



ELECTION 2016

Latino Voters at Risk:

Assessing the Impact of Restrictive
Voting Changes In Election 2016



A REPORT BY THE NALEO EDUCATIONAL FUND

The nation's leading non-profit organization that facilitates full Latino participation in the American political process, from citizenship to public service.

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EXECUTIVE SUMMARY

The Presidential election of 2016 will take place against a very different legal and political landscape than existed in 2012. Voters lost the protection of a critical piece of the Voting Rights Act, the preclearance process, to a 2013 Supreme Court ruling. Whereas in 2012, new voting policies could not be implemented in the entirety or portions of 16 states until they had cleared anti-discrimination review, in 2016, approximately eight million Latino voters are vulnerable to restrictive lawmaking and changes in election administration because they live in jurisdictions that have been freed from oversight, in spite of their documented histories of adopting practices that discriminate against minority voters.

Nineteen states created new barriers to Latino participation since 2012:

Nineteen states have enacted or implemented new laws since November 2012 that will make it harder for Latinos and other voters to cast ballots in 2016. **In sum, we estimate these laws could seriously impede more than 875,000 Latinos who are eligible to vote from participating in the 2016 Presidential election.**

States have implemented serious obstacles to voter registration:

Some of the restrictive provisions that have been implemented since 2012 make it more difficult to register to vote by adding requirements for documentation or information from potential registrants. Some states have also moved deadlines for registration to dates farther in advance of Election Day, or made it more difficult for community volunteers not affiliated with election officials to help people register.

States have imposed discriminatory restrictions on voting:

State legislatures have also made it more difficult to vote both in-person and by mail. Several states will prohibit people without acceptable photo ID from voting for the first time in a Presidential election, and some states have truncated their early voting periods. Some states have also shortened the window of opportunity for requesting an absentee ballot, or restricted helpers' ability to deliver absentee ballots for voters who cannot easily send their ballots themselves.

Restrictive laws are likely to have a disproportionate negative effect on Latino voters:

Table 1 sets forth the number and location of Latinos eligible to vote who will face challenges with electoral participation in Election 2016. In addition to the number of Latinos set forth on page 2, hundreds of thousands of additional citizens are likely to be deterred from voting by provisions whose numerical impact we cannot estimate with precision.

TABLE 1



RESTRICTIONS ON
REGISTRATION



STRICT OR
NEAR-STRICT
VOTER ID



SHORTENED
EARLY IN-PERSON
VOTING PERIODS



RESTRICTIONS ON
ABSENTEE VOTING
BY MAIL



OTHER
HEIGHTENED VOTING
QUALIFICATIONS

	RESTRICTIONS ON REGISTRATION	STRICT OR NEAR-STRICT VOTER ID	SHORTENED EARLY IN-PERSON VOTING PERIODS	RESTRICTIONS ON ABSENTEE VOTING BY MAIL	OTHER HEIGHTENED VOTING QUALIFICATIONS
Alabama	*	10,800			
Arizona				*	
Arkansas				*	
Indiana	*	*	*		
Kansas	*				
Kentucky					*
Mississippi		4,700			
Montana	*				
Nebraska			*		
New Jersey				*	
New Mexico	*				
North Carolina	More than 18,000	*	*		*
North Dakota		1,800			
Ohio			*	*	*
Tennessee		*	*		
Texas		771,300		*	
Utah				*	
Virginia	*	45,600			
Wisconsin	*	24,000	*		

TOTALS

More than
18,000

More than
858,200

*

*

*

* No estimate is provided of Latino voters affected, because there is not sufficient public data or other information required to make a reliable projection.

Election systems diminish Latino electoral opportunities:

Voters are most likely to be discouraged from voting by laws whose application directly determines who does and does not have access to the polls. But voters' actual influence on our democracy also depends upon whether election systems provide fair opportunities for underrepresented groups to elect the candidates of their choice. In some places, Latino voters have been silenced not just by laws that prevent them from voting but also by laws that design electoral systems to minimize elected officials' accountability to underrepresented communities. For example, in cities and counties where people tend to vote the same as others who share their race or ethnicity, a sizable underrepresented community can be prevented from electing a representative of its choice by use of at-large districts for which the jurisdiction's entire, majority-dominated electorate votes. Redistricting plans, likewise, have been drawn to minimize underrepresented voters' influence.

Administrative practices perpetuate discrimination against Latinos:

Although restrictive voting laws continue to be proposed and enacted, their implementation has slowed somewhat as voter advocates have won significant victories in legal challenges based on the Voting Rights Act and other protective laws. In recent years administrative decision-making has grown in prominence as a cause of unequal opportunity to participate in elections, and thus as a point of concern. Election administrators' discretion to set aggressive registration list maintenance policies, to close or consolidate polling locations, to provide insufficient resources for polling places in underrepresented communities, and to neglect the provision of language assistance throughout the election process has already made it more difficult for many Latinos and underrepresented voters to participate in elections. These and other administrative (rather than legislative) decisions pose particular danger since advocates have rarely been able to successfully use the Voting Rights Act and other legal protections to attack, and avoid, their negative effects.

Restrictive policies make democracy less inclusive when we should be making it more inclusive:

Latino registration and voting rates have long lagged far behind national averages. Latinos who are least likely to participate in elections already feel disengaged from the political system, and skeptical of the importance and potential influence of their votes. As the Latino electorate grows and constitutes an ever-larger share of all Americans eligible to vote, it is increasingly critical that Latinos progress toward becoming full participants in our nation's civic and political life. In order to accomplish this, members of the Latino electorate need to be invited and urged to participate, particularly by the family, friends, and community members they know best and trust most. Restrictive voting policies accomplish the opposite, however. Laws that make it harder to vote reinforce non-voters' sense that politicians do not want to hear from them and do not care what they think. This is why they are the wrong policy solution for the present time.

Congress and states should take immediate action to expand opportunities for all Americans to vote:

In order to effectively safeguard against adoption of procedures that discriminatorily make it harder for Latinos to vote, Congress should enact legislation that modernizes and restores the Voting Rights Act to full strength. State and local policymakers should concentrate their efforts on expanding opportunities for Americans to vote.

INTRODUCTION

The legal landscape against which the Presidential election will play out has rarely changed as dramatically as it did between the 2012 and 2016 election cycles. For almost 50 years, the Voting Rights Act's (VRA) signature provision protected voters in numerous jurisdictions that had a demonstrated propensity to adopt discriminatory policies. During Election 2012, in nine entire states and selected towns and counties in seven additional states, no new voting law could be implemented unless the U.S. Department of Justice (DOJ) or a federal court first determined it to be free of discriminatory motive and impact. This VRA-mandated preclearance procedure stopped more than 1,000 problematic provisions from taking effect between 1965 and 2013, when the Supreme Court decided a case entitled *Shelby County v. Holder*.

In *Shelby County*, certain states argued, and the Supreme Court eventually agreed, that the formula used to identify states subject to preclearance had become too outdated. This formula was based on reference to voter participation rates and election law in effect in 1964, 1968, and 1972. Though they were singled out on the basis of past practice, the jurisdictions that met the formula criteria were, by 2012, still the same jurisdictions committing the most violations of all parts of the VRA, including those applicable to every state and locality in the country. Nonetheless, the Supreme Court effectively ended almost all preclearance measures and left millions of voters more vulnerable to discriminatory election lawmaking when it announced its decision in June 2013. According to the most recent American Community Survey (ACS) data¹ available as of this writing, there are more than eight million Latinos eligible to vote living in the jurisdictions that lost the benefit of comprehensive anti-discriminatory oversight in the years in between the 2012 and 2016 Presidential elections.

Unfortunately, but perhaps predictably, the Court's *Shelby County* decision inspired a wave of restrictive election lawmaking in states in which the potential influence of underrepresented voters has been dramatically increasing. The Brennan Center for Justice has noted that seven of the 11 states with the highest African American turnout in 2008 enacted laws that made it harder to register and vote between 2010 and 2014; the same is true of nine of the 12 states whose Latino populations grew most rapidly between 2000 and 2010.²

Among these jurisdictions, nine saw more than a 100% increase in their Latino populations in between the most recent decennial Censuses, and in six of those nine states - Alabama, Arkansas, Kentucky, Mississippi, North Carolina, and Tennessee - there are new provisions in effect since Election Day 2012 that will make voting in 2016 more difficult than it was when Americans last voted for a President. In addition to all of these indicators, nine of the 15 states covered in whole or part by preclearance procedures at the time of the Supreme Court's *Shelby County* decision³ adopted new voting restrictions in recent years.

The NALEO Educational Fund once again finds, as we concluded in 2012, that laws that make it harder to register and vote are likely to have a disproportionate negative effect on Latino voters. The confluence between places where Latino and other underrepresented voters' political influence is increasing and places that have impaired access to the ballot strongly suggests that the discriminatory chilling impact of restrictive policies is not a coincidence, but a motivating factor behind their enactment. Laws newly implemented since Election Day 2012 are likely to make it more difficult for at least 875,000 eligible Latino voters to participate in the Presidential election of 2016, and hundreds of thousands of additional citizens are likely to be deterred from voting by provisions whose numerical impact we cannot estimate with precision. The numbers and locations of affected voters are set forth in Table 1 below.

¹ Throughout this report, we draw demographic data about Latinos and other racial and ethnic groups primarily from the Census Bureau's American Community Survey (ACS). As of April 2016, the most recent ACS data available are those based on responses collected in 2014. See the Methodology section at page 50 of this report for additional information about Census Bureau products used to calculate statistics included in this document.

² Wendy R. Weiser & Erik Opsal, *The State of Voting in 2014*, June 17, 2014, http://www.brennancenter.org/analysis/state-voting-2014#_ftnref6.

³ Although 16 states were fully or partially covered on Election Day 2012, covered townships in New Hampshire were released from coverage (or, "bailed out") between Election Day and June 2013, leaving 15 states fully or partially covered at the time of decision of *Shelby County*.

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Alabama	*	10,800			
Arizona				*	
Arkansas				*	
Indiana	*	*	*		
Kansas	*				
Kentucky					*
Mississippi		4,700			
Montana	*				
Nebraska			*		
New Jersey				*	
New Mexico	*				
North Carolina	More than 18,000	*	*		*
North Dakota		1,800			
Ohio			*	*	*
Tennessee		*	*		
Texas		771,300		*	
Utah				*	
Virginia	*	45,600			
Wisconsin	*	24,000	*		

TOTALS

More than
18,000

More than
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* No estimate is provided of Latino voters affected, because there is not sufficient public data or other information required to make a reliable projection.

In the present document, we describe the likely impact of a selection of newly-implemented laws in 19 states that are home to nearly nine million eligible Latino voters, or close to one of every three members of the Latino electorate. Our work does not represent a comprehensive account of restrictive voting laws enacted and implemented between 2012 and 2016, but shines a spotlight on the kinds of laws most likely to impede Latino political participation, and on the exemplars of such laws whose potential consequences for Latino voters are the most severe.

In addition, we highlight herein the potential discriminatory impact of administrative practices around such issues as registration list maintenance, siting of polling places, allocation of voting resources between polling places, and the provision of language assistance during elections to Latinos who are not yet fully fluent in English. Under the influence of notable legal victories striking down restrictive election lawmaking, some state and local legislators have slowed their efforts to enact restrictive “copycat” provisions, particularly in 2014 and 2015. As a result, in some jurisdictions around the country, discretionary decisions made by unelected administrators now pose an equal or greater threat to underrepresented voters’ ability to participate in elections.

We are particularly concerned about the potential impact of discriminatory election administration, even though we cannot estimate the scope of its likely impact on the 2016 Election, because Latino voters are particularly vulnerable to negative consequences of poor administration. This is because voting rights laws have very rarely been used successfully to challenge executive policymaking that discriminatorily affects Latino and other underrepresented groups of voters, with the exception of non-compliance with language assistance obligations.

The VRA does continue to empower DOJ and private citizens to challenge inadequate language assistance, and voters continue to report non-compliance to the Election Protection Coalition and other organizations of voter advocates. However, no new legal challenges to insufficient language assistance have been brought between Election Day 2012 and April 2016, though voting in the 2016 Presidential contest has begun.

It is clear that laws and policies that make it harder for Latinos to register and vote have a negative impact on the individuals who are personally prevented from taking part in elections by their inability to satisfy heightened requirements. What may be less obvious is that restrictive measures inhibit even those who are not directly affected by them. The policies discussed herein signal to the entire electorate that their voices and input as voters are not welcomed generously, but rather grudgingly accepted when voters are willing to put in the effort to clear the hurdles in their way. Because they tend to disengage potential voters, restrictions on access to elections constitute the wrong policy choices for 2016. It is imperative that we instead encourage Latinos and all Americans to become more regular participants in the political process by making the registration and voting process more accessible.

RESTRICTIONS ON VOTER REGISTRATION

Lawmakers in states and localities around the country have devoted significant time and attention since the turn of the century to proposals concerning elections. Although election law encompasses issues ranging from candidate qualifications to certification of election results, the provisions of most interest to the media and the general public, which have inspired the most debate and much of the legal activity in the field, are those that directly affect voters' ability to register and cast ballots. These measures are likely to have the greatest effect on voter engagement and on how potential members of the electorate feel about elections in the United States. For this reason, we profile below, and estimate the numerical impact of, restrictive changes implemented since Election Day 2012 that will make it harder for Latinos to register and vote in 2016.

Voter registration procedures are the first hurdle most voters must overcome in order to participate in American elections. The more difficult that it is to register, and the more steps required prior to the actual casting of a ballot, the less likely it becomes that lower-propensity voters will persevere and vote successfully.⁴ The inverse is also true: voter registration leads to experiences that increase likelihood of voting, including receipt of voting guides, sample ballots, and election notices from election administrators, and targeting by candidates campaigning.

Racial and ethnic disparities in civic participation and representation begin at registration. Nationwide, according to the 2012 Current Population Survey (CPS) Voting and Registration report, just 58.7% of adult Latino citizens were registered to vote, compared to 73.7% of whites⁵. 2012 CPS data also showed that 6.1% of Latino non-voters and 6.7% of African American non-voters reported that registration problems were the reason why they had not voted in 2012, compared to just 5.2% of whites⁶.

Laws that make it harder to register for all citizens in general, and particularly for citizens who are disproportionately young, highly mobile, lower-income, and foreign-born, threaten to exacerbate the dramatic differences in voter registration rates between our nation's population groups.

The most troubling laws concerning voter registration to have been promulgated since 2012 threaten to prevent valid registrations from being accepted by imposing imperfect and unnecessary citizenship verification procedures, and to frustrate voters by requiring them to complete registration procedures farther in advance of Election Day. Some states have also made unsuccessful registration attempts more likely by adding to the criteria that lead to rejection of registration applications, and two states toughened requirements applicable to non-governmental organizations whose voter registration drives often play a critical role in getting broader segments of underrepresented communities engaged in elections.

⁴ Political scientists have shown that the requirement to register reduces voter turnout, and this effect primarily hurts the poor, e.g., Steven J. Rosenstone & Raymond E. Wolfinger, *The Effect of Registration Laws on Voter Turnout*, 72 AM. POL. SCI. REV. 22 (Mar. 1978); G. Bingham Powell, Jr., *American Voter Turnout in Comparative Perspective*, 80 AM. POL. SCI. REV. 17 (Mar. 1986); Stephen Ansolabehere & David M. Konisky, *The Introduction of Voter Registration and Its Effect on Turnout*, 14 POL. ANALYSIS 83 (Winter 2006). Professors James M. Avery and Mark Peffley also found that, "states with restrictive voter registration laws are much more likely to be biased toward upper-class turnout." James M. Avery & Mark Peffley, *Voter Registration Requirements, Voter Turnout, and Welfare Eligibility Policy: Class Bias Matters*, 5 STATE POL. & POL'Y Q. 47, 47 (Spring 2005).

⁵ Unless otherwise noted, when we provide information or statistics about white populations in this document, we are referring exclusively to non-Hispanic whites.

⁶ U.S. Census Bureau, *Voting and Registration in the Election of November 2012 - Detailed Tables, Reasons for Not Voting, by Selected Characteristics Table 10*, May 2013, <https://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/Table10.xls> [hereinafter 2012 CPS Reasons for Not Voting].

PROOF OF CITIZENSHIP

U.S. citizenship verification procedures have taken two forms, both of which are likely to disproportionately impair Latino voting: some states including Arizona and Kansas have taken steps to require potential voters to display documentation of their citizenship in order to be added to voter registration lists. Other states verify citizenship after processing registration applications, by searching for matches to registrants' personally identifying information in other state and federal databases that contain information about individuals' U.S. citizenship status.

Latinos are less likely on average than other Americans to have ready access to proof of citizenship – primarily, U.S. birth certificates, passports, and Certificates of Naturalization or Citizenship⁷. This makes sense, given that people with fewer resources of many kinds – for example, those with lower incomes – are less likely to possess documentation of their citizenship. Latinos have lower average incomes⁸ than Americans of other races and ethnicities, earning median weekly wages in 2014 of just \$594, compared to \$639 for African American workers and \$816 for white workers⁹. Some Latinos and other citizens do not have access to a document that proves their citizenship. For example, many older Americans were born outside hospitals, and their births were not contemporaneously reported to governmental authorities¹⁰ – therefore, such individuals frequently do not have and cannot easily obtain a birth certificate. Others obtained birth certificates or Certificates of Naturalization decades ago, and have lost track of those documents during the ensuing years.

The cost of obtaining proof of citizenship if one does not already have it has a particularly detrimental impact on Latinos. Latinos have relatively lower level levels of income than other population groups. In addition, a significant share of Latino potential voters are naturalized citizens¹¹ and cannot prove their citizenship simply by ordering copies of their birth certificates. Replacement Certificates of Naturalization cost a daunting \$345, and Certificates of Citizenship are \$600 for most applicants.

Naturalized citizens need these more expensive documents in hand in order to obtain more affordable forms of proof of citizenship such as Passport Cards, which cost \$55 to first-time applicants.

For low-income native-born Latinos, the cost of a replacement birth certificate – \$20 in Arizona, for example, or \$15 in Kansas – can be prohibitive.¹² The actual price of a birth certificate often exceeds the direct fees charged because of the costs of transportation, postage, ordering supporting documentation, and other necessary associated tasks.

The approximately 1,400,000 Puerto Rican-born adults¹³ living on the mainland United States also face a particularly high barrier to proving their citizenship to elections officials. A Puerto Rican birth certificate would normally constitute proof of its holder's U.S. citizenship, but in 2009, the Puerto Rican government adopted new standards for official birth certificates, and simultaneously invalidated all Puerto Rican birth certificates issued before 2010¹⁴. Since the adoption of the new standards, to register to vote in a state with a proof-of-citizenship requirement, all Puerto Rican-born voters must either have a U.S. passport, or must have gone through additional procedures and paid fees to obtain a new birth certificate after July 2010.

⁷ E.g., Matt A. Barreto & Gabriel R. Sanchez, *Rates of Possession of Accepted Photo Identification Among Different Subgroups in the Eligible Population, Milwaukee County, Wisconsin* 20-22, April 23, 2012, <https://www.aclu.org/files/assets/062-10-exhibitexpertreport.pdf>; Jon C. Rogowski & Cathy J. Cohen, *Black and Latino Youth Disproportionately Affected by Voter Identification Laws in the 2012 Election* 2, 7-8, 2012, http://blackyouthproject.com/wp-content/uploads/2015/11/voter_id_effect_2012.pdf [hereinafter *Black/Latino Youth Report*].

⁸ The Brennan Center for Justice's landmark 2006 study, for example, found that people with annual incomes of less than \$25,000 were twice as likely as people with incomes above \$25,000 to lack proof of citizenship. Brennan Center for Justice of NYU School of Law, *Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification* 2, 2006, http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf [hereinafter *Citizens Without Proof*].

⁹ Bureau of Labor Statistics, *Median weekly earnings of full-time wage and salary workers by selected characteristics* Table 37, Feb. 10, 2016, <http://www.bls.gov/cps/cpsaat37.htm>.

¹⁰ Marsha Mercer, *Can We Still Vote?*, AARP BULLETIN, Aug. 30, 2012, <http://www.aarp.org/politics-society/government-elections/info-01-2012/voter-id-laws-impact-older-americans.html>.

¹¹ According to ACS 2014 1-year data, 24.8% of Latinos eligible to vote are naturalized, compared to 6.9% of black voters and 2.9% of white voters. 68.4% of Asian Americans eligible to vote also are naturalized.

¹² E.g., *Veasey v. Perry*, No. 13-CV-00193, 2014 WL 5090258 at *62 (S.D. Tex. Oct. 9, 2014), citing testimony from witness Sammie Louise Bates, who stated at trial that she could not afford the \$42 it would have cost her to obtain a birth certificate because she and her family needed the money to meet basic living expenses.

¹³ D'Vera Cohn, Eileen Patten, & Mark Hugo Lopez, *Puerto Rican Population Declines on Island, Grows on U.S. Mainland*, Aug. 11, 2014, <http://www.pewhispanic.org/2014/08/11/puerto-rican-population-declines-on-island-grows-on-u-s-mainland/>.

¹⁴ 2009 P.R. Laws 191; Government of Puerto Rico, *Puerto Rico's New Birth Certificate Law (Law 191 of 2009 – As Amended)*, <http://www2.pr.gov/prgovEN/Pages/BirthCertificateInfo.aspx> (last visited Feb. 8, 2016).

In addition to being negatively affected by pre-registration demands for proof of citizenship, Latino voters are more likely than others to be erroneously identified as potential noncitizens as a result of post-registration citizenship verification procedures. A number of states have combined state databases to identify individuals who are registered to vote, but appear to be noncitizens in DMV or other agency records. In most cases, these individuals are naturalized citizens who interacted with the state as legal permanent residents, and have not had any reason to inform the state of their change in status since becoming U.S. citizens.¹⁵ Any process that targets naturalized citizens is likely to have a disproportionate impact on Latinos, and in one representative instance in Florida, such an effort resulted in creation of a list of suspected noncitizens of whom 87% were people of color, and 58% were Latino, even though Latinos accounted for less than 20% of the state's eligible voters.¹⁶ Voters whose citizenship is questioned by election authorities are normally notified of concerns and afforded an opportunity to correct misinformation about their status. These individuals are nonetheless at risk of having their registrations cancelled if they fail to receive or timely respond to mailed correspondence. At the least, these citizens are subjected to a discouraging experience of state-initiated suspicion and scrutiny.

Recognizing that state databases contain a relatively large amount of outdated information about residents' citizenship, states increasingly have sought to verify registrants' citizenship through checks against the Department of Homeland Security's (DHS) Systematic Alien Verification for Entitlements (SAVE) database. More robust use of SAVE is unlikely, however, to prevent unwarranted questioning of registered voters' status. The SAVE system aggregates data about noncitizens' status from various databases maintained by enforcement and visa-processing arms of DHS. Because its focus is on cataloguing people who have contact with the federal government as noncitizens, SAVE is far from a comprehensive list of citizens, and also omits some noncitizen residents. Native-born American citizens are not listed in it, nor are people who derived U.S. citizenship by law but have not sought a declaration of their citizenship from DHS, or undocumented people who have never come to the attention of immigration enforcement authorities. DHS itself cautions that the system was not designed to verify voter eligibility, and has

taken steps to ensure that states that use the system for that purpose allow voters ample opportunity to correct any erroneous indication arising from a SAVE check that they might be noncitizens.¹⁷

IMPACT ON LATINO VOTERS

Kansas

Kansas adopted a requirement¹⁸ in 2011 that new registrants in the state provide documentary proof of citizenship when registering to vote. The mandate went into effect at the beginning of 2013. The 2016 Presidential election will be the first in which people registering to vote in the state for the first time will find themselves required to satisfy documentary proof of citizenship requirements in order to be added to registration rolls.

After the Kansas mandate went into effect, policymakers, legal experts, and community and civic leaders generally understood that individuals would not be required to provide proof of citizenship if they registered to vote using the standard federal registration form created pursuant to the National Voter Registration Act of 1993 (NVRA). This form can be used in any state, and does not incorporate any proof of citizenship requirement. However, in January 2016, Kansas received permission from Election Assistance Commission (EAC) Executive Director Brian Newby to apply its mandate to potential registrants who use the federal form, the last group of people who had essentially been exempted.

Director Newby's action increased the number of Kansans likely to be negatively affected by the state's proof of citizenship requirement during the 2016 Election cycle, but as of this writing, its ultimate impact remains to be determined. Director Newby's decision faces legal challenge by advocates arguing that he did not have authority to reverse the EAC's previous position that the NVRA prohibits application of state-specific proof-of-citizenship requirements to voter registrations submitted on the standard federal registration form.

From the effective date of the proof of citizenship requirement, Kansas elections officials began to mark registration applications submitted on state-produced forms but without proof of citizenship as "in suspense." In 2015, Kansas Secretary of State Kris Kobach announced a new policy that would give "in suspense" registrants 90 days to perfect their registration, after which time their

¹⁵ In Florida, for example, by the time efforts were suspended, far more of the suspected noncitizens had been confirmed as citizens than had been found to, in fact, be noncitizens wrongfully registered. E.g., Letter from Diana Kasdan, Democracy Counsel, Brennan Center for Justice at NYU School of Law & Deirdre Macnab, President, League of Women Voters of Florida, to the Hon. Ken Detzner, Secretary of State of Florida 4-6 (June 27, 2012), https://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/062712_Letter_to_Detzner.pdf.

¹⁶ Rachel Weiner, *Florida's Voter Purge Explained*, WASHINGTON POST, June 18, 2012, https://www.washingtonpost.com/blogs/the-fix/post/floridas-voter-purge-explained/2012/06/18/gJQAhhvcNIV_blog.html.

¹⁷ E.g., Mark K. Matthews, *Florida demands access to federal database to purge illegal voters*, ORLANDO SENTINEL, June 7, 2012, http://articles.orlandosentinel.com/2012-06-07/news/os-florida-voter-battle-20120607_1_voter-registration-voter-rolls-dhs; Department of Homeland Security, U.S. Citizenship and Immigration Services, and the Iowa Secretary of State, *Memorandum of Agreement Concerning the Use of the Systematic Alien Verification for Entitlements (SAVE) System to Verify Citizenship and Immigration Status of Registered Voters* § (B)(1)(m-n), Aug. 14, 2013, <https://sos.iowa.gov/elections/pdf/SAVEMOA.pdf>.

