYSVoter databases contained conflicting information about the status of 117,000 voter records. In AVID, those voter records indicated that each voter's registration was cancelled; in NYSVoter, those voter records indicated the voter's prior registration status.

60. The failure of the AVID and NYSVoter databases to synchronize for almost six months had several negative consequences for both ordinary voters and elections administrators.

61. First, the SBOE website provides a voter registration search tool that allows registered voters to confirm their voter registration status and look up their polling place. The information contained in the search tool is generated from the NYSVoter database.

62. As a result, the failure of the AVID and NYSVoter databases to synchronize for almost six months prevented affected voters who used the SBOE voter lookup tool during this period from obtaining accurate information about the status of their voter registration.

63. Second, the SBOE publishes voter enrollment statistics by county and status in April and November of each year. The data are generated from the NYSVoter database. Because the 117,000 voter records at issue were not updated in NYSVoter until early 2016, the April 1, 2016 SBOE voter enrollment statistics was the first public report indicating that the voting rolls had dropped significantly in Brooklyn (based on the purge of 117,000 voters).

64. The cancellation of these 117,000 voters caused Kings County to report an 8% decrease in total active registered voters between November 2015 and April 2016, the largest percentage decrease of any county in the State.

65. The failure of the AVID and NYSVoter databases to synchronize for almost six months impaired the ability of the SBOE, the NYCBOE, and the general public to obtain timely and accurate information about the decrease in total active registered voters from the SBOE's voter enrollment statistics until the eve of the April 2016 presidential preference primary election.

66. On or around April 19, 2016, the date of New York State's presidential preference primary election, local news outlets made inquiries to the NYCBOE regarding the large reported drop in total active registered voters contained in the SBOE's April 1 voter enrollment statistics, which in turn prompted NYCBOE Executive Management to examine the reasons for the cancellation of the approximately 117,000 voter registrations.

67. After the April 19, 2016 election had taken place, the NYCBOE determined that the cancellation of the approximately 117,000 voter registrations was contrary to NYCBOE policy, state law, and federal law. The NYCBOE compared affidavit ballots cast during the April 19, 2016 election against the list of 117,000 cancelled voter registrations with the intent of counting affidavit ballots cast by such voters. The NYCBOE's Executive Director later testified

that the NYCBOE has taken steps aimed at reinstating the 117,000 cancelled voter registrations to their prior registration status.

68. On information and belief, the voter removal program as set forth in paragraphs 26-67 was applied only to voter registration records containing a residential address in Kings County, and was not applied to voter registration records containing a residential address in other counties that comprise New York City.

NYCBOE Oversight of Borough Voter Removal Programs

69. No single NYCBOE employee or NYCBOE department is responsible for directing or monitoring list maintenance activity across the entire jurisdiction of New York City to ensure uniformity and compliance with the requirements of Section 8 of the NVRA.

70. NYCBOE list maintenance activities are overseen and executed primarily by individual borough office staff members and members of the MIS Department, including information technology contractors.

71. The NYCBOE does not provide borough office staff members and members of the MIS department with adequate or regular training regarding their obligation to comply with the list maintenance requirements of Section 8 of the NVRA. As a result, many NYCBOE borough office staff members and members of the MIS Department responsible for performing list maintenance activities lack relevant knowledge of their obligations under Section 8 of the NVRA.

72. The NYCBOE lacks adequate systems, procedures, and processes for directing, monitoring, and reporting on individual NYCBOE borough offices' compliance with the requirements of Section 8 of the NVRA.

73. The NYCBOE lacks a comprehensive plan for implementing a general list maintenance program in New York City that complies with the requirements of Section 8 of the NVRA.

74. The deficient oversight of borough voter removal programs set forth in paragraphs 69-73 was a cause of the unlawful removals of voters from the voter rolls set forth in paragraphs 26-68.

75. Unless enjoined by this Court, the deficient oversight of borough voter removal programs set forth in paragraphs 69-73 is likely to result in the same or similar unlawful removals of voters from the voter rolls set forth in paragraphs 26-68.

76. Unless enjoined by this Court, the deficient oversight of borough voter removal programs set forth in paragraphs 69-73 is likely to result in the untimely detection and/or correction of the same or similar unlawful removals of voters from the voter rolls set forth in paragraphs 26-68.

Violations of Section 8 of the NVRA

77. Defendants' actions violated the NVRA's requirement that programs to maintain accurate and current voter registration lists may not remove voters solely by reason of a voter's failure to vote. 52 U.S.C. § 20507(b)(2).

78. Defendants' actions violated the NVRA's requirement that a voter to be removed on grounds of a change of residence based upon reliable second-hand information indicating a change of address outside of the jurisdiction may only be removed if the voter fails to respond to a specific confirmation notice. 52 U.S.C. § 20507(d)(1)(B)(i).

79. Defendants' actions violated the NVRA's requirement that a voter to be removed on grounds of a change of residence based upon reliable second-hand information indicating a

change of address outside of the jurisdiction may only be removed if the voter fails to vote or appear to vote during the period ending on the day after the second federal general election subsequent to the confirmation notice being sent. 52 U.S.C. § 20507(d)(1)(B)(ii).

80. Defendants' actions violated and continue to violate the NVRA's requirement that programs to maintain accurate and current voter registration lists must be uniform and nondiscriminatory. 52 U.S.C. § 20507(b)(1).

81. Defendants' actions violated and continue to violate the NVRA's requirement that the State conduct a general program that makes a reasonable effort to remove the names of eligible voters by reason of the death of the registrant or by reason of a change in the residence of the registrant in accordance with the requirements set forth in Sections 8(b)-(d) of the NVRA. 52 U.S.C. § 20507(a)(4).

82. Unless and until ordered to do so by this Court, the Defendants will not take timely and comprehensive actions necessary to fully remedy the violations and prevent the same or similar violations from recurring.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an ORDER:

(1) Declaring that Defendants have violated Section 8 of the NVRA;

(2) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with them from future non-compliance with Section 8 of the NVRA;

(3) Requiring Defendants, their agents and successors in office, and all persons acting in concert with them, to take all steps necessary to ensure immediate and ongoing compliance with Section 8 of the NVRA; and

(4) Ordering any such additional relief as the interests of justice may require, together with the costs and disbursement in maintaining this action.

Date: January ___, 2017

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

COMMON CAUSE NEW YORK, as an organization and on behalf of its members; **BENJAMIN BUSCHER**; **SEAN HENNESSEY**; **REBECCA LIBED**; **ANDREW GERALD**; **SUSAN MILLER**; and **SARAH MILAM**;

Plaintiffs,

and

UNITED STATES OF AMERICA; and **PEOPLE OF THE STATE OF NEW YORK**;

Plaintiff-Intervenors,

v.

BOARD OF ELECTIONS IN THE CITY OF NEW YORK; **MARIA R. GUASTELLA, FREDERIC M. UMANE, JOSE MIGUEL ARAUJO, JOHN FLATEAU, MICHAEL MICHEL, ALAN SCHULKIN, SIMON SHAMOUN, ROSANNA VARGAS, JOHN WM. ZACCONE,** and **ROBERT SIANO**, in their official capacities as Commissioners of the Board of Elections in the City of New York; and **MICHAEL J. RYAN**, in his official capacity as the Executive Director of the Board of Elections in the City of New York;

Defendants.

Case No. 1:16-cv-06122-NGG-RML

CONSENT JUDGMENT AND DECREE

On or about November 3, 2016, Common Cause New York, Benjamin Buscher and Sean Hennessey filed a Complaint against the Board of Elections in the City of New York, its

Commissioners, and its Executive Director, (collectively, "the NYCBOE") alleging violations of Section 8 of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507. Thereafter, the plaintiffs, together with Rebecca Libed, Andrew Gerald, Susan Miller, and Sarah Milam (collectively, the "Private Plaintiffs"), filed an amended complaint adding claims on behalf of the added plaintiffs. The Private Plaintiffs alleged that the procedures employed by the NYCBOE to remove the names of the individual plaintiffs, members of Common Cause New York, and similarly situated voters, from New York City's official list of registered voters, violated Sections 8(a) and 8(d) of the NVRA, 52 U.S.C. § 20507(a), (d). *See* Priv. Plts.' First Am. Compl. at 2 (ECF Doc. 13).

This Court granted the United States of America ("United States") leave to intervene. (ECF Doc. 22). The United States' Complaint in Intervention alleged that the NYCBOE violated Section 8 of the NVRA by: (1) removing voters from the City's official list of registered voters based solely on a voter's failure to vote, in violation of 52 U.S.C. § 20507(b)(2); (2) removing voters from the City's official list of registered voters without using NVRA-mandated notice and confirmation procedures for voters who are thought to have moved from the jurisdiction, in violation of 52 U.S.C. § 20507(d)(1)(B)(i), (ii); (3) failing to maintain accurate and current voter registration lists in a uniform and nondiscriminatory manner, in violation of 52 U.S.C. § 20507(b)(1); and (4) failing to conduct a general program that makes a reasonable effort to remove the names of eligible voters from a voter registration list by reason of the death of the registrant or by reason of a change in the residence of the registrant in violation of 52 U.S.C. § 20507(a)(4). *See* U.S. Compl. at 14-15 (ECF Doc. 23).

The Court also granted leave to intervene to the People of the State of New York, by its attorney, Eric T. Schneiderman, Attorney General of the State of New York ("NYAG"). (ECF

Doc. 28). The NYAG's Complaint in Intervention alleged that the NYCBOE violated Article 5 of the New York Election Law by: (1) removing voters from a voter registration list solely on the basis of a voter's failure to vote; and (2) immediately removing voters from a voter registration list based on National Change of Address ("NCOA") information, rather than affording those voters two successive federal general elections to confirm their continued eligibility, in violation of N.Y. Election L., §§ 5-400(1), 5-708(5)(c). *See* NYAG Compl. at 40-42 (ECF Doc. 29). The NYAG also alleged violations of Section 8 of the NVRA. *Id*. at 38-40.

The Private Plaintiffs, the United States, the NYAG, and the NYCBOE, through counsel, have conferred and agree that this action should be settled without the delay and expense of litigation. The parties share the goals of: (1) ensuring that New York City residents are not removed from official lists of registered voters absent the procedural safeguards set forth in the NVRA and the New York Election Law, and (2) improving the accuracy of voter registration records through a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of registered voters. Accordingly, the parties have negotiated in good faith and hereby agree to the entry of this Consent Decree as an appropriate resolution of the alleged violations of the NVRA and New York Election Law.

Common Cause/New York, represented by Private Plaintiffs' counsel, recently filed an action against the members of the New York State Board of Elections, *Common Cause/New York v. Brehm*, Case No. 1:17-cv-06770-AJN, in the United States District Court for the Southern District of New York, alleging that Sections 5-213(1), 5-213(2), and 5-712(5) of the New York Election Law, and in particular the movement of eligible voters to inactive status, violates the NVRA. Nothing in this settlement agreement is intended to affect those claims or suggest in any way that Private Plaintiffs agree that Sections 5-213(1), 5-213(2), and 5-712(5) of the New York

Election Law are valid or permissible under the NVRA. While the *Brehm* case is pending and subject to the NYCBOE implementing any changes necessitated by the resolution of that case, Common Cause/New York agrees not to assert claims against the Defendants subject to this Consent Decree for their compliance with Sections 5-213(1), 5-213(2), and 5-712(5) of the New York Election Law.

The United States, the NYAG, the Private Plaintiffs, and the NYCBOE stipulate and agree that:

1. The Court has jurisdiction over this action pursuant to 52 U.S.C. § 20510(a) and 28 U.S.C. §§ 1331, 1345, and 1367.

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 112(c) and 1391(b).

3. The Private Plaintiffs brought suit under the NVRA's private right of action, 52 U.S.C. § 20510, and 42 U.S.C. § 1983. This Court has subject matter jurisdiction over their claims, which arise under federal law. 28 U.S.C. § 1331.

4. The NVRA authorizes the Attorney General of the United States to bring a civil action for such declaratory or injunctive relief as is necessary to carry out the Act. 52 U.S.C. § 20510(a). The United States does not concede the NYAG's authority to bring claims under the NVRA. The United States takes no position on any state law claim raised in this case.

5. The NYAG asserts claims under New York Election Law pursuant to N.Y. Exec. Law § 63(1). The NYAG also asserts claims under the NVRA.

6. The NYCBOE is obligated to comply with Section 8 of the NVRA. 52 U.S.C. § 20507.

7. The NYCBOE is obligated to comply with the New York Election Law.

8. The NYCBOE is responsible for activities undertaken in its borough offices and

for ensuring that those activities comply with federal and state laws. N.Y. Elec. Law §§ 3-200, 212, 214, 216, 300.

9. The Board of Elections in the City of New York and its Commissioners are proper defendants in this action.

10. The NVRA was passed in 1993 "to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal Office" while "ensur[ing] that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b)(1), (4).

11. Section 8 of the NVRA and Article 5 of the New York Election Law each address state voter list maintenance procedures for elections for federal office. 52 U.S.C. § 20507; N.Y. Election L., §§ 5-400 *et seq*., 5-700 *et seq*.

12. Section 8 of the NVRA and Article 5 of the New York Election Law prescribe the conditions under which voters may be removed from voter registration lists and the procedures that must be followed before making those removals. 52 U.S.C. § 20507(a); N.Y. Election L., §§ 5-400 *et seq*., 5-700 *et seq*.

13. Programs to maintain accurate and current voter registration lists must be uniform and nondiscriminatory, and they must comply with the Voting Rights Act of 1965 and Article 5 of the New York Election Law. 52 U.S.C. § 20507(b)(1); N.Y. Election L., § 5-614.

14. Programs to maintain accurate and current voter registration lists may not remove voters from those lists solely because a voter did not vote. 52 U.S.C. § 20507(b)(2); N.Y. Election L., § 5-400(1).

15. Section 8 of the NVRA and Article 5 of the New York Election Law permit removal of the name of a registered voter from the voter registration lists upon the registrant's request, for mental incapacity or for criminal conviction. 52 U.S.C. § 20507(a)(3)(A)-(B); N.Y.

Election L., § 5-400(1)(b), (c), (g).

16. Section 8 of the NVRA and Article 5 of the New York Election Law also require a general voter registration list maintenance program that makes a reasonable effort to remove ineligible persons from the voter registration lists because of the person's death, or because the registrant has moved to another jurisdiction, in accordance with procedures set forth in the NVRA and the New York Election Law. 52 U.S.C. § 20507(a)(4); N.Y. Election L., §§ 5-213, 5-400(1)(e)-(f), 5-712.

17. Section 8 of the NVRA and Article 5 of the New York Election Law further specify the two circumstances under which registered voters may be removed from the voter registration lists because the registrant has moved to another jurisdiction. 52 U.S.C. § 20507(d)(1).

18. First, the name of a person can be removed from the voter registration list on grounds of a change of residence based upon the voter's written first-hand confirmation of a change of address to a location outside of the registrar's jurisdiction. 52 U.S.C. § 20507(d)(1)(A); N.Y. Election L., §§ 5-400(2)(b)-(d).

19. Second, the name of a person can be removed from the voter registration list on the grounds of a change of residence, but only after two other conditions are met:

(a) The registrant fails to respond to a specific confirmation notice prescribed by the State and sent by the NYCBOE. 52 U.S.C. § 20507(d)(1)(B)(i); N.Y. Election L., §§ 5-213, 5-400(1)(f), 5-712(1)-(2). That notice, which must be sent by forwardable mail, also must be a postage prepaid and preaddressed return card on which the registrant may state his or her current address, and which contains specific instructions and information. 52 U.S.C. § 20507(d)(2); N.Y. Election L.,

§ 5-712; and,

(b) The registrant then fails to vote or fails to appear to vote during the period ending on the day after the second federal general election subsequent to the confirmation notice being sent. 52 U.S.C. § 20507(d)(1)(B)(ii); N.Y. Election L., §§ 5-213, 5-400(1)(f).

20. Section 8 of the NVRA and Article 5 of the New York Election Law provide a safe harbor example of a source of second-hand information indicating a change of address outside the jurisdiction: change of address information supplied by the United States Postal Service through its National Change of Address (NCOA) program. 52 U.S.C. § 20507(c)(1)(A); N.Y. Election L., § 5-708(5).

21. Section 8 of the NVRA and Article 5 of the New York Election Law require that any program with the purpose of systematically removing the names of ineligible voters from the official list of eligible voters be completed not later than 90 days prior to the date of a primary election or general election for federal office. 52 U.S.C. § 20507(c)(2)(A); N.Y. Election L. § 5-712(4).

22. The NYCBOE has not complied with the voter list maintenance procedures required by Section 8 of the NVRA and Article 5 of the New York Election Law by:

(a) Violating the NVRA's and the New York Election Law's requirement that programs to maintain accurate and current voter registration lists may not remove voters solely by reason of a voter's failure to vote. 52 U.S.C. § 20507(b)(2); N.Y. Election L. § 5-400(1).

(b) Violating the NVRA's and the New York Election Law's requirement that a voter who is to be removed on grounds of a change of residence may only be removed

if the voter fails to respond to a specific confirmation notice sent by the NYCBOE. 52 U.S.C. § 20507(d)(1)(B)(i); N.Y. Election L., §§ 5-213, 5-400(1)(f), 5-712(1)-(2).

(c) Violating the NVRA's and the New York Election Law's requirement that a voter to be removed on grounds of a change of residence may only be removed if the voter fails to vote or appear to vote during the period ending on the day after the second federal general election subsequent to the confirmation notice being sent. 52 U.S.C. § 20507(d)(1)(B)(ii); N.Y. Election L., §§ 5-213, 5-400(1)(f).

(d) Violating the NVRA's and the New York Election Law's requirement that programs to maintain accurate and current voter registration lists must be uniform and nondiscriminatory. 52 U.S.C. § 20507(b)(1); N.Y. Election L., § 5-614.

(e) Violating the NVRA's and the New York Election Law's requirement that the NYCBOE conduct a general program that makes a reasonable effort to remove the names of eligible voters by reason of the death of the registrant or by reason of a change in the residence of the registrant in accordance with the requirements set forth in Sections 8(b)-(d) of the NVRA, and Article 5 of the New York Election Law. 52 U.S.C. § 20507(b)(1); N.Y. Election L., §§ 5-213, 5-400(1)(e)-(f), 5-712.

(f) Removing named plaintiffs Buscher and Hennessy, and other similarly situated voters, including members of Common Cause New York, from the voter registration list in violation of the federal and state statutory provisions cited above. 52 U.S.C. § 20507; N.Y. Election L., §§ 5-400 *et seq*., 5-700 *et seq.*

WHEREFORE, the parties having freely given their consent, and the terms of this Consent Decree being fair, reasonable, and consistent with NVRA and New York Election Law

requirements, it is hereby ORDERED, ADJUDGED, and DECREED that:

23. Within 90 days of the effective date of this Consent Decree, the NYCBOE shall review every voter registration removed from its registration lists between July 1, 2013 and the effective date of this Consent Decree, and shall identify any voter improperly removed from voter registration lists in violation of Section 8 of the NVRA or Article 5 of the New York Election Law. Upon identifying a voter improperly removed from the registration list, the NYCBOE shall immediately reinstate that voter's registration, excepting any voter who subsequently re-registered to vote or was restored to and remains in active status prior to the effective date of this Consent Decree.

24. The NYCBOE shall develop and implement uniform policies and procedures designed to ensure that:

(a) Voters are not removed from voter registration lists solely by reason of the voter's failure to vote;

(b) Any voters who are improperly removed are restored to their prior registration status except for those who are currently registered to vote;

(c) Voters who are removed from voter registration lists on grounds of a change of residence are only removed in compliance with the requirements set forth in Sections 8(b)-(d) of the NVRA and Article 5 of the New York Election Law. As part of the remedy here, the NYCBOE shall base such removals for change of residence only on either: (1) the voter's written first-hand confirmation of a change of address to a location outside of the registrar's jurisdiction, or (2) some reliable second-hand information indicating a change of address outside of the jurisdiction where the voter also: (a) fails to respond to a specific confirmation

notice prescribed by the State and sent by the NYCBOE that meets the requirements of the NVRA and the New York Election Law, and (b) fails to vote or fails to appear to vote during the period ending on the day after the second federal general election subsequent to the confirmation notice being sent. For purposes of the remedy here, reliable second-hand information can consist of information gleaned from the safe harbor NCOA process; alternatively, other possible examples of reliable second-hand information indicating a change of address can include, but are not limited to, undertaking a uniform mailing of a voter registration card, sample ballot, or other election mailing to all voters in a jurisdiction, such that election authorities can use information obtained from returned non-deliverable mail;

(d) NYCBOE programs or activities designed to protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration lists for elections for federal office are uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965; and

(e) The NYCBOE conducts a general program that makes a reasonable effort to remove the names of eligible voters by reason of the death of the registrant or by reason of a change in the residence of the registrant in accordance with the requirements set forth in Sections 8(b)-(d) of the NVRA and Article 5 of the New York Election Law.

25. As set forth below, the parties envision a three-part strategy to help develop and implement such uniform policies and procedures. Accordingly, the NYCBOE shall, at a minimum:

(a) Create a Comprehensive Remedial Plan for the development and implementation of such uniform policies and procedures, as set forth below;

(b) Designate specific NYCBOE employees to be responsible for the development and implementation of such uniform policies and procedures described in the Comprehensive Remedial Plan, as set forth below; and

(c) Carry out the provisions of the Comprehensive Remedial Plan and comply with the reporting and enforcement obligations, as set forth below.

PART 1: COMPREHENSIVE REMEDIAL PLAN

26. Within 90 days of the effective date of this Consent Decree, the NYCBOE shall create a Comprehensive Remedial Plan to address its violations of election law, including the specific violations outlined in paragraph 22, and to establish an appropriate process to remove the names of voters from registration lists by reason of the death of the registrant or by reason of a change in the residence of the registrant in accordance with the requirements set forth in Sections 8(b)-(d) of the NVRA and Article 5 of the New York Election Law.

27. Within 90 days of the effective date of this Consent Decree, the NYCBOE shall provide counsel for the United States, the NYAG, and the Private Plaintiffs with its draft Comprehensive Remedial Plan. The United States, the NYAG, and the Private Plaintiffs shall have 30 days to respond. If the parties cannot in good faith agree upon the terms of an appropriate Comprehensive Remedial Plan within 30 days of the date the United States, the NYAG, or the Private Plaintiffs provided its response, any party may seek relief from the Court. Responses to any such request for relief shall be filed with the Court within 10 days of the request. Any agreed upon Comprehensive Remedial Plan shall be filed with the Court and, if deemed appropriate by the Court, so ordered.

28. At a minimum, the Comprehensive Remedial Plan shall include the following:

Description of list maintenance program:

(a) The Comprehensive Remedial Plan shall describe in detail all NYCBOE list maintenance procedures, including, but not limited to all of the procedures listed below in paragraph 28(b). Such descriptions shall include, but are not limited to:

(i) A step-by-step account of the actions undertaken in each procedure;

(ii) The role and responsibilities of each employee involved in the procedure;

(iii) The identity, by title, and role of the NYCBOE staff member(s) responsible for oversight of each procedure;

(iv) Where particular procedures work in sequence or in conjunction, explanations as to how the procedures interact, where appropriate;

(v) The elements of each procedure designed to ensure that the records of ineligible voters are accurately identified and that the records of eligible voters are not identified in error;

(vi) The steps by which procedures implemented in the systems of the NYCBOE are reflected in the single, uniform, official, centralized, interactive computerized statewide voter registration list, where appropriate; and

(vii) Where applicable, any additional procedural or technological safeguards implemented for each list maintenance program to ensure compliance with Sections 8(b)-(d) of the NVRA and Article 5 of the New York Election Law.

(b) The procedures described in the Comprehensive Remedial Plan shall include, but

are not limited to:

(i) Returns from Mail Check Procedure (Status A-X Run);

(ii) National Change of Address Procedure (NCOA Run);

(iii) Four-Year Inactive Bulk Run Procedure (Status X-2 Run);

(iv) INFO66 ITC Procedure (INFO66 ITC Run);

(v) Citywide Duplicate Voter Registration Procedure;

(vi) Potential Duplicate Notification from NYSVoter Procedure;

(vii) Deceased Notification from NYSVoter Procedure;

(viii) Other List Maintenance Performed through AVID Voter Registration Function;

(ix) Other List Maintenance Performed through AVID Voter Correction Function;

(x) Voter History Procedure; and

(xi) Duplicate voter check using the Citywide Potential Duplicate Registration Search Report.

(c) Nothing in paragraphs 28(a)-(b) prevents the NYCBOE from changing, consolidating, renaming, adding to, or eliminating the existing list maintenance procedures set forth in paragraph 28(b).

(d) The Comprehensive Remedial Plan shall also describe in detail NYCBOE's procedures for identifying, investigating and reinstating voters improperly removed since July 1, 2013 from the voter registration lists, including, but not limited to, procedures for:

(i) Reviewing information received from voters, NYCBOE staff, the United

States, the NYAG, or the Private Plaintiffs regarding a list maintenance practice that may have improperly removed voters since July 1, 2013, including but not limited to, a registration issue experienced by a particular voter;

(ii) Determining the scope of the list maintenance practice leading to the improper removal, and the number of voters affected by the practice;

(iii) Reinstating and correcting voter records of all voters identified as having been removed by the improper list maintenance practice; and

(iv) Identifying, by title, the NYCBOE staff member(s) responsible for overseeing the investigation of any improper list maintenance procedures.

Reporting timelines:

(e) The Comprehensive Remedial Plan shall provide timelines for each component of NYCBOE's list maintenance program, including, but not limited to:

(i) Where appropriate, establishing timelines and target dates for each step within each procedure, taking into account the anticipated election schedule and the requirements of the NVRA and the New York Election Law to complete voter registration list maintenance programs 90 days prior to federal elections.

(ii) Establishing regular timelines for producing data, which shall include, but is not limited to, the information set forth in paragraphs 37, 38, and 39;

(iii) Establishing a method by which NYCBOE employees will monitor whether scheduled timelines for each procedure are met and if not met, a method for reporting and correcting these issues; and

(iv) Identifying, by title, the NYCBOE staff member(s) responsible for ensuring timely reporting.

Reviewing and evaluating compliance with list maintenance program:

(f) The Comprehensive Remedial Plan shall describe NYCBOE procedures for tracking whether each borough office is conducting list maintenance activity in accordance with Section 8 of the NVRA and Article 5 of the New York Election Law including, but not limited to:

(i) Reviewing data from each borough office, including but not limited to, the data set forth in paragraph 37, and evaluating whether the information reflects potential or actual implementation problems jurisdiction-wide or at any individual borough office or offices;

(ii) Annual auditing of offices' list maintenance procedures;

(iii) Unscheduled, unannounced site visits to review procedures, policies, forms, and training materials related to list maintenance;

(iv) Actions the NYCBOE will take when data, including but not limited to, the data described in paragraphs 37, 38, and 39, auditing, or site visits indicate that a borough is not conducting list maintenance activity in accordance with Section 8 of the NVRA and Article 5 of the New York Election Law;

(v) Identifying, by title, the NYCBOE staff member(s) responsible for reviewing and evaluating compliance;

(vi) Procedural and/or technical changes necessary to prevent manual cancellations of allegedly duplicate registrations when they do not match

on first/last name or date of birth; and

(vii) Procedural and/or technical changes necessary to prevent the initiation of the voter confirmation procedures for voters with returned mail or NCOA notices indicating they have moved to an address within the same precinct.

(g) The Comprehensive Remedial Plan shall provide that election preparation activities shall take preference over systematic list maintenance during the 60 days prior to an election.

Description of complaint intake procedures:

(h) The Comprehensive Remedial Plan shall describe NYCBOE procedures for receiving and responding to voter complaints related to list maintenance activities, including complaints related to voters' registration status. Such description shall include, but not be limited to:

(i) The process by which the NYCBOE receives and tracks complaints from voters;

(ii) The process by which recorded complaints are investigated and resolved by employees at the NYCBOE;

(iii) The process by which voters filing complaints are informed of resolution by the NYCBOE;

(iv) All oversight and auditing conducted by the NYCBOE of the complaint procedures;

(v) The manner in which complaints are tracked by the NYCBOE from receipt to resolution; and

(vi) The identity and role of the NYCBOE staff member(s) responsible for

oversight of the intake procedures.

Technical changes needed to implement list maintenance plan:

(i) The Comprehensive Remedial Plan shall describe technical changes or changes to NYCBOE policy to be made in order to implement the list maintenance plan, including the timeframe for completion and the parties responsible for implementation. At minimum, the plan shall describe:

(i) Technical changes to be implemented to address the inconsistent treatment of merged duplicate voter registration records between the NYSVoter and AVID system;

(ii) Changes to user permissions for the INFO66 ITC manual flagging function;

(iii) Technical and procedural changes designed to prevent transactions performed in AVID from failing to upload to NYSVoter, and to detect and remedy any such transactions that fail to upload;

(iv) Technical changes to the existing electronic complaint tracking database, or, if necessary, the design of a new electronic complaint tracking database that ensures that voter complaints are tracked, as set forth paragraph 28(h)(v), and recorded in an electronically searchable format.

(v) Technical changes needed to track necessary data including, but not limited to, the data set forth in paragraphs 37, 38, and 39; and

(vi) The identity, by title, of the NYCBOE staff member(s) responsible for implementing technical changes.

Training needed to implement list maintenance plan:

(j) The Comprehensive Remedial Plan shall describe the training program to be implemented by the NYCBOE with respect to the NYCBOE's general program of voter list maintenance. At minimum, the plan shall include:

(i) An inventory of existing training manuals and materials;

(ii) A schedule for creating or updating training manuals and materials to implement the list maintenance plan;

(iii) Training requirements and timelines for each type of employee involved in the voter list maintenance program;

(iv) A description of the mechanism by which the relevant NYCBOE supervisory staff member will monitor whether each employee has met his or her training requirements; and

(v) The identity, by title, of the NYCBOE staff member(s) responsible for implementing the training program.

PART 2: DESIGNATE RESPONSIBILITY TO SPECIFIC NYCBOE EMPLOYEES

29. To help implement the Comprehensive Remedial Plan, the NYCBOE shall designate specific employees as coordinators, as described below. As for any coordinator position required by this Consent Decree, the NYCBOE need not hire new employees to fill those positions, but may designate current employees to these positions.

List Maintenance Coordinator(s):

30. Within 60 days of the effective date of this Consent Decree, the NYCBOE shall designate one or more "NVRA List Maintenance Coordinator(s)" (hereinafter "List Maintenance Coordinator(s)") in the central office of the NYCBOE. The NYCBOE will include the name(s)

of the designated List Management Coordinator(s) in the Comprehensive Remedial Plan. The List Maintenance Coordinator(s) will be responsible for coordinating NYCBOE list maintenance efforts across the jurisdiction, as described below. The NYCBOE shall designate a new List Maintenance Coordinator within 45 days of a vacancy.

31. Within 90 days of the effective date of this Consent Decree, the NYCBOE shall designate one or more employees to serve as the "NVRA List Maintenance MIS Coordinator(s)" (hereinafter "MIS Coordinator(s)") in the Management Information Systems office of the NYCBOE to assist the List Maintenance Coordinator(s) with technological requirements, as described below. The NYCBOE shall designate a new MIS Coordinator within 45 days of a vacancy.

32. Within 90 days of the effective date of this Consent Decree, the NYCBOE shall designate one or more employees to serve as "NVRA List Maintenance Borough Office Coordinators" (hereinafter "Borough Office Coordinators") in each of the NYCBOE's five borough offices to supervise list maintenance activities in each borough office. Borough Office Coordinators shall report to the List Maintenance Coordinator(s), as described below. The NYCBOE shall designate a new Borough Office Coordinator within 45 days of a vacancy.

33. The NYCBOE shall notify the United States, the NYAG, and the Private Plaintiffs of the identity of the List Maintenance Coordinator(s), MIS Coordinator(s), and all Borough Office Coordinators upon their designation.

Duties of List Maintenance Coordinator(s):

34. The List Maintenance Coordinator(s) duties shall include, but not be limited to:

(a) Coordinating and overseeing NYCBOE list maintenance practices in compliance with Section 8 of the NVRA, Article 5 of the New York Election Law and the

provisions of this Comprehensive Remedial Plan as described in paragraphs 28(a)-(b) (list maintenance procedures), 28(e) (reporting timelines), 28(f) (review and evaluation of list maintenance program), and 28(j) (training);

(b) Ensuring uniformity and consistency of list maintenance practices at all borough offices;

(c) Ensuring that Borough Office Coordinators complete their NVRA and New York Election Law responsibilities accurately and on time, and providing assistance as necessary;

(d) Providing Borough Office Coordinators with reminders and updates regarding such responsibilities at least two times per year;

(e) Administering the training program to be implemented by the NYCBOE as set forth in the Comprehensive Remedial Plan and as described below;

(i) Initial Training:

(1) Within 30 days of the effective date of the approval of the Comprehensive Remedial Plan, providing training to the MIS Coordinator(s) on NVRA and New York Election Law compliance responsibilities and the obligations of the MIS Office;

(2) Within 45 days of the effective date of the approval of the Comprehensive Remedial Plan, providing training to Borough Office Coordinators on NVRA and New York Election Law compliance responsibilities;

(3) Within 45 days of the training referenced in paragraph 34(e)(i)(1), coordinating and attending the initial training session held by the

MIS Coordinator(s) on NVRA and New York Election Law compliance responsibilities and the obligations of the MIS Office; and

(4) Within 45 days of the training referenced in paragraph 34(e)(i)(2), coordinating and attending the initial training sessions held by each of the Borough Office Coordinators on NVRA and New York Election Law compliance responsibilities;

(ii) Ongoing Training:

(1) Coordinating and attending all mandatory annual NVRA and New York Election Law trainings provided by the MIS Coordinator(s) for all MIS office employees who participate in list maintenance activities or have other NVRA and New York Election Law responsibilities; and

(2) Coordinating and attending all mandatory annual NVRA and New York Election Law trainings provided by Borough Office Coordinators for all borough office employees who participate in list maintenance activities or have other NVRA and New York Election Law responsibilities;

(f) Administering procedures for tracking whether each borough office is conducting timely and accurate list maintenance activity in accordance with Section 8 of the NVRA and Article 5 of the New York Election Law as set forth in the Comprehensive Remedial Plan;

(g) Determining the need for corrective action jurisdiction-wide or at any individual

borough office or offices to ensure compliance with Section 8 of the NVRA, Article 5 of the New York Election Law, and this Consent Decree and, if necessary, directing implementation of any corrective action within 30 days of identifying the need for such action;

(h) Overseeing the implementation of technical changes or changes to NYCBOE policy to be made in order to implement the list maintenance plan as set forth in the Comprehensive Remedial Plan; and

(i) Providing the information set forth in paragraph 37 to the United States, the NYAG, and the Private Plaintiffs for each month that this Consent Decree remains in effect.

Duties of MIS Coordinator(s):

35. The MIS Coordinator(s) duties shall include, but not be limited to:

(a) Providing the List Maintenance Coordinator(s) with all technological assistance necessary to implement the Comprehensive Remedial Plan;

(b) Assisting the List Maintenance Coordinator(s) in administering the training program to be implemented by the NYCBOE with respect to the NYCBOE's general program of voter list maintenance as set forth in the Comprehensive Remedial Plan, to include:

(i) Attending mandatory training provided by the List Maintenance Coordinator(s) as referenced in paragraph 34(e);

(ii) Attending the training for Borough Office Coordinators described in paragraph 34(e);

(iii) Attending all mandatory annual NVRA and New York Election Law

trainings for borough office employees who participate in list maintenance activities or have other NVRA and New York Election Law responsibilities in order provide technical assistance, including the first such trainings as described in paragraph 34(e);

(iv) Providing NVRA and New York Election Law training to all new MIS employees who participate in list maintenance activities within 30 days after the new employee's start date as described in paragraph 34(e);

(v) Providing NVRA and New York Election Law refresher training to all MIS employees who participate in list maintenance activities on an annual basis as described in paragraph 34(e); and

(vi) Certifying to the List Maintenance Coordinator(s) that all MIS employees who participate in list maintenance activities received annual training;

(c) Assisting the List Maintenance Coordinator(s) in administering the procedures for tracking whether each borough office is meeting its reporting timelines and conducting list maintenance activity in accordance with Section 8 of the NVRA and Article 5 of the New York Election Law as set forth in the Comprehensive Remedial Plan; and

(d) Providing technical assistance to Borough Office Coordinators;

Duties of Borough Office Coordinators:

36. Borough Office Coordinators duties shall include, but need not be limited to:

(a) Coordinating and overseeing Borough Office compliance with Section 8 of the NVRA, Article 5 of the New York Election Law, and the Comprehensive Remedial Plan;

(b) Coordinating Borough Office compliance with the reporting deadlines set forth in the Comprehensive Remedial Plan and paragraphs 37, 38, and 39;

(c) Notifying the List Maintenance Coordinator(s) and the MIS Coordinator(s) as soon as practicable of any implementation problems, training needs, and recommendations for improvement of list maintenance activities;

(d) Assisting the List Maintenance Coordinator(s) in administering the training program to be implemented by the NYCBOE with respect to the NYCBOE's general program of voter list maintenance as set forth in the Comprehensive Remedial Plan, to include:

(i) Attending training provided by the List Maintenance Coordinator(s) and the MIS Coordinator(s) for Borough Office Coordinators described in paragraph 34(e);

(ii) Providing mandatory NVRA and New York Election Law training to all borough office employees at their site who participate in list maintenance activities or have other NVRA and New York Election Law responsibilities as described in paragraph 34(e);

(iii) Providing mandatory annual NVRA and New York Election Law refresher training to all borough office employees who participate in list maintenance activities at their site as described in paragraph 34(e);

(iv) Providing NVRA and New York Election Law training to all new borough office employees who participate in list maintenance activities at the site within 30 days after the new employee's start date as described in paragraph 34(e); and

(v) Certifying to the List Maintenance Coordinator(s) that all borough office employees who participate in list maintenance activities received annual training.

PART 3: REPORTING OBLIGATIONS AND ENFORCEMENT REMEDIES

NYCBOE Monthly Reporting Obligation:

37. Beginning 120 days from the effective date of this Consent Decree and until the termination of this Consent Decree, the NYCBOE shall, on the 15th day of the month (or the next business day), provide the United States, the NYAG, and the Private Plaintiffs a report in a Comma Separated Values (.csv), Excel Binary (.xls), or Excel Workbook (.xlsx) format, containing the following data broken down by each borough office for each month that this Consent Decree remains in effect:

(a) The number of active voters;

(b) The number of inactive voters;

(c) The number of voter registrations transferred within the NYCBOE's jurisdiction, broken down by source of information indicating a voter's address has changed, including but not limited to:

(i) NCOA Notice;

(ii) Returned Mail; and

(iii) Voter Registration Application;

(d) The number of voter registrations changed from active to inactive status, broken down by source of information indicating voter's address has changed, including but not limited to:

(i) NCOA Notice – No Forwarding Address;

(ii) NCOA Notice – Forwarding Address Outside of Jurisdiction;

(iii) Returned Mail – No Forwarding Address; and

(iv) Returned Mail – Forwarding Address Outside of Jurisdiction;

(e) The number of voter registrations changed from active to cancelled status, broken down by grounds for cancellation, including but not limited to:

(i) Request of registrant, based upon submission of voter registration in another New York jurisdiction;

(ii) Request of registrant, based upon other confirmation in writing; and

(iii) Death of the registrant;

(f) The number of voter registrations changed from inactive to cancelled status, broken down by grounds for cancellation, including but not limited to:

(i) Change of address based upon second-hand information, no response to confirmation notice;

(ii) Change of address based upon second-hand information, affirmative response to confirmation notice;

(iii) Request of registrant, based upon submission of voter registration in another New York jurisdiction;

(iv) Request of registrant, based upon other confirmation in writing; and

(v) Death of the registrant;

(g) The number of voter registrations changed from inactive to active status, broken down by grounds for activation, including but not limited to:

(i) Return of confirmation notice;

(ii) Voting or appearing to vote in an election; and

(iii) Submission of New Voter Registration Form;

(h) The number of voter registration records contained in each of the following categories of the NYSVoter Duplicate Maintenance Report:

(i) Potential Duplicate;

(ii) Marked Duplicate;

(iii) Marked Non-Duplicate;

(iv) No Action <= 30 Days;

(v) No Action >= 30 Days;

(vi) Purged Voters; and

(vii) Purged by County EMS;

(i) The number of voter registration records contained in each of the following categories of the NYSVoter Deceased Maintenance Report:

(i) Potential Deceased;

(ii) Marked Deceased;

(iii) Marked Non-Deceased;

(iv) No Action <= 30 Days;

(v) No Action >= 30 Days;

(vi) Purged Voters; and

(vii) Purged by County EMS;

(j) The number of voter registration records flagged for INFO66 broken down by the grounds for flagging.

NYCBOE Semi-annual Audit:

38. The NYCBOE shall submit to semi-annual audits by the NYAG of its list

maintenance activities each year this Consent Decree is in effect to ensure compliance with Article 5 of the New York Election Law and Section 8 of the NVRA. On February 15 and August 15 of each year, the NYCBOE shall produce a data file to the NYAG and to the United States that contains individual voter files removed from the voter rolls over the preceding six months. The data file shall include a representative sample of voters removed pursuant to each of the procedures listed in Paragraph 28(b), but shall not include less than 1% of voters cancelled pursuant to each procedure. After reviewing the data file, the NYAG, in consultation with the United States, shall provide written notice of any potential list management errors it identifies to the NYCBOE, and the NYCBOE shall investigate those potential errors pursuant to the procedures developed under Paragraph 28(d).

NYCBOE Annual Reporting Obligation:

39. On or before March 1 of each year this Consent Decree is in effect (or the next business day), the NYCBOE shall file with the Court a report reflecting activity from the prior calendar year, which shall include, but need not be limited to, the following components:

(a) A summary of efforts to implement each of the provisions and requirements of this Consent Decree, including the results of the NYCBOE's own internal tracking, audits, site visits, and calls, as provided in the Comprehensive Remedial Plan;

(b) A description of any corrective action plans devised and implemented pursuant the Comprehensive Remedial Plan;

(c) Updated copies of all new or revised NVRA and New York Election Law procedures, rules, regulations, publications, and training materials used in the preceding reporting period or to be used in the future reporting periods;

(d) A report to the United States, the NYAG, and the Private Plaintiffs for each election during the prior calendar year of the following data broken down by each borough office. The NYCBOE shall provide such information in a Comma Separated Values (.csv), Excel Binary (.xls), or Excel Workbook (.xlsx) format:

(i) The number of provisional ballots cast by individuals whose voter registrations were in inactive status, broken down by source of information indicating voter's address has changed, including but not limited to:

(1) NCOA Notice – No Forwarding Address;

(2) NCOA Notice – Forwarding Address Outside of Jurisdiction;

(3) Returned Mail – No Forwarding Address; and

(4) Returned Mail – Forwarding Address Outside of Jurisdiction;

(ii) The number of provisional ballots cast by individuals whose voter registrations were in cancelled status, broken down by grounds for cancellation, including but not limited to:

(1) Change of address based upon second-hand information, no response to confirmation notice;

(2) Change of address based upon second-hand information, affirmative response to confirmation notice;

(3) Request of registrant, based upon submission of voter registration in another New York jurisdiction;

(4) Request of registrant, based upon other confirmation in writing;

(5) Death of the registrant; and

(6) Duplicate registrant.

Enforcement Remedies:

40. Parties shall have the right to contact the Executive Director or Deputy Executive Director of the NYCBOE or their designees, with notice to counsel for the NYCBOE, regarding enforcement of this agreement. Nothing in this Consent Decree is intended to limit the ability of any party to contact NYCBOE officials or employees in connection with conducting Election Day hotlines, Election Protection activities, or any election monitoring activities by the United States, nor is any provision of this Consent Decree intended to prohibit or limit the United States from contacting any person as authorized by law.

41. The United States, the NYAG, or the Private Plaintiffs may object to any rule, regulation, form, plan, report, or document submitted by the NYCBOE pursuant to this Consent Decree on the ground that it does not comply, or is not sufficient to ensure compliance, with the NVRA, the Election Law, or this Consent Decree. The United States, the NYAG, or the Private Plaintiffs may also object to any action or inaction by the NYCBOE on the ground that it does not comply, or is not sufficient to ensure compliance, with the NVRA, the New York Election Law, or this Consent Decree.

(a) The United States, the NYAG, or the Private Plaintiffs shall provide the Defendants with written notice detailing any objection it may have.

(b) The parties shall make a good-faith effort to resolve the concerns of the United States, the NYAG, or the Private Plaintiffs.

(c) If the parties are unable to resolve any differences within 30 days after such written notice is sent to the NYCBOE, the United States, the NYAG, or the Private Plaintiffs may seek redress before this Court.

42. The parties to this Consent Decree must employ best efforts to defend this Consent Decree against any legal challenge.

43. This Consent Decree shall take effect once it has been approved by the Court and entered upon the docket ("the effective date").

44. This Consent Decree may be terminated upon written agreement by the parties or a determination by the Court that the NYCBOE has complied with the terms of the Consent Decree, but shall not be eligible for termination until at least 30 days after the date of the second general election for Federal Office following the effective date of the Consent Decree ("the minimum term").

45. To demonstrate that it has complied with the Consent Decree, after the expiration of the minimum term the NYCBOE shall provide a report (the "Compliance Report"), with appropriate documentation, to counsel for the United States and the NYAG, with a copy to the Private Plaintiffs, that establishes the NYCBOE's compliance with the Consent Decree and that the NYCBOE has the means and intent to continue to comply with Section 8 of the NVRA.

(a) The United States and the NYAG shall each review the Compliance Report to determine in good faith whether the NYCBOE has complied with the Consent Decree. A conclusion of compliance may not be unreasonably withheld. The United States and the NYAG shall each provide their compliance determination to the NYCBOE within 90 days of receipt of the Compliance Report.

(b) If the United States and the NYAG agree that compliance has been achieved, they shall, on notice to the Private Plaintiffs, file a stipulation with the Court to terminate the Consent Decree.

(c) If the Private Plaintiffs disagree with the NYAG, the United States, and the

NYCBOE that compliance has been achieved, they may file a motion with this Court to extend the Consent Decree. In such a proceeding to extend the Consent Decree, the Private Plaintiffs bear the burden of proof to demonstrate, by a preponderance of the evidence, the existence of current and ongoing violations of the provisions of the NVRA or the New York Election Law addressed by the Comprehensive Remedial Plan. The NYCBOE shall not unreasonably withhold discovery from the Private Plaintiffs in such a proceeding.

46. If the United States or the NYAG determines that the NYCBOE has not complied with the Consent Decree, and the NYCBOE disputes this conclusion, or if the United States or the NYAG does not make a compliance determination pursuant to Paragraph 45(a), the United States, the NYAG, and the NYCBOE shall meet and confer. The NYCBOE may thereafter file a motion with this Court seeking appropriate relief, including termination of the Consent Decree.

(a) The NYCBOE shall provide at least 45 days' notice to the United States, the NYAG, and the Private Plaintiffs before filing such a motion. Failure to provide this notice, without obtaining the consent of the United States, the NYAG, the Private Plaintiffs, or the Court for a shorter notice period, shall result in the automatic rejection of the NYCBOE's application without consideration of its merits.

(b) In such a proceeding to terminate the Consent Decree, the burden of proof rests upon the NYCBOE based upon a preponderance of the evidence.

(c) If the NYCBOE's motion to terminate is granted, it shall immediately be relieved of all reporting obligations set forth in this Consent Decree.

(d) If the NYCBOE's motion to terminate is denied, the NYCBOE may renew its

motion one year after the date of denial, upon 45 days' notice to the United States, the NYAG, and the Private Plaintiffs.

47. The NYCBOE shall retain voter registration and list maintenance records related to the terms of this Consent Decree for the time periods provided in 52 U.S.C. §§ 20507(i) and 20701. This shall include training materials and other documents related to the NYCBOE's list maintenance obligations under the NVRA and the New York Election Law. The NYCBOE shall make these records available to counsel for the United States, the NYAG, or the Private Plaintiffs upon request.

48. The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement.

49. As between the NYCBOE, the NYAG, and the United States, each party shall bear all of its own costs, expenses, and attorney's fees.

50. The NYCBOE acknowledges that the Court, in its discretion, may award Private Plaintiffs reasonable attorney's fees and costs if they are determined to be prevailing parties in this litigation. The NYCBOE and Private Plaintiffs retain their respective rights with respect to this issue but hope to resolve it amicably pursuant to a separate agreement.

The undersigned agree to entry of this Consent Decree.

Date: _____

Respectfully submitted,

For UNITED STATES OF AMERICA:

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EXHIBIT P

ADVERTISEMENT

Data mix-up from Ark. secretary of state purges unknown number of eligible voters

BY Benjamin Hardy ON July 25, 2016 12:36 pm

0 comments

DISFRANCHISED: Some Arkansans could be in for an unhappy surprise on Election Day. BRIAN CHILSON

Make sure to read the story in today's Democrat-Gazette from Chelsea Boozer about a bureaucratic error that has flagged thousands of Arkansas voters to be removed from the registration rolls.

Those affected include some ex-felons now eligible to vote, as well as some 4,000 people who have never been convicted of a felony but were somehow mistakenly flagged as such in the **Arkansas Crime Information Center**, Boozer reports. It's not yet clear how many of those flagged have actually been kicked off the voter rolls.

Under Arkansas law, felons are ineligible to vote until they've completed parole or probation and paid all fines or restitution. The office of **Arkansas Secretary of State Mark Martin** regularly sends state-level data regarding felons to the **county clerks** in the state's 75 counties. Those local officials are the authorities actually responsible for registration of voters and maintenance of the rolls. But the secretary of state's office recently sent a batch of flawed data from the ACIC that contained thousands of incorrect flags.

That means — depending on the whether the clerk diligently cross-checked the data to ensure its reliability — some counties in the state may have accidentally disfranchised a large number of voters. Boozer talked to **Pulaski County Clerk Larry Crane**, who said that perhaps half of the 2,000 flags his

There's talk of a lawsuit. The article doesn't mention this, but let's also not forget that black people represent a disproportionate amount of the ex-felon population. It would be interesting to see a racial breakdown of those flagged incorrectly.

I called secretary of state spokesperson Chris Powell this morning to ask about the issue. The office's **elections division** has already told counties about the problem, he told me, and the division will keep working with the county clerks and ACIC in the weeks ahead.

But it doesn't sound as if the secretary of state's office will be making a proactive effort to identify individuals who may have been disfranchised. It is understood, Powell said, that clerks "need to check that data carefully." The office will work with the clerks on a county-by-county basis, he said. "We house the data, but they are the official voting registrars of their county. We do not add or remove anyone [from the voter rolls]."

But might some counties not realize the extent of the problem? According to Boozer, the problem arose when the secretary of state's office switched from using data from the **Arkansas Department of Correction** to the ACIC data. (Using data from the prisons system was a screw-up in itself: state law apparently says the ACIC should be the source of the data.) I asked Powell whether counties might be used to simply trusting the felony flags passed on by the secretary of state's office and therefore not have double-checked the information. After all, the clerks are required to expediently remove from the rolls anyone who is ineligible.

"I can't speak for what any individual counties were doing. But there should be due diligence involved in the process," Powell said. "I don't think anyone is just being casual about it. … I don't know personally what their process is. They have information that we provide and then they have information on their end. … Folks have been verifying the voter rolls for years. They get lists with problem registrations, duplicate registrations."

In this case, though, the secretary of state's office is itself *responsible* for passing on flawed information. I asked Powell whether Mark Martin — who is, after all, the elected constitutional officer in charge of the elections division — whether he might take any extraordinary action to make sure the problem is rectified. Powell said he would pass the question along.

As an aside: One way to solve this problem would be to simply stop disfranchising felons, as some states do. Here's information from the National Conference of State Legislatures showing how different states treat the issue, and here's a map from the ACLU.

Benjamin Hardy
Benji Hardy is a contributing editor to the Arkansas Times and a reporter for the Arkansas Nonprofit News Network. He began working at the Times in 2014.

Error flags voters on Arkansas list; thousands in jeopardy of having their registration canceled

by ***Chelsea Boozer*** | *July 25, 2016 at 5:45 a.m.*

3

Flawed data sent out by the Arkansas secretary of state's office in conjunction with the Arkansas Crime Information Center incorrectly flagged thousands of people to be removed from voter registration lists, meaning several Arkansas voters will have to prove their status before this year's presidential election if the issue isn't fixed.

In many cases, that will result in undue burden to voters, some county clerks have said, even hinting at possible future lawsuits over the mess-up.

The problem arose when the secretary of state's elections division sought to update voter lists with new felon data to ensure that felons still in prison or on parole or probation aren't allowed to vote, per state law.

In the process of getting the data from the Arkansas Crime Information Center, known as ACIC, about 4,000 people who have never been convicted of a felony were included on the list and flagged by error.

Some of them may have been notified by their county clerks' offices that their voter registration has been canceled, even though it shouldn't have been.

In other cases, of which no agency is sure of an exact total, felons who have legally regained their right to vote were incorrectly flagged in the system. Some of them have also been notified that their registration has been canceled.

Each of Arkansas' 75 counties follows its own protocol to process the data, so while some counties proceeded with canceling these people's registration when the names were flagged by the secretary of state's office, others are trying to confirm the information before doing that.

The secretary of state's office and ACIC have acknowledged the errors.

The elections division has since instructed clerks' offices to verify whether someone has restored voting rights and to verify their felon status before removing them from the database.

"We've offered advice and provided the data, but our office does not remove people" from voter lists, secretary of state spokesman Chris Powell said. "It's the responsibility of counties to make sure that [information] is correct. We don't instruct them to take this person or that person off. We give them the felon information, and they are supposed to compare that with voter registration and they make the determination [to remove someone from the database.]"

"This has been fairly recent. It's not all going to be ironed out just yet," Powell said.

Pulaski County Clerk Larry Crane said that based on a sampling of the almost 2,000 records his office received from the secretary of state, he believes that half of the names flagged shouldn't be prevented from voting.

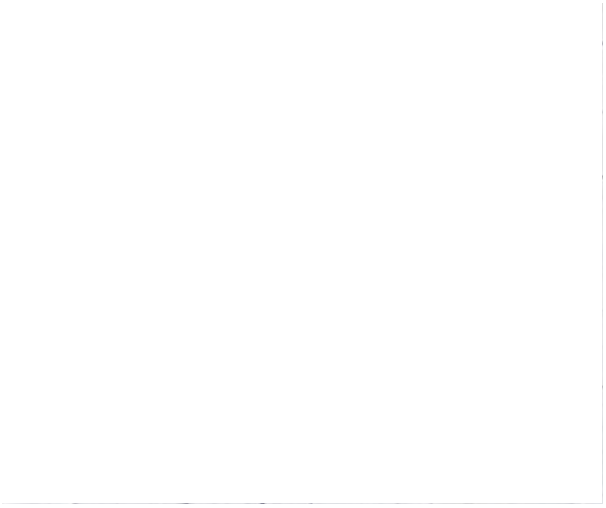
Pulaski County Assistant Chief Deputy Clerk Jason Kennedy cautioned that it may be too early to draw that conclusion, but that in the very small subset of data he's processed so far, about half of the names shouldn't have been flagged.

"In many cases, these people are going to be forced to go back through the process, sometimes years and years back [to] reprove that they have already been through the process to restore their right to vote. And I think it's unconscionable," Crane said.

"It may not be a huge burden in some instances, but it may in others. And quite honestly, any burden being placed on a person's voting rights over and above what the Constitution requires has been held to be illegal -- inappropriate," he said.

The Pulaski County office and others have expressed concerns to the secretary of state's office, but Crane said that so far no satisfactory response has been given.

ARTICLE CONTINUES BELOW



"The possibility that it may be necessary to file a lawsuit either from the clerks' end of things or the individuals' end of the situation has been discussed and no decision has been made yet whether it will be necessary," Crane said.

Flawed data

Historically, the secretary of state's election division has updated county clerks on new felons whose right to vote should be stripped per state law. The clerks will then remove those people from voter lists.

But Arkansas law allows felons to regain their right to vote once they are discharged from probation or parole and have paid all probation or parole fees, and once they have satisfied all terms of

imprisonment and paid all court costs, fines or restitution. A felon can also have his crime pardoned and be eligible to vote again.

Amendment 51 to the Arkansas Constitution states that when convicted felons show proof of that information to the county clerk, they shall be added back to voter registers.

For decades, the secretary of state's office had been getting its felon information from the Department of Correction. Recently, about 20 months passed with no updates so officials looked into why the information flow had stopped.

It turned out that the employee who had been sending the information died and no one was sure how to do his job. More digging showed that state law actually mandates that the secretary of state receive the information from the ACIC, so the process had been incorrectly performed all along.

In order to comply with state law, the secretary of state's office requested all data on felons from the Crime Center going back to when ACIC began keeping records in the 1970s.

The state election division sent out the list provided by ACIC to each county clerk's office in June.

The division quickly got feedback that there were issues with the data, and they told county officials to hold off on working from the lists, but some offices had already removed voters from the database and notified them that their registration had been canceled.

That was the case in Cleburne County, which received a list of 69 flagged voters.

"Once these people got the letter, they called and said, 'Hey, this is wrong,'" Cleburne County Clerk Paul Muse said. "I would have appreciated if [the state] would have held off until they had purged this and removed the ones who had done their debt to society or had their records expunged because we are dealing with the aftermath here."

Statewide, there were 193,549 people on the updated list from ACIC of all felons in their system.

ACIC doesn't have data on whether a felon has regained his right to vote and the secretary of state's office never requested that distinction, according to Brad Cazort, administrator of the center's repository division.

But ACIC did have errors in its system that caused some people who had never been convicted of felonies to be included on the list.

"We have found about 4,000 errors in very old -- 20 or so years ago -- convictions out of municipal court. The judgments we received indicated they were felony convictions and they were entered that way. Municipal courts can't convict persons of a felony. We are working to correct these entries but the entries were made because that's what the court records said," Cazort said.

Problems caused

Kennedy, with the Pulaski County clerk's office, said he immediately began noticing people flagged by the secretary of state's office who shouldn't have been.

"There are issues such as district court cases of outstanding warrants for traffic violations. One person only had a public intoxication conviction from 10 years ago. Some cases said 1972 unknown location and unknown charge," Kennedy said. "That puts us in a rough spot. How am I supposed to verify an unknown charge in an unknown county from before I was born?"

He said the elections division hasn't given any guidance on how to go about verification.

In response to how the secretary of state's office is providing assistance to county clerks, Powell said he believes clerks have resources available to them to verify information, and that verification is not the role of the secretary of state.

After discovering the errors, the secretary of state's office told county clerks that they can request for the database in their county to be reset to how it was before the update, essentially removing all of the new flags inputted.

Pulaski County chose that option and Kennedy wrote to the elections division and recommended they "strongly consider doing so for the entire state since even ACIC thinks that their data is not entirely reliable."

Powell told the *Arkansas Democrat-Gazette* that the secretary of state's office is offering the reset option on a county-by-county basis because every county's situation is different.

The entire situation is also putting county clerks in a legal conundrum with possibly being faced with violating the state constitution if they don't cancel registration for the people flagged by the secretary of state.

Amendment 51 of the state constitution requires voter registrars to cancel the registration of someone within 10 days of getting information that would require cancellation, such as the felon update.

The Pulaski County clerk's office said it has expressed that concern to the secretary of state.

When questioned by the newspaper about that conundrum, Powell noted the size of the update and said future updates will be simpler, but didn't directly respond.

"We are not trying to put any undue burden," he said. "We are just trying to help everyone get caught up with the law because we were not in compliance before."

Crane, the Pulaski County clerk, said he believes the update will cause "undue burden" for many voters so close to the November election, in which the county believes there will be a record-setting voter turnout.

When asked if the situation boils down to a suppression of voters' rights, Crane said it wasn't an easy question to answer.

"It's more complicated than being able to say yes or no. But my answer is yes, I believe that many people will be unfairly burdened by this circumstance," he said.

Metro on 07/25/2016

Print Headline: Error flags voters on state list; Thousands in jeopardy of having their registration canceled

Fallout of high school football coach's text aired to state board; parent of player said to get racially offensive message

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Archived Comments

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Pulaski Co. Clerk says Sec. of State needs to take responsibility in possible voter purge

by Matthew Mershon
Saturday, August 13th 2016

AA

Pulaski County Clerk Larry Crane said his office is investigating person-by-person who is eligible to vote and who isn't off a flawed list of alleged felons sent out by the Secretary of State's office. (Photo: KATV)

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)unty Clerk Larry Crane calls the
y clerks across Arkansas have be

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Crane is talking about a list compiled by Secretary of State Mark Martin's office, of nearly 8,000 people reported to be felons, later determined to be flawed.

"It was bad information, they knew it, they should have taken it back," said Crane.

Crane said he had realized there was a problem with the list he was given very early on. Pulaski County residents made up a little more than 1,800 people on the list distributed by the Secretary of State, according to Crane.

The list had gone out at the end of June, and short thereafter Crane said he contacted the Secretary of State's office with his concerns and to see how the situation could be rectified. Crane said he requested the Secretary of State contact the state's voter registration software provider to untag the newly tagged "felons" so it wouldn't affect voter rolls where other county clerks had not realized the issue yet.

According to Crane, the Secretary of State's office "dragged out" a response, originally reluctant to do anything. Crane said the Secretary of State's office eventually agreed that it would untag the people on the flawed list, but only on a county-by-county basis when a county clerk requests it in writing.

"Not statewide, not uniformly - just for the ones who asked," lamented Crane.

A letter sent out by the Secretary of State's office at the beginning of July suggested that there were "concerns about the felon data," and "given this potential, we suggest you proceed with caution when removing individuals from voter registration rolls."

The July letter goes on to say that, "if individual counties wish, ES&S (software provider) can

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But it wasn't until this week that the Secretary of State's office decided to "strongly recommend" county clerks contact them to instruct ES&S to "roll back felon removals that have

: felon data was released." Accor
k" request.

The letter dated August 9 stated that the Secretary of State does not have, "the legal authority to deem individuals eligible or ineligible to vote," instead placing the responsibility on county clerks.

"The Secretary of State should have taken responsibility for what was done, should have pulled it back and should have dealt with it in a responsible manner," said Crane.

Crane said so far his office has been able to determine nearly 400 people from the flawed ACIC felon data are actually felons and supposed to be removed from county voter rolls. He said his office has sent out letters to those 400 people informing them of their removal.

But Crane said his office has been able to determine that more than 300 people on the list were "completely innocent" and shouldn't have been on the list at all. His office is still working to determine whether more than half of the 1,800 alleged felons he had received are actually felons or if they've had their voting rights restored.

"So far my staff has spent well over 300 hours working on our 1,800 some-odd individuals that were tagged in this county," said Crane.

Both the American Civil Liberties Union of Arkansas and Democratic Party of Arkansas, along with several state media organizations have utilized the Freedom of Information Act to request the lists of voters part of this possible voter purge, along with correspondence about the lists and other information from the Secretary of State's office.

Those FOI requests were apparently delayed, the requests said to be very large - the Secretary of State's office asking for an extension to complete the request, according to Rita Sklar, executive director for the ACLU of Arkansas.

Sklar and a representative from the DPA said they were told the FOI request would be ready on

claims

there was some information missing.

"For this to be done just before an election is extremely suspect," said Sklar.

r, said, “at this point, we will revi
at steps the state has and hasn't

voters' rights and to prevent problems like this in the future. If the state doesn't take all appropriate steps with speed, then it will be necessary to seek court intervention.”

The DPA has also threatened legal action against the Secretary of State’s office in regard to their FOI request. In a statement from the DPA’s legal counsel Chris Burks:

“We are reviewing the documents that were finally provided today. Even if we are assured that all public documents have been released, we will likely file suit to ensure that public officials obey the law on time. The Arkansas Constitution reads that political power is inherent in the people. No government official is above the rights of the people.”

EXHIBIT Q

The Washington Post

Local

Va. Democrats sue to stop use of voter 'purge list'

+ Add to list

By Antonio Olivo
October 2, 2013

A federal lawsuit filed by the Virginia Democratic Party claims that some voters in the state may be kept from casting a ballot in November after their names were wrongly placed on a list meant to weed out fraud.

The court action names Gov. Robert F. McDonnell and Attorney General Ken Cuccinelli II as defendants and alleges that there were political motivations behind a "purge list" of about 57,000 voters whose names were also found on voter rolls in other states.

The lawsuit, which comes as the contentious governor's race enters its last month, contends that the list is inaccurate and that many of those voters are eligible to vote Nov. 5 in Virginia.

Filed Tuesday in U.S. District Court in Alexandria, the complaint seeks to stop state and local election officials from striking those names from voter rolls. The names were discovered as part of a data-sharing program with 25 other states, which the lawsuit contends is "deeply flawed."

"At best, Defendants' conduct reflects inadvertent sloppiness in attempting to ensure that unqualified voters do not vote in Virginia's election," the complaint reads. "At worst, the conduct is driven by partisan politics."

Cuccinelli's office called the legal action a "spurious and baseless" attempt to affect the outcome of his race for governor against Democrat Terry McAuliffe.

"Suing the attorney general is a shameless stunt, as under the law, he is clearly not an appropriate party to the lawsuit," Cuccinelli's communications director, Brian Gottstein, said in a statement.

The State Board of Elections, which was also named as a defendant, said the practice of creating a list of potentially fraudulent voters is part of its mission under state law.

Since 2007, the state board has participated in a data-sharing program with other states, known as a Crosscheck Program, and sends a list of questionable matches to local election officials for review, officials said.

"This list maintenance process was conducted in a non-discriminatory manner based solely on the official notice provided by other states' registration officials," according to a memo provided by the agency. "All voters identified in the Crosscheck Program were matched based on a 100% exact match of first name, last name, date of birth and last four digits of their Social Security Number."

State Democrats argue that the practice can lead to arbitrary purging by local election officials, many of whom were appointed by McDonnell.

The lawsuit cites several cases in which the Democratic Party learned that people whose names appeared on the list turned out to be qualified Virginia voters.

