

ELECTION 2012

Latino Voters at Risk:

The Impact of Restrictive Voting and Registration Measures on the Nation's Fastest Growing Electorate

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 Latino vote will be more important in 2012 than it has ever been in American history. An unprecedented 12.2 million Latinos are expected to cast ballots in November 2012. These voters represent dramatic growth in the Latino community that will continue for the foreseeable future: young Latino U.S. citizens are currently turning 18 and becoming eligible to vote at a rate of approximately 50,000 each month.

Even as the Latino electorate and Latino voter turnout reach historic highs, they are likely to lag behind comparable participation rates of Americans of other races and ethnicities. More than 100 years of virtually unchecked discrimination at the polls against Latino U.S. citizens gave birth to this situation, and a number of factors have sustained it, including lack of political outreach to Latino voters, failure to fully implement election language accessibility requirements, and socio-economic impediments inhibiting Latinos' knowledge of voting procedures and requirements.

On top of these persistent barriers, Latino voters and voter advocates must now contend with a significant added obstruction in the form of restrictive state voting laws and procedures that make it harder to cast a ballot. State policymakers have increasingly turned their attention and energy over the past decade, and the past two years in particular, to limiting access to the polls, and have neglected the more pressing concern that is Americans' lackluster participation in the democratic process.

Restrictive changes enacted to voting policy will have a worse effect on the Latino electorate than on all voters in the aggregate. States increasingly require voters to display government-issued photo identification when voting in person, and documentary proof of citizenship when registering to vote. Latino voters disproportionately lack these materials, and face logistical challenges that make obtaining them difficult or impossible. States have also moved to restrict innovations, such as early voting periods and community-based registration drives, that have reduced the effort required to vote, and that have been used more heavily by Latino voters than by other groups of Americans. In addition, states are ramping up scrutiny of the qualifications of naturalized citizen voters, more of whom are Latino than of any other single race or ethnicity.

States' efforts to date to restrain registration and voting opportunities and to institute heavy-handed checks of voters' qualifications may make it significantly more difficult for more than 219,000 Latino voters nationwide to vote in November 2012. This conservative estimate omits many voters whose participation will be deterred or prevented, but whose numbers cannot be reliably estimated at this time due to deficits in the data available. It also does not account for the likely, but unquantifiable, negative effect of confusion about applicable voting laws, and of the discouraging environment that will be created if states view would-be voters with suspicion and subject them to added scrutiny. The number of Latino voters who would have found it harder to vote in November 2012 would have been much greater if litigation based on the Voting Rights Act and other protective laws had not halted implementation of voting restrictions in several states. More than 835,000 Latino voters remain at serious risk of being negatively affected by restrictive voting laws that may or will enter into effect in 2013 and beyond. Finally, the foregoing numbers do not reflect the detrimental impact of these measures in perpetuating misinformation about election policies; their enactment is based on erroneous assumptions about alleged voter fraud and fosters anti-Latino and anti-immigrant sentiment.

Table 1 lists states that have adopted restrictive voting policies effective in November 2012. Where available data enable the calculation of an estimated number of Latino voters likely to be negatively affected, that number is included.

Table 1

Measures in effect in Election 2012					
	Voter ID	Proof of Citizenship	Early Voting	Third Party Registration	Non-Citizen Removal from Voter Rolls
Alaska	*	N/A	N/A	N/A	N/A
Arizona	*	**	N/A	N/A	N/A
Colorado	*	N/A	N/A	N/A	*
Florida	N/A	N/A	124,000	*	*
Georgia	41,000	*	*	N/A	N/A
Illinois	N/A	N/A	N/A	*	N/A
Indiana	23,000	N/A	N/A	N/A	N/A
Kansas	18,000	N/A	N/A	N/A	N/A
Mississippi	N/A	*	N/A	N/A	N/A
Missouri	*	N/A	N/A	N/A	N/A
North Carolina	N/A	N/A	N/A	N/A	*
Ohio	*	N/A	*	N/A	N/A
Tennessee	13,000	*	N/A	N/A	N/A
Texas	N/A	N/A	N/A	*	N/A
Utah	*	N/A	N/A	N/A	N/A
Virginia	*	N/A	N/A	N/A	N/A
West Virginia	N/A	N/A	*	N/A	N/A
Wisconsin	N/A	N/A	*	*	N/A
Totals	At least 95,000	*	At least 124,000	*	*

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

** As of April 2012, pursuant to court order, voters may register without providing proof of citizenship using the standard federal voter registration form; Arizona, however, still requires registrants using its state-produced form to include proof of citizenship.

(Table 2, with analysis of restrictive voting policies which will or may enter into effect between November 2012 and 2014 appears on the next page.)

Table 2 lists states where restrictive voting policies will, or may, enter in effect between November 2012 and November 2014. Where available data enable the calculation of an estimated number of Latino voters likely to be negatively affected, that number is included.

Table 2

Measures which will not yet be in effect in 2012			
	Voter ID	Proof of Citizenship	Non-Citizen Removal from Voter Rolls
Alabama	9,000	*	N/A
Arizona	N/A	*	N/A
Georgia	N/A	N/A	*
Iowa	N/A	N/A	*
Kansas	N/A	*	*
Michigan	N/A	*	*
Minnesota	13,000	N/A	N/A
Mississippi	4,000	N/A	N/A
Missouri	14,000	N/A	N/A
Pennsylvania	62,000	N/A	N/A
South Carolina	12,000	N/A	N/A
Texas	699,000	N/A	N/A
Virginia	N/A	N/A	*
Wisconsin	22,000	N/A	N/A
Totals	At least 835,000	*	*

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

The danger that these state initiatives pose to Latino voter participation and to the success of American governance could expand exponentially in the event of their continued dramatic proliferation across the map. Already, the movement to make elections less accessible has detracted significantly from the attention rightfully due to the problem of increasing voter turnout. The greater the percentage of the electorate that Latinos constitute, the more that we need full Latino civic participation in order to remain a strong and representative democracy.

While continuing successful efforts to limit the impact of restrictive state voting laws, advocates for the right to vote must shift national attention and discourse back to the matter of increasing Latinos' and other voters' registration and turnout. Only by doing this work will we achieve full racial and ethnic equity in elections and government.

Latino Voters at Risk:

The Impact of Restrictive Voting and Registration Measures on the Nation's Fastest Growing Electorate

I. Introduction

As the U.S. Latino population has grown over the course of the last 150 years, eligible Latino voters have faced a battery of political and socio-economic challenges that have impaired their participation in elections. On top of the existing unique challenges facing potential Latino voters, emergent state laws and policies that make it harder to vote are having an increasing, disproportionate negative impact on Latino voter turnout. In order to help inform the public dialogue about these developments, in this paper, the NALEO Educational Fund presents our conservative estimate indicating that recent restrictive changes in election procedure may deter or prevent the casting of more than 219,000 Latino votes in November 2012, and may similarly affect more than 835,000 additional Latinos during the 2013 and 2014 election cycles. Our estimate excludes many Latinos who will find it harder to vote in November 2012, but whose numbers cannot be reliably quantified because of the unavailability of necessary data and information. The rising prominence of voting restrictions draws attention and resources away from the more urgent need to increase voter registration and turnout rates, in the interest of sustaining a strong and effective democracy. While maintaining efforts to redress the lack of voting information available to, and failures to engage, the Latino electorate, advocates for the right to vote must work to limit the effects and expansion of laws and policy that pose barriers to the ballot box.

The Rise and Potential of the Latino Vote

The Latino vote is growing in prominence. In the Presidential election of 2000, nearly 6 million Latinos voted, accounting for 5.35% of all votes. By 2008, Latino voter turnout reached a historic 9.7 million, 7.43% of votes cast. The NALEO Educational Fund projects that 12.2 million Latino voters will go to the polls in November 2012.

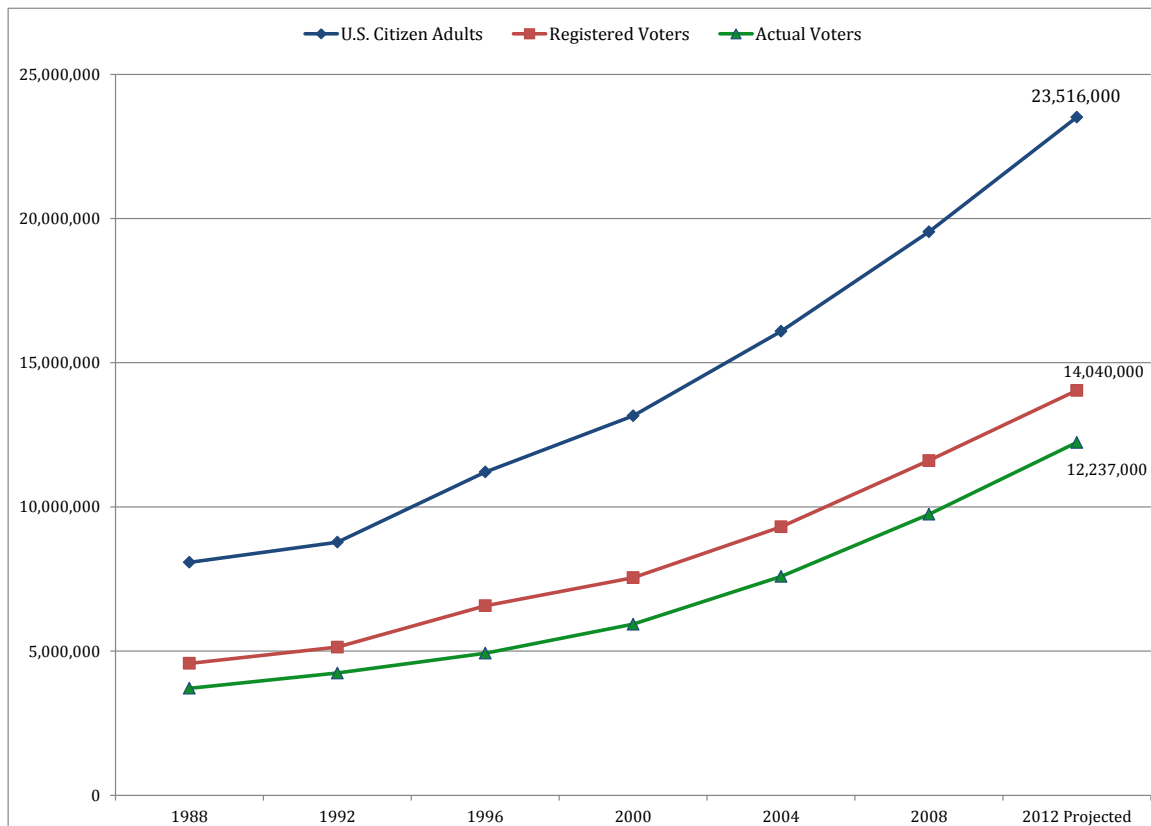
Raw numbers do not truly capture the pivotal importance of the Latino vote. Robust Latino support helped President George W. Bush (R) carry Florida in 2000 and 2004; the state was, in turn, key to President Bush's wins over then-Vice President Al Gore (D) and Senator John Kerry (D-MA). In 2008, Latino voters were indispensable to President Barack Obama's (D) victories in a number of states whose Electoral College votes had gone previously to President Bush. In Colorado, Florida, Indiana, Nevada, New Mexico and Virginia, the Latino vote for President Obama either exceeded or significantly contributed to his margin of victory.¹ Many of the states likely to determine the outcome of the 2012 election are, once again, states with a significant and rapidly growing Latino electorate, such as Florida and Colorado.²

¹ See generally, e.g., Julia Preston, *In Big Shift, Latino Vote Was Heavily For Obama*, N.Y. TIMES, Nov. 7, 2008, at A24 (noting that, for example, a majority of Florida Latinos voted for a Democratic candidate for President for the first time since 1988).

² Polling in both jurisdictions has consistently found President Obama and Governor Romney in a virtual dead heat, and the projected 1.6 million Latino votes that will be cast this year in Florida, and 225,000 Latino votes expected in Colorado, are larger than the margins of victory in each state in the 2008 Presidential election. E.g., Adam C. Smith, *Barack Obama, Mitt Romney Essentially Tied In Florida, New Times/Herald/Bay News 9 Poll Shows*, TAMPA BAY TIMES, Sept. 23, 2012, available at <http://www.tampabay.com/news/politics/national/barack-obama-mitt-romney-essentially-tied-in-florida-new-timesheraldbay/1252518>; John Ingold, *Colorado Presidential Election Poll Shows Obama, Romney*

Underpinning the increasing prominence of the Latino vote is the overall dramatic growth of the Latino population in the United States. Between the 2000 and 2010 Decennial Censuses, the number of Latino U.S. residents grew by more than 15 million, or 43%. The Latino population increase exceeded half of the total population increase in the United States in the last decade. By 2050, the Census Bureau projects that one third of all U.S. residents will be Latino. Latinos are already the second largest population group in the country.

By the numbers, Latinos are poised to play a central role in American civic affairs and governance. But Latinos have not yet achieved the level of civic participation that would enable them to fully realize the political potential of their growth. In 2008, while 64.7% of eligible African American voters and 66.1% of eligible white voters cast ballots, only 49.9% of Latino U.S. citizen adults came to the polls.³ Historically, Latino voter registration and turnout rates have not kept pace with increases in the population of Latinos eligible to vote, and if the trend of recent years continues, the gap between the number of eligible and participating Latino voters will grow larger.



Source: U.S. Census Bureau, *Voting and Registration in the November Elections: 1988-2008* and NALEO Educational Fund projections based on data from this source.

Tied, DENVER POST, Sept. 16, 2012, available at http://www.denverpost.com/nationalpolitics/ci_21553979/colorado-presidential-election-poll-shows-obama-romney-tied.

³ U.S. Census Bureau, *Voting and Registration in the Election of November 2008 – Detailed Tables, Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States Table 2*, available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

Causes of Relatively Low Latino Civic Participation

The relatively low Latino voter participation rates have roots in a number of social and historical factors, including past intentional discrimination against the Latino electorate. Prior to passage of the Voting Rights Act of 1965 (VRA), the landmark legislation which provided safeguards against discriminatory voting and election practices, voters had limited recourse against policies that selectively denied the right to vote to Latinos. It was not until the extension of the VRA to cover jurisdictions that had employed literacy tests, in 1970, and to require language assistance at polling places in certain jurisdictions with significant U.S. citizen populations not yet fluent in English, in 1975, that Latino voters were fully empowered by the law to be equal participants in American elections.

Other structural barriers to Latino voting exist, such as the lack of compliance by certain jurisdictions with these VRA mandates to provide language assistance to Latinos who are not yet fully proficient in English. In addition, significant percentages of prospective Latino voters are young and citizens by naturalization, and do not have extensive voting experience and knowledge. Socio-economic characteristics of the Latino population negatively affect its access to the kind of information any person needs to successfully cast a ballot. Finally, political parties and candidates have tended to neglect Latino voters in favor of reaching out to groups of citizens who are already active and prolific participants in the political process, an approach that deepens Latino voters' isolation and increases the likelihood that they will decline to vote.

Exacerbating the effects of what is already a challenging context for Latino voters, widespread enactment of state laws that make it harder for certain Americans to vote began in the mid-2000s, and picked up considerable steam in 2011 and 2012, just as public interest in the unprecedented growth of the Latino population has intensified. In 2004, Arizona voters approved Proposition 200, which obligated would-be new registrants to display documentary proof of their U.S. citizenship before being added to the state's voter rolls. In 2005, Indiana and Georgia enacted strict laws requiring voters to present government-issued photo identification (ID). By the end of August 2012, four additional states had added citizenship verification requirements, and eight more states had adopted strict voter ID mandates. Eight states also moved to reverse what had been a trend⁴ toward increasing access to registration opportunities and expanding voting periods. The state of Florida spearheaded a multi-state embrace of aggressive efforts to remove alleged non-citizens from registration lists.

In this paper, we examine the impact of these developments on the ability of Latinos to participate in the November 2012 election. We discuss how each type of state activity (voter ID mandates, proof of citizenship requirements, limits on early voting and the ability of non-governmental agencies to register voters, and efforts to remove alleged non-citizens from registration lists) will affect Latino voters in various states.

We estimate that new restrictive voting laws will prevent or make it more difficult for more than **219,000** Latino voters to cast ballots in the November 2012 election. Of this total, approximately 95,000 voters lack government-issued photo IDs but will be required to provide such identification at the polls in Georgia, Indiana, Kansas, and Tennessee, and 124,000 would likely have voted on now-eliminated early voting days on which polls were previously open in Florida. In addition, there are more than **835,000** Latino voters still

⁴ *E.g.*, Stephen Knack, *Does "Motor-Voter" Work? Evidence From State-Level Data*, 57 *Journal of Politics* 796 (Aug. 1995) (documenting the significant number of states passing laws contemporaneous to the 1993 NVRA which expanded voter registration opportunities).

at risk beyond Election 2012, either because implementation of restrictions enacted in their home states has been temporarily halted by court or federal government action, or because such measures have not yet been, but are likely to be, implemented in 2013 or 2014. Many 2012 electoral races are in a dead heat and likely to be decided by narrow margins, and as a result, the disenfranchisement of even a relatively small number of voters by restrictive laws could have a significant effect on election outcomes.

Our estimates are conservative, because there are not data available for some states that would permit a confident projection of the size of the Latino electorate in 2012, or the impact of some of these measures. Moreover, the detrimental impact of these restrictions on Latino voters reaches beyond the voters they directly affect. These developments create confusion about election requirements for all voters, which may deter participation. Their enactment is based on erroneous assumptions about alleged voter fraud, which perpetuates misinformation about election policies and fosters anti-Latino and anti-immigrant sentiment.

Potential members of the electorate who have not decided whether to vote are likely to be discouraged by the aura of suspicion and mistrust that advocacy of restrictive laws fosters. Even in states where such measures have not actually entered into force, the suggestion that those who register voters and come to polls ought to be subject to strict rules and exacting scrutiny does little to persuade unengaged people to turn out to vote. Finally, at a time when the electoral participation of all Americans is low, these measures are a distraction from the real challenge facing the Latino community and our democracy as a whole - the need to promote policies and initiatives that will make voting and registration more accessible, and not less accessible, to all qualified U.S. citizens.

Democracy and Participation

Democracy does not produce a representative government, and cannot function as we hope that it will when significant numbers of citizens are discouraged or prevented from voting. As Latinos comprise larger shares of the electorate, the community's robust participation in elections becomes all the more crucial to the health and strength of American governance. In order to secure our long-term prosperity and place of international leadership as a beacon of freedom and democracy, we must mobilize Americans in general, and Latinos in particular, to participate fully in civic affairs. We must facilitate and increase, not obstruct, voter turnout.