¹⁸ H.B. 2067, 2011 Kan. Sess. Laws Ch. 56.

records would be cancelled. When EAC Director Newby allowed it in late January 2016, the state began applying these rules to users of the standard federal registration form who did not submit proof of citizenship. Media reports indicate that some of these “in suspense” voters have been purged from voter rolls while others remain preliminarily enrolled, but prohibited from actually casting ballots until they have submitted proof of citizenship.¹⁹ In sum, according to plaintiffs in a legal action challenging the purging of “in suspense” voters from the Kansas voter registration list, a minimum of nearly 23,000 Kansans have thus far attempted to register to vote, but been prevented by implementation of the state’s new proof of citizenship mandate.²⁰

We do not have access to detailed information about the demographic characteristics of the estimated 22,814 would-be registrants who have already been negatively affected by the proof of citizenship requirement in Kansas. We would expect that they would be disproportionately Latino, as is the pool of all Americans who lack proof of citizenship documents, but we cannot say that all of these individuals in question submitted incomplete registrations because they did not have documentary proof of their citizenship. For example, some may have failed to submit documentation with their registrations out of ignorance of the requirement, or because they filled out a registration form during a drive at a school or library, but did not have a document proving citizenship at hand while outside of their homes. Although we cannot reliably estimate the impact of the proof of citizenship requirement on Kansan Latinos, there is good reason for concern. Latinos constitute an increasingly significant component of the electorate in Kansas. Between 2005 and 2014, the number of eligible Latino voters in Kansas grew by nearly 50%, from nearly 88,000 to more than 128,000, according to ACS data.

Virginia

In 2013, the Virginia legislature enacted legislation²¹ requiring the State Board of Elections to apply for access to the SAVE database, and to cancel the registrations of people identified as noncitizens in SAVE after sending notice and allowing them an opportunity to prove their U.S. citizenship. Although a number of states have administratively adopted similar practices²², Virginia is unique, to our knowledge, in having made this process a statutory requirement.

As noted, the SAVE database is not comprehensive, nor are its results error-free. We do not know of any publically-available analysis of its overall error rate, but there is a strong indication that the system is likely to produce some mistaken results in the Government Accountability Office’s (GAO) 2012 conclusion that SAVE had a 12% error rate in reporting the status of a test group of individuals who had been ordered removed.²³ Although we do not have the data necessary to estimate the number of negatively affected people, SAVE’s consistent use will likely impede the registration of some Latino Virginians eligible to vote. In 2012 alone, nearly 440,000 Virginians registered to vote. In 2016, hundreds of thousands more, including many Latinos, will likely attempt to register, and face additional risk of having their registration applications wrongly denied; in addition, the state received almost 320,000 potentially affected new registration applications in 2014 and 2015.

¹⁹ Ashley Arnold, *Decisions expected soon for voter lawsuits*, KSNW-TV, April 8, 2016, <http://ksn.com/2016/04/08/decisions-expected-soon-for-voter-lawsuits/>; Debra Heine, *League of Women Voters Piles on Federal Lawsuit Challenging Kris Kobach’s Citizenship Law*, PJ MEDIA, April 7, 2016, <https://pjmedia.com/trending/2016/04/07/league-of-women-voters-piles-on-federal-lawsuit-challenging-kris-kobachs-citizenship-law/>.

²⁰ *Id.*

²¹ S. 1077, 2013 Va. Acts ch. 686.

²² *E.g.*, Jeremy Redmon, *Georgia election officials seek access to immigration database*, THE ATLANTA JOURNAL-CONSTITUTION, July 17, 2012, <http://www.aic.com/news/news/local/georgia-election-officials-seek-access-to-immigr-1/nQXKS/>; National Conference of State Legislatures, *Proof of Citizenship in Legal Limbo*, THE CANVASS, JULY 2015, <http://www.ncsl.org/research/elections-and-campaigns/states-and-election-reform-the-canvass-july-2015.aspx>.

²³ OFF. OF INSPECTOR GEN., DEP’T OF HOMELAND SECURITY, IMPROVEMENTS NEEDED FOR SAVE TO ACCURATELY DETERMINE IMMIGRATION STATUS OF INDIVIDUALS ORDERED DEPORTED 1, OIG-13-11 (Revised), Dec. 2012, https://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-11_Dec12.pdf.

VOTER'S STORY: JESUS GONZALEZ

In 2004, when Arizona implemented a requirement that voters provide documentary proof of their U.S. citizenship at the time of voter registration, Jesus Gonzalez of Yuma, Arizona became a United States citizen. After his naturalization ceremony, he immediately completed a voter registration form and submitted the number of his Certificate of Naturalization to satisfy the state's new requirement. Even though the law as originally devised listed this as one of the approved methods of proving citizenship at registration, Mr. Gonzalez's application was rejected because there was no mechanism by which Arizonan authorities could verify the validity of an applicant's Certificate of Naturalization number with federal officials (and no mechanism has yet been developed for this verification). When he received notice, Mr. Gonzalez completed a second new registration application, this time providing his Arizona driver's license number, another approved method for proving citizenship. However, his application was rejected a second time. As a long-time legal permanent resident, Mr. Gonzalez had obtained his driver's license before 1996, before Arizona began tracking residents' citizenship status in DMV records; therefore, his license was not acceptable as proof of citizenship. It further came to light that in Arizona, residents with driver's licenses or state IDs who were legal immigrants, but not yet U.S. citizens, were identified in DMV records by an "F" marker, and any voter registrants who provided state ID numbers corresponding to records marked "F" would have their applications rejected. Many or most such registrants were, however – like Mr. Gonzalez – people who had naturalized but not yet renewed or otherwise updated their state ID records since becoming U.S. citizens. In Arizona, there are approximately 210,000 legal permanent residents immediately eligible for naturalization, and a majority of them are Latinos of Mexican origin.²⁴ Many will become vulnerable to the same barriers that Mr. Gonzalez encountered if and when they naturalize and seek to participate in Arizona elections.

²⁴ Robert Warren and Donald Kerwin, *The US Eligible-to-Naturalize Population: Detailed Social and Economic Characteristics*, 3 J. ON MIGRATION AND HUM. SECURITY 306, 312-313 (2015).

EARLIER REGISTRATION DEADLINES

As of February 2016, there are 12 jurisdictions in which voters can register on Election Day, and three more that have adopted the policy but will implement it after the 2016 Presidential election. In the remainder of states, voters must register in advance of Election Day. Registration deadlines pose a significant barrier to participation to voters who are less knowledgeable and receive less information about the voting process, and whose interest in an election may be piqued too late in time to register and participate. Deadlines also present challenges for voters who change residences and fail to amend their voter registration records accordingly.

Latino voters disproportionately lack information about basic registration requirements, such as deadlines, for a variety of reasons. Latino voters are more likely to be young and foreign-born than the American electorate overall, and thus are less likely to possess hands-on voting experience. Latino voters are about three times as likely to be naturalized citizens as the average American; in addition, according to ACS data, 32.9% of eligible Latino voters are aged 18-29, compared to just 18.7% of whites eligible to vote, and 26.0% of African Americans eligible to vote. Because a far smaller percentage of potential Latino voters are registered than of voters of other races and ethnicities, Latinos are less likely to receive the information and election-related appeals that both elections officials and candidates direct primarily to people who are active voters. Latino voters also disproportionately face linguistic barriers to becoming well-informed about registration deadlines: according to 2014 ACS data, 20.8% of Latinos eligible to vote are not yet fully fluent in English, compared to just 2.6% of all non-Latinos eligible to vote.

In addition to the large number of Latinos who are not yet registered to vote, a significant number of Latinos move each year, and are at risk of missing shortened registration deadlines to update or renew their registration records. Latino voters change residences relatively frequently – for example, 66% of Latinos reported having moved at least once in a Pew Research Center survey, compared to 61% of whites²⁵. 2014 ACS data show that 12.3% of adult Latino citizens moved to a new state in the past year, compared to 11.8% of adult white citizens, and 9.4% of Asian Americans, Native Hawaiians and Pacific Islanders.

The NALEO Educational Fund's interactions with voters confirm our expectation that registration deadlines will prevent qualified Latino voters from casting ballots. Significant numbers of calls to the NALEO Educational Fund's voter assistance hotline, 888-VE-Y-VOTA, have come from Latinos who are eligible and seek to vote but need more information about how, where, and when to register. For example, more than one-fourth of election-related calls received during October 2014 came from individuals who requested basic information about becoming registered to vote. Many of these callers had likely missed registration deadlines in their respective states: 35 of 282 callers seeking basic registration information in October 2014 did so less than one week before Election Day 2014, when registration deadlines had passed in all states except those offering Election Day registration, and except in North Dakota, which does not require voters to register. In 2012 surveying of unregistered but eligible Latino adult citizens, moreover, we found that 44% reported that they did not know where to register.²⁶

IMPACT ON LATINO VOTERS

Alabama

In 2014, the Alabama legislature moved the state's registration deadline²⁷ from 10 days to 14 days prior to Election Day. In addition, legislators eliminated a provision that directed counties with populations of at least 600,000 to adhere to their own locally-determined registration deadlines. At enactment, the latter measure applied only to Jefferson County, which is home to the

²⁵ Paul Taylor, Rich Morin, D'Vera Cohn, and Wendy Wang, Pew Research Center, *American Mobility: Who Moves? Who Stays Put? Where's Home?* 9, Dec. 29, 2008, <http://www.pewsocialtrends.org/files/2010/10/Movers-and-Stayers.pdf>.

²⁶ NALEO Educational Fund and Latino Decisions, *National Survey of the Great Unengaged - Non-Registered Voters, Crosstabs 4*, October 2012 (unpublished data, on file with author).

²⁷ Act 2014-428 (S.B. 235, 2014 Leg., Regular Sess. (Ala. 2014)).

city of Birmingham. Jefferson County's website continues to list the registration deadline as falling 10 days before Election Day²⁸, which indicates that the county was following state practice notwithstanding its ability to set a different deadline. These changes will apply for the first time in 2016 to new registrants for the Presidential election.

We do not have access to detailed information about the number or ethnicity of Alabamians who registered to vote in previous years during the four-day window of opportunity that has now been eliminated. We do know, however, that a very significant percentage of Latinos eligible to vote in Alabama remain unregistered, and are at risk of being prevented from voting by the imposition of a more demanding registration deadline. 2014 ACS data indicate that there were 67,220 Latino Alabamians eligible to vote. According to the state's own registration statistics, just 20,293 Latinos were on the state's registration list as of the end of 2015.²⁹ Tens of thousands of potential Latino voters must take timely action in 2016 in order to be eligible to cast a ballot in November.

North Carolina

After preclearance obligations were lifted in June 2013 by the Supreme Court's decision in *Shelby County*, the North Carolina Senate moved quickly to substitute an extensive set of restrictive voting policies for a more modest bill that had already been voted on favorably by the state House. Within just three days, a Senate committee and the full Senate and House crafted, debated, and approved sweeping legislation³⁰ that, among other provisions, eliminated pre-registration for 16 and 17 year olds, and moved the state's registration deadline farther in advance of Election Day, eliminating a period during which voters could both register for the first time and vote early.

Pre-registration of young people has been found to be an effective means of engaging voters. According to Professor Michael McDonald, in early-adopting states, pre-registration has increased registration rates of individuals who did not attend college and thus had a lower propensity to become voters; pre-registrants have also stayed on the rolls and turned out to vote at rates equal to or better than those seen among the population as a whole.³¹ The end of pre-registration means that North Carolina voting advocates, schools, and parents may be less likely to invest in what have proven to be effective efforts at educating high school students about elections and civic engagement.

We do not have access to data on the basis of which we might be able to estimate the percentage of pre-registrants in North Carolina who have historically been Latino, so we cannot say how many of those Latinos eligible would likely have become pre-registered to vote between 2013 and 2016. Researchers have found, however, that African Americans are overrepresented among successful pre-registrants³², and evidence similarly suggests that reductions in outreach to youth threaten to disproportionately affect Latinos in North Carolina. According to 2014 ACS data, Latinos account for about 3.1% of eligible voters in the state, but an outsized 13.5% of North Carolinian U.S. citizens younger than 18. These data also show that there were about **18,000** Latino North Carolinian U.S. citizens aged 16 and 17 who would have been eligible for pre-registration in 2014 and able to cast ballots in November 2016. With the elimination of pre-registration, these young people will have to meet a shortened voter registration deadline in advance of Election Day 2016.

In 2013, North Carolina also withdrew³³ the option to register and vote close in time to Election Day through a one-stop voting process. Previously, same day registration and voting were possible between the third Thursday before Election Day and the Saturday immediately prior to Election Day, for a period of about two and a half weeks. In 2013, however, legislators created a new statewide registration deadline of 25 days before Election Day for both early and Election Day voters.

As of April 2016, an injunction that prevented North Carolina from implementing the provision of its 2013 legislation concerning same day registration was set to expire after the state's June 2016 primary election. While litigation is ongoing and could result in extension of the injunction, it appears more likely than not that the law will be fully implemented, and same day registration will be unavailable, for the Presidential election in November 2016.

Publically-available North Carolina voter registration statistics report the number of registrations received by month, county, and source, but do not permit us to identify the Latino share of 2012 voters who registered through the one-stop process. However, expert analysis prepared in connection with lawsuits challenging the elimination of same day registration provides some detailed information about past users of the process.

²⁸ Jefferson County, Alabama Board of Registrars, *Where Can I Register to Vote?*, http://jeffconline.jccal.org/Sites/Jefferson_County/Documents/Board%20of%20Registrars/WhereCanIRegisterToVote.pdf (last visited April 25, 2016).

²⁹ Alabama Secretary of State, *Voter Registration Statistics - Year 2015*, <https://www.alabamavotes.gov/voterreg.aspx?a=voters> (last visited April 21, 2016).

³⁰ Sess. Law 2013-381 (H.B. 589, 2013-2014 Leg. Sess. (N.C. 2013)).

³¹ Michael P. McDonald and Matthew Thornburg, *Registering the Youth Through Voter Preregistration*, 13 N.Y.U. J. of Legis. & Pub. Pol'y 551, 566-68 (2010), <http://dev.nyuilpp.org/wp-content/uploads/2012/11/Michael-P.-McDonald-Matthew-Thornburg-Registering-the-Youth-Through-Voter-Preregistration.pdf>; J. Mijin Cha and Liz Kennedy, *Demos, Millions to the Polls: Practical Policies to Fulfill the Freedom to Vote for All Americans - Pre-Registration of 16- and 17-year-olds 2*, 2014, http://www.demos.org/sites/default/files/publications/Millions%20to%20the%20Polls%20Pre%20Registration_0.pdf.

³² Michael C. Herron and Daniel A. Smith, *Race, Shelby County, and the Voter Information Verification Act in North Carolina (Draft - Version 2)* 43, Feb. 12, 2014, <http://www.dartmouth.edu/~herron/HerronSmithNorthCarolina.pdf>.

³³ Sess. Law 2013-381 (H.B. 589, 2013-2014 Leg. Sess. (N.C. 2013)).

According to the Center for Information & Research on Civic Learning & Engagement (CIRCLE), 247,037 total voters either completed a new registration or updated their existing registration record during the 2012 same day registration period.³⁴ The 97,665 new registrants who availed themselves of this process accounted for 8.78% of all new registrations received between the 2010 and 2012 elections³⁵. Writing for CIRCLE, researchers Peter Levine, Seth Avakian, and Kei Kawashima-Ginsberg found that, “In 2012, young voters comprised 8.99% of all North Carolina voters, but 20.58% of those who utilized [same day registration] at in-person early voting locations.”³⁶ Since a disproportionate share of young North Carolinians are Latino, the same is likely true of young users of same day registration.

African Americans are also overrepresented among same day registrants.³⁷ One of the reasons posited for the greater proportionate use by African Americans of same day registration is the effect that lower educational levels have: less-educated citizens tend to become aware of and interested in elections closer in time to their occurrence, and to miss out on aspects of participation that require advance preparation.³⁸ Latinos are greatly overrepresented among the least-educated North Carolinians, and so are likely to be disproportionately negatively affected if same day registration is not available: according to 2014 ACS data³⁹, 44.5% of Latino North Carolinians aged 25 or older lack a high school diploma, compared to just 15.7% of African Americans and 11.4% of whites.

Virginia

Alongside other provisions that restrict registration and voting activity, in 2013 Virginia adopted a new law⁴⁰ that for the first time set a closing time for registrars’ offices on the day of the registration deadline preceding a primary or general election. The state’s new law specifies that registration applications must be received by 5pm on the closing day of the registration period, although mailed applications continue to be considered submitted as of the date of their postmark.

This law is striking for its opposite orientation to the relevant laws in place at the time of its passage. For example, Virginia Code § 24.2-414 requires registrars to open their offices for at least eight hours on the last day of registration, and to permit anyone in line at closing time to submit a new registration or amend an existing record.

We do not have access to comprehensive information about whether registrars’ offices maintained later hours prior to enactment of this law, nor about the numbers of Latino voters who took advantage of extended hours to submit timely registration applications. We note, however, that Latino voters are disproportionately likely to be negatively affected by loss of windows of opportunity to register. Many potential Latino voters have less flexibility in their daily schedules than their counterparts of other races and ethnicities. According to the Center for American Progress, Latinos are the least likely of all workers to have paid time off and workplace flexibility, defined as the permission to alter the hours, days, or locations where work is performed.⁴¹ Latinos are also more likely to live with children and to have childcare responsibilities that may prevent attendance during limited opening hours: for example, 65.8% of Latino households include children younger than 18, compared to 41.2% of white households.⁴²

³⁴ Intervenor-Plaintiffs’ Expert’s Report, Submitted by Peter Levine, Seth Avakian, and Kei Kawashima-Ginsberg, The Center for Information & Research on Civic Learning & Engagement, Tufts University (April 11, 2014) at 11, *League of Women Voters of North Carolina, et al. v. State of North Carolina, et al.* (M.D.N.C. 2014) (No. 1:13-CV-660), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/League15511.pdf> [hereinafter *CIRCLE Expert Report NC*].

³⁵ Declaration of Charles Stewart III, Ph.D., Submitted on behalf of the United States of America (May 2, 2014) at ¶ 86, *League of Women Voters of North Carolina, et al. v. State of North Carolina, et al.* (M.D.N.C. 2014) (No. 1:13-CV-660), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/League1553.pdf> [hereinafter *Stewart Expert Report NC*].

³⁶ *CIRCLE Expert Report NC, supra* note 34, at 5. *Stewart Expert Report NC, supra* note 35, at ¶¶ 90-92.

³⁷ *Stewart Expert Report NC, supra* note 35, at ¶¶ 90-92.

³⁸ *Id.* at ¶¶ 120-21.

³⁹ U.S. Census Bureau, *American Community Survey, Sex By Educational Attainment for the Population 25 Years and Over Tables B15002A-1*, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited April 25, 2016).

⁴⁰ S. 958, 2013 Va. Acts ch. 680.

⁴¹ Sarah Jane Glynn and Jane Farrell, Center for American Progress, *Latinos Least Likely to Have Paid Leave or Workplace Flexibility*, Nov. 20, 2012, <https://www.americanprogress.org/issues/labor/report/2012/11/20/45394/latinos-least-likely-to-have-paid-leave-or-workplace-flexibility/>.

⁴² U.S. Census Bureau, *American Community Survey, Poverty Status in the Past 12 Months of Families by Family Type by Presence of Related Children Under 18 Years by Age of Related Children Tables B17010H-1*, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited April 25, 2016).

EXPANDED REASONS FOR CANCELLATION OR REJECTION OF REGISTRATION

There are many Americans eligible to vote who are unaware of and do not understand the voter registration process, so registration requirements continue to prevent significant numbers of Americans from taking part in elections. Even if and when individuals surmount this hurdle, however, they may nonetheless find their registration applications rejected, or cancelled in subsequent years without their knowledge. Some states took steps between 2012 and 2016 that make such occurrences more likely, particularly for voters with less familiarity with elections procedures. Laws that increase the number of registration records rejected and removed raise the costs associated with voting and create obstacles for potential voters.

IMPACT ON LATINO VOTERS

Indiana

In 2013, Indiana added entirely new procedures⁴³ to its directions to election administrators for the conduct of in-person voting: effective in July 2013, officials must cancel the registrations of voters who report at a polling place that they moved outside their prior precincts. Election administrators are to give these voters blank registration forms to complete and submit to officials in their new jurisdictions of residence. However, the law does not make provision for any assistance to voters in identifying elections officials in the new jurisdiction of residence or completing registration forms.

Since the voters who may be deterred from participation by the provision are those who have moved – some of whom might previously have been allowed to cast ballots in the precincts of former residence – they are likely to be disproportionately young⁴⁴ and Latino. We do not have enough information to predict how many Latino Indianan voters are likely to have moved outside their precincts since mid-2013, and to see their registration records cancelled when they attempt to vote. According to the Voter Activation Network (VAN) database, however, there are about 91,300 Latinos registered to vote in Indiana as of April 2016, and it is likely that at least that many individuals are now more vulnerable to registration cancellation if they move and do not timely report their changes of address to elections officials.

Montana

Montana's voter registration deadline is 30 days before each Election Day, and the state also offers late registration up to and on Election Day for most, but not all, contests. In 2013, however, the state eliminated⁴⁵ new registrants' ability to correct errors on registration forms as late as ten days after the registration deadline, without losing their right to vote in the first election to be held after their applications were submitted. The availability of same day registration in the state means that voters can still correct their registration records and vote after the normal registration deadline has passed, notwithstanding the change adopted to the law. At the same time, late registration in Montana is a more demanding process than normal registration: it requires appearing in-person at a county-designated location during designated hours, whereas normal registration can be completed by mail, when convenient to the voter. Travel can be a significant barrier to potential voters in a state like Montana, which has a majority-rural population⁴⁶ including many individuals who live at a distance from municipal and state services. Moreover, state officials caution that late registration is not uniformly available for all school board elections.⁴⁷ Therefore, we expect that some Montana voters will be impaired by this change in the law.

⁴³ Public Law 194 (S.B. 518, 118th Leg., 1st Sess. (Ind. 2013)).

⁴⁴ *CIRCLE Expert Report NC*, *supra* note 34, at 14.

⁴⁵ H.B. 120, 2013 Mont. Laws ch. 336.

⁴⁶ Bill Bishop, *How Rural Are the States?*, THE DAILY YONDER, April 3, 2012, <http://www.dailyyonder.com/how-rural-are-states/2012/04/03/3847/>.

⁴⁷ Montana Secretary of State, *Montana Voter Information*, <http://sos.mt.gov/ELECTIONS/Vote/index.asp> (last visited April 27, 2016).

We cannot estimate how many of them will be Latino, because Montana's Latino population is relatively small, and as a result, available statistics concerning its Latino registered voter population are not sufficiently reliable

New Mexico

In 2015, New Mexico became one of the latest of what is now a majority of states permitting voters to register online. Within the same legislation⁴⁸ that authorized online registration, however, legislators included a provision that sets forth new reasons for rejection of registration applications. To county clerks' duties with respect to new registration applications, lawmakers added a mandate that clerks reject any registration applications that omit the applicant's name, address, social security number, date of birth, signature or equivalent mark, and affirmation of citizenship (meaning that applications without any box checked under the citizenship query are rejected).

While it is indispensable that voters provide their names, as well as the residential addresses, birth dates, and affirmation of citizenship that determine whether and where they are eligible to vote, a social security number is not similarly a fundamental determinant of the right to vote.

Some Americans neither have nor use a social security number frequently.⁴⁹ Moreover, some New Mexico registration applicants will merely commit errors or omissions in completing applications that could easily be corrected if elections officials asked intending registrants for clarification instead of rejecting those applications outright.

If, as is likely, some New Mexicans who attempt to register to vote are not added to registration rolls because of mistakes or omissions on their application materials, a large number of these negatively affected voters are likely to be Latino. According to the VAN database, nearly 36% of the state's registered voters are Latino, while 2014 ACS data show that Latinos account for 40.6% of all New Mexicans eligible to vote.

⁴⁸ S.B. 643, 2015 N.M. Laws ch. 145.

⁴⁹ See, e.g., Texas Workforce Commission, *Employees Without Social Security Numbers*, http://www.twc.state.tx.us/news/efte/employees_without_ssns.html (last visited April 27, 2016).

RESTRICTIONS ON THIRD PARTY REGISTRATION

Voter registration activities carried out by non-governmental entities make an important contribution to growing the pool of voters fully prepared to participate in elections. Community-based organizations (CBOs) that register voters reach a different audience than government officials and politicians, and are more likely than political operatives to earn residents' trust and confidence. Third-party registrars are motivated to reach potential voters where they are already spending time – at churches, shopping centers, schools, and other public places. They also exert meaningful social influence on those with whom they speak, including individuals who are already registered. In the course of helping citizens to register, non-governmental representatives are very likely to encourage people they approach to participate actively in elections. Invitations to participate that come from trusted sources are among the most persuasive approaches available to motivating unlikely voters, according to the NALEO Educational Fund's survey of non-voting Latinos.

Third-party registration activities are particularly likely to reach and engage potential Latino voters. Entities that hope to register new voters focus on communities rich in eligible but unregistered voters, and none are more so than the Latino community. According to 2014 CPS data, there were about 12,230,000 eligible, unregistered Latinos across the country, compared to about 7,235,000 unregistered African American adults and about 3,605,000 unregistered Asian Americans. More than 40% of eligible Latinos were not yet registered, compared to fewer than 30% of all eligible white citizens. Data prove that non-governmental registration efforts are effective with the Latino electorate: among registered voters, Latinos are more likely than voters of any other race or ethnicity to report to the Census Bureau that they registered at a location likely associated with a community-based registration drive, such as a school.⁵⁰

During the period of time leading up to the Presidential election of 2012, several state legislatures adopted restrictions on third-party voter registration activities that garnered national attention and opposition.⁵¹ Perhaps in response to negative publicity associated with this pre-2012 movement⁵², the tide of formal restrictions in

the law on third party voter registration activities has slowed significantly. Nonetheless, two states added new restrictions which may slow efforts to register new voters for the 2016 election.

IMPACT ON LATINO VOTERS

Virginia

In 2013, Virginia imposed⁵³ more stringent requirements on non-governmental organizations conducting registration drives in the state. Effective July 2013⁵⁴, any non-governmental entity that receives at least 25 registration forms from the state is required to register with elections authorities. All of the organization's employees or volunteers must attend training approved by the State Board of Elections, and swear out affidavits affirming that they will follow applicable laws while seeking to register voters.

Third-party registrars may not create pre-populated registration forms unless potential registrants request them. Finally, third-party groups have five fewer days than they previously did – 10 instead of 15 – in which to return completed registration forms to elections authorities.

⁵⁰ E.g., U.S. Census Bureau, *Method of Registration, by Selected Characteristics*: November 2014 Table 12, *Voting and Registration in the Election of November 2014*, Current Population Survey, Feb. 29, 2016, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-577.html> (referencing respondents who said they had registered at a hospital, school, campus, or registration booth).

⁵¹ See, e.g., League of Women Voters, *Statement by Elisabeth MacNamara, President, League of Women Voters US, at a Forum Entitled "Excluded From Democracy: The Impact of Recent State Voting Changes"*, Nov. 14, 2011, <http://lwv.org/content/statement-elisabeth-macnamara-president-lwvus-forum-entitled-excluded-democracy-impact>.