In Fairfax County, for example, about 700 voters out of nearly 8,000 listed appeared to be eligible, the lawsuit said. About 230 voters in Arlington County appeared to be mistakenly listed.

With election pressure ramping up, local officials are scrambling to clean up their voter rolls, which can be complicated.

Voters removed by error will be offered provisional ballots, officials said.

Judy Brown, the general registrar in Loudoun County, said she initially decided to wait until after the election before acting on the list of about 2,100 names her office received from the state.

But, she said, both the state and county boards of elections instructed her Wednesday to pore through the list immediately.

"I will do my best," said Brown, adding that, so far, she has discovered 410 names that may be eligible.

Antonio Olivo
Antonio Olivo covers government, politics and other issues in Northern Virginia. He has also reported from Afghanistan and Mexico after joining The Washington Post in 2013. Follow

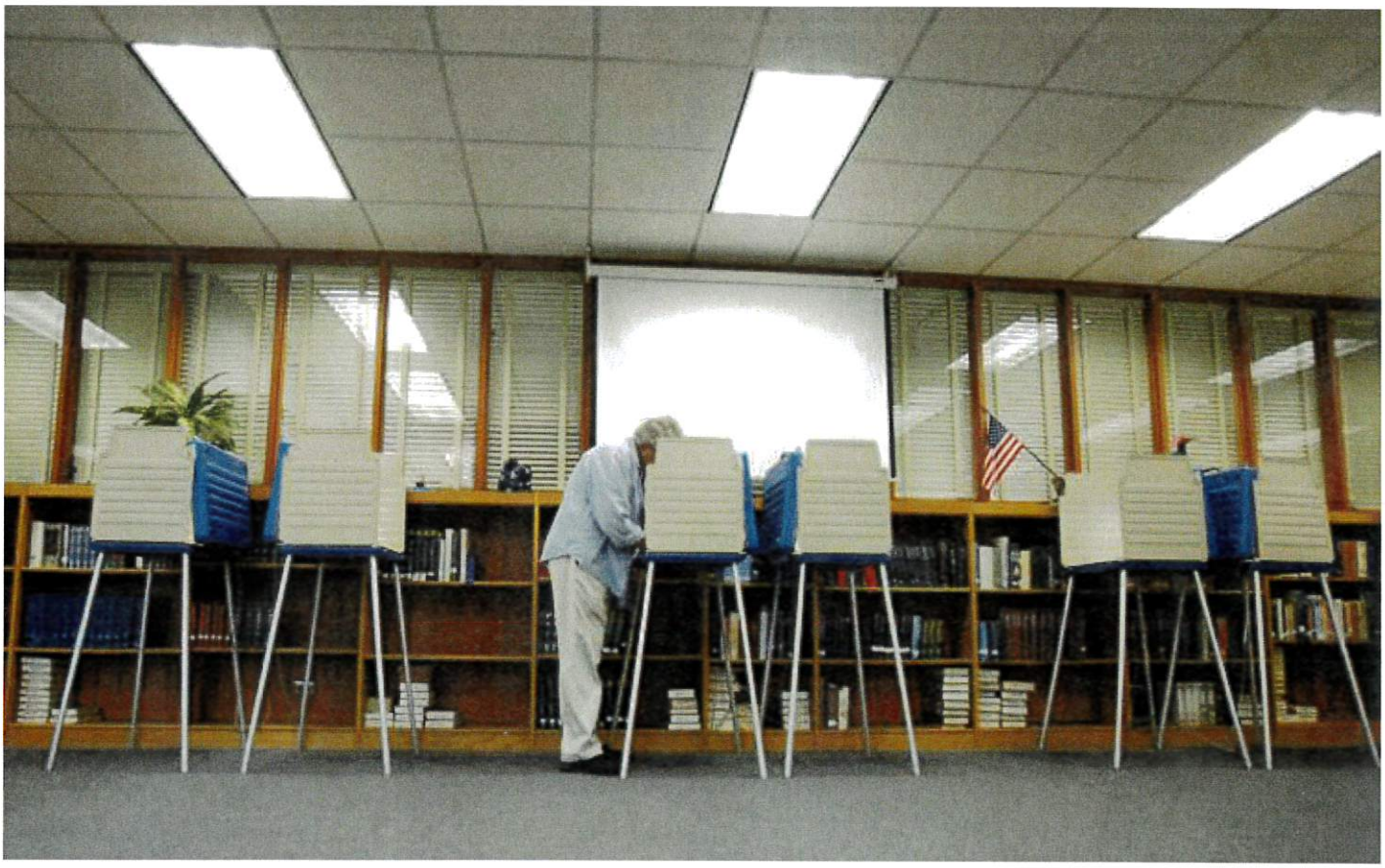
https://www.richmond.com/news/local/chesterfield/chesterfield-registrar-delays-purge-of-voter-rolls/article_162e36b5-0be7-5dc8-af9f-48876a167b43.html

Voting

Chesterfield registrar delays purge of voter rolls

Registrar cites errors on list; Democrats want all localities to wait

BY JIM NOLAN Richmond Times-Dispatch Oct 9, 2013



Chesterfield's registrar said there wasn't enough time to properly examine the voter rolls before Election Day as demanded by the state.

MARK GORMUS/TIMES-DISPATCH

The Democratic Party of Virginia is seeking a preliminary injunction to stop the State Board of Elections and the commonwealth's 132 local registrars from purging names from their voter registration lists.

The move, less than a month before statewide elections, comes ahead of the Oct. 15 deadline to register to vote. A judge will hear the injunction request Oct. 18 in U.S. District Court in Alexandria.

The purge list of 57,000 voters — broken down by locality and provided to local registrars by the State Board of Elections — is "replete with errors" and includes thousands of voters who reside in Virginia and who are lawfully registered to vote, according to a memorandum filed late last week in support of the Democratic Party's motion.

The State Board of Elections said in a statement that it is required by federal law to "conduct list maintenance activities to ensure the accuracy of the voter rolls." It says it does not cancel voters by itself but directs local registrars to "carefully review all data" to ensure it properly cancels registrations.

In Chesterfield County, Registrar Lawrence C. Haake III said that in the list of the more than 2,200 active and inactive voters he was told to purge, a preliminary examination revealed more than 170 errors among about 1,000 active voters.

Haake, a Republican who provided a statement included in the memorandum filed by the Democratic Party, said the purge list included voters whose out-of-state registration data were 10 years older than more recent, valid registration and voting history in Virginia.

"If I can find a 17 percent error rate among 1,000, what am I going to find when I start digging?" Haake said.

Haake said he concluded there was not enough time before the Nov. 5 election to correctly review the list and weed out the registrations that should be purged from those that should be preserved.

He said he would resume the process in January — a decision that apparently did not sit well with the secretary of the elections board, Donald Palmer, an appointee of Gov. Bob McDonnell, a Republican.

According to Haake, an agitated Palmer called the three members of Chesterfield's election board last week and tried to pressure them to compel Haake to continue the purging process, threatening legal action if he did not comply.

But after speaking with Haake, the Chesterfield board, made up of two Republicans and one Democrat, sided with their registrar.

"Secretary Palmer advised the members of the Chesterfield board that the responsibility to act upon this notice of registration out of state rested squarely on the general registrar. ... The only alternative left to the State Board of Elections if the local electoral board would not require the general registrar to do his duty, would be to petition the circuit court or the Supreme Court," the State Board of Elections said in response to questions about Palmer.

The statement also claimed that Haake "made no good-faith attempt to process the double and sometimes triple registrations in his jurisdiction," and said the city of Richmond was able to process its list of 930 duplicate registrations "in no more than 30 man-hours."

Palmer's actions with regard to Chesterfield were not supported by State Board of Elections Chairman Charles E. Judd.

"The agency head does not speak for the board," said Judd, who spoke with Chesterfield election officials called by Palmer regarding Haake's position on the purge list.

"I do not agree with the secretary's attempt to strong-arm a local electoral board that, in my view, is already in compliance."

In reviewing the Chesterfield data, the State Board of Elections said 167 of the voters in Chesterfield on the purge list voted last November in Virginia. The State Board of Elections response also said it had identified two of the 167 voters who appear to have "double voted" in Virginia and another state that month.

In a statement, the State Board of Elections said "these were not errors; rather they are duplication registrations that require additional analysis and the general registrar is the person mandated by law to conduct this review and take action."

The push for the injunction aligns with the larger Democratic arguments that Republicans are trying to suppress the vote in Virginia and that Attorney General Ken Cuccinelli — the GOP candidate for governor — should recuse himself as counsel to the State Board of Elections.

Brian Gottstein, a spokesman for the Attorney General's Office, has said that Cuccinelli would recuse himself from investigating any alleged election violations in the governor's race. Gottstein has also said naming Cuccinelli as a defendant in the lawsuit to stop the purge is "a shameful stunt."

The list provided by the State Board of Elections was produced by the Interstate Voter Crosscheck Program, a coalition of more than two dozen states that share voter registration lists with the purpose of identifying people with duplicate registrations and removing them from a list. Virginia began using the list this year.

According to the Democratic Party's court filing, many registrars have begun or completed the process of using the list to drop voters from their rolls, and they have found an inaccuracy rate of close to 10 percent.

"We do need an interstate checking mechanism, but I'm not real impressed with this one," said Haake, the Chesterfield registrar.

"With what I found I was not going to rush to cancel people. Voters have a hard enough time having confidence in the system, and this would only further erode that. I'm not refusing to do it," Haake added. "I've just postponed it until we can do it right."

As to how the elections board will respond to Haake's decision to wait, Palmer said: "Given the proximity of the election, we do not wish to disturb election preparations with a lawsuit."

But he said the State Board of Elections would explore its options going forward, noting "concerns remain regarding noncompliance with the law and the failure to perform statutory voter list maintenance of out-of-state registered voters."

The statement by the State Board of Elections said some discrepancies are a result of the timing between when Virginia data were matched against the other participating states' data, and when the information was provided to the local registrars.

"Others mistakenly labeled as errors are the result of Virginia registered voters who moved away from Virginia, registered to vote in another state, and returned to Virginia without canceling their Virginia registration."

The State Board of Elections said voters who receive a cancellation notice in error should immediately contact their general registrar. It said any voter whose registration was canceled by mistake will be permitted to vote on Election Day, and the voter's ballot will be counted.

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Elections board to fight suit by Democrats

Williams: Voter purge will cause problems

The Washington Post

GovBeat

Virginia election officials purging almost 40,000 voters

+ Add to list

By Reid Wilson
October 17, 2013

The Virginia Board of Elections has purged more than 38,000 names from its voter rolls just weeks before Election Day, despite serious concerns from local election administrators that many of those voters are still eligible to cast a ballot.

The purge comes a few months after the board said it would use several databases to find voters who were now ineligible to vote, either because they had been convicted of a felony or moved out of state. But after the board sent an initial list of voters who would be purged to local election administrators, those administrators found what they said were hundreds of voters who shouldn't be removed.

On Oct. 3, the state Democratic Party filed paperwork seeking an injunction to halt the purge. But on Tuesday, the Board of Elections said it had already nixed 38,870 names from voter rolls after county registrars reviewed the initial lists.

Another 11,138 eligible voters will remain active on the rolls after county registrars reviewed the state lists. And almost 7,300 will be designated "inactive," meaning they must sign a form declaring their eligibility to vote.

"This is a 14th Amendment issue. We have 131 local election officials here in Virginia, and the guidance they got from the state board was, quote, use your best judgement," said Brian Coy, a spokesman for the Virginia Democratic Party. Coy said the fact that the Board of Elections' legal adviser, Attorney General Ken Cuccinelli (R), is on the ballot this year as a candidate for governor raised red flags.

Several county registrars said they didn't have the time necessary to ensure eligible voters inadvertently included on the state list weren't denied their right to vote. Loudoun County Registrar Judy Brown said in an interview that she had to race to meet her local electoral board's deadline.

"My main concern was the lack of time to be able to devote to the list to make sure we weren't taking people off without first trying to find out if they were still here or if they had left," Brown said. "I believe that kind of stuff deserves my attention."

After Brown decided to delay the purge, the state Board of Elections called her local elections board, which voted to require Brown to scrub Loudoun County's voter rolls. They gave her one week. Brown said she sent letters to both in-state and out-of-state addresses she had for voters on the list, just a week before the state's Oct. 15 registration deadline. She's already heard from some who say they still live in-state.

"We've had a few phone calls from people who have actually been voting here for the last couple of years," Brown said.

Chesterfield County Registrar Lawrence C. Haake III filed his own affidavit, saying he had conducted a review and found almost 10 percent of the names flagged by the state Board of Elections were of eligible voters, according to the *Richmond Times-Dispatch*. Haake, a Republican, has refused to purge voters from the list.

Cuccinelli's office said in its own court filing that the the relatively small number of eligible voters mistakenly included on the list demonstrates the state Board of Elections and county registrars are doing their jobs.

"The lists in question were reviewed and prepared carefully by [the state Board of Elections] and were sent to the registrars for review and possible cancellation. The so called 'errors' were simply voters that should not be cancelled and … have not been cancelled," the Attorney General's office said in its filing. "Over 18,000 Virginia citizens were reviewed and left on Virginia registration rolls. In short, the system worked and there is no basis to restore 38,000 out of state voters to Virginia's voter registration lists."

Several county registrars filed affidavits on Tuesday to demonstrate the number of voters they had removed from lists submitted by the state. Fauquier County Registrar Alexander A. Ables said he had identified 449 records that should be canceled, out of the 519 records the state Board had flagged. Alexandria Registrar Tom Perkins identified 1,049 of 1,186 voters whose registration should be canceled. And Greg S. Riddlemoser, the Stafford County registrar, found 829 records out of 953 the state flagged that should be cancelled.

Reid Wilson
Wilson is a writer based in the District. Follow

EXHIBIT R

With Voting Rights Act Gutted, Florida Set To Resume Voter Purge

AVIVA SHEN

JUL 25, 2013, 1:08 PM

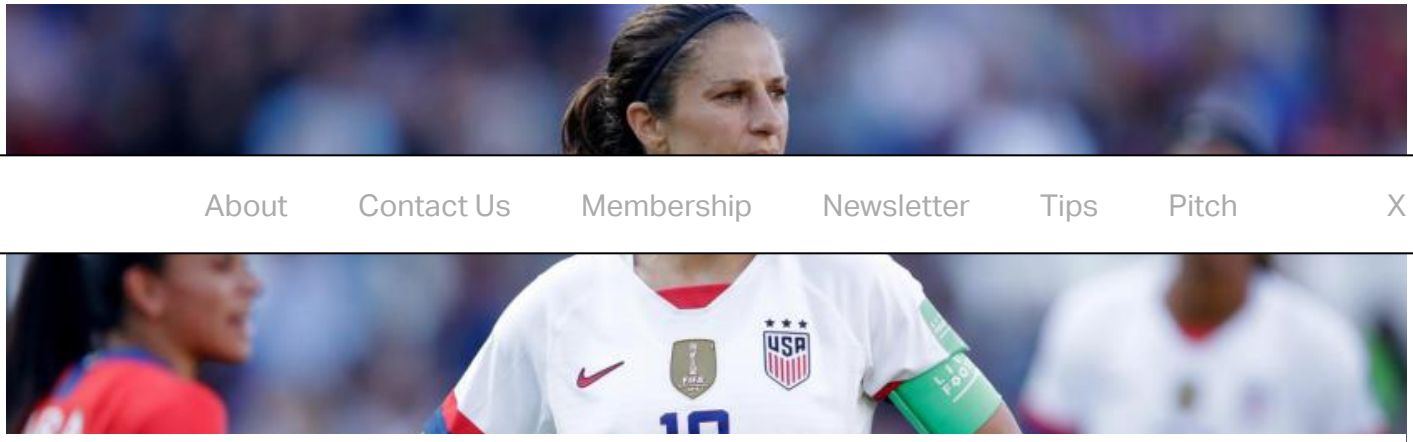
Florida's controversial initiative to screen for suspected non-citizens and purge them from the voter rolls is allowed to officiall Wednesday.

A Hispanic civil rights group and two naturalized citizens sued last year to block the purge, arguing that it needed to be approved by the federal government because five

had little choice but to dismiss the suit. Secretary of State Ken Detzner (R) said he plans to resume the voter purge.

In 2012, the Department of Justice warned that Florida's voter purge, which targeted roughly 180,000 people, was illegal, and all of the state's county election supervisors refused to execute the purge. The lists of flagged individuals—many of whom had Latino-sounding names—also turned out to be largely inaccurate. These flagged individuals would receive notifications in the mail notifying them that they had 30 days to contest the purge.

The state had to partially settle with a civil rights group and restore suspected non-citizens to the rolls, but soon tried to re-start the purge just a month before the November presidential election with a drastically pared down list of 198 voters.



After all the legal battles and thousands of wasted taxpayer dollars, the state could not turn up virtually any non-citizens who were registered to vote.

Florida voters, particularly in minority-heavy urban areas, suffered some of the longest lines and most chaotic elections in the country last year. The mayhem was largely created by Republican lawmakers' efforts to suppress votes. Besides trying to purge voters, Republicans cut the number of early voting days in half, changed ballot length restrictions so they could add frivolous constitutional amendments to 12-page ballots, and restricted voter registration. These voter suppression efforts discouraged at least 201,000 Floridians from voting, and black and Latino voters waited nearly twice as long as white voters. The backlash was so fierce that even Gov. Rick Scott (R), the primary defender of these voter suppression laws, agreed to sign an election reform law undoing most of the damage.

Prominent Florida Republicans admitted shortly after the election that the motive behind all these election law changes w

#FLORIDA, **#JUSTICE**, **#VOTING RIGHT**

The New York Times

Ruling Revives Florida Review of Voting Rolls

By Lizette Alvarez

Aug. 7, 2013

TALLAHASSEE, Fla. — Gov. Rick Scott of Florida, newly empowered by the United States Supreme Court's ruling in June that struck down the heart of the Voting Rights Act, has ordered state officials to resume a fiercely contested effort to remove noncitizens from voting rolls.

The program, which was put in place before the 2012 election, became mired in lawsuits and relentless criticism from opponents who viewed it as harassment and worse — a partisan attack by a Republican governor on Hispanic and Democratic voters.

In a federal lawsuit filed last year in Tampa, an immigrants' voting-rights group charged that the attempt to scrub the voter rolls disproportionately affected minority voters and that the state had failed to get Justice Department clearance as required under the 1965 Voting Rights Act.

Early this year, in a move to tamp down the uproar over missteps on Election Day, the Republican-controlled Legislature passed a bill undoing some of the measures it approved in 2011 that led to fewer early-voting days, problems with absentee ballots and long lines at the polls.

But Mr. Scott, in pushing to resume the voting-roll review, contends that the state has an obligation to protect the integrity of the vote. "The Supreme Court has allowed our secretary of state to start working with our supervisor of elections to make sure our sacred right to vote is not diluted," he said Tuesday, after a cabinet meeting.

His decision adds Florida to a growing list of states, including Texas, Mississippi, North Carolina and Alabama, that have seized on the Supreme Court ruling to advance legislation calling for tougher voting rules or oversight. Texas, Mississippi and Alabama all announced they would move ahead with strict voter identification card requirements.

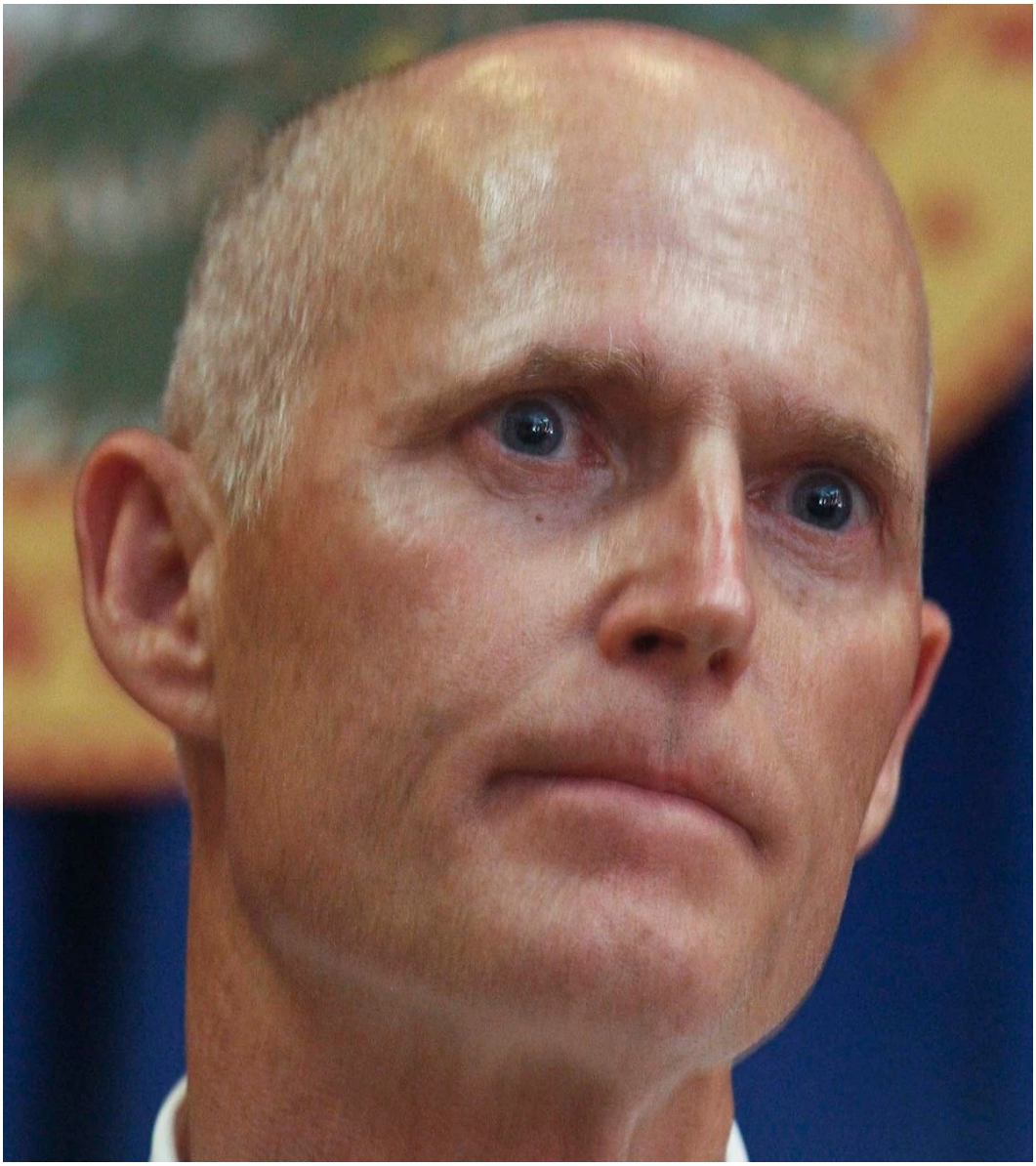
In 2011, the Republican-led Legislature in Texas adopted one of the country's strictest voter identification laws, requiring a government-issued photo ID like a driver's license. Citizens who do not have one must show a document like a birth certificate to obtain such an ID. The law, which would have affected Hispanic and black residents disproportionately, was blocked by the federal courts under the Voting Rights Act.

In North Carolina, Gov. Pat McCrory, a Republican, is expected to sign into law a bill that would reduce early voting, stiffen voter identification requirements and prohibit same-day voter registration.

The measures have all prompted strong criticism and the threat of more lawsuits. For decades, the Department of Justice and the federal courts provided oversight as part of the Voting Rights Act. That provision of the law was struck down by the Supreme Court in June, allowing states to move forward without the federal permission they were once required to obtain. In Florida, five counties were covered by the law.

In resuming the program, some political strategists said, Mr. Scott, who is running for re-election next year, could complicate his efforts to attract Hispanic voters, a group of Floridians that voted by large margins for President Obama and continues to slide into the Democratic column. Even South Florida's Cuban-Americans, now younger and less hard-line on Cuba, are no longer the reliable Republican stalwarts they once were. Forty-eight percent of Cuban-Americans voted for Mr. Obama last November, according to his campaign.

Noting that the Supreme Court ruling had essentially invalidated the immigrant group's lawsuit, the Florida Department of State sent a letter on Friday to the 68 election supervisors announcing it would reinstitute the search for noncitizens on the rolls. Unlike the last go-round, the process this time will involve election supervisors, state officials said. The state will also use the more reliable federal immigration database that it sued to gain access to last year.



Gov. Rick Scott says he wants to protect voting integrity. Phil Sears/Associated Press

But the decision puts Florida back in the cross hairs of a divisive partisan battle over voting rights. “Governor Scott seemingly is bent on suppressing the vote in Florida, with his latest move coming as an unfortunate result of the recent Supreme Court decision that gutted the Voting Rights Act,” said Senator Bill Nelson, a Florida Democrat, who was highly critical of the voter review last year.

Mr. Scott risks angering voters with perhaps little payoff, political strategists said. While securing the integrity of the vote is admirable, they say, there is no evidence that noncitizens in Florida are systematically voting. Last year’s attempt at unearthing noncitizens initially began with a pool of 182,000 names of potential noncitizens, and that was winnowed to a list of 2,600. Those named were sent to election supervisors, who found that many were in fact citizens. Ultimately, the list of possible noncitizen voters shrank to 198. Of those, fewer than 40 had voted illegally.

“It’s a solution in search of a problem,” said Steve Schale, who directed Mr. Obama’s campaign in Florida in 2008 and was a senior adviser in 2012.

As a result of the chaos during the 2012 election, many Florida voters now lack confidence in the system. This, Mr. Schale said, could further alienate them.

“There is a real risk given the history in Florida, the purges that have happened in the past and what happened in 2012; it could create this hassle for legitimate taxpaying citizens to have to prove they are citizens,” he added. “There is definitely a political risk there for Governor Scott.”

But Republicans in the state have not expressed concern over the announcement that Secretary of State Ken Detzner would restart the voter review.

A spokeswoman for Senator Marco Rubio, a Florida Republican who is leading the fight for overhauling immigration laws, said he supported making sure that only legally qualified voters could cast ballots. “If noncitizens are being allowed to vote, not only is the law being broken, but it is also entirely unfair to the legal citizens casting their votes,” said Brooke Sammon, the spokeswoman.

Whit Ayres, a Republican political consultant, said that an effort to ensure the integrity of the rolls should not be cloaked in partisanship. Mr. Ayres said many Americans support the various moves around the country to require photo identification or keep noncitizens off the rolls.

“It truly is one of those questions in American politics where there should be no ideological agenda,” he said. “Ultimately, it ought to be a question of competence, not ideology.”

But Democrats and voter rights groups said the complication arise in the details. Last year, the state used a database of drivers’ licenses to check names. That proved unreliable in sorting out citizens from noncitizens. This year, the state will have access to a federal database that has information on immigrants who have applied for benefits, including green card holders, a group that cannot vote.

The database is more reliable but not comprehensive, the Department of Homeland Security has said.

Lori Edwards, the supervisor of elections in Polk County and president of the Florida State Association of Supervisors of Elections, said she hoped the state would provide supervisors with thorough documentation showing that a voter is ineligible, as it does with felons.

But Ms. Edwards said she was perplexed about why Mr. Scott chose to return to this issue so quickly. “They are rubbing their hands together and saying, ‘Let’s go at it,’ ” Ms. Edwards said. “It doesn’t seem like a prudent way to proceed with something that you have already botched once before.”

A version of this article appears in print on Aug. 8, 2013, Section A, Page 1 of the New York edition with the headline: Ruling Revives Florida Efforts To Police Voters

Florida's latest voter purge bid draws criticism

Jeff Burlew, Tallahassee (Fla.) Democrat Published 7:59 a.m. ET Jan. 14, 2014 | **Updated 8:01 a.m. ET Jan. 14, 2014**

NAACP, others speak out on effort to remove non-U.S. citizens.

(Photo: Glenn Beil, Tallahassee Democrat)

TALLAHASSEE, Fla. — The NAACP and other groups are calling on Gov. Rick Scott to stop a renewed attempt to purge people who aren't U.S. citizens (http://www.tallahassee.com/article/20140114/NEWS01/301140008/Latest-voter-purge-bid-draws-criticism?nclick_check=1) from the state's voter rolls.

Bill Tucker, chair of the political-action committee of the NAACP's Tallahassee branch, called the renewed voter purge "a fool's errand" during a news conference at the Capitol. He said the purge would "cast another dark shadow on Florida" and "disproportionately affect Florida's most vulnerable groups," namely minorities.

State Rep. Mark Pafford, D-West Palm Beach and the House Democratic leader-designate, said Scott is "on the wrong mission entirely" in moving forward with the purge.

"He can probably find more reports of UFOs and space aliens in Florida than there are reports of fraudulent voting in the state," Pafford said. "We need to get back to the point in this state where we actually run on good policy and get re-elected that way as opposed to coming up with these types of gimmicks."

In 2012, at Scott's behest, the state attempted to purge non-U.S. citizens from voter rolls in an effort he said to address voter fraud. The state's list of potential non-citizens began with 182,000 names but later was reduced to as few as about 200. The effort was halted before the presidential election in the wake of opposition from Florida's elections supervisors and a flurry of lawsuits.

Late last year, Secretary of State Ken Detzner confirmed to reporters that a new purge would begin soon, saying, "We'll start shortly after the first of the year on a case-by-case basis reviewing files and then forwarding them down to the supervisors."

In response to questions about the latest purge, Brittany Lesser, spokeswoman for the Division of Elections, issued a statement saying, "Integrity of the voter rolls must be upheld to ensure that elections are accurate, efficient and fair. The Division of Elections will provide credible and reliable information to fulfill the duty mandated by federal and state law for local supervisors of elections to maintain correct lists. Each and every vote cast by a Floridian must count."

The Division of Elections, as part of Project Integrity, is planning to compare voter-registration records in the Florida Voter Registration System with driver's license databases to find potentially ineligible voters. The state also will be using the federal Systemic Alien Verification of Entitlements (SAVE) database to verify whether potentially ineligible voters are non-U.S. citizens. Only supervisors of elections, not the state, can purge voters from the rolls.

A Project Integrity Q&A says the state will be checking the legal status of all registered voters and that "the process is not directed at any group of registered voters."

But Tabitha Frazier, vice chair of the Florida Democratic Hispanic Caucus, said 82 percent of the names pulled in the first voter purge were non-white and 60 percent were Hispanic.

"The reason we are (concerned) is Florida has one of the largest naturalization rates of any state in the union," she said. "We have Puerto Rican communities, we have people of Cuban populations that may not have voted two years ago or even last year that are eligible to vote this year."

Gov. Rick Scott speaks at a news conference on Jan. 30, 2013, at the Capitol during the The Associated Press' annual legislative planning session in Tallahassee, Fla. *(Photo: Steve Cannon, AP)*

Dale Landry, president of the Tallahassee branch of the NAACP, said if one name turns up on a purge list that shouldn't be there, "Then it's malicious. It's malicious on the part of the governor. It's malicious on the part of his secretary of state, Detzner. We've been down this road. And the NAACP, we're ready to fight."

Leon County Supervisor of Elections Ion Sancho said the information sent to elections supervisors during the first purge "was, to say the least, awful." But he said his office would "look at all the valid information sent to us concerning citizens and ineligibility and evaluate it based on the quality of the information."

However, Sancho added, "I can certainly see why it's in Gov. Scott's interest to try to depress turnout in 2014. The Leon County Supervisor of Elections Office will continually act in the citizens' interest in this matter, not the governor's."

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REUTERS

POLITICS

MARCH 27, 2014 / 7:17 PM / 5 YEARS AGO

Florida non-citizen voter purge postponed: elections official

Bill Cotterell

TALLAHASSEE, Florida (Reuters) - Florida Governor Rick Scott's administration is abandoning its renewed effort to remove non-U.S. citizens from the voter rolls, the state's top elections official announced on Thursday.

Governor Rick Scott (R-FL) answers a question during a news briefing at the 2013 Republican Governors Association conference in Scottsdale, Arizona November 21, 2013 file photo. REUTERS/Samantha Sais

Secretary of State Ken Detzner, in a memo to county election supervisors, said the latest attempt at a purge, which two years ago set off a number of legal challenges from voting rights groups, would be postponed until next year.

He said the state planned to wait until a new federal database, which helps track potential ineligible voters, is up and running.

The decision comes after Scott, a Republican, faced heavy criticism over Florida's attempts to identify people who are not American citizens on voter lists months ahead of the 2012 presidential elections.

Running for re-election this year, Scott has repeatedly said the aim of his efforts is to protect the integrity of the voter rolls.

However, advocacy groups have called the review of non-citizens a thinly veiled attempt to disqualify Hispanic and African-American voters who tend to vote for Democractic candidates.

The state's effort in 2012 sparked several lawsuits, including one by the U.S. Justice Department, which claimed the purge violated federal law since it was conducted less than 90 days before the election.

Florida officials at the time said they had drawn up an initial list of 182,000 potential non-citizens. But that number was reduced to fewer than 200 after election officials acknowledged errors on the original list.

Ion Sancho, a veteran Leon County elections supervisor, said he welcomed the state's decision.

"The number of ineligible individuals on Florida databases is statistically insignificant," he said. "The last thing supervisors need is another partisan-driven event to complicate our lives. The entire process has been driven by partisan politics, rather than voter integrity."

In identifying potential non-citizens two years ago, Florida officials sent their information to county election supervisors who then mailed letters to voters requesting proof of citizenship.

If no response was received, the voter was dropped from the rolls.

The effort was the subject of lawsuits from five voter protection groups, including the League of Women Voters of Florida.

Deirdre Macnab, the group's president, praised the state's decision to put off the purge, which Scott's administration calls "Project Integrity."

"Independently elected supervisors of election are already standing sentry on making sure that only eligible citizens are voting," she said.

"Programs like 'Project Integrity' have proven, time and time again, to disproportionately impact minority voters and erroneously disenfranchise those that are eligible."

Editing by Kevin Gray and Gunna Dickson

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Miami Herald

POLITICS

Florida suspends non-citizen voter purge efforts

BY STEVE BOUSQUET AND AMY SHERMAN

MARCH 27, 2014 11:49 AM, UPDATED MARCH 28, 2014 02:47 AM

Gov. Rick Scott's chief elections official is suspending a politically charged election-year plan to purge noncitizens from Florida's voter rolls, citing changes to a federal database used to verify citizenship.

The about-face on Thursday by Secretary of State Ken Detzner resolves a standoff with county elections supervisors, who resisted the purge and were suspicious of its timing. It also had given rise to Democratic charges of voter suppression aimed at minorities, including Hispanics crucial to Scott's reelection hopes.

Detzner told supervisors in a memo that the U.S. Department of Homeland Security is redesigning its SAVE database, and it won't be finished until 2015, so purging efforts, known as Project Integrity, should not proceed.

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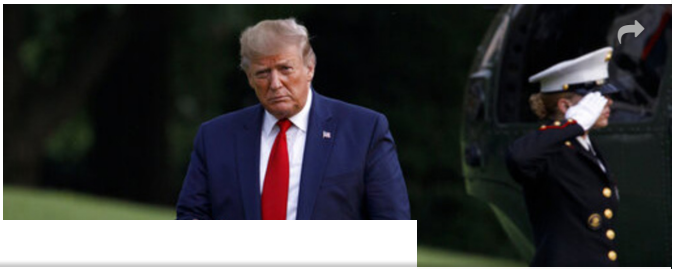


"I have decided to postpone implementing Project Integrity until the federal SAVE program Phase Two is completed," Detzner wrote.

Detzner sent his memo after three rounds of conference calls with supervisors, who endorsed his decision.

"It is a good idea to postpone the project until we're sure we have it right," said Citrus County Supervisor Susan Gill. "The closer it gets to the election, which I know you're well aware of, the more likely it is that we'll get a lot of criticism."

"We always felt and understood our statutory obligation is to remove ineligible voters from the rolls and will continue to do so," said Christina White, a spokeswoman for the Miami-Dade elections office. "We always wanted it to be a more credible and reliable list. That's what we have been waiting for. Now that they said they will delay it, we will pick it up when they decide to finish the list."

Broward's elections supervisor, Brenda Snipes, said time also was a factor, with absentee ballots for the fall election going out in July.

"That would kind of distract everybody," Snipes said.

Past efforts to purge the voter rolls of noncitizens ahead of the 2012 election created a national furor, as elections supervisors resented targeting voters with data they viewed as unreliable and political groups said the removals disproportionately targeted minority voters. Some groups accused the Scott administration of seeking to scrub the voter file of people who might not be inclined to support Republican candidates.

The 2012 list of about 180,000 suspect voters was based on driver's license data. The state soon whittled it to 2,600 and then to 198. Ultimately, about 85 voters were removed from the rolls.

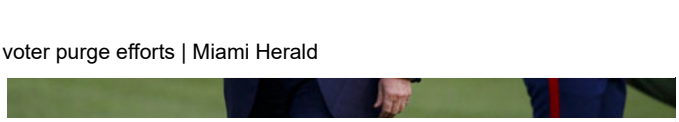
"It was irresponsible for Gov. Scott to undermine faith in our elections by creating fear that our voter rolls were filled with illegitimate voters when there was no evidence to suggest it," said Howard Simon, director of the ACLU of Florida.

Voting rights groups such as the NAACP, League of Women Voters and the Advancement Project had been critics of the purge. They did not argue in favor of noncitizens casting ballots, but said that the state-led purge disproportionately targeted minorities, ensnared some who could legally vote, such as a Brooklyn-born World War II veteran in Broward, wasted money and was ineffective.

"What we have seen from past efforts is that it has not been successful in identifying ineligible voters," said Deirdre Macnab, president of the Florida League of Voters. "The process we already have in place — supervisors work every day, all day, to clean our lists and keep them up to date — shows the current process is working very effectively."

Detzner reminded election supervisors that they have a duty to investigate cases of questionable citizenship by voters.

That's nothing new, said Deborah Clark, the Pinellas supervisor. She said supervisors closely monitor voter lists to ensure that no ineligible voters can cast ballots and must submit reports to the state twice a year explaining why voters are removed from the rolls, such as death or felony conviction.



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JOSH ISRAEL

MAR 28, 2014, 1:52 PM

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SLIDE FROM 2012 FLORIDA VOTER PURGE POWERPOINT CREDIT: FLORIDA DEPARTMENT OF STATE

Once again, Ken Dentzer, Florida Gov. Rick Scott's (R) handpicked Secretary of State, has unsuccessfully attempted to mount a massive purge of Florida's voter rolls. And once again, he has been forced to abandon this effort due to his lack of an accurate list of who is and is not eligible to vote.

In a memo, Dentzer told the state's local election supervisors that the purge would be postponed until 2015. He plans to utilize a new federal database which he believes will be up and running by then and will provide more accurate data on who is and is not a U.S. citizen.

In late 2011, Scott ordered a statewide p

Despite questions about the accuracy o

supervisors to mail letters to thousands in 2012, informing them that they appeared to be ineligible to vote. Hundreds of these letters went to U.S. citizens who were indeed

parties spoke out and called a halt to the efforts. The U.S. Department of Justice also demanded an end to the purge, deeming it illegal under the Voting Rights Act.

Dentzer pared down the initial list to just 198 names of people he deemed non-citizen voters. Even that turned up almost no non-citizens who had actually ever voted—just 39 of the state's 11 million-plus registered voters. And even that small list included some documented U.S. citizens. Still, Dentzer called the purge effort his "passion" and "moral duty."

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Paul Ryan will now profit off his failures to strip healthcare from millions of Americans

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After the U.S. Supreme Court gutted the Voting Rights Act in 2013, a federal court dismissed the legal challenges and Dentzer announced plans to resume the purge process. Again, local elections supervisors like Republican Deborah Clark spoke out, noting the unreliability of the state's data. "We just don't have any confidence in the information the state sends," she told a local reporter. In October, Dentzer took responsibility for the disastrous 2012 purge and vowed that the next one would be better. "We learned from the mistakes we made," he claimed. "We won't make the same mistakes."

Local elections supervisors cheered the news Thursday that there would be no further purge attempts in 2014. "It is a good idea to postpone the project until we're sure we have it right," Citrus County Supervisor Susan Gill (R) told the Tampa Bay Times. "The closer it gets to the election, which I know you're well aware of, the more likely is it is that we'll get a lot of criticism."

Scott is up for re-election this November. Should he lose, his replacement would likely be able to appoint a new Secretary of State before any 2015 purge.

#FLORIDA, **#JUSTICE**, **#VOTING RIGHTS**

MSNBC

Elections

Florida Governor Rick Scott attends the ribbon cutting for the opening of a I-595 Express Project in Davie, Fla., Mar. 28, 2014. **Joe Raedle/Getty**

Rick Scott's voter purge was illegal: Court

04/02/14 10:20 AM – UPDATED 04/02/14 10:39 AM

By Zachary Roth

Florida Republican Gov. Rick Scott's badly flawed purge of the voter rolls before the 2012 election was illegal, a federal court ruled Tuesday.

In a 2-1 decision, the 11th Circuit Court of Appeals found that the purge violated the National Voter Registration Act, which bars the systematic removal of voters from the rolls within 90 days of an election.

Florida conducted two separate efforts to remove non-citizens from the rolls before the last presidential election, drawing lawsuits from the U.S. Justice Department and voting-rights groups. Because the state used a flawed system that relied on often out-of-date motor vehicle records, numerous eligible voters were wrongly flagged – including a 91-year old World War II vet. They received letters telling them that if they didn't prove their citizenship within 30 days, they'd be taken off the rolls.

The Miami Herald found that "Hispanic, Democratic and independent-minded voters are the most likely to be targeted," while whites and Republicans were the least likely.

In its ruling Tuesday, the court stressed that removing voters within 90 days of an election doesn't give people enough time to fix any errors.

“Eligible voters removed days or weeks before Election Day will likely not be able to correct the State’s errors in time to vote,” Judge Beverly Martin wrote. “This is why the 90 Day Provision strikes a careful balance: It permits systematic removal programs at any time except for the 90 days before an election because that is when the risk of disfranchising eligible voters is the greatest.”

“Election integrity means making sure that legitimate voters aren’t wrongfully removed from the rolls,” Michael Slater, the executive director of Project Vote, one of the groups that sued Florida, said in a statement. “This decision vindicates the important role the National Voter Registration Act provides in protecting eligible voters from these kinds of last-minute purges.”

Scott, a Republican who is in a tight re-election fight, didn’t stop trying to purge voters after 2012. He kicked off a new effort earlier this year. In a memo to local elections supervisors sent last week, Secretary of State Ken Detzner said the state will hold off on the renewed purge until a new federal database is functioning.

THE ED SHOW, 2/13/14, 7:05 PM ET

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EXHIBIT S

198 F.Supp.3d 896
United States District Court, W.D. Wisconsin.

ONE WISCONSIN INSTITUTE, INC., Citizen Action of Wisconsin Education Fund, Inc., Renee M. Gagner, Anita Johnson, Cody R. Nelson, Jennifer S. Tasse, Scott T. Trindl, Michael R. Wilder, Johnny M. Randle, David Walker, David Aponte, and Cassandra M. Silas, Plaintiffs,

v.

Mark L. THOMSEN, Ann S. Jacobs, Beverly R. Gill, Julie M. Glancey, Steve King, Don M. Mills, Michael Haas, Mark Gottlieb, and Kristina Boardman, all in their official capacities, Defendants.

15-cv-324-jdp
|
Signed July 29, 2016

Synopsis
Background: Advocacy groups and individual voters brought action challenging constitutionality of state's voter identification law.

Holdings: The District Court, James D. Peterson, J., held that:

advocacy groups had standing;

reduction in in-person absentee voting violated the Fifteenth Amendment

limits on in-person absentee voting violated the First and Fourteenth Amendments;

law prohibiting in-person absentee voting on Monday before an election did not violate the First and Fourteenth Amendments;

laws requiring documentary proof of residence and eliminating ability to use corroboration to prove residence did not violate the First and Fourteenth Amendments;

law requiring dorm lists to indicate whether students were United States citizens violated the First and Fourteenth Amendments; and

law increasing durational residency requirement from 10 to 28 days in order to vote in Wisconsin or a given municipality violated the First and Fourteenth Amendments.

Ordered accordingly.

West Codenotes

Held Unconstitutional
Wis. Stat. Ann. § 5.02(6m)(f), 6.02, 6.10(3), 6.15, 6.34(3)(a)(7), 6.15(1), 6.855, 6.86, 6.87(3)(d).

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FINDINGS OF FACT & CONCLUSIONS OF LAW

JAMES D. PETERSON, District Judge

Mrs. Smith has lived in Milwaukee since 2003. [1] She was born at home, in Missouri, in 1916. In her long life she has survived two husbands, and she has left many of the typical traces of her life in public records. But, like many older African Americans born in the South, she does not have a birth certificate or other documents that would definitively prove her date and place of birth. After Wisconsin's voter ID law took effect, she needed a photo ID to vote. So she entered the ID Petition Process (IDPP) at the Wisconsin Department of Motor Vehicles (DMV) to get a Wisconsin ID. DMV employees were able to find Mrs. Smith's record in the 1930 census, but despite their sustained efforts, they could not link Mrs. Smith to a Missouri birth record, so they did not issue her a Wisconsin ID. She is unquestionably a qualified Wisconsin elector, and yet she could not vote in 2016. Because she was born in the South, barely 50 years after slavery, her story is particularly compelling. But it is not unique: Mrs. Smith is one of about 100 qualified electors who tried to but could not obtain a Wisconsin ID for the April 2016 primary.

Wisconsin's voter ID law is part of 2011 Wis. Act 23, enacted the year after Wisconsin Republicans won the governorship and majorities in both houses of the legislature. Act 23 was the first of eight laws enacted over the next four years that transformed Wisconsin's election system. Plaintiffs in this case challenge the voter ID law, the IDPP, and more than a dozen other provisions in these new laws, none of which make voting easier for anyone. Plaintiffs contend that the new voting requirements and restrictions were driven by partisan objectives rather than by any legitimate concern for election integrity, that these laws unduly burden the right to vote, and that they discriminate against minorities, Democrats, and the young. Plaintiffs contend that the new election laws violate the First, Fourteenth, Fifteenth, and Twenty-Sixth Amendments to the Constitution, and § 2 of the Voting Rights Act.

This case was tried to the court in May. Over nine extended days, the court heard the testimony of 45 live witnesses, including six experts, with additional witnesses presented by deposition. The parties submitted lengthy post-trial briefs, and the court heard closing arguments on June 30. The opinion that follows is the court's verdict. It sets out in detail the facts that the ***903** court finds and the legal conclusions that the court draws from those facts. Because of the large number of claims asserted in this case, and the volume of evidence submitted, the opinion is necessarily long, and few readers will endure to the end. But I will try, in a few pages of introduction, to explain succinctly the court's essential holdings and the reasons for them.

I start with a word about my role. It is not the job of a federal judge to decide whether a state's laws are wise, and I certainly do not have free-floating authority to rewrite Wisconsin's election laws. My task here is the more limited one of pointing out where Wisconsin's election laws cross constitutional boundaries. The Constitution leaves important decisions about election administration to the states. But election laws inevitably bear on the fundamental right to vote, so constitutional principles come into play. The standards that I must apply to plaintiffs' claims require me to examine carefully the purposes behind these laws, and sometimes to draw inferences about the motives of the lawmakers who enacted them. I conclude that some of these laws cannot stand.

Wisconsin's voter ID law has been challenged as unconstitutional before, in both federal and state court. In the federal case, *Frank v. Walker*, the Seventh Circuit held that Wisconsin's voter ID law is similar, in all the ways that matter, to Indiana's voter ID law, which the United States Supreme Court upheld in *Crawford v. Marion County Election Board*. The important takeaways from *Frank* and *Crawford* are: (1) voter ID laws protect the integrity of elections and thereby engender confidence in the electoral process; (2) the vast majority of citizens have qualifying photo IDs, or could get one with reasonable effort; and (3) even if some people would have trouble getting an ID, and even if those people tend to be minorities, voter ID laws are not facially unconstitutional. I am bound to follow *Frank* and *Crawford*, so plaintiffs' effort to get me to toss out the whole voter ID law fails.

If it were within my purview, I would reevaluate *Frank* and *Crawford*, but not because I would necessarily reach a different conclusion. A well-conceived and carefully implemented voter ID law can protect the integrity of elections without unduly impeding participation in elections. But the rationale of these cases should be reexamined. The evidence in this case casts doubt on the notion that voter ID laws foster integrity and confidence. The Wisconsin experience demonstrates that a preoccupation with mostly phantom election fraud leads to real incidents of disenfranchisement, which undermine rather than enhance confidence in elections, particularly in minority communities. To put it bluntly, Wisconsin's strict version of voter ID law is a cure worse than the disease. But I must follow *Frank* and *Crawford* and reject plaintiffs' facial challenge to the law as a whole.

The most pointed problem with Wisconsin's voter ID law is that it lacks a functioning safety net for qualified electors who cannot get a voter ID with reasonable effort. The IDPP is supposed to be this safety net, but as Mrs. Smith's story illustrates, the IDPP is pretty much a disaster. It disenfranchised about 100 qualified electors—the vast majority of whom were African American or Latino—who should have been given IDs to vote in the April 2016 primary. But the problem is deeper than that: even voters who succeed in the IDPP manage to get an ID only after surmounting severe burdens. If the petitioner lacks a birth certificate and does not have one of the usual alternatives to a birth certificate, on average, it takes five communications with the DMV after the initial application to get an ID. I conclude that the IDPP is unconstitutional and ***904** needs to be reformed or replaced. Because time is short with the fall elections approaching, I will issue an injunction targeted to the constitutional deficiencies that I identify.

Judge Lynn Adelman for the U.S. District Court for the Eastern District of Wisconsin has also concluded that the IDPP is likely unconstitutional, and he has issued a preliminary injunction requiring Wisconsin to institute an affidavit procedure. This procedure would allow an elector without an ID to vote by signing an affidavit stating that he or she is a qualified elector but could not get a photo ID. Judge Adelman's injunction provides one type of safety net. But plaintiffs have not asked me to impose that solution, and I will not. The state has already issued an emergency rule under which those who are in the IDPP will get receipts valid for voting. Although that is not a complete or permanent solution, it blunts the harshest effects of the IDPP. I will also order the state to publicize that anyone who enters the IDPP will promptly get a receipt valid for voting. To address this problem over the longer term, I will order the state to reform the IDPP to meet certain standards, leaving it to the state to determine how best to cure its constitutional problems. I take this approach because it respects the state's decision to have a strict voter ID law rather than an affidavit system. But Wisconsin may adopt a strict voter ID system *only* if that system has a well-functioning safety net, as both the Seventh Circuit and the Wisconsin Supreme Court have held.

The heart of the opinion considers whether each of the other challenged provisions unduly burdens the right to vote, in violation of the First and Fourteenth Amendments. This analysis proceeds under what is known as the *Anderson–Burdick* framework, which sets out a three-step analysis. First, I determine the extent of the burden imposed by the challenged provision. Second, I evaluate the interest that the state offers to justify that burden. Third, I judge whether the interest justifies the burden. Certain of Wisconsin's election laws fail *Anderson–Burdick* review. For reasons explained in the opinion, I conclude that the state may not enforce:

- most of the state-imposed limitations on the time and location for in-person absentee voting (although the state may set a uniform rule disallowing in-person absentee voting on the Monday before elections);
- the requirement that "dorm lists" to be used as proof of residence include citizenship information;
- the 28-day durational residency requirement;
- the prohibition on distributing absentee ballots by fax or email; and
- the bar on using expired but otherwise qualifying student IDs.

The purported justifications for these laws do not justify the burdens they impose.

Plaintiffs also contend that the challenged laws intentionally discriminate on the basis of race and age. This is a serious charge against Wisconsin public officials. I reject most of it, applying the framework set out by the Supreme Court in *Village of Arlington Heights v. Metropolitan Housing Development Corporation*. But applying that same framework, I find that 2013 Wis. Act 146, restricting hours for in-person absentee voting, intentionally discriminates on the basis of race. I reach this conclusion because I am persuaded that this law was specifically targeted to curtail voting in Milwaukee without any other legitimate purpose. The legislature's immediate goal was to achieve a partisan objective, but the means of achieving that objective was to suppress the reliably Democratic vote of Milwaukee's African ***905** Americans. Thus, I conclude that the limits on in-person absentee voting imposed by Act 146 fail under the Fifteenth Amendment, as well as under the *Anderson–Burdick* analysis.

In sum, Wisconsin has the authority to regulate its elections to preserve their integrity, and a voter ID requirement can be part of a well-conceived election system. But, as explained in the pages that follow, parts of Wisconsin's election regime fail to comply with the constitutional requirement that its elections remain fair and equally open to all qualified electors.

One last point: I do not intend to disrupt the August 6, 2016 election. My decision and the injunction will have no effect on that election.

Contents

FACTS

Although extensive evidence has been presented in this case, material factual disputes few and quite circumscribed. The parties sharply dispute plaintiffs' allegations that any of the challenged laws were motivated by improper purposes, particularly

intentional race and age discrimination. The parties also dispute the effect of the challenged laws on voter turnout, and whether these effects are felt more heavily by minorities and other groups of voters. But much is undisputed.

The parties have stipulated to a set of background facts, most of which describe the challenged provisions and how they operate. *See* Dkt. 184. The court adopts these facts and recounts them below, along ***906** with other facts about Wisconsin's election system before the challenged provisions went into effect. The court also adopts the facts found by Judge Adelman concerning the history and operation of the IDPP, which he based substantially on the evidence presented in this case. *Frank v. Walker*, 196 F.Supp.3d 893, No. 11–cv–1128, 2016 WL 3948068 (E.D.Wis. July 19, 2016). The court will incorporate the rest of its factual findings in the analysis section of this opinion.

Historically, Wisconsin has had a well-respected election system, and the state has consistently had turnout rates among the highest in the country. Presidential elections were close in Wisconsin: the 2000 and 2004 elections were decided by less than one-half of one percentage point. In 2008, however, President Obama won Wisconsin by almost 14 percentage points. Two years later, Republicans took control of both houses of the state legislature, and voters elected a Republican governor. Since then, Wisconsin has implemented a series of election reforms. These laws covered almost every aspect of voting: registration, absentee voting, photo identification, and election-day mechanics.

A. The challenged provisions

On May 25, 2011, Wisconsin enacted 2011 Wis. Act 23. That legislation made the following changes to Wisconsin election law:

- It imposed a voter ID requirement.
- It reduced the window of time during which municipalities could offer in-person absentee voting from a period of as much as 30 days that ended on the day before election day to a period of 12 days that ended on the Friday before election day.
- It eliminated "corroboration" as a means of proving residence for the purpose of registering to vote. [2]
- It mandated that any "dorm list" provided to a municipal clerk to be used in connection with college IDs to prove residence for the purpose of registering to vote include a certification that the students on the dorm list were United States citizens.
- It increased the in-state durational residency requirement for voting for offices other than president and vice president from 10 days to 28 days before an election and required individuals who moved within Wisconsin later than 28 days before an election to vote in their previous wards or election districts.
- It eliminated straight-ticket voting on official ballots.
- It eliminated the authority of the Government Accountability Board (GAB) to appoint special registration deputies (SRDs) who could register voters on a statewide basis.

On November 16, 2011, Wisconsin enacted 2011 Wis. Act 75, which prohibited municipal clerks from faxing or emailing absentee ballots to absentee voters other than overseas and military voters.

On April 6, 2012, Wisconsin enacted 2011 Wis. Act 227, which prohibited municipal clerks from returning an absentee ballot to an elector unless the ballot was spoiled or damaged, had an improperly completed certificate, or had no certificate.

Also on April 6, 2012, Wisconsin enacted 2011 Wis. Act 240, which eliminated the requirements that SRDs be appointed at public high schools; that, in certain circumstances, SRDs be appointed at or sent to ***907** private high schools and tribal

schools; and that voter-registration applications from enrolled students and members of a high school's staff be accepted at that high school.

In August 2012, the GAB directed election officials to accept electronic versions of documents that could be used to prove residence for the purpose of registering to vote.

On March 20, 2013, Senate Bill 91 was introduced in the Wisconsin State Senate. This bill would have permitted municipalities to open multiple in-person absentee voting locations (under existing law, municipalities were limited to only one location). The bill failed to pass.

On December 12, 2013, Wisconsin enacted 2013 Wis. Act 76. This legislation had the effect of overturning a city ordinance in Madison that required landlords to provide voter-registration forms to new tenants.

On March 27, 2014, Wisconsin enacted 2013 Wis. Act 146, which reduced the window during which municipalities could offer in-person absentee voting. This law eliminated the option of offering in-person absentee voting on weekends and on weekdays before 8 a.m. or after 7 p.m.

On April 2, 2014, Wisconsin enacted 2013 Wis. Act 177, which required that observation areas at polling places be placed between three and eight feet from the location where voters signed in and obtained their ballots and from the location where voters registered to vote.

Also on April 2, 2014, Wisconsin enacted 2013 Wis. Act 182, which required all voters, other than statutory overseas and military voters, to provide documentary proof of residence when registering to vote. Before the passage of this legislation, the requirement that a voter provide documentary proof of residence when registering to vote applied only to those who registered after the third Wednesday preceding (i.e., 20 days before) an election.

B. Parties and procedural history

The plaintiffs in this case include two organizations and several individuals. One Wisconsin Institute, Inc. is a nonprofit corporation with a mission "to advance progressive values, ideas, and policies through strategic research and sophisticated communications." Dkt. 141, ¶ 4. Citizen Action of Wisconsin Education Fund, Inc. is also a nonprofit corporation focused on pursuing social and economic justice. The individual plaintiffs are Renee Gagner, Anita Johnson, Cody Nelson, Jennifer Tasse, Scott Trindl, Michael Wilder, Johnny Randle, David Walker, David Aponte, and Cassandra Silas. They all allege that the challenged provisions injure their rights to vote, register to vote, register others to vote, or vote for Democratic candidates.

The initial defendants in this case were the members of the GAB and two of its officers. Plaintiffs have added and removed some defendants along the way, and the list now includes: Mark Thomsen, Ann Jacobs, Beverly Gill, Julie Glancey, Steve King, and Don Mills, the members of the Wisconsin Elections Commission; Michael Haas, the administrator of the Wisconsin Elections Commission; Mark Gottlieb, the secretary of the Wisconsin Department of Transportation (DOT); and Kristina Boardman, the administrator of the DMV. Plaintiffs have sued all defendants in their official capacities.

Plaintiffs filed this suit in May 2015, alleging that the challenged provisions were unconstitutional, violated the Voting Rights Act, and resulted from intentional discrimination by the Wisconsin legislature. The court granted defendants' motion to dismiss plaintiffs' challenge to the voter ID law, as well as some of their Equal Protection challenges to other provisions. ***908** Dkt. 66. But the court later permitted plaintiffs to partially reinstate their claims regarding the voter ID law, based on evidence that defendants produced during discovery. Dkt. 139. A few months later, the court substantially denied defendants' motion for summary judgment, Dkt. 185, and the case proceeded to trial.

ANALYSIS

The court will structure its analysis as follows:

First, standing. The court concludes that plaintiffs have standing to challenge each of the provisions at issue, and that the corporation plaintiffs can pursue claims under the Voting Rights Act.

Second, plaintiffs' facial challenges to Wisconsin's voter ID law. This law has already been upheld after extensive litigation in the federal courts. The court concludes that invalidating the entire voter ID law would not be appropriate in this case.

Third, plaintiffs' claims of intentional discrimination. Plaintiffs have proven by a preponderance of the evidence that the legislature passed the provisions limiting the hours for in-person absentee voting at least partially with the intent to discriminate against voters on the basis of race. But the court concludes that the remaining provisions do not violate the Fifteenth Amendment. The court also concludes that none of the challenged provisions violate the Twenty-Sixth Amendment.

Fourth, plaintiffs' "partisan fencing" claims. Although plaintiffs allege a separate claim for partisan fencing, the court concludes that their constitutional claim provides an adequate framework for analyzing these allegations.

Fifth, plaintiffs' First and Fourteenth Amendment claims for unduly burdening the right to vote. The court concludes that some, but not all, of the challenged provisions are unconstitutional because the state's justifications for them do not outweigh the burdens that they impose.

Sixth, plaintiffs' Voting Rights Act claims. The court concludes that one of the challenged provisions violates the Voting Rights Act.

Seventh, plaintiffs' Fourteenth Amendment Equal Protection claim. The court concludes that defendants have failed to articulate a rational basis for the state's decision to exclude expired student IDs as acceptable forms of voter ID.

A. Standing

The court begins with standing. At summary judgment, the court rejected defendants' justiciability arguments, including arguments related to standing. Defendants now renew some of these arguments, contending that no plaintiff has standing to challenge the voter ID law. Defendants also contend that plaintiffs lack standing to challenge almost all of the other provisions that are at issue. For plaintiffs' Voting Rights Act claims, defendants contend that no plaintiff qualifies as an "aggrieved person" able to pursue claims under the act.

"[T]he 'irreducible constitutional minimum' of standing consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, —— U.S. ——, 136 S.Ct. 1540, 1547, 194 L.Ed.2d 635 (2016) (citation omitted), *as revised*, (May 24, 2016). Defendants contend that plaintiffs have not proven the first of these elements: a cognizable injury in fact. As the parties invoking this court's jurisdiction, plaintiffs bear the burden of establishing that they have standing. *Id.* But only one plaintiff needs to have standing to challenge a given provision because the complaint seeks only injunctive relief. ***909** *Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir.2007), *aff'd*, 553 U.S. 181, 128 S.Ct. 1610, 170 L.Ed.2d 574 (2008).

Of the 10 individual plaintiffs in this case, 6 received qualifying IDs from the DMV and 4 received receipts through the IDPP. DX022; PX445. Defendants want to stop there, arguing that none of the individual plaintiffs are harmed by the voter ID law because they all currently have qualifying IDs. But there are several problems with this argument. The most obvious problem is that under the DMV's current rules, the receipts that four of the individual plaintiffs received will expire after two automatic renewals, which means 180 days after issuance. Although these plaintiffs will be able to vote in the upcoming August and November elections, there is essentially no plan in place for them after they use their two renewals. Without a valid ID, these plaintiffs will not be able to vote. Thus, they have "suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.' " *Spokeo*, 136 S.Ct. at 1548.

Even setting aside the plaintiffs who will lack acceptable IDs and be unable to vote after the November 2016 election, the voter ID law also injures the remaining individual plaintiffs. At summary judgment, the court concluded that having to *present* an ID at the polls was a sufficient injury for purposes of conferring Article III standing. Dkt. 185, at 10 (citing *Frank v. Walker*, 17 F.Supp.3d 837, 866 (E.D. Wis.), *rev'd*, 768 F.3d 744 (7th Cir.2014), *cert. denied*, —— U.S. ——, 135 S.Ct. 1551, 191 L.Ed.2d 638 (2015), and *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1351–52 (11th Cir.2009)). The court also concluded that the plaintiffs who have IDs will have to renew them or acquire other forms of identification once their current IDs expire, which would be another injury that confers standing. *Id.*

Defendants do not substantively engage these issues; they simply assert that "[t]his Court was wrong when it held that voters who have a qualifying ID have Article III standing to challenge the voter photo ID law." Dkt. 206, at 13. If defendants want to preserve the issue for appeal, then they have done so. But they have not identified reasons for the court to depart from its earlier conclusion that plaintiffs have standing to challenge the voter ID law.

As for the other provisions at issue, the corporation plaintiffs have standing to challenge these laws. "An organization may establish an injury to itself sufficient to support standing to challenge a statute or policy by showing that the statute or policy frustrates the organization's goals and necessitates the expenditure of resources in ways that would not otherwise be required." 15 James Wm. Moore et al., *Moore's Federal Practice* § 101.60[1][f] (3d ed. 2015) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982)); *see also Crawford*, 472 F.3d at 951 ("[T]he new law injures the Democratic Party by compelling the party to devote resources to getting to the polls those of its supporters who would otherwise be discouraged by the new law from bothering to vote."). To establish standing, an organization must point "to a 'concrete and demonstrable injury to its activities,' not 'simply a setback to the organization's abstract social interests.' " *Spann v. Colonial Vill., Inc.*, 899 F.2d 24, 27 (D.C.Cir.1990) (alterations omitted) (quoting *Havens Realty Corp.*, 455 U.S. at 379, 102 S.Ct. 1114).

At trial, plaintiffs adduced evidence that One Wisconsin and Citizen Action each devoted money, staff time, and other resources away from their other priorities to educate voters about the new laws. For example, Analiese Eicher, One Wisconsin's program and development director, testified ***910** that she researched all but one of the challenged provisions. Tr. 5p, at 145:12-17. [3] The purpose of this research was to allow One Wisconsin to educate its supporters, its partners, and the press. *Id.* at 145:18-25. Eicher also testified that had she not been researching the legislation, she would have been working on other programs or initiatives for One Wisconsin. *Id.* at 147:4-16. Eicher would have been advocating for other voting-related changes, such as automatic voter registration, online registration, and felony reenfranchisement. *Id.* at 147:18-24. On an organizational level, One Wisconsin developed a website to help voters navigate the registration process in an effort to remediate some of the confusion surrounding the challenged provisions. *Id.* at 148:7-9, 149:3-8.

Likewise, Anita Johnson, an individual plaintiff and one of Citizen Action's community organizers, testified that her job responsibilities have "ballooned" over the last few years as the laws have changed. Tr. 1p, at 4:16-5:1. Her presentations to community groups now take longer, she has been able to register fewer people, and she has stopped working on other issues for Citizen Action to focus exclusively on voting rights. *Id.* at 5:15-16, 7:20-8:5, 11:7-25, 32:24-33:11.

Based on this evidence, the court finds that the corporation plaintiffs are not simply redirecting their resources to litigation, which would not be an injury-in-fact that would confer standing. *See N.A.A.C.P. v. City of Kyle*, 626 F.3d 233, 238 (5th Cir.2010). Instead, both corporations are devoting resources away from other tasks and toward researching, or educating voters about, the challenged provisions. These expenditures are injuries that give both corporations standing to challenge the provisions at issue in this case because the corporations are counteracting what they perceive to be unlawful practices. *Cf. Fla. State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1166 (11th Cir.2008).