II. Context of Emerging Voting and Registration Measures

Latino Voting Potential and Reality

State laws that make it harder to vote pose a threat to democracy because they are being adopted at a time when civic participation rates among Latinos have been detrimentally impaired by the combined impact of historical and present barriers to the ballot. These barriers, as well as demographic factors, are the key reasons that the level of Latino political engagement does not reflect the significant growth of the Latino population.

The most recent data available from the Census Bureau show that nearly 52 million Latinos live in the United States. Projections based on the 2000 Census estimate that our Latino population will number more than 66 million by the time the next Census is taken in 2020. While the continued growth of the community is a certainty, Latino population increase does not automatically produce commensurate increase in the Latino electorate. While more than 78% of whites and 69% of African Americans who live in the United States are adult American citizens, fewer than 44% of Latinos meet these eligibility requirements to vote.

Several salient factors affect the share of Latinos who are adult U.S. citizens eligible to vote. The U.S.-resident Latino population is disproportionately young: about one third are under the age of 18. While these millions of young people represent future electoral strength, at present they are a major source of the disparity between the size of the Latino population and the size of the Latino electorate. Latinos are also, compared to counterparts, disproportionately non-citizens. Adult foreign nationals comprise 23.0% of the Latino population, compared to 3.7% of African American U.S. residents and a mere 1.4% of white U.S. residents. As is true of Latino youth, Latino non-citizens represent potential, but as-yet unrealized, electoral strength. More than 3.8 million Latino legal permanent residents are currently eligible to naturalize, and more individuals are constantly joining their ranks. Significant barriers exist, however, that impair the ability of these Latinos to become citizens. Adjusted for inflation, the cost of applying for naturalization has risen by 400% since 1995. Demand for English and civics courses that prepare legal permanent residents to pass the citizenship examination has grown to far outpace the availability of such classes.

In addition, the nearly 24 million⁵ Latinos who are eligible to vote have not yet met their potential to participate in elections. While Latino voter turnout has steadily increased over the course of the last several Presidential elections, it has not reached 50% during any national election held since 2000.

Adult U.S. Citizen Latinos		Actual Latino Voters	
Year	Eligible Latinos	Number	% of Eligible
2000	13,159,000	5,934,000	45.1%
2004	16,088,000	7,587,000	47.2%
2008	19,537,000	9,745,000	49.9%

Source: U.S. Census Bureau, *Voting and Registration in the November Elections: 2000—2008*

⁵ Mark Hugo Lopez, Seth Motel, Eileen Patten, *A Record 24 Million Latinos Are Eligible to Vote, But Turnout Rate Has Lagged That of Whites, Blacks* (Oct. 1, 2012), available at <http://www.pewhispanic.org/2012/10/01/a-record-24-million-latinos-are-eligible-to-vote/>.

Historical Discrimination Against Latino Voters

A complex web of factors has created the present environment in which too many members of the Latino electorate do not exercise their right to vote. These factors begin with the long history of both open and covert discriminatory actions that have prevented and deterred Latino voter participation. As early as the first half of the 19th century, delegates to Texas's constitutional convention who were preparing for U.S. statehood attempted to preclude the territory's Mexican Americans from the franchise. A second attempt originated in Texas in the 1890s to prohibit people of Mexican heritage from becoming naturalized American citizens and gaining the right to vote. In the following years, numerous Texas jurisdictions prohibited Latino voters from participating in primary elections.

Literacy tests that demanded proof of English competency as a prerequisite to voter registration were widespread prior to passage of the VRA, and the Supreme Court's 1966 decision in *Cardona v. Power*, upholding the ability of the federal government to prevent states from requiring demonstrations of English literacy from citizens educated in American schools. This particular decision invalidated New York's literacy test that had been put in place in 1922, a short time after Puerto Ricans gained U.S. citizenship and began to migrate to New York, in particular, in greater numbers.⁶ California adopted an English literacy prerequisite for voters in 1894; Arizona required voters to demonstrate their English literacy beginning in 1912, in an acknowledged attempt to deter the "ignorant Mexican vote," as one distinguished Arizonan of the time put it⁷. Later, after Southwestern states experienced peaks in Latino population during the 1920s, 30s, and 40s, targeted efforts like Operation Eagle Eye in Arizona arose to strictly enforce voter qualifications: volunteers with this program questioned would-be Latino voters about their residence and ability to read and understand English.⁸

The U.S. Civil Rights Commission's 1960s and 70s-era reports on the state of the voting rights of under-represented Americans offer further confirmation of the depth and breadth of historical discrimination against Latino voters, in both their positive findings and omissions. Though Latinos had been the target of attempts to bar access to the ballot box since the Western expansion of the nation's borders first incorporated and made American citizens of significant numbers of Latinos, the Commission's 1965 report on initial implementation of the VRA focused nearly exclusively on African American voters and the effect of literacy tests and other barriers on their exercise of the franchise. The plight of Spanish-speaking voters facing English literacy tests in New York merited only three lines in a report that was 78 pages long.⁹

The Commission's 1975 report on the state of voting rights, in contrast, documented the ongoing occurrence of discrimination against Latino voters in particular. The report cited evidence that officials had designated limited and remote registration locations in jurisdictions in which concentrations of Latino voters lived, for example, and selected registration personnel who were ill-equipped to communicate with prospective Latino

⁶ *E.g.*, CARMEN TERESA WHALEN, *THE PUERTO RICAN DIASPORA: HISTORICAL PERSPECTIVES 1-3* (Carmen Teresa Whalen & Victor Vazquez-Hernandez eds., Temple University Press 2005).

⁷ The speaker was Colonel William Herring. DAVID R. BERMAN, *ARIZONA POLITICS AND GOVERNMENT: THE QUEST FOR AUTONOMY, DEMOCRACY, AND DEVELOPMENT* 48-49 (University of Nebraska Press 1998).

⁸ *E.g.*, Chandler Davidson, Tanya Dunlap, Gale Kenny, & Benjamin Wise, *Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – Or Both? A Report to the Center for Voting Rights & Protection* 17-39 (Sept. 2004), available at http://www.votelaw.com/blog/blogdocs/GOP_Ballot_Security_Programs.pdf.

⁹ U.S. COMMISSION ON CIVIL RIGHTS, *THE VOTING RIGHTS ACT...THE FIRST MONTHS* 26, 75 (1965), available at <http://www.law.umaryland.edu/marshall/usccr/documents/cr12V942.pdf>.

voters, or even hostile to their participation. States including Arizona, California, and New York earned special mention for policies of removing voters – disproportionately Latino – from registration rolls without providing notice of removal in any language other than English. English-speaking poll workers and English-only signage confounded Latino voters’ attempts to cast ballots.¹⁰ Commission staff reported that long-term history played an important role in the ability and willingness of Latino voters to navigate obstacles to voting, writing that Mexican American voters who “have been scared away from registering or voting in the past are reluctant to try now.”¹¹

As Congress was debating the 1975 extension of the VRA providing for language assistance at the polls for the first time, explicit discussion of discrimination against Latino American voters took center stage. Celebrated civil rights leader and U.S. Representative Barbara Jordan addressed the topic in her remarks on February 19, 1975, saying,

“Nearly all the forms of discriminatory voting practices suffered by blacks in the South are being suffered by Mexican Americans in the Southwest. When Mexican Americans tried to register in one town they were told the registrar ran out of printed forms. Polling places have been located in places where only whites normally congregate. There have been instances where Mexican American ballots have been consistently challenged, causing voters to appear in court and attempt to recognize their ballot among many thousands cast. Jurisdictions have apportioned themselves to minimize the effect of the Mexican American vote. These and other specific instances of voting discrimination against Mexican Americans will be presented to the subcommittee.”¹²

In sum, by the time Congress explicitly affirmed and protected Latino voting rights, Latino voters had been subjected to more than one hundred years of seldom-interrupted, directed efforts to bar them from the ballot box. This historical discrimination significantly contributed to lagging Latino participation rates - the Census Bureau’s 1972 post-election survey, for example, found that only 46.0% of Mexican Americans and 52.7% of Puerto Ricans reported being registered to vote, compared to 65.5% of African Americans and 73.4% of whites.¹³ Moreover, the historical denial of Latino voting rights laid the foundation for the pattern of relatively low Latino voting and registration rates which persists to this day.

Inadequate Language Assistance Compliance

Though Congress has provided for strong protection of Latinos’ right to vote, imperfect implementation of protective measures has created barriers to voter turnout. The notion that Americans who are not yet fully fluent in English should be accommodated at polling places, first enshrined in 1965 in Section 4(e) of the VRA, came in for immediate attack. Before the end of 1966, the U.S. Supreme Court had upheld ballot accessibility for Spanish-dominant Puerto Ricans not once, but twice.¹⁴ Advocates have consistently come

¹⁰ U.S. COMMISSION ON CIVIL RIGHTS, THE VOTING RIGHTS ACT: TEN YEARS AFTER 74-75, 78, 86-87, 109, 114-16 (Jan. 1975), available at <http://www.law.umaryland.edu/marshall/usccr/documents/cr12v943a.pdf> [hereinafter CCR VRA Report 1975].

¹¹ *Id.* at 201.

¹² 121 CONG. REC. H3685 (1975), available at <http://www.avoiceline.org/assets/txu-oclc-2437919-094-1-121-03-c/txu-oclc-2437919-094-1-121-03-c.pdf>.

¹³ CCR VRA Report 1975, *supra* note 10, at 57.

¹⁴ In *Cardona v. Power*, 384 U.S. 672 (1966), mentioned above, and *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

forward to oppose reauthorization¹⁵ of Section 203 of the VRA, which has required certain jurisdictions with significant populations of U.S. citizens who speak English less than very well to offer language assistance at polling places since 1975. Subject jurisdictions have also resisted the VRA's mandates in a less-noisy way – through lackluster compliance – provoking a steady stream of enforcement actions by the Department of Justice and private litigants.¹⁶ Common problems with implementation have included inadequate numbers of bi-lingual workers at polling places, voting materials that are not translated well or available only in insufficient numbers, and, in the increasingly digital age, failures to include translations on websites and through other mediums.¹⁷ Such violations make it harder for potential Latino voters – more than 4,500,000 of whom nationwide may need language assistance to vote – to participate in elections.¹⁸

Voting and Latino Demographics

Modern-day circumstances and characteristics of the Latino community have exacerbated the enduring effects of discrimination and structural barriers facing Latino voters. The Latino electorate consists prominently of newer voters. In 2008, more than 30% of Latinos eligible to vote were aged 18-29, and more than 26% were naturalized citizens – both groups in which many members will not, by definition, have extensive experience as voters. Inexperienced voters, in turn, are less likely to be equipped with the basic tools needed to cast a vote: knowledge of where and how to register and confirm registration; familiarity with one's polling place and days and times designated for voting; and ability to obtain whatever documentation is required to prove one's eligibility to vote.

Just as extensive experience as a voter makes one more well-informed about election procedures, higher levels of education, income, and housing stability are associated with possession of the knowledge prerequisite to successfully casting a ballot.¹⁹ The more education a voter possesses, the more likely s/he is to have studied

¹⁵ E.g., James Thomas Tucker, *The Battle Over 'Bi-Lingual Ballots' Shifts to the Courts: A Post-Boerne Assessment of Section 203 of the Voting Rights Act*, 45 HARV. J. ON LEGIS. 507, 510 nn. 16-17 (2008) (describing Congressional testimony delivered in opposition to Section 203 in 2005 and 2006).

¹⁶ E.g., *Chinese for Affirmative Action v. Leguennec*, 580 F.2d 1006 (9th Cir. 1978) (concerning complaints by Asian American and Latino voters that the City of San Francisco did not timely provide registration materials, ballots, or voting machines that could operate in any language other than English); *United States v. Metropolitan Dade County*, 815 F. Supp. 1475 (S.D. Fla. 1993) (concerning local officials' failure to order translated documents explaining changes in voting procedures); *United States v. Berks County, PA*, 277 F. Supp. 2d 570 (E.D. Pa. 2003) (concerning denial of voting assistance to Spanish-speaking Latino voters); *United States v. Lorain County, OH*, No. 1:11-cv-02122-SO (N.D. Ohio filed Oct. 7, 2011) (concerning failure to make elections adequately accessible to thousands of Spanish-speaking residents of Puerto Rican descent).

¹⁷ E.g., Angelo Ancheta, *Language Accommodation and the Voting Rights Act*, in VOTING RIGHTS ACT REAUTHORIZATION OF 2006 299 (Ana Henderson ed., Berkeley Public Policy Press 2007).

¹⁸ Cf., e.g., Daniel J. Hopkins, *Language Access and Initiative Outcomes: Did the Voting Rights Act Influence Support for Bilingual Education?* 26 (Dec. 16, 2009) (unpublished manuscript presented to the 2009 Conference on Empirical Legal Studies, available at <http://polmeth.wustl.edu/media/Paper/cadraft5.pdf> (calculating on the basis of Latino voter surveys that a hypothetical Latino voter who speaks little English would turn out to vote 50.8% of the time if living in a jurisdiction that does not provide election-related language assistance, but 62% of the time if able to take advantage of language assistance); Michael Jones-Correa, *Language Provisions Under the Voting Rights Act: How Effective Are They?*, 86 SOC. SCIENCE Q. 549 (Sept. 2005); KARTHICK RAMAKRISHNAN, *DEMOCRACY IN IMMIGRANT AMERICA: CHANGING DEMOGRAPHICS AND POLITICAL PARTICIPATION* (Stanford University Press 2005).

¹⁹ Voting rates are highest among those with the most education, income, and housing tenure, and rise steadily with incremental increases in each measure. U.S. Census Bureau, *Voting and Registration in the Election of November 2008* –

and practiced the basics of voting. Income enables access to a great number of tools that facilitate voter participation, including internet access and identity documents such as driver's licenses and passports. Housing stability decreases the effort and information-gathering needed to vote: movers may be obligated to re-register, locate a new polling place, and obtain new identity documentation to preserve their voting rights.

Fewer prospective Latino voters than voters of other races and ethnicities benefit from the extended education, high income, and stable home ownership that are associated with strong propensity to vote. Over the course of the past two decades, Latino students have experienced consistently higher school dropout rates than students of any other race or ethnicity; in 2010, just over 15% of Latinos aged 16-24 were not in school and had not earned a high school diploma or GED, compared to slightly more than 5% of white young people, 8% of African Americans, and more than 12% of Native Americans.²⁰ Given the logical relationship between educational attainment and earnings potential, it is not surprising that Latinos' income is low relative to that of U.S. residents of other races and ethnicities. The most recent Current Population Survey data on the weekly pay of workers employed full time, for example, show that Latinos earn a median \$576, to African American workers' \$637, white workers' \$792, and Asian workers' \$930. These figures do not take into account unemployment, which as of August 2012 affected 10.1% of Latinos but only 7.2% of whites.²¹ Income, in turn, is a major determinant of whether a voter maintains or must change his or her housing arrangements. Since Latinos have been acutely affected by unemployment in the present economic downturn, it stands to reason that the community has also been disproportionately affected by foreclosures: among borrowers who took out mortgages between 2005 and 2008, for example, about 8.0% of Latino homeowners lost their dwellings to foreclosures, compared to only about 4.5% of white homeowners.²²

Everything we learn from statistics about the youth, inexperience, and socio-economic assets of potential Latino voters that indicate their probable lack of information about voting is confirmed by analysis of calls from Latino voters to 888-VE-Y-VOTA²³, the national bi-lingual voter assistance hotline. Most calls to the hotline come from voters seeking information about the mechanics of registering and voting. On one representative day, September 25, 2012, 83% of callers had questions about registration; among them, the most common were questions about whether the caller was registered already (32%) and where to register (39%). Questions about voting, including absentee voting (7%) and the locations of polling places (4%) accounted for nearly all remaining calls. These inquiries illustrate the kind of fundamental information that prospective Latino voters too often do not have.

Detailed Tables, Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Educational Attainment Table 6; *Reported Voting and Registration of Family Members, by Race, Hispanic Origin and Family Income* Table 9; *Reported Voting and Registration, by Race, Hispanic Origin, Duration of Residence, and Tenure (All races)* Table 10, available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

²⁰ National Center for Education Statistics, Institute of Education Sciences, Department of Education, *The Condition of Education 2012* Indicator 33, NCES 2012-045 (2012), available at <http://nces.ed.gov/fastfacts/display.asp?id=16>.

²¹ Bureau of Labor Statistics, *Employment status of the Hispanic or Latino population by age and sex* Table A-14 (Oct. 5, 2012), available at <http://www.bls.gov/web/empstat/cpseea14.htm>; Bureau of Labor Statistics, *Employment status of the civilian noninstitutional population by age, sex, and race* Table A-13 (Oct. 5, 2012), available at <http://www.bls.gov/web/empstat/cpseea13.htm>.

²² Tami Luhby, *Foreclosure Crisis Hits Minorities Harder*, CNNMoney.com, June 21, 2010, available at http://money.cnn.com/2010/06/18/news/economy/african-americans_latinos_foreclosure/index.htm.

²³ The NALEO Educational Fund manages the operation of this hotline, with support of members of the *Ya Es Hora* ("It's Time!") partnership (see www.yaeshora.info).

Lack of Voter Engagement Efforts Targeted At Latinos

The allocation of outreach and get-out-the-vote resources skews in the direction of the highest-propensity voters, and is an additional factor contributing to Latino voters' lack of information. Candidates and parties always operate with limitations, and take pains to determine the best possible use of the funding they have. Conventional wisdom advises against outreach to non-voters²⁴, and according to the historical evidence, a disproportionately large share of these non-voters who do not merit campaigners' time and energy are Latinos. As a former campaign manager for a San Antonio city council candidate recently wrote in the *New York Times*, "Time and again, Latinos and Anglos alike stressed to us that Latino voters, particularly younger ones, would not turn out come Election Day, no matter what we did. Engaging them — and spending precious campaign dollars on them — was quite simply a waste of time."²⁵ As evidence that most campaigns do accept this advice and make relatively anemic investment in messaging aimed at Latino voters, consider that even in the midst of unprecedented attention to the influence of the Latino vote, a *Washington Post* analysis of 2012 Presidential campaign advertising through September 23, 2012 found that spending on ads in Spanish ranked 30th on a list of topics, below such issues as Bain Capital and Newt Gingrich's qualifications.²⁶

Recent original research by the NALEO Educational Fund²⁷ finds that some potential Latino voters also have turned away from politics because they do not perceive the efficacy of their elected representatives, or the institutions they serve in. Some may even feel vilified by the political establishment, rather than appealed to or courted as constituents. In addition, some Latino potential voters have developed cynicism concerning the impact they can have as voters. A plurality of Latinos not yet registered to vote, for example, said that they had not registered because, "politicians...don't care about my opinion."