⁵² See, e.g., media coverage of veteran Florida teacher Jill Cicciarelli, charged in 2011 for violating state law in the course of organizing a voter registration drive for her students, including Marie Diamond, *Under New GOP Law, Florida Teacher Faces Huge Fines For The Crime Of Registering Students To Vote*, THINKPROGRESS, October 25, 2011, <http://thinkprogress.org/justice/2011/10/25/352081/under-new-gop-law-florida-teacher-faces-huge-fines-for-the-crime-of-registering-students-to-vote/>.

⁵³ S. 1008, 2013 Va. Acts ch. 465.

⁵⁴ The provision in question took effect when it became clear that it would not have to earn preclearance before implementation.

Any added burden on what are often low-budget or volunteer-dependent voter registration drives tends to reduce the number and scope of such efforts. We do not know to what extent Virginia's new regulations might have scuttled or delayed registration efforts that would otherwise have taken place, nor how many more Virginians in general or Latinos in particular might have registered if not for the new requirements. But making it more difficult for CBOs to register voters is likely to have a disproportionate negative effect on the number of new and updated Latino registrations that might otherwise have been obtained, since Latinos are disproportionately likely to register at locations associated with community registration drives. Moreover, there are likely a large number of Virginian Latinos who are eligible but not yet registered to vote. 2014 ACS data show that nearly 285,000 Latino adult U.S. citizens live in Virginia, while the VAN database indicates that approximately 145,000 Virginian Latinos are registered.

Wisconsin

In March 2016, Wisconsin enacted a law⁵⁵ that eliminated the position of Special Registration Deputy. These Deputies had been authorized to review and approve documents proving applicants' Wisconsin residency, which Wisconsinites must display to an official in order to be registered. The abolition of the Deputy position means that CBOs can no longer finish completed registration applications with potential voters on the spot. Instead, non-governmental actors can only register voters if they are able to collect and submit photocopies of documents proving residency along with individuals' registration applications.

The additional administrative burden of copying documents concerning residency is likely to force many organizations to scale back or end efforts to register Wisconsinites at shopping centers, churches, and other public locations and events at which photocopying is not logistically feasible.

The prospective impact on Wisconsin Latino voters of ending registration by Special Deputies remains to be seen, in part because it is not yet known when this change will go into effect. The elimination of the position will not become official until state officials certify they have implemented an electronic voter registration system. This process must be completed in time for the spring 2017 primary election at the latest, but may be completed before 2017, or even before voter registration ends for the 2016 general election.

In addition, we cannot reliably estimate the number of Wisconsin Latinos who could have been registered by a Special Registration Deputy but are not aware of, or will find it more difficult to register by, alternate methods. Given the nationwide registration trends we have cited, however, there is reason to expect that less community outreach activity around voter registration will sustain low Latino participation in Wisconsin elections. While 2014 ACS data show that approximately 150,000 Latino Wisconsinites are eligible to vote, the VAN database only includes an estimated 58,700 Latinos actually registered.

⁵⁵ 2015 Wis. Laws Act 261 (S.B. 295, 2015-2016 Leg. (Wis. 2016)).

UNFAIR RESTRICTIONS ON VOTING

The quality of voters' experiences at polling places can determine the degree of confidence they have in our democratic process, and even their future likelihood of being active participants in such vital community efforts as Parent-Teacher Organizations and government agency advisory committees. As a 2014 essay on election administration reform stated, "voters infer from their poor experience at the polls that there are larger problems with voting at the county and state levels."⁵⁶ Unfortunately, the voters most likely to encounter serious obstacles in the voting process, including intimidation, inability to meet ID requirements, assignment to a poorly-run polling place, non-receipt of absentee ballots and long lines at polling places, are Latino and other underrepresented citizens.⁵⁷

Although declining rates of voter participation should inspire a mandate to make voting a more accessible and efficient process, some lawmakers are moving in the opposite direction. For instance, Georgia State Senator Fran Millar publically opposed, and worked to defeat, DeKalb County, Georgia's 2014 decision to offer early voting on a Sunday, and at a shopping center, stating, "I would prefer more educated voters than a greater increase in the number of voters."⁵⁸

Given the widespread embrace of the concept that it should not be easy to vote⁵⁹, it is not surprising that lawmakers continue to enact laws that raise barriers to the ballot box and discourage Latino voter participation.

Between 2012 and 2016, these laws have taken the form of strict voter ID requirements, shortened early voting periods, additional restrictions on absentee voting by mail, and other heightened qualifications that particular classes of voters must meet before being allowed to cast a ballot that counts.

⁵⁶ Lonna Rae Atkeson, *Voter Confidence in 2010: Local, State, and National Factors*, in *ELECTION ADMINISTRATION IN THE UNITED STATES: THE STATE OF REFORM AFTER BUSH V. GORE 102*, 114 (R. Michael Alvarez & Bernard Grofman eds., 2014).

⁵⁷ Daniel Weeks, *Why Are the Poor and Minorities Less Likely to Vote?*, THE ATLANTIC, Jan. 10, 2014, <http://www.theatlantic.com/politics/archive/2014/01/why-are-the-poor-and-minorities-less-likely-to-vote/282896/>.

⁵⁸ Josh Israel, *Georgia State Senator Complains That Voting Is Too Convenient For Black People (Updated)*, THINKPROGRESS, Sep. 9, 2014, <http://thinkprogress.org/justice/2014/09/09/3565073/georgia-senator-early-voting-suppression/>.

⁵⁹ E.g., David Harsanyi, *Voting Is Already Way Too Easy*, THE FEDERALIST, Oct. 1, 2014, <http://thefederalist.com/2014/10/01/voting-is-already-way-too-easy/>; John Sahly, *Ex-U.S. Rep. Walsh in DeKalb says, 'It should be tough to vote'*, DAILY CHRONICLE, Jan. 21, 2013, <http://www.daily-chronicle.com/2013/01/19/ex-u-s-rep-walsh-in-dekalb-says-it-should-be-tough-to-vote/ahbpdel/>.

VOTER ID

Over the course of the past 15 years, the concept of requiring voters to show identification documents at the polls gained currency among legislators, and spread around the country in the form of increasingly strict laws. But more recently, as legal challenges to some ID requirements have progressed and succeeded⁶⁰, the enactment of voter ID mandates has slowed⁶¹. Nonetheless, Latino and other underrepresented voters in a number of states will face stricter ID rules when they go to the polls in 2016 than they did in 2012.

The most strict photo ID requirements pose the greatest risk to Latino voters. Strict ID laws are those that require voters to present one of a limited number of government-issued, photo-bearing identification documents. Strict ID laws also do not provide any alternative to obtaining and showing an approved ID for the majority of voters. In contrast to strict laws, some less-restrictive voter ID laws include a wider range of non-photo-bearing and non-government-issued documents among those to be accepted as proof of identity; some less-restrictive laws also allow most voters to prove their identity by alternate means, such as swearing out an affidavit or completing a provisional ballot which is counted if the voter's signature on the ballot envelope matches the signature on file for the voter.

Strict ID laws inhibit qualified members of the electorate from casting ballots. Millions of American adults do not possess any of the personal identification documents that strict ID laws require. Individuals who do not already hold a valid form of voter ID face numerous potential barriers to obtaining a qualifying document, including inability to pay application fees, difficulty arranging transportation to identification-issuing locations during business hours, and lack of access to documents like birth certificates that are mandatory precursors to obtaining ID.

Eligible Latino voters account for disproportionate shares of both those without ID and those who confront significant or insurmountable barriers to obtaining ID.

Research and surveys overwhelmingly report race- and ethnicity-based disparities in rates of ID possession. The Brennan Center for Justice's landmark 2006 survey *Citizens Without Proof*⁶² found that just 8% of white voting-age citizens reported not having a current, valid government-issued ID, compared to 25% of African American voting-age citizens, and 16% of Latino voting-age citizens. A September 2014 GAO report reviewed ten studies of ID possession rates⁶³, all using methodology approved by GAO social scientists. Every one of these studies that disaggregated results by race or ethnicity found that potential African American or Latino voters, or both, were more likely than their white counterparts to lack government-issued ID.⁶⁴ A February 2015 analysis by Dr. Vanessa Perez based on the 2012 American National Elections Study likewise concluded that 5% of white voters, 10% of Latino voters, and 13% of African American voters lack "government-recognized photo ID".⁶⁵

⁶⁰ For example, strict ID requirements have been struck down under state law in Arkansas, Missouri, and Pennsylvania. The Department of Justice and federal courts denied Texas's voter ID law preclearance; post-*Shelby County*, federal courts have ruled that the law violates Section 2 of the Voting Rights Act.

⁶¹ Attempts to enact new strict ID requirements and to make existing ID laws stricter do continue, however. Missouri, for example, may include on its November 2016 ballot a proposed state Constitutional amendment that would make it possible for the state to adopt and implement a strict ID requirement. Complementary legislation is under consideration before the state legislature that would require every voter to show a federal or state government-issued ID.

⁶² *Citizens Without Proof*, *supra* note B.

⁶³ U.S. GOV'T ACCOUNTABILITY OFF., ISSUES RELATED TO STATE VOTER IDENTIFICATION LAWS 34-43, GAO-14-634, Sep. 2014, <http://www.gao.gov/assets/670/665966.pdf> [hereinafter *GAO Voter ID Report*].

⁶⁴ *Id.* at 22-25.

⁶⁵ Vanessa M. Perez, Ph.D., *Project Vote, Americans Without Photo ID: A Breakdown of Demographic Characteristics 1*, Feb. 2015, <http://www.projectvote.org/wp-content/uploads/2015/06/AMERICANS-WITH-PHOTO-ID-Research-Memo-February-2015.pdf>.

When asked with more specificity about their possession of a current, valid U.S. passport or driver's license, margins widened, and 8% of whites, 17% of Latinos, and 27% of African Americans reported not having the documents in question.⁶⁶ ID possession rates are not only racially- and ethnically-disparate, but may be on the decline in at least some respects: the Transportation Research Institute at the University of Michigan recently found that the proportion of Americans aged 16-69 who have driver's licenses has been dropping steadily since the 1980s.⁶⁷

For members of the electorate who do not already possess identification that can be used for voting, obtaining it is difficult or impossible in the absence of financial, logistical, and other resources. Aspiring voters must shoulder the costs of seeking ID, which can be significant. Although state-issued IDs are free to most potential voters in most strict ID states, the documents that voters must present to obtain these free IDs are not necessarily free. For example, in Texas, applicants for a free Election Identification Certificate must provide proof of U.S. citizenship. A significant percentage – about 9% – of the state's eligible voters are naturalized citizens, and a disproportionate number of Texas's naturalized voters are Latino⁶⁸. A naturalized citizen who does not have his or her Certificate of Naturalization on hand must pay \$345 for a duplicate before he or she can even begin the process of obtaining a qualifying voter ID. Fees like this weigh most heavily on those with the lowest incomes, and in Texas and around the country, Latino families have lower average incomes than people of other races and ethnicities.

Disproportionately limited access to transportation similarly hinders Latino and other underrepresented voters' ability to meet voter ID requirements. Texas Election Identification Certificate applicants must appear in-person at a Department of Public Safety (DPS) location to obtain documentation that will enable them to vote. Some areas of the state lack any such office, and some DPS locations operate only on selected days and during selected hours. Both a 2011 analysis by the Brennan Center for Justice and a 2012 preclearance objection lodged by DOJ found that eligible Texan Latino voters were more likely than others to live at a considerable distance from the closest DPS office, and to lack access to a convenient means of transportation to that location.

Although Latinos accounted for 26.4% of eligible Texan voters in 2010, Latinos were 60.7% of the citizen voting-age population living more than 20 miles from the nearest DPS office as of 2011.⁶⁹ The ethnic disparity in household access to a vehicle cited by DOJ in 2012⁷⁰ also persists today: 2014 ACS data show that 39.6% of Texan households without access to a vehicle were Latino and 27.6% were African American, whereas white households accounted for just 26.9% of those without a vehicle.

Because they make it harder for Latinos and others to vote, heightened voter ID requirements tend to decrease rates of voter participation. In its September 2014 analysis, the GAO compared voter turnout before and after voter ID requirements were enacted in Kansas and Tennessee to voter turnout during the same time frame in states without similarly strict ID requirements. The GAO found that turnout decreased by a greater amount in the ID states, and that this decreased turnout was attributable to heightened ID requirements.⁷¹ The agency estimated that the decline in voter turnout attributable to enactment of voter ID requirements was approximately 1.9% to 3.2% in the states studied.

A 2015 Rice University/University of Houston study lends support to the GAO's conclusions, finding that 6% of registered voters in Texas's 23rd Congressional District who did not cast a ballot in 2014 declined to vote primarily because they believed they could not satisfy the newly-implemented state voter ID requirements.⁷² Latino nonvoters in the 23rd Congressional District were significantly more likely than their white counterparts to cite voter ID requirements as one reason why they did not turn out to vote in 2014.⁷³ Upon further questioning, the authors determined that only between .5 and 1% of these nonvoters actually lacked qualifying ID, which meant that, according to Professor Mark Jones of Rice University, "the most significant impact of the Texas voter photo ID law on voter participation in CD-23 in November 2014 was to discourage turnout among registered voters who did indeed possess an approved form of photo ID." The negative impact of voter ID laws is magnified because these provisions create both practical and perceived obstacles for potential voters.

⁶⁶ *Id.* at 6.

⁶⁷ Brentin Mock, *As Voter ID Laws Expand, Fewer People Are Getting Driver's Licenses*, CITYLAB, Jan. 27, 2016, <http://www.citylab.com/politics/2016/01/as-voter-id-laws-expand-fewer-people-are-getting-drivers-licenses/431547/>.

⁶⁸ According to 2014 American Community Survey data, 51.9% of the 1,530,553 adult naturalized citizens in Texas are Latino, while a relatively smaller 38.6% of the state's total population is Latino.

⁶⁹ Sundeep Iyer, Brennan Center for Justice, *Unfair Disparities in Voter ID*, Sep. 13, 2011, <https://www.brennancenter.org/blog/unfair-disparities-voter-id>.

⁷⁰ Letter from Thomas E. Perez, Assistant Attorney General for Civil Rights, U.S. Department of Justice, to Keith Ingram, Texas Director of Elections (Mar. 12, 2012), <http://www.justice.gov/crt/voting-determination-letter-34>.

⁷¹ *GAO Voter ID Report*, *supra* note 63, at 48-49.

⁷² Mark P. Jones, Jim Granato, and Renée Cross, University of Houston Hobby Center for Public Policy, Rice University's Baker Institute for Public Policy, *The Texas Voter ID Law and the 2014 Election: A Study of Texas's 23rd Congressional District 7*, Aug. 2015, <http://bakerinstitute.org/files/9541/>.

⁷³ *Id.* at 8-9.

IMPACT ON LATINO VOTERS

Alabama

Alabama enacted⁷⁴ a strict voter ID requirement in 2011, but did not implement it until after the Supreme Court's 2013 ruling in *Shelby County* exempted the law from preclearance review. As of 2014, voters in Alabama must present one of the following government-issued photo-bearing IDs in order to vote a regular ballot in-person: a valid identification card issued by any state or the federal government; a valid U.S. passport; a valid employee ID issued by a branch of the federal or Alabama state government, or by a municipal government within Alabama; a valid military ID; a valid tribal ID; or a valid student or employee ID issued by any public or private college, university, technical or professional school in Alabama. Absentee voters are also required to enclose a copy of a qualifying ID with their ballots returned by mail or delivery. Voters who lack qualifying ID may cast provisional ballots that are counted only if the voter presents a qualifying ID to elections officials by 5pm on the Friday following the election in question. A voter without ID may also cast a regular ballot only if two elections officials vouch for his or her identity and sign an affidavit confirming their positive identification of the person as a qualified voter.

Alabama's 2015 decision to close 31 driver's license-issuing locations around the state exacerbated the negative impact of the state's strict voter ID requirement.⁷⁵ As originally planned, these closures would have left 28 Alabama counties without any state identification-issuing location.⁷⁶ However, in response to widespread concern, the state reversed course and decided instead to open most of the targeted locations for one day each month.⁷⁷ As a result, many Alabamians have far less opportunity than they previously enjoyed to obtain an ID for voting purposes. For example, in Franklin County, where the Latino share of the electorate is nearly twice as large as the state average⁷⁸, the sole office that issues new state IDs was previously open two days each week⁷⁹ and now opens for just one day each month.

⁷⁴ Act 2011-673 (H.B. 19, 2011 Leg., Regular Sess. (Ala. 2011)).

⁷⁵ Alabama Law Enforcement Agency, *ALEA Reallocates Personnel to District Driver License Offices*, Sep. 30, 2015, <https://localtvwhnt.files.wordpress.com/2015/09/driver-license-release-september-2015.pdf>.

⁷⁶ Kyle Whitmire, *Voter ID and driver's license office closures blackout Alabama's black belt*, AL.COM, Oct. 2, 2015, http://www.al.com/opinion/index.ssf/2015/09/voter_id_and_drivers_license_o.html.

⁷⁷ Brian Lyman, *Alabama Will Reopen Closed DMV Offices in Black Counties*, TRIBUNE NEWS SERVICE, Oct. 20, 2015, <http://www.governing.com/topics/politics/drivers-license-offices-will-reopen-on-limited-basis.html>; Alabama Law Enforcement Agency, *Office Schedules for Reopening Driver License Offices*, Oct. 27, 2015, http://media.al.com/news_impact/other/Driver's%20license%20office%20schedule.pdf (designating just two of the 31 locations targeted for closure to be open for two days each month; the remainder will open only one day per month).

⁷⁸ American Community Survey data from the 5 year 2010-14 file show that 2.9% of eligible voters in Franklin County are Latino, as compared to about 1.6% of eligible voters statewide.

⁷⁹ As of 2012, the office was open from 9am to 4:30pm every Monday and Tuesday. See *Driver's license exam days changed*, FRANKLIN COUNTY TIMES, Mar. 3, 2012, <http://www.franklincountytimes.com/2012/03/03/driver%E2%80%99s-license-exam-days-changed/>.

⁸⁰ Voters who qualify to vote absentee by mail in Indiana are not required to send a copy of an ID with their completed ballots. However, absentee mail voting is not universally available. Only voters with approved excuses, including voters who have disabilities, voters who must be at work for all of the twelve hours during which polls are open on Election Day, and certain others, are permitted to vote by mail.

⁸¹ Public Law 194 (S.B. 518, 118th Leg., 1st Sess. (Ind. 2013))

⁸² R. Michael Alvarez, Stephen Ansolabehere, Adam Berinsky, Gabriel Lenz, Charles Stewart III, and Thad Hall, *2008 Survey of the Performance of American Elections, Final Report* 43-44, Feb. 18, 2009, <http://vote.caltech.edu/sites/default/files/Final%20report20090218.pdf> [hereinafter 2008 Perf. of Am. Elections].

⁸³ Stephen Ansolabehere, *Effects of Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day*, 42 PS: POLITICAL SCIENCE & POLITICS 127 (2009); Lonna Rae Atkeson, Lisa A. Bryant, Thad E. Hall, Kyle L. Saunders, and R. Michael Alvarez, *A new barrier to participation: Heterogenous application of voter identification policies*, 29 ELECTORAL STUD. 66 (2010); Rachael V. Cobb, D. James Greiner, and Kevin M. Quinn, *Can Voter ID Laws Be Administered in a Race-Neutral Manner? Evidence from the City of Boston in 2008*, 7 Q. J. OF POL. SCI. 1 (2012).

⁸⁴ *Black/Latino Youth Report*, supra note 7, at 1.

According to 2014 ACS data, there are 67,220 Latino Alabama residents eligible to vote in the November 2016 election. We estimate that approximately **10,800** of these individuals likely lack current, valid government-issued identification, and as a result, will find it harder to vote in 2016 than it was in 2012.

Indiana

Indiana has had a strict voter ID law in place since 2005, and its essential details have not changed. Most Indianans are still required, as they were in 2012, to display a photo ID with an expiration date, issued by the federal or Indiana state government, when voting in-person.⁸⁰ However, Indiana increased the potential negative impact on voters of its ID requirement when the state adopted a provision⁸¹ in 2013 that gives poll watchers appointed by candidates, political parties, and proponents of ballot initiatives the power to demand to see and inspect any voter's identification.

We cannot reliably estimate what percentage of Indiana's Latino residents eligible to vote are likely to face additional scrutiny of their identification documents at the polls in 2016. However, where scrutiny is applied and voters increasingly doubt their ability to satisfy new voting requirements, the participation of Latino and other underrepresented voters is likely to suffer the most. Analysis of the 2008 Survey of the Performance of American Elections revealed that 65% of Latino voters nationwide reported being asked for photo ID at the polls, compared to just 51% of white voters.⁸² Latinos were likewise more likely than white voters to be asked for identification according to the 2008 Cooperative Congressional Election Study, and analyses of 2008 voting in Boston and 2006 polling in New Mexico.⁸³ The University of Chicago polled young voters aged 18-29 in November 2012, and found that 57% of Latinos were asked for photo ID, compared to just 42.2% of whites.⁸⁴

Given the consistency of these findings, it is likely that Indiana's 169,572 Latinos who are eligible to vote will encounter disproportionate scrutiny of their IDs as they go to the polls in November 2016, relative to their experiences as voters in November 2012.

Mississippi

Like Alabama, Mississippi adopted⁸⁵ a strict voter ID requirement in 2011, but did not implement it until after the Supreme Court's *Shelby County* decision exempted the new requirement from preclearance review. As of the beginning of 2014, all Mississippians are required to display ID in order to vote in-person. Absentee voters casting ballots by mail are not required to enclose a copy of an ID. Accepted documents include photo identification cards issued by any branch of the federal or any state government, including government employee IDs; U.S. passports; firearms licenses; student IDs issued by accredited Mississippi colleges and universities; military IDs; tribal IDs; and Mississippi Voter Identification Cards issued by the Secretary of State. Pollworkers must accept otherwise qualifying IDs that have been expired for no more than ten years. Voters without acceptable ID may cast provisional ballots, which are only counted when those voters return to show an ID to elections officials, or to sign an affidavit attesting to having a religious objection to being photographed, within five days of Election Day.

2014 ACS data indicate that at least 29,593 Latino Mississippians will be eligible to vote in November 2016. We estimate that approximately **4,700** of them likely lack qualifying voter ID. We note with concern that naturalized Mississippians – including about 5,000 Latinos – are likely to find it particularly challenging to vote in 2016. First, naturalized citizens are discriminatorily singled out by Mississippi voter registration law, because only they, and no other class of U.S. citizens, are required to show documentation of citizenship to elections officials when applying for voter registration.⁸⁶ Subsequently, naturalized Mississippians are likely excluded from being able to obtain a free Mississippi Voter Identification Card. Mississippi's Secretary of State issues these documents to registered voters without other qualifying voter ID, upon the voter's provision and the Secretary of State's confirmation of the voter's date of birth, state of birth, and mother's maiden name.⁸⁷ This procedure clearly was designed with U.S.-born voters in mind, and no alternative procedures are proscribed for Americans born outside the United States.

Tennessee

Tennessee adopted a strict photo ID requirement⁸⁸ in 2011 which was in effect for the Presidential election of 2012, but which has since changed when, in 2013, the state legislature shortened⁸⁹ the list of documents accepted as proof of identification. Previously, photo IDs issued by states other than Tennessee and by any "branch, department, agency, or entity" of the state of Tennessee were accepted. But after the legislature's action, only certain Tennessee and federal government-issued photo IDs count as valid voter ID, and the law specifies that county and municipal IDs including library cards are not proof of identity for voting purposes.

In 2016, as in 2012, Tennesseans voting in-person must present ID, but requirements do not apply to people voting by mail, nursing home residents, and hospitalized residents. Tennessee also allows people with a religious objection to being photographed and individuals who lack qualifying ID, are indigent, and cannot obtain an ID without paying fees to vote upon swearing out an affidavit. The exemption for people unable to obtain ID is an important adaptation, but we are not aware of any publically-available data on how many voters have completed this process. Moreover, we do not know whether enough people are aware of the option, or willing to identify themselves as indigent, to make it an effective failsafe against the turning away of qualified voters.

We are not able to identify the number of Tennesseans who used municipal ID to vote in 2012 but will not be able to do so in 2016, nor do we have access to statistics concerning Tennesseans eligible to vote who do not have state- or federally-issued photo ID but do have a municipal photo ID. While we cannot estimate the number of voters likely to be negatively affected by the narrowing of Tennessee's list of acceptable IDs, we know that the total number of potential Latino Tennessean voters without government-issued photo ID has likely increased since 2012. 2012 ACS data showed that there were 81,362 Latinos eligible to vote in Tennessee; in 2016, there are at least 92,653 Latino members of the eligible electorate.

⁸⁵ Miss. Initiative 27 (2011).

⁸⁶ MISS. CODE ANN. § 23-15-15 (2015).

⁸⁷ Mississippi Secretary of State, *How Can I Get a Mississippi Voter ID Card?*, <http://www.msvoterid.ms.gov/Pages/VoterIDHowtoGetID.htm> (last visited April 27, 2016).

⁸⁸ 2011 Tenn. Pub. Acts ch. 323 (S.B. 16, 107th Leg., 1st Sess. (Tenn. 2011)).

⁸⁹ 2013 Tenn. Pub. Acts ch. 178 (S.B. 125, 108th Leg., 1st Sess. (Tenn. 2013)).

Texas

Texas famously adopted⁹⁰ one of the nation's most restrictive voter ID requirements in 2011. Unlike Alabama and Mississippi, Texas sought to preclear and then implement the requirement immediately after enactment. The DOJ's March 2012 decision to deny the law preclearance initially prevented its implementation. Subsequently, in an August 2012 ruling, the U.S. District Court for the District of Columbia agreed with the DOJ, finding that Texas had failed to prove that its ID law was non-discriminatory and would not leave underrepresented voters with less access to elections than they previously enjoyed. Within hours of the announcement of the *Shelby County* decision, however, Texas proclaimed its intention to move forward with requiring voter ID.

The legality of Texas's strict voter ID requirement remains in question. In October 2014, U.S. District Judge Nelva Gonzales Ramos ruled that the law was intentionally discriminatory and violated Section 2 of the VRA, a provision unaffected by the *Shelby County* decision. Judge Gonzales enjoined implementation of the ID requirement, but the Fifth Circuit Court of Appeals temporarily halted her order pending further proceedings, and the Supreme Court agreed that Texas could require voter ID in November 2014. Although a panel of three judges from the Fifth Circuit upheld Judge Gonzales's ruling that the law violated the VRA in August 2015, their decision was not the final word in the case. As of April 2016, Texas may apply its voter ID requirement pending further developments in court. Litigants await an en banc decision based on the votes of all, instead of just three, of the Fifth Circuit's judges, as well as the Supreme Court's response to a request to enjoin the voter ID law for the 2016 General Election. Additional appeals are very likely to follow on the heels of these decisions, and on balance, it is more likely than not that Texans will be required to comply with the 2011 voter ID law in November 2016.