Defendants' final justiciability challenge relates to the Voting Rights Act and whether any plaintiff qualifies as an "aggrieved person" for purposes of bringing suit pursuant to 52 U.S.C. § 10302. The court rejected this challenge at summary judgment, adopting the Eastern District of Wisconsin's reasoning in *Frank* and concluding that the corporation plaintiffs could assert claims under the Voting Rights Act. Dkt. 185, at 14-15. Once again, defendants do not substantively confront this analysis. *See* Dkt. 206, at 15. In fact, the authority on which defendants rely—*Roberts v. Wamser*, 883 F.2d 617 (8th Cir.1989)—does not actually support their assertion that corporations cannot file suit under the Voting Rights Act. *Roberts* involved an unsuccessful political candidate whose alleged injury was the loss of votes that he would have received but for the challenged voting practice. 883 F.2d at 621. The Eighth Circuit held "that an unsuccessful candidate attempting to challenge election results does not have standing under the Voting Rights Act." *Id.* But the Eighth Circuit also noted that the candidate was not suing on behalf of others who were unable to protect their own rights, *id.* which is what the corporation plaintiffs are doing in this case. The court will adhere to its earlier conclusion that One Wisconsin and Citizen Action can pursue claims under the Voting Rights Act.

B. Facial challenges to Wisconsin's voter ID law

Wisconsin's voter ID law has been through the federal courts before. The ***911** Seventh Circuit upheld the law in *Frank v. Walker*, 768 F.3d 744 (7th Cir.2014), *cert. denied*, —— U.S. ——, 135 S.Ct. 1551, 191 L.Ed.2d 638 (2015), relying on the Supreme Court's decision in *Crawford v. Marion County Election Board*, 553 U.S. 181, 128 S.Ct. 1610, 170 L.Ed.2d 574 (2008). Thus, this court will begin its consideration of the merits by addressing plaintiffs' contention that despite the holdings in *Crawford* and *Frank*, Wisconsin's voter ID law is facially unconstitutional and violates the Voting Rights Act.

Crawford considered a facial challenge to Indiana's voter ID law. 553 U.S. at 185, 128 S.Ct. 1610. The critical holding in *Crawford* is that requiring a voter to show a photo ID before voting serves the important governmental interest in ensuring the integrity of elections, particularly by preventing in-person voting fraud, thereby engendering confidence in elections. *Id.* at 200–03, 128 S.Ct. 1610. *Crawford* also held that securing an Indiana photo ID, which required assembling certain vital documents and going to the DMV to apply for the ID, imposed only modest burdens that were not much greater than the effort ordinarily required to register and vote. *Id.* at 198, 128 S.Ct. 1610. *Crawford* upheld Indiana's voter ID law against a facial challenge even though the burdens of the law fell somewhat more heavily on minority voters, and even though some individual voters might not be able to get a photo ID without surmounting more severe burdens.

In *Frank*, the Seventh Circuit considered a facial challenge to Wisconsin's voter ID law. 768 F.3d at 745. The district court had determined that there were factual distinctions between Wisconsin's law and Indiana's law: most significantly, that there were many more voters who did not have a qualifying photo ID in Wisconsin, and that those voters tended to be minorities. The Seventh Circuit expressed skepticism about the evidence of how many voters lacked ID, but concluded that, in any case, those distinctions were not material to the facial challenge. The Seventh Circuit held that Wisconsin's voter ID law was not materially different from the Indiana law at issue in *Crawford*, and that under *Crawford*, Wisconsin's voter ID law was facially constitutional. *Id.*

It is hard to deny that a state and its citizens have a truly compelling interest in maintaining election integrity. As the evidence in this case proved once again, voter fraud is rare but not non-existent. The court credits the evidence of plaintiffs' expert on the

subject, Dr. Lorraine C. Minnite, who testified and filed two expert reports. PX039; PX044. But the more compelling evidence comes from Milwaukee County, the one county in the state that has tried to systematically discover and track violations of election law. The county has an assistant district attorney devoted full-time to the job, Bruce Landgraf. Based on Landgraf's testimony, and on other evidence discussed below, the court finds that impersonation fraud—the type of fraud that voter ID is designed to prevent—is extremely rare. In most elections there are a very few incidents in which impersonation fraud cannot be ruled out. But as *Crawford* and *Frank* held, despite rarity with which election fraud occurs, it is nevertheless reasonable for states to take steps to prevent it.

Any system that requires voters to get a credential will necessarily impose a burden on them. But if the burden is a modest one, and if the credential meaningfully fosters integrity, then the constitution is satisfied. Under *Crawford* and *Frank*, collecting the necessary records and making a trip to the DMV to get an ID is a modest burden in light of the state interest that it serves. Those cases probably reflected an unduly rosy view of DMV field offices, but the evidence in this case confirms, yet ***912** again, that the vast majority of Wisconsin citizens already have the necessary ID. And most citizens who do not have an ID can get one with relative ease.

This court is, of course, bound to follow *Crawford* and *Frank*, which defendants contend doom plaintiffs' facial challenge to Wisconsin's voter ID law. Defendants are correct. But *Crawford* and *Frank* deserve reappraisal. The court is skeptical that voter ID laws engender confidence in elections, which is one of the important governmental purposes that courts have used to sustain the constitutionality of those laws.

The evidence in this case showed that portions of Wisconsin's population, especially those who live in minority communities, perceive voter ID laws as a means of suppressing voters. This means that they undermine rather than enhance confidence in our electoral system. Good national research suggests that voter ID laws suppress turnout, and that they have a small, but demonstrable, disparate effect on minority groups. *See* PX072. At trial, testimony of African American community leaders confirmed that voter ID laws engender acute resentment in minority communities. *See, e.g.*, Tr. 1p, at 131:21-24. And some of the Wisconsin legislators who supported voter ID laws believed that they would have partisan effects. Their willingness to publically tout the partisan impact of those laws deepens the resentment and undermines belief in electoral fairness.

Underlying the philosophical debate is a fundamentally factual question: do voter ID laws protect the integrity of elections? According to the *Frank* court, *Crawford* definitively answered this question. 768 F.3d at 750 ("[W]hether a photo ID requirement promotes public confidence in the electoral system is a 'legislative fact'—a proposition about the state of the world, as opposed to a proposition about these litigants or about a single state."). The primary integrity-based justification offered for voter ID laws is that they prevent voter fraud. But that seems to be a dubious proposition. A voter ID requirement addresses only certain types of election malfeasance; specifically, impersonation fraud, by which one person poses as another and votes under his or her name. This happens from time to time by accident, when a voter signs the poll book on the wrong line. That produces some frustration for voters and poll workers, but it does not represent a fundamental threat to the integrity of elections because it does not happen that often and because everyone ultimately gets to vote.

The real fear is multiple voting: that a committed but unethical partisan could cast many votes for his or her candidate under different names. Yet there is utterly no evidence that this is a systematic problem, or even a common occurrence in Wisconsin or anywhere in the United States. PX039, at 2, 35. True, it is not unheard of: in one well-known case, a Milwaukee man was so committed to Governor Walker's re-election that he voted 14 times. Tr. 8a, at 184:3-24. He was charged with and convicted of voter fraud (even without the benefits of the voter ID law). Proponents of voter ID would say that there could be other incidents of voter fraud that have gone undetected. But there is no evidence to support that hypothesis. As many have pointed out, multiple voting is not a very effective way of influencing an election, and few people would risk the penalties to do so. The bottom line is that impersonation fraud is a truly isolated phenomenon that has not posed a significant threat to the integrity of Wisconsin's elections.

The same cannot be said for Wisconsin's voter ID law, which has so far been implemented in a rigorously strict form: the only way to vote is to secure a state-approved ID. As part of Act 23, Wisconsin ***913** enacted a statute allowing citizens to receive free IDs to vote. But it was not until the eve of trial in this case that the state started paying for the underlying documents (e.g., birth certificates) that citizens needed to submit to obtain these free IDs. Even now, citizens who lack vital records can obtain free IDs only after navigating the complicated IDPP. Wisconsin's strict implementation of its voter ID law has disenfranchised more citizens than have ever been shown to have committed impersonation fraud.

In theory, the well-designed and easy-to-use registration and voting system imagined in *Crawford* and *Frank* facilitates public confidence without eroding participation in elections. But in practice, Wisconsin's system bears little resemblance to that ideal.

So where does that leave plaintiffs' facial challenge to the voter ID law? Plaintiffs contend that two aspects of the factual record of this case distinguish it from *Crawford* and *Frank*, paving the way to a fresh facial challenge.

1. Facial relief because of intentional discrimination

First, plaintiffs assert that Wisconsin's voter ID law was motivated, at least in part, by racial animus. This is a serious allegation against the public officials of Wisconsin, but the court cannot easily dismiss it here. There is manifest racial disparity in the operation of the IDPP: of the 61 actual denials that the DMV had issued as of April 2016, 85 percent were to African Americans or Latinos. PX475. And government witnesses concede that 60 of these denials were issued to qualified electors entitled to vote, but who could not meet the IDPP's criteria for a state-issued ID. *See* Tr. 6, at 75:24-76:17 (DMV administrator); Tr. 8p, at 191:2-5 (investigations unit employee). The legislative history suggests that some of the provisions challenged in this case were specifically intended to curtail voting in Milwaukee, where 40 percent of the population is African American and 17.3 percent is Latino (approximately two-thirds of the state's minority population). Both sides agree that if the court finds that the Wisconsin legislature enacted a voter ID law for the at least partially with the intent to discriminate on the basis of race, then the law is constitutionally unsound and cannot stand. The court will address this issue below, in discussing the intentional discrimination claims that plaintiffs have alleged in this case.

2. Facial relief because the IDPP has failed

The second factual distinction concerns the IDPP, which plaintiffs contend imposes severe and discriminatory burdens on some qualified Wisconsin electors. The IDPP was the subject of a great deal of testimony at trial, and it has become a dominant issue in this case. Plaintiffs contend that the IDPP demonstrates Wisconsin's intentional race discrimination, is unconstitutional under the *Anderson–Burdick* framework, and violates the Voting Rights Act.[4] And because this constitutionally required safety net is not working, plaintiffs argue that the court must strike down the entire voter ID law.

The context for, and history of, Wisconsin's effort to implement the IDPP began with Act 23, passed in 2011. Besides establishing voter ID, this legislation created Wis. Stat. § 343.50(5)(a)3., which provided that a voter could get a Wisconsin ID from the DMV for free, if the voter requested it for voting. But voters who did not have their birth certificates had to get copies, which typically required paying a fee to a government agency. Thus, getting a free ID was not really free.

***914** Many thought that the fees that voters had to pay for copies of their vital records were tantamount to an unconstitutional poll tax. Indeed, that was the conclusion that the Wisconsin Supreme Court reached in *Milwaukee Branch of NAACP v. Walker*, which relied on *Crawford* to uphold Wisconsin's voter ID law against a facial challenge. 2014 WI 98, ¶ 7, 357 Wis.2d 469, 851 N.W.2d 262, *reconsideration dismissed*, —— Wis.2d ——, 856 N.W.2d 177 (2014). The state supreme court applied a savings construction to the Wisconsin Administrative Code to provide that the required vital documents were "unavailable" to a prospective voter if he or she would have to pay a fee to get them. *Id.* ¶¶ 66–71. Thus, a person who had to pay to get a birth

certificate could use the DMV's special petition process in Wis. Admin. Code DOT § 102.15 (i.e., the IDPP) to ask for a free ID on the grounds that a birth certificate was unavailable. As the Seventh Circuit recognized in *Frank*, the availability of a truly free ID provided a necessary safety net that preserved the constitutionality of Wisconsin's voter ID law. 768 F.3d at 747. But since then, effectuating the savings construction to provide free photo IDs to voters who lacked the requisite vital records has proven to be difficult for the DMV, to say the least.

For purposes of this opinion, the court does not need to retrace every detail of DOT's response to *NAACP v. Walker*; plaintiffs have set out the timeline in a chart appended to their brief. Dkt. 207, at 253-57. In summary, the DOT instituted an emergency rule on September 11, 2014 (the day before the appellate argument in *Frank*). PX456. The emergency rule changed the definition of "unavailable," following the Wisconsin Supreme Court's direction, and it reorganized the IDPP into a new subsection of Wisconsin's Administrative Code, DOT § 102.15(5m). The emergency rule also created a procedure that, in essence, required the DMV to track down the birth record of any person who requested a free voter ID, if the person did not have a copy of their birth record. The procedure was complicated because the process required interaction between various divisions of the DMV, the Wisconsin Department of Health Services, and agencies of other states. PX472. The main task of investigating and evaluating petitions fell to the DMV's Compliance and Fraud Unit (CAFU), which, as its name implies, has staff members whose normal duties are to investigate allegations of fraud.

Many people successfully navigated the IDPP. Out of 1,389 petitions for free IDs, the DVM issued IDs to 1,132 petitioners. Of the petitioners who applied, 487 had to go through "adjudication," which included a full investigation by CAFU [5] and a final decision from Jim Miller, the head of the DMV's Bureau of Field Services (a different unit from CAFU). 230 of the petitioners who went through adjudication received IDs; 257 petitioners did not. DMV records indicate that 98 of the petitioners who did not receive IDs after adjudication cancelled their petitions. [6]

***915** The petitioners in suspended or denied status were the ones who faced serious roadblocks in the IDPP: their birth records did not exist, or those records did not perfectly match their names or other aspects of their identities, such as Social Security records. The problems arose because the DMV evaluated IDPP petitions for voting IDs by using the same identification standards that it applied to applications for Wisconsin driver licenses and standard IDs. To acquire any one of these products from the DMV, a person must prove both their identity and their legal presence in the United States. Thus, the DMV refused to issue IDs to IDPP petitioners until CAFU could confirm their identities with a match to a valid birth record, or to some equivalently secure alternative. Some petitioners simply could not meet the DMV's standard of proof, and so they could not obtain free IDs.

The lack of a valid birth record correlated strikingly, yet predictably, with minority status. The evidence at trial demonstrated that Puerto Rico, Cook County, Illinois, and states with a history of *de jure* segregation have systematic deficiencies in their vital records systems. Voters born in those places were commonly unable to confirm their identities under the DMV's standards. For example, many African American residents in Wisconsin were born in Cook County or in southern states. PX479. And many of the state's Latino residents were born in Puerto Rico. *Id.* As of April 2016, more than half of the petitioners who had entered the IDPP were born in Illinois, Mississippi, or a southern state that had a history of *de jure* segregation. PX478.

In June 2015, the DMV begin issuing denials to IDPP petitioners. By the time of trial in this case, the DMV had issued 61 denials, 53 of which were to minority petitioners. [7] Again, with one exception, the DMV had no reason to doubt that those who were denied a photo ID were Wisconsin residents, United States citizens, at least 18 years of age, and qualified to vote. Tr. 6, at 75:24-76:17. The sole exception was a Latina woman who mistakenly believed that she had been naturalized.

Since the state first implemented the IDPP, another related problem has prevented petitioners from successfully navigating the process. Until recently, the state had not appropriated any funds to pay for petitioners' vital records. Although no petitioner was

asked to pay for any vital record, the state did not acquire any vital record for which a fee was required. The result was that some petitioners fell into limbo: the DMV did not deny their petitions, but the petitioners could not confirm their identities. These petitioners ended up in "suspend" status, with the DMV essentially waiting either for the petitioner to turn up new records, or for enough time to pass that the DMV could officially deny the petition.

On March 7, 2016, DMV officials and state legal counsel met to discuss the state's failure to pay for vital records. At some point after the meeting, the DMV received funds, and during the second week of trial in this case, the DMV made its first payment to acquire a vital record for a petitioner. Tr. 7p, at 111:2-17.

On May 10, 2016, a week before the trial in this case began, the governor approved ***916** another emergency rule modifying the IDPP. PX452. The new rule acknowledged that emergency rulemaking was required to ensure that qualified electors could get a photo ID with reasonable effort in time for the next elections:

> This emergency rulemaking [was] also necessary to preserve the integrity of the verification process utilized by the Department in issuing an identification card while still preserving the public welfare by ensuring that qualified applicants who may not be able to obtain acceptable photographic identification for voting purposes with reasonable effort will be able to obtain photographic identification before the next scheduled elections.

PX453, at 14. The rule ameliorated some of the deficiencies of the IDPP: it established procedures and standards for evaluating petitions; it provided a means to surmount common impediments such as minor mismatches between a birth record and other aspects of a petitioner's identity; and it established "more likely than not" as the standard for evaluating evidence of identity, birthdate, and citizenship.[8] Perhaps most important, the emergency rule required the DMV to issue petitioners temporary identification card receipts that were valid for voting purposes while their petitions were pending.

Defendants contend that the latest emergency rule fixes the problems with the IDPP, and that because all petitioners still in the process have a receipt valid for voting, the dispute over the IDPP is moot. The court disagrees for two reasons.

First, the receipts issued under the emergency rule are not permanent. Those who hold them will be able to vote only so long as the receipts are renewed. But qualified electors are entitled to vote as a matter of constitutional right, not merely by the grace of the executive branch of the state government. The state has promised to renew the receipts for 180 days so that they will be good through the November 2016 election. But the state has been utterly silent on what happens after that. As things stand now, after these receipts expire, petitioners will once again find themselves in IDPP limbo. Thus, at best, the emergency rule gives the state time to devise a new solution (but the court has not seen any evidence to suggest that the state is actually working on a solution).

Second, even under the emergency rule, petitioners will have to convince the DMV to exercise its discretion to issue them IDs. Although the emergency rule guides that discretion and specifies that the applicable standard of proof is "more likely than not," the process is still far more arduous than collecting documents and making a trip to the DMV, as envisioned in *Crawford* and *Frank*. Being investigated by CAFU, even under the newest iteration of Wisconsin's emergency rule, still makes it unnecessarily difficult to obtain an ID.

For now, suffice it to say that the court agrees that the IDPP is a wretched failure: it has disenfranchised a number of citizens who are unquestionably qualified to vote, and these disenfranchised citizens are overwhelmingly African American and Latino. The IDPP violates the constitutional rights of those who must use it, and so Wisconsin must therefore replace or substantially

reform the process. But that does not mean that the voter ID law is unconstitutional in all of its applications. ***917** Because a targeted remedy can cure the constitutional flaws of the IDPP (and thus, the entire voter ID law), facial relief is not necessary or appropriate.

Crawford and *Frank* effectively foreclose invalidating Wisconsin's voter ID law outright. Based on the evidence presented at trial, the court has some misgivings about whether the law actually promotes confidence and integrity. But precedent is precedent, and so the court will deny plaintiffs' request to invalidate the entire voter ID regime.

C. Intentional discrimination

Plaintiffs assert claims under the Fifteenth and Twenty-Sixth Amendments, alleging intentional discrimination on the basis of race and on the basis of age. The legal standards for evaluating these claims are substantially identical, and most of the pertinent evidence for each claim is the same. With the exception of Wisconsin's restriction on the number of hours that municipal clerks can offer in-person absentee voting, the court concludes that plaintiffs have failed to prove their claims of intentional discrimination.

1. Race discrimination

Plaintiffs contend that the Wisconsin legislature passed many of the challenged provisions in violation of the Fifteenth Amendment. To succeed on these claims, plaintiffs must demonstrate that the legislature intentionally discriminated against voters because of their race. *Rogers v. Lodge*, 458 U.S. 613, 617, 102 S.Ct. 3272, 73 L.Ed.2d 1012 (1982); *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977). Discriminatory animus does not need to be the only reason for Wisconsin's new laws, or even the primary reason, but "official action will not be held unconstitutional solely because it results in a racially disproportionate impact." *Arlington Heights*, 429 U.S. at 264–65, 97 S.Ct. 555. Nor do plaintiffs have to prove discriminatory intent with direct evidence of racial animus. *Rogers*, 458 U.S. at 618, 102 S.Ct. 3272.

Whether a law is motivated by racial discrimination is a difficult factual determination, guided by sparse precedent. *Arlington Heights* provides the essential template: "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." 429 U.S. at 266, 97 S.Ct. 555. The starting point of the analysis is whether the law has had a disparate impact. But unless there is a startling pattern, inexplicable on grounds other than race, impact alone is not determinative. In that case, other evidence must support a finding of discrimination. This evidence can include the historical background and context of the law and the legislative history, especially any contemporaneous statements by the decision-making body. *See id.* at 266–68, 97 S.Ct. 555.

Before turning to the *Arlington Heights* analysis, the court considers defendants' evidentiary objection to one of plaintiffs' experts, historian Allan Lichtman, PhD. At trial, Dr. Lichtman testified that several of the challenged provisions were motivated by intentional race discrimination. *See* Tr. 6, at 237:5-18. Defendants contend that Dr. Lichtman's testimony invaded the province of the court by offering an opinion on an ultimate issue in the case, and that it was therefore not a proper topic for expert analysis. The court agrees. Dr. Lichtman provided some useful factual background to the legislation at issue—background that defendants did not dispute—but the court will not otherwise adopt his analysis or opinions about the specific issue of the legislature's intent in passing the challenged provisions.

***918** With these considerations in mind, the court turns to the merits of plaintiffs' intentional race discrimination claim. The court will analyze this claim first in the context of Wisconsin's voter ID law, then in the context of the IDPP, and finally in the context of the other challenged provisions.

a. The voter ID law

To analyze whether Wisconsin's voter ID law violates the Fifteenth Amendment, the court begins by summarizing the disparate impact that the law has had on racial minorities. The question of how many people in Wisconsin have a driver license or a Wisconsin ID has proved to be surprisingly hard to answer. The district court in *Frank* estimated that about 300,000, about 9 percent of the state's registered voters, lacked a valid photo ID. 17 F.Supp.3d at 854. The Seventh Circuit doubted this, partly because the district court in *Crawford* estimated that only 43,000 lacked ID in Indiana, and partly because it just seems implausible that 9 percent of the adult population could get by without a photo ID. 768 F.3d at 748.

To answer this question, both sides' experts matched the statewide voter registration database to the DMV database. Both sides recognize that the databases are not readily matched, which makes errors likely. After identifying and correcting for errors, plaintiffs' expert, Kenneth Mayer, PhD, estimated that 8.4 percent of registered voters lack a Wisconsin ID. Defendants' expert, M.V. Hood III, PhD, put the estimate at only 4.54 percent. The primary difference between the two experts is that Dr. Hood had the help of a DMV programmer, Fred Eckhardt, who was able to match an additional 112,817 registered voters to valid Wisconsin IDs. Tr. 4p, at 201:17-202:1. The court finds that Eckhardt's work was reliable, and that Dr. Hood's estimate is therefore the more credible one as to the number of registered voters without ID.

Unfortunately, Dr. Hood did not break those numbers down by race. Dr. Mayer did, PX038, at 19 (Table 3), and he shows that African Americans and Latinos are more likely to lack ID. But his starting point uses the inflated 8.4 percent of voters without ID. With some of its own arithmetic to reconcile Dr. Mayer's proportions to Dr. Hood's base,[9] the court finds that approximately 4.5 percent of white voters lack ID; 5.3 percent of African American voters lack ID; and 6.0 percent of Latino voters lack ID. The court notes that these numbers say nothing about what proportions of voters lack the documentation that would allow them to get a qualifying ID if they sought one.

Dr. Hood's evidence shows that African Americans and Latinos make up a disproportionate share of those seeking free IDs for voting. African Americans accounted for 35.6 percent of free IDs, whereas they make up only 5.6 percent of the citizen voting age population. Latinos accounted for 8.3 percent of the free IDs, against only 3.3 percent of the citizen voting age population. These numbers show very pronounced racial differences among those who seek IDs. This, in turn, strongly suggests that a greatly disproportionate share of African Americans and Latinos will have to go to the trouble of acquiring a qualifying ID to vote. But most of those who seek free IDs are probably voters who have the documents necessary to get a qualifying ID. *Frank* recognizes that this disparity could well have a corresponding disparate effect on turnout because any procedural requirement will dissuade some voters. ***919** But under *Frank*, the burden of going to the DMV to get a free ID is not constitutionally significant because it is a modest burden no greater than the ordinary burdens involved in voting. Still, the evidence here shows that patterns of ID possession are racially disparate, and that is likely to have a racially disparate effect on turnout. And some proportion of those seeking IDs will lack the usual documentation and have to enter the IDPP. Those individuals, too, tend to be minorities: 67.9 percent of those who entered the IDPP were minorities. PX474.

The bottom line is that the evidence suggests that the vast majority of Wisconsin voters have a qualifying ID or could get one. But both ID possession and the lack of qualifying documentation correlate strongly with race.

Next, the court considers the historical background of the voter ID law. As plaintiffs showed, before 2011, Wisconsin had an exemplary election system that produced high levels of voter participation without significant irregularities. *See* PX036, at 23 (Lichtman report discussing studies from the Pew Charitable Trusts ranking Wisconsin second best in the nation in electoral performance in 2008 and fourth best in 2010). The court will not go so far as to say that Wisconsin could not have

improved its elections. But there was no evidence that Wisconsin elections actually suffered from identifiable problems, despite unsubstantiated allegations of fraud in the 2004 presidential election.

Plaintiffs contend that demographic shifts in Wisconsin made the minority vote critical to the outcome of elections. For example, from 2010 to 2014, the white voting age population in Wisconsin declined by 1.3 percent, while the African American population increased by 3.5 percent, and the Latino population increased by 8.7 percent. *Id.* at 16-17. Voting in Wisconsin is sharply polarized by race: in statewide elections over the last decade, 90 percent of African Americans and 63 percent of Latinos voted for Democratic candidates. Because Wisconsin is a closely divided swing state, marginal differences in turnout can be decisive in close elections. Plaintiffs contend that demographic and political considerations combined to give Wisconsin Republicans a motive to discriminate against minorities in voting laws.

The Wisconsin political environment changed dramatically in 2010: Republican Scott Walker was elected governor, and Republicans won control of both houses of the legislature. Although the recall elections in summer 2012 briefly shifted control of the state senate to Democrats, Republicans regained control of the chamber a few months later. The legislature and the governorship have been in Republican control since then. Plaintiffs contend that sustained one-party control over the legislature and governorship gave Republicans the opportunity to pass discriminatory election legislation.

Plaintiffs concede that there were no procedural irregularities in how Wisconsin's voter ID law, or any of the other challenged provisions, were passed. "Given unified Republican control of the legislature and governorship ... Republicans did not have to violate procedural rules to enact many of the limitations on voting" that are at issue. *Id.* at 48. Nevertheless, plaintiffs contend that the bills were rushed through the legislature, depriving the GAB of time to review them, and providing inadequate time for public input. *See* PX084. This dovetails with plaintiffs' contention that there were *substantive* irregularities with the laws, by which plaintiffs mean that the laws were not well justified or consistent. Defendants are correct that the legislature had no obligation to provide any rationale to support a validly ***920** enacted law. But plaintiffs have a point: the challenged laws were passed by a process that allowed limited public input and little actual debate. The legislative history demonstrates that Democrats and members of the public voiced concerns about the discriminatory impact of the laws, and that those concerns largely went unrebutted. Thus, the court has little information about what actually prompted these bills and the reasons why the legislature enacted them into law. Most of them were passed with only summary statements of legislative purpose, typically invoking only generic concerns for election integrity or consistency. *See, e.g.*, PX058; PX216.

Plaintiffs would fill the gap in the official legislative record with extra-legislative comments by Republican legislators and staffers, which plaintiffs contend strongly indicate discriminatory intent. The court will not recapitulate all such statements in the record, but plaintiffs have identified a few as particularly telling. First, plaintiffs cite to a recent comment by former state senator Glenn Grothman (now a U.S. representative) that he thought that Wisconsin's voter ID law would help Republicans in the 2016 presidential election. PX068. Second, plaintiffs cite to Grothman's statements on the floor of the senate in 2014 concerning the need to limit the hours for in-person absentee voting in Milwaukee. PX022. Third, plaintiffs cite to statements by former state senator Dale Schulz and by his staffer Todd Albaugh. During a radio interview, Schultz indicated that the Republican leadership of the legislature passed the voter ID law for partisan purposes, not out of any legitimate concern for the integrity of Wisconsin elections. PX067. Albaugh testified that at the last meeting of the Republican caucus before the vote on Act 23, the Republican leadership insisted that Republicans get in line to support the bill because it was important to future Republican electoral success. *See* Tr. 1a, at 84:1-24. [10]

The parties have also stipulated to the admissibility of notes and correspondence from the files of various Republican legislators. *See* Dkt. 184, at 3-4. Among other things, this evidence includes senator Alberta Darling's expressed opinion that had it been in effect, the voter ID law would have made a difference in the November 2012 election, *id.* at 4, which like Grothman's more recent statement, shows that legislators believed that Act 23 would have a partisan impact on elections.

The court may consider these statements under *Arlington Heights*. But ample authority counsels skepticism, and the court will not simplistically assign discriminatory intent to the legislature based on the comments of individual legislators. *See Veasey v. Abbott*, 830 F.3d 216, 234, No. 14–41127, 2016 WL 3923868, at *9 (5th Cir. July 20, 2016) ("While probative in theory, even those (after-the-fact) stray statements made by a few individual legislators voting for SB 14 may not be the best indicia of the Texas Legislature's intent."). The comments that plaintiffs have identified paint a consistent picture that resonates with the rest of the record, particularly the lack of a verified problem with voter fraud, and the increasingly partisan divisions in support for the law. The conclusion is hard to resist: the Republican leadership believed that voter ID would ***921** help the prospects of Republicans in future elections. (And for that matter, Democrats apparently thought that, too.)

As for other context surrounding Wisconsin's voter ID law, the court notes that Act 23 was the first in a series of election reforms that the Republican-controlled legislature passed between 2011 and 2014. None of these laws made registration or voting easier for anyone, but they had only minimal effect on less transient, wealthier voters. For reasons explained more fully below, the stated rationales for many provisions of Act 23, and for the election laws that followed it, were meager. Accordingly, in light of the record of the case as a whole, the conclusion is nearly inescapable: the election laws passed between 2011 and 2014 were motivated in large part by the Republican majority's partisan interests.

Against this background, the court turns to the more difficult question of whether Act 23 was motivated by racial animus. For the following reasons, the court finds that it was not.

First, the legislature passed the voter ID bill in 2011, three years after the Supreme Court upheld a facial challenge to a similar voter ID law in *Crawford*. The Court had held that voter ID laws served a legitimate government interest in election integrity, and that they did not have an unduly disparate impact on racial minorities. Legislators would have been entitled to embrace the rationale that the Supreme Court endorsed, even if other legislators or members of the public contended that the law would have a disparate impact on minorities.

Second, voter ID bills have a long history in Wisconsin and in the United States, and that history does not suggest that such laws are inherently motivated by racial animus. In 2005, the Commission on Federal Election Reform, co-chaired by Jimmy Carter and James Baker III, identified a voter ID system with photo ID as one of five pillars of a reformed U.S. election system. Commission on Federal Election Reform, *Building Confidence in U.S. Elections* (September 2005), http://www.eac.gov/assets/1/AssetManager/Exhibit%20M.PDF. That same year, the Wisconsin legislature passed a photo ID bill that was ultimately vetoed by Governor Doyle, a Democrat. Although Democrats tended to oppose that bill, it garnered significant bipartisan support. This history shows that legislators and politicians with no motive to discriminate against minorities have nevertheless supported voter ID laws.

Third, even though there is scant evidence of actual voter fraud in Wisconsin, the concern for election integrity provides a valid, non-discriminatory reason for supporting a voter ID law. To be sure, there is a legitimate countervailing concern that voter ID requirements impede access to the polls. But the existence of a robust, non-discriminatory rationale in favor of voter ID makes it hard to draw the inference that support for voter ID must be racially motivated. [11]

Plaintiffs nevertheless contend that the strict version of voter ID enacted in 2011 suggests a discriminatory motive. But by then, the potential for a voter ID requirement to have a racially disparate impact ***922** had long been recognized. *See, e.g.*, *id.* at 20 ("The introduction of voter ID requirements has raised concerns that they may present a barrier to voting, particularly by traditionally marginalized groups, such as the poor and minorities, some of whom lack a government issued photo ID.") Democrats, private citizens, and the GAB repeatedly raised these types of concerns to the legislature. *See, e.g.*, PX014; PX084; PX263; PX299. The legislature passed the voter ID bill anyway, and the governor signed it.

Plaintiffs contend that the legislature's apparent willful blindness to Act 23's disparate effects is strong evidence of discrimination. But the legislature did not entirely ignore these concerns. Act 23 created Wis. Stat. § 343.50(5)(a)3., which required the DMV to provide a free ID to any citizen over the age of 18 who requested one for voting. Since the introduction of the IDPP in 2014, the profound difficulty of providing traditional DMV-issued IDs to some voters has become apparent, and the state has been painfully reluctant to address these problems. But in 2011, to the legislature that passed Act 23, the free ID seemed like a reasonable response to the concerns that opponents raised. *C.f. Building Confidence in U.S. Elections*, at 20 ("Part of these concerns are addressed by assuring that government-issued photo identification is available without expense to any citizen.").

In sum, the court concludes that plaintiffs have not proven by a preponderance of the evidence that the voter ID provision of Act 23 was motivated, even in part, by racial animus. Wisconsin's voter ID law therefore does not violate the Fifteenth Amendment.

b. The IDPP

The racial imbalances among IDPP petitioners, and among the results of the process, are striking. Minorities make up only 11 percent of Wisconsin's citizen voting age population, but they make up 55 percent of the voters who have received free IDs since Act 23 was passed. DX265. As of April 2016, two-thirds of those who entered the process were minorities; African Americans alone represented 55.9 percent of IDPP petitioners. PX474. Worse yet, African Americans and Latinos represented 85 percent (52 out of 61) of all IDPP denials. PX475.

Plaintiffs contend that these numbers present the kind of striking pattern that is inexplicable as anything but intentional discrimination. They argue that the court should find the IDPP to be unconstitutional on that basis alone, relying on decisions such as *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960) (allegations of extreme gerrymandering, if proven, would be tantamount to a "mathematical demonstration" of discrimination).

The court is not persuaded that statistics about the petitioners who have used the IDPP, or been denied free IDs, compel a finding of intentional race discrimination. And the reasoning is simple: the free ID procedure and the IDPP were designed to blunt the potential for disenfranchisement that might arise from Wisconsin's voter ID law. The potential for disenfranchisement, as all recognized, fell more heavily on minorities. Thus, it is no surprise that those who sought free IDs, or who entered the IDPP because they lacked vital records, were predominantly minorities. It is also no surprise that minorities foundered at high rates in a process that required documentary proof of identity, birthdate, and citizenship.

Make no mistake: the IDPP as it currently exists has failed to fulfill its constitutional purpose. But plaintiffs have not shown that it is the result of intentional race discrimination. As plaintiffs' counsel repeatedly reiterated to the DMV witnesses, plaintiffs do not allege that DMV ***923** employees intended to discriminate against anyone. And as the court observed during trial, some CAFU employees undertook nearly heroic efforts to track down documents to prove petitioners' identities and birthdates. The court finds that DMV employees, especially CAFU employees, undertook their duties in good faith, trying as best they could under the governing regulations to get IDs into the hands of as many petitioners as possible.

Another reason why the court cannot find that the legislature intentionally discriminated on the basis of race is that the legislature did not design or implement the IDPP. The fault lies with the executive branch, which let the IDPP grind on until plaintiffs in this litigation exposed its many flaws. But plaintiffs have not shown that anyone in the executive branch knew that the IDPP was disenfranchising voters and ignored the problem. The flaws would not have been hard to find, and Wisconsin should have done better. But based on the evidence presented at trial, the court cannot find that members of the executive branch acted with racial animus in creating or implementing the IDPP.

c. Other challenged provisions

The court now turns to the other provisions that plaintiffs challenge under the Fifteenth Amendment. Setting aside the provisions relating to in-person absentee voting, plaintiffs contend that the legislature enacted the following regulations, at least in part, with the intent to discriminate against African Americans and Latinos: (1) eliminating corroboration; (2) requiring documentary proof-of-residence; (3) eliminating statewide SRDs; (4) increasing the durational residency requirement; (5) changing the location for election observers; and (6) eliminating straight-ticket voting.

Plaintiffs contend that each of these changes in Wisconsin's voting laws particularly disadvantage minorities, who tend to be poorer, less educated, and more transient. But disparate impact alone is not enough to show intentional discrimination. *Arlington Heights*, 429 U.S. at 264–65, 97 S.Ct. 555. These regulations are all facially neutral, and the extra burdens that they impose would fall on anyone who is poorer, less educated, or more transient, regardless of race. As explained in other parts of this opinion, some of these regulations are not justified by significant government interests, which puts their legitimacy under *Anderson–Burdick* in doubt. But plaintiffs give the court no reason to find that any of these regulations were targeted at minority voters or that the legislature was racially motivated in passing any of them. Accordingly, the court concludes that plaintiffs have not shown by a preponderance of the evidence that any of these changes in Wisconsin's voting laws were motivated, even in part, by racial animus.

As for the one-location rule, plaintiffs proved that forcing all municipalities to offer only one location for in-person absentee voting imposed greater burdens on voters in large municipalities like Milwaukee than it did on voters in smaller towns. And because Milwaukee has a predominantly minority population, the one-location rule was all but guaranteed to have a disparate impact. But this provision has been in effect since 2005, long before the legislature enacted the restrictions to the hours for in-person absentee voting. *See* Wis. Stat. § 6.855(1). Thus, the legislative history and other contextual evidence discussed above does not bear on the issue of whether the legislature passed the one-location rule with the intent to discriminate. Indeed, plaintiffs have not offered any evidence addressing the legislature's intent in enacting this statute. The court therefore concludes that plaintiffs have ***924** failed to prove that the one-location rule violates the Fifteenth Amendment.

That leaves the provisions that reduce the days and hours in which in-person absentee voting is allowed. Plaintiffs have adduced evidence that weekend and evening voting is particularly important for socioeconomically disadvantaged voters, and that, in Wisconsin and nationwide, African American and Latino voters have made particularly good use of various forms of early voting. *See, e.g.*, PX036, at 42; PX047. Early voting in groups on Sundays—including church-supported "Souls to the Polls" efforts—is a widespread practice among African American voters, in Wisconsin and nationwide. Tr. 1p, at 134:6-135:1; PX245, at 38. But again, a disparate impact, without more, does not prove intentional discrimination.

But plaintiffs have more. Statements by legislators show that Act 146 reduced the hours allowed for in-person absentee voting specifically to curtail voting in Milwaukee, and, secondarily, in Madison. Senator Grothman made repeated statements objecting to the extended hours for in-person absentee voting in Milwaukee and Madison, indicating that hours for voting needed to be "reined in." [12] On the floor of the senate, he said, "I want to nip this in the bud before too many other cities get on board." PX022, at 5. Senate Majority Leader Scott Fitzgerald made similar comments. *Id.* at 12. As he put it, "But the question of where this is coming from and why are we doing this and why are we trying to disenfranchise people, I mean, I say it's because the people I represent in the 13th district continue to ask me, 'What is going on in Milwaukee?' " *Id.* at 16.

Defendants contend that Grothman and Fitzgerald were simply trying to achieve a measure of statewide uniformity because smaller towns were unable to afford the extended hours that Milwaukee was offering. That explanation is hard to credit. Under

Act 146, the legislature still tolerates disparities in voting hours among Wisconsin municipalities. Each municipality can set its own hours for in-person absentee voting. Larger cities can still outdo smaller municipalities by having their full-time clerks hold office hours that cover the full work week, while smaller towns with part-time clerks will hold limited hours, sometimes as little as an afternoon a week. Thus, rather than achieving uniformity, the provisions governing the hours for in-person absentee voting preserved great disparities from town-to-town. The legislative record shows that Act 146 was uniformly opposed by municipal clerks. PX216. Its only supporter of record was the Republican election activist Ardis Cerny. *Id.* And Governor Walker partially vetoed the bill as too extreme a reduction in opportunities to vote. PX058.

The acknowledged impetus for this law was the sight of long lines of Milwaukee citizens voting after hours. Yet instead of finding a way to provide more access to voters in small towns, the legislature responded by reining in voters in Milwaukee, the state's most populous city, where two-thirds of its African American citizens live. At trial, Kevin Kennedy, director of the GAB, confirmed that the purpose of reducing the hours for in-person absentee voting was to restrain voting in Milwaukee:

> Clearly in the recall election, the City of Milwaukee opened its in-person absentee ***925** voting for Memorial Day, which was the day before the gubernatorial recall election, and that did not sit well with the Republican majority. They thought that was designed purposely ... to allow more Democratic voters, even though it could also be said it was designed to facilitate the needs of the unique voters in Milwaukee. But that was not lost on the Legislature that the largest city made that choice whereas other municipalities wouldn't make that choice.

Tr. 5a, at 109:21-110:5.

The legislature's ultimate objective was political: Republicans sought to maintain control of the state government. But the methods that the legislature chose to achieve that result involved suppressing the votes of Milwaukee's residents, who are disproportionately African American and Latino. The legislature did not act out of pure racial animus; rather, suppressing the votes of reliably Democratic minority voters in Milwaukee was a means to achieve its political objective. But that, too, constitutes race discrimination. *Ketchum v. Byrne*, 740 F.2d 1398, 1408 (7th Cir.1984) ("We think there is little point for present purposes in distinguishing discrimination based on an ultimate objective of keeping certain incumbent whites in office from discrimination borne of pure racial animus."); *see also Rogers*, 458 U.S. at 617, 102 S.Ct. 3272 ("[M]ultimember districts violate the Fourteenth Amendment if 'conceived or operated as purposeful devices to further racial discrimination' by minimizing, cancelling out or diluting the voting strength of racial elements in the voting population.").

Based on the evidence that plaintiffs have presented, the court finds that Wisconsin's restrictions on the hours for in-person absentee voting have had a disparate effect on African Americans and Latinos. The court also finds that the legislature's justification for these restrictions was meager, and that the intent was to secure partisan advantage. Finally, the court finds that the legislature specifically targeted large municipalities—Milwaukee in particular—intending to curtail minority voting. Combined, these findings lead the court to further find that the legislature passed the provisions restricting the hours for in-person absentee voting motivated in part by the intent to discriminate against voters on the basis of race.

2. Age discrimination

Plaintiffs contend that some of the challenged provisions discriminate against younger voters on the basis of age, in violation of the Twenty-Sixth Amendment. The Twenty-Sixth Amendment provides that "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

The federal courts that have considered Twenty-Sixth Amendment claims recognize that there is "a dearth of guidance on what test applies to Twenty-Sixth Amendment claims." *N.C. State Conference of the NAACP v. McCrory*, 182 F.Supp.3d 320, 522–24, No. 13–cv–658, 2016 WL 1650774, at *165 (M.D.N.C. Apr. 25, 2016), *rev'd*, 831 F.3d 204, No. 16–1468, 2016 WL 4053033 (4th Cir. July 29, 2016) [13] ; *see also Walgren v. Bd. of Selectmen of Amherst*, 519 F.2d 1364, 1367 (1st Cir.1975) ("[W]e are still without the assistance of any precedents guiding us in evaluating the impact of the Twenty-sixth Amendment."); ***926** *Nashville Student Org. Comm. v. Hargett*, 155 F.Supp.3d 749, 757, No. 15–cv–210, 2015 WL 9307284, at *6 (M.D.Tenn. Dec. 21, 2015) ("As the parties note in their briefing, there is no controlling caselaw from the Sixth Circuit or the Supreme Court regarding the proper interpretation of the Twenty-Sixth Amendment or the standard to be used in deciding claims for Twenty-Sixth Amendment violations based on an alleged abridgment or denial of the right to vote.").

The text of the Twenty-Sixth Amendment is patterned on the Fifteenth Amendment, which prohibits the denial or abridgement of the right to vote on the basis of race. This suggests that *Arlington Heights* provides the appropriate framework for evaluating plaintiffs' claims of intentional age discrimination. Indeed, other courts have taken this approach when confronted with similar allegations. *See, e.g.*, *Lee v. Va. State Bd. of Elections*, 188 F.Supp.3d 577, 608–10, No. 15–cv–357, 2016 WL 2946181, at *26 (E.D.Va. May 19, 2016). Although the district court in *North Carolina State Conference of the NAACP* expressed doubt that the Twenty-Sixth Amendment was intended to operate just like the Fifteenth Amendment, the court followed an *Arlington Heights*-style analysis for the purposes of its decision. 182 F.Supp.3d at 523, 2016 WL 1650774, at *165.

Anderson–Burdick provides a framework through which the court could evaluate the burdens that fall on younger voters and the state's justification for those burdens. But "[i]t is difficult to believe that [the Twenty-Sixth Amendment] contributes no added protection to that already offered by the Fourteenth Amendment, particularly if a significant burden were found to have been intentionally imposed solely or with marked disproportion on the exercise of the franchise by the benefactors of that amendment." *Walgren*, 519 F.2d at 1367. Thus, for plaintiffs' age discrimination claims, the court will apply the *Arlington Heights* framework, beginning by considering whether plaintiffs have shown that the challenged provisions have had a disparate impact on younger voters. All of the challenged provisions are facially neutral, but plaintiffs have offered anecdotal evidence that some of them disproportionately affect younger voters. *See generally* Dkt. 207, at 236-41 (discussing trial evidence). As a class, younger voters are poorer and less established. They are therefore less likely to have a driver license and documentary proof of residence. They are also more transient, and thus will likely face the burden of registration more often.

But this evidence falls short of showing that young people are more likely to face burdens that they cannot overcome with reasonable effort. Young people may be more likely to lack a driver license. But that does not show that they are more likely to lack the credentials that one needs to get a Wisconsin ID. Young people may move more often, and they may be more likely to conduct their affairs online. But that does not mean that they will lack the documents needed to register, particularly because online documents can serve as proof of residence. The court does not find strong evidence of a disparate impact, which puts plaintiffs' Twenty-Sixth Amendment claim on weak footing.

Plaintiffs have some evidence of anti-youth comments made by legislators, particularly those by Senate Majority Leader Mary Lazich. Before the vote on Act 23, Lazich told the senate Republican caucus that they should support the bill because of what it "could mean for the neighborhoods of Milwaukee and the college campuses across this state." Tr. 1a, at 84:1-24. As the court has already concluded, the Republican majority was motivated, in ***927** part, by partisan objectives. But without more, this type of evidence did not establish discrimination on the basis of race, and it does not establish discrimination on the basis of age either.

Much of plaintiffs' evidence concerns the restrictions that the legislature placed on the use of college IDs. The rationale for these restrictions is not as weak as the rationale for the reduction in hours for in-person absentee voting. Under *Anderson–Burdick*, the court will evaluate whether these restrictions impose burdens that are warranted in light of the interests that they serve. But in the context of intentional age discrimination, the question is more limited: were these restrictions so baseless as to suggest

purposeful discrimination against young voters? The court concludes that the answer is "no." The restrictions served a legitimate interest in election integrity because many college students have documentation of two residences: their school addresses, and their permanent home addresses. The legislature had a legitimate interest in ensuring that students registered in only one place. *See, e.g.*, PX229 (legislative note expressing interest in tightening up registration requirements so that out-of-state students would have to declare residency in Wisconsin to vote in the state). The court will review the state's rationales for the other challenged restrictions later in this opinion. For the purposes of plaintiffs' age discrimination claim, however, it is sufficient to say that these rationales are not so feeble as to suggest intentional discrimination.

One last point. College students may use any of the means of identification or proof of residence that are available to all citizens generally. The legislature also extended to students the *additional* ability to use their college IDs, albeit under certain restrictive conditions. As a practical matter, these restrictions meant that the standard student IDs that many University of Wisconsin campuses issue were not valid for voting. But some universities have provided workarounds in the form of special university-issued voting IDs. This seems like an unwarranted rigmarole, but the end result is that college students have more ID options than other citizens do.

The court concludes that plaintiffs have not proven by a preponderance of the evidence that the challenged provisions were motivated by intentional age discrimination.

D. Partisan fencing claim

At the heart of this case is plaintiffs' contention that the Wisconsin legislature passed the challenged provisions with the intent to suppress Democratic votes to gain a partisan advantage in future elections. Plaintiffs contend that to accomplish this objective, the legislature identified groups of voters who would likely vote for Democrats and then passed measures to frustrate those voters' access to the ballot box. Put differently, the legislature targeted minorities, younger citizens, and citizens in urban areas like Milwaukee, not necessarily because of racial or age-based animus, but because it believed that these groups tended to vote for Democrats. Plaintiffs bundle these allegations into a "partisan fencing" claim. Dkt. 141, ¶¶ 197-99.

This is not the first time that a group of plaintiffs in a voting rights case has asserted a partisan fencing claim. *See, e.g.*, *Lee v. Virginia State Bd. of Elections*, No. 15-cv-357 (E.D. Va. filed June 11, 2015); *Ohio Org. Collaborative v. Husted*, No. 15–cv–1802 (S.D.Ohio filed May 8, 2015). But the legal theory is still a novel one, and neither party directs the court to precedent —binding or otherwise—that definitively establishes a framework for analyzing partisan fencing claims. Plaintiffs extrapolate that ***928** their partisan fencing claim is essentially a claim for intentional discrimination, relying on statements in various Supreme Court decisions. They therefore urge the court to consider their evidence of partisan motivation by using the *Arlington Heights* framework, which would lead the court to invalidate any election qualification that was motivated, even in part, by partisan objectives. Defendants contend that a partisan fencing claim is really just a unique species of an undue burden claim, for which the *Anderson–Burdick* framework is appropriate.

Plaintiffs derive the term "partisan fencing" from *Carrington v. Rash*, a case in which the Supreme Court invalidated a Texas constitutional provision that prevented members of the United States armed forces from voting if they moved to Texas during their service. 380 U.S. 89, 89, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965). The Court held that " '[f]encing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible." *Id.* at 94, 85 S.Ct. 775. But the Court decided *Carrington* well before *Anderson v. Celebrezze*, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983), and *Burdick v. Takushi*, 504 U.S. 428, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992), the two namesake cases for the *Anderson–Burdick* framework that courts now apply to evaluate whether voting regulations burden First and Fourteenth Amendment rights. Moreover, *Carrington* dealt with an outright prohibition on voting—service members who moved to Texas during their military service could not vote while they were in the armed forces. *Id.* at 89, 85 S.Ct. 775. And cases applying *Carrington* tend to involve outright prohibitions on the right to vote. *See, e.g.*, *Evans v. Cornman*, 398 U.S. 419, 419–20, 90 S.Ct. 1752, 26 L.Ed.2d

370 (1970) (Maryland citizens who lived on a federal reservation prohibited from voting because they were not residents of Maryland); *Cipriano v. City of Houma*, 395 U.S. 701, 702, 89 S.Ct. 1897, 23 L.Ed.2d 647 (1969) (per curiam) ("[O]nly 'property taxpayers' [had] the right to vote in elections called to approve the issuance of revenue bonds by a municipal utility."). Here, none of the challenged provisions categorically bar any citizen of Wisconsin from voting. For these reasons, *Carrington* is not directly on point here.

Looking toward more recent cases, at least one Justice of the Supreme Court has suggested that there would be First Amendment implications for state restrictions on voting that place burdens on voters because of their political views. *See Vieth v. Jubelirer*, 541 U.S. 267, 315, 124 S.Ct. 1769, 158 L.Ed.2d 546 (2004) (Kennedy, J., concurring) ("If a court were to find that a State did impose burdens and restrictions on groups or persons by reason of their views, there would likely be a First Amendment violation, unless the State shows some compelling interest."). Several years later, a unanimous Court noted that this suggestion was "uncontradicted by the majority in any of our cases." *Shapiro v. McManus*, —— U.S. ——, 136 S.Ct. 450, 456, 193 L.Ed.2d 279 (2015). But these decisions involved gerrymandering, which is not at issue in this case.

The import of these cases is that analyzing a partisan fencing claim involves a balancing analysis under the First Amendment. And that is exactly what the *Anderson–Burdick* framework provides. The framework requires the court to identify the nature and severity of the burden that a given voting regulation creates and then weigh that burden against the state's justification for it. *Common Cause Ind. v. Individual Members of the Ind. Election Comm'n*, 800 F.3d 913, 917 (7th Cir.2015). Thus, *Anderson–Burdick* appears to fit the bill for plaintiffs' partisan fencing claim.

***929** Two federal district courts that have confronted this question reached the same conclusion. In *Ohio Organizing Collaborative v. Husted*, the Southern District of Ohio concluded that *Carrington* does not "appear to create a separate equal protection cause of action to challenge a facially neutral law that was allegedly passed with the purpose of fencing out voters of a particular political affiliation." 189 F.Supp.3d 708, 766, No. 15–cv–1802, 2016 WL 3248030, at *48 (S.D.Ohio May 24, 2016). Instead, the court relied on the *Anderson–Burdick* framework as "the proper standard under which to evaluate an equal protection challenge to laws that allegedly burden the right to vote of certain groups of voters." *Id.* Likewise, in *Lee v. Virginia State Board of Elections*, the Eastern District of Virginia acknowledged that "[t]he term 'partisan fencing' is derived from *Carrington* ... and is somewhat of an aberration." 188 F.Supp.3d at 609, 2016 WL 2946181, at *26. The court concluded that the term "has been rarely deployed in election law litigation thereafter. It does not appear to create a separate cause of action but may be a useful analytical tool in evaluating First Amendment and Equal Protection Clause cases." *Id.* The reasoning in these decisions is persuasive, and this court will follow their guidance.

The court will not adopt plaintiffs' partisan fencing theory, but the theory is not completely without basis. This case challenges state laws governing voter qualifications and election mechanics; it is not a redistricting case. That distinction is important. The redistricting process is inherently political through and through, and a gerrymandering claim requires a court to decide how much partisan politics is too much. *See generally League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 413–23, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006). By contrast, voter qualifications and election administration should not be political at all, and partisan gain can never justify a legislative enactment that burdens the right to vote. So, plaintiffs argue, a state should not be allowed to manipulate its election regime by imposing even slight burdens, if the purpose is to suppress turnout to achieve a partisan advantage.

Despite the appeal of plaintiffs' theory, *Crawford* and *Frank* foreclose the argument that partisan fencing claims should be handled like claims of intentional race or age discrimination, for which *any* discriminatory legislative intent is sufficient to invalidate a law. *See Frank*, 768 F.3d at 755 (" '[I]f a nondiscriminatory law is supported by valid neutral justifications, those justifications should not be disregarded simply because partisan interests may have provided one motivation for the votes of individual legislators.' " (quoting *Crawford*, 553 U.S. at 204, 128 S.Ct. 1610)). Put differently, a provision is not unconstitutional

if the legislators who passed it were partly motivated by partisan gain, so long as there were sufficient valid justifications. The *Anderson–Burdick* framework enables federal courts to undertake this type of review.

In sum, the court rejects plaintiffs' proposal to treat their partisan fencing claim as distinct from their undue burden claims under the First and Fourteenth Amendments. As explained below, the evidence of partisan motivation that plaintiffs have adduced is pertinent to the legislature's justifications for passing the challenged provisions. The court will therefore consider this evidence as part of its *Anderson–Burdick* balancing analysis.

E. First and Fourteenth Amendment claims for undue burdens on the right to vote

Plaintiffs contend that each of the challenged provisions violates the First ***930** and Fourteenth Amendments by impermissibly burdening the right of Wisconsin citizens to vote. "A state election law, 'whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual's right to vote and his right to associate with others for political ends.' " *Common Cause Ind.*, 800 F.3d at 917 (quoting *Anderson*, 460 U.S. at 788, 103 S.Ct. 1564). But that is not to say that every voting-related law must survive strict scrutiny. Requiring states to narrowly tailor their election regulations to advance only compelling interests "would tie the hands of States seeking to assure that elections are operated equitably and efficiently." *Burdick*, 504 U.S. at 433, 112 S.Ct. 2059. Federal courts must therefore apply a "more flexible standard" when reviewing challenges to a state's election laws. *Common Cause Ind.*, 800 F.3d at 917.

Under the flexible *Anderson–Burdick* standard, "the rigorousness of [the] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Burdick*, 504 U.S. at 434, 112 S.Ct. 2059. The court must undertake a three-step analysis for each of the challenged provisions. First, the court must determine the nature and severity of the burden that a given provision imposes. Second, the court must identify the state's justification for the provision. Third, the court must weigh the burdens against the state's justifications for imposing them "and then make the 'hard judgment' that our adversary system demands." *Crawford*, 553 U.S. at 190, 128 S.Ct. 1610.

For the first step in the *Anderson–Burdick* analysis, the court must focus on the burdens that the challenged provisions place on eligible voters who cannot comply with the new requirements (e.g., who lack registration documents, who need to vote during a different in-person absentee voting period or at a different location, or who prefer to vote straight-ticket). *See id.* at 198, 128 S.Ct. 1610 ("The burdens that are relevant to the issue before us are those imposed on persons who are eligible to vote but do not possess a current photo identification that complies with the requirements of SEA 483."). Just because the majority of Wisconsin voters are able to comply with the state's registration requirements, absentee voting procedures, and miscellaneous election regulations does not mean that the burdens that these laws impose are constitutionally insignificant. But just as important, the fact that a few Wisconsin voters have difficulty complying with these laws is not enough to invalidate them across the board. *Crawford*, 553 U.S. at 199–200, 128 S.Ct. 1610 ("And even assuming that the burden may not be justified as to a few voters, that conclusion is by no means sufficient to establish petitioners' right to the [facial] relief they seek in this litigation.").

For the second step in the *Anderson–Burdick* analysis, the court must "consider the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights." *Common Cause Ind.*, 800 F.3d at 921 (citations and internal quotation marks omitted).

For the third step in the *Anderson–Burdick* analysis, the court must weigh the burdens of a given provision against the state's justification for it. When the state imposes a "severe" restriction on the right to vote, then "the regulation must be narrowly drawn to advance a state interest of compelling importance." ***931** *Burdick*, 504 U.S. at 434, 112 S.Ct. 2059 (citations and internal quotation marks omitted). "But when a state election law provision imposes only 'reasonable, nondiscriminatory restrictions'

upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Id.* (quoting *Anderson*, 460 U.S. at 788, 103 S.Ct. 1564).

With these considerations in mind, the court turns to the specific provisions that plaintiffs challenge in this case.

1. Limiting in-person absentee voting

In 2005, Wisconsin enacted Wis. Stat. § 6.855, which limited municipalities to one location for in-person absentee voting. At that time, the state did not limit the hours for in-person absentee voting. But as a practical matter, in-person absentee voting could not begin until municipal clerks received the ballots from the company that printed them, which was usually three to five weeks before the election. Tr. 2, at 265:5-7; Tr. 4p, at 121:3-11; Tr. 7a, at 114:9-15. Through Act 23, passed in 2011, and Act 146, passed in 2014, the legislature narrowed the window for in-person absentee voting to 10 days and prohibited municipal clerks from offering in-person absentee voting on weekends or on the Monday before an election. The legislature also limited the hours available for in-person absentee voting to between 8:00 a.m. and 7:00 p.m.

The court finds that the challenged in-person absentee voting provisions place a moderate burden on the right to vote.

Wisconsin's changes to its in-person absentee voting regime came amidst an increase in the use of absentee voting, both nationally and in Wisconsin. About 60,000 voters cast in-person absentee ballots on the Monday before the November 2008 general election. PX435, at 13. As plaintiffs' expert, Barry Burden, PhD, testified, absentee voting in Wisconsin (both by mail and in-person) increased from 10.6 percent to 15.5 percent between the 2010 and 2014 midterm elections. PX037, at 23. For presidential elections, the increase was not as significant: 21.1 percent in 2008 to 21.4 percent in 2012. *Id.* Defendants' expert, Dr. Hood, reached similar conclusions. Tr. 8a, at 32-41; DX001, at 11.

In spite of these trends, plaintiffs contend that the one-location rule and hour limit stifled in-person absentee voting in Wisconsin. Their theory is that if the legislature had not passed the challenged provisions, then in-person absentee voting would have increased even more, particularly among minorities and young voters, who tend to vote for Democrats. The court agrees with Dr. Hood that it would be nearly impossible to directly prove this theory—there is no way to redo the 2012 and 2014 elections without the in-person absentee provisions in place. Tr. 8a, at 44:3-6. Neither side had compelling statistical evidence that African Americans in Wisconsin had made disproportionate use of in-person absentee voting.

But plaintiffs had good anecdotal and circumstantial evidence that the in-person absentee laws impose burdens for certain voters by demonstrating that the changes had profound effects in larger municipalities like Madison and Milwaukee. These cities are home to populations of voters who disproportionately lack the resources, transportation, or flexible work schedules necessary to vote in-person absentee during the decreased timeframe. PX037, at 26-27. At trial, clerks from both cities testified that the new laws forced them to drastically cut back on the amount of time that they could offer in-person absentee voting. For example, before the November 2012 elections, Madison offered in-person absentee voting until 8:00 p.m. on weekdays, and for a few hours on Saturdays and ***932** Sundays. Tr. 2, at 265:16-20. Up to 1,200 voters a day would use in-person absentee voting. *Id.* at 266:1-6. As for Milwaukee, defendants' own expert summarized how the changes have similarly affected the availability of in-person absentee voting since 2008.

Table 2. In-Person Absentee Voting Characteristics, City of Milwaukee, 2008-2014

Election	Start	Stop	Hours	Weekends Permitted	Days Available	Total Hours
2008 General	10/13	11/3	8:00 am-5 pm, M-F; 9:00 am-5:00 pm, Sat.	Yes	17 days	200
2010 General	10/5	11/1	8:30 am-4:30 pm, M-F; 8:30 am-12:30 pm, Sat.	Yes	21 days	164
→Act 23						
2012 General	10/22	11/2	8:30 am-7:00 pm, M-F; 9:00 am-5:00 pm, S-S	Yes	12 days	121
→Act 146						
2014 General	10/20	10/31	8:00 am-7:00 pm, M-F	No	10 days	110

DX001, at 9. Voters in both municipalities took advantage of the opportunities available before the state limited in-person absentee voting, particularly weekend voting. PX206.
In Wisconsin, voters in larger cities experience disadvantages in education, income, employment, and access to transportation. PX036, at 5-15; PX037, at 26-27. Several lay witnesses testified that these pre-existing disadvantages interact with the new laws to make it more difficult for these voters to vote during the shorter period for in-person absentee voting. For example, eliminating weekend voting and reducing the number of days on which a clerk's office can accept in-person absentee ballots is problematic for a person whose job or class schedule is less flexible. Tr. 1p, at 14:13-15:8, 75:8-25, 144:19-25; Tr. 3p, at 31:2-5. Combined with the one-location rule, limiting hours leads to longer lines at clerk's offices, which in turn requires voters to be prepared to devote more time to voting. Tr. 1p, at 92:18-96:3; Tr. 2, at 266:7-16. Having only one location creates difficulties for voters who lack access to transportation.

Eliminating weekend voting also prevented groups from holding voting drives like "Souls to the Polls"—an initiative that encouraged church congregations to vote in-person absentee after church on Sunday. Tr. 1p, at 134:20-135:1; Tr. 2, at 183:14-17. But these types of collateral effects only indirectly burden voters; impediments for groups trying to get individuals to vote do not necessarily implicate the First Amendment. *Cf. Voting for Am., Inc. v. Steen*, 732 F.3d 382, 388–96 (5th Cir.2013) ("[W]e are unpersuaded that the smorgasbord of activities comprising voter registration drives involves expressive conduct or conduct so inextricably intertwined with speech as to require First Amendment scrutiny."); *Coal. for Sensible & Humane Sols. v. Wamser*, 771 F.2d 395, 400 (8th Cir.1985) (acknowledging the claim that "refusal to appoint qualified volunteers as deputy registrars restricts the accessibility of voter registration facilities and thus indirectly constitutes an unconstitutional infringement of the right to vote," ***933** but refusing to "agree that there is a constitutional right to greater access to voter registration facilities per se").

The challenged provisions do not categorically bar individuals from voting. The state has shrunk the window in which municipalities can offer in-person absentee voting, but it has not closed that window completely. If the shortened period is not convenient for certain voters, then they can vote using mail-in absentee voting or vote on election day. Regardless, both sides' evidence confirms that in-person absentee voting is still widely used, and its use has increased over the last several years. As noted above, plaintiffs argue that without the challenged provisions, in-person absentee voting would be increasing *more.* But their anecdotal evidence is not sufficient to prove this assertion.

Before turning to step two of the *Anderson–Burdick* analysis, the court will address defendants' preliminary argument that there is no constitutionally protected right to cast an absentee ballot. Defendants invoke *Griffin v. Roupas*, a case in which a group of working mothers challenged Illinois's refusal to let them vote absentee because they did not satisfy any of the statutory prerequisites (out of the county, physical incapacity, religious observance, etc.). 385 F.3d 1128, 1129 (7th Cir.2004). The *Griffin* court rejected the idea "that the Constitution requires all states to allow unlimited absentee voting," *id.* at 1130, which defendants implicitly contend should end the discussion. But this case is not about Wisconsin's outright refusal to allow in-person absentee voting. Rather, plaintiffs allege that the state is denying them the opportunity to exercise a right that they already have. Put differently, plaintiffs contend that by choosing to give its citizens the privilege of in-person absentee voting, the state must administer that privilege evenhandedly. *See Zessar v. Helander*, No. 05–cv–1917, 2006 WL 642646, at *6 (N.D.Ill. Mar. 13, 2006) ("[O]nce [states] create such a regime, they must administer it in accordance with the Constitution." (citing *Paul v. Davis*, 424 U.S. 693, 710–12, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976))). The court therefore rejects defendants' argument that plaintiffs' challenge to the in-person absentee voting provisions does not implicate their constitutional rights.

Defendants advance four justifications for the challenged in-person absentee voting provisions. First, they contend that shortening the timeframe for in-person absentee voting will allow the state to conduct uniform, orderly elections. Municipal clerks can better control the process and manage staffing. Clerks can also guarantee that absentee ballots will be available once

in-person absentee voting starts (ballots are delivered at different times, which means that a clerk's office might have them available four weeks before an election one year, but only two weeks before that same election in a different year).

Second, defendants contend that municipal clerks are busy during election season. With the reduced window for in-person absentee voting, clerks have more time for other tasks, such as conducting voting at residential care facilities, mailing absentee ballots, and entering voter registrations. Clerks also have non-election-related duties, and it becomes difficult to attend to them during business hours once in-person absentee voting begins. The reduced window allows them to take care of other responsibilities before turning their exclusive attention to voting.