While many Latino non-voters agreed that it is important that their voices be heard — particularly in local elections, which are of greater interest to unregistered voters than national elections — many non-voters simply did not feel that a vote was enough to make one's voice heard when critical legislative decisions were made. In part, the doubt as to whether participation in elections matters may stem from mistrust of a political framework that many believe has often conflated Latinos with issues that are presented as being social ills, such as illegal immigration and lack of national linguistic unity.²⁸ As such, it is unsurprising that some

²⁴ The Candidate Project, for example, advises prospective office seekers, "Don't waste your resources on people who will never vote." Chris Mann, The Candidate Project, *Targeting Your Voters*, available at <http://candidateproject.org/cms/resources/mobilization/targeting-your-voters/>.

²⁵ Matt Platkin, *People Don't Vote When No One Asks Them To*, N.Y. TIMES CAMPAIGN STOPS BLOG, Sept. 3, 2012, <http://campaignstops.blogs.nytimes.com/2012/09/03/people-dont-vote-when-no-one-asks-them-to/>.

²⁶ Wilson Andrews, Jason Bartz, Jonathan Forsythe, Dan Keating, Hal Straus, James Wilkerson & Karen Yourish, *Tracking TV ads in the Presidential campaign*, WASHINGTON POST, Sept. 25, 2012, <http://www.washingtonpost.com/wp-srv/special/politics/track-presidential-campaign-ads-2012/v1/>.

²⁷ From a forthcoming study including focus groups and national poll of both non-participatory and unregistered potential Latino voters, to be released early 2013.

²⁸ One representative example can be found in the statements of proponents of Arizona's SB 1070 such as former State Senator Russell Pearce, who wrote, "Can we maintain our social fabric as a nation with Spanish fighting English for dominance... We are much like the Titanic as we inbreed millions of Mexico's poor... and we watch our country sink." Fox News Latino, *ACLU Says Emails by Arizona Immigration Law Sponsor Show Anti-Latino Bias*, July 20, 2012, <http://latino.foxnews.com/latino/politics/2012/07/20/aclu-says-emails-by-arizona-immigration-law-sponsor-show-anti-latino-bias/>.

Latinos would doubt their ability to positively influence a world of politics that they believe views their own community as problematic.

* * *

Well before state laws that make voting and registration more difficult became a rising trend, open discrimination and socio-economic and political circumstances dovetailed with one another to prevent Latino voters from reaching their potential, and even from drawing close to parity in participation with counterparts of other races and ethnicities. Voter mobilization advocates must not lose sight of this larger context in which voter ID and other restrictive laws arise; exclusive focus on any one or several of the factors at play may endanger the effectiveness of efforts to facilitate increasing, and full, Latino civic participation.

III. Impact of Restrictive Voting Laws in November 2012

Over the course of the past ten years, and particularly since 2010, a trend inimical to Latino voter participation has emerged, toward imposing restrictions and qualifications on voting at the state level. At present, 33 states require or request that a voter prove her identity each time she visits the polls by providing documentation displaying the voter's name and address. In 2012, 27 states saw legislation introduced that would have created or strengthened voter ID mandates. There are 35 states that regulate the activities of third party organizations that conduct voter registration drives, according to the Brennan Center for Justice.²⁹ The concept of closer control of elections to ensure their integrity generally garners support among Americans, a fact which makes it more likely that the trend has yet to reach its peak. A September 2012 poll of registered Pennsylvania voters found that 59% supported the state's voter ID law, for example³⁰; a University of Delaware survey conducted May-June 2012 found public support for ID laws ranging from 69% to 82%, depending on the framing of the question³¹.

The further restrictive laws spread, however, the more they threaten to selectively disenfranchise segments of the electorate. Voting rights experts have frequently observed and described the negative effect of laws that require documentary proof of voters' qualifications, and that reduce opportunities to register and vote, on voters of color, young people, the elderly, and disabled voters.³² The NALEO Educational Fund concludes, consistent with these analyses, that restrictive state laws that will be in effect for the November 2012 election will make it harder for more than **219,000** Latinos to cast ballots. This conservative estimate excludes numbers of Latino voters who are likely to be deterred or prevented from voting by laws and factors whose precise effect cannot be quantified due to lack of relevant information. In addition, more than **835,000** Latino voters are at future risk of being impaired or prohibited from voting by the operation of restrictive laws that have been temporarily stopped by courts from taking effect in 2012, as well as other pending laws that stand a significant chance of being implemented prior to the 2013 and 2014 election cycles.

²⁹ Diana Kasdan, Brennan Center for Justice at NYU School of Law, *State Restrictions on Voter Registration Drives* 12-53 (Aug. 21, 2012), available at http://brennan.3cdn.net/f7aa10de5668ff7b44_ldm6bvtm7.pdf. Note that a recent study by the U.S. Government Accountability Office (GAO) identifies 31 jurisdictions that regulate third party voter registration, plus 2 whose laws do not allow for third party registration drives at all, and 2 that maintain optional volunteer registrar programs. Edda Emmanuelli Perez and William O. Jenkins, U.S. GAO, *Elections: State Laws Addressing Voter Registration and Voting on or before Election Day* Enclosure IV (Oct. 4, 2012), available at <http://www.sanders.senate.gov/imo/media/doc/GAO-13-90R.pdf> [hereinafter *GAO State Election Laws Study*].

³⁰ Berwood A. Yost, G. Terry Madonna, Angela N. Knittle, and Kay K. Huebner, *Franklin & Marshall College Poll: Survey of Pennsylvanians Summary of Findings* 7 (Sept. 26, 2012), available at https://edisk.fandm.edu/FLI/keystone/pdf/keysep12_1.pdf.

³¹ David C. Wilson, *Public Opinion on Voter ID Laws: Strong Support, Shaky Foundation*, HUFFINGTON POST, July 18, 2012, http://www.huffingtonpost.com/david-c-wilson/public-opinion-on-voter-i_b_1683873.html.

³² *E.g.*, Wendy R. Weiser and Lawrence Norden, Brennan Center for Justice at New York University School of Law, *Voting Law Changes in 2012* (Oct. 3, 2011), available at http://www.brennancenter.org/content/resource/voting_law_changes_in_2012/; NAACP Legal Defense and Educational Fund, Inc. and NAACP, *Defending Democracy: Confronting Modern Barriers to Voting Rights in America* (Dec. 5, 2011), available at <http://www.naacp.org/pages/defending-democracy>; Chris Melody Fields, Jenny Flanagan, Ben Hovland, and Tova Wang, Demos/Common Cause/Lawyers Committee for Civil Rights Under Law/Fair Elections Legal Network, *Got ID? Helping Americans Get Voter Identification* (April 2012), available at <http://www.commoncause.org/gotid>.

Voter ID

The 33 states that either request or mandate that voters display personal identification before casting in-person ballots differ significantly in their approach to verification of identity. Some states have been careful to preserve the ability of every eligible voter to fulfill requirements: Connecticut, Delaware, and a number of other states permit voters without documentation to execute affidavits attesting under penalty to their identity, and thereafter to vote regular ballots. Other states such as Florida and Montana count the provisional ballots that voters without ID cast so long as voters' signatures on provisional ballots match their signatures on file with state officials. On the opposite end of the spectrum are states that, with only very limited exceptions, require every voter to present a government-issued identity document before his or her ballot is counted.

Congress enacted federal election reform legislation, the Help America Vote Act of 2002 (HAVA),³³ in the wake of problems in Florida and other states during the 2000 Presidential election. HAVA required states to implement voter ID requirements for certain first-time voters registered by mail for federal elections. At the time of HAVA's enactment, many voting rights advocates opposed those mandates because of the potential barriers they could create for under-represented communities. The states that have recently enacted the most restrictive voter ID laws impose requirements far more onerous than those of HAVA, and they have significant potential to prevent qualified Americans from casting ballots. Four states profiled below will have such laws in effect for the November 2012 Presidential election.

Impact on Latino Voters

Latino voters are less likely than many of their counterparts to possess, and to be able to obtain, one of the narrow list of identity documents the states highlighted below will require from voters. Whereas 11% of all Americans surveyed by the Brennan Center for Justice did not have a government-issued photo ID, for example, 16% of Latinos lacked such identification.³⁴ The disparate youth and lower income of the Latino

³³ HAVA requires such voters who have not submitted identity documentation at registration to display at polling places either a current, valid photo identification, current utility bill, bank statement, government check, paycheck, or another government-issued document that shows their name and address. In the alternative, states may waive the ID submission requirement once they gain the capacity to cross-check driver's license numbers or the last four digits of voters' social security numbers against independent state records. We use HAVA as a benchmark against which to compare voter ID laws because HAVA represents the minimum requirement to which new voters in all states are subject.

³⁴ Brennan Center for Justice at NYU School of Law, *Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification* (2006), available at http://www.brennancenter.org/dynamic/subpages/download_file_39242.pdf [hereinafter Without Proof]. The results obtained by the Brennan Center are consistent with the results of a number of similar surveys conducted in recent years. In Pennsylvania in 2012, 18.3% of eligible Latino voters did not have a current, valid photo ID reflecting their current legal name, compared to 14.4% of all eligible voters. Matt A. Barreto, Gabriel R. Sanchez, and Hannah Walker, *Rates of Possession of Valid Identification, and Public Knowledge of the Voter ID Law in Pennsylvania* 44 (July 16, 2012), available at <http://www.aclupa.org/downloads/BarretoReport.pdf> [hereinafter Pennsylvania ID Survey]. A similar poll conducted with registered voters in Milwaukee County, Wisconsin in December 2011 and January 2012 found 11.3% of Latinos, but only 6% of whites, lacking valid, unexpired photo ID. Matt A. Barreto and Gabriel R. Sanchez, *Rates of Possession of Accepted Photo Identification, Among Different Subgroups in the Eligible Population, Milwaukee County, Wisconsin* 36 (April 23, 2012), available at <http://www.aclu.org/files/assets/062-10-exhibitjexpertreport.pdf> [hereinafter Wisconsin ID Survey]. Analysis of results of the 2008 Collaborative Multi-Racial Political Study produced the conclusion that 11% of

electorate contribute to disparities in the rates of possession of identification documents. Young people and those with lower incomes are less likely to be drivers and to have acquired licenses; they are also less likely to have access to the funds and transportation needed to obtain a government-issued photo ID.³⁵ Latinos face additional logistical barriers to obtaining identification ranging from unavailability of language assistance to inaccessibility of ID-issuing agencies, many of which have limited hours that preclude those who cannot take time off from work from using their services. In Texas, to illustrate just one unique challenge, Latinos are nearly one third of the citizen voting-age population, but more than 60% of all eligible Texas voters who live more than 20 miles from the nearest state office that issues IDs.³⁶

States whose voter identification laws could negatively affect Latino voters in November 2012 are as follows.

Georgia

Georgia requires each voter to produce a government-issued or tribal identification card. This policy is not currently subject to any legal challenge, and was precleared in 2005 as required by Section 5 of the VRA.³⁷ Acceptable documents include driver's licenses and other non-driver state IDs, passports, military IDs, and employee ID cards issued by any subdivision of the federal, state, or local Georgia governments. Voters without identification may cast provisional ballots, but provisional ballots are not counted unless voters present the required identification to their county registrar's office within three days of Election Day.

As of 2011, the most recent year for which Census data are available, there were 254,929 Latino Georgia residents eligible to vote in the November 2012 election, and we estimate that approximately 41,000 of them may be prevented or deterred from voting by the state's ID law because they likely lack government-issued photo IDs. The impact of this law on Latino Georgians may be exacerbated by the fact that information and explanations regarding compliance with ID requirements that appear on the state's website do not appear to be available in Spanish.³⁸

likely Latino voters, but only 5% of likely white voters, lacked a state-issued identification card; further, 19% of Latinos but only 12% of whites in the study lacked a state ID that was unexpired and reflected the name and address under which the voter was registered. Gabriel R. Sanchez, Stephen A. Nuño, and Matt A. Barreto, *The Disproportionate Impact of Photo-ID Laws on the Minority Electorate*, May 24, 2011, available at

<http://www.latinodecisions.com/blog/2011/05/24/the-disproportionate-impact-of-stringent-voter-id-laws/>. See also Wendy Weiser, Keesha Gaskins, and Sundeep Iyer, 'Citizens Without Proof Stands Strong', Sept. 8, 2011, http://www.brennancenter.org/content/resource/citizens_without_proof_stands_strong/.

³⁵ See, e.g., Michael Sivak & Brandon Schoettle, *Update: Percentage of Young Persons With a Driver's License Continues to Drop*, 13 TRAFFIC INJURY PREVENTION 341 (July 20, 2012); John Pawasarat, Employment and Training Institute, University of Milwaukee-Wisconsin, *The Driver License Status of the Voting Age Population in Wisconsin* (June 2005), available at <http://www4.uwm.edu/eti/barriers/DriversLicense.pdf>; Pennsylvania ID Survey, *supra* note 35, at 30, 47-48, 53-54.

³⁶ Sundeep Iyer, Brennan Center for Justice, *Unfair Disparities in Voter ID* (Sept. 13, 2011), http://www.brennancenter.org/blog/archives/the_accessibility_of_texas_dlo_locations/.

³⁷ A limited number of states, counties and townships are covered by Section 5 of the VRA by reason of meeting criteria that indicate a history of discriminatory voting practices and depressed participation in elections by under-represented racial and ethnic groups. Prior to implementing any change in voting law or practice, these subject jurisdictions must obtain preclearance from either the Department of Justice or federal courts by proving that the proposed change will not deny or abridge voting rights on account of race, color, or membership in a language minority group.

³⁸ Georgia Secretary of State, *Georgia Voter Identification Requirements* (last visited Oct. 15, 2012), <http://www.sos.georgia.gov/gaphotoid/default.htm>.

Historical experience with a strict voter ID mandate in Georgia confirms that concern about its effect on Latino voters is warranted, in spite of the contentions of some ID law proponents. Between 2004 and 2008, the number of Latino votes cast in Georgia grew dramatically, from just over 18,000 to nearly 44,000 according to statistics published by the state. This increase, however, did not keep pace with the very significant growth of the Latino population and electorate in Georgia over the same period. When the relative numbers of Georgia Latinos registered to vote in 2004 and 2008 are taken into account, it becomes clear that Latino voter turnout declined in 2008 to 59.6% of registered voters, down from 60.5% in 2004.³⁹ This decline occurred in spite of the historic level of voter enthusiasm that raised the overall national voter turnout rate from 68.7% of registered voters in 2004 to 70.3% of those registered in 2008.⁴⁰

Indiana

Prior to voting, Indianans are required to display a photo ID with an expiration date that has been issued to the voter by either the federal or Indiana state government, except that an Indianan who votes at a precinct located in a licensed care facility in which he or she resides, or who has a religious objection to being photographed, is not required to show an ID. Provisional ballot voters must return with qualifying ID or to sign a statement attesting to their financial inability to obtain an ID within ten days of Election Day. The U.S. Supreme Court affirmed the constitutionality of this law in its 2008 decision in *Crawford v. Marion County Election Board*, 553 U.S. 181, and the policy is not currently subject to any other legal challenge.

The most recent data show that there were 143,694 Latino Indiana residents eligible to vote in 2011, and we estimate that approximately 23,000 of them do not already possess government-issued photo IDs and may be prevented or deterred from voting in November 2012 by the state's ID law. As in Georgia, the impact of this law on the state's Latino voters may be magnified by the fact that advice regarding compliance produced by the state does not appear to be available in Spanish.⁴¹

Indiana's U.S. Senate contest also provides an illustration of how restrictive voting and registration measures can have a critical impact on election races, even if the number of voters affected is relatively small. In the period leading to Election Day 2012, the contest for the U.S. Senate seat currently occupied by long-serving Senator Richard Lugar (R) of Indiana has been rated a toss-up by political observers.⁴² A tight margin of victory between Mr. Donnelly and Mr. Mourdock could potentially depend on the votes, or non-votes, of Latinos subject to Indiana's voter ID law. Margins of victory have sometimes been slim in national elections in Indiana in recent years. In 2008, President Obama won 49.9% of the vote in the state to Senator John

³⁹ This discussion draws from calculations produced and presented by the Brennan Center for Justice. Keesha Gaskins, Brennan Center for Justice, *Analyzing Minority Turnout After Voter ID* (March 15, 2012), http://www.brennancenter.org/blog/archives/analyzing_minority_turnout_after_voter_id/.

⁴⁰ These calculations are based on figures in the 2004 and 2008 Election Administration and Voting Surveys produced by the U.S. Election Assistance Commission. See KIMBALL W. BRACE AND DR. MICHAEL P. McDONALD, FINAL REPORT OF THE 2004 ELECTION DAY SURVEY 73 (Sept. 27, 2005); U.S. ELECTION ASSISTANCE COMMISSION, 2008 ELECTION ADMINISTRATION AND VOTING SURVEY 28, Table 30 (Nov. 2009) [hereinafter 2008 EAC Survey].

⁴¹ Indiana Secretary of State, *Photo ID Law* (last visited Oct. 15, 2012), <http://www.in.gov/sos/elections/2401.htm>.

⁴² E.g., Roll Call, *Race Details: Races By Rating* (last visited Oct. 15, 2012), available at http://www.rollcall.com/politics/2012_race_rating_map.html; Real Clear Politics, *Indiana Senate: Mourdock v. Donnelly* (last visited Oct. 15, 2012), http://www.realclearpolitics.com/epolls/2012/senate/in/indiana_senate_mourdock_vs_donnelly-3166.html.

McCain's (R) 49.0%; out of more than 2,700,000 votes cast, just 26,163 ballots separated the candidates.⁴³ The Latino population in Indiana that may be deterred or prevented from voting by restrictive policy is of a similar size. There were more than 14,600 Latino U.S. citizen teenagers in Indiana in 2008 poised to reach eligible voting age in time for the 2012 Presidential election. In order to obtain IDs to vote, these young people will each need to come up with least four identification documents law including two bills, contracts, checks, or other official government mail addressed to them at their home address – documents that many dependent students do not have. We estimate that 23,000 adult U.S. citizen Latino residents of Indiana in total do not already have the documentation needed to vote, a factor that may have contributed to the failure of more than 40,000 eligible Latino Indianans to cast ballots in 2008.

Kansas

Kansas voters must provide an unexpired photo ID in order to cast a ballot, except that voters older than 65 may present an expired ID, and exceptions are also provided for persons with permanent physical disabilities who are unable to obtain government-issued IDs, active duty uniformed service members and their spouses and dependents who are absent from the country on Election Day, and voters whose religious beliefs prevent the taking of their photographs. Voters who cast provisional ballots have until their county's canvass day, either the Monday or Thursday after Election Day, to supply their qualifying ID to election officials. Acceptable forms of identification are driver's licenses and non-driver state IDs, military IDs, passports, government-issued weapons permits and public assistance ID cards, employee IDs issued by a division of federal, state, or local government, Native American tribal identification, and student IDs issued by accredited post-secondary Kansas schools. This policy is not presently subject to any legal challenge.