Texas's voter ID provision requires voters to display one of a particularly short list of identification documents when voting in-person. Only Texas-issued driver's licenses and identification cards including Election Identification Certificates, concealed handgun permits, U.S. passports, military IDs, and DHS-issued Certificates of Citizenship containing a photograph are accepted as proof of identity. These documents are accepted only if they are unexpired or did not expire more than 60 days before the date on which their holder is attempting to vote.

Voters with disabilities or religious objections to being photographed, and voters who have lost their identification documents as a result of a natural disaster occurring close in time to an election, are exempted from voter ID requirements. Any other voter who does not have a qualifying ID may vote a provisional ballot which will be counted if the voter shows a qualifying ID to an elections official within six days of Election Day. Absentee voters casting mail-in ballots need not send a copy of qualifying voter ID with their ballots, but in Texas, only voters who are older than 65, who have a disability, or who cannot vote in-person because they are in jail or will be absent from their home counties throughout the early voting period and on Election Day qualify to cast absentee ballots by mail.

Because litigation over Texas's ID requirement has been in progress for several years, experts have compiled, submitted for scrutiny, and discussed in the public domain a relatively extensive body of evidence of the ID mandate's discriminatory impact on Latino and other underrepresented voters. Professor Stephen Ansolabehere compared Texas's voter registration list to databases of people with current and valid state-issued IDs, passports, and other accepted documents. After excluding people who appeared to be deceased, to have moved outside of Texas, or to qualify for the disability exemption to the ID requirement, he concluded that 608,470 already-registered Texan voters lacked any acceptable form of voter ID. Professors Michael Herron and Coleman Bazelon performed similar analyses and reached consistent results.⁹¹ Using widely-accepted methods for projecting race and ethnicity, Professor Ansolabehere concluded that Latinos were between 58% and 195% more likely than white registered voters to lack acceptable voter ID, and that African Americans were between 108% and 305% more likely than whites to lack ID.⁹² Further, 5.8% of registered Latino-surnamed voters lacked an acceptable ID, compared to just 4.1% of non-Latino registered voters.⁹³ Another prominent study – a survey of more than 2,300 Texans eligible to vote conducted by Professors Matt Barreto and Gabriel Sanchez – found that Latino voters were 2.42 times as likely as whites not to possess an acceptable voter ID, and that African American voters were 1.78 times as likely as whites to lack ID.⁹⁴

⁹⁰ 2011 Tex. Gen. Laws ch. 123 (S.B. 14, 82nd Leg., Regular Sess. (Tex. 2011)).

⁹¹ *Veasey v. Perry*, 71 F. Supp.3d 627, 659-60, 662-63 (S.D. Tex. 2014).

⁹² *Id.* at 661-62.

⁹³ *Id.* at 661.

⁹⁴ *Id.* at 662-63.

These findings confirm that Texas's voter ID requirement has a disproportionate effect on Latino voters and other communities that have historically been targeted for discriminatory disfranchisement. The studies do not, however, capture the full scope of that impact, because they concern only those relatively knowledgeable people who have already successfully registered to vote, and who take active part in public policy studies. It is likely that unregistered but eligible voters, who have lower incomes and less education than registered voters, lack ID at even higher rates than registered voters. We estimate that approximately **771,300** of the 4,820,430 Texan Latinos who are eligible to vote according to 2014 ACS data likely lack qualifying voter ID, and will find it harder to vote in November 2016 than in 2012.

Wisconsin

Wisconsin enacted a strict voter ID law⁹⁵ in 2011, but after implementing it for the 2012 primary election, the state did not enforce it again until 2015, after an initial wave of litigation concerning its constitutionality was resolved in favor of the state.⁹⁶ In 2016, Wisconsin voters must show a qualifying ID both when voting in-person and by mail, in the latter instance by enclosing a photocopy of an ID. Acceptable IDs are limited to Wisconsin driver's licenses and state identification cards (current or expired since the date of the last federal election), Certificates of Naturalization that were issued no more than two years before the election in question, U.S. passports (current or expired since the date of the last federal election), Department of Defense (DOD)-issued military IDs (current or expired since the date of the last federal election), tribal IDs that include a photo, and unexpired student IDs that include a photo, the holder's signature, and the dates of issuance and expiration which must be no more than two years apart. There are exemptions, and in some cases alternative requirements, for military servicemembers stationed outside of Wisconsin and voters living abroad permanently, "confidential" voters with personal safety concerns, and residents of nursing and special care facilities and others confined to home.

As in Texas, litigation in Wisconsin has brought to light data that demonstrate the impact of this particular version of a voter ID requirement. In connection with federal court litigation, Professors Barreto and Sanchez conducted a survey of eligible voters in Milwaukee County, Wisconsin's most populous jurisdiction. The researchers asked respondents whether they had any of the IDs that would be accepted for voting under the law enacted in 2011, and whether they had the documents they would need to obtain a free state ID for voting purposes.

The court that received their testimony credited their finding that nearly 10% of eligible voters in Milwaukee County did not have a qualifying ID, and that more than 34% of those without ID also lacked the documents they would need to obtain an ID as a first-time applicant.⁹⁷ The more than 63,000 potential Milwaukee County voters who lacked qualifying ID were disproportionately Latino and African American. While 7.3% of the eligible white voters surveyed did not have a valid ID for voting purposes, 14.9% of eligible Latino voters and 13.2% of eligible African American voters lacked ID.⁹⁸ A second study conducted to assess whether the law would have a discriminatory impact produced consistent results. Consultant Leland Beatty compared Wisconsin voter registrations to driver's license and state ID records, and assigned a likely race and ethnicity to each person with widely commercially-used predictive methods. He found that among all registered voters statewide, Latinos were 2.3 to 2.6 times as likely as white voters to lack a state-issued ID, and African Americans were 1.4 to 1.7 times as likely as whites not to have a state-issued ID.⁹⁹

We estimate that approximately **24,000** of the 150,205 Latino Wisconsinites eligible to vote according to 2014 ACS data are likely to lack identification documents needed to vote in 2016, and to experience heightened barriers to the ballot as compared to past elections. Professors Barreto and Sanchez' survey tells us that it is likely that thousands of these individuals who lack a qualifying voter ID also do not have in their possession everything that they will need to obtain an ID in order to preserve their right to vote.

Virginia

Before 2013, voters in Virginia had to bring proof of identity to the polls, but were able to use a wide variety of photo and non-photo-bearing documents for that purpose. In 2013, the state adopted¹⁰⁰ a more stringent ID requirement that transformed it into a strict ID-requiring jurisdiction. Today, Virginians who vote in-person, whether as absentee voters or on Election Day, must display one of the following documents that includes a photo and is current, or has been expired for not more than one year: a state-issued driver's license, ID card, or veteran's ID card; any other photo ID issued by the federal or Virginia government or a municipal government within Virginia; a U.S. passport; a tribal ID issued by one of the 11 tribes recognized by the state; a student ID issued by a school in Virginia; or an employer-issued employee ID card. Like other strict ID states, Virginia offers a free Voter Identification Card to individuals without other ID acceptable for voting purposes.

⁹⁵ 2011 Wis. Laws Act 23 (A.B. 7, 2011-2012 Leg. (Wis. 2011)).

⁹⁶ Between 2011 and 2015, all Voting Rights Act-based claims brought against Wisconsin's voter ID law were ultimately resolved in favor of the law's legality. Therefore, the law is in effect for 2016, but at the same time, it is facing renewed legal challenge based on a different legal theory. The resolved claims were facial challenges, which contend that no possible application or reading of the law could be constitutional. More recent and outstanding claims challenge the law more narrowly, as it has been applied to particular individuals who have been unable to vote under its strictures.

⁹⁷ *Frank v. Walker*, 17 F. Supp.3d 837, 885 (E.D. Wis. 2014).

⁹⁸ *Id.* at 872.

⁹⁹ *Id.* at 871.

¹⁰⁰ H.B. 1337, 2013 Va. Acts ch. 703.

Whereas other states require precursor documents like birth certificates, however, Virginia's free voting ID is particularly accessible because it requires only completion of a simple application and appearance in-person to provide a digital signature and have a picture taken. A Virginian who does not bring identification to the polls votes a provisional ballot that is counted if the voter shows his or her ID, or sends a physical or digital copy of it, to elections officials by noon on the third day after the election.

Virginia is home to Latino communities that have recently grown significantly in size and prominence. It is also increasingly considered a "swing state" whose 13 Electoral College votes notably boost the chances of any Presidential candidate. Interest and participation in the 2016 election could well be robust, and changes in voting procedures put into place since 2012 may catch a number of voters by surprise. This is particularly true of a heightened voter ID requirement that has already been in place for the Congressional election of 2014, and that therefore is likely to be the subject of relatively less public outreach and education. Of the at least 284,913 Latino Virginians who are eligible to vote according to 2014 ACS data, we find that approximately **45,600** likely do not have any of the most commonly-used forms of voter ID, and will therefore find it harder to vote in November 2016 than it was in November 2012.

THE IMPACT OF PRE-EXISTING STRICT VOTER ID REQUIREMENTS

In this report we place special emphasis on laws that have been enacted or implemented since Election Day 2012, and that will change whether and how people vote in 2016. States whose strict voter ID requirements have not changed since 2012 also deserve mention because they remain likely to impede numerous eligible Latino voters from casting ballots. Georgia and Kansas imposed strict ID mandates in 2012 that will also apply in 2016. In Georgia, about 46,100 Latinos eligible to vote are likely to lack government-issued identification acceptable for voting purposes; nearly 20,600 Latino Kansans are likely in the same situation. Of course, not all of these individuals will decline to vote or be turned away from the polls because of feared or actual inability to satisfy an ID requirement, but as noted, the GAO found an actual decline in voter participation in Kansas and Tennessee of between 1.9% and 3.2%, attributable to the added burden of identity confirmation procedures.

THE IMPACT OF LESS-RESTRICTIVE VOTER ID REQUIREMENTS

According to the National Conference of State Legislatures (NCSL), 33 states will have some form of a voter ID requirement in place for the November 2016 election. In a majority of these jurisdictions, the requirement should not be prohibitively onerous for voters because a wide array of photo and non-photo-bearing documents are accepted as proof of identity, or because there are easily-satisfied alternative procedures available for voters without ID, including signature match verification and completion of an affidavit affirming identity. Four states with less-restrictive ID requirements nonetheless deserve citation for crafting laws that have a greater-than-average potential to place barriers in the way of qualified Latino and other voters.

North Carolina

When it imposed new restrictions on registration and voting in the wake of the Supreme Court's decision in *Shelby County*, the North Carolina legislature adopted a restrictive voter ID requirement.¹⁰¹ As enacted in 2013, the law required North Carolinians voting in-person to display one of a limited list of documents, any of which had to include a photo and expiration date¹⁰² and be unexpired on the date of the election. North Carolina driver's licenses and state IDs, U.S. passports, military IDs, tribal IDs, or veteran's IDs issued by the Department of Veterans Affairs (VA) were to be accepted as proof of identity. Voters who registered 90 days or less before an election were permitted to use an ID issued by a state other than North Carolina. Exceptions were made for victims of natural disasters occurring within 60 days of an election, voters with a religious objection to being photographed, and curbside voters; in addition, voters aged 70 or older could show expired IDs so long as they were unexpired on the holder's 70th birthday, or issued no more than eight years before the election in question. Voters without ID could vote provisionally, and these voters' provisional ballots were to be counted only if the voters returned in-person to show ID to elections officials by noon on the day before the date set for convening of the election canvass, which would typically take place seven to ten days after Election Day. The ID requirement entered into force in 2016, and during elections in 2014, pollworkers alerted voters about the imminent ID requirement but continued to allow voters without ID to cast ballots.

¹⁰¹ Sess. Law 2013-381 (H.B. 589, 2013-2014 Leg. Sess. (N.C. 2013)).

¹⁰² Military and veteran's IDs not required to contain issuance or expiration date.

STRICT NON-PHOTO ID REQUIREMENTS IN ARIZONA, NORTH DAKOTA, AND OHIO

North Carolina was the first state to adopt a new strict voter ID requirement after the VRA was weakened, and so not surprisingly, its action attracted widespread attention and concern. Litigants including the NAACP, the League of Women Voters, and the DOJ quickly filed lawsuits against the ID requirement and other measures included in the same piece of legislation. These challenges remain pending, on appeal to the Fourth Circuit Court of Appeals, as of April 2016. North Carolinians also began to protest restrictive voting policies over the course of a series of high profile actions entitled, “Moral Mondays.”¹⁰³ Likely influenced by both public opinion and the progress of litigation, the North Carolina Legislature amended the ID requirement in 2015¹⁰⁴ by creating an affidavit alternative to displaying qualifying ID. When the ID requirement goes into full effect in 2016, voters without ID may vote provisionally if they declare a reasonable impediment to obtaining ID. Their ballots will be counted when voters complete an affidavit describing their impediment, and provide either their birthdate and last four digits of social security number, or a name- and address-bearing document accepted under the Help America Vote Act (HAVA), such as a utility bill, bank statement, paycheck, or other government document.

The existence of an affidavit alternative to showing ID transforms North Carolina’s voter ID mandate from strict to non-strict. Nonetheless, because the requirement will be enforced for the first time in 2016, and has been the subject of so much popular discussion and so many expressions of concern, it is likely that many North Carolinians eligible to vote will avoid the polls out of lack of familiarity with the law and mistaken fear that they cannot satisfy the new requirements. We cannot reliably predict the number of voters who will be dissuaded from voting or otherwise negatively affected by the voter ID requirement in 2016, but North Carolina’s Latino electorate is growing rapidly, and disproportionately consists of young people who are inexperienced as voters and who have low rates of ID possession.¹⁰⁵ According to 2014 ACS data, there will be at least 250,000 Latino North Carolinians eligible to vote in 2016, an increase of more than 25% from 2010. Thirty-eight percent of these potential voters are younger than 30, compared to just 21% of non-Latino North Carolinians eligible to vote. Intensive education and mobilization efforts are needed to ensure that these potential voters do not stay home in November 2016 because of apprehension about the new ID requirement.

Adopted in Arizona in 2004 and Ohio in 2006, strict non-photo ID requirements mandate, without exception, that in-person voters display proof of their identity. Provisional ballots cast by voters without ID are counted only if voters provide the required ID to elections officials within a short time after voting. However, unlike the states profiled above, Arizona and Ohio allow voters to submit non-photo IDs for voting purposes. In Arizona, voters can provide either a valid photo ID containing their address and issued by the federal, state, or local government or a tribal authority; or, in the alternative, two non-photo IDs containing their names and addresses. Acceptable non-photo IDs include recent utility bills and bank statements, documents marked “Official Election Mail,” Arizona Vehicle Registrations and insurance cards, and property tax statements. In Ohio, only one document is required, and in addition to current Ohio- and federal government-issued photo IDs, voters may use as proof of identity utility bills, bank statements, paychecks, and government documents issued within the year prior to the election.

North Dakota first adopted a non-restrictive ID requirement for voters in 2003, but made its law significantly more restrictive with the sum of changes enacted in 2013¹⁰⁶ and 2015¹⁰⁷. In 2016, North Dakotan voters will be subject to a mandate that is in some ways stricter than some of the most stringent in the country.¹⁰⁸ However, some non-photo IDs continue to be accepted, and North Dakotans continue to enjoy broad access to the polls due to the fact that no advance voter registration is required in the state.

¹⁰³ E.g., Heather Waliga, *North Carolina NAACP President William Barber, 9 Others Arrested in ‘Moral Monday’ Protests at Legislative Building*, ABC 11 WTVD, June 17, 2015, <http://abc11.com/politics/voter-id-protests-at-state-legislature-lead-to-more-arrests/790574/>.

¹⁰⁴ Sess. Law 2015-103 (H.B. 836, 2015-2016 Leg. Sess. (N.C. 2015)).

¹⁰⁵ E.g., Erin Ferns Lee, *Project Vote, Enfranchising America’s Youth 2-3*, May 2014, <http://www.projectvote.org/wp-content/uploads/2014/05/POLICY-PAPER-Enfranchising-Americas-Youth-May-9-2014.pdf> (noting that young people are more likely than all Americans on average to lack a government-issued ID, and that young people also move residences at a rate 16 percentage points higher than all Americans, so if they do have ID it is disproportionately likely to be out of date).

¹⁰⁶ 2013 N.D. Laws Ch. 167 (H.B. 1332, 63rd Leg., Regular Sess. (N.D. 2013)).

¹⁰⁷ 2015 N.D. Laws Ch. 157 (H.B. 1333, 64th Leg., Regular Sess. (N.D. 2015)).

¹⁰⁸ We note, however, that a lawsuit was filed in January 2016 against the state’s voter ID requirements. If successful, this suit could potentially produce an injunction against enforcement of the ID requirements in November 2016, but as of April 2016 we do not have any information to suggest that an injunction is more likely than not.

At present, only four forms of ID are accepted from in-person voters: North Dakota driver's licenses, North Dakota non-driver state IDs, tribal IDs, and long-term care identification certificates issued by institutions located in North Dakota. North Dakotans living outside the United States who do not have one of the four primary forms of ID may submit, in the alternative, a copy of a military ID or U.S. passport. Absentee voters can also submit the attestation of a second North Dakota voter to their qualifications as an alternative to providing ID, but the attesting voter must submit his or her qualifying ID number in the attestation. Because North Dakota does not require voters to register, the state does not have a provisional balloting process. Therefore, voters who cannot timely satisfy ID requirements cannot vote.

We are not aware of studies that document what percentage of Americans, and people of various races and ethnicities, possess the non-photo documents described above, and so we are not able to estimate the number of Latino voters likely to be negatively affected by laws like Arizona's and Ohio's, that require all voters to prove their identity but allow a more expansive menu of options for fulfilling the requirement. However, the category of non-photo IDs accepted in North Dakota is so narrow¹⁰⁹ that very few Latino residents without other photo ID are likely to benefit from the provision. According to 2014 ACS data, there are at least 11,194 adult Latino citizens eligible to vote in North Dakota. About **1,800** of them likely lack qualifying state-issued photo ID, and stand to be impeded from voting by the new ID requirement.

VOTER'S STORY: MARIA DEL CARMEN SANCHEZ

Maria del Carmen Sanchez has a lot in common with other potential Latino voters in her home state of North Carolina. Like more than one-fourth of the state's Latino electorate, she is a naturalized citizen, born in Cuba. And like many Latinos, she has a name that non-Latino municipal officials sometimes struggle to understand. Ms. Sanchez's full given name was Maria del Carmen Sanchez Ennes. Maria del Carmen is her first name, and Ennes is her mother's last name, while Sanchez, her father's last name, is the last name she went by before her marriage. After marriage, Ms. Sanchez's North Carolina driver's license listed her married name, Maria Sanchez Thorpe, but mistakenly denoted "Sanchez" as her middle name. When she first obtained a Social Security Number as a child, moreover, her name was mistakenly recorded with "del" denoted as her middle name, and without any notation of "Carmen" or "Ennes."

In 2007, when Ms. Sanchez attempted to renew her North Carolina driver's license, she was initially refused service because employees determined that the married name on her previously-existing driver's license record did not match the name on her U.S. passport: Maria del Carmen Sanchez. Unbelievably, the solution employees offered her was to obtain a divorce so that her legal name would revert to that reflected on her passport. Fortunately, she discovered that she could instead complete a name change form and renew her ID. Unfortunately, however, Ms. Sanchez's difficulties continued. In 2015, she discovered that the name now on her driver's license did not match her name in voter registration records, and that she might be refused a ballot in future elections in which the state's new voter ID requirement applied on that basis. North Carolina voter registration records identify voters' races and ethnicities, but Ms. Sanchez was further dismayed to learn that her own registration record did not list her as Latina. Ms. Sanchez attributes the disparities between the various official records concerning her to many Americans' lack of familiarity with Latino naming conventions. She fears that many fellow North Carolinian Latino voters may encounter challenges due to these same issues as the state's ID law takes effect.

¹⁰⁹ According to a study by the National Center for Health Statistics, as of 2012 the rate of usage in North Dakota of nursing homes was 49.22 for every 1000 people aged 65 or older; for residential care communities, it was 40.48 for every 1000 people 65 or older. Lauren Harris-Kojetin, Ph.D., Manisha Sengupta, Ph.D., Eunice Park-Lee, Ph.D., Roberto Valverde, M.P.H., National Center for Health Statistics, *Long-Term Care Services in the United States: 2013 Overview* Table 5, 92-93, 2013, <https://www.ahcanca.org/nca/resources/Documents/13%20NCHS%202013%20LTC%20Services%20Overview%20December.pdf>. According to American Community Survey data, in 2012 there were 100,012 North Dakotan U.S. citizens aged 65 or older in total, which equates to there being approximately 4,900 North Dakotans in nursing homes, and 4,000 in residential care communities, who are likely eligible to vote. It is likely that the long-term care certificate non-photo exemption applies to not significantly more than about 10,000 North Dakotans, a relatively small segment of the approximately 559,000 North Dakotans eligible to vote.

SHORTENED IN-PERSON VOTING PERIODS

Over the past several decades, voter advocates have developed and persuaded lawmakers to adopt election-related innovations that harness enhanced technological capacity, and that adapt the conduct of democracy to the changing rhythms of daily life in the United States. Flexible voting periods are one of the most popular of such approaches: in 2016, every jurisdiction will allow, at the least, voters who cannot get to a polling place on Election Day to vote an absentee ballot in advance of Election Day, and 37 states and the District of Columbia will offer early voting to any qualified voter.¹¹⁰

The availability of advance in-person voting likely empowers many Latino voters to cast ballots who might otherwise struggle to participate during the narrow window of opportunity that Election Day presents. As early voting has gained in popularity and spread to new jurisdictions, Latino and other underrepresented voters have made increasing use of flexible voting options. In 2011, for example, the Pew Hispanic Center found that Latino use of early voting outpaced national averages, and climbed from 2006, when 20.9% of Latinos voted early, to 2010, when 26.2% of Latinos voted early.¹¹¹ In 2014, advocates promoting flexible voting options to Latino Arizonans succeeded in increasing the number of Latino voters on the state's Permanent Early Voting List from 90,000 to more than 265,000.¹¹² According to analysis by the Brennan Center for Justice, the nine states with the highest early voting rates in 2008 and 2012 were Arkansas, Florida, Georgia, Nevada, New Mexico, North Carolina, Tennessee, Texas, and Utah.¹¹³ These nine states with popular, robust early voting programs are home to 25.7% of the nation's eligible electorate, but a disproportionately larger 36.0% share of all Latinos eligible to vote.

Early and flexible voting are particularly important to Latino voters because of the heavy demands on their time. Latinos have a higher civilian workforce participation rate than Americans of any other race and ethnicity¹¹⁴, and, as noted, less workplace flexibility and more childcare-related obligations than all American voters on average.

Insufficient free time is also likely one reason why many Latino voters feel that they lack sufficient knowledge of what candidates and ballot questions stand for, and hesitate to turn out on Election Day as a result. Advocates have found that early voting is an attractive option for Latino voters because, as Petra Falcon of the non-profit organization Promise Arizona stated, "Voting early allows [Latino voters] much more time and much more privacy to really reflect on who the candidates are, and quite frankly, for the four years that we've been doing voter registration, we've found that the biggest fear for people is voting for the wrong person or voting for the wrong ballot initiative."¹¹⁵

Many potential Latino voters are also likely to be encouraged to consider early voting by religious leaders. After African Americans, Latinos are the most likely of all Americans to say that religion is important to them, and that they attend religious services at least once a week.¹¹⁶ Not surprisingly, therefore, religious leaders have undertaken notable efforts to turn out Latino voters in recent years.¹¹⁷ These efforts are most likely to bear fruit where potential voters have the option of heading straight to an early polling place from services, especially where religious institutions provide transportation to the polls.

¹¹⁰ National Conference of State Legislatures, *Absentee and Early Voting*, Mar. 24, 2016, <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (last visited April 27, 2016) [hereinafter *NCSL Absentee/Early Voting Research*].

¹¹¹ Mark Hugo Lopez, Pew Research Center, *The Latino Electorate in 2010: More Voters, More Non-Voters* 9, April 26, 2011, <http://www.pewhispanic.org/2011/04/26/the-latino-electorate-in-2010-more-voters-more-non-voters/>.

¹¹² Griselda Nevarez, *One Strategy That Can Help Get Latinos to Vote*, HUFFINGTON POST, Oct. 8, 2014, http://www.huffingtonpost.com/2014/10/08/early-voting-latinos_n_5954348.htm [hereinafter *Nevarez Article*].

¹¹³ Diana Kasdan, Brennan Center for Justice, *Early Voting: What Works* 3, 2013, https://www.brennancenter.org/sites/default/files/publications/VotingReport_Web.pdf.

¹¹⁴ Bureau of Labor Statistics, *Civilian labor force participation rate by age, gender, race, and ethnicity* Table 3.3, Dec. 8, 2015, http://www.bls.gov/emp/ep_table_303.htm.

¹¹⁵ *Nevarez Article*, *supra* note 112.

¹¹⁶ Pew Research Center, *Religious Landscape Study: Racial and ethnic composition*, 2015, <http://www.pewforum.org/religious-landscape-study/racial-and-ethnic-composition/> (last visited April 25, 2016).

¹¹⁷ *E.g.*, Curt Anderson, *Churches using 'souls to polls' to rally vote*, ASSOCIATED PRESS, Oct. 1, 2012, <http://www.piconetwork.org/news-media/coverage/2012/churches-using-souls-to-polls-to-rally-vote>; Heather Sells, *Fla. Church Leaders Get Out the Hispanic Vote*, CBN NEWS, Jan. 13, 2012, <http://www.cbn.com/cbnnews/politics/2012/january/fla-church-leaders-get-out-the-hispanic-vote/?mobile=false>.

Unfortunately, while early voting is available in more jurisdictions in 2016 than in 2012, several states have moved in the opposite direction to cut back on early voting periods. These cuts not only leave Latinos and all voters with less opportunity to cast ballots, but sow confusion and disillusionment among voters who confront frequent or unanticipated changes to election practices. Ohioans, Tennesseans, and Wisconsinites are particularly vulnerable to this phenomenon in 2016: in all three states, early voting periods have been altered at least twice within the space of just four years, between January 2011 and December 2014. Equally troubling is academic analysis that shows a correlation between larger populations of underrepresented voters and lack of early voting¹¹⁸, as well as between cutbacks in early voting and lower Latino and African American voter turnout rates.¹¹⁹ Early voting's capacity to broaden and diversify the electorate may be precisely the reason why some policymakers advocate limiting or not offering flexible voting periods.