Third, defendants contend that limiting in-person absentee voting to one location saves money. More locations mean more staff, supplies, and security. Clerks are also able to directly supervise the entire process because it is occurring in one location rather than across the municipality.

***934** Fourth, defendants contend that limiting in-person absentee voting to one location avoids voter confusion by creating uniformity. Their concern is that voters might accidentally believe that because they can vote in-person absentee at multiple locations, they can also vote at multiple polling locations on election day.

With one exception, these interests do not justify the moderate burdens that the challenged provisions impose. Alleviating the workload for clerks could be a sufficient reason to limit the hours for in-person absentee voting. But the laws that the challenged provisions replaced did not *require* municipal clerks to offer in-person absentee voting during the now-eliminated days and times or at multiple locations. A clerk who wanted to retain control over the process, save money by using less staff, or reduce the hours to have time to attend to other duties could have chosen to do so under the old laws. Thus, any burdens on clerks that the state was purporting to address were voluntarily undertaken, which undermines the state's interest in alleviating those burdens.

Furthermore, the state's interest in establishing uniform times for in-person absentee voting does not make sense because clerks can currently set whatever hours and days they want for in-person absentee voting, within the parameters of the statutes. Contrary to defendants' assertion, Dkt. 206, at 65, the new laws do not actually "provide[ ] a set date when in-person absentee voting begins." Municipal clerks are still free to start in-person absentee voting at different times, so long as it is not before the window opens. Under the new law, smaller towns with part-time clerks can still conduct in-person absentee voting by appointment only or on just a few days a week, *see, e.g.*, Tr. 7a, at 166:21-177:14; PX161, while larger municipalities can offer in-person absentee voting from 8:00 a.m. to 7:00 p.m., Monday through Friday, for two weeks, *see, e.g.*, Tr. 2, at 265:2-12. Thus, the challenged provisions do not actually create any consistency in when individual clerk's offices offer in-person absentee voting.

Requiring all municipalities to have one location for in-person absentee voting may have a superficial appeal. But uniformity for uniformity's sake gets the state only so far. In 2014, the number of adults per municipality in Wisconsin ranged from 33 to 433,496. PX037, at 26. The state's one-location rule ignores the obvious logistical difference between forcing a few dozen voters to use a single location and forcing a few hundred thousand voters to use a single location. There is simply no evidence that a one-location rule prevents voter confusion, or that any confusion would be as widespread or burdensome as the types of difficulties that voters face when having only one location at which to vote in-person absentee.

Evidence at trial suggested that one of the justifications for the challenged in-person absentee provisions was to "rein in" the big cities in the state, principally for political purposes. *See generally* PX022. State legislators were concerned that smaller municipalities could not keep up with the cities that had the resources to provide 60 to 70 hours of in-person absentee voting each week. *Id.* Ensuring equal access to the franchise is certainly a valid state interest, probably even a compelling one. But stifling votes for partisan gain is not a valid interest. And Wisconsin's approach in this instance was backward: rather than *expanding* in-person absentee voting in smaller municipalities, the state *limited* in-person absentee voting in larger municipalities. By doing so, the state has imposed moderate burdens on the residents of those larger municipalities.

The court concludes that most of the challenged in-person absentee voting provisions ***935** violate the First and Fourteenth Amendments for three reasons: the moderate burdens that they impose are not justified by the state's proffered interests; local control addresses the needs of the communities; and the purported consistency is illusory.

The one exception is the state's decision to prohibit in-person absentee voting on the Monday before an election. The Wisconsin Municipal Clerks Association advocated for this provision, emphasizing that the day before an election is usually very busy. Tr. 4p, at 123:8-124:12; Tr. 7a, at 158:22-160:9. The GAB advocated for this provision as well. Tr. 5a, at 102:2-4. The state's interest in preventing clerks from incurring additional responsibilities on the day before an election, even voluntarily, is considerably more important than during the weeks leading up to the election. Clerks cannot complete some of their preparation for election day until all absentee ballots are cast, and so allowing in-person absentee voting right up through the eve of the election necessarily prevents clerks from completing those tasks until after hours. Prohibiting in-person absentee voting on the day before an election allows clerks to focus on preparing for the election, go home at a reasonable hour, and be as sharp as possible for election day, which will itself be a long day. The state's interest in prohibiting in-person absentee voting on the day before an election outweighs the moderate burdens that this measure imposes. Thus, the court concludes that this one provision does not violate the First and Fourteenth Amendments.

2. Requiring documentary proof of residence and eliminating corroboration

Wisconsin requires voters to provide documentary proof of residence when registering to vote. Wis. Stat. § 6.34(2). Before Act 23, passed in 2011, voters could use corroboration to prove their residence. And before Act 182, passed in 2014, voters needed to provide documentary proof of residence only when registering to vote within 20 days before an election. Plaintiffs challenge both the requirement of documentary proof of residence and the elimination of corroboration. These are two aspects of an overall challenge to what Wisconsin requires from voters who want to register. Plaintiffs contend that Wisconsin's proof of residence requirement burdens Wisconsin voters, particularly young voters who live with their parents, elderly voters, economically disadvantaged voters who live with friends or relatives, women voters whose residency documents are in their husbands' names, and minority voters who suffer from higher rates of residential instability. [14]

The court finds that the challenged registration provisions impose only slight burdens on voters.

Between 2006 and 2012, about 35,000 Wisconsin citizens used corroboration to register to vote. PX038, at 39. But plaintiffs have adduced only anecdotal evidence to support their contention that the elimination of corroboration imposes a severe burden. They have not proven that minorities, Democrats, or young voters experience any widespread or insurmountable ***936** difficulties registering to vote on account of this change in the law. Indeed, plaintiffs' expert conceded that he did "not have specific data on how many people were unable to register because they were no longer permitted to use corroborating witnesses to prove residency." *Id.* The same is true of plaintiffs' evidence about voters who could not provide documentary proof of residence: although plaintiffs have identified examples of voters who were turned away at the polls, there is no evidence about how prevalent the problem is, or about how many voters cannot obtain documentary proof of residence with reasonable effort.

Voters in Wisconsin can satisfy the proof of residence requirement with a little planning. For example, rather than trying to register on election day, voters can contact their municipal clerk beforehand, when there is still time to update mailing addresses for bank statements, utility bills, or other acceptable forms of proof of residence. *See* PX490, at 5-6 (voter tried to use corroboration at the polls); PX045, at 3 (same); PX059, at 1 (183 people not able to register at polls because they did not have proof of residence). Wisconsin also allows voters to present electronic copies of their proof of residence documents (e.g., online bank statements or utility bills), which eliminates the need to wait for a document to arrive by mail.

At least some clerks have even identified a solution for voters who are simply unable to obtain the necessary documentation. Under Wis. Stat. § 6.34(3)(a)11., a person can register to vote by providing a document issued by a unit of government. Thus, if a voter provides a municipal clerk with the address at which the voter wants to register, the clerk can send the voter a letter and *that letter* then becomes a government document that the voter can use to register. *See, e.g.*, Tr. 1p, at 163-65; Tr. 2, at 301-02. This system is not much different from the one that Wisconsin used to have. When a voter registered, the clerk's office would send him or her a postcard to confirm the registration address. If the card came back as undeliverable, then the clerk's office knew that there was a problem; if the card did not come back, then the clerk's office considered the registration verified. The current laws merely add the step that a voter must return to the clerk's office to verify receiving the document.

The lone context in which proof of residence requirements and the elimination of corroboration can be more problematic is election day registration. An unregistered voter who lacks easy access to documentary proof of residence and decides on election day that he or she will vote may be unable to register without corroboration. The specific burdens on voters who plan to register on election day are still slight. With a little advanced planning, even a voter who lacks access to standard methods for proving residence can register to vote on election day.

For many voters, registering to vote will not be a regular event: once registered, a voter can continue voting under that registration until he or she moves. And even for voters who move often, if they complete the registration process once, they will be prepared for it in the future. Wisconsin law allows voters to choose from an array of documents to prove residence, and this flexibility means that the loss of corroboration does not impose a severe burden on the right to vote. It may be inconvenient to plan ahead to register at the polls on election day, particularly without corroboration, and it may be cumbersome to update account information with a bank or utility company. But these activities are no more burdensome than those that the Supreme Court has already considered. *See Crawford*, 553 U.S. at 198, 128 S.Ct. 1610 ***937** ("For most voters who need them, the inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting.").

Defendants justify the registration requirements as ensuring that voters actually reside in the municipalities where they register to vote. Asking for proof of residence, and not accepting corroboration, also helps prevent fraud. Defendants adduced no actual evidence of fraudulent use of corroboration though. *See, e.g.*, Tr. 7a, at 118:20-119:6 (voter attempted to pressure other voters to corroborate his residence but they all refused).

These interests justify the slight burdens that the challenged registration provisions impose. Residence is a bona fide voter qualification. Plaintiffs are correct that defendants have not adduced evidence of a genuine threat or history of registration-related fraud. But "[l]egislatures ... should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights." *Munro v. Socialist Workers Party*, 479 U.S. 189, 195–96, 107 S.Ct. 533, 93 L.Ed.2d 499 (1986). Pursuant to *Frank* and *Crawford*, states can anticipate and guard against fraudulent voting, and public confidence in elections is a legitimate state interest. [15] Regardless, a voter's residence in a particular municipality is a qualification for voting in that municipality. The state has an interest in making sure that only qualified voters are participating in elections, and the proof of residence requirement is directly linked to that goal.

The court concludes that the challenged registration requirements do not violate the First and Fourteenth Amendments.

3. Changing how students can use "dorm lists" to register

Before Act 23, college and university students could register to vote use their student IDs and a "dorm list" that their institutions provided to municipal clerks. [16] The legislature has changed this provision by requiring that dorm lists also indicate whether

students are U.S. citizens. This change requires colleges and universities to provide information that the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, prevents them from disclosing without consent. PX435, at 34-35. [17] Rather than obtaining consent to provide this information, most colleges and universities have stopped providing dorm lists to municipal clerks. PX436, at 10.

The court finds that the dorm list provision places only a slight burden on student voters.

***938** The dorm list provision is a special accommodation that allows college and university students to prove their residences with student IDs. This option is *in addition to* the standard options that all voters have. Act 23 pulls back only some of the special dispensation that the legislature gave students. The challenged provisions do not deny students the ability to register outright. Students can also register using a student ID and a fee receipt showing that they paid tuition in the last nine months. *See* Wis. Stat. § 6.34(3)(a)7.a. And of course, students can register by presenting any of the other listed documents to prove residence. Plaintiffs did not present evidence showing how often students used dorm lists before Act 23, or how many students are now unable to register without the option. Without this sort of proof, plaintiffs cannot demonstrate that any burden on student voters is more than slight.

Act 23 nevertheless burdens student voters who want to use their student IDs as proof of residence to register because it conditions their registration on proof of citizenship, which is something that no other voter must present to register. When any voter registers in Wisconsin, including a student voter, the voter must sign a statement certifying that he or she is a U.S. citizen. *See* DX101. But that is it. Voters do not need to actually *prove* that they are citizens. True, the primary burden that this provision imposes is on colleges and universities, which must provide compliant dorm lists. But if colleges and universities are unwilling to provide these lists, then for all practical purposes, Act 23 has taken away a method through which students can register to vote.

Defendants justify the provision by arguing that U.S. citizenship is a qualification for voting in Wisconsin, *see* Wis. Const. art. III, § 1, and so "it makes sense to confirm it." Dkt. 206, at 87. [18] That is a weak justification for two reasons. First, none of the state's other methods for proving residence require voters to "confirm" their U.S. citizenship beyond signing a citizenship certification on the registration form. Students sign this certification too. Defendants do not explain how this certification procedure, which apparently satisfies the state's interest in confirming citizenship for the overwhelming majority of non-students who register to vote, is insufficient in the context of student voters. Second, even if the state is particularly worried about non-citizen students voting—and at trial, the state presented no evidence of such a problem—the challenged provision does not allay that concern. Non-citizen students could easily skirt the requirement of demonstrating citizenship by using one of the other methods for proving residence.

Although the changes to using a dorm list to register impose only slight burdens, the state has not offered even a minimally rational justification for the law. The court therefore concludes that this provision violates the First and Fourteenth Amendments.

4. Eliminating statewide SRDs and eliminating SRDs and registration locations at high schools

Plaintiffs challenge the provisions of Act 23, passed in 2011, that eliminated statewide SRDs and the provisions of Act 240, passed in 2012, that eliminated the requirement that high schools accept registrations from staff and enrolled students.

The court finds that the challenged SRD and high school registration provisions place only slight burdens on voters.

***939** Most of the burdens that plaintiffs identify from these laws do not fall directly on voters. For example, plaintiffs contend that eliminating statewide SRDs hinders individuals who register voters during off-site registration drives. *See, e.g.*, Tr. 1p, at 7:20-8:25 (Citizen Action employee cannot register voters outside the municipalities in which she is an SRD), 187:15-188:6

(college student cannot be a statewide SRD); Tr. 3a, at 101:1-102:21 (organizations cannot conduct voter-registration drives). Plaintiffs also contend that without statewide SRDs, more voters will be forced to register at a municipal clerk's office or at the polls, which will cause congestion and additional work for clerks and poll workers. Tr. 2, at 327:14-20. The *Anderson–Burdick* framework does not focus on these burdens; rather, the relevant issue is the nature and severity of the burdens that fall on *voters* and on the right to vote.

The real burden for voters is the loss of potentially convenient options for registering through a statewide SRD or at a high school. But plaintiffs have not adduced evidence of how widespread or significant this problem is. No testimony or expert opinion established how many voters want to register through statewide SRDs or at high schools and are unable to do so. Nor did any testimony establish how many voters are unable to register at all without these options. The closest that plaintiffs came was an anecdote about one municipality not appointing any SRDs in 2011 and 2012, which meant that all voters had to register through the clerk's office those years. PX490, at 3. Yet that burden was principally the result of that particular clerk refusing to appoint any SRDs. Plaintiffs do not argue that all, or even many, other municipalities refuse to appoint SRDs.

Defendants justify these provisions by arguing that statewide SRDs make mistakes that municipal clerks have to spend time correcting. Tr. 4p, at 133:3-20 (continuous difficulties in municipalities across the state with untimely or incorrect registrations from SRDs); Tr. 7a, at 121:2-7 (statewide SRDs submit incomplete forms, "which complicates things and requires follow-up"), 170:6-19 (same); Tr. 8p, at 133:8-12 (GAB auditor had problems with legibility and missing information from statewide SRDs). Defendants also presented evidence that students and staff did not use high school registration locations that frequently, and that high school SRDs also had problems submitting registrations. Tr. 4p, at 130:18-23 (problems with high school SRDs), 131:8-17 (less than 10 registrations per year from a high school), 132:3-9 (high school students like to register on election day or in the clerk's office because "it's a Facebook picture-taking time"); Tr. 7a, at 169: 11-19 (clerk has never received a registration from a high school and has not heard complaints about eliminating high schools as registration locations). Although this evidence was not conclusive for every municipality in the state, it supported defendants' assertion that voters did not use high school registration locations that much.

Plaintiffs counter these concerns by pointing out that they came only from small municipalities. Clerks from larger municipalities supported having statewide SRDs. Tr. 1p, at 88:3-8. Plaintiffs also argue that even if statewide SRDs make mistakes, these lead municipal clerks to engage with voters to correct those mistakes, and so the net result is beneficial. Plaintiffs' criticisms are not persuasive: a state certainly does not have to stand by and watch problems fester in smaller municipalities just because one or two larger municipalities do not have, or can easily overcome, those same problems. The legislature was entitled to conclude that the problems with statewide SRDs outweighed the benefits.

***940** Defendants also justify eliminating statewide SRDs on the grounds that it gave clerks direct control over the SRDs in their municipalities. [19] The state supervised statewide SRDs, which made it difficult for municipal clerks to revoke or train SRDs when problems occurred. Tr. 4p, at 132:10-24. The benefits of local control led the Wisconsin Municipal Clerks Association to support eliminating statewide SRDs. *Id.* Now, clerks train and supervise each SRD in their municipality, which allows them to address issues quicker and more efficiently.

The state's interests in eliminating mistakes from high school and statewide SRDs, and in giving municipal clerks the ability to directly manage the SRDs with whom they work, justify the slight burdens that the challenged provisions impose. There is nothing stopping an individual from registering to be an SRD in as many municipalities as he or she likes. And alternative registration options alleviate virtually any inconvenience to voters who would benefit from being able to register with a statewide SRD.

The court concludes that the challenged SRD and high school registration provisions do not violate the First and Fourteenth Amendments.

5. Preempting Madison's landlord ordinance

Act 76, passed in 2013, overrode an ordinance that Madison passed in July 2012 requiring landlords to distribute voter registration forms to new tenants. Plaintiffs contend that the act burdens the right to vote by making it harder to register.

The court finds that the landlord provision imposes only a slight burden on voters.

There is some evidence that Madison's ordinance was an effective tool for reaching voters who rented their homes. *See, e.g.*, Tr. 3a, at 24:17-25:4. In the short time that Madison's ordinance was in effect, Madison registered at least 500 voters who submitted the forms that their landlords had given them. *Id.* at 168:4-9. That was right before the November 2012 presidential election. [20] Madison is also home to a large student population, with many students renting their homes.

As with other challenged provisions, plaintiffs have not adduced evidence of a significant or widespread burden. The state statute does not preclude landlords from distributing materials; it just prevents municipalities from *requiring* that they distribute materials. Even assuming that in practice the law means that no landlord will provide forms, the only real burden that voters experience is having to obtain registration forms elsewhere—the rest of the steps for registering are the same. At most, the state has denied Madison voters a convenience. Plaintiffs have not adduced evidence of voters in Madison (or anywhere in Wisconsin) who did not receive registration forms from their landlords and were unable to register to vote.

Defendants justify the law on the grounds that requiring landlords to provide voting materials creates the possibility ***941** for voter confusion. At trial, two municipal clerks opined that landlords, who are not trained election officials, could distribute outdated materials or inaccurate information. Tr. 4p, at 136:22-137:20; Tr. 7p, at 19:10-20:7. This testimony was speculative; defendants did not introduce evidence that landlords have actually distributed the wrong information. But the potential for confusion is at least plausible, which makes the state's interest in avoiding it a reasonable one.

The state has an interest in ensuring that voters receive the correct information about where and how to register to vote. Here, the possibility that landlords will provide outdated or inaccurate information seems minimal, and defendants' justification for overriding Madison's ordinance is relatively weak. If the statute more than minimally burdened the right to vote, then it probably would not withstand constitutional scrutiny. But defendants have put forth a rational explanation for it, and that explanation is sufficient to justify the slight burden that the law imposes.

The court concludes that the landlord provision does not violate the First and Fourteenth Amendments.

6. Increasing the durational residency requirement

Act 23, passed in 2011, increased Wisconsin's durational residency requirement from 10 days to 28 days. This means that residents who move within Wisconsin fewer than 28 days before an election have to vote in their former municipalities. And residents who move into Wisconsin from out-of-state fewer than 28 days before an election cannot vote in Wisconsin at all (except for the offices of president and vice president, pursuant to Wis. Stat. § 6.15(1)).

The court finds that the increased durational residency requirement imposes a moderate burden on voters in Wisconsin, particularly for populations that tend to be more transient or lack access to transportation.

"Durational residence requirements completely bar from voting all residents not meeting the fixed durational standards. By denying some citizens the right to vote, such laws deprive them of a fundamental political right, preservative of all rights." *Dunn v. Blumstein*, 405 U.S. 330, 336, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972) (citations, internal quotations, and alterations omitted). Plaintiffs have adduced evidence from which the court can infer that a longer residency requirement leads to increased difficulties for certain types of voters. That is an important consideration because the court must evaluate the burdens that the law imposes on voters who cannot comply with it. *See Crawford*, 553 U.S. at 198, 128 S.Ct. 1610. Here, the burden is significant. A voter who does not satisfy the durational residency requirement cannot vote unless he or she: (1) travels back to his or her former municipality; or (2) votes absentee by mail. These options reduce the burden that the law imposes, but they do not negate it entirely.

Plaintiffs seek a return to the old 10-day rule, presumably because the rule does not impermissibly burden the right to vote. Thus, their contention is really that the *increase* from 10 days to 28 days burdens the right to vote. Given the specific burdens at issue, plaintiffs' evidence of problems with the overall durational residency requirement, *see e.g.*, Tr. 1p, at 44:19-45:6; PX055, at 2; PX059, at 1, is not particularly relevant.

Plaintiffs have not adduced direct evidence of the burdens that the change from 10 days to 28 days imposes. They have not identified how many voters would be able to comply with a 10-day rule but not with a 28-day rule. *See* Tr. 1p, at 44:9-14 (Citizen Action employee unable to identify how ***942** many voters were affected by the increase); Tr. 2, at 292:17-25 (municipal clerk testified to an unspecified "increase"); PX490, at 18 (one voter affected by the increase).[21] Nor could plaintiffs' experts pin down how widespread the problem is. For example, Dr. Lichtman presented 2010 census data to show that only 1.6 percent of the white population had moved into the state during the previous year, compared 2.1 percent of African Americans and 2.4 percent of Latinos. PX036, at 47. For in-state moves, 12.5 percent of white residents had lived in a different house in the previous year, compared to 26.2 percent of African Americans and 19.5 percent of Latinos. *Id.* at 41. But this information covered the entire year and was not limited to eligible voters.

As with many of their other claims, plaintiffs attempted to indirectly prove the nature and severity of the burdens that the increased durational residency requirement creates. Voters who move more often have to confront residency requirements more often. Wisconsin has a significant population of African American and Latino voters, who are more likely to be transient than white voters are. PX036, at 40-41; PX037, at 27. Thus, the court can infer that the durational residency requirement will impose considerable burdens on a class of voters within the state that will have difficulty complying with the requirement.

For voters who move into Wisconsin from another state, the 28-day residency requirement disenfranchises them from state and local elections in Wisconsin (although they can vote for president and vice president). Voters who move within the state at least have the option of voting in their former municipalities. But that option is realistically available only to those who can travel. Although voting absentee by mail can alleviate some of the burden for voters who cannot travel, that option presents its own obstacles. There is considerable public distrust of voting absentee by mail, the process is cumbersome and difficult to understand for some voters, and it presents added security challenges for municipal clerks. Tr. 1p, at 76:13-77:24; Tr. 2, at 114:18-117:10; Tr. 4p, at 158:7-159:14.

On top of the burdens of actually voting in a former municipality, the durational residency requirement presents unique registration problems as well. Voters who must register in their former municipalities may no longer have documents to prove their residence. Tr. 1p, at 79:16-22; Tr. 2, at 290:3-291:2. And even if a voter has adequate documentation, the registration form requires signing a certification that the voter has "resided at the [former] residential address for at least 28 consecutive days immediately preceding this election, with no present intent to move." DX101, at 1. Signing this certification puts voters in an uncomfortable position because the form states that "[f]alsification of information on this form is punishable under Wisconsin law as a Class I felony." *Id.*; *see also* Tr. 1p, at 79:7-15; Tr. 2, at 290:3-291:2. Also, for voters who sign the form and are able

to register, there may still be confusion when the municipal clerk sends a confirmation postcard to confirm the new registration at the old address and the card is returned as undeliverable. PX436, at 24.

Defendants justify the longer residency requirement as preserving election integrity, safeguarding voter confidence, and avoiding voter confusion. Specifically, the requirement serves these interests by preventing ***943** voter "colonization," which "involve[s] voting by nonresidents, either singly or in groups. The main concern is that nonresidents will temporarily invade the State or county, falsely swear that they are residents to become eligible to vote, and, by voting, allow a candidate to win by fraud." *Dunn*, 405 U.S. at 345, 92 S.Ct. 995. Defendants also contend that the requirement prevents "party raiding," "whereby voters in sympathy with one party designate themselves as voters of another party so as to influence or determine the results of the other party's primary." *Rosario v. Rockefeller*, 410 U.S. 752, 760, 93 S.Ct. 1245, 36 L.Ed.2d 1 (1973).

Defendants' purported interests in the 28-day durational residency requirement do not justify the severe burdens that the provision imposes for several reasons. First, defendants did not introduce any evidence at trial of a genuine threat of colonization or party raiding. Nor have defendants explained how a durational residency requirement prevents party raiding, which is a problem that involves voters who are *already registered.*

Second, even if the threat of colonization motivated the state's actions, defendants failed to address the difference between a durational residency requirement in the abstract, and increasing that requirement from 10 days to 28 days. The state's interests certainly justify some sort of residency requirement. *See Marston v. Lewis*, 410 U.S. 679, 680, 93 S.Ct. 1211, 35 L.Ed.2d 627 (1973) (per curiam) (upholding a 50-day rule and holding that "[s]tates have valid and sufficient interests in providing for some period of time—prior to an election—in order to prepare adequate voter records and protect its electoral processes from possible frauds"). But defendants have not explained how a 28-day rule serves these interests better than a 10-day rule does. The court is not persuaded that increasing a durational residency requirement by 18 days actually inhibits colonization, raiding, or fraud, at least not to the extent necessary to justify the burdens that the increase imposes on otherwise-qualified voters. To the contrary, the requirement appears to simply make it harder for otherwise eligible voters to vote. It is also somewhat inconsistent with allowing election day registration, which lets voters decide to vote at the last minute.

The state also advances a few practical points, which go toward avoiding voter confusion. For example, a GAB official testified that "the justification put forward to support the 28-day residency is partly that it was maybe more consistent with what some other states had." Tr. 8p, at 41:16-18. Indeed, 25 states and the District of Columbia have a durational residency requirement, and the average length is 28.8 days. DX001, at 23. In 77 percent of those states, the requirement is 30 days. *Id.* The shortest requirement is 20 days. *Id.* at 24. Consistency with other states is a superficial rationale that does not justify burdening (or completely disenfranchising) voters within the state who cannot comply with the requirement. Nor did defendants present evidence that there were such persistent problems with registration fraud (or *any* problems, for that matter) that the state needed to lengthen its durational residency requirement.

Defendants also argue that the increased requirement allows voters more time to gather documents and plan for voting. For example, a voter who moves to a new district 11 days before an election might not have enough time to obtain documentary proof of the new residence, and a voter who moves 9 days before an election might not have enough time to request an absentee ballot from his or her former municipality. Any such convenience is utterly speculative—defendants did not ***944** identify a single voter who benefitted from the increased time in which to gather registration documents. Regardless, the rule adds considerable *inconvenience.* As one municipal clerk testified during trial, the rule is cumbersome for a person who moves 20 days before an election and is able to gather the necessary registration documents. Tr. 7a, at 140:16-142:1. Thus, defendants' convenience-based justification is not persuasive.

The court concludes that the state's change to the durational residency requirement violates the First and Fourteenth Amendments.

7. Establishing a zone for election observers

Act 177, passed in 2014, established a statutorily prescribed zone in which election observers must stand at the polls to oversee voting on election day. The zone had to be between three and eight feet away from the table at which voters announced their names or registered to vote. Wis. Stat. § 7.41(2). This act overrode an existing GAB rule that allowed observers to be between 6 and 12 feet from the location where voters were announcing their presence and registering to vote. Part of the impetus for Act 177 was that a select group of election observers complained that officials were invoking the GAB's rule to keep them too far away to be able to hear and see events at polling places. *See* PX240; PX441, at 14-15. Plaintiffs allege that the state burdened the right to vote by moving observers closer to voters and facilitating harassment and intimidation.

The court finds that the provisions governing where election officials can position election observers imposes only a slight burden on the right to vote.

Although the executive director for Milwaukee's Election Commission confirmed that "99.5% of election observers respect the state's election observer rules," Tr. 1p, at 112:16-18, some municipalities have had problems with disruptive, harassing, and intimidating observers. These problems are prevalent in high-minority areas like Milwaukee and Racine. PX045, at 3; PX436, at 19. Besides intimidating voters, having observers close to poll workers implicates voter privacy concerns: depending on the types of documents that a voter presents for registering or as identification, an observer could be able to see financial statements, social security numbers, or other personal information. Overly zealous election observers also potentially slow down poll workers and cause delays at the polls. Plaintiffs contend that these problems would not exist, or would at least not rise to the level of constitutional violations, under the GAB's former 6-to-12-foot rule.

Despite the evidence of problems with some observers, plaintiffs have not shown that Act 177 imposes a significant burden on voters. The court does not doubt that election observers can create consternation for many voters. But Wis. Stat. § 7.41(2) gives municipal clerks and chief election inspectors discretion to create an observation area at each polling place; it does not require that they place observers closer than the GAB rule allowed. The court is not persuaded that the statute imposes any significant burden on voters. Local election officials have the discretion, under the statute, to manage the position of observers.

In the anecdotes that plaintiffs presented at trial, problems with election observers occurred when poll workers or chief inspectors failed to exercise the authority that the state gave them to control or even remove observers. Problems also occurred when observers were closer than three feet, which was not a situation that the state even allowed, let alone imposed on ***945** voters. *See, e.g.*, Tr. 1p, at 85:4-6 ("Well, to be clear, that wasn't related to the space, the space issue; that was just related to the conduct of the observer."). Also, plaintiffs' evidence of problems consisted of incidents that occurred *before* the state passed Act 177, which undermines their assertion that the new law burdens the right to vote.

Plaintiffs' challenge to Wisconsin's election observer law is essentially dissatisfaction with the choices that clerks or chief inspectors have made, or with their failure to address unruly observers. By establishing a range in which officials can place observers, the state has arguably made it possible for others to impose burdens on voters. But plaintiffs have failed to prove that election officials consistently exercise their authority under Wis. Stat. § 7.41(2) in a way that impedes or intimidates voters. At most, then, the law imposes only a slight burden on the right to vote.

Defendants offer a compelling justification for giving municipal clerks and chief election inspectors discretion to establish an observation zone. "States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election– and campaign-related disorder." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997). Here, the state balanced the right that observers have to be present at the polls with the rights that voters have to keep their personal information private and with the flexibility that poll workers need to conduct efficient and fair

elections. Rather than setting a one-size-fits-all rule, the legislature created guidelines to allow local municipalities to organize and control their polling places. Flexibility is important because not all polling places can accommodate a uniform distance. Tr. 2, at 286:17-289:22; Tr. 4p, at 139:18-140:2. And the range that the legislature selected was not unreasonable: three feet may be necessary to accommodate elderly observers or cramped polling places; eight feet allows observers to see and hear without interfering with poll workers.

To be clear, the court does not condone harassment or intimidation by election observers, at any distance from registration or announcement tables. The state would be well served to impress upon municipal clerks and chief inspectors the importance of managing election observers. And those election officials must in turn exercise their authority to protect voters from unruly observers. As far as Act 177 is concerned, however, the state's justification for the act outweighs any burdens that it creates.

The court concludes that the challenged election observer provisions do not violate the First and Fourteenth Amendments.

8. Eliminating straight-ticket voting

Act 23, passed in 2011, eliminated straight-ticket voting: voters must now select individual candidates on their ballots. Plaintiffs contend that this burdens the right to vote, particularly for voters with lower levels of educational attainment.

The court finds that this provision creates only a slight burden on the right to vote, even among populations with lower levels of educational attainment or who have less time to spend voting.

The burdens that plaintiffs identify include longer lines at the polls (because voters must mark an entire ballot) and increased confusion and likelihood of mistakes. But there was limited evidence about whether the elimination of straight-ticket voting caused these burdens and, if so, to what extent. Dr. Lichtman wrote in his report that "[t]he elimination of straight-ticket voting in Act 23 also has an adverse impact on waiting time since it ***946** makes voting lengthier for those who would otherwise use this option." PX036, at 44. Yet Dr. Lichtman did not identify evidence to support this assertion or indicate how much delay the elimination of straight-ticket voting actually caused. As for lay witnesses, plaintiffs elicited testimony that the lack of straight-ticket voting could confuse voters. *See, e.g.*, Tr. 1p, at 82:17-83:3. But the actual evidence of confusion involved voters who remembered having the option in the past and asking about whether it still existed. PX490, at 22-23. Beyond that, straight-ticket voting was mostly a convenience, and plaintiffs did not adduce evidence that the lack of straight-ticket voting deterred anyone from voting.

Defendants' first justification for eliminating straight-ticket voting is that it was joining a national trend. As another district court recently explained, that argument does not get the state very far. *Mich. State A. Philip Randolph Inst. v. Johnson*, —— F.Supp.3d ——, ——, No. 16–cv–11844, 2016 WL 3922355, at *8 (E.D.Mich. July 21, 2016) ("The fact that some other states do not allow straight party voting changes none of the facts that are before this Court. Furthermore, and more importantly, the behaviors of other states are *irrelevant* to the question of constitutionality. If the Ohio Legislature successfully instituted poll-taxes and literacy tests without challenge, it would not change the fact that poll-taxes and literacy tests are still clearly unconstitutional burdens on the right to vote." (original emphasis)).

Defendants also argue that eliminating straight-ticket voting decreases the chance of a voter selecting a straight-ticket option and then voting for candidates on the rest of the ballot. This type of over-voting would invalidate some or all of a voter's choices. Wis. Stat. § 7.50(1)(b). Defendants did not introduce evidence that these types of problems were prevalent, although they seem no more or less likely than the confusion that some voters might experience after not seeing a straight-ticket option that they are used to. Nevertheless, defendants' justification is reasonable.

Finally, defendants argue that eliminating straight-ticket voting encourages voters to become more informed about candidates or issues, and it ensures that voters do not accidentally overlook items on a ballot. Defendants did not introduce evidence of how often these problems occur, but the danger is there: in elections with referenda or non-partisan races, a voter who uses a straight-ticket option could overlook some items on a ballot. Tr. 7p, at 20:8-21:23. This justification is reasonable.

The court concludes that the straight-ticket provision does not violate the First and Fourteenth Amendments.

9. Prohibiting clerks from sending absentee ballots by fax or email

Act 75, passed in 2011, prevents municipal clerks from faxing or emailing absentee ballots, except to military or overseas electors. Plaintiffs contend that this provision unjustifiably burdens voters who are traveling but who do not qualify as overseas electors.

The court finds that this provision places a moderate burden on voters who are traveling, particularly if they are outside of the country or in locations with unreliable mail delivery.

Before Act 75, some municipalities sent hundreds of ballots by fax or email. Tr. 1p, at 87:8-12; Tr. 2, at 332:11-22. Now, without the option for electronic ballots, absentee voters must rely on mail service. This is particularly problematic for students or researchers who are abroad in remote areas, but it also affects domestic travelers, especially for elections in which ballots are not finalized until close to election day. Tr. 2, at 329:8-332:10; Tr. 7a, at 144:25-145:23; PX491, at 6-9. In at least some cases, ***947** voters who cannot receive ballots by fax or email are simply unable to vote. Although voters are able to request their ballots by fax or email, that does them little good if the mailed ballot itself does not ever arrive, or if it arrives too late for a voter to return it in time to be counted.

Defendants justify the law by contending that faxing or emailing ballots requires significant time and energy from municipal clerks. They also contend that there is a higher chance of human error because clerks have to re-create electronically returned ballots in paper form on election day, and that this process invades the voter's privacy because those officials will see the voter's selections. And a voter who receives an electronic copy of a ballot could forward that ballot to other voters, who might incorrectly believe that they can vote with it. According to defendants' expert, Dr. Hood, these considerations supported the state's decision to do away with faxing and emailing ballots to most absentee voters. DX001, at 19. As to the specific instances in which voters have had difficulty with receiving or sending absentee ballots by mail, defendants contend that voters can overcome these difficulties with planning, and they observe that electronic methods for sending ballots may not be any more reliable than using mail.

Defendants' justifications are not persuasive. Wisconsin already requires municipal clerks to send ballots by fax or email to military voters and to voters who are permanently overseas, which undercuts most of defendants' justifications. At trial, defendants principally relied on the testimony of two municipal clerks to defend this law. *See* Tr. 4p, at 141:12-142:25; Tr. 7a, at 116:11-118:8. These clerks testified that electronic ballots can create a little more work before and on election day. Defendants did not present evidence of widespread opposition to sending ballots by fax or email. Indeed, other election officials could not see reasons for eliminating the practice, or testified that it did not create significant logistical problems. Tr. 2, at 332:23-333:4 ("It took a few minutes to compile the email."), 333:15-17; PX435, at 48. From a practical perspective, the court simply does not credit the assertion that in the year 2016, printing a paper ballot and instructions, putting them into an envelope, and physically sending the envelope overseas is less burdensome on municipal clerks than compiling a PDF and sending an email. This is especially so because clerks are already sending ballots electronically to military and overseas electors.

Defendants also overstate their concerns about privacy, security, and errors. A voter who chooses to submit an absentee ballot electronically is voluntarily giving up some of the privacy that a mailed ballot would have. That is the voter's problem, not the

state's problem: a voter who is concerned about privacy can simply avoid voting by fax or email. As for defendants' concern that voters may forward electronic copies of absentee ballots, they presented only one example of this occurring. There is no reason to think that it is a widespread problem. Even if it occurs regularly, a municipal clerk can correct the issue with an email to the voter who submitted a forwarded ballot. Finally, even crediting defendants' assertion that there is a higher *chance* for human error when re-creating an electronically received ballot in paper form, that chance is minimal because two election officials perform the task together. Defendants did not adduce evidence that mistakes ever actually happened, or that they happen with any frequency.

If the challenges of sending and receiving electronic ballots are as severe as defendants make them out to be, then the state can make the practice optional instead of mandatory.[22] But the state's justifications ***948** for flatly prohibiting clerks from sending ballots by fax or email do not outweigh the moderate burdens that the challenged provision places on voters who are affected by it.

The court concludes that the provision prohibiting municipal clerks from sending absentee ballots by fax or email violates the First and Fourteenth Amendments.

10. Limiting when clerks can return absentee ballots to voters

Act 227, passed in 2012, prevents clerks from returning a received absentee ballot to a voter unless the ballot is damaged or has an incomplete certification. Plaintiffs contend that these provisions place undue burdens on voters with lower levels of educational attainment, who tend to be African Americans and Latinos.

The court finds that the provisions governing when clerks can return absentee ballots to voters place only a slight burden on the right to vote.

After Act 227, municipal clerks cannot return absentee ballots to voters to correct mistakes such as over-voting or improper marks. According to plaintiffs, minorities are more likely to make these kinds of mistakes because they have lower levels of educational attainment. PX036, at 9. Dr. Lichtman opined that "[t]his problem is especially acute for Wisconsin Hispanics. According to the US Census American Community Survey 2010, 3-Year Estimates, 33.2 percent of Hispanics in Wisconsin speak English 'less than very well.' " *Id.* at 48. The court does not give these opinions much value because Dr. Lichtman did not link his conclusion to the voting context. He did not identify what percentage of minority *voters* would have difficulty understanding a ballot, nor did he explain whether (and why) absentee ballots would be a type of printed document that minority voters would struggle to understand. Likewise, plaintiffs have not directed the court to any evidence demonstrating that comprehension problems with absentee ballots actually occur. *See* Dkt. 207, at 67.

Defendants' justification for this provision is straightforward and persuasive. Election officials do not open absentee ballots until election day, when they feed the ballots through counting machines. Thus, the only time that clerks would see the types of mistakes that plaintiffs identify is when they are actually preparing to feed the ballots through the machines. At that point, it is too late to return the ballot to the voter. In contrast, the errors for which clerks are now allowed to return absentee ballots are visible without opening the ballot envelope: "a spoiled or damaged absentee ballot," Wis. Stat. § 6.86(5), and "an absentee ballot with an improperly completed certificate or with no certificate," *id.* § 6.87(9).

Beyond the procedural justification, defendants argue that permitting clerks to return ballots to correct "mistakes"—as plaintiffs want—leaves clerks without any real guidance. One clerk could determine that a voter made a mistake by not voting for each office on a ballot, while a different clerk could determine that the same voter apparently did not want to vote for each office. Preventing ambiguity and confusion serves the state's interest in running efficient and orderly elections.

The court concludes that the limits on when clerks can return absentee ballots to voters do not violate the First and Fourteenth Amendments.

11. The IDPP

Plaintiffs contend that the IDPP impermissibly burdens the right to vote. They seek to invalidate the process not only for the petitioners who are currently trapped within it, but also for future petitioners ***949** who use the IDPP to obtain a free ID for voting purposes.

The court finds that the IDPP imposes severe burdens on the right to vote.

At least 60 qualified electors—those whose petitions were denied—were disenfranchised for the 2016 spring primary in Wisconsin. There were also 36 people in "suspend" status who had not been issued IDs. There is no evidence that any of these people were not qualified electors. And as defendants' expert, Dr. Hood, acknowledged, there are "undoubtedly" people who are discouraged from even entering the process because they lack the documents or think that it is too cumbersome. Tr. 7p, at 199:11-200:8.

Even petitioners who succeed in navigating the IDPP do so only after enduring severe burdens. Becky Beck, a CAFU research agent, indicated that once a petition gets to CAFU, it typically takes five separate contacts between the investigator and the petitioner to verify the petitioner's identity, birthdate, and citizenship. Tr. 8p, at 159:12-16. CAFU's Case Activity Reports document many instances in which petitioners are repeatedly sent to family members, hospitals, or schools to hunt for additional documentation, even when there is no doubt that the person is a qualified elector. Sometimes these petitioners succeed—but only after they have engaged in months of back-and-forth with CAFU—when the DMV finally determines, in its discretion, that the petitioner has made a strong enough case to warrant issuing an ID. Even when the effort is ultimately successful, the IDPP imposes burdens that far exceed those contemplated in *Crawford* and *Frank*.

Defendants invoke the same justifications that *Crawford* and *Frank* discuss. They contend that Wisconsin's voter ID law (which includes the IDPP) deters fraud, promotes public confidence in elections, and promotes the orderly administration of elections. These interests justify a voter ID law in general, but they do not justify the severe burdens that the IDPP imposes. The Seventh Circuit has anticipated that such burdens could pose constitutional problems for Wisconsin's voter ID law; it noted in *Frank* that:

> *Milwaukee Branch of NAACP* and the regulations leave much to the discretion of the employees at the Department of Motor Vehicles who decide whether a given person has an adequate claim for assistance or dispensing with the need for a birth certificate. Whether that discretion will be properly exercised is not part of the current record, however, and could be the subject of a separate suit if a problem can be demonstrated.

768 F.3d at 747 n. 1.

The evidence presented at trial confirms that the IDPP disenfranchises otherwise qualified voters. And even when confronted with lawsuits in two different federal courts, the state has utterly failed to devise a workable solution for getting these voters IDs. The state's most recent emergency rule allows the petitioners who are currently in the IDPP to vote in the November 2016 election. But there is no plan in place for after the petitioners' current receipts expire. Kicking the problem down the road does not alleviate the severe burdens that these petitioners must endure, nor does it prevent any future petitioners from suffering the same severe burdens. In short, many IDPP petitioners face insurmountable obstacles that serve no important interest because

the government concedes that these petitioners are qualified electors. These justifications, such as they are, do not outweigh the burdens that the IDPP imposes.

The court concludes that the current version of the IDPP violates the First and Fourteenth Amendments.

***950 12. Cumulative effect**

Plaintiffs contend that the cumulative effect of the challenged provisions in this case imposes an undue burden on the right to vote. According to plaintiffs, even if individual provisions comport with the First and Fourteenth Amendments, the court must still consider the overall effect of Wisconsin's election system on voters, particularly on Democratic voters. To prove this aspect of their case, plaintiffs rely heavily on the "calculus of voting" theory that Dr. Burden explained in his expert report. PX037, at 4-5. Under this theory, a voter's likelihood of voting is essentially the result of a formula that reflects a cost-benefit analysis. A person will vote if his or her probability of determining the outcome of the election, multiplied by the net psychological benefit of seeing his or her preferred candidate win, is greater than the "cost" of voting (i.e., the effort needed to become informed, and the time and resources needed to register to vote and cast a ballot). *Id.*

Plaintiffs argue that Wisconsin has imposed a series of independently minor burdens that, collectively, increase the cost of voting enough to deter voters who tend to vote for Democrats. As explained above, plaintiffs did not present compelling statistical evidence of the deterrent effects that the challenged provisions have. But the nature of the challenged provisions, none of which facilitate voting or registration, makes it reasonable to infer that there will be some such effect. And as the Seventh Circuit recognized in *Frank*, "*any* procedural step filters out some potential voters." 768 F.3d at 749 (original emphasis). But a deterrent effect alone, especially one that is not reliably quantified, does not render the cumulative effect somehow unconstitutional.

The *Anderson–Burdick* framework requires the court to evaluate "the precise interests put forward by the State as justifications for the burden imposed by its rule." *Burdick*, 504 U.S. at 434, 112 S.Ct. 2059. This requirement is difficult in the context of "cumulative effects" because the state can have different justifications for different rules, each with varying levels of persuasiveness. Plaintiffs do not propose a legal framework for evaluating a "cumulative effects" claim under *Anderson–Burdick.* But even looking broadly at the laws that they challenge in this case, the court's analysis of the individual provisions already addresses the problematic aspects of Wisconsin's election system.

Take the challenged registration provisions: the court agrees that aspects of Wisconsin's registration requirements burden the right to vote, particularly for voters who are more likely to move (which includes minority and younger voters, and thus, Democratic voters) and for voters who lack convenient access to documentary proof of residence (again, minority and younger voters, and thus, Democratic voters). But the state's interests in preempting fraud, avoiding confusion, and ensuring that only qualified voters register to vote are compelling enough to justify at least some of the burdens that the challenged provisions collectively impose. Removing the restrictions on using dorm lists and reducing the durational residency requirement will ease the burdens of Wisconsin's registration laws, at least to a degree that the state's interests can justify.

Likewise, the principal problem with Wisconsin's in-person absentee system is that it addresses inequality across municipalities by suppressing voting in larger cities rather than by enabling increased voting in smaller cities. Invalidating that approach not only addresses the burdens on in-person absentee voting, but it also alleviates burdens in other aspects of Wisconsin's election system. A voter who is intimidated by election observers or who is ***951** concerned about long lines at the polls because there is no straight-ticket voting, for example, may be able to vote in-person absentee and avoid those concerns altogether.

In short, although plaintiffs press a separate claim for the cumulative effects of the challenged provisions, the court concludes that they are entitled to no broader relief than the invalidation of the specific provisions that the court has identified as constitutionally infirm. A remedy directed at the diffuse cumulative effects of Wisconsin's election regime would invite, essentially, a rewrite

of the state's election laws. That would be an unwarranted intervention by a federal court into an area reserved to the state legislature.

F. Voting Rights Act claims

Plaintiffs challenge the following provisions under § 2 of the Voting Rights Act: the reductions to in-person absentee voting; the one-location rule for in-person absentee voting; the elimination of corroboration; the requirement of documentary proof of residence; the elimination of statewide SRDs; the increased durational residency requirement; the zone for election observers; and the elimination of straight-ticket voting. Plaintiffs contend that these provisions disparately burden African Americans and Latinos.

Section 2 of the Voting Rights Act prohibits states and political subdivisions from implementing any "voting qualification or prerequisite to voting or standard, practice, or procedure ... in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a). Plaintiffs can establish a violation of § 2 by showing that, based on the totality of the circumstances, Wisconsin's election process is "not equally open to participation by members of a class of [protected] citizens ... in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* § 10301(b). Plaintiffs do not need to adduce proof of discriminatory intent to prevail on their Voting Rights Act claims. *Chisom v. Roemer*, 501 U.S. 380, 394–95, 111 S.Ct. 2354, 115 L.Ed.2d 348 (1991).

Most case law applying § 2 of the Voting Rights Act pertains to so-called "vote dilution" claims, which generally involve gerrymandering. Plaintiffs in this case bring claims over voting and registration requirements, which are "vote denial" claims for which Voting Rights Act law is less developed. In *Frank*, the Seventh Circuit endorsed a two-step inquiry for reviewing vote-denial challenges to voting qualifications under the Voting Rights Act:

> First, the challenged standard, practice, or procedure must impose a discriminatory burden on members of a protected class, meaning that members of the protected class have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.
>
> Second, that burden must in part be caused by or linked to social and historical conditions that have or currently produce discrimination against members of the protected class.

768 F.3d at 754–55 (citations and internal quotation marks omitted). But the Seventh Circuit also cautioned that "§ 2(a) does not condemn a voting practice just because it has a disparate effect on minorities." *Id.* at 753. "It is better to understand § 2(b) as an equal-treatment requirement (which is how it reads) than as an equal-outcome command." *Id.* at 754. The court must therefore analyze whether plaintiffs have proven that: (1) the challenged provisions impose disparate burdens on African Americans and Latinos; and (2) under the ***952** totality of the circumstances, these burdens are linked to the state's historical conditions of discrimination.

1. Disparate burdens

Two threshold issues affect how the court evaluates plaintiffs' evidence of disparate burdens. First, defendants contend that the Voting Rights Act requires plaintiffs to couch their evidence in terms of a departure from an "objective benchmark," rather than a departure from what Wisconsin's laws used to be. Dkt. 206, at 114. The Supreme Court has indicated that a different baseline is part of what distinguishes § 2 claims from § 5 claims:

> In § 5 preclearance proceedings—which uniquely deal only and specifically with *changes* in voting procedures—the baseline is the status quo that is proposed to be changed: If the change "abridges the right to vote" relative to the status quo, preclearance

> is denied, and the status quo (however discriminatory *it* may be) remains in effect. In § 2 or Fifteenth Amendment proceedings, by contrast, which involve not only changes but (much more commonly) the status quo itself, the comparison must be made with a hypothetical alternative: If the *status quo* "results in [an] abridgement of the right to vote" or "abridge[s] [the right to vote]" relative to what the right to vote *ought to be,* the status quo itself must be changed.

Reno v. Bossier Par. Sch. Bd., 528 U.S. 320, 334, 120 S.Ct. 866, 145 L.Ed.2d 845 (2000) (original emphasis).

But *Reno* and the other cases on which defendants rely are vote *dilution* cases; this is a vote *denial* case. The few other federal courts that have considered how to evaluate burdens in vote denial cases have determined that this distinction is important. Relying on the text of the Voting Rights Act, the Southern District of Ohio recently concluded that "the relevant benchmark is inherently built into § 2 claims and is whether members of the minority have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice." *Ohio Org. Collaborative*, 189 F.Supp.3d at 757, 2016 WL 3248030, at *39; *see also Ohio State Conference of N.A.A.C.P. v. Husted*, 768 F.3d 524, 556 (6th Cir.2014) ("Section 2 vote denial claims inherently provide a clear, workable benchmark.... under the challenged law or practice, how do minorities fare in their ability 'to participate in the political process' *as compared to other groups of voters*?" (original emphasis) (quoting 42 U.S.C. § 1973(b), which has been transferred to 52 U.S.C. § 10301)), *vacated on other grounds*, No. 14–3877, 2014 WL 10384647 (6th Cir. Oct. 1, 2014). The reasoning in these cases is persuasive, and the court rejects defendants' argument that plaintiffs must identify an objective benchmark to prevail on their Voting Rights Act claims.

Part of determining whether minority voters have less opportunity to participate than other members of the electorate may involve comparing the challenged provisions with the laws that they replaced. *See League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 241–42 (4th Cir.2014), *cert. denied*, —— U.S. ——, 135 S.Ct. 1735, 191 L.Ed.2d 702 (2015); *Ohio Org. Collaborative*, 189 F.Supp.3d at 758, 2016 WL 3248030, at *40 ("[A]n analysis of whether a change in law results in a decreased opportunity of minorities to vote as compared to other voters is exactly the type of analysis required by § 2 claims."). But that is not to say that a given provision would violate the Voting Rights Act just because it leaves minority voters worse off than a prior law. The appropriate inquiry at this first step is whether the challenged provision burdens ***953** minority voters more than other voters. *See Frank*, 768 F.3d at 753.

The second threshold issue concerns the type of evidence that the parties have presented to prove (or disprove) that African Americans and Latinos have suffered disparate burdens under the challenged provisions. Experts on both sides have presented extensive statistical evidence derived from election turnout data in Wisconsin over time. Given the information available about Wisconsin's elections, turnout rates may be the best that the parties can offer. But raw turnout statistics reveal very little about the disparate burdens that a state's election system imposes. For example, defendants tout the high turnout numbers for the April 2016 election—the first statewide election in which the voter ID law and other challenged provisions were in effect—as evidence that minorities are not suffering disparate burdens under Wisconsin's election laws. Tr. 1a, at 60:8-17. But turnout in a given election depends on many factors, ranging from which offices are on the ballot to the amount of money spent on campaigning and the contentiousness of the races. The April 2016 Wisconsin involved unusually sharply contested primaries on both sides, which undoubtedly contributed to the higher-than-average turnout for an April election. Tr. 2, at 42:10-43:9. One cannot infer from the high overall turnout that Wisconsin's election laws have no impact, or that they have no differential impact on minorities.

That is not to say that turnout statistics are utterly useless. Plaintiffs' expert, Dr. Mayer, used the statewide voter database, correlated to a separate database of demographic and political information, to track several cohorts of voters across the 2010 and 2014 elections (i.e., before and after some of the challenged provisions went into effect). Both sides' experts agreed that comparing midterm elections, rather than presidential elections, made sense, because Barack Obama's presence on the ballot in 2008 and 2012 would likely skew minority turnout. And, although the usual constellation of factors affected voting in 2010 and 2014, a change in election law regime was one significant difference between those elections, and no one was aware of any

other major factor likely to affect turnout. Dr. Mayer also opined that, based on survey research, in 2014 most voters believed that the voter ID law was in effect, even though it was actually still enjoined. Thus, Dr. Mayer was of the view that the 2014 election would be a good test of the impact of the laws challenged in this case.

Dr. Mayer used statistical regression analysis to isolate some of the variables that contribute to a voter's likelihood of voting. Based on this analysis, Dr. Mayer concluded that African Americans, Latinos, and those who lived in student wards, were slightly less likely to vote in the 2014 election than the average voter was. PX043, at 14 (updated Table 8). By contrast, in the 2010 election, African Americans and those in student wards were actually *more* likely to have voted. For Latinos, the difference between 2010 and 2014 was small (though slightly in the opposite direction; they were slightly less likely to vote in 2010). Plaintiffs contend that Dr. Mayer's analysis shows that they challenged the provisions decreased likelihood that minorities will vote. These conclusions are in line with other national studies, which conclude that voter ID laws tend to suppress minority turnout at elections. *See* PX072.

Defendants' expert, Nolan McCarty, PhD, criticized Dr. Mayer's conclusions because Dr. Mayer does not account for "roll-off" in the statewide voter database. That database provides a "snapshot" in that it includes voting records only for ***954** those voters who are registered as of the date the report of the database is generated, which in Dr. Mayer's case was September 24, 2015. Thus the September 24, 2015 database does not include the voting records of any voter who was not registered as of that date, even though that voter might have been registered for the 2010 or 2014 elections. Dr. McCarty surmises that minority voters would have been more likely to rolloff, so that Dr. Mayer's turnout rates for 2010 were too high, and thus the difference between those rates and the 2014 rates would be smaller. DX005, at 9. Dr. Mayer response is that despite the roll-off effect, his conclusions are sound, because he finds the effect even among the cohort of committed voters (because they stayed registered from 2010 to 2015 without rolling off the database). The court finds that, despite Dr. McCarty's criticism, Dr. Mayer's regression analysis supports the conclusion that the probability of an African American voting, relative to an average voter, was less in 2014 than it was in 2010. The court finds that Dr. Mayer's conclusions about those who live in student wards are not informative, because his definition of those who live in student wards does not include only students. The bottom line is that Dr. Mayer's analysis lends some support to the plaintiffs' claim that the challenged provisions tend to reduce African American voting by some modest amount. But nothing presented by either side demonstrated that the challenged laws had a striking impact on turnout overall or among any class of voters.

And even with the support of other empirical evidence, Dr. Mayer's conclusions, without more, are not enough to carry the day for plaintiffs. "It is better to understand § 2(b) as an equal-treatment requirement (which is how it reads) than as an equal-outcome command." *Frank*, 768 F.3d at 754. At the end of the day, turnout statistics report outcomes, not the burdens of the election regulations that might have influenced those outcomes. Thus, the court must look for specific evidence demonstrating that the challenged provisions fall disparately on minorities.

a. Registration provisions

Plaintiffs challenge three registration-related provisions under the Voting Rights Act: proof of residence, elimination of corroboration, and elimination of statewide SRDs. Plaintiffs contend that these provisions impose disparate burdens on minority voters, who are more likely to move than white voters are. The court accepts plaintiffs' expert evidence that minority populations are more transient. PX036, at 47. If those populations register at the same rate that white populations do, then they would need to complete registration more often. For minority voters who do not have convenient access to proof of residence, this requirement could be disparately burdensome, as could the elimination of corroboration.

Wisconsin's registration requirements apply to all voters, regardless of race. The fact that voters must register after they move does not itself impose a disparate burden. Instead, plaintiffs must demonstrate that it is categorically more difficult for African American or Latino voters to comply with the registration requirements, and that registering more often therefore forces these populations to confront those difficulties more often. Plaintiffs have failed to make this showing.

Even acknowledging that minorities are more likely to lack driver licenses or state-issued IDs, those are only 2 of the 12 options for proving residence that Wis. Stat. § 6.34(3)(a) authorizes. Dr. Lichtman indicates that minorities are more likely to be unemployed, *id.* at 7-8, which could mean that they would lack access to paychecks. But that still leaves residential leases, utility bills, bank statements, and documents issued by any unit of government. ***955** Indeed, as discussed above, municipal clerks have devised a strategy for sending letters to voters and then letting them use those letters to register. *See, e.g.*, Tr. 1p, at 163-65; Tr. 2, at 301-02. Plaintiffs therefore cannot demonstrate that the documentary proof of residence requirement burdens minorities for purposes of § 2. *Cf. Frank*, 768 F.3d at 752–53 ("[P]ersons who rely on the waiver procedure still must apply for it, which means that on average black and Latino residents must file more paperwork than white residents. Although these findings document a disparate outcome, they do not show a 'denial' of anything by Wisconsin, as § 2(a) requires.").

As for corroboration, plaintiffs' evidence of a disparate burden substantially consists of anecdotes and lay observations. *See, e.g.*, Tr. 1p, at 78:7-20 (corroboration is useful to people who are transient or in poverty); Tr. 3a, at 88:15-20 (corroboration facilitates participation by homeless or marginally housed voters). This testimony does not establish a verifiable disparate effect. And although some voters have been unable to register at the polls because corroboration is no longer an option, plaintiffs do not identify a racial slant to this problem. In fact, Dr. Lichtman expressly acknowledged that statistics about the use of corroboration by race are not available. PX036, at 40. This leaves plaintiffs unable to prove that the elimination of corroboration disparately prevents minorities from registering to vote.

In the abstract, African Americans and Latinos could have more difficulties presenting documentary proof of residence, particularly without corroboration. But plaintiffs have not actually *proven* that the challenged burdens disparately burden minorities. There is no persuasive evidence that minorities who want to register are systematically unable to comply with the requirement that they present proof of residence. The challenged provision violates the Voting Rights Act only if it gives "members of the protected class ... less opportunity than other members of the electorate to participate in the political process." *Frank*, 768 F.3d at 755 (citations and internal quotation marks omitted). Given the number of documents that voters can use to prove their residence, African American and Latino voters do not have "less opportunity" to participate in elections just because they are less likely to be able to use certain types of documents. *Cf. Ohio Org. Collaborative*, 189 F.Supp.3d at 758, 2016 WL 3248030, at *40 (prohibiting officials from sending unsolicited applications for absentee ballots does not create a burden for § 2 purposes).

Plaintiffs also argue that minority voters are more likely to register through SRDs at voter-registration drives than white voters are. But plaintiffs' only citation for this proposition is a website. *See* Dkt. 207, at 204. Plaintiffs did not introduce the website as evidence at trial, and they do not direct the court to other evidence admitted at trial that supports this contention. The court therefore concludes that plaintiffs have failed to prove that the elimination of statewide SRDs has had a disparate effect on minorities.

The court concludes that the challenged provisions requiring documentary proof of residence, eliminating corroboration, and eliminating statewide SRDs do not disparately burden African Americans or Latinos.

b. Durational residency provision

In the context of plaintiffs' constitutional challenge, the court concluded that the increased durational residency requirement imposes disparate burdens on African Americans and Latinos. For substantially the same reasons, the court concludes that this provision also disparately ***956** burdens minorities for purposes of the plaintiffs' Voting Rights Act claims.

Wisconsin's minority populations are much more transient than its white population is, in terms of both moving into the state and moving within the state. PX036, at 47. Unlike the methods for proving residence, there is no flexibility in the durational residency requirement: a voter either satisfies the requirement or does not satisfy it. Voters who have not been in a municipality for at least 28 days must either return to their former municipalities (if they moved within Wisconsin) or be disenfranchised. Because African Americans and Latinos are also more likely to lack access to transportation and to have less flexible work schedules, traveling to another municipality is not always feasible. On top of these burdens, voters who first have to register in their former municipalities must complete the awkward process of certifying that they have "resided at the [former] residential address for at least 28 consecutive days immediately preceding this election, with no present intent to move." DX101, at 1.

The court concludes that the durational residency provision disparately burdens African Americans and Latinos.

c. In-person absentee voting provisions

In the context of plaintiffs' constitutional challenge, the court concluded that Wisconsin's in-person absentee voting provisions burden the right to vote, particularly for minority populations in larger municipalities. For substantially the same reasons, the court concludes that these provisions also disparately burden minorities for purposes of plaintiffs' Voting Rights Act claims.

Wisconsin's rules for in-person absentee voting all but guarantee that voters will have different experiences with in-person absentee voting depending on where they live: voters in large cities will have to crowd into one location to cast a ballot, while voters in smaller municipalities will breeze through the process. And because most of Wisconsin's African American population lives in Milwaukee, the state's largest city, the in-person absentee voting provisions necessarily produce racially disparate burdens. Moreover, plaintiffs have demonstrated that minorities actually used the extended hours for in-person absentee voting that were available to them under the old laws. PX036, at 43.

The court concludes that the in-person absentee voting provisions disparately burden African Americans and Latinos.

d. Election observer and straight-ticket voting provisions

Plaintiffs contend that African Americans and Latinos are disparately affected by the state's rules governing where election observers can stand at polling places and by the state's elimination of straight-ticket voting.

Problems with election observers are more prevalent in high-minority areas like Milwaukee and Racine. But, as with plaintiffs' constitutional challenges to this provision, the problem for plaintiffs' Voting Rights Act claims is that municipal clerks and chief election inspectors decide where observers stand, not the state. The individual decisions that election officials make may lead to increased harassment at certain polling places. But that is not the same as saying that the state has imposed a disparate burden on minorities just by defining a range in which to position observers.

Plaintiffs rely exclusively on anecdotal evidence to prove that observers intimidate or harass African Americans and Latino voters more often than white voters. This evidence is insufficient to prove a violation of the Voting Rights Act, and most of it is not directly relevant. Plaintiffs have not presented evidence—expert or otherwise—that minorities disparately suffer ***957**

burdens when election observers stand close to them, or that the state's zone for election observers leads election officials to place observers closer to voters in minority-heavy municipalities. Indeed, plaintiffs' anecdotal evidence does not address the distances at which observers have caused problems, except to suggest that many observers were closer than three feet. That is not a result of Act 177—the state prohibited election officials from allowing observers to be closer than three feet. Thus, plaintiffs cannot attribute these problems to the state for purposes of proving a disparate burden.

This leaves plaintiffs' evidence that problems are more prevalent in Milwaukee and Racine. These problems occurred under the GAB's rule, not under the statute that replaced it, which undermines plaintiffs' assertion that Act 177 disparately burdens minorities. But even inferring that problems are more common in these municipalities under the new rule, the burden that minorities experience still comes from election officials not using the authority that the state has given them to control election observers. Plaintiffs have not proven that the state has imposed a disparate burden on African Americans or Latinos by giving election officials discretion to designate zones for election observers that are appropriate for their polling locations.

As for the elimination of straight-ticket voting, the court has already found that this provision imposes only slight burdens on the right to vote. For substantially similar reasons, the court concludes that the provision does not create a disparate burden for purposes of plaintiffs' Voting Rights Act claims. Again, plaintiffs' evidence is entirely anecdotal and mainly establishes only that African Americans and Latinos would prefer to use straight-ticket voting. The elimination of straight-ticket voting applies to all voters, regardless of race. Plaintiffs have failed to prove that this provision gives minorities less opportunity to vote than other voters.

The court concludes that the challenged provisions governing election observers and straight-ticket voting do not disparately burden African Americans or Latinos.

e. The IDPP

As explained above, the IDPP imposes a discriminatory burden on racial minority groups, meaning that their members have less opportunity than others do to participate in the political process. Plaintiffs have made a more than ample showing on this element.

The court concludes that the IDPP disparately burdens African Americans and Latinos.

2. Caused by or linked to social and historical conditions

The second step in analyzing a claim under the Voting Rights Act is to consider whether a discriminatory burden is "in part ... caused by or linked to social and historical conditions that have or currently produce discrimination against members of the protected class." *Frank*, 768 F.3d at 755. Having concluded that Wisconsin's durational residency requirement, provisions for in-person absentee voting, and IDPP disparately burden African Americans and Latinos, the court now considers whether those burdens are linked to social and historical conditions of discrimination.

Plaintiffs contend that the court should apply the so-called *Gingles* factors to analyze their Voting Rights Act claims. The Supreme Court has endorsed these factors, at least in the context of vote dilution cases. *See Thornburg v. Gingles*, 478 U.S. 30, 44–45, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986). But the Seventh Circuit has found them to be "unhelpful in voter-qualification cases," *Frank*, 768 F.3d at 754, and so the ***958** court will not organize its analysis by factor. Nevertheless, the Voting Rights Act requires courts to examine "the totality of circumstances," 52 U.S.C. § 10301(b), which essentially comprises the same inquiries that the *Gingles* factors address. Thus, plaintiffs' evidence about Wisconsin's history of discrimination and about the effects of past discrimination that minority groups suffer is relevant to their Voting Rights Act claims.