As of 2011, there were 112,308 Kansas Latino residents eligible to vote in November 2012, and an estimated **18,000** of them lack valid government-issued ID and may be prevented or deterred from voting in 2012. As in Georgia and Indiana, the impact of this law on the state's Latino voters may be magnified by the fact that not all materials produced by the state to aid voters with compliance appear to be available in Spanish.⁴⁴

Tennessee

Tennessee's voter ID law requires individuals to present a state government-issued photo ID, passport, or military ID with photo. Exceptions are provided for voters who are hospitalized or are nursing home residents, and for voters whose religious beliefs prevent them from being photographed. Voters without ID who cast provisional ballots must present the required ID to officials within two days of Election Day. The City of Memphis has sued the state, concerned that its free library cards with photos will not be accepted as valid voter ID. This litigation is not expected, however, to delay or prevent the law from being implemented during this November's election.

By 2011, there were 81,362 Latino Tennesseans eligible to vote, but we estimate that approximately **13,000** of them do not have government-issued photo ID and may find it harder to vote in November 2012. As is

⁴³ *Election Results 2008: Indiana*, N.Y. TIMES (last visited Oct. 10, 2012), <http://elections.nytimes.com/2008/results/states/indiana.html>.

⁴⁴ Kansas Secretary of State, Elections Division, *Got Voter ID?* (last visited October 4, 2012), <http://www.gotvoterid.com/>.

true of a number of states hoping to enforce and implementing voter ID laws this fall, Tennessee does not appear to provide information about its law and obtaining a satisfactory ID in Spanish⁴⁵, which may worsen the law's impact on Latino voters.

States With Moderately-Restrictive ID Requirements

A second group of states employs a class of voter ID requirements that stop short of forcing most or all voters to display government-issued photo ID, but that nonetheless have the potential to disenfranchise an unknown number of Latino voters. The states in question – Arizona, Missouri, Utah, and Virginia – require voters to display one or more forms of acceptable identification that include documents without photos, such as bank statements, government checks, and utility bills.⁴⁶ Most voters who are unable to provide the requested identification may, as in strict ID states, cast provisional ballots that are not counted unless voters supply the necessary documents within a short time span post-election.⁴⁷ In Missouri, voters without ID may only vote if two supervising election judges personally know the voter and attest to his or her identity. Three additional states – Alaska, Colorado, and Ohio – similarly require designated photo or non-photo ID to be shown at polling places, but invest discretion in election judges to count provisional ballots based on verification of the information voters write on ballot materials, and do not require provisional voters to return to elections offices later with the required ID.⁴⁸ Nonetheless, each of these states has reported rejecting provisional ballots based on failure to provide sufficient identification to the Election Assistance Commission.⁴⁹

It is unclear precisely how many Latino voters may find it challenging to vote in these seven states, but there will be individuals at risk of disenfranchisement under moderate voter ID laws. It does not appear that any study has reliably measured the number of prospective voters who do not possess one or more of the expanded list of photo and non-photo IDs accepted by moderate ID states. Anecdotally, however, cases occur in the Latino community. The Mexican American Legal Defense and Educational Fund represented two such voters as a participant in litigation concerning Texas's voter ID law: Victoria and Nicole Rodriguez, 18 year old twin sisters. Neither sister has a driver's license, state ID, passport, or other photo ID acceptable for voting purposes under their state's new law.⁵⁰ The sisters also lack non-photo documents that display their address: they do not pay their own phone or other bills; do not have bank accounts or jobs; and have school transcripts and student IDs that do not include their address.⁵¹ The sisters also have non-address-bearing

⁴⁵ Tennessee Department of Safety and Homeland Security, *Voter Photo ID* (last visited Oct. 4, 2012), <http://www.tn.gov/safety/photoids.shtml>.

⁴⁶ Arizona and Utah require either one photo ID or two non-photo identification documents.

⁴⁷ In Utah provisional ballots may be counted if elections officials can verify voters' identities through some other means that they determine to be as reliable as a check of identification documents. Reports to the federal government reflect that this failsafe provision has not stopped Utah from rejecting some provisional ballots for lack of sufficient identification in recent elections. 2008 EAC Survey, *supra* note 41, at Table 36A.

⁴⁸ *E.g.*, State of Alaska, Division of Elections, *Questioned Voting* (last visited Oct. 2, 2012), http://www.elections.alaska.gov/vi_hv_quest_vote.php; Colorado Secretary of State, *Provisional Ballots FAQs* (Oct. 11, 2010), <http://www.sos.state.co.us/pubs/elections/FAQs/ProvisionalBallots.html>.

⁴⁹ *E.g.*, 2008 EAC Survey, *supra* note 41, at Table 36A; U.S. ELECTION ASSISTANCE COMMISSION, 2010 ELECTION ADMINISTRATION AND VOTING SURVEY Table 35A (Dec. 2011).

⁵⁰ Defendant-Intervenors' Proposed Supplemental, Non-Duplicative Findings of Fact and Conclusions of Law (Docket No. 241) at ¶¶ 23A-23H, *Texas v. Holder* (D. D.C. 2012) (No. 1:12-cv-00128 RMC-DST-RLW).

⁵¹ Telephone Interview with Nina Perales, Vice President of Litigation, Mexican American Legal Defense and Educational Fund (Oct. 2, 2012).

birth certificates and social security cards⁵², but in most states would struggle to provide acceptable proof of their residence and to meet either strict photo or moderate non-photo identification requirements.

A portion of the Latino voters in Alaska, Arizona, Colorado, Missouri, Ohio, Utah, and Virginia who do not already have valid government-issued photo ID are likely to find it harder to vote because of difficulty securing non-photo IDs that satisfy applicable requirements. For reference, the expected number of eligible Latino voters in each of these states who may not have a current photo ID is as follows:

State	Eligible Latino Voters	Projected Eligible Latino Voters Without Photo ID (16% of eligible voters)
Alaska	23,165	4,000
Arizona	879,733	141,000
Colorado	493,508	79,000
Missouri	86,344	14,000
Ohio	170,774	27,000
Utah	129,198	22,000
Virginia	235,097	38,000

Proof of Citizenship

At least some voters submitting new registration applications are or will be required to provide documents proving their U.S. citizenship in Alabama, Arizona, Georgia, Kansas, Mississippi, and Tennessee⁵³, another legislative development likely to negatively affect Latino voters. Generally, states accept driver's licenses and state IDs that contain an indication that the holder's citizenship has been verified, passports, U.S. birth certificates, and certificates of naturalization and citizenship issued by the Department of Homeland Security (DHS) as valid proof, in addition to other less common documents.

Impact on Latino Voters

Laws that require new registrants to provide proof of their U.S. citizenship affect a disproportionate number of Latinos. Voters with lower incomes are more likely to lack immediate access to proof of their citizenship than those with higher incomes.⁵⁴ Latinos, with lower median income than whites, African Americans, or Asian Americans and unemployment rates higher than average, are overrepresented in this group and among the estimated 7%⁵⁵ of eligible voters who do not have proof of citizenship documents.

Lower income Latinos are not only less likely than others to have documentation of citizenship, but more likely to encounter difficulties obtaining it. In nearly every case, voters must pay a fee for documents. Costs

⁵² *Latino lawmakers say Texas Voter ID law a hardship for minorities*, HOUSTON CHRONICLE, July 10, 2012, <http://blog.chron.com/txpotomac/2012/07/latino-lawmakers-say-texas-voter-id-law-a-hardship-for-minorities/>.

⁵³ New Hampshire also requires applicants registering in person to provide proof of citizenship, but allows applicants to satisfy the requirement by executing an affidavit affirming citizenship.

⁵⁴ Without Proof, *supra* note 35, at 2.

⁵⁵ *Id.*

range from a charge of, in most states, \$10-30⁵⁶ for a copy of a birth certificate, which may nonetheless be prohibitive for individuals with extremely tight budgets; to \$600 for a DHS-issued Certificate of Citizenship⁵⁷. There is almost always an effective tax levied against voters who do not already possess proof of their citizenship, but these voters are already lower income on average, and susceptible to disenfranchisement as a result of the imposition of such virtual poll taxes.

Costs are most likely to be high, and prohibitive, for naturalized Americans, nearly one third of whom are Latino according to the American Community Survey. At first glance, the least expensive option for a naturalized citizen without access to citizenship documentation is a U.S. passport, which costs \$55 for a card and \$135 for a book; however, naturalized citizens must provide a certificate of citizenship or naturalization in order to obtain a passport, so any such citizen without proof must obtain a replacement naturalization certificate, which costs \$345.⁵⁸

Naturalized citizens are also subject to targeted, disproportionate scrutiny in certain states with proof of citizenship laws. Only naturalized citizens are required to provide proof of citizenship at registration in Mississippi. In Tennessee, only individuals identified as potential non-citizens on the basis of cross-checks against state databases – most likely, those who submit immigration status-related documents to the state and subsequently naturalize – are asked to present documentation of U.S. citizenship.

Latinos are overrepresented among elderly Americans whose births were not officially recorded, another segment of society most likely to be negatively affected by proof of citizenship laws. Older voters born at home in the United States – a disproportionate share of them Latino – did not always have their births registered with states, as the practice was in the process of becoming standard during the first half of the 20th century.⁵⁹ In many states, such individuals must satisfy difficult or impossible evidentiary standards in order

⁵⁶ For example, a copy of a birth certificate from Maricopa County, Arizona costs \$20, Arizona Department of Health Services, *Office of Vital Records: Maricopa County Fee Schedule* (July 1, 2011), available at http://www.azdhs.gov/vitalrcd/Maricopa_fee_schedule.htm; \$25 in Georgia, Georgia Department of Public Health, *Vital Records: Birth Certificates* (last visited Sept. 26, 2012), available at <http://health.state.ga.us/programs/vitalrecords/birth.asp>; and \$15 in Nashville, Tennessee, Metropolitan Government of Nashville & Davidson County, Tennessee, Health Department, *Vital Records* (2011), available at <http://health.nashville.gov/VitalRecords.htm>. Though Kansas offers voters free birth certificate copies for voting purposes, it cannot guarantee this benefit for Kansas voters born outside the state.

⁵⁷ An application to U.S. Citizenship and Immigration Services for a Certificate of Citizenship costs \$600. U.S. Citizenship and Immigration Services, Department of Homeland Security, N-600 Application for Certificate of Citizenship (Feb. 29, 2012), available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=a936cac09aa5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>.

⁵⁸ U.S. Citizenship and Immigration Services, Department of Homeland Security, N-565 Application for Replacement Naturalization/Citizenship Document (Aug. 7, 2012), available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextoid=a910cac09aa5d010VgnVCM10000048f3d6a1RCRD>.

⁵⁹ See, e.g., Robert D. Grove, *Studies in the Completeness of Birth Registration; Part I, Completeness of Birth Registration in the United States, December 1, 1939, to March 31, 1940*, 17 VITAL STATISTICS SPECIAL REPORTS 224 (April 20, 1943); Alice Hetzel, U.S. Department of Health and Human Services, *U.S. Vital Statistics System Major Activities and Developments, 1950-95* 59 (1997), available at <http://www.cdc.gov/nchs/data/misc/usvss.pdf> (documenting that states with large Spanish-speaking and Native American populations were many of the last jurisdictions to enter the Census Bureau's birth registration area).

to obtain alternate proof of their nativity – in Arizona, for example, an applicant for a delayed birth certificate must submit the affidavit of a person with personal knowledge of the applicant’s birth, who was at least ten years old at the time of the birth.⁶⁰

Impact in Georgia, Mississippi and Tennessee

The scale of the negative impact of enacted proof of citizenship laws on Latino voters in the upcoming election is difficult to estimate for a number of reasons. Voters newly registering in Georgia and Tennessee may be required to comply with mandates to provide both proof of identity at polls, and proof of citizenship at registration. There is an unknown, but likely⁶¹, overlap between the voters who may be deterred or kept from voting by ID laws, who are counted above, and those potentially barred by proof of citizenship requirements. At the same time, there may be some voters in these states who possess proof of identity but not citizenship – for instance, those who have long held and repeatedly renewed state-issued IDs, but who have lost their birth certificates or other citizenship-related documents. In Mississippi, some negative impact on Latino naturalized citizens seems likely, but the relatively high margin of error that may be associated with the best possible estimate of the scale of that impact counsels against reliance.⁶²

Historical Experience of Disparate Impact in Arizona

In Arizona, a proof of citizenship requirement went into effect in 2005 which has had a deleterious effect on Latino voters. The 9th Circuit U.S. Court of Appeals invalidated the law in April 2012⁶³, and for most of the ensuing period⁶⁴, the state has been required to accept federal voter registration application forms not accompanied by documentary proof of citizenship. The state continues to require such proof with state-created registration forms, however, and the Secretary of State’s webpage on voter registration does not presently explicitly inform voters that they may submit a federal form without proof of citizenship.⁶⁵ To date, there does not appear to have been any survey conducted that would measure the number of unregistered Arizonans who erroneously believe they must obtain proof of citizenship to register, and who fail to complete the process as a result. Unregistered Arizonans are, however, disproportionately Latino on the whole – the most recent available data from the Census Bureau show that 66.0% of all eligible Arizona voters, but only 57.5% of eligible Latino Arizonans, were registered.

⁶⁰ ARIZ. ADMIN. CODE § R9-19-207 (2012).

⁶¹ See, e.g., Wisconsin ID Survey, *supra* note 35, at 34-35, Table 1, Table 3 (finding that 14.9% of a pool of eligible Latino voters surveyed lacked a current, valid photo ID and 18.9% of the same group lacked documentary proof of their U.S. citizenship); Pennsylvania ID Survey, *supra* note 35, at 25-26, 44, 46, Table 14, Table 16 (finding that among a pool of eligible Latino voters surveyed, 18.3% lacked a current, valid photo ID and 13.0% lacked documentary proof of their U.S. citizenship; noting overlap between two groups).

⁶² See *Sources, Methodology, and Explanatory Notes* Section, *infra*, for explanatory notes regarding the Current Population Survey.

⁶³ On October 15, 2012, the U.S. Supreme Court agreed to hear Arizona’s appeal of the 9th Circuit’s decision. As a result, reversal is again a possibility, and Arizona may be permitted in the future to refuse to accept any voter registration form not accompanied by proof of U.S. citizenship.

⁶⁴ Implementation of the 9th Circuit’s decision was temporarily suspended when the U.S. Supreme Court issued a Temporary Order Granting a Stay of the Mandate on June 14, 2012, but this decision again took effect when the full Supreme Court denied Arizona’s application for a stay and vacated the Temporary Order on June 28, 2012.

⁶⁵ Arizona Secretary of State, *Voter Registration and Education* (last visited Oct. 15, 2012), <http://www.azsos.gov/election/voterregistration.htm>.

Findings from the period of years during which proof of citizenship was required from every new Arizona registrant indicate disproportionate impact on Latino voters, and provide cause for concern about the potential effect of citizenship documentation mandates. One expert study submitted in the course of litigation concluded that while non-Hispanic Arizonans subject to the citizenship requirement registered at a rate 30% lower than that observed in the 31 months preceding its implementation, Latino Arizonans' registration rate dropped by 43% compared to its pre-citizenship mandate level.⁶⁶ Another analysis by Dr. Louis Lanier calculated that absent change in registration law, 162,900 new Latino registrations and 918,585 new non-Latino registrations should have been processed during the period in question. Actual Latino registrations were just 61% of the predicted total, while actual non-Latino registrations reached 67% of the expected level.⁶⁷ The evident disparate impact on Latinos of more exacting voter registration rules was exacerbated when researchers discounted the likely effect of a major private campaign to register Latino voters that was launched in May 2007.⁶⁸

Rejected voter registration applications, like successful registrations, provide evidence that Arizona's proof of citizenship requirement has disproportionately affected Latino voters. Latino Arizonans have been less likely to overcome the added barrier of citizenship verification: 11% of applicants who did register after initial rejection were Latino, but an outsized 20% of those who did not manage to register were Latino.⁶⁹ Under the citizenship mandate, Latinos were disproportionately rebuffed when they tried to register relative to their representation among all voter registration applicants, according to analysts.⁷⁰

Advocacy efforts to promote voter access would benefit from investigation of the extent to which voters in Arizona become aware and take advantage of the option they now possess, pending further Supreme Court review, to register with a federal form and without submitting proof of citizenship. It remains to be seen how the Supreme Court will handle the issue, and whether the 9th Circuit's ruling partially invalidating Arizona's law, which is controlling only in the states of Alaska, Hawaii, Washington, Montana, Oregon, Idaho, California, Nevada, and Arizona, will be extended to other states that have enacted or are considering similar policy. These and other factors will significantly affect the degree of influence proof of citizenship requirements exert in the coming years.

Early Voting Periods

Early voting availability and periods were generally expanding until several states recently enacted reductions, to the likely detriment of those states' Latino voters. A total of 33 states now offer early in-person voting, and 16 of these have started or extended such a program in the past ten years, while two more states have created pilot early voting procedures.⁷¹ But most recently, eight states have moved in the opposite direction, five of

⁶⁶ Gonzalez Plaintiffs' Proposed Findings of Fact (March 9, 2008) ¶ 684, *Gonzalez v. Arizona* (D. Ariz. 2008) (No. CV-06-1268-PHX-ROS (Lead)/No. CV-06-1362-PCT-JAT (Cons.)/No. CV-06-1575-PHX-EHC (Cons.) [hereinafter Gonzalez Findings of Fact].

⁶⁷ Joint Proposed Pretrial Order, Exhibit A (June 16, 2008) ¶¶ 1493-98, *Gonzalez v. Arizona* (D. Ariz. 2008) (No. CV-06-1268-PHX-ROS (Lead)/No. CV-06-1362-PCT-JAT (Cons.)/No. CV-06-1575-PHX-EHC (Cons.).

⁶⁸ *Id.* at ¶¶ 1499-1502.

⁶⁹ Gonzalez Findings of Fact, *supra* note 71, at ¶ 608.

⁷⁰ *Id.* at ¶¶ 613, 618.

⁷¹ GAO State Election Laws Study, *supra* note 30, at 85-105.

them making changes that will reduce early voting opportunities in the November 2012 Presidential election compared to the 2008 election cycle.