IMPACT ON LATINO VOTERS

Indiana

In 2013, Indiana enacted extensive election-related legislation¹²⁰ that, along with making it more likely that registration applications would be rejected and that voters' identification documents would be subjected to scrutiny, also shortened by one day the state's in-person absentee voting period. Previously, absentee voters could begin casting ballots 29 days before Election Day; the 29th day before Election Day also was, and remains, the state's registration deadline. However, the state has now eliminated any possibility that one might register and cast an absentee ballot in-person on the same day. The legislation that made this change directed that if Indiana's voter registration deadline should change again, its in-person absentee voting period would adjust accordingly to begin the day after the registration period ends.

In-person absentee voting is popular with Indiana voters. As of Election Day 2014, the Secretary of State's office reported that about 61% of the more than 200,000 absentee voters in the state had voted in-person instead of returning ballots by mail.¹²¹

Although we know that a majority of early voters in Indiana are likely to choose to vote in-person, we do not have access to data that show what percentage of all early voters or of all Latino early voters cast ballots on the first day of in-person absentee balloting in 2012, when the in-person voting period began on the same day as the voter registration deadline.

Therefore, we cannot say with certainty how many Indianan Latino voters are likely to be negatively affected by the shortening of the in-person absentee voting period. The change is, however, likely to make voting more difficult for at least some potential Latino voters. There is abundant evidence that the option to both register and vote at the same time is a popular one that tends to increase voter turnout generally, and Latino voter turnout in particular¹²²; its withdrawal is likely to have the opposite effect.

Nebraska

In 2013, Nebraska shortened¹²³ its early voting period by five days, electing to begin issuing early ballots 30, instead of the previous 35, days in advance of Election Day. Lawmakers announced that the measure was inspired by desire to avoid liability of the sort that potentially arose when elections officials failed to program a specialized machine for blind voters in time for the start of early voting, and a blind voter was unable to cast a ballot. The voter in question opposed the proposal, according to Fox News, and said that she did not "want others to lose early voting days because of her complaint."¹²⁴ Nonetheless, lawmakers ultimately approved a compromise over elimination of early voting days: as originally introduced, the legislation would have eliminated 10 days of early voting and moved the start of voting to 25 days before Election Day.¹²⁵

¹¹⁸ E.g., Elliott B. Fullmer, *The Site Gap: Racial Inequalities in Early Voting Access*, 43 AM. POL. RES. 283 (Mar. 2015).

¹¹⁹ E.g., Michael C. Herron and Daniel A. Smith, *Race, Party, and the Consequences of Restricting Early Voting in Florida in the 2012 General Election*, 67 Pol. Res. Q. 646 (Sep. 2014).

¹²⁰ Public Law 194 (S.B. 518, 118th Leg., 1st Sess. (Ind. 2013)).

¹²¹ Indiana Secretary of State, *Media Information guide for Indiana 2014 General Election 4*, Nov. 3, 2014, http://www.in.gov/sos/elections/files/2014_General_Election_Media_Guide_with_Attachments_11.03.2014.pdf.

¹²² Demos, citing data from the United States Election Project at George Mason University, notes that average voter turnout is more than 10 percentage points higher in states with same day registration than it is in those without. Demos, Project Vote, *Same-Day Registration 1-2*, 2014, <http://www.demos.org/publication/what-same-day-registration-where-it-is-available>. In addition, same day registration is positively associated with stronger turnout among young voters, and youth turnout trends often determine Latino turnout since a disproportionate share of eligible Latino voters are young people. Nonprofit Vote, *America Goes to the Polls: Voter Participation Gaps in the 2012 Presidential Election 4*, Sep. 2013, <http://www.nonprofitvote.org/documents/2013/09/america-goes-to-the-polls-2012-voter-participation-gaps-in-the-2012-presidential-election.pdf>.

¹²³ L.B. 271, 103rd Leg., 1st Regular Sess. (Neb. 2013).

¹²⁴ Associated Press, *Nebraska lawmakers debate reducing early voting days*, FOX NEWS POLITICS, April 3, 2013, <http://www.foxnews.com/politics/2013/04/03/nebraska-lawmakers-debate-reducing-early-voting-days.html>.

¹²⁵ L.B. 271 as introduced, 103rd Leg., 1st Regular Sess. § 2(3) (Jan. 16, 2013), <http://nebraskalegislature.gov/FloorDocs/103/PDF/Intro/LB271.pdf>.

We do not have access to detailed information about the days on which early votes have historically been cast in Nebraska. Data provided by Nebraska to the EAC concerning the 2012 and 2014 elections also do not permit us to say with confidence how many total early votes were cast in the state in either year.¹²⁶ Although we cannot estimate how many Latino Nebraskans will find it harder to vote in 2016 because of the elimination of early voting days, any one of the 67,007 Latinos eligible to vote in the state could potentially be negatively affected.

North Carolina

North Carolina's 2013 omnibus election legislation¹²⁷ included a provision that shortened the state's early voting period from 17 to 10 days, and required that early voting end by 1pm on the final day of the period, the Saturday immediately before Election Day. By eliminating more than 40% of previously-available early voting days, North Carolina made the most dramatic restrictive change to its early voting period in the nation between 2013 and 2015. This provision has been allowed to go into effect, and unless a pending lawsuit is definitively resolved in favor of the plaintiffs during calendar year 2016, there will be a truncated early voting period in November 2016.

Litigation concerning North Carolina's reduction in early voting days has produced a relative wealth of expert analysis concerning its likely impact. In 2012, North Carolinians made robust use of early voting. About 60% of all votes were cast during the early voting period, and nearly 900,000 votes, accounting for 35.2% of all early votes, were cast on the seven eliminated days.¹²⁸ Another 50,651 early votes were cast on the last Saturday of early voting, but after 1pm, when early voting locations will close in 2016 and beyond.¹²⁹ In sum, 22.2% of all votes cast in North Carolina in 2012 were cast on days or at times when voting will no longer be offered in 2016.

Early voters in North Carolina are disproportionately from underrepresented communities. In 2008 and 2012, more than 70% of the state's African American voters cast ballots during early voting periods, while in each of these two elections, just over 51% of white voters voted early.¹³⁰

Moreover, African Americans constituted 23% of North Carolina's electorate in 2012, but 33% of all individuals who voted on early voting days now eliminated.¹³¹ Concerns about the validity of ethnicity information in North Carolina's voter data files prevent the NALEO Educational Fund, and other researchers, from drawing firm conclusions about Latino voters' relative use of early voting in North Carolina. Nonetheless, political science and election law experts believe that Latinos will eventually be found to be among the low-propensity voters whose civic participation suffers most greatly because of early voting period reductions.¹³² In North Carolina, any one of the nearly 250,000 Latinos eligible to vote could be inhibited from casting a ballot in 2016 by constriction of the state's early voting period.

Ohio

Ohio's early voting policies have been in significant flux since 2012, when lawmakers approved¹³³ elimination of evening and weekend early voting hours. Litigation resulted in the opening of early voting locations on the weekend and Monday immediately preceding Election Day 2012, but did not deter Ohio legislators from adopting a further reduction to early voting in 2014.¹³⁴ Effective June 2014, Ohio law requires ballots to be ready for early and absentee voting on the day after the voter registration period closes. The state's registration deadline is 30 days before Election Day, but early voting had begun in Ohio 35 days before Election Day. The new provision on ballot availability effectively eliminated early voting that previously took place between the 35th and 30th days before Election Day. Incidentally, shortening the state's early voting period also resulted in the elimination, for all but military and overseas voters, of same day registration that had taken place during the overlapping period when both registration and early voting were available.

¹²⁶ For 2012, data submitted by the state fail to indicate the source of more than 11,000 ballots reported as cast, and appear to switch figures concerning the number and percentage of ballots cast early. For 2014, the state reported no early votes, but 117,543 absentee ballots cast, which represent more than 20% of all votes. An unknown percentage of these were likely early ballots that voters submitted in-person.

¹²⁷ Sess. Law 2013-381 (H.B. 589, 2013-2014 Leg. Sess. (N.C. 2013)).

¹²⁸ Expert Report and Declaration of Theodore T. Allen, Ph.D. (April 11, 2014) at 16, *League of Women Voters of North Carolina, et al. v. State of North Carolina, et al.* (M.D.N.C. 2014) (No. 1:13-CV-660), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/League15510.pdf> [hereinafter *Allen Declaration*].

¹²⁹ *CIRCLE Expert Report NC*, *supra* note 34, at 16 (Table 4).

¹³⁰ Expert Report of J. Morgan Kousser (April 10, 2014) at 23 (Table 3), *League of Women Voters of North Carolina, et al. v. State of North Carolina, et al.* (M.D.N.C. 2014) (No. 1:13-CV-660), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/League1557.pdf> [hereinafter *Kousser Expert Report NC*].

¹³¹ *Stewart Expert Report NC*, *supra* note 35, at ¶ 131.

¹³² *CIRCLE Expert Report NC*, *supra* note 34, at 15; Expert Report and Declaration of Paul Gronke, Ph.D. (May 2, 2014) at 12, *League of Women Voters of North Carolina, et al. v. State of North Carolina, et al.* (M.D.N.C. 2014) (No. 1:13-CV-660), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/League1551.pdf>.

¹³³ S.B. 295, 129th Leg., Regular Session (Ohio 2012).

¹³⁴ S.B. 238, 130th Leg., Regular Session (Ohio 2014).

Voter advocates once again challenged Ohio's 2014 decision to restrict early voting hours. Plaintiffs including the American Civil Liberties Union (ACLU) negotiated a settlement under which Ohio officials agreed that every jurisdiction within the state would offer the same early voting periods, and that early voting would be restored from 1pm to 5pm on a second Sunday, as well as between 5pm and 7pm on the weekdays immediately preceding Election Day. The settlement left Ohio's early voting period to start on the day after its registration deadline, however, ratifying elimination of same day registration.

Although we do not have access to data showing the number or percentage of Latino Ohioans who voted in 2012 during the now-eliminated days of early voting, available statistics do give some sense of the likely scale of impact. In 2012, about 90,000 Ohioans in total voted during the first six days of early voting¹³⁵, accounting for about 1.6% of the 5,633,246 votes cast¹³⁶. As in other states, these individuals were disproportionately members of underrepresented communities: Ohio African Americans' early voting rate in 2012 was more than twice that of their white counterparts, for example.¹³⁷ According to ACS data, at least 200,000 Latino Ohioans will be eligible to vote in 2016, but they will have less opportunity to do so than they would have in 2012. Those among them who might previously have registered and voted on the same day during the eliminated early voting days may be entirely prevented from participating in the Presidential election of 2016.

Tennessee

In advance of the 2012 election, Tennessee enacted restrictions¹³⁸ on its early voting process that may have gone unnoticed by many voters because they applied only to primaries and other lower-profile contests. During the 2012 primary and for subsequent Presidential primaries, the early voting period was shortened by two days. In addition, municipalities with fewer than 500,000 residents earned the option of foregoing early voting in uncontested elections. Perhaps emboldened by the fact that this move did not attract widespread opposition, the state went farther in 2013, eliminating¹³⁹ the two days of early voting closest in time to Election Day, when voters' attention and participation often are at their height. In 2016, Tennesseans will be able to vote early beginning 20 days before Election Day, as before, but ending seven days before Election Day instead of the previous five days.

We do not have access to detailed information that would enable us to determine how many Tennessean early votes were cast in 2012 on the now-eliminated days, either in total or by Latino voters in particular. It is also difficult to draw firm conclusions about the overall use of early voting in the state from the data it submitted to the EAC concerning the 2012 election. These data indicate that an infinitesimal number of votes - fewer than 2,000 out of well over 2 million total votes - were cast during early voting. However, news reports say that far larger percentages of Tennesseans have voted early during past elections. About half of all votes were reported to have been cast early during the 2010 primary election, for example.¹⁴⁰ While we are not able to say how many Latino voters are likely to find it harder to vote in 2016 than in 2012 because the state has reduced early voting options, we note that the number of potentially affected voters is growing exponentially. 2010 ACS data showed that there were about 76,000 eligible Latino voters in Tennessee, while 2014 ACS data counted 92,653 Latino Tennesseans eligible to vote. The size of the state's Latino electorate has grown by about 20% in just one Presidential term.

Wisconsin

Like their counterparts in Ohio and Tennessee, Wisconsin lawmakers reduced early voting opportunities in the state both prior to and after the 2012 election cycle. In 2014, legislators adopted¹⁴¹ a prohibition on early voting on weekends or legal holidays. In addition, the 2014 law prohibited municipal clerks from offering any more than 45 hours of in-person absentee voting in any week, to take place between the hours of 8am and 7pm. Since Wisconsin's early voting period begins on the third Monday before Election Day and ends on the Friday before Election Day, there previously was one weekend during which Wisconsinites could cast early ballots. Prior to 2014, there also was no limit on the total hours of early voting time clerks could offer, nor on the daily opening and closing times for early voting except that in-person absentee voting was required to end by 5pm on the last Friday of the period.

¹³⁵ Zachary Roth, *Settlement reverses some cuts to Ohio early voting*, MSNBC, April 17, 2015, <http://www.msnbc.com/msnbc/settlement-reverses-some-cuts-ohio-early-voting>.

¹³⁶ Ohio Secretary of State, *Voter Turnout in General Elections*, <https://www.sos.state.oh.us/sos/elections/Research/electResultsMain/HistoricalElectionComparisons/Voter%20Turnout%20in%20General%20Elections.aspx> (last visited April 28, 2016).

¹³⁷ Complaint (May 1, 2014) at ¶ 32, *Ohio State Conference of the NAACP, et al., v. Husted, et al.*, (S.D. Ohio 2015) (No. 2:14-cv-404-GLF-EPD), https://www.aclu.org/sites/default/files/field_document/ohio_complaint.pdf.

¹³⁸ 2011 Tenn. Pub. Acts ch. 381 (S.B. 923/H.B. 708, 107th Gen. Assemb., Regular Sess. (Tenn. 2011)).

¹³⁹ 2013 Tenn. Pub. Acts ch. 231 (S.B. 906/H.B. 704, 108th Gen. Assemb., Regular Sess. (Tenn. 2013)).

¹⁴⁰ Chas Sisk, *Early voting begins in Middle Tennessee for Aug. 7 elections*, THE TENNESSEAN, July 18, 2014, <http://www.tennessean.com/story/news/politics/2014/07/18/early-birds-hit-polls/12821217/>.

¹⁴¹ 2013 Wis. Laws Act 146 (S.B. 324, 2013-2014 Leg. (Wis. 2013)).

According to Wisconsin's Government Accountability Board (GAB), 514,398 early votes were cast in the state in 2012, representing 16% of all votes cast.¹⁴² This report is strikingly consistent with the state's findings concerning in-person absentee voting in 2008, when the GAB estimated that 475,649 ballots were cast early and in-person, accounting for 15.9% of all votes.¹⁴³ We do not have access to the detailed information about these early voters that would enable us to determine what percentage voted on weekends and what percentage were Latino.

However, more than 150,000 Wisconsin Latinos will be eligible to vote in 2016, according to ACS data, and it is reasonable to expect that, in keeping with past trends, a significant share of them will seek to vote early. Intending early voters will have less opportunity to cast ballots in 2016 than in 2012 because of the new constraints placed on Wisconsin's early in-person absentee balloting period.

¹⁴² Wisconsin Government Accountability Board, *In-Person Absentee (Early) Voting Starts Today*, Oct. 20, 2014, <http://www.gab.wi.gov/node/3422>.

¹⁴³ Adam Harvell and Edward Edney, Wisconsin Government Accountability Board, *An Examination of Early Voting in Wisconsin* Appendix G, Dec. 17, 2009, <http://elections.state.wi.us/docview.asp?docid=18307&locid=47>.

REDUCED OPPORTUNITY TO VOTE ABSENTEE BY MAIL

Absentee balloting by mail has long been more widely available as a flexible voting option than early in-person voting. Every state and the District of Columbia permits, at the very least, certain classes of voters who cannot be present at a polling place on Election Day to vote on a ballot that is mailed or delivered to the voter in advance of Election Day, and which the voter can return by mail¹⁴⁴ or delivery. In a majority of jurisdictions, absentee voting by mail is available to any registered voter regardless of whether or not the voter is able to cast a ballot in-person on Election Day.¹⁴⁵

Given the longstanding¹⁴⁶ and widespread availability of absentee voting, and states' propensity to preserve liberal absentee balloting options even while placing added restrictions on in-person voting¹⁴⁷, it is striking that several states have nonetheless imposed new restrictions on voting by mail since the 2012 election season. Absentee voting laws newly effective for the 2016 Presidential election concern, primarily, the imposition of earlier deadlines for submission of ballots, and limits on the activities of individuals who assist absentee voters.

Examination of voter files to determine Latinos' historical absentee voting rates would be a time and resource-intensive undertaking, and is beyond the scope of this paper. We are nonetheless concerned that restrictive policies governing absentee voting by mail will negatively affect a significant number of Latino voters for several reasons. First, as noted, absentee voting by mail is more widely available than is early voting in-person. Millions of Latinos eligible to vote in states including New York (1,870,750 eligible Latinos as of 2014), Pennsylvania (430,592 eligible Latinos), Virginia (284,913 eligible Latinos), and Connecticut (283,110 eligible Latinos) have no option but to vote absentee if they are unable to cast a ballot in-person on Election Day. Individuals in these and other states without early voting are at real risk of being entirely prevented from voting if absentee ballot restrictions make it harder or impossible for them to complete and timely submit valid votes.

Because Latino voters are more likely than others to be in the workforce, and more likely to have inflexible work- and childcare-related demands on their time, they are disproportionately likely to need a range of options for casting ballots. Where those options are not available in full, we expect that a disproportionate share of potential Latino votes will not be cast. Indeed, in 2012 Latino, African American, and Asian American citizens were all significantly more likely than whites to report to the Census Bureau that they did not vote because they were too busy or had conflicting schedules.¹⁴⁸

IMPACT ON LATINO VOTERS

Arizona

The Arizona legislature placed an additional barrier in the way of some of its absentee voters when, in 2016, it adopted legislation¹⁴⁹ making it a felony to pick up or deliver a mail ballot, unless the person assisting a mail voter is an immediate family member or caregiver to the voter, or lives at the same address as the voter. Strikingly, the legislature adopted a similar rule with lesser criminal penalties in 2013, but then quickly repealed it after opponents conducted a successful petition drive to subject the new rule to a popular vote.¹⁵⁰ The new rule takes effect 90 days after the state legislature's adjournment, a date which is likely to fall in July 2016.

¹⁴⁴ NCSL *Absentee/Early Voting Research*, *supra* note 110.

¹⁴⁵ *Id.*

¹⁴⁶ John C. Fortier, *Absentee and Early Voting: Trends, Promises, and Perils* 7-13 (The AEI Press 2006).

¹⁴⁷ Many states, including Mississippi, Tennessee, and Texas, have exempted absentee voters from strict ID requirements.

¹⁴⁸ 2012 CPS *Reasons for Not Voting*, *supra* note 6.

¹⁴⁹ 2016 Ariz. Sess. Laws Ch. 5 (H.B. 2023, 52nd Leg., 2nd Regular Sess. (Ariz. 2016)).

¹⁵⁰ Howard Fischer, *Ducey signs bill to make ballot harvesting a felony*, ARIZONA CAPITOL TIMES, March 9, 2016, <http://azcapitoltimes.com/news/2016/03/09/senate-passes-bill-outlawing-early-ballot-collection/#ixzz44EcViY13>.

We do not have sufficient data on Arizona's Latino absentee voters to predict how many depend on assistance from third parties to complete and deliver their ballots, so we cannot estimate the number of Latino Arizonans likely to find it harder to vote in 2016 because of this new rule. Observers have expressed concerns about the potential negative impact of the law, however, that have already inspired the filing of a lawsuit¹⁵¹ challenging the provision as discriminatory. The non-profit organization One Arizona estimates that approximately 300,000 Arizona Latino voters are on the state's Permanent Early Voting List and will receive mail ballots.¹⁵² Many additional Latino voters will request a one-time mail ballot for the 2016 General Election. These likely mail voters, who have fewer permissible means of returning their ballots than they did in 2012, represent a large share of the 433,000 Latino votes the NALEO Educational Fund expects to be cast in Arizona in November 2016.¹⁵³

Arkansas

In 2013, Arkansas legislators made a number of restrictive changes¹⁵⁴ to absentee mail voting procedures. The most significant of these concerned procedures for returning absentee ballots to elections officials with the assistance of third parties. Lawmakers added a provision compelling rejection of absentee ballots delivered by any assistor who fails to sign the voting register maintained by the county clerk. Worse, any absentee voter who fails to correctly identify the person who will transmit his or her absentee ballot at the time of application for an absentee ballot may not have his or her ballot counted at all. If there is a mismatch between the name and address of the assistor listed in a ballot application and the name or address of the assistor who actually returns a complete ballot, the ballot is treated as provisional; if an assistor returns a ballot but no assistor was listed on the corresponding absentee ballot application, the ballot is rejected.

Long-term care facility administrators may help residents by obtaining and returning their ballots, but, although the Arkansas Supreme Court found the state's strict voter ID law unconstitutional in 2014, facility administrators are required to present photo ID to county clerks in order to pick up ballots for their residents. The 2013 law also requires clerks to reject absentee ballot applications bearing a signature that does not appear sufficiently similar to the voter's signature on file with the state.¹⁵⁵

Finally, Arkansas's overseas absentee voters previously could make a single request for absentee ballots for the next two elections, but after 2013, any application for an absentee ballot in the state is good for only one election cycle.

Multiple, complex factors will determine the number of voters who are negatively affected by these provisions. We cannot reliably estimate the number of Latino voters likely to find it harder to vote in 2016 because of the state's new, more restrictive absentee balloting laws, due to our inability to measure the overlapping impact of all of these factors on Arkansan Latinos. Some negative impact is likely given the scope of absentee and Latino voting in the state: in 2012 the state reported that about 3% of the 1,078,548 votes cast – more than 32,000 ballots – were submitted by absentee voters.¹⁵⁶ 2014 ACS data show that there are at least 60,585 Latino Arkansans eligible to vote in 2016.

New Jersey

New Jersey adopted¹⁵⁷ tougher absentee ballot transmission rules in 2015 that bear some striking similarity to similar provisions enacted in other states. Effective August 2015, New Jerseyans who pick up and deliver absentee ballots for other voters are not permitted to assist any more than three people per election, down from the previous limit of ten voters. In addition, when assistors deliver ballots, they are newly required to display an ID containing their address and signature that is issued or recognized as official by a governmental entity.

Publically-available statistics on absentee voting in New Jersey do not permit us to identify the percentage of Latino voters who typically cast absentee ballots in the state, nor the number or percentage of all absentee ballots that are transmitted by assistors. Accordingly, it is not possible to project the number of Latino voters likely to find it harder to vote in New Jersey in 2016. We note, however, that as a populous state with a significant Latino electorate, New Jersey has received a relatively large number of absentee votes in recent elections. In 2012, 284,103 absentee votes were cast in New Jersey.¹⁵⁸ Latinos cast about 10.8% of all votes in the state in 2012, according to CPS data. As compared to other states, New Jersey may also have a significant number of potential absentee voters who need assistance with absentee ballot

¹⁵¹ Andrew Gumbel, *Democrats' Arizona lawsuit turns eyes to state plagued by voting controversy*, THE GUARDIAN, April 15, 2016, <http://www.theguardian.com/us-news/2016/apr/15/arizona-voting-rights-lawsuit-election-controversy>.

¹⁵² Griselda Nevarez, *Donald Trump's Immigration Rhetoric Mobilizing Arizona Latino Voters*, PHEONIX NEW TIMES, April 1, 2016, <http://www.phoenixnewtimes.com/news/donald-trumps-immigration-rhetoric-mobilizing-arizona-latino-voters-8183165>.

¹⁵³ 153 NALEO Educational Fund, *Election 2016 State Projections and Profiles: Arizona*, 2016, <http://www.naleo.org/election2016>.

¹⁵⁴ 2013 Ark. Acts 1424 (S.B. 1067, 89th Gen. Assemb., Regular Sess. (Ark. 2013)).

¹⁵⁵ The law also requires clerks to provide notice of such rejections of absentee ballot applications to the voters concerned, and an opportunity to correct problems.

¹⁵⁶ Arkansas Secretary of State, *2012 Voices of Arkansas: A report on voting trends in the natural state* 19, June 2013, http://www.sos.arkansas.gov/elections/Documents/Voices2012_Web.pdf.

¹⁵⁷ 2015 N.J. Laws ch. 84 (S.B. 685, 2014-2015 Leg., Regular Sess. (N.J. 2015)).

¹⁵⁸ New Jersey Division of Elections, *Vote by Mail Ballots Cast By County 4*, Dec. 15, 2015, <http://www.njelections.org/election-results/vote-by-mail-ballot-chart-years-2003-2015.pdf>.

delivery, and who may be negatively affected in 2016 by this change in relevant law. The ACLU of New Jersey has noted, for example, that thousands of New Jerseyans awaiting trial, incarcerated in connection with civil fines, and serving sentences for misdemeanors are eligible to vote, but only able to do so by absentee ballot.¹⁵⁹ These individuals have been impeded for some time from voting by residency restrictions on ballot messengers, according to the ACLU.¹⁶⁰ If it has proven difficult in the past to identify assistants to deliver ballots for incarcerated voters, it will be particularly difficult to do so under today's stricter limitation on the number of voters that each assistant may help.

Ohio

Prior to 2012, some Ohio elections officials developed an innovative method of reaching out to citizens not yet engaged in elections: they sent out unsolicited absentee ballot applications to encourage registered voters to participate, and to inform more potential voters of the flexible voting options available to them. This outreach took place at the discretion of county administrators, so not all of the state's voters received the same materials. In 2012, the Ohio Secretary of State's office took over the process, mailing an absentee ballot application to each registered voter in the state.¹⁶¹ In 2014, the state legislature ratified this change¹⁶², but did so in a way that makes it much less likely that absentee ballot-related outreach to Ohioans will endure. State law now vests authority to send unsolicited absentee ballot applications in only the Secretary of State's office. All other state and local authorities are prohibited from mailing out applications that have not been requested. The Secretary of State may only send unsolicited applications in even years and when the procedure is specifically funded by the state legislature. Some Ohio jurisdictions had previously enclosed prepaid envelopes with absentee ballot materials, but Ohio lawmakers put a stop to this practice by prohibiting any government entity from providing prepaid envelopes for voters to return absentee ballots or ballot applications to elections officials. Finally, lawmakers gave local boards of election discretion to reject absentee votes submitted in envelopes that are "incomplete." The legislature did not, however, provide any direction as to the proper interpretation of "incomplete."