Wisconsin has a relatively scant history of state-sanctioned discrimination. When Wisconsin became a state in 1848, its constitution did not extend the right to vote to African Americans; they obtained that right after the measure was passed at a statewide election in 1849. But the effect of the election remained in doubt until 1866, when the Wisconsin Supreme Court clarified that African Americans had the right to vote. *See generally Gillespie v. Palmer*, 20 Wis. 544 (1866).

Other statewide policies (or lack thereof) have disparately affected minorities to some degree, even if they were not facially discriminatory. For example, from 1913 to 2006, only municipalities with more than 5,000 residents had to register voters. In other municipalities, voters did not have to register. According to Dr. Burden, the result of this practice was that "98% of blacks and 91% of Latinos lived in municipalities where registration was required. In contrast, only 68% of whites lived in these municipalities." PX037, at 11. Thus, until 2006, minorities in Wisconsin disproportionately faced more impediments to voting than white citizens faced.

Few municipalities outside of Milwaukee provide election-related materials in languages other than English, despite the fact that the GAB makes these forms available for clerks to use, and no other municipality provides ballots in Spanish. *Id.* Given the significant percentages of Spanish-speaking voters in municipalities across the state, *id.*; PX036, at 48, Wisconsin's failure to address the issue is significant.

Plaintiffs' other evidence of historical conditions of discrimination concerns Milwaukee. This makes sense, given that Milwaukee is home to most of the state's minority population. Along with other large cities in the state, Milwaukee is where the disparate burdens that the challenged provisions impose are most prevalent. But under the Voting Rights Act, "units of government are responsible for their own discrimination but not for rectifying the effects of other persons' discrimination." *Frank*, 768 F.3d at 753. Thus, defendants have argued in this case that Milwaukee's history of discrimination, which is technically not the state's own discrimination, cannot give rise to liability under the Voting Rights Act.

Drawing such a rigid distinction for purposes of plaintiffs' Voting Rights Act claims would undermine the purposes of the law. *See Chisom*, 501 U.S. at 403, 111 S.Ct. 2354 ("Congress enacted the Voting Rights Act of 1965 for the broad remedial purpose of ridding the country of racial discrimination in voting.... [T]he Act should be interpreted in a manner that provides the broadest possible scope in combating racial discrimination." (citations, internal quotation marks, and alterations omitted)). But even assuming that the Voting Rights Act does not impose liability on the state for a municipality's discrimination—a questionable assumption—the act certainly prevents a state from enacting laws that interact with a municipality's history of discrimination to impose disparate burdens. *See Frank*, 768 F.3d at 754 ("We are not saying that, as long as blacks register and vote more frequently than whites, a state is entitled to make changes for the purpose of curtailing black voting. Far from it; that would clearly violate § 2 [of the Voting Rights Act].").

***959** Beginning with the in-person absentee provisions, there is evidence that the state legislature passed these laws, at least in part, to specifically address what it perceived to be a problem with larger municipalities, like Milwaukee. Legislators were concerned that these municipalities offered residents more opportunities to vote than smaller municipalities offered. For example, during a floor session in the state senate, proponents of limiting the window for in-person absentee voting specifically referred to nipping Milwaukee and Madison's practices "before too many other cities get on board." PX022, at 6. Even if the state was not directly responsible for creating the socioeconomic disparities that exist in Milwaukee and other larger cities, the in-person absentee provisions impose burdens *because* of those disparities. For these reasons, the court concludes that evidence of discrimination in Milwaukee is relevant to the causation element of plaintiffs' Voting Rights Act claims.

During the 1960s and 1970s, Milwaukee experienced considerable white flight. Although the city's Common Council passed an open housing law, discriminatory housing practices continued to limit housing choices for African Americans, confining them to the inner city. PX037, at 12. Zoning regulations in the municipalities surrounding Milwaukee further reinforced the

segregation. As a result, two-thirds of Wisconsin's African American residents now live in Milwaukee, which remains one of the most segregated cities in the country. *Id.* at 13.

Coupled with segregated housing practices, Milwaukee has also had a difficult history with discrimination in education. In 1976—more than 20 years after *Brown v. Board of Education*—a federal judge concluded that Milwaukee's schools were illegally segregated. *Amos v. Bd. of Sch. Dirs. of Milwaukee*, 408 F.Supp. 765 (E.D.Wis.), *aff'd sub nom.*, *Armstrong v. Brennan*, 539 F.2d 625 (7th Cir.1976), *vacated*, 433 U.S. 672, 97 S.Ct. 2907, 53 L.Ed.2d 1044 (1977). The case settled after going to the Supreme Court. But the results of educational inequality have persisted. In 2015, high school graduation rates in Wisconsin were 66 percent for blacks, 78 percent for Latinos, and 93 percent for whites.[23] PX037, at 16.

Most of the rest of plaintiffs' expert evidence does not link to the disparate burdens that the in-person absentee provisions create. For example, Dr. Burden catalogs other instances of racial disparities in incarceration rates, income, and health. *Id.* at 15-18. Although this evidence is credible, it is only tangentially relevant to plaintiffs' Voting Rights Act claims. Likewise, Dr. Burden's analysis of other *Gingles* factors (i.e., racially polarized voting, race-based appeals in political campaigns, minority members elected to public office) does not bear directly on the disparate burdens that the court has found.

Disparities in housing, education, and employment, have left minority groups condensed into high-density urban areas, which makes them particularly vulnerable to Wisconsin's rules for in-person absentee voting. With only one location for in-person absentee voting, voters must travel farther than they would otherwise have to travel if municipalities could establish more locations. And basic math confirms that one location in a larger municipality will have to contend with a larger volume of voters than one location in a smaller municipality will have to confront. Lower levels of educational attainment and employment decrease the flexibility that minority ***960** populations will have to spend time waiting in line to vote in-person absentee, which makes the reduced hours problematic as well. The court therefore finds that the burdens that Wisconsin's in-person absentee provisions impose are linked to historical conditions of discrimination. These provisions are invalid under the Voting Rights Act.

As for durational residency, African Americans and Latinos will have to deal with this requirement more often than white voters will because they move more often. These populations are also more likely to lack access to transportation, meaning that if they do not satisfy the durational residency requirement, they will be less able to travel back to vote in their former municipalities. But plaintiffs have not persuasively explained how these burdens are linked to the historical conditions of discrimination described above. "Section 2(a) forbids discrimination by 'race or color' but does not require states to overcome societal effects of private discrimination that affect the income or wealth of potential voters." *Frank*, 768 F.3d at 753. The court therefore finds that the burdens that Wisconsin's durational residency requirement imposes are not linked the historical conditions of discrimination. These provisions do not violate the Voting Rights Act.

Finally, based on the evidence adduced at trial, the court cannot conclude that the burdens that the IDPP imposes are linked to historical conditions of discrimination in Wisconsin. Most of the problems that petitioners have had with getting through the IDPP relate to their inability to provide vital records to the DMV or to CAFU. But those failures tend to result from historical conditions of discrimination in the petitioner's home state or country. Under *Frank*, it is not clear that the Voting Rights Act authorizes the court to hold Wisconsin accountable for these conditions. *See* 768 F.3d at 753 ("The judge did not conclude that the state of Wisconsin has discriminated in any of these respects. That's important, because units of government are responsible for their own discrimination but not for rectifying the effects of other persons' discrimination."). It would be up to the Seventh Circuit, not this court, to clarify the scope of the inquiry under § 2.

Plaintiffs contend that this is an excessively narrow reading of the Voting Rights Act, because it would allow Wisconsin to ignore rank discrimination by other states. They may be right, but the result appears to follow from *Frank*. Because the IDPP is

manifestly unconstitutional under the *Anderson–Burdick* framework, the court will invalidate the IDPP regardless of its status under the Voting Rights Act.

G. Fourteenth Amendment claims for disparate treatment of voters

Plaintiffs initially challenged three of the provisions at issue under the Fourteenth Amendment, alleging that the legislature lacked a rational basis for: (1) implementing a 28-day durational residency requirement; (2) eliminating straight-ticket voting; and (3) excluding technical college, out-of-state, and other expired IDs as qualifying forms of voter ID. Dkt. 19, ¶¶ 164-69. The court dismissed the claims concerning Wisconsin's durational residency requirement and straight-ticket voting. Dkt. 66, at 5-9. At summary judgment, plaintiffs dropped their challenge to excluding technical college IDs, and the court granted summary judgment to defendants on most of the rest of plaintiffs' remaining rational basis claim. Dkt. 185, at 20-24. The court denied defendants' motion for summary judgment with regard to plaintiffs' challenge that the state lacked a rational basis for excluding expired college or university IDs from the list of qualifying forms of voter ID.

***961** In their post-trial brief, plaintiffs purport to "continue to challenge the rational basis of excluding three forms of ID: 1) out-of-state driver's licenses, 2) driving receipts issued under Wis. Stat. § 343.11, and 3) state ID card receipts." Dkt. 207, at 128. Plaintiffs are free to pursue these issues on appeal, but the court has already entered summary judgment for defendants on these aspects of plaintiffs' rational basis claims.

Plaintiffs also note that at summary judgment, the court "ruled that excluding expired college or university IDs lacked a rational basis." *Id.* at 128 n.32. That is incorrect. In denying defendants' motion, the court did not affirmatively conclude that the state lacked a rational basis for excluding expired college or university IDs. As the pertinent section of the summary judgment opinion stated: "[a]t this point, defendants have failed to identify a rational basis for the legislature's decision to exclude expired student IDs. The court will deny this aspect of defendants' motion for summary judgment." Dkt. 185, at 24. The court essentially concluded that defendants' proffered justifications for excluding expired student IDs were insufficient, and that defendants would have to do better at trial if they wanted to overcome plaintiffs' rational basis challenge.

Ultimately, plaintiffs' misreading of the summary judgment decision is immaterial because rational basis review focuses on the state's justification for its actions, rather than on plaintiffs' disagreement with those actions. "[A] classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity." *Heller v. Doe*, 509 U.S. 312, 319, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993). The court will uphold the state's decision to exclude expired college or university IDs if defendants identify "a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Id.* at 320, 113 S.Ct. 2637. Defendants did not need to produce evidence at trial to support the rationality of the state's decision, nor are they limited to the justifications that the legislature had in mind at the time that it passed the challenged provisions—any rational justification for the laws will overcome an equal protection challenge. *Id.* at 320–21, 113 S.Ct. 2637.

The state's approach to college and university IDs is somewhat inconsistent. The state purports to have given students the flexibility and convenience to choose how to verify their identities at the polls. In addition to the other forms of acceptable ID that are available to citizens generally, students have the unique option of using the IDs that they receive from their schools. But that option is not as convenient as it appears. College or university IDs are acceptable only if they expire within two years after issuance. Wis. Stat. § 5.02(6m)(f). The standard ID that the University of Wisconsin-Madison—the state's flagship university—issues does not comply with this requirement. Tr. 1p, at 173:2-174:18; Tr. 3a, at 44:13-21. Instead, UW-Madison offers a second, voting-specific ID to its students who want to use university-issued IDs to vote. Tr. 3a, at 45:15-46:19. Thus, in practice, the option to use a college or university ID does not provide much flexibility or convenience.

The state has also taken considerable pains to limit the use of college or university IDs to current students only. The three requirements in Wis. Stat. § 5.02(6m)(f) are redundant: (1) the ID card itself must be unexpired; (2) the card must have an

expiration date that is no more than two years after its date of issuance; and (3) the voter must present proof of current enrollment. If each of these requirements provided some additional level of protection against former students using their IDs to ***962** vote, then those requirements might be rational. But as it stands, defendants have not explained why any requirement beyond proof of current enrollment is necessary to protect against fraudulent voting with a college or university ID. Nevertheless, plaintiffs' rational basis claim challenges only the requirement that the ID card be unexpired when a voter presents it at the polls.

Defendants argue that it is rational to require voters to present unexpired college and university IDs because voters can use these IDs only in conjunction with proof of enrollment. *See* Wis. Stat. § 5.02(6m)(f). According to defendants, the state reasonably has presumed that anyone with an expired ID is probably no longer enrolled at the issuing college or university. Thus, it makes no sense to allow a voter to use an expired college or university ID because that voter will not be able to also provide proof of enrollment. This is a circular argument. Worse, it is the exact argument that defendants presented at summary judgment. The court concluded that this argument was not persuasive for two reasons:

> First, defendants apparently make no room for the possibility that a student could be enrolled at an institution but have an expired student ID. If incoming freshmen at four-year universities receive student IDs that expire two years after issuance, then any junior or senior who fails to obtain a new student ID would have to find a different way to prove his or her identity. Second, unlike receipts for driver licenses and ID cards, expired student IDs are not later replaced with entirely different documents. Defendants therefore cannot rely on the same arguments about simplifying elections by eliminating unnecessary duplicative forms of ID.

Dkt. 185, at 24. Repetition has not made defendants' argument any more persuasive.

At a macro level, the state's concern with ensuring that only current students vote with student IDs may be rational. But Wis. Stat. § 5.02(6m)(f) adequately addresses that concern by requiring a voter to present proof of enrollment with the student ID. Adding the requirement that a voter's college or university ID be unexpired does not provide any additional protection against fraudulent voting. If anything, this measure prevents otherwise qualified voters from voting simply because they have not renewed their IDs since beginning school. Thus, even under an exceedingly deferential rational basis review, the state has failed to justify its disparate treatment of voters with expired IDs. The court concludes that requiring unexpired college or university IDs violates the Fourteenth Amendment.

To be clear, the court is not concluding that voters have carte blanche to use expired college or university IDs at the polls; they must still comply with the other requirements of Wis. Stat. § 5.02(6m)(f). Plaintiffs have not directed their rational basis challenge to the requirement that a voter with a college or university ID also present proof of enrollment at the issuing institution. Nor have plaintiffs challenged the rational basis for permitting only IDs that expire no more than two years after issuance. [24] These requirements still apply. The only thing that will change is that the ID card that a college or university student actually presents at the polls can be expired.

***963** CONCLUSION AND REMEDIES

The court has identified several constitutional and statutory violations, and the court will grant declaratory and injunctive relief accordingly.

For the challenged provisions relating to in-person absentee voting, Wisconsin's statutes establishing a one-location rule, Wis. Stat. § 6.855–.86, violate the First and Fourteenth Amendments and § 2 of the Voting Rights Act. Likewise, the sections of Act 146 amending Wis. Stat. §§ 6.86(1)(b) to limit the days and times for in-person absentee voting violate the Fifteenth Amendment. These provisions, along with the sections of Act 23 that limit the hours for in-person absentee voting, also violate § 2 of the Voting Rights Act and the First and Fourteenth Amendments, except with regard to preventing municipal clerks from holding hours for in-person absentee voting on the Monday before an election.

For the challenged provisions relating to registering to vote, the sections of Act 23 amending Wis. Stat. § 6.34(3)(a)7. to require dorm lists to include proof of a student's citizenship violate the First and Fourteenth Amendments. Likewise, the sections of Act 23 amending Wis. Stat. §§ 6.02, .10(3), and .15 to increase the durational residency requirement from 10 days to 28 days violate the First and Fourteenth Amendments.

For the challenged provisions relating to election procedures, the sections of Act 75 amending Wis. Stat § 6.87(3)(d) to prohibit municipal clerks from emailing or faxing absentee ballots to voters violate the First and Fourteenth Amendments.

For the challenged provisions relating to voter ID, the statutes and administrative rules that create and govern the IDPP that voters can use to obtain free IDs for purposes of voting violate the First and Fourteenth Amendments.

Plaintiffs seek a permanent injunction. Dkt. 207, at 244. They must therefore demonstrate that: (1) they have succeeded on the merits; (2) no adequate remedy at law exists; (3) they will suffer irreparable harm without injunctive relief; (4) the irreparable harm suffered without injunctive relief outweighs the irreparable harm that Wisconsin will suffer if the injunction is granted; and (5) the injunction will not harm the public interest. *Old Republic Ins. Co. v. Emp'rs Reinsurance Corp.*, 144 F.3d 1077, 1081 (7th Cir.1998). Based on the court's conclusion that several of the challenged provisions violate the Constitution or the Voting Rights Act, or both, the court finds that plaintiffs have made the requisite showing and injunctive relief is appropriate. With the exception of the IDPP, the court will permanently enjoin defendants from enforcing the invalid provisions.

The IDPP does not require wholesale invalidation. As described in the introduction to this opinion, another federal court has already issued a preliminary injunction against enforcing the IDPP. That injunction imposes an affidavit-based solution, essentially allowing voters to sign a form instead of presenting an ID at the polls. Plaintiffs have not asked for that type of relief here, and the court will not grant it. Nothing would prevent the state from complying with both Judge Adelman's injunction and the one that this court will impose.

This court will require that the IDPP be reformed to satisfy two criteria. First, Wisconsin cannot make it unreasonably difficult for voters to obtain a free ID. Once a petitioner has submitted materials sufficient to initiate the IDPP, the DMV must promptly issue a credential valid for voting, unless readily available information shows that the petitioner is not a qualified elector entitled to such a credential. Second, ***964** the state must inform the general public that those who enter the IDPP will promptly receive a credential valid for voting, unless readily available information shows that the petitioner is not a qualified elector entitled to such a credential.

For further clarification: the credentials issued under this procedure need not be valid for any purpose other than voting; the court is not ordering the state to issue Wisconsin IDs to all those who enter the IDPP. But the credentials issued are not temporary: petitioners and the public must be informed that these credentials have a term equivalent to that of a driver license or Wisconsin ID, and that they will be valid for voting until they expire or are revoked for good cause. Good cause is shown if the petitioner is not a qualified elector; the failure to provide additional information or communication to the DMV is not good cause. The receipts issued under the most recent Emergency Rule would meet these requirements, with the exception of the currently stated term of expiration.

ORDER

IT IS ORDERED that:

1. The IDPP as implemented is unconstitutional under the First and Fourteenth Amendments to the United States Constitution;

2. 2013 Wis. Act 146 is unconstitutional under the Fifteenth Amendment to the United States Constitution;

3. The restriction limiting municipalities to one location for in-person absentee voting is unconstitutional under the First and Fourteenth Amendments to the United States Constitution;

4. The state-imposed limits on the time for in-person absentee voting, with the exception of the prohibition applicable to the Monday before election day, are unconstitutional under the First and Fourteenth Amendments to the United States Constitution;

5. The requirement that "dorm lists" to be used as proof of residence include citizenship information is unconstitutional under the First and Fourteenth Amendments to the United States Constitution;

6. The increase of the durational residency requirement from 10 days to 28 days is unconstitutional under the First and Fourteenth Amendments to the United States Constitution;

7. The prohibition on distributing absentee ballots by fax or email is unconstitutional under the First and Fourteenth Amendments to the United States Constitution;

8. The prohibition on using expired, but otherwise qualifying, student IDs is unconstitutional under the First and Fourteenth Amendments to the United States Constitution;

9. Plaintiffs' request for a permanent injunction is GRANTED, and defendants are permanently enjoined from enforcing any of the provisions held unlawful in sections 1 through 8 of this ORDER;

10. Defendants, and their officers, agents, servants, employees, attorneys, and all those acting in active concert or participation with them, or having actual or implicit knowledge of this order, are further ORDERED to:

   a. Promptly issue a credential valid as a voting ID to any person who enters the IDPP or who has a petition pending;

   b. Provide that any such credential has a term of expiration equivalent to that of a Wisconsin driver license or photo ID and will not be cancelled without cause;

   ***965** c. Inform the general public that credentials valid for voting will be issued to persons who enter the IDPP;

   d. Further reform the IDPP so that qualified electors will receive a credential valid for voting without undue burden, consistent with this opinion;

11. Provisions 10.a. through 10.d. are to be effectuated within 30 days so that they will be in place and available for voters well before the November 8, 2016, election.

12. The court retains jurisdiction to oversee compliance with the injunction;

13. The court intends this ruling to be immediately appealable; for the avoidance of doubt, the court grants permission to any party to file an interlocutory appeal if this order is not final for appeal purposes.

All Citations

198 F.Supp.3d 896

Footnotes

1 "Mrs. Smith" is not her real name, which I withhold to protect her privacy. The record of her interaction with the DMV is PX421.

2 Corroboration allows a registered voter to sign a statement verifying the residence of another person, which allows that person to register to vote.

3 Citations to trial transcripts are by day, session, page, and line. Thus, "Tr. 5p, at 145:12-17" refers to the transcript from the fifth day of trial, afternoon session, page 145, lines 12 through 17.

4 The court will analyze the IDPP under these legal theories later in this opinion.

5 Full investigation by CAFU commonly involved acquiring a CLEAR background report. These reports contained a substantial amount of deeply personal information, including any criminal records, judgments and liens, residence history, home and vehicle ownership history, and a list of possible relatives and associates. The DMV witnesses testified that the DMV never used CLEAR reports to the disadvantage of petitioners. But even assuming that CLEAR reports were acquired only to connect petitioners to vital records, the court finds that having DMV personnel acquire and review a compilation of personal information imposes a substantial burden on the right to vote.

6 The DMV's code for "customer initiated cancel" covers a wide range of results. For example, petitions received this code when the petitioner died while the petition was pending. Petitions also received this code if a petitioner simply gave up or if he or she found a birth certificate and applied for a standard state-issued ID.

7 Nine of the petitioners who received denial letters were able to track down vital records on their own and receive free IDs without using the IDPP. *See* Dkt. 207, at 69 (discussing examples). The DMV re-coded these denials to "customer-initiated cancellations."

8 At trial, DMV witnesses testified that the new emergency rule codified current practice. Tr. 8p, at 190:7-193:7. This testimony was not credible. The testimony of CAFU employees showed that petitioners were held to a much higher standard than "more likely than not." The court finds that IDPP petitions were decided by a standard that was at least as rigorous as "clear and convincing proof."

9 The court also assumes that the errors corrected by Eckhardt are distributed evenly across racial groups. Nothing in Eckhardt's description of the errors that he found suggested that they would correlate with race.

10 At trial, defendants disputed Albaugh's interpretation and evaluation of the meeting, and they also objected to his testimony on hearsay grounds. The court overrules the hearsay objection because Lazich's out-of-court statements were not offered for their truth. The point was not that the voter ID law would actually help Republicans in future elections. The point was that Lazich thought they would, and that was part of her motive for encouraging support for the voter ID law. Defendants offered no evidence to dispute the accuracy of Albaugh's recounting of what was said at the meeting.

11 Dr. Lichtman points out that in 2015, during consideration of a bill to require photo IDs for the Food Share program, the Wisconsin Assembly rejected an amendment that would have allowed Food Share IDs to be used for voting. PX036, at 36-37. According to Dr. Lichtman, if the legislature were sincerely interested in election integrity, it would accept Food Share IDs for voting because they are every bit as secure as Wisconsin IDs. The refusal to accept Food Share IDs is, therefore, evidence of discriminatory intent. The argument would be persuasive, if it were contemporaneous with Act 23, the voter ID law. The force of the argument is also blunted because the Food Share ID bill has not been enacted.

12 Plaintiffs have adduced evidence that might suggest personal bias on Grothman's part. PX078 (statements about Martin Luther King, Jr. Day); PX073 (about Milwaukee voters who would not be able to vote on weekends: "[A]nybody who can't vote with all these options, they've really got a problem. I really don't think they care that much about voting in the first place, right?"). The court does not ascribe Grothman's personal antagonism toward minority voters to the legislature.

13 The court has reviewed the Fourth Circuit's decision invalidating North Carolina's voter ID law on the grounds that it was motivated by an intent to discriminate on the basis of race. The decision relies on factual considerations unique to North Carolina, and, accordingly, it has no bearing on this case.

14 Plaintiffs also contend that Wisconsin's registration requirements have effectively put an end to voter registration drives. As explained above, the court's primary task under *Anderson–Burdick* is to evaluate the burden that a given provision places on *voters*. "[T]here is nothing 'inherently expressive' about receiving a person's completed application and being charged with getting that application

to the proper place," *Voting for Am., Inc.*, 732 F.3d at 392 (citations omitted), which means that the First Amendment would not protect a group's mere desire to register voters. Plaintiffs' evidence regarding voter registration drives is mostly tangential to the main issues in this case.

15 *Frank* and *Crawford* dealt with the requirement of presenting ID at the polls on election day. Presenting documentary proof of residence is the functional equivalent of a photo ID for the registration side of elections.

16 A dorm list is "a certified and current list of students who reside in housing sponsored by the university, college, or technical college." Wis. Stat. § 6.34(3)(a)7.b.

17 FERPA permits colleges and universities to release only "directory information" without parental consent. This information includes "the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student." 20 U.S.C. § 1232g(a)(5)(A).

18 Defendants also argue that students have other options for proving residence. But that is not a justification for the law; as explained above, it is a reason for concluding that the law imposes only slight burdens on student voters.

19 The court notes that for this issue, the parties have switched sides on the importance of local control. Plaintiffs—for whom local control was so important in the context of in-person absentee voting—now appear to want statewide control, and defendants—for whom uniformity was so important in the context of in-person absentee voting—now argue that local control is vital.

20 The municipal clerk could not remember if it was the 2010 or 2012 election. But the ordinance went into effect in July 2012. *See* Madison, Wis., Code of Ordinances, § 32.06(5).

21 Defendants offered anecdotal evidence that not very many voters fall into the window between 10 and 28 days. *See, e.g.*, Tr. 7a, at 122:4-10, 172:22-173:6. But this evidence, too, is inconclusive.

22 Before 2011, the statute was permissive, not mandatory.

23 Although these are statewide statistics, the problem is likely just as prevalent in Milwaukee.

24 Without the requirement that a voter present an unexpired college or university ID, it seems unnecessary to regulate the ID's expiration date. But that is outside the scope of plaintiffs' challenge, and so the court will leave it to the state to determine whether this provision is still necessary.

351 F.Supp.3d 1160
United States District Court, W.D. Wisconsin.

ONE WISCONSIN INSTITUTE, INC., Citizen Action of Wisconsin Education Fund, Inc., Renee M. Gagner, Anita Johnson, Cody R. Nelson, Jennifer S. Tasse, Scott T. Trindl, Michael R. Wilder, Johnny M. Randle, David Walker, David Aponte, and Cassandra M. Silas, Plaintiffs,

v.

Mark L. THOMSEN, Ann S. Jacobs, Beverly R. Gill, Julie M. Glancey, Steve King, Don M. Mills, Michael Haas, Mark Gottlieb, and Kristina Boardman, All in Their Official Capacities, Defendants.

15-cv-324-jdp
|
Signed 01/17/2019

Synopsis

Background: Advocacy groups and individual voters brought action challenging constitutionality of Wisconsin's voter identification laws. After the United States District Court for the Western District of Wisconsin, James D. Peterson, J., 198 F.Supp.3d 896, determined that the laws contained unconstitutional restrictions on voting and granted plaintiffs' request for permanent injunction, plaintiffs then moved to enforce the previously-issued injunctions against provisions of new election law that limited time for in-person absentee voting, prohibited voters from using expired student identification cards, and prohibited voters from using temporary identification cards for more than 60 days.

Holdings: The District Court, Peterson, J., held that:

restriction on in-person absentee voting violated previously-issued injunction, and

restrictions on use of student and temporary identification cards violated previously-issued injunction.

Motion granted.

Procedural Posture(s): Other.

West Codenotes

Held Invalid

Wis. Stat. §§ 5.02(6m)(f), 6.86 (1)(b), 343.50(1)(c)(1)

Attorneys and Law Firms

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Clayton P. Kawski, Jody J. Schmelzer, Sean Michael Murphy, Gabe Johnson-Karp, Wisconsin Department of Justice, Gabe Johnson, Madison, WI, for Defendants.

ORDER

JAMES D. PETERSON, District Judge

Plaintiffs contend that 2017 Wisconsin Act 369, enacted by the Wisconsin legislature in December 2018, violates injunctions issued in this case in 2016. So plaintiffs seek an order enforcing the injunction against three provisions of Act 369: (1) limits on the time for in-person absentee voting; (2) restrictions on the use of student identification cards for voting; and (3) a time limit on the validity of temporary identification cards issued under the ID Petition Process. Dkt. 330. The court will grant plaintiffs' motion to enforce the injunctions. This is not a close question: the three challenged provisions are clearly inconsistent with the injunctions that the court has issued in this case.

ANALYSIS

The court retains jurisdiction to enforce its own orders even while the appeal is pending, as all parties agree. *Frank v. Walker*, 835 F.3d 649, 652 (7th Cir. 2016) ("The Western District has the authority to monitor compliance with its injunction, and we trust that it will do so conscientiously ..."). The question is whether the challenged provisions fall within the scope of the injunctions issued in this case. The parties debate the legislative intent behind Act 369, but the court need not resolve that issue to decide plaintiffs' motion. Regardless why the state legislature enacted the law, all the provisions at issue are encompassed by the injunctions and are therefore enjoined.

Plaintiffs first challenge § 1k of Act 369, which states that in-person absentee voting, or early voting, may occur "no earlier than 14 days preceding the election and no later than the Sunday preceding the election." Section 1k violates the court's July 29, 2016 order, which enjoined defendants from enforcing "[t]he state-imposed limits on the time for in-person absentee voting, with the exception of the prohibition applicable to the Monday before election day." *One Wisconsin Inst., Inc. v. Thomsen*, 198 F.Supp.3d 896, 964 (W.D. Wis. 2016). At the time the court issued the injunction, one of those limits was a 10-day window for in-person absentee voting. *Id.* at 931. Although Act 369 expands the early voting window slightly, it is still a "state-imposed limit[ ] on the time for in-person absentee voting," so it violates the injunction.

Defendants' arguments to the contrary are not persuasive. First, defendants say that the court's injunction was directed at ***1162** specific laws in effect at the time and that Act 369 is a new law, so it falls outside the scope of the injunction. But the scope of the injunction relates to conduct that the court concluded was unlawful; the particular statutory provisions at issue are not important. If the court accepted defendants' argument, it would mean that a legislative body could evade an injunction simply by reenacting an identical law and giving it a new number.

Second, defendants say that Act 369 changes the scope of the law by eliminating some restrictions on in-person absentee voting that the court found to be unlawful. For example, the new law does not place restrictions on hours or locations for in-person absentee voting. According to defendants, "[t]hese changes address the Court's concerns with the old enjoined law that were considered at trial," so "[e]njoining the new law cannot be justified as necessary to maintain the status quo." Dkt. 333, at 8. This argument ignores the fact that the court concluded that each restriction was independently unlawful and enjoined them separately. Defendants do not point to any language in the court's opinion or injunction in which the court relied on the cumulative effect of the voting restrictions as justification for enjoining them. A party cannot avoid an injunction by complying with parts of it while disregarding others.

Third, defendants rely on two cases to support the proposition that the new law moots plaintiffs' challenge to the restrictions on in-person absentee voting, *Zessar v. Keith*, 536 F.3d 788 (7th Cir. 2008), and *Bradley v. Work*, 154 F.3d 704 (7th Cir. 1998). But both *Zessar* and *Bradley* are readily distinguishable.

In *Zessar*, the district court held that a state law about absentee voting violated the Due Process Clause because it did not require election officials to give the voter timely notice if her vote was rejected. 536 F.3d at 791. The court of appeals held that the state legislature mooted the claim when it enacted a new provision that required election officials to give the voter notice of a rejection "before the close of the period of counting provisional ballots." *Id.* at 792 (citing 10 ILCS 5/19–8(g–5) (2006)). In *Bradley*, the court of appeals affirmed the decision of the district court that it could not consider a challenge under the Voting Rights Act to Indiana's system of selection of state-court judges after the state changed the electoral process. *Bradley*, 154 F.3d at 710.

Neither of these cases is instructive. Neither case raised questions about the scope of a district court's injunction. And both cases involved new laws that made substantial changes to the challenged conduct. In this case, the new law still restricts the amount of time that a municipality may offer in-person absentee voting. Defendants do not even attempt to show that that there is a material difference between the number of days permitted under Act 369 and the number of days permitted under the previous law. The bottom line is that § 1k includes a restriction that is inconsistent with the court's injunction, so that restriction is enjoined.

Plaintiffs also challenge § 1 and § 92 of Act 369. Section 1 prohibits a voter from using an expired student ID; § 92 prohibits a voter from using a temporary ID for more than 60 days.

Defendants acknowledge that both provisions fall within the scope of the injunctions issued in this case. *See One Wisconsin*, 198 F.Supp.3d at 964 ("The prohibition on using expired, but otherwise qualifying, student IDs is unconstitutional under the First and Fourteenth Amendments to the United States Constitution" and "defendants are permanently enjoined from enforcing" ***1163** that prohibition); Dkt. 293, at 8 (requiring that temporary IDs be valid for at least 180 days). But defendants say that the point of enacting the provisions was not to defy the court's order. Rather, defendants say, the legislature amended the pertinent statutory provisions for other reasons that have nothing to do with the conduct enjoined by the court. (Section 1 also added language about IDs issued by technical colleges and § 92 also added language that requires state officials to provide a receipt to an applicant for an ID card.) Defendants say that the language that prohibits voters from using expired student IDs or temporary IDs more than 60 days old was included in the provisions simply to anticipate the possibility that the court of appeals will uphold the provisions. *Id.* at 13–15. And, the argument goes, there is "no reason to think" that officials will not follow the court's injunctions despite § 1 and § 92 of Act 369, so enjoining those provisions would be "redundant and unnecessary" while the appeal is pending. Dkt. 333, at 13–15.

This argument is inconsistent with the rest of defendants' brief. In arguing against enjoining § 1k, defendants contend that the new law moots the existing injunction. But in the context of § 1 and § 92, defendants argue that a new law is covered by the existing injunction, so there is no need to enjoin it. This inconsistency is persuasive evidence that it may not be clear to election officials whether § 1 and § 92 mooted the injunction or whether those sections are enjoined. So the court will grant plaintiffs' motion as to those provisions as well.

ORDER

IT IS ORDERED that plaintiffs' motion to enforce the court's injunctions, Dkt. 330, is GRANTED. The injunctions issued in this case apply to the challenged portions of §§ 1, 1k, and 92 of 2017 Wisconsin Act 369.

All Citations

351 F.Supp.3d 1160

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EXHIBIT T

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF SOUTH CAROLINA, *Plaintiff*, v. UNITED STATES OF AMERICA, and ERIC HIMPTON HOLDER, JR. in his official capacity as Attorney General of the United States, *Defendants*, and JAMES DUBOSE, *et al.*, *Defendant-Intervenors*.	Civil Action No. 12-203 (BMK) (CKK) (JDB)

Before: KAVANAUGH, *Circuit Judge*; KOLLAR-KOTELLY, *District Judge*; and BATES, *District Judge*.

Opinion for the Court filed by *Circuit Judge* KAVANAUGH, with whom *District Judge* KOLLAR-KOTELLY and *District Judge* BATES join.

Concurring opinion filed by *District Judge* KOLLAR-KOTELLY.

Concurring opinion filed by *District Judge* BATES, with whom *District Judge* KOLLAR-KOTELLY joins.

MEMORANDUM OPINION

KAVANAUGH, *Circuit Judge*: This case concerns South Carolina's new voter ID law, Act R54. The question presented is whether that new state law is lawful under the federal Voting Rights Act. As relevant here, Section 5 of the Voting Rights Act bars state laws that have either the purpose or the effect "of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c(a). The effects prong of Section 5 of the Voting Rights Act measures a State's proposed new voting law against the benchmark of the State's pre-existing law.

For several decades, South Carolina has had a voter ID law. Under the version of the law in effect since 1988, a voter must show a South Carolina driver's license, DMV photo ID card, or non-photo voter registration card in order to vote. Under that pre-existing South Carolina law, a voter with a non-photo voter registration card need not show a photo ID in order to vote. As we will explain, South Carolina's new law, Act R54, likewise does not require a photo ID to vote. Rather, under the expansive "reasonable impediment" provision in Act R54 – as authoritatively interpreted by the responsible South Carolina officials, an interpretation on which we base our decision today – voters with the non-photo voter registration card that sufficed to vote under pre-existing law may still vote without a photo ID. Those voters simply must sign an affidavit at the polling place and list the reason that they have not obtained a photo ID.

In addition, Act R54 expands the kinds of photo IDs that may be used to vote – adding passports, military IDs, and new photo voter registration cards to the driver's licenses and DMV photo ID cards already permitted by pre-existing law. Moreover, Act R54 minimizes the burden of obtaining a qualifying photo ID as compared to pre-existing law. The new law creates a new type of photo ID – namely, photo voter registration cards – which may be obtained for free at

each county's elections office. Also, under Act R54, DMV photo ID cards may be obtained at each county's DMV office for free; those cards cost $5 under pre-existing law.

In short, Act R54 allows citizens with non-photo voter registration cards to still vote without a photo ID so long as they state the reason for not having obtained one; it expands the list of qualifying photo IDs that may be used to vote; and it makes it far easier to obtain a qualifying photo ID than it was under pre-existing law. Therefore, we conclude that the new South Carolina law does not have a discriminatory retrogressive effect, as compared to the benchmark of South Carolina's pre-existing law. We also conclude that Act R54 was not enacted for a discriminatory purpose. Act R54 as interpreted thus satisfies Section 5 of the Voting Rights Act, and we grant pre-clearance for South Carolina to implement Act R54 for future elections beginning with any elections in 2013. As explained below, however, given the short time left before the 2012 elections, and given the numerous steps necessary to properly implement the law – particularly the new "reasonable impediment" provision – and ensure that the law would not have discriminatory retrogressive effects on African-American voters in 2012, we do not grant pre-clearance for the 2012 elections.

I. Legal and Factual Background

A. The Voting Rights Act and Act R54

The Voting Rights Act of 1965 is among the most significant and effective pieces of legislation in American history. Its simple and direct legal prohibition of racial discrimination in voting laws and practices has dramatically improved the Nation, and brought America closer to fulfilling the promise of equality espoused in the Declaration of Independence and the Fourteenth and Fifteenth Amendments to the Constitution.

Section 5 of the Voting Rights Act requires certain States and political subdivisions – including South Carolina – to obtain pre-clearance of proposed changes in state or local voting laws. Pre-clearance must be obtained from the U.S. Attorney General or from a three-judge court of the U.S. District Court for the District of Columbia. 42 U.S.C. § 1973c(a). The Section 5 pre-clearance requirement seeks to ensure that the proposed changes "neither ha[ve] the purpose nor will have the effect of denying or abridging the right to vote on account of race or color" or membership in a language minority group. *Id.* The effects prong of Section 5 examines the effects of a State's proposed new law on minority voters, as compared to the benchmark of the State's pre-existing law.

Pursuant to the Voting Rights Act, South Carolina here seeks pre-clearance of Act R54, South Carolina's new voter ID law.[1]

South Carolina's pre-existing voter ID law has been in place since 1988. That law has required voters to present one of three forms of ID at the polling place: (i) a South Carolina driver's license, (ii) a South Carolina DMV photo ID card, or (iii) the non-photo voter registration card given to all registered voters in South Carolina.

On May 11, 2011, the South Carolina General Assembly passed Act R54, and Governor Nikki Haley then signed it into law. The stated purpose of the law is "to confirm the person presenting himself to vote is the elector on the poll list." Act R54, § 5. The law adds three forms of qualifying photo ID to the list of photo IDs accepted under pre-existing law. The full list of qualifying photo IDs now includes not only (i) a South Carolina driver's license and (ii) a South

[1] South Carolina seeks pre-clearance of Sections 4, 5, 7, and 8 of Act R54; the Attorney General already pre-cleared the sections of Act R54 that are independent of the voter ID requirement.

Carolina DMV photo ID card, but also (iii) a passport, (iv) a federal military photo ID, and (v) a new free photo voter registration card.[2]

Under Section 4 of Act R54, new photo voter registration cards may be obtained for free in person from county elections offices.[3] There is at least one elections office in each of South Carolina's 46 counties. The photo voter registration card may be obtained by presenting the citizen's current non-photo voter registration card. Or a citizen who is already registered to vote may verbally confirm his or her date of birth and the last four digits of his or her Social Security number. Or, consistent with the Help America Vote Act, Pub. L. No. 107-252 (2002) (codified at 42 U.S.C. §§ 15301-15545), a citizen may present any photo ID, utility bill, bank statement, government check, paycheck, or other government document that shows his or her name and address.

Under Section 6 of Act R54, DMV photo ID cards may now be acquired for free from county DMV offices. Under pre-existing law, those cards cost $5. There is at least one DMV office in all 46 counties, and more than one DMV office in some of the more populated counties. To obtain the free DMV photo ID card, the voter must go to a DMV office and present proof of South Carolina residency, U.S. citizenship, and Social Security number. Such proof typically requires a voter to present, among other things, either a birth certificate or a passport. The documents required to obtain a DMV photo ID card are not changed from pre-existing law.

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[2] Act R54 requires that the qualifying photo ID be valid and current; pre-existing law stated that it must be valid.

Under Act R54, if a voter possesses an acceptable form of photo ID but arrives at the polling place without it, the voter may of course go home and come back with the photo ID. Or the voter may cast a provisional ballot at the polling place. That provisional ballot will be counted so long as the voter presents his or her photo ID to the county board of elections before certification of the election, which occurs on a statutorily set deadline a few days after election day. Act R54, § 5.

[3] To be clear, Act R54 adds a new free photo voter registration card; it does not eliminate the non-photo voter registration card. *See* Act R54, § 4. Under Section 2 of Act R54, which has already been pre-cleared by the Department of Justice, citizens who register to vote will continue to be issued a non-photo voter registration card.

Importantly for our purposes, Act R54 still permits citizens to use their *non-photo* voter registration cards to vote, as they could under pre-existing South Carolina law. Act R54 provides that if a voter has "a reasonable impediment that prevents the elector from obtaining photographic identification," the voter may complete an affidavit at the polling place attesting to his or her identity. Act R54, § 5. To confirm the voter's identity to the notary (or, in the case of a notary's unavailability, to the poll manager) who witnesses the affidavit, the voter may show his or her non-photo voter registration card. The affidavit also must list the voter's reason for not obtaining a photo ID. Together with the affidavit, the voter may cast a provisional ballot, which the county board "shall find" valid unless it has "grounds to believe the affidavit is false." *Id.* So long as the voter does not lie about his or her identity or lie about the reason he or she has not obtained a photo ID, the reason that the voter gives must be accepted by the county board, and the ballot must be counted. As we will explain further below, state and county officials may *not* review the reasonableness of the voter's explanation (and, furthermore, may review the explanation for falsity only if someone challenges the ballot). Therefore, all voters in South Carolina who previously voted with (or want to vote with) the non-photo voter registration card may still do so, as long as they state the reason that they have not obtained a photo ID.[4]

In order to educate voters and election officials about the new law's effects, Section 7 of Act R54 requires the South Carolina State Election Commission to "establish an aggressive voter education program." Among other things, the Commission must post information at county elections offices, train poll managers and poll workers, coordinate with local and service organizations, advertise the changes in South Carolina newspapers, and disseminate information through local media outlets. The law also requires "documentation describing the changes in this

[4] Relatedly, if a voter does not produce one of the required photo IDs on election day because of "a religious objection to being photographed," the law expressly provides that the voter may fill out an affidavit to that effect and cast a provisional ballot. Act R54, § 5.

legislation to be disseminated by poll managers and poll workers" on election day. Act R54, § 7(3). In advance of the elections, the Commission must also notify each registered voter who does not currently have a driver's license or DMV photo ID card of the law's effects and of the availability of free photo IDs.

Section 8 of the Act requires the Commission to distribute a list of registered voters without a driver's license or DMV photo ID card to third parties upon request. That provision is designed to assist outside groups that want to help voters obtain the necessary IDs and educate voters about the law.

B. Act R54's Reasonable Impediment Provision

At first blush, one might have thought South Carolina had enacted a very strict photo ID law. Much of the initial rhetoric surrounding the law suggested as much. But that rhetoric was based on a misunderstanding of how the law would work. Act R54, as it has been authoritatively construed by South Carolina officials, does not have the effects that some expected and some feared. As we have outlined, Act R54 has several important components: It allows three additional forms of qualifying photo IDs; it makes it far easier to obtain qualifying photo IDs than it was under pre-existing law; and it contains a significant reasonable impediment provision that allows registered voters with non-photo voter registration cards to vote without photo IDs, so long as they fill out an affidavit at the polling place and indicate the reason that they have not obtained an R54-listed photo ID.

Of course, the initial rhetoric surrounding this case arose in part because of a key unanswered question at the time of Act R54's enactment: namely, how would the reasonable impediment provision be interpreted and enforced? Would it be interpreted restrictively and

force voters – some of whom are poor and lack transportation – to try to obtain new photo IDs? Or would it be interpreted broadly and allow voters to continue to vote with their non-photo voter registration cards so long as they state the reason for not having obtained a photo ID? We know that at least some South Carolina legislators intended the reasonable impediment provision to be interpreted broadly so as to accommodate voters currently without photo IDs. For example, Speaker of the House Robert Harrell testified that the legislature intended the reasonable impediment provision to be construed "very, very broadly." Trial Tr. 64:14-15 (Aug. 28, 2012); *see also* Trial Tr. 63:20-21 (Aug. 27, 2012) (Senator Campsen) (reasonable impediment provision "is very broad"). But those directional signals still left ultimate interpretation to the relevant administrative agencies in the South Carolina Government.

As this litigation unfolded, the responsible South Carolina officials determined, often in real time, how they would apply the broadly worded reasonable impediment provision. Two officials play critical and complementary roles in the interpretation and implementation of Act R54: the Attorney General of South Carolina and the Executive Director of the South Carolina State Election Commission. The Attorney General is the chief legal officer of the State, and the Executive Director of the State Election Commission has principal responsibility for implementing Act R54's requirements. In 2011, the Attorney General of South Carolina officially interpreted the reasonable impediment provision and listed a variety of situations that, as a matter of law, would qualify as a reasonable impediment. And at the close of trial, the South Carolina Attorney General submitted an additional memorandum to the Court addressing several issues about the reasonable impediment provision. The Court also heard testimony from the Executive Director of the State Election Commission, Marci Andino. Ms. Andino testified that she follows the interpretation of South Carolina law offered by the Attorney General of South

Carolina. Ms. Andino also furnished specific assurances about how the reasonable impediment provision would be implemented. The evidence shows that county boards and election officials, who will be implementing the law on the ground, adhere to guidance from the central State Election Commission.

The Attorney General of South Carolina and Ms. Andino have emphasized that a driving principle both at the polling place and in South Carolina state law more generally is erring in favor of the voter. *See* S.C. Responses to the Court's Questions, Aug. 31, 2012, at 8 ("Ms. Andino is also correct to resolve conflicting legal requirements in favor of the voter."); Op. S.C. Att'y Gen., Aug. 16, 2011, 2011 WL 3918168, at *4 (reasonable impediment provision must be interpreted in light of "fundamental nature of the right to vote"); Op. S.C. Att'y Gen., Oct. 11, 1996, 1996 WL 679459, at *2 ("[W]hen there is any doubt as to how a statute is to be interpreted and how that interpretation is to be applied in a given instance, it is the policy of this Office to construe such doubt in favor of the people's right to vote.").

Most importantly for present purposes, the interpretation of South Carolina law rendered by the responsible South Carolina officials has established that Act R54 will continue to permit voting by registered voters who have the non-photo voter registration card, so long as the voter states the reason for not having obtained a photo ID. As a result, Act R54 will deny *no* voters the ability to vote and have their votes counted if they have the non-photo voter registration card that could be used to vote under pre-existing South Carolina law.

As the responsible South Carolina officials have confirmed repeatedly, any reason asserted by the voter on the reasonable impediment affidavit for not having obtained a photo ID must be accepted – and his or her provisional ballot counted – unless the affidavit is "false." Thus, the reasonableness of the listed impediment is to be determined by the individual voter, not

by a poll manager or county board. The reasonable impediment affidavit simply helps to ensure that voters with non-photo voter registration cards are who they say they are. The purpose of this provision, by its plain text and as it has been administratively interpreted, is *not* to second-guess the reasons that those voters have not yet obtained photo IDs. So long as the reason given by the voter is not a lie, an individual voter may express any one of the many conceivable reasons why he or she has not obtained a photo ID.

As the South Carolina Attorney General determined, a voter may assert, for example, that he or she lacks a birth certificate, or has a disability, or does not have a car. (The example of voters who don't have a car is especially important because one of the main concerns during the legislative debates was whether citizens without cars would be required to obtain photo IDs. They are not.) So too, a voter may assert any of the myriad other reasons for not procuring one of the required photo IDs, such as: I had to work, I was unemployed and looking for work, I didn't have transportation to the county office, I didn't have enough money to make the trip, I was taking care of my children, I was helping my family, I was busy with my charitable work, and so on. Any reason that the voter *subjectively* deems reasonable will suffice, so long as it is not false.[5] If the affidavit is challenged before the county board, the county board may not second-guess the *reasonableness* of the asserted reason, only its *truthfulness*. As the Attorney

[5] Although county boards generally cannot second-guess whether the reason given was a "reasonable impediment" that prevented the voter from obtaining a photo ID, statements simply denigrating the law – such as, "I don't want to" or "I hate this law" – need not be accepted. Nor need nonsensical statements such as, to borrow an absurd example given at trial, "The moon is made of green cheese, so I didn't get a photo ID." The ability of county boards to police the outermost boundaries of the expansive reasonable impediment provision in this commonsense way does not affect our evaluation of Act R54. As the *Florida* three-judge court did, we assess the "reasonable" voter, not a voter who seeks to flout the law. *Florida v. United States*, 2012 WL 3538298, at *9 (D.D.C. 2012). That said, a county board's ability to police the outskirts of the reasonable impediment provision may not be used as a pretext for impermissible disenfranchisement or for backing away from the expansive understanding of the reasonable impediment provision articulated by the responsible South Carolina officials and adopted in this opinion.

General of South Carolina put it, "unless there is reason to believe the affidavit contains falsehoods, the vote will ultimately be deemed valid." Op. S.C. Att'y Gen., Aug. 16, 2011, 2011 WL 3918168, at *4.

That extremely broad interpretation of the reasonable impediment provision will make it far easier than some might have expected or feared for South Carolina voters with a non-photo voter registration card (and without photo ID) to vote as they could under pre-existing law. Yet the Department of Justice and the intervenors have oddly resisted that expansive interpretation of Act R54. They have insisted that the broad interpretation of the reasonable impediment provision advanced by the South Carolina Attorney General and State Election Commission contravenes the statutory language. But interpreting the law as the responsible South Carolina officials have done – to allow the voter's subjective interpretation of reasonable impediment to control – is perfectly consistent with the text of Act R54. Recall that under Act R54, a voter may cast a provisional ballot if he or she has "a reasonable impediment that prevents the elector from obtaining photographic identification." Act R54, § 5. The county board must find that provisional ballot valid "unless the board has grounds to believe the affidavit is *false*." *Id.* (emphasis added). Thus, the plain text of Act R54 provides for county-board review only of the affidavit's factual *falsity*, not of the listed impediment's *reasonableness* or *unreasonableness*. It is a sound reading of Act R54 – indeed, it could well be the best reading of the statutory text – to leave the determination of reasonableness up to the voter. Moreover, we of course owe substantial deference to a State's interpretation of state law. *Cf. Mullaney v. Wilbur*, 421 U.S. 684, 690-91 (1975). We thus accept and adopt, as a condition of pre-clearance, the expansive interpretation offered by the South Carolina Attorney General and the South Carolina State Election Commission. And as we will explain, that understanding is central to our resolution of

the case. *Cf. Florida v. United States*, 2012 WL 3538298, at *37 (D.D.C. 2012) ("Accordingly, our grant of preclearance to the inter-county mover changes is based on our express understanding that Florida will follow its laws as written and will abide by the representations it has made to this court.") (citations omitted).

What this means is that registered voters who could vote under pre-existing South Carolina law with a non-photo voter registration card – and who have not secured one of the qualifying photo IDs – will still be able to vote with the exact same non-photo voter registration card. The only additional requirement is that those voters will have to fill out an affidavit attesting to their identity and stating the reason for not having obtained a photo ID, and cast a provisional ballot.

The Department of Justice and intervenors contend that Act R54's affidavit requirement may negate the efficacy of the reasonable impediment provision. We disagree. Act R54 provides that voters who list a reasonable impediment must be permitted to vote if they complete the affidavit. *See* Act R54, § 5. Another provision of South Carolina law directs that affidavits be notarized. *See* S.C. Response to U.S. Request for Admission No. 19. As this affidavit requirement will be implemented, however, it will not burden the right to vote.

To witness the affidavits, notaries will be at the polling places. Notaries may not charge the voter, and notaries will *not* be able to require photo ID in order to notarize the affidavit (which otherwise would render the provision a circular absurdity). South Carolina election officials have determined that a current non-photo voter registration card will suffice to assure notaries of the voter's identity. *See* S.C. Code § 26-3-40 (notary must obtain "satisfactory evidence" of identity).[6] Notaries may not impose any requirement not permitted under federal

[6] It is possible that a notary would not even require the non-photo voter registration card to prove identity and would just rely on the notary's personal knowledge or on the verification of a credible

law or do anything more than confirm identity. The notary may ensure, for example, that the voter's non-photo voter registration card or other ID matches the voter's name. But as we interpret South Carolina law, including its voting laws, notaries are not permitted to screen voters based on the notaries' evaluations of voter capacity.

To implement the law, South Carolina may recruit notaries to work at the polls, and it may encourage poll managers to become notaries. Moreover, if a notary is not available at a certain polling place, the South Carolina Attorney General has determined that poll managers may witness reasonable-impediment affidavits, and county election boards will be directed to count the accompanying provisional ballots. We accept and require, as a condition of pre-clearance, the South Carolina Attorney General's reconciliation of competing South Carolina statutory provisions and the resulting interpretation of Act R54 as *not* requiring notaries to witness the affidavits, if a notary is unavailable.

II. Analysis

A. Analysis Under the Effects Test of Section 5 of the Voting Rights Act

The legal question before the Court is whether Act R54 as so interpreted satisfies Section 5 of the Voting Rights Act. South Carolina has the burden of showing that Act R54 "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c(a). Because the law's effect will also inform our analysis of legislative purpose, we begin by assessing whether Act R54 will have a discriminatory effect. To satisfy the effects prong of Section 5 of the Voting Rights Act of 1965, South Carolina must demonstrate that implementation of Act R54 will not "lead to a retrogression in the position of

witness. *See* S.C. Notary Public Reference Manual 3 (2012). What's important for present purposes is that the non-photo voter registration card is *sufficient* to establish identity and vote, as it was under pre-existing South Carolina law.

racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States*, 425 U.S. 130, 141 (1976). Under Section 5, the new law must not disproportionately and materially burden racial minorities as compared to the benchmark of the State's pre-existing law.

In practice, the expansive reasonable impediment provision in Act R54 means that every South Carolina citizen who has the non-photo voter registration card that could be used under pre-existing South Carolina law may still use that card to vote. That of course includes all of the intervenor South Carolina citizens. For example, intervenor Delores Freelon does not currently possess any of the photo IDs listed in Act R54 that are now available. But like all South Carolina voters, she can vote under Act R54 at her usual polling place with her non-photo voter registration card and cite any one of the multiple reasons why she has not obtained a qualifying photo ID: that she does not have an accurate birth certificate, that she does not own a car, or that she has experienced health problems that have prevented her from traveling. Or she could cite any other reason she subjectively feels is reasonable, with any potential review by the county board only for the factual accuracy of her affidavit (and even that limited review occurs only if someone challenges her affidavit). Put simply, under Act R54, Ms. Freelon does not need to obtain any R54-listed photo ID to continue to vote in South Carolina elections.

Moreover, as compared to pre-existing South Carolina law, Act R54 *expands* the list of photo IDs that will qualify for voting. In addition to the driver's licenses and DMV photo ID cards accepted under pre-existing law, the new law adds military IDs, passports, and new free photo voter registration cards to the list of permissible IDs.

On top of that, the new law makes it far easier to obtain a photo ID than it was under pre-existing law. The law creates the new free photo voter registration card. The law also provides

for free DMV photo ID cards. The free photo voter registration card may be obtained at each county's elections office. And the DMV photo ID card may now be acquired for free at each county's DMV office. The availability of those cards makes it far easier for registered voters to obtain a qualifying photo ID than it was under pre-existing South Carolina law.

In addition, Act R54 requires the State to undertake various outreach and educational measures to encourage and make it easier for voters without an R54-listed photo ID to obtain one. The State Election Commission will advertise the law's changes and the availability of free photo IDs. To do so, the Commission will use its website and other social media platforms, newspapers of general circulation, and local media outlets. The Commission will also provide individual notice to every registered voter without a South Carolina driver's license or DMV photo ID card. And it will make a list of the registered voters without such DMV-issued photo IDs available to other organizations, so as to encourage those organizations to engage in their own mobilization efforts.

Under Act R54 as it has been interpreted, we do not find any discriminatory retrogressive effect on racial minorities under Section 5 of the Voting Rights Act. A state voting law has a discriminatory retrogressive effect if the law disproportionately and materially burdens minority voters when measured against the pre-existing state law. *See Florida v. United States*, 2012 WL 3538298, at *9 (D.D.C. 2012) ("In brief, we conclude that a change that alters the procedures or circumstances governing voting and voter registration will result in retrogression if: (1) the individuals who will be affected by the change are disproportionately likely to be members of a protected minority group; and (2) the change imposes a burden material enough that it will likely cause some reasonable minority voters not to exercise the franchise."); *Texas v. Holder*, 2012 WL 3743676, at *13 (D.D.C. 2012) ("Texas can prove that SB 14 lacks retrogressive effect even

if a disproportionate number of minority voters in the state currently lack photo ID. But to do so, Texas must prove that these would-be voters could easily obtain SB 14-qualifying ID without cost or major inconvenience.").

Here, about 95% of South Carolina registered voters possess one of the R54-listed photo IDs. But the evidence reveals an undisputed racial disparity of at least several percentage points: About 96% of whites and about 92-94% of African-Americans currently have one of the R54-listed photo IDs. That racial disparity, combined with the burdens of time and cost of transportation inherent in obtaining a new photo ID card, might have posed a problem for South Carolina's law under the strict effects test of Section 5 of the Voting Rights Act absent the reasonable impediment provision.

But even though the South Carolina law – absent the reasonable impediment provision – may have run into problems under Section 5, the sweeping reasonable impediment provision in Act R54 eliminates any disproportionate effect or material burden that South Carolina's voter ID law otherwise might have caused. To repeat, under pre-existing law, citizens could vote without a photo ID only if they showed their non-photo voter registration card. Under Act R54, all citizens may still vote with that non-photo voter registration card, so long as they state the reason for not having obtained a photo ID. In addition, the new law both increases the number of qualifying photo IDs and makes it far easier to obtain a photo ID. Therefore, as so designed, Act R54 will not materially burden voters and will not have a discriminatory retrogressive effect on minority groups as compared to pre-existing South Carolina law.[7]

[7] South Carolina has represented that, as required by Act R54, it will notify voters about the law. This will include notice that voters with non-photo voter registration cards may continue to vote without photo ID so long as, at the polling place, they sign an affidavit that attests to identity and lists the reason they have not obtained a photo ID.

To ensure that the reasonable impediment provision operates as intended, there is also the question of how the voter who wishes to vote with a non-photo voter registration card will inform poll workers of the voter's reason for not obtaining a photo ID. The text of Act R54 simply requires a voter to "list the impediment" that prevented him or her from obtaining a photo ID. Act R54, § 5. State Election Commission officials have worked on a draft form that voters would complete at the polling places; the draft form has boxes that can be checked and leaves two blank lines for voters with non-photo voter registration cards to explain the reason that they have not obtained a photo ID. At the same time, South Carolina has repeatedly informed the Court that the purpose of Act R54 is to make sure that the voter is who he or she says, and not to improperly deter voters with non-photo voter registration cards from voting. In order to achieve South Carolina's stated purposes and to ensure that the reasonable impediment process does not disproportionately and materially burden minority voters in violation of the Voting Rights Act, South Carolina agrees that the process of filling out the form must not become a trap for the unwary, or a tool for intimidation or disenfranchisement of qualified voters. Therefore, consistent with the laundry list of reasons that South Carolina has told the Court will qualify as a reasonable impediment, the form at a minimum must have separate boxes that a voter may check for "religious objection"; "lack of transportation"; "disability or illness"; "lack of birth certificate"; "work schedule"; "family responsibilities"; and "other reasonable impediment." The form will require a further brief written explanation from the voter *only if* he or she checks the "other reasonable impediment" box on the form. So implemented, the process of listing the reason and filling out the form will not constitute a material burden for purposes of the Voting Rights Act. We base our decision today on that understanding of how the law will be implemented.[8]

[8] Throughout the proceedings, South Carolina has repeatedly emphasized to the Court that it will

The reasonable impediment provision thus operates similarly to a requirement that the voter without photo ID simply sign an affidavit stating that the voter is who he or she says. That's noteworthy, because the Department of Justice has concluded that requiring such affidavits does not pose a material burden on the right to vote for Section 5 pre-clearance purposes. *See* Letter from T. Christian Herren, Jr., Chief, Voting Section of Civil Rights Division of U.S. Department of Justice, to J. Gerald Hebert and Stephen B. Pershing (Sept. 4, 2012) (pre-clearing New Hampshire's voter ID law, which requires an affidavit from voters without photo IDs). Indeed, some *opponents* of strict photo voter ID laws have proposed such affidavits as an alternative to strict photo voter ID requirements. *See* America Votes Act, H.R. 6419, 112th Cong. (2012) (proposed bill permitting eligible voters to sign an affidavit if they do not have a state-required ID). It turns out that, as authoritatively interpreted, South Carolina's reasonable impediment provision strongly resembles the kind of affidavit requirement that the Department of Justice has agreed would not materially burden the right to vote.

It is true that citizens who vote with non-photo voter registration cards will cast provisional ballots, not regular ballots. But the word "provisional" is a bit of a misnomer in this instance. These ballots must be counted and will be counted, at least so long as the voter does not lie when he or she fills out and signs the reasonable impediment affidavit. Counting the reasonable impediment ballots will not differ in substance from the counting of absentee ballots. When the provisional ballot process operates in this way, casting a provisional ballot instead of a regular ballot does not burden the right to vote. *See Florida*, 2012 WL 3538298, at *33-38.

It is also true that, at the polling place, the process of filling out the reasonable impediment affidavit and casting the provisional ballot may take a few minutes more than the

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implement the reasonable impediment process in a way that alleviates material burdens, as determined by the Court. As described here, the process of completing the form at the polling place will not constitute a material burden.

regular ballot. On the other hand, in some situations this provisional ballot process might take a few minutes *less* than the regular ballot, if there are long lines for the regular voting machines and if the polling place uses additional lines for provisional ballots. In any event, under the precise circumstances of this law and this case, speculation about a few minutes more or less at polling places depending on respective times for regular ballots and provisional ballots does not rise to the level of a material burden that could render the entire law impermissible under the Voting Rights Act – as our fellow three-judge courts in this District have recently concluded in similar circumstances. *See Texas*, 2012 WL 3743676, at *10 ("some voter ID laws impose only 'minor inconvenience' and present little threat to the 'effective exercise of the electoral franchise' – and would thus be easily precleared under section 5"); *see also Florida*, 2012 WL 3538298, at *35.

In addition, a voter who shows a non-photo voter registration card and casts a provisional ballot is not required to attend the canvassing at the county office when the provisional ballots are counted. Because the reasonable impediment ballot is presumed valid and because any challenger can contest a completed affidavit based only on falsity, it would be nearly impossible for a county board to reject such a provisional ballot *as false* without first seeking to notify and hear from the voter. So long as the reasonable impediment affidavit is properly completed and actually lists a reason for not obtaining a photo ID, the affidavit generally "will be deemed to speak for itself" and the ballot must be counted. Op. S.C. Att'y Gen., Aug. 16, 2011, 2011 WL 3918168, at *4.[9]

[9] As dictated by the text of Section 5 of Act R54, the South Carolina Attorney General added an obvious caveat: "Of course, this conclusion assumes there is no basis for a challenge to the ballot other than the voter did not present a Photo ID at the polls." Op. S.C. Att'y Gen., Aug. 16, 2011, 2011 WL 3918168, at *4.

Our overall assessment of this provisional ballot process as ameliorative is strongly buttressed by the Supreme Court's evaluation of provisional ballots in *Crawford v. Marion County Election Board*. There, the Court stated that any burden created by Indiana's photo ID requirement was, "of course, mitigated by the fact that, if eligible, voters without photo identification may cast provisional ballots that will ultimately be counted." *Crawford v. Marion County Election Board*, 553 U.S. 181, 199 (2008) (binding opinion of Stevens, J.); *see also Texas*, 2012 WL 3743676, at *33 (listing provisional ballots for indigent persons as one of the ameliorative amendments "that could have made this a far closer case"). In other words, the Supreme Court characterized provisional ballots as curing problems and alleviating burdens, not as creating problems and imposing burdens.

Congress has similarly viewed provisional ballots as ameliorative. In the Help America Vote Act of 2002, known as HAVA, Congress mandated that States establish a provisional ballot process for certain voters, such as those who have recently moved or who forget to bring their state-required IDs to the polling place. *See* 42 U.S.C. § 15482(a). As in Act R54, the HAVA provisional ballot process entails both casting a provisional ballot and executing a written affirmation before an election official at the polling place. *Id.* And like Act R54, HAVA requires that, if found eligible, voters' ballots "shall be counted." *Id.* So Congress, as well as the Supreme Court, has viewed provisional ballots of this kind as a legitimate way for citizens to vote and have their votes counted.

In addition to Supreme Court and Congressional approval, the landmark Carter-Baker Report issued in 2005 also expressed a similar view of provisional ballots. A commission led by former President Jimmy Carter and Secretary James Baker issued a report that described provisional ballots as "a crucial safety net" in the current electoral system. BUILDING

CONFIDENCE IN U.S. ELECTIONS: REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, 16 (2005). In its proposed reforms, the Carter-Baker Report recommended that voters generally be required to present photo IDs in order to vote. But the Report maintained a role for provisional ballots, suggesting that provisional ballots be made available for those voters who fail to bring a photo ID to the polls. Those provisional ballots would be counted so long as the voter's signature was verified (for the first two federal elections after implementation) or the voter went to the appropriate election office with the required ID within 48 hours (for all future elections). This Report, too, supports South Carolina's use of provisional ballots for voters who have only their non-photo voter registration cards.