Impact on Latino Voters

Latino voters' use of early voting periods is growing and robust, so reducing early voting is likely to make casting a ballot more difficult for Latinos. As early voting has become more widespread, it has become more popular among voters from under-represented racial or ethnic groups, who outpaced white voters in casting early ballots in 2008.⁷² In 2006, 20.9% of Latinos voted early, increasing to 26.2% in 2010; in both years, a greater percentage of Latino voters visited the polls early than of all voters combined.⁷³

The appeal of early voting to Latino voters is likely to lie in the flexibility it affords those with many demands on their time, and in the likelihood of Latino participants in group weekend activities being invited to vote immediately in conjunction with those activities. Latino workers may have less flexibility in their jobs than counterparts, and less ability to visit polls during short designated periods. Special polling by the Department of Labor has revealed that year after year, fewer Latino workers than Americans of other races and ethnicities have reported being able to vary their work schedules, for example.⁷⁴ Latino voters are also more likely to have child-rearing duties that pose a barrier to getting to the polls within narrow windows of time. Recent American Community Survey results indicate that more than 37% of eligible Latino voters live with their own child or children below the age of 18, compared to just 28% of non-Latinos.

Observers attributed historic early voting turnout in 2008 to, in part, recruitment of voters at religious services⁷⁵, and Latino community leaders have made similar concerted efforts to engage voters in conjunction with their activities that take place while early voting offices are open. Religious organizations like the National Hispanic Christian Leadership Conference have undertaken widespread voter mobilization campaigns, particularly in recent years as it has increasingly become possible to vote on weekends before Election Day.⁷⁶ Other associations that aim to increase Latino voter turnout focus outreach around weekend activities at which community members gather, holding events at festivals, concerts, sporting events, and shopping centers in addition to churches. Reducing the effort required to vote is widely considered to increase turnout, while being asked to participate has a demonstrated positive effect on Latino voter turnout.⁷⁷

⁷² Teresa James, Project Vote, *Early In-Person Voting: Effects on Underrepresented Voters, Voting Turnout, and Election Administration 2* (Aug. 2010), available at <http://www.projectvote.org/early-voting.html>.

⁷³ Mark Hugo Lopez, Pew Hispanic Center, *The Latino Electorate in 2010: More Voters, More Non-Voters 9* (April 2011), available at <http://www.pewhispanic.org/files/reports/141.pdf>.

⁷⁴ E.g., Terence M. McMenamin, *A time to work: recent trends in shift work and flexible schedules*, 130 MONTHLY LABOR REVIEW 3, 4 (Dec. 2007), available at www.bls.gov/opub/mlr/2007/12/art1full.pdf.

⁷⁵ E.g., Interviews by the ACLU with Aaron Phillips, Sure House Baptist Church, Larry Harris, Mt. Olive Baptist Church, and Emmitt T. Caviness, Greater Abyssinia Baptist Church (last visited Oct. 3, 2012), available at <http://www.aclu.org/voting-rights/take-your-souls-polls-voting-early-ohio>.

⁷⁶ Matti Stevenson, *The National Hispanic Christian Leadership Conference Ready to Mobilize 16 Million Constituents to Vote Life, Family and Faith* (last visited Sept. 29, 2012), <http://www.nhclc.org/en/news/national-hispanic-christian-leadership-conference-ready-mobilize-16-million-constituents-vote-l>; Andrea Madambashi, *Hispanic Christian Leaders Encourage Young Latinos to Vote*, CHRISTIAN POST, Jan. 12, 2012, <http://www.christianpost.com/news/hispanic-christian-leaders-encourage-young-latinos-to-vote-66880/>.

⁷⁷ E.g., Matt A. Barreto and Stephen A. Nuño, *The Effectiveness of Co-Ethnic Contact on Latino Political Recruitment*, 64 POLITICAL RESEARCH QUARTERLY 448, 449, 453 (June 2011).

Thus, being asked to vote during leisure time and being able to do so immediately is likely to have positively influenced Latino voters' participation in elections and early voting periods in particular.

In the states that have reduced early voting periods since 2008, data on the race and ethnicity of early voters, and on the volume of early voting day to day, is not uniformly available. Primarily for this reason, the likely impact of early voting day reductions cannot be quantified in most cases. Statistics that are available from the most recent election cycle, however, indicate that more than 124,000 Latino voters would have cast ballots on now-eliminated early voting days, and may find it more difficult to vote in November 2012. States reducing early voting for 2012 are as follows.

Florida

Florida's 2011 legislative reduction of early voting days and hours targeted a particular day on which Latino voters were strongly represented among those who came to the polls, and may impair Latino voting in the counties in which it remains in full effect. The state moved to reduce the early voting period from 14 to eight days, and the minimum daily hours at early voting locations by two hours. Counties were given the option to offer as few as 48 total hours of early voting, and to offer different voting hours at different polling places within the same county. In addition, voting was prevented from occurring on the Sunday immediately before Election Day.

In the five Florida counties – Collier, Hardee, Hendry, Hillsborough, and Monroe – subject to Section 5 of the VRA, the Department of Justice initially opposed preclearance of the changes to voting hours on the basis of their likely discriminatory effect. After a federal District Court sided with the government and denied preclearance, likening the state's new early voting plan to one that would close specific polling places in disproportionately African American precincts, a compromise was negotiated. Election supervisors in each of the five subject counties agreed to provide early voting on the eight specified days for 12 hours each day, and in turn, the Department of Justice gave its approval for implementation. In a separate lawsuit, a coalition of voters and voting advocates is challenging the reduction of early voting in all Florida counties, arguing that the move violates the First Amendment, constitutional guarantees of the equal right to vote regardless of race, Section 2 of the Voting Rights Act, and the Florida Constitution. This case has not yet been resolved as of this writing, though a request for a preliminary injunction was recently denied. On balance, Florida's counties, with the partial exception of those subject to Section 5 of the VRA, will follow the new law for November 2012; Section 5 counties will uniformly provide for the maximum early voting period possible under the new law.

Impact on Latino Voters

Latino voters were active participants in early voting in Florida in 2008, and many thousands who might have voted on days when polling places will not be open in 2012 may find it more difficult to vote in the 2012 Presidential election. In 2008, at least 7.5% of all Latino votes in Florida were cast on the six now-eliminated days of voting⁷⁸, and 24.5% of all Latino voters visited the polls early. Presuming that early voting rates would be comparable this year, the 7.5% of the Latino vote that might have been cast on these six days equals a projected 124,000 votes. Of particular note is the end of early voting on the Sunday immediately prior to

⁷⁸ The six days in question were the first five days of the early voting period and the last Sunday immediately prior to Election Day: October 20-24 and November 2, 2008.

Election Day: at least 1.45% of all Latino votes were cast on that day alone, compared to .52% of white, non-Hispanic votes. At that rate, nearly 24,000 Latino votes might have been cast on that Sunday alone during the November 2012 election cycle.

In Florida, additional factors may affect the number of voters detrimentally affected by new limits on early voting. Under superseded law, Florida counties were not required to offer Sunday voting, and in 2008 only ten of 67 counties opened polling places on the Sunday prior to Election Day. Under new law, however, every county will provide for at least six hours of early voting on the second Sunday before Election Day, October 28, 2012. On balance, Sunday voting hours may not be significantly reduced throughout the state, but early vote totals may still be less than they were in 2008: more than twice as many Florida Latinos voted on Sunday, November 2, 2008 as on Sunday, October 26, 2008. As will be true with respect to each state profiled below, in Florida there is no historical experience with a reduction in early voting times that would provide an indication of the extent to which resulting voter confusion or inability to visit the polls at another time might dampen participation. Analysis of the number, race and ethnicity of early voters and Election Day voters in 2012 should reveal more about still-evolving trends in the use of generous early voting periods by under-represented voters from these population groups.

Georgia

Georgia amended its early voting policy in 2011, limiting opportunities for Latino and other voters by notably reducing what had been one of the longest early voting periods offered by any state. In 2008, voting began 45 days before Election Day, on Monday, September 22, 2008, and continued until Friday, October 31, 2008; in 2012, the state's early voting period began Monday, October 15, 2012 and is scheduled to end on Friday, November 2, 2012. Though polls will be open for 14 fewer days in 2012 than in 2008, Georgians will be able to vote on one Saturday during the early voting period in 2012, whereas all early voting hours were on weekdays in 2008. These changes to Georgia's early voting period were precleared by the Department of Justice in August 2011 and are not subject to any further legal challenge.

Impact on Latino Voters

Georgia voters made strong use of early voting in 2008, casting 1,778,317 ballots early, or close to half of the 3,924,486 votes recorded in the state for President; Latino voters were participants in this trend and may be affected by the rollback of voting days for 2012. Available aggregated data on the race and ethnicity of early in-person and absentee voters indicate that approximately 11.7% of Georgia Latino votes were cast early in 2008, compared to 45.5% of white votes and 54.8% of African American votes. These data are not well-suited to the task of assessing the Latino early in-person vote, however, and it is likely that Latino early voting was more significant than it appears.⁷⁹

⁷⁹ Georgia Secretary of State, Elections Division, *Early Voting Statistics as of 11/3/08*, available at <http://sos.georgia.gov/elections/earlyvotingstats08.htm>. Note that these data count both absentee and early ballots, and studies, including the work of Project Vote, *supra* note 77, have found that among all those who cast ballots before Election Day, white voters are more likely to use absentee ballots and under-represented voters are more likely to vote early in-person. In addition, it is highly likely that some of the voters recorded by the state as being white, African American, Asian, Pacific Islander, Native American, or "other" have Latino heritage. An analysis of 2008 general election results in Georgia conducted by the NALEO Educational Fund and the Georgia Association of Latino Elected Officials (GALEO) compared voters' self-reporting of their race/ethnicity on registration forms, on which statistics published by the state are based, to original surname matching analysis. Surname matches indicated that there were 75%

It is unknown precisely how many Latino early in-person votes were cast on now-eliminated early voting days, but approximately 500,000 Georgians in total voted between September 22, 2008 and Friday, October 10, 2008, slightly more than 28% of all early votes, and nearly 13% of all votes. If Latinos vote in 2012 at rates consistent with their performance and the turnout of all early voters in the 2008 election, it is likely that thousands will be denied the option of voting on their preferred day. We are unable, however, to estimate this number with confidence because of the lack of precise data on early voters' ethnicities, and because of the relatively high margin of error that would attach to a projection of the 2012 Georgia Latino vote.

Early voting is likely to take on added importance for Georgia Latino voters in 2012 and beyond. More than 31% of Georgia Latinos eligible to vote are naturalized citizens, compared to nearly 25% of eligible Latino voters nationwide. Naturalized citizens tend not to have as much familiarity with voting procedures and options as native-born Americans, so the Georgia Association of Latino Elected Officials (GALEO) is conducting a significant campaign of education and outreach in 2012, in cooperation with radio, print, and television partners, to encourage greater use in the Latino community of early voting.⁸⁰ GALEO opposed the 2011 reduction of Georgia's early voting period.

Ohio

In Ohio, lawmakers voted to eliminate a number of extended evening and weekend voting hours for the 2012 election cycle, days and times during which many Ohio voters cast ballots in 2008. Following a series of legislative and administrative developments, the state planned to reduce the early voting period by two weeks of evening hours (4:30 or 5:00 pm – 7:00 pm), four weekends, and the three days immediately preceding Election Day, with an exception for military voters. The Obama for America campaign challenged the differential treatment of military and other voters, and won decisions in support of its position from the federal District Court and Court of Appeals. On October 16, 2012, the Supreme Court declined Ohio's request for emergency review; as a result, Ohio's Secretary of State has directed county elections officials to offer early voting to all eligible voters from 8:00 am till 2:00 pm on Saturday, November 3, 2012 and Monday, November 5, 2012, and from 1:00 pm till 5:00 pm on Sunday, November 4, 2012.

Impact on Latino Voters

As a result of the Ohio Latino electorate's as-yet relatively modest size, comprehensive data about its participation in early voting is not available, and the effect on it of limiting early voting cannot be calculated with confidence. Based on data collected from a sample of Ohio counties representing an estimated 62% of 2008 votes, more than 95,000 total early votes were cast on days and at times that will not be available in

more Latino registered voters in Georgia than it appeared based on self-reports on registration forms. In part, this is likely because voters who choose more than one race and ethnicity on their registration forms – for example, “white” and “Latino” – are listed in state records under only one of those choices. See *Georgia's Latino Electorate in 2008* (June 2009), at <http://www.galeo.org/pdfs/063009GLVAnalysisTOTALv1.pdf> for more information.

⁸⁰ GALEO Executive Director Jerry Gonzalez was reached on October 16, 2012, as he was preparing to meet with media representatives who planned to document and publicize Mr. Gonzalez's own personal visit to the polls to cast his vote early. Mr. Gonzalez indicated that GALEO would focus intensive efforts during the present election cycle on encouraging more Georgia Latinos to vote early. Interview with Jerry Gonzalez, Executive Director, GALEO (Oct. 16, 2012).

2012, representing at least 1.6% of all votes.⁸¹ Ohio's growing Latino population accounted for just over 74,000, or approximately 1.35%, of votes in 2008. If these Latino voters have participated in early voting at rates consistent with the overall population's, then potentially more than one thousand Latino voters may have voted during now-eliminated periods, and may be expected to face an added burden this fall in the form of reduced voting opportunities. This figure is a rough estimate, however, that does not reflect differing rates at which Latino Ohioans may vote early as compared to all voters, nor likely increase in Latino voting in Ohio in 2012, which cannot be precisely calculated for the same reasons as apply in Georgia.

West Virginia

In 2011, West Virginia shortened its early voting period by one week, which may impair voting by the 153,096 West Virginians of all races and ethnicities who voted early in 2008. Available data do not indicate, however, how many votes were cast during the early voting days now eliminated, nor what percentage of early votes Latino West Virginians cast. The lack of necessary data prevents any detailed projection of the impact of early voting reductions on Latino West Virginians; in addition, the fact that West Virginia has a relatively small Latino population means that any calculations concerning the state's Latino vote involve a high margin of error and are not ideally reliable.

Wisconsin

In Wisconsin, voters may participate in the functional equivalent of early voting by casting in-person absentee ballots during a pre-election period that was shortened in 2011, to the likely detriment of perhaps as many as thousands of Latino voters. In 2008, Wisconsinites could vote in-person, without excuse, during a period that began 30 days before Election Day and ended on the Monday immediately prior. For 2012, this period was truncated by slightly more than one week; early voting will begin on the third Monday prior to the election and end two days earlier than before, on the Friday before Election Day. As in West Virginia, detailed data documenting daily early vote totals and Latino participation in Wisconsin early voting for 2008 are not available, and a negative effect on Latino voters of 2011 reductions to the voting period is likely but unquantifiable. It is difficult even to know precisely how many early in-person votes were cast in the state in 2008, because more than 1,700 Wisconsin municipalities did not use a standard system for recording distinctions between early votes cast in person and by mail.⁸² In the state's best estimate, 475,649 early ballots were cast in-person in 2008, 15.94% of the overall vote total. Latino voters, if they voted early at consistent

⁸¹ Estimates of votes cast in 2008 during periods that will not be available in 2012 were made prior to pertinent court rulings that resulted in the opening of early voting locations on the Saturday, Sunday, and Monday immediately before Election Day. As a result, these estimates do not break down the times of the day during which votes were cast on the Saturday – Monday in question, and cannot be used to estimate how many of the approximately 102,243 votes cast during this period were submitted outside the now-determined polling place hours for 2012. See Norman Robbins, Northeast Ohio Voter Advocates, *Effects of legislation and Directives on early in-person (EIP) voting in Ohio in 2012, as of Aug. 17, 2012* 2 (Aug. 2012), available at <http://www.nova-ohio.org/reports.htm>. It is known that some portion of early votes cast on the days that were the subject of litigation were cast at times when polls will not be open in 2012: in 2008, some counties opened polling places until 7:00 pm on Monday and 5:00 pm on Saturday. Ari Berman, *Another Loss For Voter Suppression: Pre-Election Early Voting Upheld in Ohio*, THE NATION, October 17, 2012, available at <http://www.thenation.com/blog/170626/another-loss-voter-suppression-pre-election-early-voting-upheld-ohio#>.

⁸² Adam Harvell and Edward Edney, Wisconsin Government Accountability Board, Elections Division, *Early Voting in Wisconsin: Final Draft Report* Appendix G (Nov. 6, 2009), available at <http://elections.state.wi.us/section.asp?linkid=1583&locid=47>.

rates, cast several thousand ballots before Election Day. An unknown fraction of them voted on days when polling places will not be open in 2012, and may find it more inconvenient to vote in this year's election.

Early Voting Changes Not Likely To Significantly Affect Latino Voters

Three additional jurisdictions enacted reductions to early voting periods which deserve mention for their contribution to a larger trend, but which are less likely to negatively affect Latino and other voters than the changes profiled above. Washington, DC adopted early in-person voting in 2009. By 2010, the city had mandated a voting period of at least seven days, but in 2011 the law was changed to provide for no more than seven days of early voting. Because there was no early voting in 2008, and because the change in the law did not necessarily alter early voting locations' open periods, the restriction seems unlikely to have significant impact.

In Illinois, lawmakers extended early voting hours on weekends and holidays in the state's most populated areas in 2009, but more recently shortened the voting period by five days overall, from the twenty-second to fifth day pre-election to the fifteenth through third day before November 2012 Election Day. On balance, extra votes cast during the days and times added in close proximity to Election Day and on holidays and weekends have the potential to offset any loss in votes that might come from delaying the start of early voting. Finally, in 2011 Tennessee shortened early voting by moving its ending date from five days to seven days before Election Day; this change, however, applies only to Presidential primaries and will not affect voting in November 2012.

Third Party Voter Registration

A majority of states directly regulate the activities of organizations and individuals conducting voter registration activities, some in ways that reduce Latino citizens' opportunities to register. Most regulations concern procedures for obtaining official designation as a registration agent, mandatory training of individuals assisting voters with completing forms, reporting on activities to state authorities, and deadlines for returning completed forms to state authorities. A number of states prohibit organizations from paying registration agents commissions or salaries dependent on the number of completed forms each submits.

Most states' regulations are not sufficiently onerous to deter third party registration activities. Arkansas, for example, merely requires registration agents to return forms to the state within 21 days of their completion, or by 30 days before an election if that date comes sooner. Louisiana gives local officials the option of designating paid deputy registrars who must be eligible voters, and requires forms to be returned to the state within 30 days of execution by a voter, or before the registration deadline for the next election. Nebraska has created specific rules controlling the training and activities of official deputy registrars, but also allows individuals and organizations to conduct registration activities without taking part in the deputy registrar program.