While we have not located any publically-available data on historical response rates to unsolicited absentee ballot-related mailings in Ohio, it is very likely that if these mailings are not funded or sent in 2016, Latino votes will be lost. Researchers associate a small increase in the overall number of mailed absentee ballots cast in Ohio in 2012, as compared to 2008, with the mailing for the first time in 2012 of an absentee ballot application to every voter in the state. Moreover, in some counties where applications had not previously been mailed out unsolicited, absentee voting rates increased by 25% or more in 2012.¹⁶³ Studies have shown a similar connection between receipt of election-related mail and Latinos' propensity to vote.¹⁶⁴

Texas

In 2015, Texas lawmakers adopted¹⁶⁵ a new deadline for submission of absentee ballot applications of at least 11 days before Election Day. For the 2012 Presidential election, the deadline for requesting an absentee ballot was nine days before Election Day. In Texas, the elections officials responsible for managing the absentee balloting process must receive applications by the deadline date; applications sent by the deadline but not received until after it has passed are rejected.

We have not analyzed the race and ethnicity of absentee voters in Texas in past elections, and in addition, we are unable to identify which absentee voters submitted requests for ballots that were received on the last two days of the application period in previous election cycles. However, we are particularly concerned about the likely consequences of any restrictive election-related lawmaking in Texas. Any provision that requires voters to take action farther in advance of Election Day is likely to have disfranchising effects, since voters' awareness of and interest in elections is greatest close in time to Election Day.¹⁶⁶ At least 28.1% of eligible voters in Texas today – almost 5 million adult citizens – are Latino, but Latino voter participation rates in Texas are already poor and cannot afford to slip further as a result of attrition due to restrictive lawmaking. In 2012, according to CPS data, just 38.8% of eligible Latino Texans voted, compared to 53.8% of all Texans. In 2014, Texas Latino voter turnout was an abysmal 22.4%.

¹⁵⁹ American Civil Liberties Union of New Jersey and League of Women Voters of New Jersey, *Making Every Vote Count: A Review of the 2008 Elections in New Jersey* 17, May 2009, <https://www.aclu-nj.org/files/8713/1540/4573/051909voterpt.pdf>.

¹⁶⁰ *Id.*

¹⁶¹ Maggie Thurber, Ohio Watchdog, New laws mean voting changes for Ohio 2014 elections, June 3, 2014, <http://watchdog.org/147966/ohio-2014-elections/>.

¹⁶² S.B. 205, 130th Leg., Regular Sess. (Ohio 2014).

¹⁶³ Northeast Ohio Voter Advocates, *Analysis of Early In-Person and Mail-In Absentee Voting in the Ohio 2012 General Election Compared to 2008* 2-3, <http://1001.nccdn.net/000/000/1a6/35a/analysis-early-absentee-voting-2012-vers10-1-19-13.pdf> (last visited April 28, 2016).

¹⁶⁴ *E.g.*, Costas Panagopoulos, Ph.D., *Targeting Latino Voters in Campaign Communications: New Evidence and Insights*, LATINO DECISIONS BLOG, Oct. 25, 2012, <http://www.latinodecisions.com/blog/2012/10/25/targeting-latino-voters-in-campaign-communications-new-evidence-and-insights/> (finding that, compared to a control group, New York Latino voters who received election-related mailings cast ballots at a rate that was 1-2.2% higher).

¹⁶⁵ 2015 Tex. Gen. Laws ch. 1050 (H.B. 1927, 84th Leg., Regular Sess. (Tex. 2015)).

¹⁶⁶ *E.g.*, Stewart Expert Report NC, *supra* note 35, at ¶¶ 117-18, Figure 9 (noting that data on Google searches show the most voting-related queries entered immediately prior to and on Election Day, an indicator that, "people become interested in registering to vote long past the time that the registration deadline has passed.").

Utah

In 2013, Utah legislators also set their state's deadline for submission of absentee ballot requests earlier.¹⁶⁷ Previously, voters had until the Friday before Election Day to request absentee ballots; in 2016, however, Utahans must apply to vote absentee by the Thursday before Election Day. In shortening the window of opportunity for requesting an absentee ballot, Utah lawmakers reversed the course set just a year earlier, when the state began offering voters the option of requesting absentee ballots online.¹⁶⁸

Utah did not provide information to the EAC about absentee ballots cast in 2012, and does not provide free information to the general public about absentee voters. But significant interest in mail balloting in the state suggests that the absentee voting process, which is available to any Utahan without excuse, could be an important driver of voter participation in the state.

A recent report by the Utah Foundation, for example, concluded that, "A voting system which includes numerous options for voters, such as Election Day registration, early voting, or optional vote-by-mail, is more likely to see high turnout than one without."¹⁶⁹ The Foundation determined that Utah jurisdictions that tested mail-only elections in 2015 saw 39% higher voter turnout than they had in comparable elections four years earlier.¹⁷⁰ By contrast, an absentee voting system that is harder to access in 2016 than it was in 2012 is likely to deter or prevent some Latino Utahan voters from casting ballots.

¹⁶⁷ 2013 Utah Laws ch. 198 (H.B. 204, 60th Leg., 2013 Gen. Sess. (Utah 2013)).

¹⁶⁸ Dennis Romboy, *Utah voters may now request absentee ballots online*, DESERET NEWS, Mar. 22, 2012, <http://www.deseretnews.com/article/865552658/Utah-voters-may-now-request-absentee-ballots-online.html?pg=all>.

¹⁶⁹ Utah Foundation, *Voting in Utah: Analyzing Current Practices and Future Options for Utah Voters* 1, Report Number 735, Dec. 2015, <http://www.utahfoundation.org/reports/voting-in-utah-analyzing-current-practices-and-future-options-for-utah-voters/>.

¹⁷⁰ *Id.* at 11.

OTHER HEIGHTENED QUALIFICATIONS TO VOTE

The focus of election-related lawmaking has evolved rapidly ever since the 2000 Presidential election brought shortcomings of our system into sharp focus. Both the general public and legislators have paid increasing attention to restrictive election lawmaking, particularly since the Supreme Court decided *Crawford v. Marion County Election Board* in 2008, the first major case to test the constitutionality of a strict voter ID requirement. The earliest strict ID provisions were not fully implemented until after *Crawford* was resolved, and most other states declined to enact similar measures until after the Supreme Court allowed Indiana's ID law to stand. After *Crawford*, restrictive election-related laws initially became a more frequent topic of popular discussion and proposed legislation.

Since 2011, however, voter advocates have won high-profile victories in challenges to the kinds of laws profiled in this report – in particular, voter ID laws¹⁷¹, proof of citizenship requirements¹⁷², and shortened early voting periods¹⁷³. It is certain that lawmakers and strategists have taken note. While some states continue to consider new laws modeled after the examples highlighted above,¹⁷⁴ alternative legislative provisions that have not yet been the subject of successful legal challenge have also gained currency since 2012. We set forth representative examples below of additional types of policies that impose heightened qualifications on voters, and will make it harder for Latinos and all voters to cast ballots in 2016.

IMPACT ON LATINO VOTERS

Felon Disfranchisement – Kentucky

At the start of 2015, Kentucky was one of only three states that required every resident convicted of a felony to individually apply for restoration of voting rights before regaining the ability to participate in elections. By Executive Order¹⁷⁵ in November 2015, outgoing Governor Steven Beshear restored the voting rights of every Kentuckian who had completed a sentence, paid all fines and restitution, and was not subject to any pending charges, except that rights restoration

continued to be granted by application only to those convicted of treason, bribery in an election, or other very serious offenses including murder, sexual abuse, human trafficking, and armed assault and burglary. One month later, however, Governor Beshear's successor, current Governor Matt Bevin, reversed this policy¹⁷⁶, finding that it was procedurally unconstitutional and contrary to relevant state law. As a result, Kentuckians who regained the right to vote under the November 2015 Executive Order retain it, but Kentuckians who became, or will become, eligible for restoration of voting rights after December 22, 2015 must once again apply and be approved individually.

Latinos are overrepresented in prison populations, and it is very likely that they are also a disproportionate share of Americans who have lost voting rights because of felon disfranchisement laws, of which Kentucky's is one of the strictest examples. As of 2014, 97% of inmates in federal and state prisons were serving sentences of one year or more¹⁷⁷, meaning that most incarcerated people had likely been convicted of felonies¹⁷⁸. The most recent available statistics show that 22% of those federal and state prison inmates are Latino¹⁷⁹, although Latinos only account for 15.2% of adults in the country.

¹⁷¹ *E.g.*, *Frank v. Walker*, 17 F. Supp.3d 837 (E.D. Wis. 2014); *Veasey v. Perry*, 71 F. Supp.3d 627 (S.D. Tex. 2014); *Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015); *Applewhite, et al. v. Commonwealth, et al.*, No. 330 MD 2012 (Pa. Commw. Ct. Jan. 17, 2014); *Martin v. Kohls*, 2014 Ark. 427 (Ark.).

¹⁷² *E.g.*, *Arcia v. Sec'y of Fla.*, 772 F.3d 1335 (11th Cir. 2014); *ACLU v. Schultz*, No. 14-0585 (Supreme Court), No. CVCV009311 (Polk County District Court) (Iowa Mar. 13, 2015); *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247 (U.S. 2013).

¹⁷³ *E.g.*, *Ohio State Conference of the NAACP v. Husted*, 43 F. Supp.3d 808 (S.D. Ohio 2014).

¹⁷⁴ *See, e.g.*, Jack Suntrup, *Democrats launch filibuster as voter ID brought up again in Missouri Senate*, ST. LOUIS POST-DISPATCH, April 28, 2016, http://www.stltoday.com/news/local/govt-and-politics/democrats-launch-filibuster-as-voter-id-brought-up-again-in/article_20a7a1cf-beb0-512c-87e9-7f2363ca7f0a.html.

¹⁷⁵ Ky. Executive Order 2015-871 (Nov. 24, 2015), <http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2015-MISC-2015-0871-242277.pdf>.

¹⁷⁶ Ky. Executive Order 2015-052 (Dec. 22, 2015), <https://www.brennancenter.org/sites/default/files/blog/Bevin%20Order%202015-052.pdf>.

¹⁷⁷ E. Ann Carson, Bureau of Justice Statistics, Department of Justice, *Prisoners in 2014* 5, No. NCJ 248955, Sep. 2015, <http://www.bjs.gov/content/pub/pdf/p14.pdf> [hereinafter *Prisoners in 2014*].

¹⁷⁸ *See* 18 U.S.C. § 3559 (2009) (penalties for federal misdemeanors are one year or less of imprisonment or fines; penalties for federal felonies are one year or more of imprisonment).

¹⁷⁹ *Prisoners in 2014*, *supra* note 177, at 15.

In 2010, before Governor Beshear instituted automatic voting rights restoration, there were 243,842 Kentuckians in total who had lost voting rights because of a conviction.¹⁸⁰ While many of these individuals will be able to vote in 2016 because of Governor Beshear's actions, the total number of negatively affected citizens has already begun to increase again as newly-convicted individuals confront prospective indefinite disfranchisement. We cannot say precisely how many Latino Kentuckians will be prevented from voting in 2016 and beyond by Governor Bevin's Executive Order, but it is very likely that those who are unable to vote will be disproportionately Latino compared to the Kentucky electorate as a whole.

Invalidation of Votes Cast Out of Precinct – North Carolina

In North Carolina, omnibus election legislation enacted in 2013 included a provision¹⁸¹ that invalidated in entirety votes cast outside the correct precinct. Generally, if a voter seeks to vote at a location at which he or she is not in the pollbooks, and believes that he or she is registered to vote notwithstanding that absence, then pollworkers should offer the voter a provisional ballot. Previously in North Carolina, if a registered voter cast a provisional ballot in the wrong location, elections officials would count the person's votes for offices for which he or she was eligible to vote, but invalidate only those votes cast for any local races on the provisional ballot for which the person was not eligible to vote. In 2014 and future election cycles, however, no votes cast at the wrong precinct location count.

Publically-available analysis strongly indicates that out-of-precinct voters in North Carolina, and throughout the nation, have been disproportionately members of underrepresented communities. In 2012, for example, CPS data showed that African Americans cast just 26% of all votes in North Carolina, but 32% of provisional ballots voted out-of-precinct, according to Professor J. Morgan Kousser.¹⁸² Advocates who have studied ballots cast outside the correct precinct say that the ability to have one's out-of-precinct vote partially counted is particularly important to voters who need flexibility.

Adam Sotak, an analyst who advocated North Carolina's decision to count votes, wrote, "The out-of-precinct provision is especially helpful to people who can't take off several hours from work, who recently registered or moved within the county or who don't have easy access to transportation."¹⁸³ In addition to enjoying less work flexibility and being more likely to move residences than others, Latinos disproportionately lack access to transportation: for example, 13.7% of Latinos lack access to a car, compared to less than 5% of whites.¹⁸⁴ Since votes cast outside precinct account for a significant share of all provisional ballots¹⁸⁵, it is relevant that Latinos generally cast disproportionate shares of all provisional ballots.¹⁸⁶

Refusal to count valid votes cast in the wrong precinct is likely to result in the voices of thousands of North Carolinians not being heard in the state's elections, a disproportionate number of them Latino. Between 2006 and 2012, 92.6% of all provisional ballots marked as cast out-of-precinct in North Carolina were counted at least in part.¹⁸⁷ At this rate, 6,932 of the 7,486¹⁸⁸ 2012 provisional ballots coded as outside precinct were counted in part. The law invalidating out-of-precinct votes was in effect in 2014, and because pollworkers were aware that many provisional ballots would not be counted at all, they did not offer them to as many voters.¹⁸⁹ Accordingly, the number of provisional ballots cast out-of-precinct dropped significantly as compared to past election years.¹⁹⁰ If North Carolina Latinos follow national patterns by requiring provisional ballots at a disproportionate rate in November 2016, Latinos will be overrepresented among North Carolinians at risk of being prevented from voting.

In 2014, the Fourth Circuit Court of Appeals granted a preliminary injunction against non-counting of out-of-precinct ballots. Because the Fourth Circuit's ruling came close in time to Election Day 2014, the Supreme Court put the injunction on hold for that election and allowed implementation of the law as passed. The Supreme Court's stay expired and the Fourth Circuit's injunction took effect once again in April 2015, but in April 2016, a federal court ruled against a lawsuit challenging this and other new provisions of North Carolina election law.

¹⁸⁰ Sentencing Project, *Criminal Justice Facts: State-by-State Data - Kentucky*, <http://www.sentencingproject.org/map/map.cfm#map> (last visited April 25, 2016).

¹⁸¹ Sess. Law 2013-381 (H.B. 589, 2013-2014 Leg. Sess. (N.C. 2013)).

¹⁸² Kousser *Expert Report NC*, *supra* note 130, at 20.

¹⁸³ *Id.* at 29.

¹⁸⁴ Alan Berube, Elizabeth Deakin, and Steven Raphael, The Brookings Institution and University of California at Berkeley, *Socioeconomic Differences in Household Automobile Ownership Rates* 7, June 2006, <http://socrates.berkeley.edu/~raphael/BerubeDeakinRaphael.pdf>; Judith Bell and Larry Cohen, PolicyLink and Prevention Institute, *The Transportation Prescription: Bold New Ideas for Healthy, Equitable Transportation Reform in America* 16, July 2009, http://www.kintera.org/atf/cf/%7B97C6D565-BB43-406D-A6D5-ECA3BBF35AF0%7D/transportationRX_final.pdf.

¹⁸⁵ See, e.g., U.S. Election Assistance Commission, *The 2014 EAC Election Administration and Voting Survey Comprehensive Report* 16, 231-34 Tables 35a and 35b, June 30, 2015, http://www.eac.gov/assets/1/1/2014_EAC_EAVS_Comprehensive_Report_508_Compliant.pdf (noting that the second most frequently-reported reason for rejecting a provisional ballot was that it was cast in the wrong precinct or jurisdiction) [hereinafter 2014 EAVS Report].

¹⁸⁶ See, e.g., Michael C. Herron and Daniel A. Smith, *Florida's 2012 General Election under HB 1355: Early Voting, Provisional Ballots, and Absentee Ballots* 1,3, 2013, <http://electionsmith.files.wordpress.com/2013/01/lwy-pr-herron-smith.pdf> (finding that Latinos were disproportionately likely to cast provisional ballots in Florida in 2012 compared to white non-Hispanic voters); Kimball W. Brace and Dr. Michael P. McDonald, *Final Report of the 2004 Election Day Survey* 6-6, Sep. 27, 2005, https://electioncenter.org/documents/EAC-2004%20election%20surveyFull_Report_wTables.pdf (finding that jurisdictions with majority-Latino populations and those required to provide election materials and assistance in languages other than English recorded disproportionate use of provisional ballots).

¹⁸⁷ Stewart *Expert Report NC*, *supra* note 35, at ¶ 229.

¹⁸⁸ *Id.* at 95 (Table 12).

¹⁸⁹ Isela Gutierrez and Bob Hall, *Alarm Bells from Silenced Voters* 6, June 2015, <http://democracy-nc.org/downloads/SilencedVoters.pdf>.

As of this writing, the injunction against non-counting of out-of-precinct ballots will expire after the North Carolina primary election in June 2016 absent further intervention by the federal court that will hear an appeal of the April 2016 decision. On balance, it is likely that ballots cast in the wrong location will not be counted in November 2016.

Heightened Restrictions on Provisional Ballots – Ohio

Like North Carolina, Ohio adopted a law¹⁹¹ in 2014 that makes it less likely that provisional ballots will be counted in 2016. The most troubling provisions in the law relate to how the envelope in which provisional ballots are placed must be completed, and the procedures governing whether the provisional ballots of persons who come to the polls without ID are counted. In 2016, all fields on a provisional ballot envelope must be completed if the ballot is to be accepted. In addition, the new Ohio law reduced the number of days after the election that voters who came to the polls without ID are allowed to show valid ID to elections officials. In 2012, voters had 10 days to satisfy ID requirements, but in 2016, provisional voters in Ohio will have only seven days after Election Day in which to provide documents or information needed to confirm the validity of their votes.

According to the 2014 law, elections officials must mail voters notice of deficiencies with provisional ballots. With the reduction in the number of days that Ohio voters can furnish valid ID to ensure their provisional ballots count, it is easy to imagine a scenario in which a provisional voter in Ohio does not receive mailed notice of a problem with his or her provisional ballot until after it is too late to correct the problem.

Although we do not know how many of Ohio's provisional voters have been Latino in past election cycles, we would expect that, as is the case in other states and nationwide, Latinos will likely make up a disproportionate share of the provisional voters who will encounter more stringent rules in 2016 than in 2012. Numerous Latino and other provisional voters could be negatively affected. Ohio reported receiving 208,087 provisional ballots in 2012, equal to 3.7% of the 5,633,246 votes cast in total.¹⁹²

VOTER'S STORY: MICAELA

On Election Day 2014, a Latina Durham County, North Carolina voter, identified as Micaela by advocates from Democracy North Carolina who assisted her, went to the polls to cast a ballot. Like many Latinos, Micaela uses both of her parents' last names and puts her actual last name, her father's last name, before her mother's last name when giving her full name. At the first polling location she went to, Micaela had to wait in line, and when it was her turn to vote, she was instead told to go to a different polling location. At this second polling place, she was again forced to wait in a line, only to discover that pollworkers could not find her name in the pollbooks at that location. Rather than attempt to vote at a third location, Micaela used a provisional ballot at the second polling place, and left contented that she had been able to cast a ballot notwithstanding the inconvenience she encountered. Contacted later and informed that her vote had not been counted at all because it had been cast in the wrong precinct, Micaela said, "Wow, you mean I did all that for nothing?"

¹⁹⁰ *Id.*

¹⁹¹ S.B. 216, 130th Leg., Regular Session (Ohio 2014).

¹⁹² 192 U.S. Election Assistance Commission, *The 2012 Election Administration and Voting Survey* 49 (Table 34), Sep. 2013, http://www.eac.gov/assets/1/Page/990-050%20EAC%20VoterSurvey_508Compliant.pdf [hereinafter 2012 EAVS Report].

DIMINISHING THE POWER OF THE UNREPRESENTED COMMUNITIES' VOTE

Underrepresented voters' influence is limited not only by laws that make it harder to register and vote, but also by laws that diminish the weight of their votes. Post-2012, a number of jurisdictions have adopted new measures concerning redistricting and methods of election that impair the ability of underrepresented communities to elect the candidates of their choice. Some such policies have been enacted under circumstances that strongly indicate that they were designed with discriminatory intent.¹⁹³

Policymakers have repeatedly manipulated redistricting plans and electoral systems to stop underrepresented communities from choosing their elected leaders. For example, redistricting plans may include districts in which Latinos constitute a slight majority of the population, but are unlikely to constitute a majority of voters because so many of the individuals assigned to the district cannot or are not likely to vote.¹⁹⁴ When Latinos have preferences for the candidates of their choice that are consistently different from those of the majority white population, whites and Latinos may vote in blocs and in opposition to one another. Where this racially-polarized voting occurs, at-large seats or election systems can put Latino voters at a disadvantage. To dilute the Latino vote, lawmakers may designate seats on school boards, city councils, and other elected bodies as at-large districts, elections for which will be dominated reliably by local majorities.¹⁹⁵ In contrast, officeholders elected by distinct neighborhoods within diverse communities can and do reflect the views of voting minorities. These tactics do not directly affect voters' access to elections, but they indirectly alienate underrepresented voters from the political system by skewing the outcome of elections, and creating the risk that elected officials are not accountable to all of their constituents.

NEGATIVE IMPACT ON LATINO VOTERS

Both state and local bodies have adopted troubling plans for division of districts between 2012 and 2016. The example that follows illustrates the discriminatory effect that redistricting and method-of-election laws can have, but is just one of many such measures that have been used to diminish Latino voters' potential influence on elections in 2016.

Texas

Like many other towns in Texas, the city of Irving, located near Dallas, saw its demographic makeup change significantly since 2000. In spite of rapid growth of the area Latino and minority populations, the Irving Independent School District (ISD) maintained an at-large system for electing its board members, in which all voting residents of the District – the majority of them white – voted for every seat on the Board. Unsuccessful Latino candidates for the School Board filed a legal challenge to at-large voting in 2008, but this claim failed because the Court relied on old Census data from 2000 which indicated that the Latino population was not yet large enough to constitute a majority in a single-member district drawn to represent a discrete part of the District.

¹⁹³ *E.g.*, Complaint (Nov. 12, 2014) at ¶¶ 20-36, 52, *Patino, et al., v. City of Pasadena, et al.* (S.D. Tex. 2014) (No. 4:14-cv-03241), http://www.maldef.org/assets/pdf/MALDEF_complaint_111214.pdf.

¹⁹⁴ *See, e.g., Texas v. United States*, 887 F. Supp.2d 133, 155-56 (D. D.C. 2012) (discussing manipulation of Texas's 2011 Congressional redistricting plan).

¹⁹⁵ *E.g.*, Letter from Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, Department of Justice, to William D. Barr, Ed.D., Superintendent of Schools, Monterey County Office of Education (Mar. 29, 2002), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/CA-1050.pdf>; *St. Bernard Citizens for Better Gov't v. St. Bernard Parish Sch. Bd.*, No. 02-2209, 2002 U.S. Dist. LEXIS 16540 (E.D. La. Aug. 26, 2002); Consent Judgment and Decree (Oct. 26, 2009) at ¶¶ 4-8, *United States v. Town of Lake Park, Florida* (S.D. Fla. 2009) (No. 9:09-cv-80507-KAM), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/lakepark_cd.pdf; Letter from Thomas E. Perez, Assistant Attorney General for Civil Rights, U.S. Department of Justice, to Melody Thomas Chappell, Wells, Peyton, Greenberg & Hunt (Dec. 21, 2012), https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/l_121221.pdf.

However, after the 2010 Census showed the Latino share of the local population increasing by 15 percentage points since 2000, the Board reconsidered its position. The Irving ISD voted to begin electing two members at-large and five members from separate parts of the District in 2013.

Armed with more accurate demographic data, local Latino candidates and voters once again challenged the partial 5-2 at-large plan in 2013. Among other pertinent evidence, the plaintiffs pointed out that no Latino had ever won election to the School Board in a contested race against a white candidate. In fact, seven Latino candidates running between 2006 and 2012 had each garnered at least 80-90% of Latino votes, but only between 7.5% and 32.7% of non-Latino votes.¹⁹⁶ Testifying at trial, one of the sitting members of the School Board acknowledged that he did not understand how the VRA applied to the method of election chosen for Board seats, and did not believe the matter was important.¹⁹⁷

In the face of such disregard and the continued exclusion of Latino voices from local school governance, the Court ruled in favor of the plaintiffs and against at-large elections for the School Board; subsequently, the Board eliminated at-large districts in favor of seven seats elected by discrete parts of the School District. Elections have not yet been held for all of the new single-member districts, but already, the Board of Trustees has diversified to include a naturalized citizen, Dinesh Mali, elected in 2015.¹⁹⁸

¹⁹⁶ *Benavidez v. Irving Indep. Sch. Dist.*, No. 3:13-CV-0087-D, 2014 U.S. Dist. LEXIS 113239, at *34-35 (N.D. Tex. Aug. 15, 2014).

¹⁹⁷ Avi Selk, *Bias, bad math plague Irving ISD election system, court told*, DALLAS NEWS, July 28, 2014, <http://www.dallasnews.com/news/community-news/irving/20140728-bias-bad-math-plague-irving-isd-election-system-court-told.ece>.

¹⁹⁸ Irving Independent School District, *Board of Trustees Member Bios*, <http://www.irvingisd.net/Page/332> (last visited Feb. 3, 2016).

ADMINISTRATIVE PRACTICES THAT RESTRICT LATINO VOTER PARTICIPATION

It is likely that more state lawmakers would have adopted even more provisions modeled after those we have profiled herein if opponents of restrictive laws had been less successful in legal challenges initiated since 2011. One indicator is the fact that many eager lawmakers have publically celebrated their expanded ability post-*Shelby County* to enact new voting laws free from federal government oversight.¹⁹⁹ There continue to be significant numbers of bills that would make it harder to vote introduced for consideration by state legislatures²⁰⁰, but their enactment has slowed somewhat in 2014 and 2015.

While advocates have had some success in slowing the pace of restrictive election lawmaking, some policymakers have pursued another route to impose barriers to electoral access: the implementation of administrative practices by local election boards and municipal officials. Administrative practices can play a role similar to that of broadly-applied restrictive laws in making it disproportionately more difficult for Latinos and other underrepresented voters to cast ballots. Administrative discretion makes the imposition of these practices easier than achieving policy changes through the more unwieldy legislative process. Particularly since 2012, strong documentation has emerged of the disfranchising effects on Latino voters of the practices devised by local officials. Administrative decisions that have a chilling impact on the Latino electorate are not just isolated occurrences, but reoccur throughout the country and have a systemic effect.