In sum, we conclude that Act R54, with its expansive reasonable impediment provision, will not have a discriminatory retrogressive effect on racial minorities in violation of Section 5 of the Voting Rights Act.

B. Analysis Under the Purpose Test of Section 5 of the Voting Rights Act

South Carolina also must demonstrate that Act R54 was not passed for "any discriminatory purpose." 42 U.S.C. § 1973c(c).

In evaluating legislative purpose, the Supreme Court has instructed that "courts should look to" the "decision in *Arlington Heights* for guidance." *Reno v. Bossier Parish School Board*, 520 U.S. 471, 488 (1997). Under *Arlington Heights*, "an important starting point" to the Section 5 purpose inquiry is the analysis we conducted above of whether the voting change bears more heavily on minorities – that is, whether the law has discriminatory retrogressive effects under the effects prong of Section 5. *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977). Other potential sources of evidence of purpose include the historical

background of the legislative decision, the specific sequence of events leading up to the law's passage, departures from the normal legislative procedure, and legislative history, especially contemporaneous statements by legislators. *Id.* at 267-68. In order to rise to the level of discriminatory purpose, the legislature must have "selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects" on a minority group. *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979).

As an initial matter, the stated purpose of Act R54's voter ID provisions is "to confirm the person presenting himself to vote is the elector on the poll list." Act R54, § 5. South Carolina legislators have consistently asserted that Act R54 will thereby deter voter fraud and enhance public confidence in the electoral system. Those are the same purposes that have justified South Carolina's pre-existing voter ID law, which has been in place since 1988. And the Supreme Court has specifically recognized the legitimacy of those purposes: In upholding Indiana's stricter voter ID law, the Supreme Court stated that there "is no question about the legitimacy or importance" of the interest in deterring voter fraud and that there is "independent significance" in enhancing public confidence in the electoral system. *Crawford v. Marion County Election Board*, 553 U.S. 181, 196-97 (2008) (binding opinion of Stevens, J.); *see also id.* at 196 ("While the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear."); *id.* at 204 (those motives "are both neutral and sufficiently strong"). Notably, the Supreme Court deemed those interests valid despite the fact that the "record contain[ed] no evidence of any such fraud actually occurring in Indiana at any time in its history." *Id.* at 194; *see also Texas*, 2012 WL 3743676, at *12 ("[W]e reject the argument, urged by the United States at trial, that the absence of documented voter fraud in Texas somehow suggests that Texas's interests in protecting its ballot box and safeguarding voter confidence

were 'pretext.' A state interest that is unquestionably legitimate for Indiana – without *any* concrete evidence of a problem – is unquestionably legitimate for Texas as well."); *Florida*, 2012 WL 3538298, at *45 ("the fact that a state has acted proactively to close a loophole in its election laws . . . does not *by itself* raise an inference of discriminatory intent").

The Supreme Court's affirmation of the general legitimacy of the purpose behind a voter ID law is consistent with the fact that many States – particularly in the wake of the voting system problems exposed during the 2000 elections – have enacted stronger voter ID laws, among various other recent changes to voting laws. So too, the 2005 bipartisan Carter-Baker Report also forcefully recommended photo voter ID laws.

As the Supreme Court concluded with respect to Indiana and as a recent three-judge court in this District found with respect to Texas, we conclude that South Carolina's goals of preventing voter fraud and increasing electoral confidence are legitimate; those interests cannot be deemed pretextual merely because of an absence of recorded incidents of in-person voter fraud in South Carolina.

Act R54 pursues those goals by requiring either (i) a qualifying photo ID or (ii) a reasonable impediment affidavit from voters who continue to vote with their non-photo voter registration cards. By allowing voters with non-photo voter registration cards to continue to vote without photo IDs, South Carolina specifically sought to alleviate the burden on voters who might not have obtained one of the qualifying photo IDs. At the same time, by requiring an affidavit, South Carolina sought to enhance the solemnity of the process by which voters without photo IDs confirm their identities. *See, e.g.*, Trial Tr. 85:17-18 (Aug. 27, 2012) (Senator Campsen) (affidavits "give some sense of gravity or certainty to the statement that is being made").

When they debated and enacted Act R54, South Carolina's legislators and Governor no doubt knew, given the data obtained from the State Election Commission, that photo ID possession rates varied by race in South Carolina. Under *Feeney*, legislators' knowledge of the law's potential disproportionate impact does not alone equate to discriminatory purpose. *See Feeney*, 442 U.S. at 279. But under *Arlington Heights*, ongoing legislative action with the knowledge of such an impact might be some evidence of discriminatory purpose, depending on the other facts and circumstances. *See Arlington Heights*, 429 U.S. at 266. Here, we do not need to thread that analytical needle because, critically, South Carolina legislators did not just plow ahead in the face of the data showing a racial gap. Presented with that data, South Carolina legislators did not force everyone to obtain a photo ID in order to vote. Instead, South Carolina legislators – led by Republican Senator and now Lieutenant Governor Glenn McConnell and Democratic Senator John Land, who, according to the evidence, are well-respected in the Assembly by African-American legislators and white legislators, Republicans and Democrats – made several important changes to the bill. Among those changes was the addition of the sweeping reasonable impediment provision, which as interpreted by the responsible South Carolina officials ensures that all voters of all races with non-photo voter registration cards continue to have access to the polling place to the same degree they did under pre-existing law.[10] The legislators also permitted three *new* forms of qualifying photo IDs on top of the two already permitted under pre-existing law. And the legislators made it easier to obtain a qualifying photo ID: They created a new free photo voter registration card and made DMV photo ID cards available for free. And the legislators mandated a variety of education and outreach efforts to inform voters, poll managers, and county officials about the law's effects. Those many

[10] South Carolina legislators drafted the reasonable impediment provision in order to alleviate burdens on voters without photo IDs. South Carolina did not model the reasonable impediment provision on any other State's law.

provisions significantly undermine any suggestion that Act R54 was enacted for a discriminatory purpose.

In response, the Department of Justice and the intervenors point to Act R54's proximity to the election of the country's first African-American President, a Republican legislature's refusal to accede to some of the Democratic legislators' amendments, and the bill's sometimes rancorous legislative history. But those pieces of circumstantial evidence, even in the aggregate, do not overcome the central facts that we have described, which convincingly show that Act R54 was not enacted for a discriminatory purpose. When, as here, a law is race-neutral and does not have a discriminatory effect, it is obviously difficult for a challenger to the law to show that it was enacted for a discriminatory purpose. A legislature that intended to enact a discriminatory voting law typically would enact either: (i) a race-based law or (ii) a race-neutral law with racially discriminatory effects. There is neither here; what is more, there is a lot of evidence, including in the text of the final law, that reflects legislators' efforts to avoid discriminatory retrogressive effects on African-American voters.

To be sure, we are troubled by one piece of evidence in the record: an email exchange between a South Carolina constituent and one House member in which the constituent referred disparagingly to African-American voters who do not have photo IDs. The constituent's email demonstrates something we know and do not forget: Racial insensitivity, racial bias, and indeed outright racism are still problems throughout the United States as of 2012. We see that reality on an all-too-frequent basis. *See, e.g.*, *Tweets Put Focus on Racism, Hockey and Boston*, USA TODAY, April 27, 2012 (describing outburst of racist online comments after African-American hockey player from opposing team scored winning goal). The long march for equality for African-Americans is not finished. But the views of one constituent – and one legislator's failure

to immediately denounce those views in his responsive email, as he later testified he should have done – do not speak for the two Houses of the South Carolina Legislature, or the South Carolina Governor.

Of course, we don't know what we don't know about the true motivations of every legislator. But on the record before us, which is quite extensive, that one email does not overcome key points that, under Supreme Court precedent, must inform proper evaluation of overall legislative purpose in this context, including that: Act R54 is a facially neutral law and has no discriminatory retrogressive effects; Act R54 was passed for stated nondiscriminatory purposes that have been declared valid by the Supreme Court; Act R54 creates new forms of qualifying free photo IDs and makes it far easier to obtain a qualifying photo ID than it was under pre-existing law; Act R54 requires a variety of outreach and educational efforts to help voters obtain the requisite IDs; and Act R54 contains the expansive reasonable impediment provision that was intentionally designed to relieve any potentially problematic aspects of Act R54 and allows voters with non-photo voter registration cards to vote as they could before.

Based on the entire record and the text of Act R54, we cannot conclude that Act R54 was enacted for a racially discriminatory purpose.

C. Comparison to Other States' Laws

Our conclusion that Act R54 lacks discriminatory retrogressive effect or discriminatory purpose finds further support when we compare South Carolina's law to some other recently analyzed voter ID laws, such as those in Indiana, Georgia, New Hampshire, and Texas. The Indiana, Georgia, and New Hampshire laws have passed legal muster; Texas's law has not. As

we will explain, if those laws were to be placed on a spectrum of stringency, South Carolina's clearly would fall on the less stringent end.

Like South Carolina, many States have enacted voter ID laws for the stated purposes of deterring voter fraud and enhancing citizens' confidence in elections. In some States, however, minorities disproportionately lack photo IDs. That racial gap has exacerbated concerns about voter ID laws – in particular, about the burden of obtaining a photo ID and, correspondingly, about denying voters without photo IDs the ability to vote. To address those and other concerns, some States have adopted ameliorative provisions in their voter ID laws. Two broad kinds of ameliorative provisions can reduce the burden on voters who do not possess a qualifying photo ID. First, the law can make photo IDs readily accessible to voters – for example, by eliminating fees for such IDs, by expanding the kinds of underlying documentation that may be used to obtain the IDs, or by making the IDs available at convenient locations. Second, the law can create some method by which voters without photo IDs can continue to vote on election day, typically with an affidavit of some kind.

With its new free photo voter registration card and its broad reasonable impediment provision, South Carolina's law includes *both* kinds of ameliorative provisions. Among other things, Act R54 contains both (i) a free photo ID provision that allows voters to obtain a free photo ID, with minimal documentation, in each county, and (ii) an expansive reasonable impediment exception that allows voters without qualifying photo IDs to still vote. Among recently pre-cleared or federal court-approved voter ID laws, South Carolina's law stands out for having tackled the lack of photo ID possession in *both* ways. It is not an overstatement to describe South Carolina's Act R54 as significantly more friendly to voters currently without qualifying photo IDs than the voter ID laws in Indiana, Georgia, New Hampshire, and Texas.

First, consider Indiana. In *Crawford*, the Supreme Court upheld Indiana's voter ID law against a constitutional challenge. *See Crawford v. Marion County Election Board*, 553 U.S. 181 (2008). Although Indiana is not a covered jurisdiction under Section 5 of the Voting Rights Act, that sole Supreme Court decision on voter ID laws remains instructive. Indiana had neither kind of ameliorative provision that South Carolina has. Unlike South Carolina, Indiana required many citizens seeking photo IDs to present a birth certificate – and there generally is a fee to obtain a birth certificate (between $3 and $12 in Indiana). *See id.* at 198 n.17 (binding opinion of Stevens, J.). Moreover, unlike South Carolina, Indiana did not have anything close to the expansive reasonable impediment provision contained in South Carolina's Act R54. Indiana voters without photo IDs could vote a provisional ballot only if they were indigent. And, even then, those ballots were counted only if those who claimed indigence made *a separate trip* to the county seat within 10 days after the election. *See id.* at 186, 199.

To be sure, *Crawford* was not a Section 5 pre-clearance case. But in the Section 5 context, the Department of Justice has pre-cleared two States' laws – Georgia's and New Hampshire's – that include only one of the two kinds of ameliorative provisions that South Carolina's law contains.

Take Georgia. Put simply, Georgia's voter ID law does not permit voters who lack qualifying photo IDs to vote at the polling place. There is no affidavit or reasonable impediment provision of the kind there is in South Carolina. In Georgia, if you don't have a qualifying photo ID at the polling place, you cannot vote. Georgia's law is, for that reason, significantly more stringent than South Carolina's law. Georgia's law was nonetheless pre-cleared by the Department of Justice, upheld by the Eleventh Circuit against constitutional challenge, and

recently cited by another three-judge court in this District as having been pre-cleared "probably for good reason." *Texas*, 2012 WL 3743676, at *32.[11]

Next, consider New Hampshire. During the course of this litigation, New Hampshire's voter ID law was pre-cleared by the Department of Justice. Like South Carolina, New Hampshire allows voters without qualifying photo IDs to vote: New Hampshire voters who do not have photo IDs must sign an affidavit attesting to their identity. N.H. Rev. Stat. Ann. § 659:13.[12] Unlike in South Carolina, however, New Hampshire state officials are required to do a follow-up inquiry after election day for every voter who votes without a photo ID. And unlike South Carolina, New Hampshire does not make free photo IDs readily available. Under New Hampshire law, a state photo ID card costs $10, unless the voter first obtains a voucher exempting him or her from the fee. *Id.* § 260:21(V). In South Carolina, by contrast, the new photo voter registration card is free.

Finally, there is Texas. The Texas voter ID law was recently denied pre-clearance by a three-judge court in this District. The Texas law apparently would have been the most stringent in the Nation. *See Texas*, 2012 WL 3743676, at *33 ("The State of Texas enacted a voter ID law that – at least to our knowledge – is the most stringent in the country."). Unlike South Carolina, Texas required many citizens seeking IDs to present a birth certificate – and there generally is a fee to obtain a birth certificate ($22 in Texas). *Id.* at *1-2. Moreover, unlike South Carolina, Texas has many counties that lack a place for voters to obtain qualifying photo IDs, meaning that

[11] In trying to deal with the fact that Georgia's law is more stringent than South Carolina's, the Department of Justice has pointed out that Georgia allows a variety of forms of ID to qualify for voting. That's true but beside the point for the precise issue before us. What matters for these analytical purposes are the people who *don't* have a qualifying photo ID. The number of people without qualifying photo IDs in Georgia is significant, and when Georgia's law was enacted, there was a racial gap in voters without qualifying IDs. Yet in Georgia, those without qualifying photo IDs were not permitted to vote at the polling place. In South Carolina, they can.

[12] To be sure, in New Hampshire the voter does not need to check a box identifying the reason why he or she has not obtained a photo ID, nor is the affidavit notarized.

those voters would have to travel to other counties to get one. *Id.* at *16. And, most importantly, unlike South Carolina, Texas did not have any kind of reasonable impediment or affidavit provision to accommodate those voters who had not obtained a photo ID and wanted to vote.

In short, the Indiana and Texas laws contained neither kind of ameliorative provision that the South Carolina law contains. And the Georgia and New Hampshire laws contained only one of the two kinds of ameliorative provisions that the South Carolina law contains. As a relative matter, South Carolina's law imposes less of a burden on voters currently without qualifying photo IDs than the laws of Indiana, Georgia, New Hampshire, or Texas.

In addition to comparing South Carolina to those other States' laws, it is illuminating to measure South Carolina's law against the proposed voter ID reforms in the Carter-Baker Report issued by President Carter and Secretary Baker. The comprehensive Carter-Baker Report recommended that States adopt photo voter ID laws, and proposed *less* accommodation for voters without photo IDs than South Carolina's Act R54 provides. The Carter-Baker approach would make free photo IDs available, but, unlike South Carolina, it would require many citizens to show a birth certificate in order to obtain an ID. Under the Carter-Baker approach, moreover, voters without photo IDs would have an unqualified right to vote by provisional ballot for only the first two elections after implementation; after that, however, provisional ballots would be counted only if the voters were to make a separate trip to the appropriate election office within 48 hours with a valid photo ID.

In sum, our comparison of South Carolina's Act R54 to some other States' voter ID laws – as well as to the Carter-Baker Report's proposed voter ID reforms – strongly buttresses the conclusion that South Carolina's law has neither a discriminatory effect nor a discriminatory purpose. South Carolina's new voter ID law is significantly more friendly to voters without

qualifying photo IDs than several other contemporary state laws that have passed legal muster. As a matter of precedent, the decisions upholding those other state laws, while not binding on us, support our conclusion here that South Carolina's law does not have a discriminatory retrogressive effect. Moreover, the fact that South Carolina has gone to greater lengths than those other States to alleviate the burdens of voter ID laws, while not dispositive, tends to support the conclusion that South Carolina did not act with a discriminatory purpose.

* * *

Based on the above analysis of the purpose and effect of Act R54, we conclude that Act R54 "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color" for future elections beginning with any elections in 2013. 42 U.S.C. § 1973c(a). Therefore, we pre-clear Act R54 for future elections beginning with any elections in 2013.

III. The 2012 Elections

Although we pre-clear Act R54 for *future* elections, there remains the question of the 2012 elections. Those elections occur in just under four weeks. In short, the Court cannot conclude that Act R54 can be properly implemented in time for the 2012 elections. Therefore, the Court does not pre-clear the relevant provisions of Act R54 (Sections 4, 5, 7, and 8) for the 2012 elections.

We have emphasized the importance of the reasonable impediment provision to our analysis of Act R54 and to our pre-clearance of Act R54 for future elections. But a large number of difficult steps would have to be completed in order for the reasonable impediment provision to be properly implemented on November 6, 2012. In the course of just a few short weeks, the law

by its terms would require: that more than 100,000 South Carolina voters be informed of and educated about the law's new requirements; that several thousand poll workers and poll managers be educated and trained about the intricacies and nuances of the law, including about our decision here today; and that county election boards become knowledgeable of the law, including of our decision here today. New forms need to be created, and notices posted and mailed, among other things.

The text of Act R54 strongly suggests that those steps cannot be completed in the short time before the 2012 elections. The South Carolina legislature established several deadlines for education and training that indicated the legislature's belief that implementation of the law would occur over the course of about 11 months. Under the law, the State Election Commission had to provide individual notice to registered voters without a DMV-issued ID "no later than December 1, 2011." Act R54, § 7(8). The Commission had to place informational notices in South Carolina newspapers "no later than December 15, 2011." *Id.* § 7(6). And the Commission had to coordinate with county boards and conduct at least two training seminars in each county "prior to December 15, 2011." *Id.* § 7(4). Because the law had not been pre-cleared before now, South Carolina has not initiated any of those steps. The statute's own requirements that education and training begin nearly a *year* before the first elections under Act R54 strongly suggest that those steps cannot be adequately completed in just four weeks.

Furthermore, the reasonable impediment provision is new, and it will likely require some explanation to poll managers and poll workers, and to county officials. With under four weeks left to go, the potential for chaos is obvious. In that regard, we note that South Carolina officials – while gamely and admirably saying they will try to get the job done no matter what – have previously told the Court that this is far too late a date for the law to be properly implemented.

For example, Ms. Andino, the Executive Director of the State Election Commission, originally stated that pre-clearance by August 1 would be needed, while the South Carolina Attorney General previously opined that full implementation for the 2012 elections could not occur if pre-clearance came after September 15. To be clear, the Court does not rest its decision on those prior statements, as those statements may have reflected what was optimal rather than what was absolutely essential. But those prior statements do add to the overwhelming weight of the evidence that the Court has carefully sifted through. That evidence convinces the Court that South Carolina – while acting in all good faith – cannot ensure proper implementation of the multi-step training and educational process required by its new law, and in particular the critical reasonable impediment provision, in the few short weeks that remain.

In deciding not to pre-clear for the 2012 elections, the Court also considers it important that South Carolina voters without R54-listed photo IDs would have very little time before the 2012 elections to choose the option of obtaining one of the free qualifying photo IDs. For the future, the new free photo voter registration cards and the free DMV photo ID cards will be long available in at least two offices in each county. That will create an ameliorative transition period in which more voters can obtain those IDs, and leave fewer voters to rely on the reasonable impediment provision. The Supreme Court expressed a similar assumption about the law at issue in *Crawford*: "Presumably most voters casting provisional ballots will be able to obtain photo identifications before the next election." *Crawford v. Marion County Election Board*, 553 U.S. 181, 199 n.19 (2008) (binding opinion of Stevens, J.). Notably, the Supreme Court assumed as much notwithstanding that Indiana voters needed a birth certificate, passport, veterans or military ID, or certificate of naturalization in order to obtain a free ID. *Id.* at 198

n.17. By contrast to Indiana, South Carolina provides free photo voter registration cards without costly underlying documentation.

And in considering the 2012 elections, keep in mind that Act R54 may *not* have been pre-cleared for any elections without the expansive reasonable impediment provision. Again, that's because this law, without the reasonable impediment provision, could have discriminatory effects and impose material burdens on African-American voters, who in South Carolina disproportionately lack one of the R54-listed photo IDs. Without the reasonable impediment provision, the law thus would have raised difficult questions under the strict effects test of Section 5 of the Voting Rights Act. And the reasonable impediment provision carries even greater importance for the 2012 elections because South Carolina citizens will not have much time to obtain the new free photo voter registration cards. Because the voters who currently lack qualifying photo ID are disproportionately African-American, proper and smooth functioning of the reasonable impediment provision would be vital to avoid unlawful racially discriminatory effects on African-American voters in South Carolina in the 2012 elections. Even assuming the best of intentions and extraordinary efforts by all involved, achieving that goal is too much to reasonably demand or expect in a four-week period – and there is too much of a risk to African-American voters for us to roll the dice in such a fashion.

From the outset, the Court has pushed very hard to make a decision in time for the 2012 elections. We set an extremely aggressive trial schedule to accomplish that objective. Counsel for all parties have worked diligently, which the Court greatly appreciates. Unfortunately, as one might have anticipated in a case with this many entities involved, the parties ran into some discovery delays over the summer in trying to obtain relevant information. In the ordinary case, those minor and typical delays would not have been a big deal. In this case, those discovery

delays pushed back the trial date by several weeks, with the voluntary consent of all parties. And that delay has in turn pushed back our date of decision.

We need not belabor the point. At this late date, the Court is unable to conclude that South Carolina can implement Act R54 for the 2012 elections in a way that will suffice under the Voting Rights Act.[13] However, as indicated above, South Carolina has satisfied its burden for future elections and may implement Act R54 for future elections, consistent with the understandings of Act R54 articulated by the responsible state officials and reflected in this opinion.[14]

IV. Future Enforcement

In reaching our decision to pre-clear Act R54 for future elections, we emphasize that Section 5 of the Voting Rights Act provides that pre-clearance shall not "bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure." 42 U.S.C. § 1973c(a). If South Carolina were to alter its interpretation of the reasonable impediment provision, or any other relevant provision of Act R54 – as the law has been

[13] Some have contended that Section 5's intrusion on state sovereignty is unconstitutional, at least under the statutory coverage formula now in place. Invoking the constitutional avoidance doctrine, South Carolina has suggested that we should therefore construe the effects test of Section 5 of the Voting Rights Act more narrowly than the statutory text would indicate. But the text and Supreme Court precedent establish that the effects test of Section 5 is stringent and that a voting law change that disproportionately and materially burdens minority voters is unlawful. Any argument to narrow Section 5 in this way must be directed to Congress or to the Supreme Court.

[14] Enforcing the Voting Rights Act here only prevents implementation of the new voter ID law for the 2012 elections. This case thus does not raise the Equal Protection Clause issue that can arise when enforcement of the Voting Rights Act requires States to engage in race-based treatment of individual voters, as in redistricting cases. *See Georgia v. Ashcroft*, 539 U.S. 461, 491-92 (2003) (Kennedy, J., concurring); *Shaw v. Hunt*, 517 U.S. 899, 911-16 (1996).

This case also does not raise the question of how a Section 2 effects challenge to voter ID laws should be resolved. Section 2 applies throughout the Nation, unlike Section 5, which applies only in covered jurisdictions. Under the Section 2 effects test (known as the "results" test), the pre-existing state law is not a benchmark. *See Holder v. Hall*, 512 U.S. 874, 880-84 (1994) (binding opinion of Kennedy, J.). It therefore can be more difficult to establish a violation of the Section 2 results test than a violation of the Section 5 retrogressive effects test. *See id.* at 883-85.

interpreted by the responsible state officials and described and adopted in this opinion – the State would have to obtain pre-clearance of that change before applying that new interpretation. *See Young v. Fordice*, 520 U.S. 273, 285 (1997) (requiring pre-clearance of "new, significantly different administrative practices – practices that are not purely ministerial, but reflect the exercise of policy choice and discretion by Mississippi officials"); *NAACP v. Hampton County Election Commission*, 470 U.S. 166, 178 (1985) (holding that "the form of a change in voting procedures" is not dispositive of the need for pre-clearance, as Section 5 "reaches informal as well as formal changes"). Moreover, pre-clearance is required not just for legislative or administrative changes but also for any changes that might result from South Carolina courts' interpretations of Act R54. *See Riley v. Kennedy*, 553 U.S. 406, 421 (2008) ("the preclearance requirement encompasses voting changes mandated by order of a state court") (quotation marks omitted); *Branch v. Smith*, 538 U.S. 254, 262 (2003) (Section 5 "requires preclearance of *all* voting changes" and "there is no dispute that this includes voting changes mandated by order of a state court"); *Lockhart v. United States*, 460 U.S. 125, 133 (1983) ("Section 5 was intended to halt actual retrogression in minority voting strength without regard for the legality under state law of the practices already in effect.").[15]

If South Carolina attempts to make such a change without pre-clearance, the Voting Rights Act authorizes the Attorney General of the United States to bring a Section 5 enforcement action in federal court. 42 U.S.C. § 1973j(d). And the Supreme Court long ago recognized a

[15] Of course, Section 5 applies only when South Carolina "enact[s] or seek[s] to administer" a voting change. 42 U.S.C. § 1973c(a). Thus, any random, unauthorized failure to follow state election law on the part of a poll manager, county board, or other individual official can be enjoined by a state court as an ordinary violation of state law. *See United States v. Saint Landry Parish School Board*, 601 F.2d 859, 864 (5th Cir. 1979) ("one would not normally conclude that a state 'enacts or administers' a new voting procedure every time a state official deviates from the state's required procedures"). If the state court does not enforce the law, as outlined and required in this opinion, that would constitute a "change" in South Carolina law. And the federal courts may act to correct and prevent any such changes in South Carolina law that occur without pre-clearance.

private right of action that permits individuals to do the same. *See Allen v. State Board of Elections*, 393 U.S. 544, 554-55 (1969). We have no doubt that the appropriate federal court would entertain complaints and issue appropriate injunctions if South Carolina were to narrow the interpretation of the reasonable impediment provision articulated here without first obtaining the required pre-clearance of any such change. *See, e.g.*, *Butler v. Columbia*, 2010 WL 1372299, at *4 (D.S.C. 2010) (requiring pre-clearance of change resulting from South Carolina Supreme Court's interpretation of election statute); *Gray v. South Carolina State Election Commission*, 2010 WL 753767, at *2-3 (D.S.C. 2010) (requiring pre-clearance of change in State Election Commission procedures for filing candidate statements).

In closing, we underscore that all South Carolina state, county, and local officials must comply with Act R54 as it has been interpreted by the responsible state officials and as it has been described and adopted in this opinion. Any change in the law as so interpreted would be unlawful, without pre-clearance from the Attorney General of the United States or from this Court. We are fully aware, moreover, that what looks good on paper may fall apart in practice. We expect and anticipate that South Carolina state, county, and local officials will endeavor to prevent such slippage. Given the concerns powerfully expressed at trial by several African-American legislators in South Carolina – namely, Representative Gilda Cobb-Hunter, Senator Gerald Malloy, and Senator John Scott – proper implementation of this law will be important, both for legal reasons and to maintain South Carolina citizens' confidence in the fair and impartial administration of elections.

* * *

In sum, we pre-clear Act R54 sections 4, 5, 7, and 8 for future elections in South Carolina beginning with any elections in 2013 on the basis of the interpretations and understandings that have been expressed by the South Carolina Attorney General and the Executive Director of the

South Carolina State Election Commission, and that we have adopted in this opinion. We deny pre-clearance for the 2012 elections.

KOLLAR-KOTELLY, *District Judge*, concurring: I concur fully in both the Court's excellent opinion and Judge Bates' thoughtful concurrence. I write separately only to emphasize the importance of the reasonable impediment provision in future elections.

Experts for both South Carolina and the Defendants agree that as of April 2012, approximately 130,000 registered voters in South Carolina lacked a photo ID acceptable under Act R54, and those voters are disproportionately likely to be members of a racial minority. Over time, this number is reasonably expected to shrink as voters have the opportunity to obtain the free photo IDs made available under Act R54. However, the photo voter registration card is unlikely to be the panacea South Carolina portrays it to be simply because this form of identification is only available if a voter registers in person at the county elections office. New voters will continue to receive non-photo voter registration cards if they register in person at any of the myriad of other locations where voter registration is available (including public libraries, social service departments, and armed forces recruitment centers, depending on the county) or if the voter registers by mail, and must make a separate trip to the county elections office to obtain the photo voter registration card. Moreover, although Act R54 eliminated the fee for the DMV photo ID, it understandably did not alter the underlying documentation requirement. While Act R54 undoubtedly made it far easier to obtain an acceptable photo ID, some portion of newly registered voters will likely be forced to rely on the reasonable impediment provision in order to vote in the 2014, 2016, and other future elections. Thus, any narrowing of South Carolina's interpretation of the reasonable impediment provision from what the Court has accepted and required in its opinion must itself be pre-cleared, not just to comply with the procedural requirements of the Voting Rights Act, but also because such narrowing may have the real effect of disenfranchising a group that is likely to be disproportionately comprised of minority voters.

BATES, *District Judge*, with whom *District Judge* KOLLAR-KOTELLY joins, concurring: I concur fully in the Court's excellent opinion. I write only to add two brief observations.

First, to state the obvious, Act R54 as now pre-cleared is not the R54 enacted in May 2011. It is understandable that the Attorney General of the United States, and then the intervenor-defendants in this case, would raise serious concerns about South Carolina's voter photo ID law as it then stood. But now, to the credit of South Carolina state officials, Act R54 as authoritatively interpreted does warrant pre-clearance. An evolutionary process has produced a law that accomplishes South Carolina's important objectives while protecting every individual's right to vote and a law that addresses the significant concerns raised about Act R54's potential impact on a group that all agree is disproportionately African-American. As the Court's opinion convincingly describes, South Carolina's voter photo ID law, as interpreted, now compares very favorably with the laws of Indiana, Georgia and New Hampshire, each of which has passed legal muster through either federal court constitutional review or pre-clearance by the Attorney General. The path to a sound South Carolina voter photo ID law has been different, given the essential role of the State's interpretation of key provisions.

Which brings me to my second observation – one cannot doubt the vital function that Section 5 of the Voting Rights Act has played here. Without the review process under the Voting Rights Act, South Carolina's voter photo ID law certainly would have been more restrictive. Several legislators have commented that they were seeking to structure a law that could be pre-cleared. *See* Trial Tr. 104:18-21 (Aug. 28, 2012) (Harrell) ("I was very aware at the time that we were doing this that whatever we would have to do would have to be subject to the Voting Rights Act because that would be the basis for the Department of Justice preclearing the bill for us."); *id.* at 105:15-18 ("[I] ask[ed] the staff who drafted the bill for me to please make sure that we are

passing a bill that will withstand constitutional muster and get through DOJ or through this court."); Trial Tr. 108:23-25 (Aug. 27, 2012) (Campsen) (agreeing that he was "interested in what voter ID legislation had been precleared" in drafting R54); *id.* at 148:10-15 (discussing senators' statement that "[t]he responsible thing to do was to fix [the bill] so that it would not fail in the courts or get tripped up by the Voting Rights Act"); Trial Tr. 141:9-12 (Aug. 28, 2012) (McConnell) (discussing his efforts on behalf of a bill that "had a better chance of getting preclearance"); *id.* at 182:18-20 (on the Senate floor "[t]here was discussion about" how "to craft a bill that would comply with the voting rights amendment"). The key ameliorative provisions were added during that legislative process and were shaped by the need for pre-clearance. And the evolving interpretations of these key provisions of Act R54, particularly the reasonable impediment provision, subsequently presented to this Court were driven by South Carolina officials' efforts to satisfy the requirements of the Voting Rights Act.

Congress has recognized the importance of such a deterrent effect. *See* H.R. Rep. No. 109-478, at 24 (2006) (finding that "Section 5 encourage[s] the legislature to ensure that any voting changes would not have a discriminatory effect on minority voters," and "that the existence of Section 5 deterred covered jurisdictions from even attempting to enact discriminatory voting changes" (internal quotation marks omitted)); S. Rep. No. 109-295, at 11 (2006) (finding "some reason to believe that without the Voting Rights Act's deterrent effect on potential misconduct" racial disparities in voting "might be considerably worse"). The Section 5 process here did not force South Carolina to jump through unnecessary hoops. Rather, the history of Act R54 demonstrates the continuing utility of Section 5 of the Voting Rights Act in deterring problematic, and hence encouraging non-discriminatory, changes in state and local voting laws.

ALAN WILSON
ATTORNEY GENERAL

June 28, 2011

VIA FEDERAL EXPRESS
SECTION 5 SUBMISSION
Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
1800 G St., N.W.
Washington, DC 20006

Submission under Section 5 of the Voting Rights Act:
Act R54 (A27 H3003) of 2011
Voter ID

Dear Sir or Madam:

Enclosed is a copy of Act R54 (A27 H3003) of 2011 ("Act") for consideration under Section 5 of the Voting Rights Act.

The Act implements several changes:

- In Sections 1 and 3, the Act amends the list of factors used to determine a voter's domicile for voting purposes.
- In Section 2, the Act allows a voter to request a duplicate registration notification if the original is lost or defaced.
- In Section 4, the Act requires the State Election Commission to implement a system to issue voter registration cards bearing the voter's photograph.
- In Section 5, the Act requires that a photo ID be presented when voting and provides for the casting of a provisional ballot.
- In Section 6, the Act requires the Department of Motor Vehicles to issue a special identification card free of charge to anyone aged seventeen years or older.

- In Section 7, the Act requires the State Election Commission to implement a voter education program concerning the changes made by the Act.
- In Section 8, the Act requires the State Election Commission to compile and publish a list of all voters who do not currently have an acceptable photo ID.

The South Carolina General Assembly, acting in its general law-making capacity, passed the Act under the sponsorship of Representatives Clemmons, Harrell, Lucas, Bingham, Harrison, Cooper, Owens, Sandifer, Allison, Ballentine, Bannister, Barfield, Bowen, Cole, Crawford, Daning, Delleney, Forrester, Frye, Gambrell, Hamilton, Hardwick, Hiott, Horne, Huggins, Limehouse, Loftis, Long, Lowe, Merrill, V.S. Moss, Norman, Parker, G.M. Smith, G.R. Smith, Sottile, Stringer, Toole, Umphlett, Viers, White, Crosby, Thayer, Simrill, Ryan, McCoy, Murphy, Atwater, Henderson, Quinn, Tallon, Patrick, J.R. Smith, Hixon, Taylor, Young, Bedingfield, Corbin, Pitts, Chumley, Spires, Pope, Bikas, Pinson, D.C. Moss, Erickson, Willis, Brady, Herbkersman, Nanney, Brannon and Whitmire. Representative Alan D. Clemmons provided the attached letter regarding his reasons for sponsoring the legislation. Representative Clemmons can be contacted at 843.448.8207.

The Act states that all sections except Section 4 take effect upon signature by the governor, and Governor Haley signed the Act on May 18, 2011. The Act states that Section 4 takes effect when the State Election Commission receives sufficient funding to implement the provisions of Section 4.

The Act amends the following sections of the S.C. Code of Laws:

- S.C. Code Ann. § 7-1-25, which was last amended by Act R180 (A103, S373) of 1999, which was precleared on October 1, 1999.
- S.C. Code Ann. § 7-5-125, which was last amended by Act R571 (A507, S745) of 1988, which was precleared on July 18, 1988.
- S.C. Code Ann. § 7-5-230, which was last amended by Act R180 (A103, S373) of 1999, which was precleared on October 1, 1999.
- S.C. Code Ann. § 7-13-710, last amended by Act R459 (A459, S1162) of 1996, which was not submitted for preclearance since it did not make any voting-related changes.
- S.C. Code Ann. § 56-1-3350, last amended by Act R296 (A277, S288) of 2010, which was not submitted for preclearance since it did not make any voting-related changes.

The following are minorities who are familiar with this legislation:

(1) Representative Harold Mitchell, Jr.
414C Blatt Building
Columbia, SC 29201
803.734.6638

(2) Senator Kent M. Williams

602 Gressette Building
Columbia, SC 29201
803.212.6008

This office is not aware that the changes in the Act affect any minority or language groups adversely. This office is not aware of any past or pending litigation regarding this Act, and this office is not aware that the changes have been enforced or administered.

Please feel free to contact my assistant Jay Smith at 803.734.3733 with any questions regarding this submission.

Sincerely yours,

C. Havird Jones, Jr.
Assistant Deputy Attorney General

Enclosures:

Act R54 (A27 H3003) of 2011
Redlined version of Act R54 (A27 H3003) of 2011
Act R180 (A103, S373) of 1999
Preclearance letter for Act R180 (A103, S373) of 1999
Act R571 (A507, S745) of 1988
Preclearance letter for R571 (A507, S745) of 1988
Relevant portions of Act R459 (A459, S1162) of 1996
Relevant portions of Act R276 (A181 H3546) of 1993
Act R296 (A277, S288) of 2010
Statement from Representative Clemmons

CC via email:

Garry Baum, State Election Commission
Bobby Bowers, Research and Statistics
Wayne Gilbert, Research and Statistics
Will Roberts, Research and Statistics
Elizabeth Taylor, Legislative Council

South Carolina General Assembly
119th Session, 2011-2012

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R54, H3003

STATUS INFORMATION

General Bill
Sponsors: Reps. Clemmons, Harrell, Lucas, Bingham, Harrison, Cooper, Owens, Sandifer, Allison, Ballentine, Bannister, Barfield, Bowen, Cole, Crawford, Daning, Delleney, Forrester, Frye, Gambrell, Hamilton, Hardwick, Hiott, Horne, Huggins, Limehouse, Loftis, Long, Lowe, Merrill, V.S. Moss, Norman, Parker, G.M. Smith, G.R. Smith, Sottile, Stringer, Toole, Umphlett, Viers, White, Crosby, Thayer, Simrill, Ryan, McCoy, Murphy, Atwater, Henderson, Quinn, Tallon, Patrick, J.R. Smith, Hixon, Taylor, Young, Bedingfield, Corbin, Pitts, Chumley, Spires, Pope, Bikas, Pinson, D.C. Moss, Erickson, Willis, Brady, Herbkersman, Nanney, Brannon and Whitmire
Document Path: l:\council\bills\ms\7070zw11.docx
Companion/Similar bill(s): 1, 3961

Introduced in the House on January 11, 2011
Introduced in the Senate on January 27, 2011
Last Amended on May 11, 2011
Passed by the General Assembly on May 11, 2011
Governor's Action: May 18, 2011, Signed

Summary: Voter ID

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/7/2010	House	Prefiled
12/7/2010	House	Referred to Committee on **Judiciary**
1/11/2011	House	Introduced and read first time (House Journal-page 3)
1/11/2011	House	Referred to Committee on **Judiciary** (House Journal-page 3)
1/12/2011	House	Member(s) request name added as sponsor: Atwater
1/18/2011	House	Member(s) request name added as sponsor: Henderson, Quinn, Tallon, Patrick, J.R.Smith, Hixon, Taylor, Young, Bedingfield, Corbin, Pitts, Chumley, Spires, Pope, Bikas, Pinson
1/19/2011	House	Committee report: Favorable with amendment **Judiciary** (House Journal-page 2)
1/20/2011	House	Member(s) request name added as sponsor: D.C.Moss
1/25/2011	House	Member(s) request name added as sponsor: Erickson, Willis
1/25/2011	House	Objection by Rep. Cobb-Hunter and Sellers (House Journal-page 32)
1/25/2011	House	Requests for debate-Rep(s). Clemmons, Crawford, JE Smith, Hart, Govan, McEachern, Erickson, Brantley, King, Jefferson, Munnerlyn, Forrester, Parker, Allison, Mack, Mitchell, Bikas, DC Moss, JR Smith,

		Hixon, Taylor, Young, RL Brown, GA Brown, Anderson, Clyburn, Hosey, Brannon, Hayes, Battle, Gilliard, McCoy, Stringer, Sandifer, Whitmire, VS Moss, Nanney, Bedinfield, Henderson, Allen, Hearn, Dillard, Corbin, Hardwick, Loftis, Pope, Whipper, Ott, and Vick (House Journal-page 32)
1/26/2011	House	Member(s) request name added as sponsor: Brady, Herbkersman, Nanney, Brannon, Whitmire
1/26/2011	House	Amended (House Journal-page 28)
1/26/2011	House	Read second time (House Journal-page 28)
1/26/2011	House	Roll call Yeas-74 Nays-45 (House Journal-page 28)
1/27/2011	House	Read third time and sent to Senate (House Journal-page 34)
1/27/2011	Senate	Introduced and read first time (Senate Journal-page 17)
1/27/2011	Senate	Referred to Committee on **Judiciary** (Senate Journal-page 17)
2/3/2011		Scrivener's error corrected
2/8/2011	Senate	Motion For Special Order Failed (Senate Journal-page 14)
2/8/2011	Senate	Roll call Ayes-25 Nays-15 (Senate Journal-page 14)
2/9/2011	Senate	Motion For Special Order Failed (Senate Journal-page 23)
2/9/2011	Senate	Roll call Ayes-26 Nays-14 (Senate Journal-page 23)
2/10/2011	Senate	Special order, set for February 10, 2011 (Senate Journal-page 19)
2/10/2011	Senate	Roll call Ayes-26 Nays-17 (Senate Journal-page 19)
2/15/2011	Senate	Debate interrupted (Senate Journal-page 24)
2/16/2011	Senate	Debate interrupted (Senate Journal-page 23)
2/17/2011	Senate	Debate interrupted (Senate Journal-page 12)
2/22/2011	Senate	Debate interrupted (Senate Journal-page 23)
2/23/2011	Senate	Committee Amendment Amended and Adopted (Senate Journal-page 36)
2/23/2011	Senate	Read second time (Senate Journal-page 36)
2/23/2011	Senate	Roll call Ayes-26 Nays-15 (Senate Journal-page 36)
2/24/2011		Scrivener's error corrected
2/24/2011	Senate	Read third time and returned to House with amendments (Senate Journal-page 11)
2/24/2011	Senate	Roll call Ayes-24 Nays-15 (Senate Journal-page 11)
2/24/2011		Scrivener's error corrected
2/25/2011		Scrivener's error corrected
3/2/2011	House	Debate adjourned until Thursday, March 3, 2011 (House Journal-page 49)
3/3/2011	House	Debate adjourned until Tuesday, March 8, 2011 (House Journal-page 28)
3/8/2011	House	Debate adjourned until Wednesday, March 9, 2011 (House Journal-page 73)
3/9/2011	House	Debate adjourned on amendments (House Journal-page 27)
3/10/2011	House	Debate adjourned on amendments (House Journal-page 30)
3/29/2011	House	Debate adjourned on Senate amendments until Wednesday, March 30, 2011 (House Journal-page 30)
3/30/2011	House	Debate adjourned on Senate amendments until Thursday, March 31, 2011 (House Journal-page 33)
3/31/2011	House	Debate adjourned on amendments (House Journal-page 35)
4/5/2011	House	Debate adjourned on Senate amendments until Wednesday, April 6, 2011 (House Journal-page 22)
4/6/2011	House	Senate amendment amended (House Journal-page 36)
4/6/2011	House	Returned to Senate with amendments (House Journal-page 36)
4/13/2011	Senate	Non-concurrence in House amendment (Senate Journal-page 35)
4/13/2011	Senate	Roll call Ayes-28 Nays-15 (Senate Journal-page 35)
4/14/2011	House	House insists upon amendment and conference committee

		appointed Reps. Clemmons, Lucas, and Merrill (House Journal-page 2)
4/14/2011	Senate	Conference committee appointed McConnell, Campsen, and Scott (Senate Journal-page 21)
4/26/2011	House	Conference report received and adopted (House Journal-page 38)
4/26/2011	House	Roll call Yeas-71 Nays-36 (House Journal-page 38)
5/11/2011	Senate	Conference report received and adopted (Senate Journal-page 35)
5/11/2011	Senate	Roll call Ayes-26 Nays-16 (Senate Journal-page 35)
5/11/2011	Senate	Ordered enrolled for ratification (Senate Journal-page 47)
5/17/2011		Ratified R 54
5/18/2011		Signed By Governor

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VERSIONS OF THIS BILL

12/7/2010
1/19/2011
1/26/2011
2/2/2011
2/3/2011
2/23/2011
2/24/2011
2/25/2011
4/6/2011
5/11/2011

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

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(R54, H3003)

AN ACT TO AMEND SECTION 7-1-25, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF "DOMICILE", SO AS TO PROVIDE FACTORS TO CONSIDER IN DETERMINING A PERSON'S INTENTION REGARDING HIS DOMICILE FOR VOTING PURPOSES; TO AMEND SECTION 7-5-125, RELATING TO WRITTEN NOTIFICATION OF REGISTRATION, SO AS TO PROVIDE THAT IF AN ELECTOR LOSES OR DEFACES HIS REGISTRATION NOTIFICATION, HE MAY OBTAIN A DUPLICATE NOTIFICATION FROM HIS COUNTY BOARD OF REGISTRATION; TO AMEND SECTION 7-5-230, AS AMENDED, RELATING TO LEGAL QUALIFICATIONS OF APPLICANTS FOR REGISTRATION AND CHALLENGES OF QUALIFICATIONS, SO AS TO REVISE WHAT THE BOARD OF REGISTRATION MUST CONSIDER WHEN A CHALLENGE IS MADE REGARDING RESIDENCE OR DOMICILE OF AN ELECTOR; BY ADDING SECTION 7-5-675 SO AS TO PROVIDE THAT THE STATE ELECTION COMMISSION SHALL IMPLEMENT A SYSTEM TO ISSUE VOTER REGISTRATION CARDS WITH A PHOTOGRAPH OF THE ELECTOR, AND TO PROVIDE WHEN THE PROVISIONS OF

THIS SECTION TAKE EFFECT INCLUDING A REQUIREMENT THAT IMPLEMENTATION IS CONTINGENT ON FUNDING TO IMPLEMENT THIS REQUIREMENT; TO AMEND SECTION 7-13-710, AS AMENDED, RELATING TO PROOF OF THE RIGHT TO VOTE, SO AS TO REQUIRE CERTAIN PHOTOGRAPH IDENTIFICATION IN ORDER TO VOTE, TO PROVIDE THAT ONE OF THE POLL MANAGERS SHALL COMPARE THE PHOTOGRAPH CONTAINED ON THE REQUIRED IDENTIFICATION WITH THE PERSON PRESENTING HIMSELF TO VOTE AND SHALL VERIFY THAT THE PHOTOGRAPH IS THAT OF THE PERSON SEEKING TO VOTE, TO PERMIT PROVISIONAL BALLOTS IF THE PHOTOGRAPH IDENTIFICATION CANNOT BE PRODUCED OR IF THE POLL MANAGER DISPUTES THE PHOTOGRAPH, TO PROVIDE EXCEPTIONS FOR A RELIGIOUS OBJECTION TO BEING PHOTOGRAPHED OR IF THE ELECTOR SUFFERS FROM A REASONABLE IMPAIRMENT THAT PREVENTS HIM FROM OBTAINING PHOTOGRAPH IDENTIFICATION, TO PERMIT THE CASTING OF A PROVISIONAL BALLOT IN THESE CASES UPON SPECIFIC REQUIREMENTS INCLUDING AN AFFIDAVIT, TO PROVIDE FOR THE MANNER IN WHICH THE COUNTY BOARD OF REGISTRATION AND ELECTIONS SHALL PROCESS THESE PROVISIONAL BALLOTS, AND TO PROVIDE THAT THE IDENTIFICATION REQUIRED ABOVE IS FOR THE PURPOSE OF CONFIRMING THE IDENTITY OF THE ELECTOR AND TO PROVIDE FOR THE MANNER IN WHICH THE ELECTOR'S DOMICILE SHALL BE DETERMINED FOR PURPOSES OF VOTING; TO AMEND SECTION 56-1-3350, AS AMENDED, RELATING TO SPECIAL IDENTIFICATION CARDS ISSUED BY THE DEPARTMENT OF MOTOR VEHICLES TO RESIDENTS OF THIS STATE TEN YEARS OF AGE OR OLDER, SO AS TO REDUCE THIS AGE TO FIVE YEARS OF AGE OR OLDER, TO PROVIDE THAT THESE CARDS MUST BE ISSUED FREE OF CHARGE TO PERSONS SEVENTEEN YEARS OF AGE AND OLDER AND FOR THE FEE TO BE CHARGED TO PERSONS BETWEEN THE AGES OF FIVE AND SIXTEEN, TO DELETE LANGUAGE OF THE SECTION RELATING TO RENEWAL FEES AND WAIVER OF FEES, AND TO REVISE PROVISIONS OF THE SECTION PERTAINING TO USE OF THE FEES COLLECTED; TO PROVIDE THAT THE STATE ELECTION COMMISSION SHALL ESTABLISH AN AGGRESSIVE VOTER EDUCATION PROGRAM CONCERNING THE PROVISIONS OF THIS ACT TO EDUCATE THE PUBLIC IN CERTAIN PARTICULARS OF THIS ACT AND THE COMMISSION ALSO MAY IMPLEMENT ADDITIONAL EDUCATIONAL PROGRAMS IN ITS DISCRETION; TO PROVIDE THAT THE STATE ELECTION COMMISSION IS DIRECTED TO CREATE A LIST CONTAINING ALL REGISTERED VOTERS OF SOUTH CAROLINA WHO ARE OTHERWISE QUALIFIED TO VOTE BUT DO NOT HAVE A SOUTH CAROLINA DRIVER'S LICENSE OR OTHER FORM OF IDENTIFICATION CONTAINING A PHOTOGRAPH ISSUED BY THE DEPARTMENT OF MOTOR VEHICLES AS OF DECEMBER 1, 2011, AND TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MUST PROVIDE THE LIST OF PERSONS WITH A SOUTH CAROLINA DRIVER'S LICENSE OR OTHER FORM OF IDENTIFICATION CONTAINING A PHOTOGRAPH ISSUED BY THE DEPARTMENT OF MOTOR VEHICLES AT NO COST TO THE COMMISSION.

Be it enacted by the General Assembly of the State of South Carolina:

Factors to consider

SECTION 1. Section 7-1-25 of the 1976 Code, as added by Act 103 of 1999, is amended to read:

"Section 7-1-25. (A) A person's residence is his domicile. 'Domicile' means a person's fixed home where he has an intention of returning when he is absent. A person has only one domicile.

(B) For voting purposes, a person has changed his domicile if he (1) has abandoned his prior home and (2) has established a new home, has a present intention to make that place his home, and has no present intention to leave that place.

(C) For voting purposes, a spouse may establish a separate domicile.

(D) For voting purposes, factors to consider in determining a person's intention regarding his domicile include, but are not limited to:

(1) a voter's address reported on income tax returns;

(2) a voter's real estate interests, including the address for which the legal residence tax assessment ratio is claimed pursuant to Section 12-43-220(C);

(3) a voter's physical mailing address;

(4) a voter's address on driver's license or other identification issued by the Department of Motor Vehicles;

(5) a voter's address on legal and financial documents;

(6) a voter's address utilized for educational purposes, such as public school assignment and determination of tuition at institutions of higher education;

(7) a voter's address on an automobile registration;

(8) a voter's address utilized for membership in clubs and organizations;

(9) the location of a voter's personal property;

(10) residence of a voter's parents, spouse, and children; and

(11) whether a voter temporarily relocated due to medical care for the voter or for a member of the voter's immediate family."

Duplicate registration

SECTION 2. Section 7-5-125 of the 1976 Code, as added by Act 507 of 1988, is amended to read:

"Section 7-5-125. (A) Any person who applies for registration to vote and is found to be qualified by the county board of registration to whom application is made must be issued a written notification of registration. This notification must be on a form prescribed and provided by the State Election Commission.

(B) If an elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail."

Consideration of challenges

SECTION 3. Section 7-5-230 of the 1976 Code, as amended by Act 103 of 1999, is further amended

to read:

"Section 7-5-230. (A) The boards of registration to be appointed under Section 7-5-10 shall be the judges of the legal qualifications of all applicants for registration. The board is empowered to require proof of these qualifications as it considers necessary.

Once a person is registered, challenges of the qualifications of any elector, except for challenges issued at the polls pursuant to Sections 7-13-810, 7-13-820, and 7-15-420 must be made in writing to the board of registration in the county of registration. The board must, within ten days following the challenge and after first giving notice to the elector and the challenger, hold a hearing, accept evidence, and rule upon whether the elector meets or fails to meet the qualifications set forth in Section 7-5-120.

(B) When a challenge is made regarding the residence or domicile of an elector, the board must consider the provisions of Section 7-1-25(D).

(C) Any person denied registration or restoration of his name on the registration books shall have the right of appeal from the decision of the board of registration denying him registration or such restoration to the court of common pleas of the county or any judge thereof and subsequently to the Supreme Court."

System to be implemented

SECTION 4. Article 7, Chapter 5, Title 7 of the 1976 Code is amended by adding:

"Section 7-5-675. The State Elections Commission shall implement a system in order to issue voter registration cards with a photograph of the elector. This voter registration card may be used for voting purposes only."

Photograph identification required; provisional ballots

SECTION 5. Section 7-13-710 of the 1976 Code, as last amended by Act 459 of 1996, is further amended to read:

"Section 7-13-710. (A) When a person presents himself to vote, he shall produce a valid and current:

(1) South Carolina driver's license; or

(2) other form of identification containing a photograph issued by the Department of Motor Vehicles; or

(3) passport; or

(4) military identification containing a photograph issued by the federal government; or

(5) South Carolina voter registration card containing a photograph of the voter pursuant to Section 7-5-675.

(B) After presentation of the required identification described in subsection (A), the elector's name must be checked by one of the managers on the margin of the page opposite his name upon the

registration books, or copy of the books, furnished by the board of registration. One of the managers also shall compare the photograph contained on the required identification with the person presenting himself to vote. The manager shall verify that the photograph is that of the person seeking to vote. The managers shall keep a poll list which must contain one column headed 'Names of Voters'. Before a ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers.

(C)(1) If the elector cannot produce the identification as required in subsection (A), he may cast a provisional ballot that is counted only if the elector brings a valid and current photograph identification to the county board of registration and elections before certification of the election by the county board of canvassers.

(2) If the manager disputes that the photograph contained on the required identification is the person presenting himself to vote, the elector may cast a provisional ballot. A determination of that provisional ballot must be made in accordance with Section 7-13-830.

(D)(1)(a) If an elector does not produce a valid and current photograph identification due to a religious objection to being photographed, he may complete an affidavit under penalty of perjury at the polling place and affirm that the elector: (i) is the same individual who personally appeared at the polling place; (ii) cast the provisional ballot on election day; and (iii) has a religious objection to being photographed. Upon completion of the affidavit, the elector may cast a provisional ballot. The affidavit must be submitted with the provisional ballot envelope and be filed with the county board of registration and elections before certification of the election by the county board of canvassers.

(b) If an elector does not produce a valid and current photograph identification because the elector suffers from a reasonable impediment that prevents the elector from obtaining photograph identification, he may complete an affidavit under the penalty of perjury at the polling place and affirm that the elector: (i) is the same individual who personally appeared at the polling place; (ii) cast the provisional ballot on election day; and (iii) the elector suffers from a reasonable impediment that prevents him from obtaining photograph identification. The elector also shall list the impediment, unless otherwise prohibited by state or federal law. Upon completion of the affidavit, the elector may cast a provisional ballot. The affidavit must be submitted with the provisional ballot envelope and be filed with the county board of registration and elections before certification of the election by the county board of canvassers.

(2) If the county board of registration and elections determines that the voter was challenged only for the inability to provide proof of identification and the required affidavit is submitted, the county board of registration and elections shall find that the provisional ballot is valid unless the board has grounds to believe the affidavit is false.

(3) If the county board of registration and elections determines that the voter has been challenged for a cause other than the inability to provide proof of identification as required by subsection (A), the county board of registration and elections shall:

(a) note on the envelope containing the provisional ballot that the voter complied with the proof of

identification requirement; and

(b) proceed to determine the validity of the remaining challenges before ruling on the validity of the provisional ballot.

(E) The purpose of the identification required pursuant to subsection (A) is to confirm the person presenting himself to vote is the elector on the poll list. Any address listed on the identification is not determinative of an elector's domicile for the purpose of voting. An elector's domicile for the purpose of voting is determined pursuant to the provisions of Section 7-1-25."

Special identification card provisions revised

SECTION 6. Section 56-1-3350 of the 1976 Code, as last amended by Act 277 of 2010, is further amended to read:

"Section 56-1-3350. (A) Upon application by a person five years of age or older who is a resident of South Carolina, the department shall issue a special identification card as long as:

(1) the application is made on a form approved and furnished by the department; and

(2) the applicant presents to the person issuing the identification card a birth certificate or other evidence acceptable to the department of his name and date of birth.

(B)(1) The fee for the issuance of the special identification card is five dollars for a person between the ages of five and sixteen years.

(2) An identification card must be free to a person aged seventeen years or older.

(C) The identification card expires five years from the date of issuance.

(D) Special identification cards issued to persons under the age of twenty-one must be marked, stamped, or printed to readily indicate that the person to whom the card is issued is under the age of twenty-one.

(E) The fees collected pursuant to this section must be credited to the Department of Transportation State Non-Federal Aid Highway Fund."

Voter education program

SECTION 7. The State Elections Commission must establish an aggressive voter education program concerning the provisions contained in this legislation. The State Elections Commission must educate the public as follows:

(1) Post information concerning changes contained in this legislation in a conspicuous location at each county board of registration and elections, each satellite office, the State Elections Commission office, and their respective websites.

(2) Train poll managers and poll workers at their mandatory training sessions to answer questions by electors concerning the changes in this legislation.

(3) Require documentation describing the changes in this legislation to be disseminated by poll managers and poll workers at every election held following preclearance by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first.

(4) Coordinate with each county board of registration and elections so that at least two seminars are conducted in each county prior to December 15, 2011.

(5) Coordinate with local and service organizations to provide for additional informational seminars at a local or statewide level.

(6) Place an advertisement describing the changes in this legislation in South Carolina newspapers of general circulation by no later than December 15, 2011.

(7) Coordinate with local media outlets to disseminate information concerning the changes in this legislation.

(8) Notify each registered elector who does not have a South Carolina issued driver's license or identification card a notice of the provisions of this act by no later than December 1, 2011. This notice must include the requirements to vote absentee, early, or on election day and a description of voting by provisional ballot. It also must state the availability of a free South Carolina identification card pursuant to Section 56-1-3350.

In addition to the items above, the State Elections Commission may implement additional educational programs in its discretion.

Registered voter list

SECTION 8. The State Election Commission is directed to create a list containing all registered voters of South Carolina who are otherwise qualified to vote but do not have a South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles as of December 1, 2011. The list must be made available to any registered voter upon request. The Department of Motor Vehicles must provide the list of persons with a South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles at no cost to the commission. The commission may charge a reasonable fee for the provision of the list in order to recover associated costs of producing the list.

Findings

SECTION 9. The General Assembly finds that all the provisions contained in this act relate to one subject as required by Section 17, Article III of the South Carolina Constitution in that each provision relates directly to or in conjunction with other sections to the subject of election reform as stated in the title. The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in this act.

Time effective

SECTION 10. Except for SECTION 4, the provisions of this act are effective upon approval by the Governor.

Approval and funding

SECTION 11. SECTION 4 takes effect upon preclearance approval by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Election Commission's receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the State Election Commission from issuing voter registration cards by the methods allowed prior to the implementation of this SECTION.

Ratified the 17th day of May, 2011.

_____

President of the Senate

_____

Speaker of the House of Representatives

Approved the _____ day of _____2011.

_____

Governor

----XX----

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South Carolina General Assembly
119th Session, 2011-2012

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Bill 3003

~~Indicates Matter Stricken~~
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CONFERENCE COMMITTEE REPORT ADOPTED -- NOT PRINTED

May 11, 2011

H. 3003

Introduced by Reps. Clemmons, Harrell, Lucas, Bingham, Harrison, Cooper, Owens, Sandifer, Allison, Ballentine, Bannister, Barfield, Bowen, Cole, Crawford, Daning, Delleney, Forrester, Frye, Gambrell, Hamilton, Hardwick, Hiott, Horne, Huggins, Limehouse, Loftis, Long, Lowe, Merrill, V.S. Moss, Norman, Parker, G.M. Smith, G.R. Smith, Sottile, Stringer, Toole, Umphlett, Viers, White, Crosby, Thayer, Simrill, Ryan, McCoy, Murphy, Atwater, Henderson, Quinn, Tallon, Patrick, J.R. Smith, Hixon, Taylor, Young, Bedingfield, Corbin, Pitts, Chumley, Spires, Pope, Bikas, Pinson, D.C. Moss, Erickson, Willis, Brady, Herbkersman, Nanney, Brannon and Whitmire

S. Printed 2/23/11--S.

Read the first time January 27, 2011.

A BILL

TO AMEND SECTION 7-1-25 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO LIST FACTORS TO CONSIDER FOR DOMICILE; TO AMEND SECTION 7-5-125, SO AS TO PROVIDE THAT AN ELECTOR MAY OBTAIN A DUPLICATE REGISTRATION NOTIFICATION; TO AMEND SECTION 7-5-230, RELATING TO ELECTION LAWS, SO AS TO MAKE TECHNICAL CHANGES; TO ADD SECTION 7-5-675, SO AS TO PROVIDE THAT THE STATE ELECTION COMMISSION WILL IMPLEMENT A SYSTEM TO ISSUE VOTER REGISTRATION CARDS WITH A PHOTOGRAPH OF THE VOTER; TO AMEND SECTION 7-13-710 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO REQUIRE PHOTOGRAPH IDENTIFICATION TO VOTE, PERMITTING FOR PROVISIONAL BALLOTS IF THE IDENTIFICATION CANNOT BE PRODUCED, AND TO PROVIDE AN EXCEPTION FOR A RELIGIOUS OBJECTION TO BEING PHOTOGRAPHED; TO AMEND SECTION 56-1-3350, SO

AS TO REQUIRE THE DEPARTMENT OF MOTOR VEHICLES TO PROVIDE FREE IDENTIFICATION CARDS UPON REQUEST FOR PERSONS AGED SEVENTEEN YEARS OR OLDER; TO PROVIDE FOR A VOTER EDUCATION PROGRAM CONCERNING THE REQUIREMENTS OF THIS BILL; AND TO PROVIDE THAT THE STATE ELECTION COMMISSION CREATE A LIST OF ALL REGISTERED VOTERS WHO DO NOT HAVE A SOUTH CAROLINA DRIVER'S LICENSE OR OTHER FORM OF IDENTIFICATION CONTAINING A PHOTOGRAPH ISSUED BY THE DEPARTMENT OF MOTOR VEHICLES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 7-1-25 of the 1976 Code is amended to read:

"Section 7-1-25. (A) A person's residence is his domicile. 'Domicile' means a person's fixed home where he has an intention of returning when he is absent. A person has only one domicile.

(B) For voting purposes, a person has changed his domicile if he (1) has abandoned his prior home and (2) has established a new home, has a present intention to make that place his home, and has no present intention to leave that place.

(C) For voting purposes, a spouse may establish a separate domicile.

(D) For voting purposes, factors to consider in determining a person's intention regarding his domicile include, but are not limited to:

(1) a voter's address reported on income tax returns;

(2) a voter's real estate interests, including the address for which the legal residence tax assessment ratio is claimed pursuant to Section 12-43-220(C);

(3) a voter's physical mailing address;

(4) a voter's address on driver's license or other identification issued by the Department of Motor Vehicles;

(5) a voter's address on legal and financial documents;

(6) a voter's address utilized for educational purposes, such as public school assignment and determination of tuition at institutions of higher education;

(7) a voter's address on an automobile registration;

(8) a voter's address utilized for membership in clubs and organizations;

(9) the location of a voter's personal property;

(10) residence of a voter's parents, spouse, and children; and

(11) whether a voter temporarily relocated due to medical care for the voter or for a member of the voter's immediate family."

SECTION 2. Section 7-5-125 of the 1976 Code is amended to read:

"Section 7-5-125. (A) Any person who applies for registration to vote and is found to be qualified by the county board of registration to whom application is made must be issued a written notification of registration. This notification must be on a form prescribed and provided by the State Election Commission.

(B) If an elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail."

SECTION 3. Section 7-5-230 of the 1976 Code is amended to read:

"Section 7-5-230. (A) The boards of registration to be appointed under Section 7-5-10 shall be the judges of the legal qualifications of all applicants for registration. The board is empowered to require proof of these qualifications as it considers necessary.

Once a person is registered, challenges of the qualifications of any elector, except for challenges issued at the polls pursuant to Sections 7-13-810, 7-13-820, and 7-15-420 must be made in writing to the board of registration in the county of registration. The board must, within ten days following the challenge and after first giving notice to the elector and the challenger, hold a hearing, accept evidence, and rule upon whether the elector meets or fails to meet the qualifications set forth in Section 7-5-120.

(B) When a challenge is made regarding the residence or domicile of an elector, the board ~~may~~ must consider the provisions of Section 7-1-25(D) ~~following proof to establish residence including, but not limited to, income tax returns, real estate interests, mailing address, address on driver's license, official papers and documents requiring the statement of residence address, automobile registration, checking and savings accounts, past voting record, membership in clubs and organizations, location of personal property, and the elector's statements as to his intent~~.

(C) Any person denied registration or restoration of his name on the registration books shall have the right of appeal from the decision of the board of registration denying him registration or such restoration to the court of common pleas of the county or any judge thereof and subsequently to the Supreme Court."

SECTION 4. Article 7, Chapter 5, Title 7 of the 1976 Code is amended by adding:

"Section 7-5-675. The State Elections Commission shall implement a system in order to issue voter registration cards with a photograph of the elector. This voter registration card may be used for voting purposes only."