Impact on Latino Voters

In contrast to states with modest or flexible regulations, the most exacting state laws can influence the capacity of third party registrars and determine whether they decide to conduct registration activities at all, factors that affect Latino voters disproportionately. Latino voters are more likely to have registered to vote with the

assistance of non-governmental registrars than are other segments of the electorate.⁸³ During the 2010 election cycle, more than 16% of Latinos who were registered reported having completed forms provided by a third party, compared to approximately 10% of white, non-Hispanic registrants, 15% of African Americans, and 14% of Asian Americans. Community-based registrars increase the participation rates of low-propensity voters by reaching them in the course of conducting their daily activities, and reducing the proactive effort they must put forth to become registered. In the Latino community in particular, as noted, being personally asked to participate in an election by someone like a third party registration agent is positively associated with turnout.

Since the 2010 federal election cycle, four states have tightened restrictions on the activities of third party registrars.⁸⁴ No reliable estimate has been produced, however, of the precise impact of these regulations, because of present inability to control, in statistics concerning successful registration rates, for outside variables that can significantly influence registration decisions such as voter enthusiasm.

Florida

In 2011, Florida chilled third party registration activities when it imposed new notification and reporting obligations on independent registrars, and created a tight deadline of 48 hours for return of completed forms to state authorities. Potential fines for noncompliance as large as \$1,000 contributed to the decision of organizations including the National Council of La Raza's *Democracia* program and the League of Women Voters⁸⁵ to suspend their work in the state while litigation over the law ensued. In its decision of May 31, 2012, the federal District Court for the Northern District of Florida halted implementation of the 48-hour deadline, mandatory detailed reporting of volunteers' identities and dates of service and of the number of registration forms received and returned, and a requirement that volunteers sign a statement that is misleading in its treatment of penalties for false registration. Thereafter, third party organizations resumed registration activities in the state.

Latino voter registration is likely to have declined in Florida as a result of the year during which restrictions on third party voter registration activities were in effect. A *New York Times* analysis found that 81,471 fewer Floridians had registered to vote between June 2011 and March 2012 than had registered during the corresponding period prior to the 2008 Presidential election.⁸⁶ In Miami-Dade County, where the population is 65% Latino, registration applications were down 39% compared to the same pre-2008 election

⁸³ When using Census Bureau data to evaluate Latino voters' use of third party registration services, we follow the thinking of U.S. District Judge Gregg Costa as articulated in his decision in *Voting for America, Inc. v. Andrade*, 2012 U.S. Dist. LEXIS 108303 at *3 (No. 12-CV-44) (S.D. Tex. 2012). Judge Costa explains that he will consider data on voters who report on the Current Population Survey that they registered through a "registration booth" or at a "school, hospital, or campus" to reflect the results of third party registration activities.

⁸⁴ Omitted from this tally is Washington, which in 2011 criminalized and provided for a penalty for intentional failure to return completed forms on time. Reputable third party registrars should not be inhibited from collecting applications in Washington by this provision, as any failure on their part to timely return forms to the state can reasonably be anticipated to be unintentional.

⁸⁵ Memorandum in Support of Motion to Intervene as Defendants (Docket No. 16-3, Sept. 9, 2011) 5-7, *Florida v. United States* (D. D.C. 2011) (No. 1:11-cv-1428-CKK-MG-ESH).

⁸⁶ Michael Cooper and Jo Craven McGinty, *Florida's New Election Law Blunts Voter Drives*, NYTIMES at A1, March 28, 2012, available at <http://www.nytimes.com/2012/03/28/us/restrictions-on-voter-registration-in-florida-have-groups-opting-out.html>.

period.⁸⁷ Statistics compiled by the state of Florida show that 503,909 valid new registrations were received in calendar year 2007, compared to only 424,478 in calendar year 2011.⁸⁸ Comparative totals of applications gathered by third party registration organizations in the period leading to the 2008 and 2012 elections, and data about the race and ethnicity of new voters completing these applications, will provide additional indication of the number of Latino Floridians who may have been prevented from voting in November 2012 by third party registration regulations.

Illinois

Illinois third party registration organizations faced an additional hurdle beginning in July 2011, when a new law shortened the time they are allotted to return completed applications by personal delivery from seven to two days. Registrars are still allowed seven days, however, to return forms by mail. Although it does not appear that prolific national organizations that conduct registration drives curtailed their efforts in Illinois in response, there is some indication in available statistics of declining registration returns compared to four years earlier. From July 2007 to September 2008, 66,224 Latinos Illinoisans submitted new registration applications, accounting for 12% of all those received; during the comparable period from July 2011 to September 2012, however, 43,930 Latinos registered to vote, representing 10% of all new voters. There is not enough information available to indicate to what extent this reduction might be attributable in part or whole to the tightening of third party registration regulations.

Texas

Texas enacted heightened restrictions on third party registrars that entered into effect in September 2011. Under the new law, registrars may not work in more than one county, and must be Texas residents. Registration forms may not be photocopied, nor returned completed to state officials by U.S. mail. A federal District Court enjoined these provisions and some controls regarding employment of registration agents in August 2012, but the 5th Circuit U.S. Court of Appeals took up the case and vacated the injunction in early September, and the new law thus controls at present. There has not been a decrease in the overall number of new registration applications submitted by Texans during the 2011-12 period, compared to 2007-08. However, new registration applications from Latino voters accounted for 39% of all new Texas voter registrations between September 2007 and August 2008, compared to 33% of new Texas voter registrations between September 2011 and August 2012. It is not known to what extent this disparity may be attributable to barriers encountered by third party registrars, but data that may become available in the future from community-based registrars may reveal more about the impact of registration regulations on eligible Texas voters.

Wisconsin

A recent change in Wisconsin law governing registration activities in schools may impair registration of the state's Latino voters. As of April 20, 2012, the designation of registration agents at high schools is no longer mandatory, and as a result young people in Wisconsin are less likely to be asked to register to vote as they become eligible members of the electorate. In Wisconsin, as elsewhere, eligible Latino voters are younger on

⁸⁷ *Id.*

⁸⁸ Florida Division of Elections, *Voter Registration Statistics* (Sept. 2012), available at <http://election.dos.state.fl.us/nvra/changes.asp>.

average than their counterparts. As of 2010, 36.1% of eligible Latino voters in Wisconsin were between the ages of 18 and 29, compared to just 20.4% of all other eligible Wisconsin voters. Latino voters are also more likely than others to register at a school: in 2008, 21.8% of Latino Wisconsin residents who were registered to vote reported to the Census Bureau that they had completed their registration at a school, hospital, or on campus, compared to just 9.6% of registered Wisconsin voters of other races and ethnicities. Though a negative impact is likely, a firm estimate of how reducing registration opportunities in Wisconsin schools will affect Latino voters cannot be calculated. Reasons include inability to isolate the number of school/hospital/campus registrants who register at a high school, and lack of information regarding the activities of community organizations and other volunteers who may fill the void by increasing their outreach to Wisconsin high school students and educators.

Non-Citizen Removals From Voter Registration Lists

In 2011 and 2012, a number of states have publicly stated that their voter registration lists contain significant numbers of suspected non-citizens wrongly registered to vote. States have identified alleged non-citizens registered to vote by comparing data from state agencies – primarily driver’s license and state ID-issuing offices – to registration lists.⁸⁹ Because many or most of those identified as potentially ineligible voters are naturalized citizens, this process applies added scrutiny to disproportionately Latino voters, and may deter or prevent some from voting.

Impact on Latino Voters

States’ efforts to identify alleged non-citizens registered to vote have a disproportionate chilling effect on voting by eligible Latino voters. Driver’s license bureau and other state agency records are updated only as often as customers initiate contact. Residents may, and often do, pass years in between contacts with state agencies – in Florida, for example, non-commercial driver’s licenses issued to citizens and legal permanent residents are valid for a period of eight years. Experience⁹⁰ shows that most of those who submit immigration documents to state agencies and who also register to vote are citizens who naturalized after the date of their last contact with a state agency. According to the American Community Survey, more adult naturalized citizens are Latino than of any other race or ethnicity.

Status and Future of Non-Citizen Purges

Though they have spotlighted and dedicated investigative resources to verifying citizenship of registered voters over the past two years, state officials have taken action to remove voters only on isolated occasions. In 2011, North Carolina sent letters requesting verification of citizenship to 637 people identified through a search of driver’s license records; while 223 of these individuals provided the requested proof, the registration of 410 voters was cancelled, in most cases due to failure to respond to the letter.⁹¹ In May 2012, Florida began

⁸⁹ E.g., Rachel Weiner, *Florida’s Voter Purge Explained*, WASHINGTON POST, THE FIX (BLOG), June 18, 2012, http://www.washingtonpost.com/blogs/the-fix/post/floridas-voter-purge-explained/2012/06/18/gIQAhvcNIV_blog.html.

⁹⁰ In state after state, as the following discussion details, lists of thousands of people who showed immigration documents to state agencies and who registered to vote have been reduced to hundreds, or to two-digit numbers, after further status checks were completed revealing that majorities of such registered voters were in fact U.S. citizens.

⁹¹ Ivan Moreno, *Voter Purges Turn Up Little Evidence Of Fraud Despite Republican Insistence*, HUFFINGTON POST, Sept. 24, 2012, http://www.huffingtonpost.com/2012/09/25/voter-purges-republicans_n_1912190.html.

sending notices to county election officials directing them to investigate the citizenship of more than 2,600 voters – nearly 60% of them Latino⁹² – who had been flagged as suspected non-citizens, and to purge those individuals who failed to confirm their citizenship. Litigation eventually led to the suspension of this effort, but officials from Florida and 12 other states⁹³ continued to vocally seek access to federal government records on immigrants and naturalized citizens, which DHS announced that it would grant on a state-by-state basis in July 2012.

Numerous states are expected to pursue citizenship verification and removal of suspected non-citizens in the future, and at least seven states – Colorado, Florida, Georgia, Iowa, Kansas, Michigan, and Virginia – have concluded or are negotiating for agreements that allow them to use DHS' Systematic Alien Verification for Entitlements (SAVE) database to check the citizenship of select voters. As of this writing, however, it appears that only two states' citizenship verification procedures may result in additional notifications to voters of suspected non-citizen status or potential cancellation of voters' registration prior to the November 2012 election.

Florida

Florida became one of the first states to run SAVE database checks on the names of suspected non-citizen registered voters, and in late September 2012 the state sent a revised list of 198 registered voters it believed to be non-citizens to local elections officials. These officials were directed to send letters to the named voters offering them the chance to appeal and prove their citizenship within 30 days of receipt of the letter.⁹⁴ Such a process that proceeded with the greatest possible speed could result in some voters being threatened with removal from registration rolls just prior to Election Day 2012.

The state's use of federal government resources has not created an absolutely reliable process that can be depended upon not to misidentify qualified U.S. citizens, however. The *Miami Herald* identified one Latino voter, Yeral Arroliga, who provided proof of his U.S. citizenship to Florida earlier in 2012, but was once again erroneously included in the state's subsequent revised list of alleged non-citizen voters.⁹⁵ A high percentage, 41%, of the 198 individuals on Florida's new list are Latino⁹⁶, whereas Latinos account for just over 16% of eligible Florida voters and about 14% of registered Florida voters.

⁹² Marc Caputo and Patricia Mazzei, *Hispanics, NPAs more likely to face noncitizen voter purge than whites, GOP*, MIAMI HERALD, March 12, 2012, available at <http://www.miamiherald.com/2012/05/12/v-fullstory/2796905/noncitizen-voter-hunt-targets.html>.

⁹³ Sara Burnett, *Suthers backs Gessler, asks Homeland Security to screen voters*, DENVER POST, July 10, 2012, available at http://www.denverpost.com/breakingnews/ci_21044134/suthers-backs-gessler-asks-homeland-security-screen-voters.

⁹⁴ Steve Bousquet, *New noncitizen voter purge has its own problems, county elections officials say*, TAMPA BAY TIMES, Sept. 28, 2012, available at <http://www.tampabay.com/news/politics/national/new-noncitizen-voter-purge-has-its-own-problems-county-elections-officials/1253711>.

⁹⁵ Marc Caputo, Patricia Mazzei, and Anna Edgerton, *Florida sends election departments list of 198 potential noncitizens; some may have illegally voted*, MIAMI HERALD, Sept. 26, 2012, available at <http://www.miamiherald.com/2012/09/26/v-fullstory/3022387/florida-sends-election-departments.html#storylink=cpy>.

⁹⁶ *Id.*

Colorado

Colorado has been a vocal proponent of identification of suspected non-citizens wrongly registered to vote. In 2011, Secretary of State Scott Gessler (R) announced that as many as 11,000 ineligible Coloradan non-citizens might be able to cast ballots; by August 2012, his office had culled its list down to just under 4,000 individuals to whom it sent letters requesting proof of citizenship. Upon obtaining access to the SAVE database, Colorado performed an additional round of verification, following which it concluded that just 141 people registered to vote might not be citizens. Instead of pursuing the notification process it promised in its agreement with the federal government⁹⁷, which would allow these individuals the opportunity to prove their citizenship and correct any errors in records, Colorado forwarded its list of 141 to local elections officials so that they, or third parties, could challenge these voters' eligibility if they appeared to vote in November 2012.

This procedure creates real danger that citizens erroneously included may be denied the right to vote – particularly as they may not realize they have been targeted, and may fail to bring proof of their citizenship to polling places. A *Denver Post* investigation identified two individuals on the list of 141 who said that they are, in fact, U.S. citizens.⁹⁸ In addition, U.S. citizens among the nearly 4,000 voters who received “warning” letters in August will not be informed, as of this writing, that they have not been removed from registration rolls even if they failed to respond to the letter they received. They may thus wrongly conclude they are no longer registered, and may not even attempt to vote.

Although a reliable estimate of the impact of purges on qualified citizen Latino voters in Florida, Colorado, and North Carolina is not available⁹⁹, purging procedures adopted by states are troubling. DHS' SAVE database was designed to enable states to verify individuals' eligibility for benefits such as public health insurance and welfare support, and not for the very different task of determining who may vote. The database does not contain any records regarding numerous categories of individuals who may become registered to vote: excluded are citizens born in the United States; certain people who have acquired citizenship through their U.S. citizen parents; and undocumented residents who have never interacted with DHS. The error rate of records that appear through SAVE has not yet been tested, but it is clear that such errors do exist because of cases like that of Mr. Arroliga of Florida, and the two Colorado voters identified by the *Denver Post*. Moreover, DHS itself has acknowledged there is some risk of erroneous translation of information between various database systems whose records are combined in the process of conducting a SAVE check.¹⁰⁰ Because of potential for error, the federal government has required states to offer voters identified through SAVE as non-citizens ample time and opportunity to prove their U.S. citizenship.¹⁰¹

⁹⁷ Memorandum of Agreement Between the Department of Homeland Security, U.S. Citizenship and Immigration Services, and The Colorado Secretary of State (providing for state access to SAVE records) (Aug. 22, 2012) (copy on file with author) [hereinafter Colorado MOA].

⁹⁸ Tim Hoover, *Noncitizen voter ID'd fraction of those first alleged by Gessler*, DENVER POST, Sept. 16, 2012, available at http://www.denverpost.com/recommended/ci_21553840.

⁹⁹ We are unable to estimate likely impact of non-citizen purges because of the unavailability of information about key factors such as the number of targeted, eligible North Carolina voters who successfully re-registered, and the number of qualified citizens included on states' revised target lists.

¹⁰⁰ E.g., Department of Homeland Security, *Privacy Impact Assessment Update for the Systematic Alien Verification for Entitlements Program 3* (July 27, 2012), No. DHS/USCIS/PIA-006(a).

¹⁰¹ Colorado MOA Section IV, Part B, *supra* note 102; Memorandum of Agreement Between the Department of Homeland Security, U.S. Citizenship and Immigration Services, and Florida Department of State/Division of Elections (providing for state access to SAVE records) Section IV, Part B (Aug. 14, 2012) (copy on file with author).

Efforts to conduct purge activities close in time to elections amplify likelihood of erroneous cancellation of valid registrations, and the Department of Justice has argued that the National Voter Registration Act of 1993 prohibits purges of alleged non-citizens occurring in the 90 days prior to federal primaries and general elections.¹⁰²

Indirect Effects of Voting Restrictions on Latino Voters

Redistricting

Latinos who can cast their ballots in 2012 may feel the effect of laws that make it harder to register and vote. These laws may result in diminished Latino voting in districts designed to give Latinos the opportunity to elect their candidate of choice. The VRA governs the redistricting process, prohibiting dilution of the voting strength of racial and ethnic minorities. The growth of the Latino community across the United States, as measured by the 2010 Census, has resulted in the creation of new districts designed to ensure that Latino voters' electoral opportunities reflect their increased presence. In the event of even modest reductions in registration and turnout, however, Latinos are at risk of losing representation within such districts.

In Texas, for example, strong population growth – 65% of it attributable to the Latino community – resulted in a gain of four seats in the U.S. House of Representatives. Following extended litigation, the state adopted an interim court-approved map that creates two districts, the 33rd and 35th, where Latinos have the opportunity to elect the candidate of their choice. In the new 33rd District in the Dallas-Fort Worth area, 61% of adult residents, and 39% of citizens eligible to vote, are Latino.¹⁰³ If tight new regulations have negatively affected citizens' access to third party registration opportunities, which Latino voters use in disproportionate numbers, then Latino voters' ability to elect their candidate of choice in the 33rd District may be obviated, even before voting commences.

Voter Confusion Resulting from Voting and Registration Restrictions

There is also a notable risk of confusion among voters over what law applies given that the status of new laws is in constant flux, and that a number of states, erring on the side of caution, have begun and continued to educate voters about laws that may not be in effect in 2012. In the first place, many voters do not learn about changes to voting procedures until confronted with them at polling places. Three months after the enactment of Pennsylvania's ID law, more than one third of the state's eligible voters reported that they had not heard about the new requirement.¹⁰⁴ Even closer observers may not manage to keep up with rapid developments.

¹⁰² Complaint ¶ 2, *United States v. Florida* (N.D. Fla. 2012) (No. 4:12CV285-RH/CAS).

¹⁰³ Texas Legislative Council, *Hispanic Population Profile Using Census, American Community Survey, and Voter Registration Data: Congressional Districts Plan C235* (Feb. 27, 2012), available at <ftp://ftpgis1.tlc.state.tx.us/PlanC235/Reports/PDF/>.

¹⁰⁴ Karen Langley, *Many Pennsylvanians aren't aware of new voter ID law, professor testifies*, PITTSBURGH POST-GAZETTE at A5, July 26, 2012, available at <http://www.post-gazette.com/stories/news/politics-state/many-pennsylvanians-arent-aware-of-new-voter-id-law-professor-testifies-646371/>.