Below, we highlight four administrative issues that threaten to block access to the ballot for many in 2016: overzealous voter registration list maintenance and delayed processing of new registration applications; polling place changes and consolidations; allocation of voting resources and resulting long wait times for voting; and insufficient provision of language assistance services. Because so many localities approach these issues in so many different ways, we are unable to undertake a comprehensive assessment of the size of the negative impact of these administrative policies on the nation's Latino electorate. We do note below, however, the extensive evidence of the disproportionate effect that

the decisions made on these points have had on underrepresented communities, including Latinos. In 2016, it is critical that communities develop further the local infrastructures necessary to uncover, document, and bring to light administrative practices that have a discriminatory impact. Without consistent local oversight, we cannot accurately describe nor effectively address the negative effects of administrative decision-making.

REGISTRATION APPLICATION PROCESSING AND REGISTRATION LIST MAINTENANCE

Elections officials have the legal responsibility to both add qualified applicants to registration rolls in a timely fashion, and conduct regular maintenance to confirm registrants' continued eligibility and identify voters who have died, moved, or are no longer eligible to vote where registered. Although both federal and state laws and regulations govern the processes of adding voters to and removing them from registration lists, many election administrators retain significant discretion to determine, for example, what sources to consult in the maintenance process, and when to declare a match between a voter registration record and a record from another governmental source concerning someone who cannot vote. With their decisions about such factors as staffing assignments and guidelines for interpretation of handwritten registration applications, election administrators also can exert powerful influence over the processing of new registration applicants.

¹⁹⁹ E.g., Ross Ramsey and Julián Aguilar, *High Court Strikes Down Key Provision of Voting Rights Act*, TEXAS TRIBUNE, June 25, 2013, <https://www.texastribune.org/2013/06/25/key-provision-voting-rights-act-stricken-down/> (quoting June 25, 2013 tweet from then-Texas Attorney General Greg Abbott); Ari Berman, *Where Are the GOP Supporters of Voting Rights?*, THE NATION, June 25, 2014, <http://www.thenation.com/article/where-are-gop-supporters-voting-rights/> (citing Mayor Johnny Isbell of Pasadena, Texas stating in the wake of the *Shelby County* decision, 'The Justice Department can no longer tell us what to do. '); Sarah Childress, *With Voting Rights Act Out, States Push Voter ID Laws*, PBS FRONTLINE, June 26, 2013, <http://www.pbs.org/wgbh/frontline/article/with-voting-rights-act-out-states-push-voter-id-laws/> (citing then-Arizona Attorney General Tom Horne's statement welcoming *Shelby County* and characterizing preclearance coverage as 'humiliat[ing]').

²⁰⁰ According to the Brennan Center for Justice, 92 restrictive voting bills were introduced in 2013; 83 in 2014; and at least 113 in 2015 as of May of that year. Brennan Center for Justice, *Voting Laws Roundup 2013*, Dec. 19, 2013, <https://www.brennancenter.org/analysis/election-2013-voting-laws-roundup>; *Voting Laws Roundup 2014*, Dec. 18, 2014, <http://www.brennancenter.org/analysis/voting-laws-roundup-2014>; *Voting Laws Roundup 2015*, June 3, 2015, <https://www.brennancenter.org/analysis/voting-laws-roundup-2015>.

Election administrators who do not make processing of new applications a high priority, and who adopt aggressive approaches to identifying registered voters who are no longer eligible, tend to disproportionately impede voting by members of underrepresented communities for several reasons. The failure to process voter registration applications in a timely manner imperils the right to vote. In theory, when a person appears to vote and claims to be registered but cannot be located in pollbooks, pollworkers should offer the person a provisional ballot. Subsequent investigation should reveal that provisional voters whose registrations were submitted by the deadline are qualified. In practice, however, pollworkers do not always offer voters provisional ballots, and sometimes even refuse to provide them to voters who request them on their own initiative.²⁰¹ Many voters whose registration applications are mishandled or subject to delayed processing are likely to leave polling places without casting ballots, disillusioned by their inability to vote in spite of the effort they have invested in the process.

Inattention to processing of registration applications is most likely to impair voters who register late in time before an election, when it may become impossible to redress errors and omissions in time for Election Day. Last-minute registrants are disproportionately young and likely to be recent movers²⁰² – in other words, people with relatively less voting experience than others, and people closer to the economic margins of society²⁰³. Thus, it is likely that Latinos comprise a disproportionately higher share of those who register right before the deadline than all registrants, and that these Latinos would be negatively affected when registration applications are not processed expeditiously.

Particularly aggressive list maintenance tactics are also likely to prevent eligible voters from casting ballots. When an election administrator concludes that a voter is deceased or has lost voting rights because of a conviction or incompetency ruling, he or she may cancel the person's registration without notice to the voter. People suspected of moving away from the address at which they were registered must be notified before their registrations are cancelled, but mailed notices can fail to reach their targets for a variety of reasons including post office error, travel, and voters' inattention to what may appear to be "junk" mail. In whatever way they come to administrators' attention, many people wrongfully identified for list maintenance do not become aware that their voter registration records are suspended or cancelled until they attempt to and are unsuccessful at casting ballots. Voters of color are more likely to be wrongfully identified as potentially ineligible to vote when

liberal record matching criteria and other aggressive methods are employed in registration list maintenance. Latino and African American voters are more likely than whites to share the same name, for example: analysis of the 2000 decennial Census showed that 12.1% of the nation's Latino population shared one of the six most common family names among Latinos, and 10.1% of all African Americans shared the six most popular family names among African Americans, while people who shared the six most common family names among white Americans accounted for just 3.3% of the total white population.²⁰⁴

INCIDENTS ILLUSTRATIVE OF THE NEGATIVE IMPACT ON LATINO VOTERS

The following incidents that have occurred between 2013 and February 2016 demonstrate how registration list maintenance policies can disproportionately impede underrepresented voters from participating in elections. These examples are representative of occurrences around the country, but do not provide a comprehensive accounting of the impact that registration list maintenance policies have had on Latino or other voters between the 2012 and 2016 Presidential elections. Although the cases we describe below did not directly affect significant numbers of Latino voters, they occurred in states whose Latino populations are increasing rapidly, and they are representative of practices that have resulted in discriminatory exclusion of Latino voters in documented cases. For example, in 2006, DOJ successfully sued Long County, Georgia officials who selectively challenged the qualifications of dozens of Latino registered voters, subjecting them to an investigatory process not applied to other challenged voters.

Georgia

Between August and October of 2015, the Hancock County, Georgia Board of Elections and Registration (BOER) entertained a series of challenges to the eligibility of approximately 17% of registered voters from the town of Sparta. The challenges – some of them brought by a member of the BOER who both advocated and voted in favor of removal of some voters from the registration rolls – were apparently based upon selective investigation of a group of mostly African American voters, at least some of whom were challenged because of alleged mismatches between their voter registration and driver's license/state ID records. The BOER was not compelled

201 Telephone Interviews with callers to NALEO Educational Fund election assistance hotline, 888-VE-Y-VOTA (notes on file with author).

202 James G. Gimpel, Joshua J. Dyck, and Daron R. Shaw, *Election-Year Stimuli and the Timing of Voter Registration*, 13 PARTY POL. 351, 356-57 (2007), <http://www.nonprofitvote.org/documents/2010/11/election-year-stimuli-and-timing-of-registration.pdf>.

203 According to the Census Bureau, movers between 2005 and 2010 were more likely to be renters and to be unemployed than people who did not move. Moving rates among lower-income people were higher than moving rates of higher-income Americans. David K. Ihrke and Carol S. Faber, U.S. Census Bureau, *Geographical Mobility: 2005 to 2010, Population Characteristics* (Report P20-567) 4-5, Dec. 2012, <https://www.census.gov/prod/2012pubs/p20-567.pdf>.

204 David L. Word, Charles D. Coleman, Robert Nunziata, and Robert Kominski, *Demographic Aspects of Surnames from Census 2000* 5, 20, <http://www2.census.gov/topics/genealogy/2000surnames/surnames.pdf> (last visited April 29, 2016).

by law to undertake these investigations, much less to do so close in time to an election. Instead, its members made a discretionary decision to scrutinize the driver's license and state ID records of registered voters. Citing concerns about the burden to voters of defending their qualifications to vote, and the strongly disproportionate impact of the BOER's actions on qualified African American voters who did not have the opportunity or capacity to contest their removal from the voter registration list, the Georgia NAACP and other partners filed a legal challenge to this activity in November 2015.

North Carolina

In 2014, advocates reported that the Guilford County, North Carolina Board of Elections had rejected more than 1,400 voter registration applications submitted by students at North Carolina A&T State University²⁰⁵, a school with a student population that is more than 85% African American²⁰⁶. Although students at the school had previously been accepted as registrants when they submitted applications listing the University's address as their home, the Board of Elections reversed course and began rejecting applications filed by students living on campus who wrote the University's address on their applications rather than their dormitory addresses and room numbers. Citing insufficient funding, the Board of Elections failed even to notify student applicants that their registrations had been rejected.

POLLING PLACE CHANGES AND CONSOLIDATIONS

Elections officials generally enjoy discretion in determining how many polling locations to set up for a given election, and where to locate these voting centers. Because Presidential elections are such expansive undertakings, typically involving the operation of more than 100,000 polling locations across the country, it is difficult to collect sufficient data to assess nationwide trends in how administrators are exercising this discretion. Even the best available source of data about polling place locations, the EAC's Election Administration and Voting Survey (EAVS), omits data from some non-responding states and localities. Still, EAVS data point to a downward trend in the number of polling places operated by election administrators during major federal elections. From a high of 132,237 in 2008, the number of polling places that states reported utilizing declined to 119,968 in 2012, and 114,486 in 2014.²⁰⁷

Reducing the number of polling locations available, or shifting to new locations, disorients voters, and is likely to have a disproportionate negative impact on members of underrepresented communities. Even relatively small increases in the distances that voters must travel from home to polling location result in lost votes.²⁰⁸ Our experience confirms that polling place site changes are of significant concern to Latinos. In 2014, concerns about changed polling locations were the fourth most common complaint reported to the NALEO Educational Fund's voter assistance hotline, ranking above such prominent issues as failures to offer voters provisional ballots and problems complying with voter ID requirements.

Moreover, there is evidence that extended distance from a polling place has a larger negative effect on Latino, African American, and Asian American voter turnout than on white voter turnout.²⁰⁹ It follows logically that this would be so from the fact that Latinos and other voters of color have relatively less access to personal transportation²¹⁰ and less flexibility in the workplace and home. Likewise, there is evidence that when the effects are aggregated of all of the polling place-related decisions made by various local jurisdictions, members of underrepresented communities must travel longer distances to vote on average than their counterparts. A recent landmark study by the research firm Insightus found that North Carolina Boards of Elections changed the location of one-third of the state's early voting locations for 2014, and that these changes had a large disproportionate negative impact on African American voters.²¹¹ Insightus statisticians found that, "While the average white voter's distance to his or her nearest Early Voting site increased by just 26 feet in 2014, the average black voter's distance increased by a quarter of a mile. Summing that up over the members of each race, that's an aggregate increase in distance-to-poll of just 21,000 miles for white voters (71% of the electorate), but more than 350,000 miles for black voters (22% of the electorate)."²¹²

²⁰⁵ Evan Walker-Wells, *Blocking the youth vote in the South*, FACING SOUTH, Oct. 29, 2014, <http://ncignite.org/2014/10/29/blocking-the-youth-vote-in-the-south/> [hereinafter *Blocking Southern youth vote*].

²⁰⁶ Forbes, *America's Top Colleges: North Carolina A & T State University*, <http://www.forbes.com/colleges/north-carolina-a-t-state-university/> (last visited April 29, 2016).

²⁰⁷ U.S. Election Assistance Commission, 2008 Election Administration and Voting Survey 71-74 (Table 42), Nov. 2009, <http://www.eac.gov/assets/1/Documents/2008%20Election%20Administration%20and%20Voting%20Survey%20EAVS%20Report.pdf>; 2012 EAVS Report, supra note 192, at 78-81 (Table 41); 2014 EAVS Report, supra note 185, at 259-63 (Table 41).

²⁰⁸ E.g., Moshe Haspel and H. Gibbs Knotts, *Location, Location, Location: Precinct Placement and the Costs of Voting*, 67 J. OF POL. 560 (May 2005), <http://www.appstate.edu/~ehrhadtgc/Haspel--Location.pdf>.

²⁰⁹ E.g., Kenneth McCue, Redistricting Database for the State of California, *The Effect on Minority Voter Turnout by Distance from the Polling Place*, <http://statedatabase.org/pub/data/REPORTS/Misc/kfm.pdf> (last visited April 27, 2016).

²¹⁰ In addition to sources cited elsewhere in this report, see, e.g., Dr. William Busa, *insightUS, North Carolina's Shell Game of Electoral Apartheid: How the Board of Elections Shoved Black Voters Away From the Ballot Box in 2014*, Nov. 23, 2015, http://insight-us.org/fair_places.html (noting that 16% of black North Carolina householders do not have access to an automobile, while only 4% of whites do not, and that black North Carolinians who work outside the home are three times more likely than whites to rely on public transportation).

²¹¹ *Id.*

²¹² *Id.*

INCIDENTS ILLUSTRATIVE OF THE NEGATIVE IMPACT ON LATINO VOTERS

Between 2013 and April 2016, advocates raised concerns about the impact of a plethora of polling place closures and realignments in states ranging from Pennsylvania to Illinois to Texas. The logistical fiasco that resulted from Maricopa County, Arizona's last-minute decision to reduce the number of 2016 Presidential primary polling places by more than half compellingly illustrates the enormous potential impact and ongoing importance of decisions about polling place locations. Below, we highlight representative, but not comprehensive, examples of incidents that have threatened to make it harder for Latinos and other underrepresented people – especially youth – to vote.

Florida

After voters encountered long lines at polling places around the state in 2012, Florida lawmakers sought to ease pressure by expanding the types of locations that could be used for voting in 2013. Local elections officials in Gainesville and Polk County, Florida sought to follow this lead in 2014 by granting students' request to designate the University of Florida's student union as an early voting site, but were prevented from doing so by the state Division of Elections.²¹³ Elsewhere in Florida, polling places were moved off the campuses of Florida State University and Florida A & M University.²¹⁴ These three schools have large populations of students from underrepresented communities: more than 7,800 Latino students attended the University of Florida as of 2013, accounting for over 15% of the student body.²¹⁵ More than 18%²¹⁶ of Florida State students are Latino; Florida A & M's student body is more than 90% African American.²¹⁷

North Carolina

Over the course of the last ten years, the minority share of the student population at Appalachian State University in Boone, North Carolina has nearly doubled, and Latino enrollment has increased from 1.7% of all students in 2006 to 4.2% of the student body in 2015.²¹⁸ An early voting site located for many years at the Appalachian State University student union came to serve the highest

volume of voters of any such location in Watauga County.²¹⁹ But for the November 2014 election, officials tried to close this location and leave the more than 17,000 students at the University without an easily-accessible on-campus voting site. Litigation ensued, and resulted first in an order to reopen the location, followed by a State Board of Elections vote to reopen it, and then another contrary court decision halting the initial court order to maintain the polling place. Student leaders confirmed that election officials' conflicting decisions had created significant confusion likely to result in lower voter turnout.²²⁰ In 2015 and for the 2016 primary election, there was no polling location on the Appalachian State University campus.²²¹ North Carolina county boards of election have also, in recent years, taken steps to close polling locations on the campuses of East Carolina University, Winston-Salem State University²²², North Carolina State University²²³, Duke University, and the University of North Carolina at Charlotte²²⁴.

RESOURCE ALLOCATION AND LONG LINES AT POLLING PLACES

Although many of the issues discussed in this report have attracted significant journalistic and popular attention, only one problem with elections has won mention in a Presidential victory address and inspired creation of a special federal Commission to address it: the occurrence of extremely long lines for voting. While some analysts dispute the degree of negative impact attributable to restrictive policies like shortened early voting periods and heightened scrutiny of voters' qualifications, there is little, if any, disagreement that having to wait for multiple hours in a line makes it unacceptably difficult to vote.

²¹³ Steve Bousquet, *State blocks use of UF student union as early voting center*, TAMPA BAY TIMES, Feb. 6, 2014, <http://www.tampabay.com/blogs/the-buzz-florida-politics/state-blocks-use-of-uf-student-union-as-early-voting-center/2164465>.

²¹⁴ *Blocking Southern youth vote*, *supra* note 205.

²¹⁵ University of Florida, *UF Statistics*, http://www.multicultural.ufl.edu/uf_statistics/ (last visited Feb. 4, 2016).

²¹⁶ CollegeData, *College Profile: Florida State University*, http://www.collegedata.com/cs/data/college/college_pg01_tmpl.jhtml?schoolid=817 (last visited Feb. 4, 2016).

²¹⁷ CollegeData, *College Profile: Florida Agricultural and Mechanical University*, http://www.collegedata.com/cs/data/college/college_pg01_tmpl.jhtml?schoolid=1037 (last visited Feb. 4, 2016).

²¹⁸ Institutional Research, Assessment, and Planning, Appalachian State University, *University Profile 5*, <http://irap.appstate.edu/sites/irap.appstate.edu/files/College-Profile-ALL.pdf> (last visited Feb. 4, 2016).

²¹⁹ Email correspondence with Anita Earls, Executive Director, Southern Coalition for Social Justice (Jan. 14, 2016) (on file with author).

²²⁰ Dana Liebelson, *North Carolina Fights To Take Voting Site Away From Pesky College Kids*, HUFFINGTON POST, Oct. 23, 2014, <http://billmoyers.com/2014/10/23/north-carolina-fights-take-voting-site-away-pesky-college-kids/>.

²²¹ Watauga County Board of Elections, *Precincts*, http://www.wataugacounty.org/main/App_Pages/Dept/BOE/precincts.aspx (last visited April 29, 2016).

²²² Bertrand M. Gutierrez, Chairman: *Eliminate WSSU early-voting site*, WINSTON-SALEM JOURNAL, Aug. 18, 2013, http://www.journalnow.com/news/elections/local/article_3da9300a-07a2-11e3-b6b3-001a4bcf6878.html.

²²³ *We should be able to vote on campus* (Staff Editorial), THE TECHNICIAN, Oct. 22, 2014, http://www.technicianonline.com/opinion/article_c9d409ae-59a1-11e4-a751-0017a43b2370.html.

²²⁴ *Blocking Southern youth vote*, *supra* note 205.

Isolated reports of extremely long wait times for voting emerged prior to 2008²²⁵, but multiplied into a national trend in 2008, 2012, and during election cycles in between and since. Voters waited an hour or more during early voting in 2008 in states including Florida, Georgia, Arkansas, and North Carolina²²⁶, and for as long as seven hours in 2012.²²⁷ In total, an estimated ten million voters waited half an hour or more to vote in 2012.²²⁸ Unfortunately, similar problems recurred in 2014.²²⁹

Social science research and the work of the Presidential Commission on Election Administration (PCEA) have contributed significantly to our understanding of the causes and consequences of long lines at the polls. The Brennan Center for Justice, for example, studied lines for voting in Florida, Maryland, and South Carolina, and found that allocation of resources between polling locations correlated to wait times to vote, with sites assigned fewer voting machines and pollworkers experiencing longer lines.²³⁰ Professor Charles Stewart III, a leading expert on long lines at polls, concurs that lines have their basis in mismatches of voting resources to voters.²³¹ Researchers also attribute long lines to the preponderance of inaccurate voter registration records in pollbooks, which slow the process of checking in arriving voters²³²; surges of arriving voters; and use of voting machines on which voters record their choices electronically instead of with a paper ballot.²³³

There is strong consensus that long lines hurt voter turnout and bode ill for future civic engagement. Poll observers have frequently reported observing intending voters leave long lines at polling places without casting ballots, and responses to surveys about the 2012 election indicate that between 500,000 and 730,000 individuals nationwide did not vote because of long lines.²³⁴ An even larger number of votes – as many as 2.6 million – may have been lost to long lines in 2008.²³⁵

The longer and more widespread waiting times are, the bigger their impact is likely to be. Based on his study of election results stretching back to 2004, Professor Theodore Allen has concluded that each additional hour of wait time at polling places corresponds to a loss of about 2% of remaining non-voters who would otherwise have participated in the election.²³⁶ Long lines also tend to reduce voters' confidence in elections, and even to cause economic loss. Just 47% of 2012 voters who waited an hour or longer to vote expressed confidence that their votes were counted as they intended, compared to 68% of voters who waited ten minutes or less at a polling place.²³⁷ The value of the work that voters failed to perform in 2012 because of the aggregate amount of time they instead spent waiting in line to vote was more than \$540 million.²³⁸

NEGATIVE IMPACT ON LATINO VOTERS

The costs of inadequate and mismanaged voting resources, and resulting long lines, vary widely across racial, ethnic, and geographic lines. One of the most striking revelations to emerge from the study of voting waiting times is that their negative impact on Latino and African American voters is far greater than it is for white voters. For example, the average wait for all Latino voters nationwide in 2012 was 19 minutes, compared to 12 minutes for white voters.²³⁹ Although African Americans experienced the longest national-average wait times, at 23 minutes, Latino voters faced the longest waits in Florida, where precincts serving larger proportions of Latino voters closed later than precincts serving mostly white voters.²⁴⁰

225 E.g., Michael Powell and Peter Slevin, *Several Factors Contributed to 'Lost' Voters in Ohio*, WASHINGTON POST, Dec. 15, 2004, at A1.

226 Chris Kromm, *Voting Rights Watch: Long Lines – a voting rights issue*, FACING SOUTH, Oct. 22, 2008, <http://www.southernstudies.org/2008/10/voting-rights-watch-long-lines-a-voting-rights-issue.html>.

227 Andrew Cohen, *No One in America Should Have to Wait 7 Hours to Vote*, THE ATLANTIC, Nov. 5, 2012, <http://www.theatlantic.com/politics/archive/2012/11/no-one-in-america-should-have-to-wait-7-hours-to-vote/264506/>.

228 Presidential Commission on Election Administration, *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration* 13, Jan. 2014, <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

229 E.g., Anthony Wilson, *Voters Wait in Long Lines on Last Day of Early Voting*, ABC11 WTVD, Nov. 2, 2014, <http://abc11.com/politics/voters-wait-in-long-lines-on-last-day-of-early-voting/376576/>.

230 Christopher Famighetti, Amanda Melillo, and Myrna Perez, Brennan Center for Justice, *Election Day Long Lines: Resource Allocation* 7-8, 2014, <https://www.brennancenter.org/sites/default/files/publications/ElectionDayLongLines-ResourceAllocation.pdf> [hereinafter *Resource Allocation Study*].

231 Charles Stewart III, Caltech/MIT Voting Technology Project, *Managing Polling Place Resources* 13, Nov. 2015, <http://web.mit.edu/vtp/Managing%20Polling%20Place%20Resources.pdf> [hereinafter *Polling Place Resources*].

232 Pam Fessler, *Fixing Long Lines At The Polls May Be Harder Than You Think*, NPR MORNING EDITION, Feb. 12, 2013, <http://www.npr.org/sections/itsallpolitics/2013/02/12/171513524/fixing-long-lines-at-the-polls-may-be-harder-than-you-think>.

233 Douglas M. Spencer and Zachary S. Markovits, University of California, Pew Center on the States, *Long Lines at Polling Stations?: Observations from an Election Day Field Study* 13-15, 21-22, 2010, <http://www.vote.caltech.edu/sites/default/files/Lines%20at%20Polling%20Stations.pdf>.

234 *Polling Place Resources*, supra note 231, at 17.

235 *2008 Perf. of Am. Elections*, supra note 82, at 59.

236 *Allen Declaration*, supra note 128, at 20.

237 *Polling Place Resources*, supra note 231, at 17.

238 *Id.* at 18.

239 Nick Wing, *2012 Voting Lines Study Shows Minorities Faced Longer Average Wait Times To Cast Ballots*, HUFFINGTON POST, April 8, 2013, http://www.huffingtonpost.com/2013/04/08/2012-voting-lines-study_n_3039410.html.

240 Michael C. Herron and Daniel A. Smith, *Precinct Closing Times in Florida during the 2012 General Election* 6, 20-22, Oct. 21, 2014, <http://www.dartmouth.edu/~herron/closingtimes.pdf>.

The close correlation between minority voter density and longer wait times is not a coincidence, as the Brennan Center's analysis of Florida, Maryland, and South Carolina shows. In those three states, precincts serving higher percentages of underrepresented voters tended to be assigned fewer voting machines, in violation of applicable regulations in Maryland and South Carolina, and in derogation of lessons that should and could have been learned in Florida in 2008²⁴¹. Whether or not conscious intention to impair Latino and African American voting is a factor, the individual choices that election administrators have made in equipping polling places have clearly resulted in less opportunity for members of these communities to participate in elections.

INSUFFICIENT LANGUAGE ASSISTANCE

Forty years after our nation first made significant strides toward holding linguistically accessible elections with the enactment of Section 203 of the VRA, election administrators continue to struggle with the task of living up to the promise that no American citizen will be prevented from voting by his or her inability to speak or read English.²⁴² Under the VRA, jurisdictions are required to provide language assistance in Spanish and certain other languages based on a formula that takes into account the proportion of a jurisdiction's U.S. citizen adults from a particular language group, coupled with rates of English proficiency and literacy. As of the determinations published in 2011, 213 counties and municipalities and three states were required to make voting materials and assistance equally available in English and Spanish. In addition, some states and localities, including California, Colorado, and the District of Columbia, go beyond federal requirements by setting lower thresholds for provision of language assistance, or expanding the list of languages in which assistance must be offered. Every jurisdiction in the country is also required, under Section 208 of the VRA, to permit voters who cannot read or speak English to be assisted in the voting booth by the person of their choice, other than an employer or union representative. Unfortunately, noncompliance with these provisions continues to be widespread, attributable in significant part to administrative decision-making about the amount of effort and resources invested in ensuring that voters who are not yet fully fluent in English can vote knowledgeably and without delay.²⁴³

There are many aspects of bilingual election administration that responsible officials have historically neglected. One of the most common problems is insufficient recruitment of bilingual pollworkers. It is frequently difficult to find people who are available for and interested in a temporary part-time job that seldom, if ever, pays enough to make a significant contribution to the income individuals and families need to survive. It is all the more difficult to find such individuals who possess the valuable skill of bilingual ability and who satisfy other threshold requirements which include, in almost all jurisdictions in the country, U.S. citizenship.²⁴⁴

Agreements drafted by the DOJ to settle charges of inadequate provision of language assistance frequently proscribe²⁴⁵, as does the EAC's Best Practices Tool Kit for bilingual election administrators²⁴⁶, active engagement with language minority community leaders and organizations to better reach and attract qualified bilingual pollworkers. However, such engagement requires a meaningful investment of time and energy that many election officials have failed to dedicate to the task unless, or until, they are compelled by litigation or other pressure.