SECTION 5. Section 7-13-710 of the 1976 Code, as last amended by Act 459 of 1996, is further amended to read:

"Section 7-13-710. (A) When ~~any~~ a person presents himself to vote, he shall produce ~~his~~ a valid and current:

(1) South Carolina driver's license; or

(2) other form of identification containing a photograph issued by the Department of Motor Vehicles; ~~if he is not licensed to drive, or the written notification of registration provided for by Sections 7-5-125~~

~~and 7-5-180 if the notification has been signed by the elector.~~; or

(3) passport; or

(4) military identification containing a photograph issued by the federal government; or

(5) South Carolina voter registration card containing a photograph of the voter pursuant to Section 7-5-675.

~~If the elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail.~~

(B) After presentation of the required identification described in subsection (A), ~~his~~ the elector's name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. One of the managers also shall compare the photograph contained on the required identification with the person presenting himself to vote. The manager shall verify that the photograph is that of the person seeking to vote. The managers shall keep a poll list which must contain one column headed 'Names of Voters'. Before ~~any~~ a ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers.

(C)(1) If the elector cannot produce the identification as required in subsection (A), he may cast a provisional ballot that is counted only if the elector brings a valid and current photo identification to the county board of registration and elections before certification of the election by the county board of canvassers.

(2) If the manager disputes that the photograph contained on the required identification is the person presenting himself to vote, the elector may cast a provisional ballot. A determination of that provisional ballot must be made in accordance with Section 7-13-830.

(D)(1)(a) If an elector does not produce a valid and current photograph identification due to a religious objection to being photographed, he may complete an affidavit under penalty of perjury at the polling place and affirm that the elector: (i) is the same individual who personally appeared at the polling place; (ii) cast the provisional ballot on election day; and (iii) has a religious objection to being photographed. Upon completion of the affidavit, the elector may cast a provisional ballot. The affidavit must be submitted with the provisional ballot envelope and be filed with the county board of registration and elections before certification of the election by the county board of canvassers.

(b) If an elector does not produce a valid and current photograph identification because the elector suffers from a reasonable impediment that prevents the elector from obtaining photograph identification, he may complete an affidavit under the penalty of perjury at the polling place and affirm that the elector: (i) is the same individual who personally appeared at the polling place; (ii) cast the provisional ballot on election day; and (iii) the elector suffers from a reasonable impediment that prevents him from obtaining

photograph identification. The elector also shall list the impediment, unless otherwise prohibited by state or federal law. Upon completion of the affidavit, the elector may cast a provisional ballot. The affidavit must be submitted with the provisional ballot envelope and be filed with the county board of registration and elections before certification of the election by the county board of canvassers.

(2) If the county board of registration and elections determines that the voter was challenged only for the inability to provide proof of identification and the required affidavit is submitted, the county board of registration and elections shall find that the provisional ballot is valid unless the board has grounds to believe the affidavit is false.

(3) If the county board of registration and elections determines that the voter has been challenged for a cause other than the inability to provide proof of identification as required by subsection (A), the county board of registration and elections shall:

(a) note on the envelope containing the provisional ballot that the voter complied with the proof of identification requirement; and

(b) proceed to determine the validity of the remaining challenges before ruling on the validity of the provisional ballot."

(E) The purpose of the identification required pursuant to subsection (A) is to confirm the person presenting himself to vote is the elector on the poll list. Any address listed on the identification is not determinative of an elector's domicile for the purpose of voting. An elector's domicile for the purpose of voting is determined pursuant to the provisions of Section 7-1-25.

SECTION 6. "Section 56-1-3350. (A) Upon application by a person ~~ten~~ five years of age or older who is a resident of South Carolina, the department shall issue a special identification card as long as:

(1) the application is made on a form approved and furnished by the department; and

(2) the applicant presents to the person issuing the identification card a birth certificate or other evidence acceptable to the department of his name and date of birth.

(B)(1) The fee for the issuance of the special identification card is five dollars~~, and~~ for a person between the ages of five and sixteen years.

(2) An identification card must be free to a person aged seventeen years or older.

(C) The identification card expires five years from the date of issuance. ~~The renewal fee is also five dollars. Issuance and renewal fees are waived for indigent persons who are mentally ill, mentally retarded, homeless, or who are on public assistance as the sole source of income. As used in this section 'indigent' means a person who is qualified for legal assistance which is paid for with public funds. For purposes of this section, a homeless person is an individual who lacks a fixed and regular nighttime residence or an individual who has a primary nighttime residence that is:~~

~~(a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations, including congregated shelters and transitional housing;~~

~~(b) an institution that provides a temporary residence for individuals intended to be institutionalized; or~~

~~(c) a public or private place not designed for, or ordinarily used as, regular sleeping accommodations for human beings.~~

~~The term does not include any individual imprisoned or otherwise detained pursuant to an act of Congress. Annually, the director of a facility which provides care or shelter to homeless persons must certify this fact to the department. The department must maintain a list of facilities which are approved by the department, and only letters from the directors of these approved facilities are considered to comply with the provisions of this section. To have the issuance or renewal fee waived for an identification card, a homeless person must present a letter to the department from the director of a facility that provides care or shelter to homeless persons certifying that the person named in the letter is homeless. The letter may not be older than thirty days.~~

(D) Special identification cards issued to persons under the age of twenty-one must be marked, stamped, or printed to readily indicate that the person to whom the card is issued is under the age of twenty-one.

(E) The fees collected pursuant to this section must be credited to the Department of Transportation State Non-Federal Aid Highway Fund ~~as provided in the following schedule based on the actual date of receipt by the Department of Motor Vehicles:~~

~~Fees and Penalties Collected After~~	~~General Fund of the State~~	~~Department of Transportation~~
~~State Non-Federal Aid Highway Fund~~		
~~June 30, 2005~~	~~60 percent~~	~~40 percent~~
~~June 30, 2006~~	~~20 percent~~	~~80 percent~~
~~June 30, 2007~~	~~0 percent~~	~~100 percent~~."

SECTION 7. The State Elections Commission must establish an aggressive voter education program concerning the provisions contained in this legislation. The State Elections Commission must educate the public as follows:

(1) Post information concerning changes contained in this legislation in a conspicuous location at each county board of registration and elections, each satellite office, the State Elections Commission office, and their respective websites.

(2) Train poll managers and poll workers at their mandatory training sessions to answer questions by electors concerning the changes in this legislation.

(3) Require documentation describing the changes in this legislation to be disseminated by poll managers and poll workers at every election held following preclearance by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first.

(4) Coordinate with each county board of registration and elections so that at least two seminars are conducted in each county prior to December 15, 2011.

(5) Coordinate with local and service organizations to provide for additional informational seminars at a local or statewide level.

(6) Place an advertisement describing the changes in this legislation in South Carolina newspapers of general circulation by no later than December 15, 2011.

(7) Coordinate with local media outlets to disseminate information concerning the changes in this legislation.

(8) Notify each registered elector who does not have a South Carolina issued driver's license or identification card a notice of the provisions of this act by no later than December 1, 2011. This notice must include the requirements to vote absentee, early, or on election day and a description of voting by provisional ballot. It must also state the availability of a free South Carolina identification card pursuant to Section 56-1-3350.

In addition to the items above, the State Elections Commission may implement additional educational programs in its discretion.

SECTION 8. The State Election Commission is directed to create a list containing all registered voters of South Carolina who are otherwise qualified to vote but do not have a South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles as of December 1, 2011. The list must be made available to any registered voter upon request. The Department of Motor Vehicles must provide the list of persons with a South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles at no cost to the commission. The commission may charge a reasonable fee for the provision of the list in order to recover associated costs of producing the list.

SECTION 9. The General Assembly finds that all the provisions contained in this act relate to one subject as required by Article III, Section 17 of the South Carolina Constitution in that each provision relates directly to or in conjunction with other sections to the subject of election reform as stated in the title. The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in this act.

SECTION 10. Except for SECTION 4, the provisions of this act are effective upon approval by the Governor.

SECTION 11. SECTION 4 takes effect upon preclearance approval by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Election Commission's receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the State Election Commission from issuing voter registration cards by the methods allowed prior to the implementation of this SECTION.

/s/Sen. Glenn F. McConnell /s/Rep. Alan D. Clemmons

/s/Sen. George E. Campsen III /s/Rep. James H. Merrill

Sen. John L. Scott, Jr. /s/Rep. James H. Lucas

On Part of the Senate. On Part of the House.

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This web page was last updated on May 11, 2011 at 8:01 PM

South Carolina General Assembly
113th Session, 1999-2000

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Bill 373

~~Indicates Matter Stricken~~
Indicates New Matter

Current Status

Bill Number:	373
Ratification Number:	180
Act Number:	103
Type of Legislation:	General Bill GB
Introducing Body:	Senate
Introduced Date:	19990120
Primary Sponsor:	Holland
All Sponsors:	Holland
Drafted Document Number:	l:\s-jud\bills\holland\jud0025.dhh.doc
Date Bill Passed both Bodies:	19990603
Date of Last Amendment:	19990602
Governor's Action:	S
Date of Governor's Action:	19990630
Subject:	Elections, voter registration; elector qualifications, address change notification; voting machine, optical scan system

History

Body	Date	Action Description	Com	Leg Involved
------	19990721	Act No. A103		
------	19990630	Signed by Governor		
------	19990624	Ratified R180		
House	19990603	Concurred in Senate amendment, enrolled for ratification		
House	19990603	Debate adjourned on Senate Amendments		
Senate	19990602	House amendments amended, returned to House with amendment		
House	19990525	Read third time, returned to Senate with amendment		
House	19990520	Amended, read second time		
House	19990519	Committee report: Favorable with amendment	25 HJ	
House	19990223	Introduced, read first time, referred to Committee	25 HJ	
Senate	19990219	Read third time, sent to House		
Senate	19990218	Read second time, unanimous consent for third reading on Friday, 19990219		
Senate	19990217	Committee report: Favorable	11 SJ	

Senate	19990120	Introduced, read first time, referred to Committee	11 SJ

Versions of This Bill

Revised on February 17, 1999 - Word format
Revised on May 19, 1999 - Word format
Revised on May 20, 1999 - Word format
Revised on June 2, 1999 - Word format

View additional legislative information at the LPITS web site.

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

(A103, R180, S373)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 7-1-25 SO AS TO DEFINE THE WORD "RESIDENT" FOR VOTING PURPOSES; TO AMEND SECTION 7-5-230, RELATING TO BOARDS OF REGISTRATION, SO AS TO PROVIDE A PROCEDURE FOR THE CHALLENGING OF THE QUALIFICATIONS OF AN ELECTOR; BY ADDING SECTION 7-5-325 SO AS TO PROVIDE THAT WRITTEN NOTIFICATION OF A CHANGE OF ADDRESS IS DEEMED GIVEN UNDER OATH; TO AMEND SECTION 7-13-1330, RELATING TO THE APPROVAL OF VOTE RECORDERS BY THE STATE ELECTION COMMISSION, SO AS TO INCLUDE AN OPTICAL SCAN VOTING SYSTEM WITHIN THE MEANING OF VOTE RECORDER, PROVIDE THAT NO VOTE RECORDER OR OPTICAL SCAN VOTING SYSTEM MAY BE APPROVED FOR USE BY THE STATE UNLESS CERTIFIED BY AN ACCREDITED NATIONAL TESTING AUTHORITY AND THE STATE ELECTION COMMISSION AS MEETING CERTAIN STANDARDS, PROVIDE A PROCEDURE TO FOLLOW FOR A PERSON OR COMPANY SEEKING APPROVAL OF A VOTE RECORDER OR OPTICAL SCAN SYSTEM, PROVIDE FOR A PROCEDURE FOR THE DECERTIFICATION OF A VOTE RECORDER OR OPTICAL SCAN VOTING SYSTEM BY THE COMMISSION; TO AMEND SECTION 7-13-1340, RELATING TO THE REQUIREMENTS FOR VOTE RECORDERS, SO AS TO REQUIRE A VOTING SYSTEM TO BE ABLE TO ELECTRONICALLY TRANSMIT VOTE TOTALS FOR ALL ELECTIONS TO THE STATE ELECTION COMMISSION; TO AMEND SECTION 7-13-1620, RELATING TO THE EXAMINATION AND APPROVAL OF VOTING MACHINES BY THE BOARD OF STATE CANVASSERS, SO AS TO ESTABLISH A PROCEDURE FOR THE APPROVAL OF A VOTING MACHINE BY THE STATE ELECTION COMMISSION BEFORE IT MAY BE USED IN AN ELECTION AND PROVIDE FOR A PROCEDURE FOR THE DECERTIFICATION OF A VOTING MACHINE; TO AMEND SECTION 7-13-1640, RELATING TO VOTING MACHINE REQUIREMENTS, SO AS TO REQUIRE A VOTING SYSTEM TO BE ABLE TO ELECTRONICALLY TRANSMIT VOTE TOTALS FOR ALL ELECTIONS TO THE STATE ELECTION COMMISSION; AND TO REPEAL SECTION 7-13-1630 RELATING TO THE EMPLOYMENT OF EXPERTS TO ASSIST IN EXAMINATION OF A VOTING MACHINE.

Be it enacted by the General Assembly of the State of South Carolina:

Definition, resident

SECTION 1. The 1976 Code is amended by adding:

"Section 7-1-25. (A) A person's residence is his domicile. 'Domicile' means a person's fixed home where he has an intention of returning when he is absent. A person has only one domicile.

(B) For voting purposes, a person has changed his domicile if he (1) has abandoned his prior home and (2) has established a new home, has a present intention to make that place his home, and has no present intention to leave that place.

(C) For voting purposes, a spouse may establish a separate domicile."

Procedure for challenging qualifications

SECTION 2. Section 7-5-230 of the 1976 Code is amended to read:

"Section 7-5-230. The boards of registration to be appointed under Section 7-5-10 shall be the judges of the legal qualifications of all applicants for registration. The board is empowered to require proof of these qualifications as it considers necessary.

Once a person is registered, challenges of the qualifications of any elector, except for challenges issued at the polls pursuant to Sections 7-13-810, 7-13-820, and 7-15-420 must be made in writing to the board of registration in the county of registration. The board must, within ten days following the challenge and after first giving notice to the elector and the challenger, hold a hearing, accept evidence, and rule upon whether the elector meets or fails to meet the qualifications set forth in Section 7-5-120.

When a challenge is made regarding the residence of an elector, the board may consider the following proof to establish residence including, but not limited to, income tax returns; real estate interests; mailing address; address on driver's license; official papers and documents requiring the statement of residence address; automobile registration; checking and savings accounts; past voting record; membership in clubs and organizations; location of personal property; and the elector's statements as to his intent.

Any person denied registration or restoration of his name on the registration books shall have the right of appeal from the decision of the board of registration denying him registration or such restoration to the court of common pleas of the county or any judge thereof and subsequently to the Supreme Court."

Notification

SECTION 3. The 1976 Code is amended by adding:

"Section 7-5-325. Any change of address submitted by an elector for registration or voting purposes as provided by Sections 7-5-320(D), 7-5-330(F)(2)(a), and 7-5-440, and any other written notification of change of address signed by an elector are considered to be given under oath. An elector convicted of fraudulently providing such change of address is guilty of violating Section 7-25-10 and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both."

Approval of vote recorder system or optical scan system

SECTION 4. Section 7-13-1330 of the 1976 Code is amended to read:

"Section 7-13-1330. (A) Before any kind of vote recorder system, including an optical scan voting system, is used at any election, it shall be approved by the State Election Commission which shall examine the vote recorder and shall make and file in the commission's office a report, attested by the signature of the executive director, stating whether, in the opinion of the commission, the kind of vote recorder so examined can be accurately and efficiently used by electors at elections, as provided by law. No vote recorder or optical scan voting system may be approved for use in the State unless certified by an Independent Testing Authority (ITA) accredited by the National Association of State Election Directors and the State Election Commission as meeting or exceeding the minimum requirements of the Federal Election Commission's national voting system standards. If this report states that the vote recorder can be so used, the recorder shall be considered approved and vote recorders of its kind may be adopted for use at elections, as herein provided.

(B) No kind of vote recorder not approved pursuant to this section shall be used at any election and if, upon the reexamination of any type vote recorder previously approved, it appears that the vote recorder so reexamined can no longer be accurately and efficiently used by electors at elections as provided by law, the approval of the vote recorder must immediately be revoked by the State Election Commission, and no such type vote recorder shall thereafter be purchased for use or used in this State.

(C) If a vote recorder, including an optical scan voting system, which was approved for use before July 1, 1999, is improved or otherwise changed in a way since its approval that does not impair its accuracy, efficiency, or capacity, the vote recorder may be used in elections. However, if the software, hardware, or firmware of the system is improved or otherwise changed, the system must comply with the requirements of subsection (A).

(D) Any person or company who requests an examination of any type of vote recorder or optical scan voting system shall pay a nonrefundable examination fee of one thousand dollars for a new voting system and a nonrefundable examination fee of five hundred dollars for an upgrade to any existing system to the State Election Commission. The State Election Commission may at any time, in its discretion, reexamine any vote recorder or optical scan voting system when evidence is presented to the commission that the accuracy or the ability of the system to be used satisfactorily in the conduct of elections is in question.

(E) Any person or company who seeks approval for any vote recorder or optical scan voting system in this State must file with the State Election Commission a list of all states or jurisdictions in which the system has been approved for use. This list must state how long the system has been used in the state; contain the name, address, and telephone number of that state or jurisdiction's chief election official; and must disclose any reports compiled by state or local government concerning the performance of the system. The vendor is responsible for filing this information on an ongoing basis.

(F) Any person or company who seeks approval for any vote recorder or optical scan voting system must file with the State Election Commission copies of all contracts and maintenance agreements used in connection with the sale of the voting system. All changes to standard contracts and maintenance agreements must be filed with the State Election Commission.

(G) Any person or company who seeks approval for any vote recorder or optical scan voting system must conduct, under the supervision of the State Election Commission and any county election commission, a field test for any new voting system, as part of the certification process. The field test shall involve South Carolina voters and election officials and must be conducted as part of a scheduled primary, general, or special election. This test must be held in two or more precincts, and all costs relating to the voting system must be borne by the vendor. The test must be designed to gauge voter reaction to the system, problems that voters have with the system, and the number of voting units

required for the efficient operation of an election. The test must also demonstrate the accuracy of votes cast and reported on the system.

(H) Before any vote recorder or optical scan voting system approved after July 1, 1999, may be used in elections in the State, all source codes for the system must be placed in escrow by the manufacturer, at the manufacturer's expense, with the approved software ITA. These source codes must be available to the State Election Commission in the event that the company goes out of business, pursuant to court order, or in the event that the State Election Commission determines that an examination of these source codes is necessary. It is the responsibility of the manufacturer to place all updates of these source codes in escrow and to notify the State Election Commission that this requirement has been met.

(I) After a vote recorder or optical scan voting system is approved, an improvement or change in the system must be submitted to the State Election Commission for approval pursuant to this section; however, this requirement does not apply to the technical capability of a general purpose computer or reader to electronically count and record votes or to a printer to accurately reproduce vote totals.

(J) If the State Election Commission determines that a vote recorder or optical scan voting system that was approved no longer meets the requirements set forth in subsections (A) and (C) or Section 7-13-1340, the commission may decertify that system. A decertified system shall not be used in elections unless the system is reapproved by the commission under subsections (A) and (C).

(K) Neither a member of the State Election Commission, any county election commission or custodian, nor a member of a county governing body shall have any pecuniary interest in any vote recorder or in the manufacture or sale of the vote recorder."

Systems must have capacity to transmit totals electronically

SECTION 5. Section 7-13-1340 of the 1976 Code is amended by adding an appropriately numbered subsection to read:

"( ) If approved after July 1, 1999, or if an upgrade in software, hardware, or firmware is submitted for approval as required by Section 7-13-1330(C), the voting system must be able to electronically transmit vote totals for all elections to the State Election Commission in a format and time frame specified by the commission."

Procedure for approval of voting machine

SECTION 6. Section 7-13-1620 of the 1976 Code is amended to read:

"Section 7-13-1620. (A) Before any kind of voting machine, including an electronic voting machine, is used at any election, it must be approved by the State Election Commission which shall examine the voting machine and make and file in the commission's office a report, attested to by the signature of the commission's executive director, stating whether, in the commission's opinion, the kind of voting machine so examined can be accurately and efficiently used by electors at elections, as provided by law. No voting machine may be approved for use in the State unless certified by an Independent Testing Authority (ITA) accredited by the National Association of State Election Directors and the State Election Commission as meeting or exceeding the minimum requirements of the Federal Election Commission's national voting system standards.

(B) When a voting machine has been approved for use before July 1, 1999, it may be used in elections.

However, if the system's software or firmware is improved or changed, the system must comply with the requirements of subsection (A).

(C) Any person or company who requests an examination of any type of voting machine must pay a nonrefundable examination fee of one thousand dollars for a new voting system. A nonrefundable examination fee of five hundred dollars must be paid for an upgrade to any existing system. The State Election Commission may reexamine any voting machine when evidence is presented to the commission that the accuracy or the ability of the machine to be used satisfactorily in the conduct of elections is in question.

(D) Any person or company who seeks approval for any type of voting machine in this State must file with the State Election Commission a list of all states or jurisdictions in which that voting machine has been approved for use. This list must state how long the machine has been used in the state; contain the name, address, and telephone number of that state or jurisdiction's chief election official; and disclose any reports compiled by state or local government concerning the performance of the machine. The vendor is responsible for filing this information on an ongoing basis.

(E) Any person or individual who seeks approval for any type of voting machine must file with the State Election Commission copies of all contracts and maintenance agreements used in connection with the sale of the voting machine. All changes to standard contracts and maintenance agreements must be filed with the State Election Commission.

(F) Any person or company who seeks approval for any voting machine must conduct, under the supervision of the State Election Commission and any county election commission, a field test for any new voting machine, as part of the certification process. The field test shall involve South Carolina voters and election officials and must be conducted as part of a scheduled primary, general, or special election. This test must be held in two or more precincts, and all costs relating to the use of the voting machine must be borne by the vendor. The test must be designed to gauge voter reaction to the machine, problems that voters have with the machine, and the number of units required for the efficient operation of an election. The test must also demonstrate the accuracy of votes reported on the machine.

(G) Before any voting machine, approved after July 1, 1999, may be used in elections in the State, all source codes for the system must be placed in escrow by the manufacturer at the manufacturer's expense with the approved software ITA. These source codes must be available to the State Election Commission in the event that the company goes out of business, pursuant to court order, or in the event that the State Election Commission determines that an examination of these source codes is necessary. It is the responsibility of the manufacturer to place all updates of these source codes in escrow and to notify the State Election Commission that this requirement had been met.

(H) After a voting machine is approved, an improvement or change in the machine must be submitted to the State Election Commission for approval pursuant to this section; however, this requirement does not apply to the technical capability of a general purpose computer, reader, or printer.

(I) If the State Election Commission determines that a voting machine that was approved no longer meets the requirements of subsections (A) and (B) or Section 7-13-1640, the commission may decertify that machine. A decertified machine shall not be used in an election unless it is reapproved by the commission under subsections (A) and (B).

(J) No member of the State Election Commission, county election commission, custodian, or member of a county governing body may have any pecuniary interest in any voting machine or in the manufacture or sale of any voting machine."

Systems must have capacity to transmit totals electronically

SECTION 7. Section 7-13-1640 of the 1976 Code is amended by adding an appropriately numbered item to read:

"( ) If approved after July 1, 1999, or if an upgrade in software, hardware, or firmware is submitted for approval as required by Section 7-13-1620(B), the voting system must be able to electronically transmit vote totals for all elections to the State Election Commission in a format and time frame specified by the commission."

Repeal

SECTION 8. Section 7-13-1630 of the 1976 Code is repealed.

Time effective

SECTION 9. This act takes effect upon approval by the Governor.

Ratified the 24th day of June, 1999.

Approved the 30th day of June, 1999.

This web page was last updated on Wednesday, December 9, 2009 at 9:05 A.M.

U.S. Department of Justice

Civil Rights Division

Voting Section
P.O. Box 66128
Washington, DC 20035-6128

R180

JDR:VLO:AS:emr
DJ 166-012-3
1999-2108

OCT 4

October 1, 1999

C. Havird Jones, Jr., Esq.
Senior Assistant Attorney General
Civil Division
P.O. Box 11549
Columbia, South Carolina 29211-1549

Dear Mr. Jones:

This refers to Act No. 103 (1999), which defines "resident" for voting purposes; provides procedures for the written notices of change of address and for challenging qualifications of electors; and establishes standards and procedures for approval and certification of vote recorder and optical scan voting systems for the State of South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 2, 1999.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

South Carolina General Assembly
107th Session, 1987-1988

Bill 745

Current Status

Bill Number:	745
Ratification Number:	571
Act Number	507
Introducing Body:	Senate
Subject:	Written notification of registration

View additional legislative information at the LPITS web site.

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

(A507, R571, S745)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 7-5-125 SO AS TO PROVIDE FOR WRITTEN NOTIFICATION OF REGISTRATION TO VOTE; AND TO AMEND SECTION 7-13-710, RELATING TO PROOF OF THE RIGHT TO VOTE AND THE POLL LIST, SO AS TO REVISE THE VOTER IDENTIFICATION REQUIREMENTS BY PROVIDING FOR PROOF BY WRITTEN REGISTRATION NOTIFICATION.

Be it enacted by the General Assembly of the State of South Carolina:

Written notification of registration

SECTION 1. Article 3 of Chapter 5 of Title 7 of the 1976 Code is amended by adding:

"Section 7-5-125. Any person who applies for registration to vote and is found to be qualified by the county board of registration to whom application is made must be issued a written notification of registration. This notification must be on a form prescribed and provided by the State Election Commission."

Voter identification

SECTION 2. Section 7-13-710 of the 1976 Code is amended to read:

"Section 7-13-710. When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the South Carolina Department of Highways and Public Transportation (SCDHPT), if he is not licensed to drive, or the written notification of registration provided for by Sections 7-5-125 and 7-5-180 if the notification has been signed by the elector. If the elector loses or defaces his registration notification, he may obtain a

duplicate notification from his county board of registration upon request in person, or by telephone or mail. After presentation of the required identification, his name must be checked by one of the managers

on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. The managers shall keep a poll list which must contain one column headed 'Names of Voters'. Before any ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

U.S. Department of Justice

Civil Rights Division

WBR:MAP:NG:dvs
DJ 166-012-3
W1894

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

July 18, 1988

C. Havird Jones, Jr.
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to Act No. R571 (1988) which provides for written notification of registration to vote in the State of South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on May 19, 1988.

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: Mark A. Posner for
Gerald W. Jones
Chief, Voting Section

RECEIVED
S. C. ATTORNEY GENERAL
DATE 7-22-88

South Carolina General Assembly
111th Session, 1995-1996

Bill 1162

Current Status

Bill Number:	1162
Ratification Number:	459
Act Number:	459
Type of Legislation:	General Bill GB
Introducing Body:	Senate
Introduced Date:	19960221
Primary Sponsor:	Martin
All Sponsors:	Martin
Drafted Document Number:	res9923
Date Bill Passed both Bodies:	19960521
Date of Last Amendment:	19960514
Governor's Action:	S
Date of Governor's Action:	19960605
Subject:	Dealer license plates, county economic development employee

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History

Body	Date	Action Description	Com	Leg Involved
------	19960715	Act No. A459		
------	19960605	Signed by Governor		
------	19960530	Ratified R459		
Senate	19960521	Concurred in House amendment, enrolled for ratification		
House	19960515	Read third time, returned to Senate with amendment		
House	19960514	Amended, read second time		
House	19960509	Committee report: Favorable with amendment	21	HEPW
House	19960402	Introduced, read first time, referred to Committee	21	HEPW
Senate	19960328	Read third time, sent to House		
Senate	19960327	Amended, read second time		
Senate	19960326	Committee report: Favorable with amendment	15	ST
Senate	19960221	Introduced, read first time, referred to Committee	15	ST

View additional legislative information at the LPITS web site.

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

(A459, R459, S1162)

AN ACT TO AMEND SECTIONS 7-13-710, 8-11-10, 12-36-1710, 12-37-220, 12-37-2660, 12-37-2725, 12-37-2727, 12-43-220, 12-43-300, 12-45-70, 12-49-225, 12-49-271, 12-49-310, 12-54-240, 14-7-130, 15-9-350, 15-9-360, 15-9-370, 23-31-140, 24-3-110, 31-17-320, 31-17-360, 31-17-380, 31-17-410, 36-9-307, 36-9-319, 38-73-455, 38-77-113, 38-77-340, 43-5-620, 44-43-30, 44-43-70, 56-1-10, 56-1-270, 56-1-290, 56-1-300, 56-1-310, 56-1-320, 56-1-330, 56-1-340, 56-1-350, 56-1-360, 56-1-365, 56-1-380, 56-1-410, 56-1-420, 56-1-460, 56-1-475, 56-1-510, 56-1-540, 56-1-630, 56-1-740, 56-1-770, 56-1-790, 56-1-810, 56-1-850, 56-1-1030, 56-1-1090, 56-1-1130, 56-1-1320, 56-1-1340, 56-1-1730, 56-1-1760, 56-1-2050, 56-1-2110, 56-1-2140, 56-3-360, 56-3-665, 56-3-2340, 56-5-6230, 56-10-10, 56-10-20, 56-10-40, 56-10-220, 56-15-560, AND 56-29-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO VOTING PROVISIONS, BUSINESS HOURS FOR DEPARTMENTS OF STATE GOVERNMENT, EXCISE TAXES ON CERTAIN MOTOR VEHICLE SALES, EXEMPTION FROM TAXES, THE LISTING OF LICENSE REGISTRATION APPLICATIONS, THE CANCELLATION OF CERTAIN LICENSE PLATE AND REGISTRATION CERTIFICATES, THE RETROACTIVE APPLICATION OF SECTION 12-37-2750, THE EQUALIZATION AND REASSESSMENT OF TAXES, THE TIME FOR PAYING AND COLLECTING TAXES, THE ENFORCED COLLECTION OF TAXES, THE REQUIREMENT AS TO COMPLIANCE WITH THE DEPARTMENT OF REVENUE AND TAXATION REGULATIONS, THE PREPARATION OF JURY LISTS, SUMMONS, PUBLICATION AND SERVICE, THE PURCHASE OF A PISTOL, MANUFACTURING LICENSE PLATES, MOBILE HOME LICENSING REQUIREMENTS, MOBILE HOME MOVING PERMITS, MOVING MOBILE HOMES, OBTAINING A MOBILE HOME CERTIFICATE OF TITLE, MOBILE HOME BUYER PROTECTION, SALE OF SECURED PROPERTY WITHOUT CONSENT, EXCEPTIONS TO CHANGING THE BASE RATE FOR AUTOMOBILE INSURANCE, CONDITIONS FOR WAIVING THE LICENSE REINSTATEMENT FEE, EXCLUSIONS FROM AUTOMOBILE INSURANCE COVERAGE, PROVIDING CERTAIN MOTOR VEHICLE INFORMATION TO THE DEPARTMENT OF SOCIAL SERVICES, DISTRIBUTING FORMS AUTHORIZING ORGAN DONATION UPON LICENSE RENEWAL, RECRUITMENT FOR ORGAN DONORS AND DISSEMINATION OF INFORMATION, DRIVER'S LICENSES, THE SUSPENSION OF THE REGISTRATION OF VEHICLES REPORTED AS STOLEN, THE REQUIREMENT OF PROOF OF PAYMENT OF THE FEDERAL USE TAX, THE ISSUANCE OF FIRST-TIME REGISTRATION AND LICENSE PLATES, PAYMENT OF A FINE OR FORFEITURE OF A BOND FOR A TRAFFIC VIOLATION, MOTOR VEHICLE REGISTRATION AND FINANCIAL SECURITY, THE FULFILLMENT OF WARRANTY AGREEMENTS AND DEFINITIONS RELATING TO THE MOTOR VEHICLE CHOP SHOP, STOLEN, AND ALTERED PROPERTY ACT, SO AS TO DEVOLVE CERTAIN FUNCTIONS OF THE DEPARTMENT OF REVENUE AND TAXATION MOTOR VEHICLE DIVISION UPON THE DEPARTMENT OF PUBLIC SAFETY, AND TO REVISE CERTAIN OTHER DEPARTMENTAL REFERENCES; TO AMEND SECTION 56-3-2320, AS AMENDED, RELATING TO RESTRICTIONS ON THE USE OF DEALER LICENSE PLATES, SO AS TO PROVIDE THAT A DEALER LICENSE PLATE IS ALLOWED ON A MOTOR VEHICLE LOANED TO AN ECONOMIC DEVELOPMENT ENTITY; TO AMEND SECTION 1-11-310, AS AMENDED, RELATING TO THE DIVISION OF MOTOR VEHICLE MANAGEMENT'S ACQUISITION AND DISPOSITION OF VEHICLES, SO AS TO MAKE A TECHNICAL CHANGE; TO AMEND SECTION 1-30-90, AS AMENDED, RELATING TO THE DEPARTMENT OF PUBLIC SAFETY, SO AS TO REVISE ITS AUTHORITY; TO AMEND SECTION 1-30-95, AS AMENDED, RELATING TO THE DEPARTMENT OF REVENUE AND TAXATION, SO AS TO REVISE ITS AUTHORITY; TO AMEND SECTION 11-35-710, AS AMENDED, RELATING TO EXEMPTIONS TO THE PROCUREMENT CODE, SO AS TO REVISE EXEMPTED ITEMS THE DEPARTMENT OF

PUBLIC SAFETY MAY PROCURE; TO AMEND SECTIONS 12-4-10 AND 12-4-15, BOTH AS AMENDED, RELATING TO THE CREATION OF THE DEPARTMENT OF REVENUE AND TAXATION, SO AS TO REVISE ITS AUTHORITY; TO AMEND SECTION 12-37-2650, AS AMENDED, RELATING TO THE ISSUANCE OF TAX NOTICES AND PAID RECEIPTS, SO AS TO REVISE THE PROCESS OF ISSUING NOTICES AND RECEIPTS AND TO TRANSFER CERTAIN AUTHORITY FROM THE DEPARTMENT OF REVENUE AND TAXATION TO THE DEPARTMENT OF PUBLIC SAFETY; TO AMEND SECTION 12-49-290, AS AMENDED, RELATING TO THE RIGHTS OF MORTGAGEES AND OTHERS, SO AS TO REVISE THE AUTHORITY OF THE DEPARTMENT OF REVENUE AND TAXATION; TO AMEND SECTION 12-49-330, AS AMENDED, RELATING TO THE RIGHTS OF A LIENHOLDER WITH A SECURITY INTEREST FILED WITH THE DEPARTMENT OF REVENUE AND TAXATION MOTOR VEHICLE DIVISION, SO AS TO REVISE THE AUTHORITY OF THIS AGENCY; TO AMEND SECTION 16-17-680, AS AMENDED, RELATING TO THE UNLAWFUL PURCHASE OR TRANSPORTATION OF CERTAIN ITEMS, SO AS TO MAKE A TECHNICAL CHANGE; TO AMEND SECTION 17-5-130, AS AMENDED, RELATING TO QUALIFICATIONS FOR CORONER, SO AS TO TRANSFER CERTAIN AUTHORITY FROM THE LAW ENFORCEMENT TRAINING COUNCIL TO THE DEPARTMENT OF PUBLIC SAFETY; TO AMEND SECTION 19-5-30, AS AMENDED, RELATING TO THE ADMISSIBILITY OF CERTAIN COPIES OF MOTOR VEHICLE RECORDS, SO AS TO REVISE THE TYPES OF COPIES THAT ARE ADMISSIBLE AND TO TRANSFER CERTAIN AUTHORITY TO THE DEPARTMENT OF PUBLIC SAFETY; TO AMEND SECTION 20-7-944, AS AMENDED, RELATING TO INFORMATION TO BE PROVIDED ON VARIOUS LICENSES TO BE USED TO COLLECT CHILD SUPPORT OBLIGATIONS, SO AS TO REVISE THE INFORMATION THAT MUST BE PROVIDED; TO AMEND SECTION 20-7-945, AS AMENDED, RELATING TO THE REVOCATION OF THE LICENSE OF CERTAIN LICENSES, SO AS TO REVISE THE REVOCATION REVIEW PROCEDURE AND TO PROVIDE A PROCEDURE TO INDEMNIFY A LICENSING ENTITY FROM CONSEQUENCES THAT MAY RESULT FROM THE REVOCATION OF A LICENSE; TO AMEND SECTIONS 23-6-20 AND 23-6-30, BOTH AS AMENDED, RELATING TO THE ESTABLISHMENT OF THE DEPARTMENT OF PUBLIC SAFETY, SO AS TO REVISE ITS DUTIES AND POWERS; TO AMEND SECTION 23-6-50, AS AMENDED, RELATING TO THE DEPARTMENT OF PUBLIC SAFETY'S ANNUAL AUDIT, SO AS TO PROVIDE THAT CERTAIN REVENUES GENERATED BY THE DEPARTMENT DURING A PRIOR FISCAL YEAR MAY BE CARRIED FORWARD TO THE CURRENT FISCAL YEAR; TO ADD SECTIONS 23-6-90 AND 23-6-145 SO AS TO PROVIDE THAT THE DEPARTMENT OF PUBLIC SAFETY SHALL PROVIDE SECURITY FOR CERTAIN GOVERNMENTAL FACILITIES AND TO PROVIDE THAT CERTAIN DEPARTMENT OFFICERS MAY STOP CERTAIN MOTOR VEHICLES AND REQUIRE THE DRIVER TO PRODUCE CERTAIN INFORMATION; TO AMEND SECTION 26-6-300, AS AMENDED, RELATING TO THE CREATION OF THE DIVISION OF MOTOR VEHICLE RECORDS AND VEHICLE INSPECTIONS, SO AS TO CHANGE ITS NAME AND REVISE ITS RESPONSIBILITIES; TO AMEND SECTION 23-11-110, AS AMENDED, RELATING TO QUALIFICATIONS OF SHERIFFS, SO AS TO REVISE CERTAIN QUALIFICATIONS; TO AMEND CHAPTER 25 OF TITLE 23, AS AMENDED, RELATING TO LAW ENFORCEMENT OFFICERS HALL OF FAME, SO AS TO TRANSFER ADMINISTRATION OF THE HALL OF FAME FROM A COMMITTEE TO THE DEPARTMENT OF PUBLIC SAFETY, TO MAKE THE COMMITTEE ADVISORY, TO CHANGE CHAIRMANSHIP OF THE COMMITTEE, TO CLARIFY REFERENCES, TO DIRECT THE COMMITTEE TO PROVIDE TOURS AND PROGRAMS, AND TO REMOVE THE COMMITTEE'S AUTHORITY TO EMPLOY STAFF; TO AMEND SECTIONS 23-28-20, AS AMENDED, 23-28-30, 23-28-40, 23-28-60, 23-28-80, AND 23-28-90, ALL RELATING TO RESERVE LAW ENFORCEMENT OFFICER TRAINING, SO

AS TO TRANSFER VARIOUS DUTIES TO THE DEPARTMENT OF PUBLIC SAFETY AND ITS CRIMINAL JUSTICE ACADEMY DIVISION, AND TO DELETE OBSOLETE REFERENCES; TO AMEND SECTION 23-47-20, RELATING TO 911 SYSTEM REQUIREMENTS, SO AS TO TRANSFER OPERATOR TRAINING DUTIES TO THE CRIMINAL JUSTICE ACADEMY DIVISION OF THE DEPARTMENT OF PUBLIC SAFETY, AND TO DELETE OBSOLETE REFERENCES; TO AMEND SECTION 31-17-340, AS AMENDED, RELATING TO MOBILE HOME LICENSES, SO AS TO CLARIFY REFERENCES; TO AMEND SECTIONS 38-55-530 AND 38-55-570, BOTH AS AMENDED, BOTH RELATING TO INSURANCE FRAUD AND REPORTING, SO AS TO MAKE CERTAIN TECHNICAL CHANGES; TO AMEND SECTION 38-77-1120, AS AMENDED, RELATING TO DEFINITIONS FOR MOTOR VEHICLE THEFT AND FRAUD REPORTING, SO AS TO DELETE REFERENCES TO THE DIVISION OF THE STATE HIGHWAY PATROL; TO AMEND SECTION 56-1-40, AS AMENDED, RELATING TO PERSONS PROHIBITED FROM OBTAINING A DRIVER'S LICENSE, SO AS TO CLARIFY PROVISIONS PERTAINING TO NONRESIDENTS; TO AMEND SECTION 56-1-80, AS AMENDED, RELATING TO PROCEDURES FOR OBTAINING A DRIVER'S LICENSE, SO AS TO TRANSFER CERTAIN DUTIES FROM THE DEPARTMENT OF REVENUE AND TAXATION TO THE DEPARTMENT OF PUBLIC SERVICE, TO REVISE THESE PROCEDURES, AND TO DELETE PENALTIES; TO AMEND SECTION 56-1-90, AS AMENDED, RELATING TO IDENTIFICATION REQUIRED TO OBTAIN A DRIVER'S LICENSE, SO AS TO TRANSFER CERTAIN DUTIES FROM THE DEPARTMENT OF REVENUE AND TAXATION TO THE DEPARTMENT OF PUBLIC SAFETY AND TO CLARIFY DOCUMENTATION REQUIRED; TO AMEND SECTION 56-1-130, AS AMENDED, RELATING TO DRIVER'S LICENSE EXAMINATIONS, FEES, AND CLASSES OF LICENSES, SO AS TO PROVIDE FOR AN "APPROPRIATE" RATHER THAN A FIXED FEE AND TO REVISE THE WEIGHT OF VEHICLES FOR CERTAIN LICENSE CLASSES; TO ADD SECTION 56-1-141, SO AS TO PROVIDE THAT A PASSING GRADE FROM A QUALIFIED EDUCATION PROGRAM FROM A SECONDARY SCHOOL IS CERTIFICATION THAT DEPARTMENT STANDARDS HAVE BEEN MET; TO AMEND SECTION 56-1-210, AS AMENDED, RELATING TO EXPIRATION AND RENEWAL OF DRIVER'S LICENSES, SO AS TO AUTHORIZE RENEWAL BY MAIL OF A DIGITIZED LICENSE; TO AMEND SECTION 56-1-280, AS AMENDED, RELATING TO MANDATORY SUSPENSION AND REVOCATION OF DRIVER'S LICENSES, SO AS TO DELETE PROVISIONS AUTHORIZING THE DEPARTMENT TO REVOKE OR SUSPEND LICENSES FOR CAUSES REQUIRED BY OTHER LAWS OF THIS STATE; TO ADD SECTION 56-1-285 SO AS TO AUTHORIZE THE DEPARTMENT TO REVOKE OR REFUSE TO RENEW A LICENSE FOR FAILURE TO PAY A FEE OR TAX; TO ADD SECTION 56-1-288 SO AS TO AUTHORIZE THE DEPARTMENT TO GARNISH AN INCOME TAX REFUND IN LIEU OF REVOCATION FOR FAILURE TO COMPLY WITH FINANCIAL RESPONSIBILITY; TO AMEND SECTION 56-1-370, RELATING TO THE RIGHT OF A LICENSEE TO REQUEST A REVIEW AFTER NOTIFICATION OF A SUSPENSION OR OTHER ACTION BY THE DEPARTMENT, SO AS TO CHANGE A REFERENCE FROM COUNTY TO JUDICIAL CIRCUIT AND CLARIFY OTHER REFERENCES; TO AMEND SECTION 56-1-390, RELATING TO THE FEE FOR REINSTATEMENT OF THE LICENSE, SO AS TO CLARIFY A REFERENCE AND AUTHORIZE THE DIRECTOR OR HIS DESIGNEE TO WAIVE OR RETURN THE REINSTATEMENT FEE UNDER CERTAIN CONDITIONS; TO AMEND SECTION 56-1-400, RELATING TO THE REQUIREMENT THAT THE DEPARTMENT OF PUBLIC SAFETY, UPON SUSPENDING OR REVOKING A LICENSE, REQUIRE THAT THE LICENSE BE SURRENDERED TO THE DEPARTMENT, SO AS TO CLARIFY REFERENCES AND DELETE REFERENCES TO THE SURRENDERING OF THE LICENSE TO THE DEPARTMENT OF REVENUE AND TAXATION AND THE NOTIFICATION

REQUIREMENTS; TO AMEND SECTION 56-1-463, RELATING TO THE REQUIREMENT THAT SECTION 56-1-560 DOES NOT APPLY IF AND WHEN THE PROPOSED SUSPENSION IS BASED SOLELY ON THE LACK OF NOTICE BEING GIVEN TO THE DEPARTMENT, SO AS TO CLARIFY THE REFERENCE AND SPECIFY THAT FINES OR PENALTIES ARE DUE TO THE COURT; TO ADD SECTION 56-1-478 SO AS TO AUTHORIZE THE DEPARTMENT TO ENTER INTO RECIPROCAL AGREEMENTS WITH OTHER STATES AND POLITICAL SUBDIVISIONS FOR THE COLLECTION OF FINES, FEES, OR OTHER COSTS WHICH RESULTED IN THE REVOCATION OF A PERSON'S DRIVING PRIVILEGES OF A PERSON APPLYING FOR A DRIVER'S LICENSE OR RENEWING A DRIVER'S LICENSE IN THIS STATE; TO AMEND SECTION 56-1-640 TO CHANGE A REFERENCE FROM THE LICENSING AUTHORITY OF THE PARTY STATE TO THE DEPARTMENT AND FROM A REFERENCE TO JURISDICTION TO SOUTH CAROLINA; TO AMEND SECTION 56-1-650, RELATING TO THE REPORTING OF CERTAIN VIOLATIONS BY THE LICENSING AUTHORITY IN THE HOME STATE, SO AS TO DELETE REFERENCES TO LICENSING AUTHORITY AND SUBSTITUTE THE REQUIREMENT THAT A STATE THAT IS A MEMBER OF THE DRIVER'S LICENSE COMPACT SHALL REPORT TO ANOTHER MEMBER STATE OF THE COMPACT A CONVICTION FOR CERTAIN CRIMES, CLARIFY DESCRIPTIONS OF CERTAIN CRIMES, PROVIDE THAT IF THE VIOLATIONS LISTED IN THIS SECTION ARE NOT PRECISELY THE SAME WORDS USED BY A MEMBER STATE, THE MEMBER STATE SHALL CONSTRUE THE DESCRIPTION TO APPLY TO OFFENSES OF THE MEMBER STATE THAT ARE SUBSTANTIALLY SIMILAR TO THE ONES DESCRIBED, REQUIRE THAT A STATE AS A MEMBER OF THE COMPACT SHALL REPORT TO ANOTHER MEMBER STATE OF THE COMPACT A CONVICTION WHERE ANY OTHER OFFENSE OR ANY OTHER INFORMATION CONCERNING CONVICTIONS THAT THE MEMBER STATES AGREE TO REPORT, PROVIDE THAT FOR A CONVICTION THAT IS NOT REQUIRED TO BE REPORTED UNDER THIS SECTION, THE PROVISIONS OF SECTION 56-1-320 SHALL GOVERN THE EFFECT OF THE REPORT CONVICTION IN THIS STATE AND PROVIDE THAT FOR A CONVICTION THAT IS NOT REQUIRED TO BE REPORTED UNDER THIS SECTION NOTICE OF THE CONVICTION MUST BE RECEIVED BY THE DEPARTMENT FOR PURPOSES OF SUSPENSION OR REVOCATION WITHIN ONE YEAR OF THE DATE OF CONVICTION; TO AMEND SECTION 56-1-670, SO AS TO CLARIFY REFERENCES TO THE DEPARTMENT AND TO SOUTH CAROLINA; TO AMEND SECTION 56-1-680, SO AS TO CHANGE REFERENCES FROM THE HEAD OF THE LICENSING AUTHORITY OF EACH PARTY STATE TO THE DIRECTOR OR HIS DESIGNEE OF THE DEPARTMENT FOR PURPOSES OF FORMULATING NECESSARY PROCEDURES FOR THE EXCHANGE OF INFORMATION UNDER THE COMPACT; TO AMEND SECTION 56-1-746, RELATING TO THE SUSPENSION OF A DRIVER'S LICENSE FOR OFFENSES RELATING TO THE POSSESSION, SALE, AND CONSUMPTION OF BEER, WINE, AND ALCOHOLIC BEVERAGES, SO AS TO CHANGE A REFERENCE FOR AN OFFENSE FROM SECTION 56-1-510(4) TO SECTION 56-1-510(5); TO AMEND SECTION 56-1-800, RELATING TO COPIES OF PROCEEDINGS HELD UNDER THE PROVISIONS OF ARTICLE 3, CHAPTER 1 OF THIS TITLE, SO AS TO INCLUDE A REFERENCE TO AN OPTICAL DISK AND TO PROVIDE THAT IT IS DEEMED A TRUE COPY WHEN CERTIFIED BY THE DIRECTOR OR HIS DESIGNEE; TO AMEND SECTION 56-1-820, RELATING TO THE RIGHT OF A LICENSEE TO REQUEST IN WRITING A REVIEW AFTER NOTICE OF SUSPENSION, SO AS TO DELETE REFERENCES TO REVIEW AND PROVIDE THAT HE HAS THE RIGHT TO AN ADMINISTRATIVE HEARING AND TO CLARIFY A REFERENCE; TO AMEND SECTION 56-1-1020, RELATING TO THE MEANING OF A HABITUAL OFFENDER, AS DETERMINED BY THE DEPARTMENT OF PUBLIC SAFETY, SO AS TO CLARIFY REFERENCES AND DELETE THE DEFINITION OF

CONVICTION UNDER THIS SECTION AND A REFERENCE TO THE APPLICABILITY OF ARTICLE 5, CHAPTER 1 OF THIS TITLE TO CONVICTIONS WHICH OCCURRED PRIOR TO JUNE 14, 1973; TO AMEND SECTION 56-1-1100, RELATING TO THE OPERATION OF A MOTOR VEHICLE IN THIS STATE WHILE THE DECISION OF THE DEPARTMENT PROHIBITING ITS OPERATION IS IN EFFECT, SO AS TO DELETE THE CRIME OF UNLAWFULLY OPERATING A MOTOR VEHICLE WHILE THE DECISION OF THE DEPARTMENT REMAINS IN EFFECT, AND CLARIFYING REFERENCES; TO AMEND SECTION 56-1-1330, RELATING TO PROVISIONAL DRIVER'S LICENSE, SO AS TO CORRECT CERTAIN REFERENCES TO THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES AND OTHER REFERENCES TO THE DEPARTMENT OF PUBLIC SAFETY; TO AMEND SECTION 56-1-2100, RELATING TO A COMMERCIAL DRIVER'S LICENSE, SO AS TO DELETE A REFERENCE TO THE DEPARTMENT OF PUBLIC SAFETY AND CHANGE FROM THE FOURTH TO THE FIFTH CALENDAR YEAR AFTER THE CALENDAR YEAR IN WHICH IT WAS ISSUED THE EXPIRATION OF THE LICENSE; TO AMEND SECTION 56-1-2130, RELATING TO TESTS FOR ALCOHOL OR DRUGS AND THE PRESUMPTION OF CONSENT, SO AS TO CLARIFY A REFERENCE AND DELETE A REFERENCE TO THE REQUIREMENT THAT THE DEPARTMENT BE NOTIFIED IF THE DRIVER IS DISQUALIFIED FROM DRIVING A COMMERCIAL MOTOR VEHICLE; TO AMEND SECTION 56-1-3350, RELATING TO SPECIAL IDENTIFICATION CARDS ISSUED BY THE DEPARTMENT, SO AS TO CHANGE REFERENCES FROM THE MOTOR VEHICLE DIVISION OF THE DEPARTMENT OF REVENUE AND TAXATION TO THE DEPARTMENT OF PUBLIC SAFETY, DELETE THE REQUIREMENT FOR THE SIGNATURE OF THE DIRECTOR OF A FACILITY THAT PROVIDES CARE OR SHELTER TO A HOMELESS PERSON CERTIFYING THAT THE PERSON NAMED IN THE LETTER IS HOMELESS BE DELETED, AND DELETE THE REQUIREMENT THAT THE DEPARTMENT MAY PROMULGATE REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION; TO AMEND TITLE 56 OF THE 1976 CODE BY ADDING CHAPTER 2 SO AS TO PROVIDE THAT THE DEPARTMENT MUST REFUSE TO RENEW THE DRIVER'S LICENSE AND MOTOR VEHICLE REGISTRATION OF A PERSON WHO HAS NOT PAID PROPERTY TAXES WITHIN THE TIME LIMITS PRESCRIBED, TO PROVIDE THAT THE DEPARTMENT OF PUBLIC SAFETY SHALL ISSUE TO COUNTY TREASURERS OR COUNTY TAX COLLECTORS BIENNIAL LICENSE PLATES AND REVALIDATION DECALS, AND THAT THESE OFFICIALS SHALL GIVE THEM TO A MOTOR VEHICLE OWNER, AND TO PROVIDE THAT VALIDATION DECALS MUST BE ISSUED FOR A PERIOD NOT TO EXCEED TWELVE MONTHS; TO AMEND SECTION 56-3-240, RELATING TO CONTENTS OF AN APPLICATION FOR REGISTRATION AND LICENSING, SO AS TO REVISE THE REQUIREMENTS OF THE ODOMETER DISCLOSURE STATEMENT; TO AMEND SECTION 56-3-376, RELATING TO THE ESTABLISHMENT OF A SYSTEM OF REGISTRATION OF CERTAIN MOTOR VEHICLES ON A MONTHLY BASIS AND THE ASSIGNMENT OF ANNUAL REGISTRATION PERIODS, SO AS TO PROVIDE FOR BIENNIAL REGISTRATIONS OF THESE VEHICLES; TO AMEND SECTION 56-3-620, RELATING TO BIENNIAL REGISTRATION FEES FOR PERSONS OVER SIXTY-FIVE OR WHO ARE HANDICAPPED AND SECTION 56-3-630, RELATING TO FEES FOR COMMON CARRIER PASSENGER VEHICLES, SO AS TO REVISE AND FURTHER PROVIDE FOR CERTAIN TERMS; TO AMEND SECTION 56-3-660, RELATING TO FEES FOR SELF-PROPELLED PROPERTY CARRYING VEHICLES, SO AS TO REVISE THE MANNER IN WHICH THE LICENSE FEES SHALL BE DEPOSITED AND USED; TO AMEND SECTION 56-3-670, RELATING TO FEES FOR FARM TRUCK LICENSES, SO AS TO DELETE LANGUAGE REQUIRING A PERSON TO CERTIFY TO THE DEPARTMENT THAT HE IS A BONA FIDE FARMER; TO AMEND SECTION 56-3-710, RELATING TO FEES FOR HOUSE TRAILERS, SO AS TO

CHANGE CERTAIN REFERENCES; TO AMEND SECTION 56-3-720, RELATING TO FEES FOR CAMPUS AND TRAVEL TRAILERS, SO AS TO REVISE THE MANNER IN WHICH VEHICLES ARE INCLUDED IN THIS CLASSIFICATION; TO AMEND SECTION 56-3-780, RELATING TO PERMANENT LICENSE PLATES FOR CERTAIN GOVERNMENTAL VEHICLES, SO AS TO REVISE THE TYPES OF GOVERNMENTS TO WHICH THE SECTION APPLIES AND THE WORDS SUCH PLATES MUST BEAR; TO AMEND SECTIONS 56-3-1010, 56-3-1020, AND 56-3-1040, RELATING TO FLEET MOTOR VEHICLES, SO AS TO CHANGE CERTAIN REFERENCES AND PROVIDE THE DEPARTMENT MAY AUTHORIZE SELECT FLEET OPERATORS TO ISSUE SPECIAL LICENSE PLATES AND REGISTRATION CARDS FOR THEIR OWN FLEET VEHICLES; TO AMEND SECTION 56-3-1110, RELATING TO FREE VEHICULAR REGISTRATION FOR DISABLED VETERANS, SO AS TO REVISE THE VEHICLES TO WHICH THE SECTION APPLIES AND PROVIDE THAT SURVIVING SPOUSES OF SUCH VETERANS ARE ALSO ELIGIBLE TO OBTAIN SUCH PLATE SO LONG AS THEY DO NOT REMARRY; TO AMEND SECTION 56-3-1150, RELATING TO FREE VEHICULAR REGISTRATION FOR FORMER PRISONERS OF WAR, SO AS TO REVISE THE VEHICLES TO WHICH THE SECTION APPLIES; TO AMEND SECTION 56-3-1320, RELATING TO FEES FOR REPLACEMENT PLATES AND STICKERS, SO AS TO REVISE THE MANNER IN WHICH THE FEES ARE DETERMINED; TO AMEND SECTION 56-3-1330, RELATING TO SUSPENSION, CANCELLATION, OR REVOCATION OF REGISTRATIONS AND LICENSINGS, SO AS TO DELETE CERTAIN JURISDICTION OF THE CIRCUIT COURT OVER THESE MATTERS; TO AMEND SECTIONS 56-3-1510, 56-3-1520, AND 56-3-1530, RELATING TO SPECIAL LICENSE PLATES FOR AMATEUR RADIO OPERATORS, SO AS TO CHANGE CERTAIN VEHICLE REFERENCES, THE APPLICATION PROCEDURE FOR SUCH PLATES, AND THE LICENSING PERIOD THEREOF; TO AMEND SECTIONS 56-3-1610, 56-3-1620, AND 56-3-1630, RELATING TO SPECIAL LICENSE PLATES FOR EMERGENCY MEDICAL TECHNICIANS, SO AS TO CHANGE CERTAIN VEHICLE REFERENCES, THE APPLICATION PROCEDURES FOR SUCH PLATES, AND THE LICENSING PERIOD THEREOF; TO AMEND SECTION 56-3-1710, RELATING TO THE DESIGN OF PLATES FOR PUBLICALLY-OWNED VEHICLES, SO AS TO FURTHER PROVIDE FOR SUCH DESIGN AND THE APPLICABILITY OF THE PROVISIONS OF THE SECTION; TO AMEND SECTIONS 56-3-1750, RELATING TO SPECIAL LICENSE PLATES FOR MEMBERS OF THE MILITARY RESERVE, 56-3-1810, RELATING TO SPECIAL LICENSE PLATES FOR MEMBERS OF THE NATIONAL GUARD, AND 56-3-1850, RELATING TO SPECIAL LICENSE PLATES FOR MEDAL OF HONOR RECIPIENTS, SO AS TO FURTHER PROVIDE FOR THE TYPE OF VEHICLES TO WHICH THESE SECTIONS APPLY; TO AMEND SECTIONS 56-3-1971, 56-3-1972, 56-3-1973, AND 56-3-1974, RELATING TO THE UNIFORM PARKING VIOLATIONS TICKET, SO AS TO REVISE THE PROCEDURES GOVERNING ITS ISSUANCE, FORM, AND CONTENT; TO AMEND SECTIONS 56-3-2010 AND 56-3-2030, RELATING TO PERSONALIZED LICENSE PLATES, SO AS TO REVISE THE MANNER IN WHICH AND VEHICLES FOR WHICH THESE PLATES MAY BE ISSUED; TO AMEND SECTION 56-3-2150, RELATING TO SPECIAL LICENSE PLATES FOR MEMBERS OF MUNICIPAL AND COUNTY COUNCILS, SO AS TO REVISE THE TYPE OF VEHICLES TO WHICH THE SECTION APPLIES; TO AMEND SECTION 56-3-2320, RELATING TO DEALER LICENSE PLATES, SO AS TO FURTHER PROVIDE FOR THE APPLICABILITY OF THE SECTION IN REGARD TO THE TESTING OR DEMONSTRATION OF TRUCKS; TO AMEND SECTION 56-3-2380, RELATING TO DENIAL OF APPLICATIONS FOR REGISTRATION AND LICENSING, SO AS TO REVISE THE AUTHORITY OF THE DEPARTMENT TO PROMULGATE REGULATIONS IN REGARD THERETO; TO AMEND SECTION 56-3-2810, RELATING TO SPECIAL LICENSE PLATES FOR VOLUNTEER FIREMEN, AND SECTION 56-3-3310, RELATING TO SPECIAL

LICENSE PLATES FOR PURPLE HEART RECIPIENTS, SO AS TO FURTHER PROVIDE FOR THE TYPES OF VEHICLES TO WHICH THE SECTION APPLIES; TO AMEND SECTION 56-3-3710, RELATING TO SPECIAL COLLEGE OR UNIVERSITY LICENSE PLATES, SO AS TO FURTHER PROVIDE FOR THE ISSUANCE OF THESE PLATES AND FOR THE DISTRIBUTION OF THE FUNDS COLLECTED FROM THE FEES THEREFOR; TO AMEND SECTION 56-3-3910, RELATING TO COMMEMORATIVE LICENSE PLATES FOR THE STATE DANCE, SECTION 56-3-3950, RELATING TO "KEEP SOUTH CAROLINA BEAUTIFUL" LICENSE PLATES, AND SECTION 56-3-4310, RELATING TO SPECIAL LICENSE PLATES FOR RETIRED MEMBERS OF THE UNITED STATES ARMED FORCES, SO AS TO FURTHER PROVIDE FOR THE TYPES OF VEHICLES TO WHICH THESE SECTIONS APPLY; TO AMEND SECTION 56-3-4510, AS AMENDED, RELATING TO SPECIAL COMMEMORATIVE LICENSE PLATES FOR NONGAME WILDLIFE AND NATURAL AREAS FUND, SO AS TO PROVIDE THE DEPARTMENT OF REVENUE AND TAXATION SHALL ISSUE A SPECIAL COMMEMORATIVE MOTOR VEHICLE LICENSE PLATE FOR USE BY THE OWNER ON HIS PRIVATE PASSENGER MOTOR VEHICLE; TO AMEND SECTION 56-3-4710, AS AMENDED, RELATING TO THE ISSUANCE OF SOUTH CAROLINA STATE GUARD LICENSE PLATES, SO AS TO PROVIDE THE DEPARTMENT MAY ISSUE A SPECIAL MOTOR VEHICLE LICENSE PLATE TO A MEMBER OF THE GUARD FOR A MOTOR VEHICLE OWNED BY THE MEMBER; TO AMEND SECTION 56-3-4910, AS AMENDED, RELATING TO SOUTH CAROLINA FIREFIGHTERS' LICENSE PLATES, SO AS TO PROVIDE THE DEPARTMENT MAY ISSUE SOUTH CAROLINA FIREFIGHTERS LICENSE PLATES TO A RESIDENT FOR A PRIVATE PASSENGER MOTOR VEHICLE OWNED BY HIM AND TO PROVIDE FOR THE DISBURSEMENT OF THE FUNDS; TO AMEND SECTION 56-3-5910, RELATING TO PEARL HARBOR SURVIVORS' LICENSE PLATES, SO AS TO PROVIDE AN OWNER OF A PRIVATE PASSENGER MOTOR VEHICLE MAY APPLY FOR A PEARL HARBOR SURVIVOR'S LICENSE PLATE; TO AMEND SECTION 56-3-5930, RELATING TO PROOF OF ELIGIBILITY FOR A PEARL HARBOR LICENSE PLATE, SO AS TO PROVIDE A PEARL HARBOR LICENSE PLATE MAY BE ISSUED ONLY TO AN APPLICANT FOR HIS PRIVATE PASSENGER MOTOR VEHICLE; TO AMEND SECTION 56-5-60, AS AMENDED, RELATING TO REQUIREMENTS FOR ENVELOPES MAILED BY THE DEPARTMENT CONTAINING CERTAIN NOTICES, SO AS TO DELETE THE PHRASE DEPARTMENT OF PUBLIC SAFETY; TO AMEND SECTION 56-5-750, AS AMENDED, RELATING TO AN INDIVIDUAL'S FAILURE TO STOP HIS MOTOR VEHICLE WHEN SIGNALED BY A LAW ENFORCEMENT VEHICLE, SO AS TO PROVIDE THE DEPARTMENT MUST SUSPEND A PERSON'S DRIVER'S LICENSE FOR A FIRST OFFENSE FOR AT LEAST THIRTY DAYS FOR FAILURE TO STOP WHEN SIGNALED BY A LAW ENFORCEMENT VEHICLE BY MEANS OF A SIREN OR FLASHING LIGHT AND FOR A SECOND OFFENSE THE PERSON'S DRIVER'S LICENSE MUST BE REVOKED BY THE DEPARTMENT FOR A PERIOD OF ONE YEAR AND TO DELETE THE TERM "CONVICTION" AND ITS DEFINITION AND TO REQUIRE THE DEPARTMENT OF PUBLIC SAFETY TO KEEP A NONPUBLIC RECORD OF A PERSON'S OFFENSE FOR FAILING TO STOP FOR A SIGNALING LAW ENFORCEMENT VEHICLE AFTER THE OFFENDER'S RECORD IS EXPUNGED; TO AMEND SECTION 56-5-765, AS AMENDED, RELATING TO THE INVESTIGATION OF A TRAFFIC COLLISION INVOLVING A MOTOR VEHICLE OR MOTORCYCLE OF A LAW ENFORCEMENT AGENCY, SO AS TO DELETE THE PHRASE "SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY" AND TO ADD THE TERM "DEPARTMENT"; TO AMEND SECTION 56-5-1270, RELATING TO ACCIDENT REPORTS WHICH STATE AN INJURY OR DEATH OCCURRED OR PROPERTY DAMAGE OF FOUR HUNDRED DOLLARS OR MORE, SO AS TO REQUIRE AN OWNER OR OPERATOR INVOLVED IN AN ACCIDENT NOT INVESTIGATED BY A LAW ENFORCEMENT