Among states intending to implement new strict voter ID laws during the 2012 general election, more than half have been affected by court decisions issued in the three months preceding Election Day.¹⁰⁵

States' public education campaigns and polling site practices may also increase the level and consequences of voter confusion during November 2012. Pennsylvania will continue to direct voters to obtain state-issued IDs, and may instruct pollworkers to request voters' ID on Election Day as well, even though the state has been prevented from denying regular ballots to voters without ID for the 2012 election cycle. Although their websites indicate that voter ID will not be mandatory during the 2012 election, states such as Wisconsin and Mississippi are offering or publicizing free voter ID availability.¹⁰⁶ On top of communications coming directly from states, media coverage of voting restrictions has been intense, and even voters in states that have not significantly changed their practices may draw mistaken conclusions about the law applicable to them. North Carolina gas station owner and voter registration activist Paulette Camp reported recently, for example, "Everyone who comes in says, 'What do I have to have? Do I have to have a driver's license?' They're hearing that you have to have all these identifications [to register and vote]."¹⁰⁷ A North Carolina voter ID requirement was adopted by the legislature, but vetoed by the governor, in 2011. In sum, citizens – particularly those with less knowledge of and experience with elections¹⁰⁸ – may be dissuaded from voting by the very fact that they are unsure what the law requires of voters, or by mistaken belief that they cannot satisfy applicable rules. Latino voters, who disproportionately lack information about elections, are at heightened risk of being effectively disenfranchised because of confusion about voting requirements.

¹⁰⁵ States that have not been stopped are Kansas and Tennessee; states that have been stopped include Pennsylvania, South Carolina, Texas, and Wisconsin.

¹⁰⁶ *E.g.*, Mississippi Secretary of State, *Do You Have... (Informational Flyer)*, available at <http://www.msvoterid.ms.gov/PDF/Outreach%20Poster%20V2%20%284%29.pdf>; Wisconsin Department of Transportation, *Obtaining an identification (ID) card* (June 13, 2012), <http://www.dot.wisconsin.gov/drivers/drivers/apply/idcard.htm>.

¹⁰⁷ Amanda Terkel, *Democrats Worry Confusion Over Rules May Depress Voter Turnout*, HUFFINGTON POST, Oct. 2, 2012, http://www.huffingtonpost.com/2012/10/02/voter-turnout-voter-id-rules_n_1930248.html?utm_hp_ref=politics.

¹⁰⁸ One study found that 44% of voters 18-29 answered a question about whether their state required voter ID incorrectly, for example. The Center for Information & Research on Civic Learning and Engagement, *Romney Trails Among Young Adults; Most Are Misinformed About Their States' Voting Laws* (July 31, 2012), available at <http://www.civicyouth.org/romney-trails-among-young-adults/>.

IV. Latino Voters at Future Risk of Disenfranchisement

If not for protective laws like the VRA and vigorous defense of access to the ballot, laws that make it harder for Latinos and other Americans to vote could have had a negative effect on at least 795,000 more Latino voters in November 2012. The electorate is at risk of being significantly hindered in future elections: a sampling of additional restrictive laws most likely to be implemented for the 2013 or 2014 election cycles would impede or prevent the casting of at least 40,000 more Latino votes. Advocates for voter access should continue to put effort into organizing and litigating against laws that negatively affect voters, and Section 5 of the VRA must be preserved as Congress directed when it renewed the Act in 2006.

Successful Litigation Against Restrictive Voting Laws

Community advocates, national non-profits, affected voters, and the Department of Justice have responded to the passage of new restrictive voting laws by filing lawsuits that have halted the implementation of laws that would otherwise have inhibited Latino voting in November 2012. The immediate impact that enjoined laws could have had is great, but the fact that appeals have not yet been exhausted in most cases demonstrates that hundreds of thousands of Latino voters are at continued risk of finding it harder to vote in future elections. The following examples of litigation that forestalled restrictive voting laws are illustrative, but not exhaustive.

Texas

Texas enacted a voter ID mandate in 2011 which was originally scheduled to take effect at the beginning of calendar year 2012, to the prospective detriment of the state's large Latino electorate. The law would require most Texas voters to present a government-issued ID at polling places; acceptable documents include passports, military IDs, certificates of citizenship and naturalization displaying photos, and state ID cards and weapons permits no more than 60 days past their expiration date. Certain disabled voters, those with religious objections to being photographed, and individuals who lack ID because of natural disasters would qualify for exceptions to the law.

Texas is covered by Section 5 of the VRA, and must therefore obtain preclearance from either the Department of Justice or U.S. District Court for the District of Columbia of all proposed voting law changes. Texas requested preclearance from the Department of Justice in July 2011, and the Department denied the request in March 2012. Texas anticipated this outcome in advance, however, and filed its request for federal court review of its ID law in January 2012. The Department of Justice argued that the ID law would disproportionately impair the ability of Latino Texans to vote; as in other states, surveys revealed that Latinos disproportionately did not already possess the documents they would need to vote under the new policy.¹⁰⁹ In addition, Latino Texas voters faced notable barriers to obtaining identification: Latino households were nearly twice as likely as white households to lack access to a car, and in counties without ID-issuing offices, Latinos were also nearly twice as likely as white residents to lack state-issued identification.¹¹⁰

¹⁰⁹ Letter from Thomas E. Perez, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Keith Ingram, Director of Elections, Elections Division, Office of the Texas Secretary of State 2-3 (March 12, 2012) (*available at* <http://www.aclu.org/files/assets/85051426-doj-letter-to-texas-on-voter-id-law.pdf>) [hereinafter Texas ID Preclearance Letter].

¹¹⁰ *Id.* at 4.

The U.S. District Court issued its decision denying preclearance at the end of August 2012, and effectively determined the fate of the ID law for the 2012 election. The Court postponed issuing its decision on a second issue that Texas raised in its suit, whether Section 5 of the VRA is constitutional. Texas intends to appeal the preclearance decision to the Supreme Court, but cannot request review until after the District Court also rules on its challenge to the VRA.¹¹¹ Texas and the Department of Justice have been ordered to submit arguments on the constitutionality of Section 5 by November 12, 2012. With this deadline falling after Election Day 2012, Texas will be prevented from requiring voters to display identification at the polls during the 2012 general election.

Impact on Latino Voters

In the absence of Section 5 of the VRA, and a Department of Justice committed to its robust enforcement, Texas's voter ID law would have had a potentially significant negative effect on the Latino electorate in November 2012. Worse, this negative effect might have been explicitly intended. The District Court panel of judges wrote that they did not need to decide what lawmakers' intent was when they enacted the voter ID mandate, but in another case decided the week before the voter ID lawsuit, a different group of judges from the same court ruled that the same Texas legislature had intentionally discriminated against Latino and African American voters in its formulation of new Congressional and state office districts.¹¹²

As of 2011, there were 4,366,040 Latino Texans eligible to vote, and we estimate that **699,000** of them do not already possess state-issued documentation that would be acceptable under the new Texas law as proof of a voter's identity. This estimate is consistent with the number – between a range of 603,892 to 795,955 – of Latino Texans that the Department of Justice concluded appeared to lack a state-issued ID on the basis of data supplied by the state itself.¹¹³

Latino Texas voters remain at future risk of disenfranchisement through operation of the state's voter ID mandate. The state will appeal the ruling that prevented the law's implementation in 2012; in addition, observers believe the Supreme Court may accept for argument during its 2012-13 term another pair of cases challenging the premise on which the decision blocking the ID law was based.¹¹⁴ A decision invalidating part of the VRA would remove a critical check on the potential discriminatory impact of new voting procedures in this state with a particularly large and rapidly growing Latino electorate. Additional pending cases blocking the implementation of restrictive voting laws depend upon Section 5 of the VRA, including those concerning early voting in Florida and voter ID in South Carolina.

Pennsylvania

A significant negative impact on Latino voters during the November 2012 election was also narrowly avoided when, on October 2, 2012, Pennsylvania Commonwealth Court Judge Robert Simpson partially blocked the state's new voter ID law from going into immediate effect. Judge Simpson initially refused to stop the law,

¹¹¹ Julián Aguilar, *After Voter ID Decision, What Happens Next?*, TEXAS TRIBUNE, Sept. 6, 2012, available at <http://www.texastribune.org/texas-politics/voter-id/states-challenge-voting-rights-act-moves-forward/>.

¹¹² *Texas v. United States*, 2012 U.S. Dist. LEXIS 121685 at *71-*80, *84-*94 (D. D.C. Aug. 28, 2012).

¹¹³ Texas ID Preclearance Letter, *supra* note 116, at 3.

¹¹⁴ *E.g.*, Lyle Denniston, *Voting rights cases: Made simple*, SCOTUSBLOG, Sept. 7, 2012, <http://www.scotusblog.com/2012/09/voting-rights-cases-made-simple/>.

but reconsidered his decision after the Pennsylvania Supreme Court, skeptical of the claim that the ID requirement would not effectively disenfranchise a significant number of voters, returned the case to him. The partial injunction against the law, based on its likely violation of provisions of the Pennsylvania Constitution, allows the state to ask voters for ID, but requires that voters who cannot show ID be allowed to vote and have their ballots counted.

The Pennsylvania law in question would require voters to present an unexpired photo ID issued by the state or federal government, an accredited Pennsylvania institution of higher education, a Pennsylvania care facility, or a local Pennsylvania government if the ID is an employee identification card. State driver's licenses and non-driver identification cards would be accepted if expired for no longer than 12 months, and military IDs that are valid indefinitely and do not display an expiration date would also be acceptable. Voters who could not obtain qualifying identification due to indigence would be allowed to vote, and their provisional ballots counted, upon swearing out an affidavit explaining their financial inability to obtain an ID. Otherwise, provisional voters would be required to submit, within six days of Election Day and either in person or by mail, fax, or electronically, affirmation of identity and a copy of their qualifying identification card in order for their ballots to be counted.

Impact on Latino Voters

As of 2011, there were 387,257 Latino Pennsylvania residents eligible to vote, and we estimate that approximately 62,000 of them might have been deterred or prevented from voting in Election 2012 by the state's ID law, had it not been enjoined. Even though Pennsylvanians will be able to cast ballots without showing ID, the state will be allowed to request IDs in November 2012, and to continue its efforts to educate voters about obtaining state IDs for voting purposes. These activities will tend to make voters erroneously believe that they are in fact required to bring ID to the polls, and it is likely that some will not attempt to vote as a result, notwithstanding the injunction against the law.

Pennsylvania's voter ID mandate may negatively affect the state's Latino voters in future election cycles. Judge Simpson's partial injunction extends only through the date of the November 2012 General Election, and is not a permanent resolution of the challenge to the law. The temporary stop on implementation, moreover, is premised significantly on concerns about the short time remaining before Election Day 2012¹¹⁵; when there is more time post-2012 Election for the state to conduct outreach to voters and issue IDs, it is likely that Pennsylvania courts will be more inclined to affirm the constitutionality of the voter ID law. Voter ID may yet become mandatory in Pennsylvania; its potential effect on Latino and other voters makes continued monitoring important.

Wisconsin

As in Pennsylvania, a significant number of Latino voters in Wisconsin might have found it more difficult to vote in the 2012 General Election but for rulings by state judges that stopped a new voter ID mandate from being implemented. In March 2012, Dane County Circuit Judge Richard Niess permanently enjoined the voter ID law; in July 2012, another Dane County Judge, David Flanagan, reached the same result in a

¹¹⁵ Decision 3-5, *Applewhite v. Pennsylvania* (Pa. Commw. Ct. 2012) (No. 330 M.D. 2012), available at http://www.pacourts.us/NR/rdonlyres/CFBF4323-B964-4846-8179-88D689375C10/0/CMWSuppDerAppPrelInjOrder_100212.pdf.

separately filed case. Two additional challenges were filed and remain pending in Wisconsin federal courts. The state is appealing the Dane County decisions, but its requests to the Wisconsin Supreme Court to grant urgent review, and to the Wisconsin Court of Appeals seeking holds on Judge Niess's and Judge Flanagan's decisions, have been denied. These denials ensure that the state cannot implement its ID mandate until the normal conclusion of the state appeals process, no earlier than months after Election Day 2012.

Wisconsin's new law would require voters to display a photo ID at polls, which could be a Wisconsin driver's license or non-driver ID, a passport or military ID, a certificate of naturalization issued during the two years preceding the election, an ID card issued by a federally recognized Native American tribe, or a student ID that includes a signature, issue date, and expiration date not more than two years after the election. Provisional ballot voters would be required to display qualifying IDs to municipal clerks before 4:00 pm on the Friday following the election in order for their votes to be counted. The litigation in process, described above, contends that these requirements will violate the Wisconsin Constitution, federal prohibitions on the imposition of poll taxes, the Equal Protection Clause of the 14th Amendment, and Section 2 of the VRA, which prohibits the implementation of any voting procedure in any state that would impair or deny the right to vote on the basis of race, color, or language minority group membership.

Impact on Latino Voters

There were 139,036 Latino Wisconsin residents as of 2011 eligible to vote, and we estimate that **22,000** Latino Wisconsin residents could have been deterred or prevented from voting in November 2012 by the state's ID law. At least as many Wisconsin Latino voters are at ongoing risk of future disenfranchisement for as long as the state's appeals are active and the threat of implementation of the law remains.

South Carolina

In 2011, South Carolina changed its law to require voters to produce one of a limited number of government-issued photo IDs in order to vote: only South Carolina driver's licenses and non-driver IDs, passports, military IDs, and state voter registration cards bearing a photo are accepted. State officials have affirmed that an exception in the law for individuals with religious objections or other "reasonable impediment" to obtaining ID will be liberally applied: if voters who have a non-photo state voter registration card but no photo ID sign affidavits explaining their circumstances, their ballots will be counted so long as the County Board of Elections has no reason to believe that affidavits are false. State officials will not second-guess, in other words, the defensibility of voters' stated reasons for lacking photo ID. Voters who do not have their non-photo state voter registration cards, however, will have only the option of casting provisional ballots and returning to their county board of elections with qualifying ID before election results are certified.

South Carolina is required under the VRA to obtain preclearance of its voter ID mandate prior to implementation. The Department of Justice denied preclearance in December 2011, and South Carolina subsequently sued for preclearance by the U.S. District Court for the District of Columbia. On October 10, 2012, the Court released its decision, which prevented the law from being implemented for the 2012 election because of the lack of sufficient time to ensure that qualified voters were fully informed and had the requisite documents. In light of the availability of the affidavit procedure for voters without photo ID, however, the Court granted preclearance for the law to go into effect beginning in 2013.

Impact on Latino Voters

Had South Carolina's new voter ID law gone into effect in 2012 as intended, we estimate that approximately **12,000** of the 75,181 Latino South Carolina residents eligible to vote as of 2011 might have been deterred or prevented from voting in 2012. Like several other states profiled above, South Carolina does not appear to have yet made available information for voters regarding the ID law and obtaining qualifying identification in Spanish¹¹⁶, which may exacerbate the law's negative effect on Latino voters in the future if no further efforts are made to provide translations. The expected implementation of the law in 2013 is concerning. At the same time, it is unknown how many South Carolinians who lack photo ID may have access to non-photo voter registration cards, and may be able to vote successfully after displaying this card and signing an affidavit.

Florida

In Florida, multiple lawsuits have successfully challenged and mitigated the effects on Latino and other voters of H.B. 1355, the state law containing changes described above to Florida's early voting period and third party voter registration regulations. In May 2012, a federal District Court granted a request for a temporary injunction against the law's short deadline for returning completed registration forms, reporting requirements concerning volunteers' service and registration forms received from the government, and requirement that volunteers sign a potentially misleading statement. Although Florida initially appealed this decision, by August the state agreed to a voluntary settlement, and the District Court entered a permanent injunction against key provisions.

A number of laws that protect voters played a role in achieving this result. The District Court's decision was based on constitutional protections of free speech, association with others, and reasonable and equal access to elections, as well as on the National Voter Registration Act's protections for community groups seeking to register voters. Separately, Florida and the Department of Justice contested preclearance under Section 5 of the VRA. Florida asked the U.S. District Court for the District of Columbia to preclear its new voter registration regulations, and the Department of Justice opposed the request on the strength of evidence that included indicators that Latino and African American voters were more likely than others to register with the assistance of a third party organization.¹¹⁷ The disputed preclearance of the challenged registration regulations was resolved after the state agreed to a permanent injunction in the case described above, but steadfast enforcement of Section 5 played a role in moving the state toward acquiescence.

Impact on Latino Voters

The bar imposed on the regulations that caused third party voter registration groups to temporarily suspend Florida operations avoided the likely specter of worse declines in voter registration totals for the 2012 election cycle. Because they resumed registering voters in June 2012, before the peak of the Presidential election season, groups like the National Council of La Raza should have been able to take advantage of heightened enthusiasm and interest among potential voters. But even though the outcome in this case is likely to help more people become qualified to vote, and is a permanent resolution that will not be appealed, there is reason

¹¹⁶ South Carolina State Election Commission, *New Photo ID Requirements Not Yet In Effect* (Sept. 24, 2012), http://www.scvotes.org/2012/09/24/new_photo_id_requirements_not_yet_in_effect.

¹¹⁷ United States' and Defendant-Intervenors' Joint Submission Concerning Proposed Findings of Fact and Conclusions of Law (May 3, 2012) ¶¶ 57-57H, *Florida v. United States* (D. D.C. 2011) (No. 1:11-cv-1428-CKK-MG-ESH).

to fear that the danger to third party voter registration in Florida may recur. Since 2005, the Florida legislature has repeatedly imposed onerous regulations on such operations, only to have them softened voluntarily and by court order.¹¹⁸ The existence of a pattern of adoption of policy that infringes on the access to the polls of voters who have been historically discriminated against is precisely the reason that Section 5 of the VRA continues in force today, and is needed for the coming years.