Another task that election administrators have neglected is the translation of printed materials and electronic resources, such as websites. Quality translations are done manually by people with related certifications or, at the very least, complete fluency in the regional form of Spanish most commonly spoken in a particular county or city.²⁴⁷ Today, however, there are cheaper and quicker, but also less effective²⁴⁸, methods available, including online tools like Google's "Translate" function. Some of these even enable people with no second language ability at all to produce translations, but the results are sometimes incomprehensible, and at best, communicate ideas imprecisely, using awkward phrasing.

Some election administrators have chosen to provide lower-quality translations because they were not willing to invest the money and time necessary to obtain certified translations, and the adequacy of bilingual assistance with elections has suffered as a result. For example, in Gonzales County, Texas, election administrators attempted to severely reduce the jurisdiction's bilingual operations in 2008 and again in 2009. Although it had conducted elections in both English and Spanish since 1976, the County proposed converting to use of a machine

²⁴¹ *Resource Allocation Study*, *supra* note 230, at 7-8.

²⁴² *E.g.*, Michael Jones-Correa and Israel Waismel-Manor, *Language Provisions Under the Voting Rights Act: Effectiveness and Implementation* (Submission to the Presidential Commission on Election Administration) 1, Sep. 4, 2013, <https://www.supportthevoter.gov/files/2013/09/Michael-Jones-Correa-Language-Provisions-VRA.pdf> (noting that one in seven jurisdictions could not provide researchers registration materials in required languages, one in four did not have the necessary personnel to provide assistance, and one-third failed to provide either translated materials or bilingual personnel) [hereinafter *Language Provisions Effectiveness*].

²⁴³ *E.g.*, Angelo N. Ancheta, *Language Assistance and Local Voting Rights Law*, 44 IND. L. REV. 161, 173 (2010); see also Civil Rights Division, U.S. Department of Justice, *Cases Raising Claims Under the Language Minority Provisions of the Voting Rights Act*, Oct. 16, 2015, <http://www.justice.gov/crt/cases-raising-claims-under-language-minority-provisions-voting-rights-act>.

²⁴⁴ 32.1% of U.S. residents who speak a language other than English at home are non-citizens, compared to just 1.1% of residents who speak English at home. *U.S. Census Bureau, Characteristics of People by Language Spoken at Home Table S1603*, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited April 29, 2016).

²⁴⁵ *E.g.*, Memorandum of Agreement ¶¶ 10, 16-18, *U.S. v. County of Kane, Illinois* (N.D. Ill. Nov. 7, 2007) (No. 07-C-5451); Consent Decree ¶ 8, *U.S. v. Fort Bend County, Texas* (S.D. Tex. April 13, 2009) (No. 4:09-cv-01058); Consent Decree ¶¶ 24-27, *U.S. v. Colfax County, Nebraska* (D. Neb. March 2, 2012) (No. 8:12-cv-00084).

²⁴⁶ U.S. Election Assistance Commission, *Best Practices Tool Kit* Section 3, July 30, 2004, www.eac.gov/assets/1/Page/Best%20Practices%20Tool%20Kit.doc.

²⁴⁷ Dialects of Spanish can be difficult for even native Spanish speakers from different regions of the world to understand. *E.g.*, Freddy De La Rosa, *Differentiating Between Spanish Accents*, BRAINSCAPE, Oct. 14, 2015, <https://www.brainscape.com/blog/2015/02/difference-spanish-accents/>.

²⁴⁸ *E.g.*, Jenny An, *How Accurate Is Google Translate, Really?*, DIGITAL TRENDS, April 27, 2013, <http://www.digitaltrends.com/web/how-accurate-is-google-translate/>; Tomomi Menjo, *When It Comes To Translational Accuracy, Google Translate Should Just Let It Go!*, TRANSLUENT, Feb. 2, 2015, <http://become.transfluent.com/blog/en/2015/02/when-it-comes-to-translational-accuracy-google-translate-should-just-let-it-go/>.

translator after more than 30 years of contrary practice, and pledged that members of a local League of United Latin American Citizens (LULAC) chapter and employees with the Secretary of State's office would review results for accuracy. It emerged, however, that the County had not secured the agreement of either entity to assist it before it proposed to change translation methods. Further, the proposed use of a less accurate translation method was not an accident: contemporaneously, the leading County election official was quoted in local press as stating, "Language minority voters are not citizens if they do not speak English."²⁴⁹ Because Gonzales County was subject to preclearance under the VRA at the time, it was prevented from moving forward, but it is only one of many jurisdictions that have sought to cut corners on translations to the detriment of Latino voters.

When the responsible administrators decide not to allocate sufficient resources to providing effective language assistance, Latino voters suffer a disproportionate share of the negative impact. Spanish is by far the most commonly-spoken language in the United States after English: people who speak Spanish at home account for 62% of all U.S. residents who speak a language other than English.²⁵⁰ The number of jurisdictions required by federal law to conduct multilingual elections with Spanish assistance dwarfs the number of jurisdictions that provide assistance in any other single language by orders of magnitude.²⁵¹ Where quality language assistance is available, the rate at which eligible Latino and Spanish-speaking voters register and vote tends to improve²⁵²; registration and turnout are lower where language assistance is not comprehensively available. Professors Michael Jones-Correa and Israel Waisman-Manor found that Latino voter turnout was 11% percent higher in counties covered by Section 203 of the VRA than in uncovered counties that do not provide Spanish language assistance, and Latino registration 15% higher in covered than uncovered counties. Provision of Spanish-language printed materials was associated with a 4% increase in Latino registration rates, and employment of Spanish-speaking staff was associated with a 6% increase in Latino registration.²⁵³

INCIDENT ILLUSTRATIVE OF THE NEGATIVE IMPACT ON LATINO VOTERS

Florida

In addition to the language assistance mandates in Sections 4(e) and 203, Section 4(f)(4) of the VRA required that jurisdictions subject to preclearance provide language assistance. The jurisdictions covered by 4(f)(4) were those that met criteria set forth in Section 4(b) of the Act. When the Supreme Court decided *Shelby County* in 2013, it did not discuss the ongoing validity of language assistance requirements. It did, however, rule that the coverage formulas and criteria in Section 4(b) could not stand. Although differing points of view have been expressed, some legal experts believe the invalidation of Section 4(b) incidentally extended to Section 4(f)(4), such that jurisdictions formerly subject to preclearance no longer need conduct multilingual elections unless they are independently covered by Sections 203 or 4(e), or other relevant law.²⁵⁴

Monroe County, Florida was one of the five jurisdictions in Florida that was subject to preclearance under Section 4 of the VRA prior to 2013. Accordingly, it provided Spanish-language assistance to its citizens on election matters, and its sample ballots posted online for pre-*Shelby County* elections were in English and Spanish.²⁵⁵ But after the County was released from preclearance coverage, it ceased providing Spanish-language voting materials, omitting Spanish translations from ballots and election materials²⁵⁶ it published after the *Shelby County* decision. The County's election officials need not have taken this step, but acted as quickly as they could to make it harder for Spanish-speaking residents to vote, failing even to wait long enough for legal experts to fully consider *Shelby County's* impact on Section 4(f)(4).²⁵⁷

249 Letter from Thomas E. Perez, Assistant Attorney General for Civil Rights, U.S. Department of Justice, to Robert T. Bass, Esq., Allison, Bass & Assocs. at 5 (Mar. 12, 2010), http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/I_100312.pdf.

250 U.S. Census Bureau, *Language Spoken at Home by Ability to Speak English For the Population 5 Years and Over Table B16001* (5-year 2009-14 data file), <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited April 29, 2016).

251 Determinations Under Section 203, Voting Rights Act Amendments of 2006, 76 Fed. Reg. 63,602 (2011).

252 E.g., Daniel J. Hopkins, *Translating into Votes: The Electoral Impacts of Spanish-Language Ballots*, 55 AM. J. OF POL. SCI. 814, 815 (Oct. 2011); Bernard L. Fraga and Julie Lee Merseth, *Examining the Causal Impact of the Voting Rights Act Language Minority Provisions 2*, July 11, 2015, http://www.bernardfraga.com/uploads/2/2/3/4/22341374/fragamerseth_vralanguage.pdf; Michael Jones-Correa, *Language Provisions Under the Voting Rights Act: How Effective Are They?*, 86 Soc. Sci. Q. 549 (2005).

253 *Language Provisions Effectiveness*, *supra* note 242, at 1-2.

254 E.g., Shauna Reilly, *Language Assistance under the Voting Rights Act: Are Voters Lost in Translation?* 12, n.1 (Lexington Books 2015); Cody Gray, *Savior Through Severance: A Litigation-Based Response to Shelby County v. Holder*, 50 HARV. C.R.-C.L. L. REV. 49, 82 (2015).

255 E.g., Monroe County, Fla. Supervisor of Elections, *2012 Presidential primary sample ballot*, http://www.keys-elections.org/portals/monroe/documents/2012_jan_rep_county.pdf (last visited April 29, 2016).

256 E.g., Monroe County, Fla. Supervisor of Elections, *2013 Municipal election sample ballots - Key West, Florida*, http://www.keys-elections.org/portals/monroe/documents/oct_mayor_sample.pdf and http://www.keys-elections.org/portals/monroe/documents/oct_smd_1_sample.pdf (last visited April 29, 2016).

257 Well after Monroe County stopped providing Spanish language voting materials, knowledgeable writers and thinkers continued to express lack of complete certainty about the consequences of the *Shelby County* decision for 4(f)(4). See, e.g., National Commission on the Voting Rights Act, *Protecting Minority Voters 2014: Our Work Is Not Done* 193, 2014, <http://votingrightstoday.org/ncvr/resources/discriminationreport>.

SECONDARY NEGATIVE EFFECTS OF RESTRICTIVE ELECTION POLICYMAKING

Laws and administrative policies that make the registration and voting process more challenging have a negative influence that reaches beyond the universe of potential voters who are directly deterred from taking part in elections. Restrictive election policymaking can impede the civic participation of even those who have yet to become active members of the electorate. Voters' sense of disengagement from the political process and mistrust of policymakers is a significant factor underlying declining rates of participation. In turn, by conveying a sense that policymakers do not trust voters, restrictive voting laws serve to reinforce potential voters' presumptions and make continued decline in voter participation a likelihood.

Even though we have an unprecedented wealth of tools at our disposal today for accomplishing tasks conducive to voting, like communicating with one another from remote locations and processing large amounts of data electronically, voter registration and participation rates have progressively declined since 1964.²⁵⁸ Most recently, the overall voter turnout rate slid from 63.6% in 2008 to 61.8% in 2012, according to CPS data.

The decline in voter engagement is occurring even though our population demographics are also changing in ways that experience would predict would lead to higher rates of participation. Older and more educated citizens are more likely than their younger and less-educated counterparts to vote, for example.²⁵⁹ The American electorate has aged in recent decades, and will continue to do so. In 2000, 16.3% of the U.S. population was 60 or older; by 2010, people aged at least 60 accounted for 18.5% of the population.²⁶⁰ By 2030, Americans older than 65 are expected to constitute more than 20% of the country.²⁶¹ Americans have also gained in educational attainment. According to the National Center for Education Statistics, the percentages of people younger than 30 who have earned high school diplomas, bachelor's degrees, and Master's or higher degrees have all increased between 1990 and 2014.²⁶² There must be other factors at play that have depressed what should otherwise be the positive impact of technological advances and demographic changes conducive to voter turnout.

The NALEO Educational Fund's survey and interviews with Latinos who are unregistered or inconsistent voters provide a window on what those factors may be, and how restrictive voting policies may exacerbate their impact. A plurality of Latino citizens who had not registered to vote told us that the primary reason they had not made an effort to participate was that politicians did not care about their opinions. In total, 42% of respondents gave this answer, or said that voting did not seem to make a difference or that the process of voting was too difficult. An overwhelming majority of registered voters who were not regular participants in elections said that they felt it was important to get involved in politics in order to have one's voice heard in our democracy, but many of these individuals also noted that they frequently felt frustrated and angry when watching news about politics, and 25% said they had not voted in 2008 because they were unable to get to the polls or because they felt their votes would not matter. These answers tell us that many potential Latino voters perceive voting to be increasingly complicated and time-consuming, and that politicians' role in creating this impression conveys the message to Latino voters that elected officials do not value or desire their participation.

²⁵⁸ Jose A. DelReal, *Voter turnout in 2014 was the lowest since WWII*, WASHINGTON POST, Nov. 10, 2014, <https://www.washingtonpost.com/news/post-politics/wp/2014/11/10/voter-turnout-in-2014-was-the-lowest-since-wwii/>.

²⁵⁹ E.g., U.S. Census Bureau, *The Decline in American Voter Turnout* (SB/91-23) 1, Nov. 1991, <https://www.census.gov/population/socdemo/voting/SB91-23.pdf>; The Pew Research Center For The People & The Press, *Regular Voters, Intermittent Voters, and Those Who Don't: Who Votes, Who Doesn't, and Why* 5, Oct. 18, 2006, <http://www.people-press.org/2006/10/18/who-votes-who-doesnt-and-why/> [hereinafter *Who Doesn't Vote 2006*]; Pew Research Center, *The Party of Nonvoters: Younger, More Racially Diverse, More Financially Strapped*, Oct. 31, 2014, <http://www.people-press.org/2014/10/31/the-party-of-nonvoters-2/> [hereinafter *Nonvoters 2014*].

²⁶⁰ U.S. Administration on Aging, *Comparison of Age and Sex of the U.S. Population in the 2000 and 2010 Censuses*, http://www.aoa.acl.gov/aging_statistics/Census_Population/census2010/Index.aspx (last visited April 28, 2016).

²⁶¹ Jennifer M. Ortman, Victoria A. Velkoff, and Howard Hogan, *An Aging Nation: The Older Population in the United States* (P25-1140) 2-3, May 2014, <https://www.census.gov/prod/2014pubs/p25-1140.pdf>.

²⁶² National Center for Education Statistics, *Fast Facts: Educational Attainment*, 2015, <https://nces.ed.gov/fastfacts/display.asp?id=27> (last visited April 29, 2016).

There is evidence that increasing numbers of all voters feel disengaged from the political process because of the adoption of barriers to voting, although the disproportionately large gap between the number of Latinos who are eligible to vote and who cast ballots points to particularly severe negative effects on the Latino electorate. People of all races and ethnicities who are not registered are more likely than occasional or regular voters to say that voting does not change things²⁶³, and also more likely to possess characteristics that make them vulnerable to restrictive voting policies. Unregistered Americans are disproportionately young, less wealthy, and less educated.²⁶⁴ As such, they are more likely than counterparts to lack identity documents that might be required to register or vote, and less likely to be able to leave work to vote.²⁶⁵ When officials adopt policies that make registering and voting more challenging for people who are not yet active participants in elections, they may reinforce unregistered and non-voting Americans' assumptions that prevailing powers do not want them to be part of the political process and do not care about their opinions. The particular kinds of restrictions discussed herein send a targeted message to Latinos and underrepresented individuals that voting is not for people like them who are, for example, not yet fully fluent in English, or do not have easy access to a birth certificate or state ID card.

The NALEO Educational Fund's research suggests that personal invitations to participate in elections that come from trusted, respected messengers can overcome the sense of disengagement and mistrust that have contributed to depressed levels of voter participation. Of those we surveyed, 60% of infrequent voters and 65% of unregistered Latino citizens said they would be more likely to register or vote if their mothers asked them to do so; more generally, 69% of registered Latinos and 64% of unregistered Latinos said that family members and closer personal friends could influence their decisions about participating in elections.

Other research has similarly found that people who were asked about their plans for voting on Election Day were more likely to cast ballots²⁶⁶; and that potential voters who had face-to-face contact with people working to mobilize the electorate were also more likely to participate in elections than those who were not personally asked to vote²⁶⁷. Invitations to vote have in fact been found to be particularly effective in increasing participation by people who are low-propensity voters.²⁶⁸

Unfortunately, restrictive voting laws and policies function as a dis-invitation to participate, and the unwelcoming attitude fueling their adoption has been on full public display for a number of years. Latino and other low-propensity voters follow political and social news, and are very aware that politicians advocate restrictive voting laws by citing concerns about the qualifications of voters like them, who have immigrant origins or are students, or belong to other disproportionately Latino segments of the population. The orientation of some lawmakers toward imposing barriers to the ballot box is the wrong public policy for our time, regardless of the number of individuals ultimately prevented from voting by their inability to satisfy new, heightened requirements. The negative social and psychological impact of restrictive policymaking may be as great, or greater, than its practical chilling effect; it is very likely undermining the potential positive influence of improved educational attainment, increasing access to elections through online and mobile platforms, and other achievements.

²⁶³ *Who Doesn't Vote 2006*, *supra* note 259, at 4.

²⁶⁴ *Nonvoters 2014*, *supra* note 259, at 1.

²⁶⁵ *E.g.*, Anna Danziger and Shelley Waters Boots, *Workplace Flexibility 2010 and Urban Institute, Lower-Wage Workers and Flexible Work Arrangements* 5-6, 2008, <http://workplaceflexibility2010.org/images/uploads/Lower-Wage%20Workers%20and%20FWAs.pdf>.

²⁶⁶ Sasha Issenberg, *Nudge the Vote*, N.Y. TIMES MAGAZINE, Oct. 29, 2010, at MM28.

²⁶⁷ David Niven, *The Mobilization Solution?: Face-to-Face Contact and Voter Turnout in a Municipal Election*, 66 J. OF POL. 868 (June 2004).

²⁶⁸ *Id.*

CONCLUSION

MORE THAN 875,000 ELIGIBLE LATINO VOTERS WILL BE NEGATIVELY AFFECTED BY RESTRICTIVE ELECTION POLICYMAKING SINCE 2012, AND MANY MORE WILL ENCOUNTER CHALLENGES CAUSED BY ADMINISTRATIVE PRACTICES.

As our nation approaches the Presidential election of 2016, the most urgent task facing officials responsible for elections is to make the voting process equally accessible to all citizens, and to encourage eligible voters to participate at higher rates than have been seen in recent cycles. American democracy cannot thrive, and our country cannot prosper to its potential, without robust levels of civic participation. We are encouraged that many additional jurisdictions are developing strategies and policies designed to expand access to voting, such as online voter registration, same day registration and electronic registration through state agencies. At the same time, the implementation of the policies highlighted herein proves that advocates and public officials still have work to do to ensure that our political system is untainted by mechanisms that are discriminatory in effect or intent.

Our sense that proactive efforts must continue is reinforced by voters' experiences during the 2016 Presidential primary season. Underrepresented citizens have once again been inhibited from voting by missing and incorrect information published in a Kansas Spanish-language voter guide²⁶⁹; hours-long lines at polling places in Arizona²⁷⁰; and aggressive purging of voters from registration rolls in New York²⁷¹, among other incidents. In the modern day United States, our advanced technological capabilities, our respect for one another as citizens and neighbors, and our shared appreciation of the importance of making a better future for all of our children should forestall the placement of unnecessary barriers to voters making their voices heard.

²⁶⁹ Dion Lefler, *Errors in Kansas' Spanish voting guide include wrong registration deadline*, THE KANSAS CITY STAR, April 9, 2016, <http://www.kansascity.com/news/politics-government/article70943892.html>.

²⁷⁰ Ari Berman, *There Were 5-Hour Lines to Vote in Arizona Because the Supreme Court Gutted the Voting Rights Act*, THE NATION, Mar. 23, 2016, <http://www.thenation.com/article/there-were-five-hour-lines-to-vote-in-arizona-because-the-supreme-court-gutted-the-voting-rights-act/>.

²⁷¹ Gregory Krieg, Sanders campaign, *New York officials cry foul after New York voters report issues*, CNN, April 20, 2016, <http://www.cnn.com/2016/04/19/politics/new-york-primary-voter-problem-polls-sanders-de-blasio/>.

METHODOLOGY

SOURCES OF DEMOGRAPHIC AND VOTER TURNOUT DATA

Throughout this paper, statistics regarding the size of racial and ethnic segments of the population (including relative rates at which people of various races and ethnicities have access to vehicles, live with children younger than 18, speak a language other than English at home, and more), numbers and shares of eligible voters of particular races and ethnicities, and numbers and shares of eligible voters who are naturalized and Puerto Rican-born are from the Census Bureau's American Community Survey (ACS) data, in most cases the 2014 1-year estimates, unless otherwise stated in footnotes. Data on some areas with smaller populations, such as Franklin County, Alabama, are available only in ACS 5-year estimates, and where this is the case we have used the 5-year estimates. ACS data are calculated from surveys of a sampling of U.S. households, and several years of responses must be aggregated to get enough information about smaller population areas to draw statistically reliable conclusions.

Statistics on the voter registration rates, turnout, methods of registration and reasons for not voting of individuals of various races and ethnicities are from the Census Bureau's biennial *Voting and Registration* reports based on the Current Population Survey (CPS), or from the Voter Activation Network database maintained by NGP VAN, as stated parenthetically or in footnotes. The CPS may overestimate turnout and registration because results are based on voters' self-reported participation. CPS estimates for smaller sub-groups may be based on relatively small sample sizes, moreover, and the margin of error associated with estimates of voting and registration for sub-groups is greater than the margin associated with estimates concerning larger segments of the population. The VAN database contains voter data files that are regularly updated against the voter registration files maintained by states; it does not provide any information about eligible but unregistered voters. The database assigns a likely race and ethnicity to registered voters based on a combination of factors including data in state files, updates entered by VAN users, and statistical probability informed by Census data.

Information and statistics concerning Latino population growth in the various states between decennial Censuses are taken from the Census Bureau's report entitled *The Hispanic Population: 2010* (online at <http://www.census.gov/prod/cen2010/briefs/c2010br-04.pdf>), comparing total population numbers from the 2000 and 2010 Censuses. Decennial Census counts make no distinction between U.S. citizens and non-citizen residents; therefore, these statistics reflect total numbers of both eligible voters and individuals who are not eligible to vote.

As noted parenthetically or in footnotes, statistics about the historical shares of votes cast early, as absentee ballots by mail, and provisionally are drawn from states' own publications; states' reports to the EAC published in the biennial Election Administration and Voting Survey; and academic experts' analysis, prepared for litigation and based on detailed information contained in voter data files, at least some of which is not routinely available to members of the public. Some data about the total numbers of registrants and voters in particular states and at particular times are also drawn from periodic reports published by statewide authorities responsible for elections, including state Boards of Election and Secretaries of State's offices.

METHOD FOR CALCULATING VOTERS POTENTIALLY AFFECTED BY STRICT VOTER ID LAWS

Throughout this paper, we calculated total numbers of Latino voters in particular states who may be prevented from voting by strict voter ID laws by multiplying each state's Latino U.S. citizen voting age population from the ACS by 16%, the proportion of Latinos estimated by the Brennan Center for Justice to lack current, valid government-issued photo ID in its landmark 2006 survey, *Citizens Without Proof* (online at http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf). The continuing validity of this estimate has been affirmed by multiple subsequent studies that have reached consistent conclusions. Using methodologies reviewed and approved by GAO social scientists²⁷², researchers found that, as of 2012, 15% of eligible Latino voters in Milwaukee County, Wisconsin and 18% of eligible Latino voters in Pennsylvania lacked

²⁷² GAO Voter ID Report, *supra* note 63, at 34-43.

a photo ID acceptable for voting under newly-adopted strict ID laws in those states. Also in 2012, a nationwide survey of registered voters by Professor Charles Stewart found that 27% of Latinos, 37% of African Americans, and 16% of whites did not have a valid driver's license; and, 10% of Latino respondents to the 2012 American National Elections Study reported that they lacked any photo ID while 17% reported not having a valid driver's license or passport. Even actual registered voters, who are more likely than unregistered but eligible voters to possess ID, lack documents at comparable, racially- and ethnically-disparate rates: in 2012, 17% of Latinos registered to vote in Texas did not appear in records of driver's license, state ID, and gun permit holders, for example, compared to just 11% of white voters. The Brennan Center's 2006 estimate occupies a middle ground in between the highest and lowest rates of Latino voter non-possession of identification subsequently reported, and to the best of our knowledge it has not been supplanted nor contradicted by any other study that improves upon its scope and sample size. Therefore, we continue to use this best-available estimate in the same way as in our 2012 publication, *Latino Voters at Risk: The Impact of Restrictive Voting and Registration Measures on the Nation's Fastest Growing Electorate*.

The numbers resulting from multiplying the population eligible to vote by the percentage of potential Latino voters likely to lack acceptable voter IDs have been rounded to the nearest hundred to reflect the fact that these are estimates rather than precise calculations based on surveys specific to each state's population and policy.

This methodology does not account for voters who may lack government-issued photo ID but may be able to vote under a strict ID requirement either with a qualifying student, tribal, or other ID, or because they qualify for an exemption from having to show an ID. There may also be some voters without ID living in some strict ID states who are nonetheless able to vote by absentee ballot without possessing a qualifying ID. We do not have sufficient data to produce an estimate of how these options may mitigate the negative effects of strict ID requirements, but any reduction in affected voters due to available

alternatives to showing government-issued ID is offset, at least in part, by the demonstrated chilling effect of heightened ID requirements on even some voters who are able to meet them, but mistakenly believe they cannot.

METHOD FOR CALCULATING VOTERS POTENTIALLY AFFECTED BY RESTRICTIONS ON REGISTRATION

We have conservatively projected the number of eligible Latino voters negatively affected by the end of preregistration for 16- and 17-year-olds in North Carolina by presenting, as a floor, the total number of Latino U.S. citizen North Carolina residents reported in American Community Survey 1-year data who were aged 16 or 17 in 2014. The actual number of negatively affected individuals also includes some young people who turned 16 in 2013 after the law in question took effect, as well as some young people who turned 17 in 2013 but did not pre-register to vote before the opportunity was eliminated.

TURNOUT FACTORS NOT CONSIDERED

To the extent that our analysis suggests that restrictive voting policies may negatively affect Latino voter registration and turnout levels, we emphasize that there are many other factors not discussed herein that affect voter engagement, turnout, and success in casting ballots. We have not attempted to weigh the competing influences on voters against one another nor to make any precise predictions about whether, and to what extent, the policies discussed herein will actually result in a certain number of Latino votes being cast, or not cast, in November 2016. Instead, taking each policy and its consequences on its own, we have set forth as much as we know about the number of Latino voters likely to encounter additional hurdles to casting ballots. Hurdles do not necessarily mean that voters will not prevail and successfully cast ballots, but we know from social scientific consensus that hurdles do tend to reduce the number of participating voters.