OFFICER WITH TOTAL PROPERTY DAMAGE OF ONE THOUSAND DOLLARS OR MORE TO FORWARD A WRITTEN REPORT AND PROOF OF LIABILITY INSURANCE TO THE DEPARTMENT AND TO REQUIRE A LAW ENFORCEMENT OFFICER WHO INVESTIGATES A MOTOR VEHICLE ACCIDENT THAT RESULTS IN INJURY TO OR DEATH OF ANY PERSON OR TOTAL PROPERTY DAMAGE TO AN APPARENT EXTENT OF ONE THOUSAND DOLLARS OR MORE TO FORWARD A WRITTEN REPORT OF THE ACCIDENT TO THE DEPARTMENT INCLUDING THE NAMES OF INTERVIEWED PARTICIPANTS AND WITNESSES; TO AMEND SECTION 56-5-1350, RELATING TO THE DEPARTMENT'S ANALYSIS AND STATISTICS ON REPORTED ACCIDENTS, SO AS TO LIMIT THE DEPARTMENT'S REPORT TO ACCIDENT REPORTS FILED PURSUANT TO SECTION 56-5-1270; TO AMEND SECTION 56-5-2585, RELATING TO THE EXEMPTION OF MUNICIPAL PARKING METER FEES BY DISABLED VETERANS, SO AS TO DELETE THE PHRASE "DEPARTMENT OF REVENUE AND TAXATION" AND TO ADD THE TERM "DEPARTMENT"; TO AMEND SECTION 56-5-2980, RELATING TO COPIES OF ACCIDENT REPORTS PURSUANT TO SECTION 56-5-2970 AS PRIMA FACIE EVIDENCE OF A PREVIOUS CONVICTION, SO AS TO ALLOW COPIES OF AN ACCIDENT REPORT ON AN OPTICAL DISK TO BE USED AS PRIMA FACIE EVIDENCE OF ONLY A PRIOR CONVICTION AGAINST AN OFFENDER AND TO DELETE THE PHRASE "MOTOR VEHICLE DIVISION" AND REPLACE IT WITH THE TERM "DEPARTMENT"; TO AMEND SECTION 56-5-2990, AS AMENDED, RELATING TO THE SUSPENSION OF A CONVICTED PERSON'S DRIVER'S LICENSE, SO AS TO DELETE THE PHRASE "DEPARTMENT OF REVENUE AND TAXATION" AND ADD THE TERM "DEPARTMENT" AND TO DELETE THE PHRASE "SOUTH CAROLINA COMMISSION ON ALCOHOL AND DRUG ABUSE" AND REPLACE IT WITH THE PHRASE "DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES"; TO AMEND SECTION 56-5-3750, AS AMENDED, RELATING TO THE SALE OF MOPEDS, SO AS TO DELETE THE PHRASE "DEPARTMENT OF REVENUE AND TAXATION" AND ADD THE TERM "DEPARTMENT"; TO AMEND SECTION 56-5-4035, RELATING TO PERMITS FOR VEHICLES CARRYING CULVERT PIPES, SO AS TO DELETE THE PROVISION THAT THE DEPARTMENT OF PUBLIC SAFETY MAY INSTITUTE REGULATIONS FOR THE SALE OF PERMITS TO VEHICLES CARRYING CULVERT PIPES AND TO MAKE OTHER TECHNICAL CHANGES; TO AMEND SECTION 56-5-4070, AS AMENDED, RELATING TO THE REGULATION OF LENGTH OF VEHICLES ON HIGHWAYS, SO AS TO DELETE THE PHRASE "DEPARTMENT OF PUBLIC SAFETY" AND ADD THE TERM "DEPARTMENT"; TO AMEND SECTION 56-5-4075, AS AMENDED, RELATING TO REGULATIONS GOVERNING VEHICULAR TRAFFIC ON HIGHWAYS, SO AS TO DELETE THE PHRASES "DEPARTMENT OF PUBLIC SAFETY" AND "THE DEPARTMENT OF REVENUE AND TAXATION" AND TO ADD THE TERM "DEPARTMENT"; TO AMEND SECTION 56-5-4095, AS AMENDED, RELATING TO THE TRANSPORTATION OF MODULAR OR SECTIONAL HOUSING UNITS ON THE STATE'S PUBLIC HIGHWAYS, SO AS TO DELETE THE PHRASE "DEPARTMENT OF REVENUE AND TAXATION" AND ADD THE PHRASE "DEPARTMENT OF TRANSPORTATION"; TO AMEND SECTION 56-5-4140, AS AMENDED, RELATING TO THE GROSS WEIGHT OF VEHICLES OPERATED ON A HIGHWAY IN THE STATE, SO AS TO PROVIDE THAT A VEHICLE OR COMBINATION OF VEHICLES OPERATED OR MOVED ON THE HIGHWAY OR INTERSTATE MUST MEET AXLE SPACING REQUIREMENTS AND MAXIMUM OVERALL GROSS WEIGHTS AS PROVIDED IN SUBSECTION (B) AND TO PROVIDE THAT VEHICLES UP TO EIGHTY THOUSAND POUNDS MAY OPERATE UPON ANY HIGHWAY WITH RESTRICTIONS AS PROVIDED IN THIS SECTION AND TO DELETE GUIDELINES FOR THE GROSS WEIGHT OF VEHICLES WITH ONE AND TWO AXLES AND VEHICLES WHICH HAVE BEEN ISSUED A SPECIAL PERMIT BY THE DEPARTMENT OF REVENUE AND TAXATION

AND TO MAKE CHANGES IN THE TABLE WHICH DENOTES THE MAXIMUM WEIGHT VEHICLES ARE ALLOWED WITH TWO OR MORE CONSECUTIVE AXLES, AND TO DELETE PROVISIONS REGARDING THE ENFORCEMENT OF A MORATORIUM OF THE THIRTY-FOUR THOUSAND POUNDS TANDEM AXLE LIMIT AND THE FEDERAL BRIDGE FORMULA AND TO PROVIDE CERTAIN TYPES OF VEHICLES ARE LIMITED TO A WEIGHT OF TWENTY THOUSAND POUNDS FOR EACH AXLE AND TO REQUIRE CONCRETE MIXING TRUCKS WORKING WITHIN A FIFTEEN MILE RADIUS OF THEIR HOME BASE MAY NOT WEIGH MORE THAN SIXTY-SIX THOUSAND POUNDS AND TO PROVIDE WEIGHT GUIDELINES FOR WELL-DRILLING, BORING RIGS, AND TENDER TRUCKS AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 56-5-4150, AS AMENDED, RELATING TO THE REGISTRATION AND INVESTIGATION BY THE DEPARTMENT OF REVENUE AND TAXATION OF VEHICLES WHICH TRANSPORT PROPERTY OR TEN OR MORE PERSONS, SO AS TO DELETE THE PHRASE "DEPARTMENT OF REVENUE AND TAXATION" AND TO ADD THE TERM "DEPARTMENT"; TO AMEND SECTION 56-5-4160, AS AMENDED, RELATING TO PENALTIES FOR VEHICLES WHICH EXCEED THE GROSS WEIGHT IMPOSED BY SECTION 56-5-4130 OR 56-5-4140, SO AS TO PROVIDE FOR THE DISBURSEMENT OF FINES COLLECTED FROM VEHICLES WHICH CARRY EXCESS WEIGHT; TO AMEND SECTION 56-5-4192, AS AMENDED, RELATING TO THE MOVEMENT OF A MOBILE HOME ON HIGHWAYS OF THIS STATE ON SATURDAYS, SO AS TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 56-5-4720, AS AMENDED, RELATING TO THE USE OF OSCILLATING, ROTATING, OR FLASHING RED LIGHTS ON STATE DEPARTMENT HIGHWAYS AND PUBLIC TRANSPORTATION VEHICLES, SO AS TO DELETE THE TERM "DEPARTMENT" AND ADD THE PHRASE "DEPARTMENT OF TRANSPORTATION"; TO AMEND SECTION 56-5-4880, AS AMENDED, RELATING TO THE INSPECTION OF BRAKES OF MOTOR-DRIVEN CYCLES BY THE DEPARTMENT, SO AS TO DELETE THE PHRASE "DEPARTMENT OF REVENUE AND TAXATION" AND ADD THE TERM "DEPARTMENT"; TO AMEND SECTION 56-5-5010, AS AMENDED, RELATING TO THE SAFETY GLASS IN MOTOR VEHICLES, SO AS TO DELETE THE PHRASE "DEPARTMENT OF REVENUE AND TAXATION" AND ADD THE TERM "DEPARTMENT"; TO AMEND SECTION 56-5-5670, AS AMENDED, RELATING TO THE DUTIES OF A PERSON WHO DEMOLISHES VEHICLES, SO AS TO DELETE THE PHRASE "DEPARTMENT OF REVENUE AND TAXATION" AND ADD THE TERM "DEPARTMENT"; TO AMEND SECTION 56-5-5810, RELATING TO DEFINITIONS FOR PURPOSES OF ABANDONED VEHICLES, SO AS TO REVISE DEFINITIONS WITH RESPECT TO SUCH VEHICLES AND TRANSFER ENFORCEMENT AUTHORITY; TO ADD SECTION 56-5-5820 SO AS TO DECLARE THAT ABANDONED AND DERELICT VEHICLES CONSTITUTE A HEALTH AND SAFETY HAZARD; TO AMEND SECTION 56-5-5840, RELATING TO ABANDONED VEHICLES, SO AS TO DELETE OBSOLETE PROVISIONS; TO AMEND SECTION 56-5-5850, AS AMENDED, RELATING TO PROCEDURES EMPLOYED IN THE REMOVAL OF ABANDONED OR DERELICT VEHICLES, SO AS TO REVISE THESE PROCEDURES; TO AMEND SECTION 56-5-5870, AS AMENDED, RELATING TO AUTHORITY TO CONTRACT TO PREPARE FOR THE DISPOSAL OF ABANDONED VEHICLES, SO AS TO EXTEND THIS AUTHORITY TO LOCAL GOVERNMENTS AND DELETE REFERENCES TO THE AUTHORITY OF THE DIRECTOR; TO AMEND SECTION 56-5-5880, RELATING TO AUTHORITY TO ENTER ONTO PROPERTY TO ENFORCE ABANDONED VEHICLE PROVISIONS, SO AS TO EXTEND THIS AUTHORITY TO LOCAL GOVERNMENTS; TO AMEND SECTION 56-5-5890, RELATING TO THE REQUIREMENT NOT TO HARM ABANDONED VEHICLES IN THE PROCESS OF REMOVAL, SO AS TO MAKE GRAMMATICAL CHANGES; TO AMEND SECTION 56-5-5900, RELATING TO THIRD PARTY LIABILITY FOR PENALTIES AND

FEES WITH RESPECT TO ABANDONED VEHICLES, SO AS TO MAKE GRAMMATICAL CHANGES AND AUTHORIZE RECEIPT OF STOLEN VEHICLE REPORTS FROM OTHER STATES; TO AMEND SECTION 56-5-5910, RELATING TO PENALTIES FOR TAMPERING WITH IDENTIFYING TAGS, SO AS TO INCREASE THE MAXIMUM FINE; TO AMEND SECTION 56-5-5920, RELATING TO THE CIRCUMSTANCES UNDER WHICH VEHICLES ARE SUBJECT TO THE ABANDONMENT PROVISIONS, SO AS TO MAKE GRAMMATICAL CHANGES AND LIMIT THE APPLICATION OF THE ARTICLE TO VEHICLES PRESENTING AN IMMEDIATE HAZARD; TO AMEND SECTION 56-5-5940, RELATING TO ENFORCEMENT OF THE ABANDONED VEHICLE LAW, SO AS TO AUTHORIZE THE LANDOWNER WHERE A VEHICLE IS ABANDONED TO APPLY TO THE APPROPRIATE LAW ENFORCEMENT JURISDICTION TO ENFORCE THE ARTICLE; TO ADD SECTION 56-5-5945, SO AS TO PROVIDE FOR THE DUTIES OF DEMOLISHERS RECEIVING ABANDONED CARS; TO AMEND SECTION 56-5-5950, RELATING TO THE OFFENSE OF ABANDONING A VEHICLE, SO AS TO INCREASE THE MAXIMUM FINE; TO AMEND SECTION 56-7-10, AS AMENDED, RELATING TO THE UNIFORM TRAFFIC TICKET, SO AS TO REQUIRE APPROVAL OF THE TICKET FORM BY THE ATTORNEY GENERAL WITHIN THIRTY DAYS AND TO AUTHORIZE AUTOMATED TICKETS UPON APPROVAL BY THE DEPARTMENT; TO AMEND SECTION 56-7-12, AS AMENDED, RELATING TO INSURANCE VERIFICATION FOLLOWING A MOVING VIOLATION, SO AS TO AUTHORIZE RATHER THAN REQUIRE THE FURNISHING OF THE INSURANCE VERIFICATION REQUEST FORM TO THE ALLEGED VIOLATOR AND TO TRANSFER ENFORCEMENT OF THIS PROVISION; TO AMEND SECTION 56-9-330, RELATING TO FEES FOR DRIVING RECORD ABSTRACTS AND ACCIDENT REPORTS, SO AS TO DELETE REFERENCES TO SPECIFIC FEES; TO ADD SECTION 56-9-505, SO AS TO AUTHORIZE A WAIVER OF THE FINANCIAL RESPONSIBILITY REQUIREMENTS FOR SUSPENSIONS FOR FAILURE TO PAY PROPERTY TAXES UPON PROOF OF PAYMENT; TO AMEND SECTION 56-10-45, AS AMENDED, RELATING TO SUSPENSION AND REVOCATION IN ENFORCING MANDATORY INSURANCE REQUIREMENTS, SO AS TO AUTHORIZE AGREEMENTS FOR ENFORCEMENT, TO IMPOSE AN ADDITIONAL FIFTY DOLLAR FINE FOR ITEMS RECOVERED TO BE CREDITED TO THE GENERAL FUND OF THE LOCAL JURISDICTION, AND TO TRANSFER GENERAL ENFORCEMENT AUTHORITY; TO AMEND SECTION 56-10-240, AS AMENDED, RELATING TO THE CRIMINAL AND CIVIL PENALTIES FOR FAILING TO MAINTAIN INSURANCE ON A VEHICLE, SO AS TO DELETE THE INCREASED REINSTATEMENT FEE FOR SUBSEQUENT INSURANCE LAPSES, TO LIMIT TO TEN YEARS THE PERIOD REQUIRED TO BE CONSIDERED IN DETERMINING PRIOR CONVICTIONS FOR PURPOSES OF THE CRIMINAL PENALTY, AND TO TRANSFER ENFORCEMENT AUTHORITY; TO ADD CHAPTER 11 IN TITLE 56, RELATING TO MOTOR VEHICLES, SO AS TO PROVIDE FOR THE REVISED IMPOSITION OF THE ROAD TAX ON MOTOR CARRIERS AND PROVIDE FOR THE ENFORCEMENT OF THE CHAPTER; TO AMEND SECTION 56-15-310, RELATING TO MOTOR VEHICLES AND THE REQUIREMENT OF A LICENSE, SO AS TO, AMONG OTHER THINGS, CHANGE THE LICENSING PERIOD; TO AMEND SECTION 56-15-340, RELATING TO MOTOR VEHICLE RECORDS, SO AS TO REORGANIZE THE PROVISIONS OF THE SECTION; TO AMEND SECTION 56-15-570, RELATING TO WHOLESALE MOTOR VEHICLE AUCTIONS AND THE REQUIREMENT OF A SURETY BOND, SO AS TO, AMONG OTHER THINGS, DELETE THE PROVISION THAT A NEW BOND OR A PROPER CONTINUATION CERTIFICATE MUST BE DELIVERED TO THE ADMINISTERING AGENCY ANNUALLY BEFORE RENEWAL OF LICENSE; TO AMEND SECTION 56-16-140, RELATING TO REGULATION OF MOTORCYCLE MANUFACTURERS, DISTRIBUTORS, DEALERS, AND WHOLESALERS AND THE

LICENSE FOR A DEALER OR WHOLESALER, FEES, AND PENALTIES FOR NONCOMPLIANCE, SO AS TO, AMONG OTHER THINGS, RESTATE THE LICENSING PERIOD; TO AMEND SECTION 56-16-170, RELATING TO RECORDS PERTAINING TO THE TRANSFER OF MOTORCYCLES AND PENALTIES FOR FAILURE TO KEEP RECORDS OR TO MAKE THEM AVAILABLE, SO AS TO REORGANIZE THE SECTION; TO AMEND TITLE 56, RELATING TO MOTOR VEHICLES, BY ADDING CHAPTER 17 SO AS TO ENACT PROVISIONS FOR CRIMINAL PENALTIES; TO AMEND SECTION 56-19-10, AS AMENDED, RELATING TO PROTECTION OF TITLES TO AND INTERESTS IN MOTOR VEHICLES AND DEFINITIONS, SO AS TO DEFINE "MOPED"; TO AMEND SECTION 56-19-240, AS AMENDED, RELATING TO APPLICATION FOR A MOTOR VEHICLE CERTIFICATE OF TITLE, FORM, AND CONTENTS, SO AS TO, AMONG OTHER THINGS, DELETE THE PROVISION THAT A TRANSFEROR MAY COMPLETE THE ODOMETER DISCLOSURE STATEMENT ON EITHER A NOTARIZED BILL OF SALE IN AN APPROVED FORMR ON THE PREVIOUS CERTIFICATE OF TITLE; TO AMEND SECTION 56-19-280, RELATING TO MOTOR VEHICLE CERTIFICATES OF TITLE, REFUSAL OF A CERTIFICATE, AND A VEHICLE WHICH IS REPORTED STOLEN OR CONVERTED, SO AS TO PROVIDE THAT A TITLE MAY BE ISSUED ON A VEHICLE THAT IS REPORTED STOLEN ONLY IN CASES WHERE THE SETTLEMENT TO AN INSURANCE COMPANY IS INVOLVED; TO AMEND SECTION 56-19-310, RELATING TO NUMBERING MOTOR VEHICLE CERTIFICATES ISSUED TO SUCCESSIVE OWNERS AND TWO TRANSFERS WHEN AN AUCTIONEER GIVES TITLE, SO AS TO DELETE THE PROVISION THAT TRANSFER OR SALE OF A VEHICLE THROUGH AN AUCTION SALE WHERE THE AUCTIONEER GIVES TITLE SHALL BE CONSIDERED A SALE; TO AMEND SECTION 56-19-340, RELATING TO THE MAILING OF THE MOTOR VEHICLE CERTIFICATE OF TITLE TO THE FIRST LIENHOLDER OR, IF NONE, TO THE OWNER, SO AS TO PROVIDE ALTERNATIVELY FOR THE CERTIFICATE OF TITLE TO BE GIVEN TO THE LIENHOLDER'S AUTHORIZED AGENT; TO AMEND SECTION 56-19-480, RELATING TO THE TRANSFER AND SURRENDER OF CERTIFICATES, LICENSE PLATES, REGISTRATION CARDS, AND MANUFACTURER'S SERIAL PLATES OF VEHICLES SOLD AS SALVAGE, ABANDONED, SCRAPPED, OR DESTROYED, SO AS TO, AMONG OTHER THINGS, REQUIRE A REPORT INDICATING THE TYPE AND SEVERITY OF ANY DAMAGE TO THE VEHICLE; TO AMEND SECTION 56-19-650, RELATING TO THE PROCEDURE TO BE FOLLOWED WHEN AN OWNER CREATES A SECURITY INTEREST IN A MOTOR VEHICLE, SO AS TO, AMONG OTHER THINGS, DELETE CERTAIN LANGUAGE AND PROVISIONS AND PROVIDE FOR THE SITUATION WHERE A SUPPLEMENTAL LIEN IS CREATED BY THE OWNER; TO AMEND SECTION 56-23-10, AS AMENDED, RELATING TO THE REQUIREMENT THAT DRIVER TRAINING SCHOOLS BE LICENSED, SO AS TO DELETE UNNECESSARY LANGUAGE DEFINING "DEPARTMENT"; TO AMEND SECTION 56-25-10, AS AMENDED, RELATING TO NONRESIDENT TRAFFIC VIOLATOR COMPACTS, SO AS TO, AMONG OTHER THINGS, DELETE THE AUTHORIZATION TO PROMULGATE REGULATIONS; TO AMEND SECTION 56-25-20, RELATING TO SUSPENSION OF DRIVER'S LICENSE FOR FAILURE TO COMPLY WITH A TRAFFIC CITATION ISSUED IN SOUTH CAROLINA OR ANY JURISDICTION HAVING THE NONRESIDENT TRAFFIC VIOLATOR COMPACTS, SO AS TO, AMONG OTHER THINGS, PERMIT, RATHER THAN REQUIRE, THE SUSPENSION OF THE DRIVER'S LICENSE, AND PROVIDE FOR THE OPTION OF REFUSING TO RENEW THE LICENSE; TO AMEND SECTION 56-28-10, RELATING TO ENFORCEMENT OF MOTOR VEHICLE EXPRESS WARRANTIES AND DEFINITIONS, SO AS TO PROVIDE THAT "MOTOR VEHICLE" MEANS A PRIVATE PASSENGER MOTOR VEHICLE AND REMOVE THE PROVISION EXCLUDING TRUCKS WITH A GROSS VEHICLE WEIGHT OVER SIX THOUSAND POUNDS FROM BEING COVERED UNDER THE TERM "MOTOR

VEHICLE", AND TO PROVIDE THAT A "NEW MOTOR VEHICLE" MEANS, AMONG OTHER THINGS, A PRIVATE PASSENGER VEHICLE; TO AMEND SECTION 56-29-50, AS AMENDED, RELATING TO THE "MOTOR VEHICLE CHOP SHOP, STOLEN, AND ALTERED PROPERTY ACT" AND FORFEITURE OF THE MOTOR VEHICLE, TOOLS, IMPLEMENTS, OR OTHER INSTRUMENTALITY, SO AS TO TRANSFER ADMINISTERING-AGENCY AUTHORITY FROM THE DEPARTMENT OF REVENUE AND TAXATION TO THE DEPARTMENT OF PUBLIC SAFETY, AND TO PROVIDE FOR THE CERTIFICATION OF THE SEIZING AGENCY RATHER THAN ITS AFIDAVIT; TO AMEND SECTION 56-31-50, AS AMENDED, RELATING TO RENTAL OF PRIVATE PASSENGER AUTOMOBILES AND THE SURCHARGE ON THE RENTAL OF SUCH VEHICLES FOR THIRTY-ONE DAYS OR LESS, SO AS TO, AMONG OTHER THINGS, TRANSFER ADMINISTERING-AGENCY AUTHORITY FROM THE DEPARTMENT OF REVENUE AND TAXATION TO THE DEPARTMENT OF PUBLIC SAFETY, PROVIDE FOR REMITTING CERTAIN EXCESS SURCHARGE REVENUES TO THE STATE TREASURER'S OFFICE, RATHER THAN THE DEPARTMENT OF REVENUE AND TAXATION, AND DELETE CERTAIN PROVISIONS; TO REPEAL CHAPTER 31 OF TITLE 12, RELATING TO THE ROAD TAX ON MOTOR CARRIERS, AND SECTIONS 12-4-400, RELATING TO THE DIVISION OF COMMERCIAL MOTOR VEHICLE SERVICES; 12-4-410, RELATING TO THE DUTIES AND POWERS OF THE DIVISION OF COMMERCIAL MOTOR VEHICLE SERVICES; 12-37-2740, RELATING TO ASSESSMENT OF PROPERTY TAXES, MOTOR VEHICLES, AND SUSPENSION OF DRIVER'S LICENSE AND REGISTRATION; 20-7-947, RELATING TO CHILD SUPPORT, SUPPORT ENFORCEMENT THROUGH VEHICLE LICENSE REVOCATION, AND INTERAGENCY AGREEMENTS; 23-6-10(3), RELATING TO THE DEPARTMENT OF PUBLIC SAFETY AND THE DEFINITION OF "DEPUTY DIRECTOR"; 23-6-200, RELATING TO THE DIVISION OF PUBLIC SAFETY OF THE DEPARTMENT OF PUBLIC SAFETY; 56-1-225(B), RELATING TO THE REEXAMINATION OF DRIVERS INVOLVED IN FOUR ACCIDENTS WITHIN TWENTY-FOUR MONTHS AND THE AUTHORITY TO PROMULGATE REGULATIONS; 56-1-520, RELATING TO ADMINISTRATION AND ENFORCEMENT OF ARTICLE 1 OF CHAPTER 1, TITLE 56, REGARDING DRIVER'S LICENSES; 56-1-530, RELATING TO THE PROMULGATION OF RULES AND REGULATIONS FOR THE ENFORCEMENT OF ARTICLE 1 OF CHAPTER 1, TITLE 56, REGARDING DRIVER'S LICENSES; 56-1-550, RELATING TO THE USE OF FEES COLLECTED UNDER ARTICLE 1 OF CHAPTER 1, TITLE 56, REGARDING DRIVER'S LICENSES; 56-1-560, RELATING TO THE PROVISION THAT ARTICLE 1 OF CHAPTER 1 OF TITLE 56, REGARDING DRIVER'S LICENSES, SHALL NOT BE HELD TO REPEAL ANY OTHER LAWS BUT SHALL BE HELD TO BE CUMULATIVE; 56-1-830, RELATING TO JUDICIAL REVIEW OF THE SUSPENSION OF A DRIVER'S LICENSE; 56-1-840, RELATING TO ADMINISTRATION AND ENFORCEMENT OF ARTICLE 3 OF CHAPTER 1, TITLE 56, REGARDING THE POINT SYSTEM FOR EVALUATING OPERATING RECORDS OF DRIVERS, AND PROMULGATION OF RULES AND REGULATIONS; 56-1-1120, RELATING TO THE REQUIREMENT THAT THE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION SHALL REVIEW AND CERTIFY CERTAIN DRIVER'S LICENSE RECORDS; 56-1-3390, RELATING TO PROMULGATION OF RULES AND REGULATIONS TO IMPLEMENT ARTICLE 15 OF CHAPTER 1, TITLE 56, REGARDING IDENTIFICATION CARDS; 56-3-20(21), RELATING TO MOTOR VEHICLE REGISTRATION AND LICENSING AND THE DEFINITION OF "DEPARTMENT"; 56-3-251, RELATING TO BIENNIAL LICENSE PLATES OR REVALIDATION DECALS FOR MOTOR VEHICLES; 56-3-420, RELATING TO THE GROUNDS FOR REFUSING TO LICENSE AND REGISTER AN AUTOMOBILE UTILITY TRAILER; 56-3-880, RELATING TO THE PROMULGATION OF RULES AND REGULATIONS AS TO UNCERTIFIED CHECKS TENDERED FOR MOTOR VEHICLE LICENSE FEES; 56-3-1010(3), RELATING TO

CORPORATE-OWNED FLEET MOTOR VEHICLES AND THE DEFINITION OF "DEPARTMENT"; 56-3-1160, RELATING TO PROMULGATION OF REGULATIONS FOR THE EFFECTUATION OF ARTICLE 8 OF CHAPTER 3, TITLE 56, REGARDING FREE VEHICULAR REGISTRATION FOR FORMER PRISONERS OF WAR; 56-3-1950(1), RELATING TO FREE PARKING FOR HANDICAPPED PERSONS AND THE DEFINITION OF "DEPARTMENT"; 56-3-2410, RELATING TO PROVISIONS REGARDING ADMINISTERING AND ENFORCING CHAPTER 3, TITLE 56, AS TO REGISTRATION AND LICENSING OF MOTOR VEHICLES AND RULES AND REGULATIONS; 56-3-2500, RELATING TO RULES AND REGULATIONS GOVERNING CHANGE OR SUBSTITUTION OF MOTOR VEHICLE ENGINES; 56-3-2670, RELATING TO PROMULGATION OF REGULATIONS NECESSARY TO IMPLEMENT ARTICLE 29 OF CHAPTER 3, TITLE 56, REGARDING CERTAIN TEMPORARY LICENSE PLATES; 56-3-2750, RELATING TO PROMULGATION OF REGULATIONS NECESSARY TO IMPLEMENT ARTICLE 30 OF CHAPTER 3, TITLE 56, REGARDING TEMPORARY LICENSE PLATES AND CERTIFICATES OF REGISTRATION OF MOTOR VEHICLES USED ONLY FOR CORPORATE RESEARCH AND DEVELOPMENT; 56-5-370, RELATING TO TRAFFIC REGULATION, GOVERNMENTAL AGENCIES, PEDESTRIANS, POLICE OFFICERS, AND OTHER PERSONS AND THE DEFINITION OF "DEPARTMENT"; 56-5-2960, RELATING TO TRAFFIC REGULATION AND THE PROVISION THAT PLEAS OF GUILTY OR NOLO CONTENDERE OR FORFEITURE OF BAIL ARE THE SAME AS A CONVICTION; 56-5-5015 (L), RELATING TO PROMULGATION OF REGULATIONS PRESCRIBING ENFORCEMENT OF THE PROCEDURE AND MECHANISM FOR TESTING LIGHT TRANSMITTANCE IN VEHICLE GLASS; 56-5-5610, RELATING TO DEFINITIONS UNDER THE LAWS ON DISPOSITION OF ABANDONED MOTOR VEHICLES ON THE HIGHWAYS; 56-5-5680, RELATING TO PENALTIES UNDER THE LAWS ON DISPOSITION OF ABANDONED MOTOR VEHICLES ON THE HIGHWAYS; 56-5-5830, RELATING TO DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF REVENUE AND TAXATION, AND THE REQUIREMENT THAT COUNTY AND MUNICIPAL OFFICERS COOPERATE WITH THE DIRECTOR, REGARDING DISPOSITION OF ABANDONED OR DERELICT MOTOR VEHICLES ON PUBLIC OR PRIVATE PROPERTY; 56-5-5860, RELATING TO THE REQUIREMENT THAT TITLES SHALL VEST IN THE STATE OF SOUTH CAROLINA WITH RESPECT TO THE DISPOSITION OF ABANDONED OR DERELICT MOTOR VEHICLES ON PUBLIC OR PRIVATE PROPERTY; 56-5-5930, RELATING TO IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 41 OF CHAPTER 5, TITLE 56, REGARDING DISPOSITION OF ABANDONED OR DERELICT MOTOR VEHICLES ON PUBLIC OR PRIVATE PROPERTY; 56-5-6180, RELATING TO PROMULGATION OF RULES AND REGULATIONS FOR THE ADMINISTRATION OF ARTICLE 43 OF CHAPTER 5, TITLE 56, REGARDING TRAFFIC VIOLATIONS PROCEDURE; 56-9-20(1), RELATING TO THE DEFINITION OF "CONVICTION" UNDER THE MOTOR VEHICLE FINANCIAL RESPONSIBILITY ACT; 56-9-20(2), RELATING TO THE DEFINITION OF "DEPARTMENT" UNDER THE MOTOR VEHICLE FINANCIAL RESPONSIBILITY ACT; 56-9-310, RELATING TO THE ADMINISTRATION OF CHAPTER 9, TITLE 56, REGARDING THE MOTOR VEHICLE FINANCIAL RESPONSIBILITY ACT, AND TO THE HEARINGS AND THE PROMULGATION OF RULES AND REGULATIONS THEREUNDER; 56-10-210 (3), RELATING TO THE DEFINITION OF "DEPARTMENT" UNDER THE LAWS REGARDING INSURANCE REQUIREMENTS RELATING TO MOTOR VEHICLE REGISTRATION; 56-10-290, RELATING TO ENFORCEMENT OF THE PROVISIONS OF ARTICLE 3 OF CHAPTER 10, TITLE 56, REGARDING INSURANCE REQUIREMENTS AS TO MOTOR VEHICLE REGISTRATION; 56-10-300, RELATING TO THE POWER TO PRESCRIBE, ADOPT, PROMULGATE, RESCIND, AND ENFORCE REGULATIONS WITH RESPECT TO ARTICLE 3 OF CHAPTER 10, TITLE 56, REGARDING INSURANCE

REQUIREMENTS RELATING TO MOTOR VEHICLE REGISTRATION; 56-15-10(R), RELATING TO THE DEFINITION OF "DEPARTMENT" UNDER THE LAWS ON MOTOR VEHICLES AND THE REGULATION OF MANUFACTURERS, DISTRIBUTORS, AND DEALERS; 56-15-360, RELATING TO THE PROMULGATION OF REGULATIONS NECESSARY FOR THE ENFORCEMENT OF CHAPTER 15, TITLE 56, REGARDING REGULATION OF MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND DEALERS; 56-16-10(R), RELATING TO THE DEFINITION OF "DEPARTMENT" UNDER THE LAWS REGARDING THE REGULATION OF MOTORCYCLE MANUFACTURERS, DISTRIBUTORS, DEALERS, AND WHOLESALERS; 56-16-190, RELATING TO AUTHORITY TO PROMULGATE REGULATIONS NECESSARY FOR THE ENFORCEMENT OF CHAPTER 16, TITLE 56, REGARDING REGULATION OF MOTORCYCLE MANUFACTURERS, DISTRIBUTORS, DEALERS, AND WHOLESALERS; 56-19-10(5), RELATING TO THE DEFINITION OF "DEPARTMENT" UNDER THE LAWS REGARDING PROTECTION OF TITLES TO AND INTERESTS IN MOTOR VEHICLES; 56-19-30, RELATING TO ADOPTION AND ENFORCEMENT OF RULES AND REGULATIONS NECESSARY TO CARRY OUT THE PROVISIONS OF CHAPTER 19, TITLE 56, REGARDING PROTECTION OF TITLES TO AND INTERESTS IN MOTOR VEHICLES, AND RELATING TO ADOPTION AND ENFORCEMENT OF RULES AND REGULATIONS NECESSARY TO CARRY OUT THE PROVISIONS OF CHAPTER 21, TITLE 16, REGARDING OFFENSES INVOLVING MOTOR VEHICLE TITLES; 56-27-10(C), RELATING TO THE DEFINITION OF "DEPARTMENT" UNDER THE LAWS ON PROFESSIONAL HOUSEMOVING; 38-73-456, RELATING TO THE PROVISION THAT AN INCREASE IN AUTOMOBILE INSURANCE PREMIUMS, OR ADDITIONAL SURCHARGES, FOR A DRIVING VIOLATION IS PROHIBITED UNTIL A CONVICTION OCCURS; AND 38-77-175, RELATING TO VERIFICATION OF AUTOMOBILE INSURANCE COVERAGE UPON THE ISSUANCE OF A TRAFFIC TICKET, FORM, AND PENALTY; AND TO PROVIDE THAT, WITH RESPECT TO THE REPEAL OF ITEMS OR SUBSECTIONS OF PROVISIONS OF LAW IN THIS ACT, THE CODE COMMISSIONER SHALL RENUMBER, OR RELETTER, ALL REMAINING ITEMS OR SUBSECTIONS AS NECESSARY TO CONFORM TO THE REPEALER.

Be it enacted by the General Assembly of the State of South Carolina:

Dealer and wholesaler license plates

SECTION 1. Section 56-3-2320(A) of the 1976 Code, as last amended by Section 121J, Part II, Act 497 of 1994, is further amended to read:

"(A) Upon application being made and the required fee being paid to the department, the department may issue dealer license plates to a licensed motor vehicle dealer. The license plates, notwithstanding other provisions of this chapter to the contrary, may be used exclusively on motor vehicles owned by, assigned, or loaned for test driving purposes to the dealer when operated on the highways of this State by the dealer, its corporate officers, its employees, or a prospective purchaser of the motor vehicle. The use by a prospective purchaser is limited to seven days, and the dealer shall provide the prospective purchaser with a dated demonstration certificate. The certificate must be approved by the department. Dealer plates must not be used to operate wreckers or service vehicles in use by the dealer nor to operate vehicles owned by the dealer that are leased or rented by the public. No dealer plates may be issued by the department unless the dealer furnishes proof in a form acceptable to the department that he has a retail business license as required by Chapter 36 of Title 12 and has made at least twenty sales of motor vehicles in the twelve months preceding his application for a dealer plate. The sales requirement may be waived by the department if the dealer has been licensed for less than one year. For purposes of this

section, the transfer of ownership of a motor vehicle between the same individual or corporation more than one time is considered as only one sale. Multiple transfer of motor vehicles between licensed dealers for the purpose of meeting eligibility requirements for motor vehicle dealer plates is prohibited.

A dealer may be issued two plates for the first twenty vehicles sold during the preceding year and one additional plate for each fifteen vehicles sold beyond the initial twenty during the preceding year. For good cause shown, the department in its discretion may issue extra plates. If the dealer has been licensed less than one year, the department shall issue a number of license plates based on an estimated number of sales for the coming year. The department may increase or decrease the number of plates issued based on actual sales made.

The cost of each dealer plate issued is twenty dollars.

Upon application to the department, a public or private school, college, or university, or an economic development entity created or sanctioned by the county where the entity is located, may be issued a license plate to be used on vehicles loaned or rented to the school, college, university, or economic development entity by a licensed motor vehicle dealer. The plate must be a personalized plate designed by the department. The cost of each plate issued is two hundred dollars, of which one hundred sixty dollars must be remitted by the department to the county in which the school, college, university, or economic development entity is located. Each plate is valid for two years, and there is no limit on the number of plates which may be issued, except in the case of an economic development entity where only one plate per entity is allowed.

A dealer license plate is allowed on a motor vehicle which the dealer lends to a public or private school for use in a driver education program. A plate used for this purpose may be obtained without fee and without regard to the limit on plates issued pursuant to this section. When the motor vehicle is no longer used for driver education, the dealer shall surrender the plate to the department.

Notwithstanding the provisions of this section, a dealer exclusively selling heavy duty trucks at retail is eligible to obtain license plates for exclusive use on the heavy duty trucks regardless of the number of trucks sold by him during the preceding required number of months. These license plates for trucks must be noted with a distinct and separate identification and used only on heavy duty trucks. For purposes of this section, heavy duty trucks include trucks having a gross vehicle weight of sixteen thousand pounds or greater."

Titles to school buses and service vehicles

SECTION 2. Section 1-11-310(E) of the 1976 Code, as last amended by Act 449 of 1992 is further amended to read:

"(E) Titles to school buses and service vehicles operated by the State Department of Education and vehicles operated by the South Carolina Department of Transportation must be retained by those agencies."

Motor vehicle licensing, registration, and titling

SECTION 3. Section 1-30-90 of the 1976 Code, as added by Act 181 of 1993 is further amended to read:

"Section 1-30-90. The following agencies, boards, and commissions, including all of the allied,

advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of Public Safety to be initially divided into divisions for Highway Patrol, State Police, Training and Continuing Education, and Motor Vehicle.

(A) Law Enforcement Hall of Fame, formerly provided for at Section 23-25-10, et seq.;

(B) State Highway Patrol, formerly provided for at Section 23-5-10, et seq.;

(C) Public Service Commission Safety Enforcement, formerly provided at Section 58-3-310;

(D) Law Enforcement Training Council, formerly provided for at Section 23-23-30, et seq.;

(E) Public Safety Division, formerly of the Governor's Office;

(F) The vehicle inspection, administrative services, drivers records, and financial responsibility sections and other offices of the Division of Motor Vehicles, formerly provided for at Section 56-1-10, et seq.;

(G) The motor vehicle licensing, registration, and titling sections, formerly provided for at Section 1-30-95(B)."

Department of Revenue and Taxation

SECTION 4. Section 1-30-95 of the 1976 Code, as added by Act 181 of 1993 is further amended to read:

"Section 1-30-95. The following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of Revenue and Taxation to be initially divided into divisions for Alcohol Beverage Control and Tax; provided, however, that from July 1, 1993, until February 1, 1995, the governing authority of the department shall be the commissioners of the Tax Commission, as constituted June 30, 1993, and thereafter, pursuant to the provisions of Section 12-3-10, et seq.;

(A) Licensing Division of Alcoholic Beverage Control Commission, formerly provided for at Section 61-1-10, et seq.;

(B) Tax Commission, formerly provided for at Section 12-3-10, et seq."

Identification to vote

SECTION 5. The first sentence of Section 7-13-710 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

"When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Public Safety, if he is not licensed to drive, or the written notification of registration provided for by Sections 7-5-125 and 7-5-180 if the notification has been signed by the elector."

Business hours

SECTION 6. Section 8-11-10 of the 1976 Code, as last amended by Act 181 of 1993 is further amended to read:

"Section 8-11-10. The departments of the state government except where seven day per week services are maintained, shall remain open from nine A.M. until five P.M. from Monday through Friday, both inclusive, except on holidays fixed by law. On Saturdays such departments may close at one P.M. Skeleton forces may be maintained on Saturday and so staggered that each employee shall work not less than one Saturday out of each month; provided, that the offices of the Motor Vehicle Division of the Department of Public Safety shall remain open from eight-thirty A.M. until five P.M. from Monday through Friday, both inclusive, except on holidays fixed by law and these offices need not be kept open on Saturdays, except as may be necessary to carry on essential work."

Highway repair

SECTION 7. Section 11-35-710(1) of the 1976 Code, as last amended by Section 51, Part II, Act 7 of 1995, is further amended to read:

"(1) the construction, maintenance, and repair of bridges, highways, and roads; vehicle and road equipment maintenance, and repair; and other emergency type parts or equipment utilized by the Department of Transportation or the Department of Public Safety;"

Department of Revenue and Taxation's functions

SECTION 8. Section 12-4-10 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

"Section 12-4-10. The South Carolina Department of Revenue and Taxation is created to administer and enforce the revenue laws of this State; administer the licensing laws and regulations relating to alcoholic liquors, beer, and wine and assess penalties for violations thereof; and other laws specifically assigned to it."

Department of Revenue and Taxation; divisions

SECTION 9. Section 12-4-15 of the 1976 Code, as added by Act 181 of 1993, is further amended to read:

"Section 12-4-15. The Department of Revenue and Taxation must be divided into such divisions as the director may prescribe."

Issuance and transfer of titles

SECTION 10. Section 12-36-1710(G) of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

"(G) The Department of Public Safety and the Division of Aeronautics of the Department of Commerce may not issue a license or transfer of title without first procuring from the Department of Revenue and Taxation information showing that the excise tax has been collected. The Department of Natural Resources may not license any boat or register any motor without first procuring from the Department of

report must include a description of the motor vehicle or motor vehicle part, its color, if any, the date, time, and place of its seizure, the name of the person from whose possession or control it was seized, the grounds for its seizure, and the location where it is held or stored.

(M) When an applicant for a certificate of title or salvage certificate presents to the department proof that the applicant purchased or acquired a motor vehicle at the public sale conducted pursuant to this section and that fact is attested to by the seizing agency, the division shall issue a certificate of title, or salvage certificate for the motor vehicle upon receipt of the statutory fee, properly executed application for a certificate of title, or other certificate of ownership, and the certification of the seizing agency that a state-assigned number was applied for and affixed to the motor vehicle prior to the time that the motor vehicle was released by the seizing agency to the purchaser."

Administering agency changed; etc.

SECTION 245. Section 56-31-50(C), (D) of the 1976 Code, as added by Part II, Section 69A of Act 501 of 1992 and as last amended by Section 1502 of Act 181 of 1993, are further amended to read:

"(C) On February fifteenth of each year all rental companies engaged in the business of renting private passenger motor vehicles which collect surcharges pursuant to this section shall file a report with the department stating the total amount of South Carolina personal property taxes on private passenger motor vehicles paid in the previous calendar year, the total amount of private passenger motor vehicle rental revenues earned on rentals in South Carolina for the previous calendar year, and the amount by which the total amount of the surcharges for the previous year exceeds the total amount of personal property taxes on private passenger motor vehicles paid for the previous calendar year. All surcharge revenues collected in excess of the total amount of personal property taxes on private passenger motor vehicles must be remitted to the State Treasurer's office for deposit in the state general fund.

(D) Any rental company which makes a false report to the department with the intent to misrepresent the amount of personal property taxes on private passenger motor vehicles paid or the amount of surcharges collected is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding one thousand dollars or by a term of imprisonment not exceeding one year, or both. Each violation constitutes a separate offense."

Provisions repealed; renumbering by Code Commissioner

SECTION 246. A. Chapter 31 of Title 12, Sections 12-4-400, 12-4-410, 12-37-2740, 20-7-947, 23-6-10 (3), 23-6-200, 56-1-225(b), 56-1-520, 56-1-530, 56-1-550, 56-1-560, 56-1-830, 56-1-840, 56-1-1120, 56-1-3390, 56-3-20(21), 56-3-251, 56-3-420, 56-3-880, 56-3-1010(3), 56-3-1160, 56-3-1950(1), 56-3-2410, 56-3-2500, 56-3-2670, 56-3-2750, 56-5-370, 56-5-2960, 56-5-5015(L), 56-5-5610, 56-5-5680, 56-5-5830, 56-5-5860, 56-5-5930, 56-5-6180, 56-9-20(1), 56-9-20(2), 56-9-310, 56-10-210(3), 56-10-290, 56-10-300, 56-15-10(r), 56-15-360, 56-16-10(r), 56-16-190, 56-19-10(5), 56-19-30, 56-27-10(c), 38-73-456, and 38-77-175 of the 1976 Code are repealed.

B. For each item repealed in subsection A., the Code Commissioner shall renumber all existing items as may be necessary to conform the remaining items in each existing section.

Time effective

SECTION 247. This act takes effect upon approval by the Governor.

Approved the 5th day of June, 1996.

South Carolina General Assembly
110th Session, 1993-1994

Bill 3546

Current Status

Introducing Body:	House
Bill Number:	3546
Ratification Number:	276
Act Number:	181
Primary Sponsor:	Sheheen
Type of Legislation:	GB
Subject:	State Government Restructuring
Date Bill Passed both Bodies:	19930614
Computer Document Number:	CYY/15185SD.93
Governor's Action:	S
Date of Governor's Action:	19930618
Introduced Date:	19930223
Date of Last Amendment:	19930614
Last History Body:	------
Last History Date:	19930618
Last History Type:	Act No. 181
Scope of Legislation:	Statewide
All Sponsors:	Sheheen Wilkins Boan Hodges Jennings Harwell Corning Thomas
Type of Legislation:	General Bill

History

Bill	Body	Date	Action Description	CMN	Leg Involved
3546	------	19930618	Act No. 181		
3546	------	19930618	Signed by Governor		
3546	------	19930615	Ratified R 276		
3546	Senate	19930614	Ordered enrolled for ratification		
3546	Senate	19930614	Free Conference Committee Report received, adopted	99	
3546	House	19930614	Free Conference Committee Report received, adopted	99	
3546	Senate	19930602	With unanimous consent, Free Conference Powers were granted contingent upon the Conference Report containing language specifying a seven	99	Moore Stilwell Jackson

			member board at DHEC be empowered to set policy, handle permitting and to employ an executive director		
3546	House	19930602	Free Conference Powers granted, appointed Reps. to Committee of Free Conference	99	Hodges Boan Clyborne
3546	Senate	19930525	Conference powers granted, appointed Senators to Committee of Conference	98	Moore Stilwell Jackson
3546	House	19930525	Conference powers granted, appointed Reps. to Committee of Conference	98	Hodges Boan Clyborne
3546	House	19930525	Insists upon amendment		
3546	Senate	19930520	Non-concurrence in House amendment		
3546	House	19930520	Senate amendments amended, returned to Senate		
3546	Senate	19930517	Amended, read third time, returned to House with amendments		
3546	Senate	19930513	Unanimous consent to be placed in status of Adjourned Debate ahead of all other Adjourned Debates		
3546	Senate	19930511	Read second time, notice of general amendments		
3546	Senate	19930511	Recalled from Committee	11	
3546	Senate	19930330	Introduced, read first time, referred to Committee	11	
3546	House	19930325	Amended, read third time, sent to Senate		
3546	House	19930311	Amended, read second time		
3546	House	19930310	Amended, debate interrupted by adjournment		
3546	House	19930309	Amended, debate interrupted by adjournment		
3546	House	19930309	Objection by Representative		Wilkins Hodges McLeod Beatty Haskins
3546	House	19930308	Recalled from Committee	25	
3546	House	19930223	Introduced, read first time, referred to Committee	25	

View additional legislative information at the LPITS web site.

(R276, H3546)

AN ACT TO AMEND TITLE 1, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ADMINISTRATION OF GOVERNMENT BY ADDING CHAPTER 30, SO AS TO ESTABLISH WITHIN THE EXECUTIVE BRANCH OF STATE GOVERNMENT NINETEEN DEPARTMENTS AND TO ESTABLISH

WITHIN EACH DEPARTMENT CERTAIN DIVISIONS COMPOSED OF SPECIFIED STATE AGENCIES, TO PROVIDE FOR THE ORGANIZATION, GOVERNANCE, DUTIES, FUNCTIONS, AND PROCEDURES OF THE VARIOUS DEPARTMENTS AND DIVISIONS, AND FOR THE MANNER OF SELECTION, TERMS, AND REMOVAL OF DEPARTMENT HEADS, BOARD AND COMMISSION MEMBERS, AND OTHER OFFICIALS, TO PROVIDE THAT CERTAIN OTHER AGENCIES OR DEPARTMENTS OF STATE GOVERNMENT SHALL PERFORM THEIR DUTIES AND FUNCTIONS AS A PART OF AND UNDER THE SUPERVISION OF DESIGNATED CONSTITUTIONAL OR STATUTORY OFFICERS, TO AMEND CHAPTER 23 OF TITLE 1 OF THE 1976 CODE, RELATING TO STATE AGENCY RULE MAKING AND ADJUDICATION OF CONTESTED CASES BY ADDING ARTICLE 5, SO AS TO ESTABLISH THE SOUTH CAROLINA ADMINISTRATIVE LAW JUDGE DIVISION THE JUDGES OF WHICH SHALL HEAR, DETERMINE, AND PRESIDE OVER CONTESTED CASES OF CERTAIN STATE AGENCIES, DEPARTMENTS, DIVISIONS, AND COMMISSIONS, TO AMEND SECTIONS 1-23-110, 1-23-115, 1-23-120, 1-23-130, 1-23-160, 1-23-310, 1-23-320, 1-23-380, AND TO ADD SECTION 1-23-111 RELATING TO THE STATE ADMINISTRATIVE PROCEDURES ACT SO AS TO REVISE THE MANNER IN WHICH REGULATIONS ARE PROMULGATED, APPROVED, AND TAKE EFFECT, TO ABOLISH SPECIFIED BOARDS, COMMISSIONS, AND COMMITTEES OF THIS STATE, TO PROVIDE FOR TRANSITIONAL PROVISIONS IN REGARD TO THIS ACT, TO PROVIDE FOR EFFECTIVE DATES, AND TO AMEND SECTIONS 1-1-110, 1-3-210, 1-3-220, 1-3-240, 1-3-250, 1-15-10, 1-20-50, 1-25-60, 2-7-71, 2-7-73, 2-7-105, 2-13-190, 2-13-240, 2-15-61, 2-17-15, 2-19-30, 2-19-70, 2-22-20, 2-23-10, 2-67-10, 2-67-30, 3-3-210, 3-5-40, 3-5-50, 3-5-60, 3-5-80, 3-5-100, 3-5-120, 3-5-130, 3-5-140, 3-5-150, 3-5-160, 3-5-170, 3-5-190, 3-5-320, 3-5-330, 3-5-340, 3-5-360, 4-9-155, 4-10-25, 4-10-60, 4-10-80, 4-10-90, 4-29-67, 5-3-90, 5-3-110, 5-3-300, 5-7-110, 5-27-510, 6-9-60, 7-13-710, 8-1-80, 8-1-100, 8-11-10, 8-11-945, 8-13-740, 8-13-910, 8-17-370, 8-21-310, 8-21-770, 8-21-780, 8-21-790, 9-1-60, 9-11-180, 10-5-230, 10-5-240, 10-5-270, 10-5-300, 10-5-320, 10-7-10, 10-9-320, 10-11-50, 10-11-80, 11-9-820, 11-9-825, 11-11-10, 11-17-10, 11-35-45, 11-35-710, 11-35-1520, 11-35-5230, 11-35-5250, 11-35-5270, 11-37-200, 12-2-10, 12-4-10, 12-4-30, 12-4-335, 12-4-350, 12-4-370, 12-7-455, 12-7-460, 12-7-1220, 12-7-1225, 12-7-1250, 12-7-1590, 12-7-2010, 12-7-2230, 12-7-2415, 12-7-2590, 12-7-2610, 12-9-130, 12-9-310, 12-9-420, 12-9-630, 12-9-860, 12-13-70, 12-16-1110, 12-19-20, 12-19-60, 12-19-100, 12-21-100, 12-21-320, 12-21-470, 12-21-660, 12-21-780, 12-21-820, 12-21-1060, 12-21-1110, 12-21-1320, 12-21-1540, 12-21-1550, 12-21-1570, 12-21-1580, 12-21-1590, 12-21-1610, 12-21-1840, 12-21-2420, 12-21-2719, 12-21-2720, 12-21-2726, 12-21-3320, 12-21-3441, 12-21-3590, 12-21-3600, 12-23-310, 12-23-815, 12-23-820, 12-23-830, 12-27-270, 12-27-380, 12-27-

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Be it enacted by the General Assembly of the State of South Carolina:

...

Name changed

SECTION 65. Section 7-13-710 of the 1976 Code is amended to read:

"Section 7-13-710. When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the South Carolina Department of Revenue and Taxation, if he is not licensed to drive, or the written notification of registration provided for by Sections 7-5-125 and 7-5-180 if the notification has been signed by the elector. If the elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail. After presentation of the required identification, his name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. The managers shall keep a poll list which must contain one column headed `Names of Voters'. Before any ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification

of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers."

...

In the Senate House June 15, 1993.

Nick A. Theodore,
President of the Senate

Robert J. Sheheen,
Speaker of the House of Representatives

Approved the 18th day of June, 1993.

Carroll A. Campbell, Jr.
Governor

Printer's Date -- September 20, 1993 -- S.

South Carolina General Assembly
118th Session, 2009-2010

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A277, R296, S288

STATUS INFORMATION

General Bill
Sponsors: Senator L. Martin
Document Path: l:\s-rules\drafting\lam\003viol.ec.lam.docx

Introduced in the Senate on January 15, 2009
Introduced in the House on April 28, 2009
Last Amended on May 26, 2010
Passed by the General Assembly on June 2, 2010
Governor's Action: June 11, 2010, Vetoed
Legislative veto action(s): Veto overridden

Summary: Driver's license

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/15/2009	Senate	Introduced and read first time SJ-11
1/15/2009	Senate	Referred to Committee on **Transportation** SJ-11
4/15/2009	Senate	Committee report: Favorable **Transportation** SJ-8
4/16/2009		Scrivener's error corrected
4/22/2009	Senate	Read second time SJ-20
4/23/2009	Senate	Read third time and sent to House SJ-16
4/28/2009	House	Introduced and read first time HJ-8
4/28/2009	House	Referred to Committee on **Judiciary** HJ-9
5/6/2010	House	Committee report: Favorable with amendment **Judiciary** HJ-6
5/18/2010	House	Debate adjourned until Wednesday, May 19, 2010 HJ-56
5/19/2010	House	Requests for debate-Rep(s). Weeks, Hosey, Hart, RL Brown, Jefferson, Gilliard, Hutto, King, Brantley, Dillard, Duncan, Stavrinakis, and Bales HJ-16
5/26/2010	House	Amended HJ-72
5/26/2010	House	Read second time HJ-72
5/26/2010	House	Roll call Yeas-83 Nays-18 HJ-72
5/27/2010	House	Read third time and returned to Senate with amendments HJ-47
6/2/2010	Senate	Concurred in House amendment and enrolled SJ-203
6/7/2010		Ratified R 296
6/11/2010		Vetoed by Governor
6/16/2010	Senate	Veto overridden by originating body Yeas-33 Nays-7 SJ-235
6/29/2010	House	Veto overridden Yeas-78 Nays-33 HJ-46
7/13/2010		Effective date See Act for Effective Date
7/14/2010		Act No. 277

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VERSIONS OF THIS BILL

1/15/2009
4/15/2009
4/16/2009
5/6/2010
5/26/2010

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

(A277, R296, S288)

AN ACT TO AMEND ARTICLE 1, CHAPTER 1, TITLE 56, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 56-1-146 SO AS TO REQUIRE A CLERK OF COURT TO NOTIFY THE DEPARTMENT OF MOTOR VEHICLES OF A PERSON WHO IS CONVICTED OF A VIOLENT CRIME; TO REQUIRE THE DEPARTMENT OF MOTOR VEHICLES TO NOTIFY THE CONVICTED PERSON THAT HE SHALL SURRENDER HIS DRIVER'S LICENSE OR SPECIAL IDENTIFICATION CARD TO THE DEPARTMENT; BY ADDING SECTION 56-1-148 SO AS TO PROVIDE THAT A PERSON CONVICTED OF A VIOLENT CRIME SHALL HAVE A SPECIAL CODE AFFIXED TO THE REVERSE SIDE OF HIS DRIVER'S LICENSE OR SPECIAL IDENTIFICATION CARD THAT IDENTIFIES THE PERSON AS HAVING BEEN CONVICTED OF A VIOLENT CRIME, TO PROVIDE A FEE TO BE CHARGED FOR AFFIXING THE CODE AND FOR ITS DISTRIBUTION, AND TO PROVIDE A PROCESS FOR REMOVING THE CODE; TO AMEND SECTION 56-1-80, AS AMENDED, RELATING TO THE CONTENTS OF A DRIVER'S LICENSE APPLICATION, SO AS TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 56-1-3350, AS AMENDED, RELATING TO THE ISSUANCE OF A SPECIAL IDENTIFICATION CARD BY THE DEPARTMENT OF MOTOR VEHICLES, SO AS TO MAKE TECHNICAL CHANGES; AND TO PROVIDE THAT THE PROVISIONS OF SECTION 56-1-80 MUST BE MET UPON THE RENEWAL OF AN EXISTING DRIVER'S LICENSE OR SPECIAL IDENTIFICATION CARD.

Be it enacted by the General Assembly of the State of South Carolina:

Surrender of driver's license by person convicted of certain crimes

SECTION 1. Article 1, Chapter 1, Title 56 of the 1976 Code is amended by adding:

"Section 56-1-146. When a person is convicted of or pleads guilty or nolo contendere to a crime of violence as defined in Section 16-23-10(3) on or after July 1, 2011, in this State, the clerk of court must notify by mail, electronic mail, or facsimile the Department of Motor Vehicles within thirty days of the conviction of guilt or nolo contendere plea. The Department of Motor Vehicles must then notify the person who was convicted of the crime of violence as defined in Section 16-23-10(3) that he must surrender his driver's license or special identification card to the Department of Motor Vehicles by mail or in person, and the Department of Motor Vehicles shall issue to the person by mail or in person a driver's license or special identification card with the identifying code as referenced in Section 56-1-148. If the person convicted of a crime of violence as defined in Section 16-23-10(3) fails to surrender his driver's license or special identification card to the Department of Motor Vehicles, the driver's license or special identification card is considered canceled."

Identifying code affixed on driver's license of person convicted of certain crimes

SECTION 2. Article 1, Chapter 1, Title 56 of the 1976 Code is amended by adding:

"Section 56-1-148. (A) As used in this chapter 'identifying code' means a symbol, number, or letter of the alphabet developed by the department to identify a person convicted of or pleading guilty or nolo contendere to a crime of violence as defined in Section 16-23-10(3) on or after July 1, 2011. The symbol, number, or letter of the alphabet shall not be defined on the driver's license or special identification card.

(B) In addition to the contents of a driver's license provided for in Section 56-1-140 or a special identification card provided for in Section 56-1-3350, a person who has been convicted of or pled guilty or nolo contendere to a crime of violence as defined in Section 16-23-10(3) on or after July 1, 2011, must have an identifying code determined by the department affixed to the reverse side of his driver's license or special identification card. The code must identify the person as having been convicted of a violent crime. The code must be developed by the department and made known to the appropriate law enforcement officers and judicial officials of this State.

(C) The presence of a special identifying code on a person's driver's license or special identification card may not be used as a grounds to extend the detention of the person by a law enforcement officer or grounds for a search of the person or his vehicle.

(D) The department shall charge a fee of fifty dollars for affixing the identifying code provided in subsection (B). This fee is in addition to the fee provided for in Section 56-1-140. This fee must be placed by the Comptroller General into a special restricted account to be used by the department to defray expenses associated with this section.

(E) A person whose driver's license or special identification card has been canceled pursuant to Section 56-1-146 may apply for a new license or special identification card in a manner prescribed by the department. The department must issue by mail or in person a new license or special identification card with the identifying code required by this section after payment of the fifty-dollar fee provided in subsection (C). The department must not issue a new driver's license to a person during any period of suspension or revocation for any reason other than Section 56-1-146 and a driver's license may only be issued after the period of suspension or revocation has ended and the person is otherwise eligible to be issued a license.

(F) The intent of placing an identifying code on a driver's license or special identification card that identifies a person who has been convicted of a crime of violence as defined in Section 16-23-10(3) is to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens and law enforcement officers. Notwithstanding this legitimate stated purpose, this provision is not intended to violate the guaranteed constitutional rights of persons who have violated our state's laws.

(G) If a person's conviction or guilty plea for a crime of violence as defined in Section 16-23-10(3) is reversed on appeal, or if the person is subsequently pardoned, then the person may apply for a driver's license or special identification card that does not have the identifying code affixed.

(H) A person who is not convicted of a subsequent crime of violence as defined in Section 16-23-10(3) for five years after he has completely satisfied the terms of his sentence or during the term of the person's probation or parole, whichever the sentencing judge determines is appropriate, may file an application with the department to have the identifying code affixed to his driver's license or special

identification card removed.

(I) A person must provide appropriate supporting documentation prescribed by the department to verify his eligibility to have the identifying code removed pursuant to subsection (F) or (G). Upon verification and payment of the fee provided in Section 56-1-140, the person must be issued a new driver's license or special identification card."

Application for driver's license or permit

SECTION 3. Section 56-1-80 of the 1976 Code, as last amended by Act 92 of 2007, is further amended to read:

"Section 56-1-80. (A) An application for a driver's license or permit must:

(1) be made upon the form furnished by the department;

(2) be accompanied by the proper fee and acceptable proof of date and place of birth;

(3) contain the full name, date of birth, sex, race, and residence address of the applicant and briefly describe the applicant;

(4) state whether the applicant has been licensed as an operator or chauffeur and, if so, when and by what state or country;

(5) state whether a license or permit has been suspended or revoked or whether an application has been refused and, if so, the date of and reason for the suspension, revocation, or refusal;

(6) allow an applicant voluntarily to disclose a permanent medical condition, which must be indicated by a symbol designated by the department on the driver's license and contained in the driver's record; and

(7) allow an applicant voluntarily to disclose that he is an organ and tissue donor which must be indicated by a symbol designated by the department on the driver's license and contained in the driver's record.

(B) The information contained on a driver's license and in the driver's department records pertaining to a person's permanent medical condition, as provided for in item (A)(6), must be made available, upon request, to law enforcement and emergency medical services and hospital personnel; and the information and records pertaining to a person's organ and tissue donor status, as provided for in item (A)(7), must be made available, upon request, to law enforcement, emergency medical services and hospital personnel, and the South Carolina Donor Referral Network, as provided for in Section 44-43-910.

(C) Whenever an application is received from a person previously licensed or permitted in another state, the Department of Motor Vehicles may request a copy of the applicant's record from the other state. When received, the record becomes a part of the driver's record in this State with the same effect as though entered on the operator's record in this State in the original instance. Every person who obtains a driver's license or permit for the first time in South Carolina and every person who renews his driver's license or permit in South Carolina must be furnished a written request form for completion and verification of liability insurance coverage.

The completed and verified form or an affidavit prepared by the department showing that neither he, nor a resident relative, owns a motor vehicle subject to the provisions of this chapter, must be delivered to the department at the time the license or permit is issued or renewed."

Application for special identification card

SECTION 4. The first paragraph of Section 56-1-3350 of the 1976 Code is amended to read:

"Section 56-1-3350. Upon application by a person ten years of age or older who is a resident of South Carolina, the department shall issue a special identification card as long as:

(1) the application is made on a form approved and furnished by the department; and

(2) the applicant presents to the person issuing the identification card a birth certificate or other evidence acceptable to the department of his name and date of birth."

Requirements of Section 56-1-80 must be met

SECTION 5. The requirements of Section 56-1-80 of the 1976 Code, as amended by Section 3 of this act, must be met upon the renewal of an existing driver's license or special identification card of a person convicted of a crime of violence as defined in Section 16-23-10(3) in this State on or after July 1, 2011.

Savings clause

SECTION 6. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 7. This act takes effect July 1, 2011, and applies to all persons convicted of a crime of violence as defined in Section 16-23-10(3).

Ratified the 7th day of June, 2010.

Vetoed by the Governor -- 6/11/2010.

Veto overridden by Senate -- 6/16/2010.

Veto overridden by House -- 6/29/2010.

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House of Representatives

State of South Carolina

Committees:
Judiciary
Election Laws Subcommittee, Chairman
Rules, Vice-Chairman
Judicial Merit Selection Commission

June 28, 2011

Mr. Jay Smith
Assistant Attorney General for South Carolina
Post Office Box 11549
Columbia, South Carolina 29211

Dear Mr. Smith:

I am writing you concerning House Bill 3003, the Voter Identification provisions, recently signed into law in South Carolina. You have asked me to briefly explain why I chose to introduce H.3003. I will try to explain how I came to feel that voter identification was an important issue.

First, let me say that it is an unspoken truth in South Carolina that election fraud exists. Though no one likes to speak about it, it is well known in politics that elections can be won and lost, based not only on who votes but who votes for whom. Opponents of this bill often claimed that, based on their research, there were no instances of voter impersonation prosecuted in South Carolina, claiming that H.3003 was a solution in search of a problem. In my years in South Carolina politics I know quite the opposite to be true, as do opponents of this or other Voter I.D. legislation.

Understanding that there was an issue with ballot security in South Carolina and that the opportunity for fraud and abuse was obvious in our current system, I sought a solution.

I would love to be able to tell you that I originated the provisions of H.3003 myself, that presentation of a picture I.D. and the various safeguards for voter and ballots alike were my own. I did not originate the idea. However, I paid close attention to what the Indiana Legislature enacted and the reasons that they gave for taking such a step. I agreed in full with the Indiana rationale and believed that such a measure would be beneficial to safeguard elections in South Carolina. Therefore, I introduced H.3003 and did all that I could to ensure its passage through the South Carolina General Assembly.

I believe that the provisions of H.3003 are fair and justified and that the legislation seeks to balance the state's interest in having fair and secure elections and a citizen's absolute right to cast their ballot. If, for one moment, I believed that the provisions of H.3003 were designed to do anything other than assure fair and fraud-free elections, I would not have introduced the legislation.

If I can provide any further information, please do not hesitate to contact me.

Sincerely,

Alan Clemmons