Future Expansion

Victories in the courts do not guarantee the cessation of efforts in state legislatures to enact voting restrictions, and such efforts seem likely in light of the number of additional states that have recently passed or come within proverbial inches of adopting laws that would make voting more difficult. These include six states in which the legislature passed a strict voter ID law that was vetoed by the governor: Michigan in 2012, and Minnesota, Missouri, Montana, New Hampshire, and North Carolina in 2011. Further legislative and other action has followed in these states. In November 2012, Minnesotans will vote on a proposed amendment to the state's Constitution that would create a strict voter ID requirement effective in 2013, for example. A similar effort to amend Missouri's Constitution to allow for a voter ID mandate was slated to be voted on this fall, but was turned back by a March 2012 court decision that found that the language the legislature had proposed to include on the ballot was impermissibly misleading. New Hampshire ultimately enacted a less onerous bill in 2012, which nonetheless shortens the list of IDs accepted at the state's polling places, effective in 2013. In Michigan, the Secretary of State added a checkbox to primary ballots requesting that voters confirm their U.S. citizenship, even though Michigan Governor Rick Snyder (R) had vetoed this measure, and the state had not obtained the required Section 5 preclearance authorizing the procedural change.¹¹⁹

Restrictive Voting Laws Already Enacted

Alabama and Mississippi have already enacted strict voter ID laws that may enter into effect to the detriment of Latino voters prior to the 2014 federal elections. Kansas and Alabama have also already adopted requirements that voters present proof of citizenship at registration. Both Alabama and Mississippi are covered by Section 5 of the VRA; neither state has yet obtained an opinion from the Department of Justice granting or denying preclearance. If approved, Alabama's new law would require voters to display a photo ID issued by a state, federal, or tribal government, or by an institution providing post-secondary education in Alabama; first-time registrants would be required to provide a state ID indicating the holder's citizenship has been confirmed, a birth certificate, a passport, naturalization documents, or a qualifying tribal ID. Only voters whose identity is confirmed from personal knowledge by two pollworkers would be permitted to vote without presenting qualifying ID. In Mississippi, all voters except for those with religious objections to being photographed would be required to provide valid photo ID at the polls. Acceptable documents include state IDs, government-issued employee IDs, passports and military IDs, tribal IDs, Mississippi weapons licenses and voter IDs containing photographs, and student IDs issued by accredited Mississippi schools.

¹¹⁸ *Id.* at ¶¶ 25-25G.

¹¹⁹ *Editorial: Citizenship checkbox was an error*, LANSING (MI) STATE-JOURNAL, Sept. 26, 2012, available at <http://www.lansingstatejournal.com/article/20120927/OPINION01/309270005/Editorial-Citizenship-checkbox-an-error>.

Beginning on January 1, 2013, new registrants in Kansas will have to prove their citizenship in a manner virtually identical to that envisioned by Alabama. Unlike in Alabama and Mississippi, this provision does not require any further authorization to take effect, and it is not presently subject to any legal challenge.

Impact on Latino Voters

Notable numbers of Latino voters may be hindered from voting if and when restrictive voting laws become effective in states including those highlighted herein. Every state in the nation experienced an increase in its Latino population between 2000 and 2010¹²⁰, and it is likely that the numbers of eligible Latino voters in each state will continue to increase commensurate with projected overall growth of the U.S. Latino population through at least 2050. In future years, therefore, the number of Latino voters who might be negatively affected in a given state is not likely to be less than what the number would have been had a law in question been in effect during 2011, the most recent year for which data on the number of eligible voters are available.

According to our estimates, if precleared, Alabama's voter ID law could make it harder for more than **9,000** Latino voters who may not already have a qualifying ID to cast ballots. Mississippi's new voter ID law could affect more than **4,000** potential Latino voters in that state. Minnesota's proposed constitutional amendment has drawn more support than opposition in public polling¹²¹; if adopted, it could negatively affect more than **13,000** Latino voters. At least **14,000** Latino Missouri residents would be at risk of being disenfranchised under any strict ID requirement the state might eventually adopt. A number of would-be Kansan Latino voters may be negatively affected by that state's soon-to-take-effect proof of citizenship mandate; however, as described above, these are likely to be substantially the same voters who are unable to satisfy the state's voter ID requirement. In sum, a mere sampling of additional changes to state voting procedures that are at greatest risk of taking effect in the coming years would increase the number of potentially affected voters by at least **40,000**.

Impact of Ongoing Investigation of Suspected Non-Citizen Registrants

States that continue to conduct investigations of suspected non-citizen registrants based in part on error-prone state records will also contribute to future restriction of the Latino vote. At least five states in addition to Florida and Colorado have taken steps toward enabling their officials to check for federal records on the citizenship of particular voters, mostly naturalized citizens of whom a plurality are Latino. In one of these states, Iowa, the Secretary of State tried to institute emergency rules that would have allowed him to cancel, pre-Election Day 2012, the registration of non-responsive suspected non-citizens. A quick legal response by community groups temporarily prevented these efforts, but the state continues to push for future scrutiny of voters who obtained Iowa IDs with immigration documents.¹²² Iowa's attempt to expedite its citizenship verification process, and Colorado's conclusion that it did not have enough time pre-Election Day 2012 to pursue an official non-citizen notification-and-appeal process, indicate that states generally have had to delay

¹²⁰ Sharon R. Ennis, Merarys Ríos-Vargas, Nora G. Albert, U.S. Census Bureau, *The Hispanic Population: 2010* 6, Table 2 (May 2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-04.pdf>.

¹²¹ E.g., Jim Ragsdale, *Minnesota Poll: More than half of those polled back voter ID, but support is down*, MINNEAPOLIS STAR-TRIBUNE, Sept. 13, 2012, <http://www.startribune.com/politics/statelocal/170857591.html?refer=y>.

¹²² Reuters, *Judge temporarily blocks possible Iowa voter purge*, YAHOO! NEWS, Sept. 14, 2012, <http://news.yahoo.com/judge-temporarily-blocks-possible-iowa-voter-purge-002044496.html>.

their publicly-announced plans to institute systematic purges of alleged non-citizen registrants until after the 2012 election cycle, when their effect on Latino voters may intensify.

* * *

State laws that make it harder to vote may well have an even greater future impact on the Latino vote than the numbers provided above indicate. As is true of this paper's discussion of restrictive voting law changes prevented from taking effect in 2012 by litigation, the foregoing overview of nearly-enacted legislation and of laws that may soon be implemented is illustrative, but not exhaustive. The 2012 election and subsequent changes to state legislative and executive personnel will have an as-yet unknown effect on the reach and spread of restrictive voting policy, as will the outcome of litigation currently in progress. In sum, there is real and significant risk that voting will become more difficult for many more hundreds of thousands of Latino voters in the near term.

V. Voting Restrictions and the Need to Expand Participation

The impact of restrictive voting laws does not stem solely from their direct effect on Latino and other voters whose ballot access they impair. Laws and policies that make it harder to register and vote also do damage to the state of public discourse surrounding elections and voting law. Despite some recent upticks, voter turnout rates in the United States lag well behind those in comparable democracies. One recent publication noted, for example, that fewer eligible Americans vote in Congressional elections than in the equivalent contests in at least 13 countries: Belgium, Australia, Greece, Italy, Spain, the Netherlands, Japan, Germany, Portugal, the United Kingdom, Canada, South Korea, and France.¹²³ It is clear that we have work to do as a society to foster a more participatory and representative democracy, but the prevalence of legislative initiatives that push voting further out of reach is moving us in the opposite direction.

Misinformed Justifications

The restrictive voting laws and policies spotlighted in this paper are driven by concerns that are based, at best, on misinformation, and at worst on prejudice and hope of partisan gain. The concept that elections officials must require would-be voters to do more to prove their eligibility to register, and their identity to vote, is premised on belief that without safeguards in place, ineligible individuals would register and attempt to vote under borrowed identities. Proponents of voting restrictions do frequently argue that voting fraud justifies tightening restrictions: John Fund, a journalist and editor of *The American Spectator*, writes in his recent book *Stealing Elections: How Voter Fraud Threatens Our Democracy* that the U.S. has a “fraud-prone election system” in which improper voting is accelerating and occurring throughout the country. Mr. Fund posits that requiring identification to vote is a popular and common sense response to this specter of fraud.¹²⁴ Former Department of Justice official Hans von Spakovsky, another prominent advocate of voting restrictions, has likewise argued that voting fraud “is a proven election manipulation tactic,”¹²⁵ and necessitates taking responsive steps to ensure election integrity.

In fact, very few legitimate cases of fraudulent voting have occurred that would have been impossible under the system of tighter checks on voter qualifications that individuals like Mr. Fund and Mr. von Spakovsky advocate, in spite of the concerted efforts undertaken to discover and prosecute them. As the *Wall Street Journal* summarizes, “researchers studying voter fraud – a term used to refer to cases in which one voter impersonates another at the poll to cast a fraudulent vote – say they have so far found little direct evidence that the practice is common enough to affect the results of elections, even close ones.”¹²⁶ News21, a national investigative reporting project funded by the Carnegie Corporation of New York and the John S. and

¹²³ HOWARD STEVEN FRIEDMAN, *THE MEASURE OF A NATION: HOW TO REGAIN AMERICA'S COMPETITIVE EDGE AND BOOST OUR GLOBAL STANDING* Ch. 4 (Prometheus Books 2012).

¹²⁴ John Fund, *Democracy Imperiled*, NATIONAL REVIEW, Sept. 13, 2004, available at <http://old.nationalreview.com/comment/fund200409130633.asp>.

¹²⁵ Hans von Spakovsky, *Voter Fraud Is a Proven Election Manipulation Tactic*, U.S. NEWS AND WORLD REPORT, June 13, 2012, <http://www.usnews.com/debate-club/is-voter-fraud-a-real-problem/voter-fraud-is-a-proven-election-manipulation-tactic>.

¹²⁶ Carl Bialik, *Voter Fraud: Hard to Identify*, WALL STREET JOURNAL at A2, Sept. 1, 2012, available at <http://online.wsj.com/article/SB10000872396390443864204577621732936167586.html> [hereinafter *Fraud Hard to Identify*].

James L. Knight Foundation and staffed by a national team of experienced journalists and students, conducted one of the most recent surveys of improper voting allegations.¹²⁷ This initiative's work revealed 2,068 possible incidents of voter fraud since 2000, over a time span during which there were some 146 million registered voters in the country. A mere ten of these cases involved suspected impersonation of another voter, the only fraudulent activity that might be detected by installation of a voter ID mandate. Professor Justin Leavitt, author of The Brennan Center for Justice's 2007 report *The Truth About Voter Fraud*, identified a total of nine impersonation accusations between 2000 and 2007.¹²⁸ These low numbers persist even though the Department of Justice, during the administration of President Bush, pledged to prioritize prosecution of voter fraud. The Department's policies were altered in order to permit legal actions against even minor and isolated voting offenses; nonetheless, five years of efforts produced a total of just 120 people charged, and 86 convicted, for all kinds of fraudulent activity throughout the country.¹²⁹

Associating Latinos With Election Fraud

According to supporters, checks on voters' citizenship both before and after registration are necessary because of the prevalence of unauthorized registration and voting by non-citizens. Florida Governor Rick Scott (R), for example, has defended his efforts over the course of the past year to cancel suspected non-citizens' registration by referencing allegedly confirmed cases of immigrants registering and voting in his state – by one accounting, Scott was certain that more than 50 non-citizens had voted in Florida.¹³⁰ Even if this accounting is accurate, 50 votes are a minute fraction of, for example, the nearly eight million votes cast in Florida in November 2008. Objective investigations by journalists, however, have found even lower total numbers of cases. News21's database includes 56 allegations of non-citizen voting nationally during a period of more than ten years, for example. The *New York Times* notes that most or all of the handful of suspected non-citizen voting cases identified by Department of Justice under President Bush involved apparent mistake rather than intentional fraud.¹³¹

When investigative efforts uncover low incidence of fraud that does not justify voting restrictions, advocates of laws that make voting harder have resorted to appeals to xenophobic and anti-Latino fear. Thus, Texas Lieutenant Governor David Dewhurst (R) wrote in 2007, in support of a Texas voter ID proposal, that, "I want people to consider that with eight to 12 million illegal aliens currently living in the U.S., the basic American principle of one person, one vote, is in danger."¹³² Writing in the *Baltimore Sun* in support of voting restrictions earlier this year, former Maryland Governor Robert Ehrlich (R) echoed this refrain, arguing that, "Ballot security concerns are heightened in so-called sanctuary states, where undocumented aliens are encouraged to live and work...This 'welcome wagon' for illegal immigrants...makes the realization of free

¹²⁷ News21, *Election Fraud In America* (Aug. 12, 2012), available at <http://votingrights.news21.com/interactive/election-fraud-database/>.

¹²⁸ Fraud Hard to Identify, *supra* note 133.

¹²⁹ Eric Lipton and Ian Urbina, *In 5-Year Effort, Scant Evidence of Voter Fraud*, N.Y. TIMES at A1, April 12, 2007, available at <http://www.nytimes.com/2007/04/12/washington/12fraud.html?pagewanted=all> [hereinafter Scant Evidence].

¹³⁰ Terry Frieden, *Justice Department lawsuit challenges Florida voter purge*, CNN NEWS, June 12, 2012, <http://www.cnn.com/2012/06/12/politics/florida-voting-lawsuit-holder/index.html>.

¹³¹ Scant Evidence, *supra* note 136.

¹³² Attorney General Holder's Motion to Compel Production of Testimony and Documents Exhibit 17, *The Week in the Rearview Mirror*, Texas Weekly, Volume 23, Issue 46, *Texas v. Holder* (D. D.C. 2012) (No. 1:12-cv-00128 RMC-DST-RLW).

and fair elections far more difficult.¹³³ The conflation of unauthorized immigration and fraud in elections, at a time when many undocumented residents are of Hispanic origin¹³⁴, pushes members of the public to imagine that illegal Latino votes are being cast and must be suppressed, when in fact the evidence tells us that eligible Latino citizens are under-represented in the participating electorate, and that non-citizens very rarely vote, much less with fraudulent intent.

Partisanship in Voting Policy

Partisan gain is, along with ethnic prejudice, one of the least-defensible justifications advanced for making it harder to vote. Though a conviction that voting restrictions will benefit a particular political party is alleged more often than acknowledged, there have been instances of individuals belying such a belief. Pennsylvania State Representative Mike Turzai (R) famously stated in June 2012, for example, that his state's voter ID mandate would help Governor Romney to win in the state in November.¹³⁵ Another often-cited indicator that support for voting restrictions might be driven by expected impact on election outcomes is one-time Republican Senate staff member Paul Weyrich's observation that, "I don't want everybody to vote. As a matter of fact, our leverage in the elections quite candidly goes up as the voting populace goes down."¹³⁶ Speaking generally, experts like Professor Richard Hasen of the University of California-Irvine School of Law have observed that, "Most of the new laws have passed on party lines."¹³⁷

Diverting Attention From Expanding Voter Participation

Laws that make it harder to vote are concerning because of their significant and disproportionate potential effect on Latino voters, all the more so in consideration of the faulty premises on which they may be based. The expanding space devoted to debate and passage of voting restrictions is not well-deserved; it is distorting public discourse to focus on election security when the failure and inability of voters to participate in elections is the problem of far greater magnitude.

Restrictive voting laws and policies detract from the strength of our democracy, which depends on enfranchisement and broad participation rather than measures that subject voters to scrutiny and controls not warranted by objective need. The success of the nation-building experiment undertaken by our founding fathers draws from its foundation on the principle that Americans will be governed democratically through the vote. Equal voting rights regardless of race, ethnicity, gender, language ability, and other distinctions are so central to our national character that they are protected by more amendments to the Constitution than any

¹³³ Robert L. Ehrlich, Jr., Voter ID laws uphold system's integrity, *BALTIMORE SUN* at 24a, Feb. 26, 2012, available at http://articles.baltimoresun.com/2012-02-24/news/bs-ed-ehlich-fraud-20120226_1_voter-id-laws-photo-id-identification.

¹³⁴ Jeffrey Passel and D'Vera Cohn, Pew Hispanic Center, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade* (Sept. 1, 2010), available at <http://www.pewhispanic.org/2010/09/01/us-unauthorized-immigration-flows-are-down-sharply-since-mid-decade/>.

¹³⁵ *Turzai: Voter ID Will Allow Romney to Win Pa.* (Video) (June 23, 2012), available at <http://www.youtube.com/watch?v=EuOT1bRYdK8>.

¹³⁶ Ari Berman, *The GOP War on Voting*, *ROLLING STONE*, Aug. 30, 2011, available at <http://www.rollingstone.com/politics/news/the-gop-war-on-voting-20110830>.

¹³⁷ Interview by Lauren Feeney, truthout.org, of Richard Hasen, Chancellor's Professor of Law and Political Science, University of California-Irvine School of Law (Sept. 28, 2012), available at <http://truth-out.org/opinion/item/11838-election-expert-richard-hasen-on-voter-fraud-and-disenfranchisement>.

other fundamental right.¹³⁸ Our attention at all levels of government is best devoted to advancing the democratic principle of broad participation: simply put, we must make it easier, not harder, for qualified U.S. citizens to vote. Unjustified restrictions on registration and voting move our nation in the wrong direction.

¹³⁸ Amendments that protect the right to vote include (but are not limited to) the 15th, prohibiting race- or color-based discrimination in voting; the 19th, extending the franchise to women; the 23rd, which ensures that District of Columbia residents have the right to vote for President; the 24th, which bars poll taxes; and the 26th, which gives the right to vote to 18-20 year olds.

VI. Conclusion

Election 2012 is an important moment in time for the Latino electorate. There is no dispute that the Latino population in the United States will continue to grow for the foreseeable future, and along with it the number and influence of Latino adult U.S. citizens eligible to vote. At the same time, Latinos have not voted to the extent of their potential, due to factors including discrimination, lack of information and engagement. The sustained vitality of American democracy demands that emerging groups of eligible voters be fully engaged in elections; instead, recent trends in voting law changes have favored unfair, unnecessary barriers to participation. Unfortunately, Latino voters are at risk of confronting more widespread restrictions in the coming years that make it even more difficult to register and vote, and dampen Latino voter engagement just as it should be increasing.

This paper is, of necessity, a first look at the impact of restrictive voting policies on Latino voters. Numerous factors that cannot yet be reliably quantified prevent a confident prediction of the total number of Latino voters who will find it harder to vote and fail to cast ballots in November 2012, but what is known leads the NALEO Educational Fund to conclude that more than 219,000 Latino voters are at risk of finding it more difficult to vote in 2012. More than 835,000 additional Latino voters may be unable to vote or deterred from voting in the 2013 and 2014 election cycles, particularly if recent trends continue. The results of the 2012 election will tell us more about just how significant a factor these laws are to turnout of Latino and other voters: this will be the first Presidential contest held since states began to react to the U.S. Supreme Court's 2008 approval of Indiana's voter ID law in *Crawford v. Marion Co. Election Board* and to pursue the widespread implementation of similar measures. It will be important to seek to learn more about the interplay between laws that discourage voting, and other factors, some of them discussed in this paper, that have played a part in keeping Latino voters from participating fully. Ultimately, in the interest of sustaining a robust democracy, we must use what we learn to swing the pendulum in favor of law and policy that helps to bring every eligible American to the polls.

Sources, Methodology, and Explanatory Notes

Sources of Demographic and Voter Turnout Data

Throughout the paper, statistics on historical Latino voter turnout and 2012 election projections are as published in the NALEO Educational Fund's 2012 *Latino Election Handbook*. Figures on the turnout of other groups of voters by race and ethnicity for comparison are drawn from the same sources of Latino turnout data in the *Handbook*, the Census Bureau's biennial *Voting and Registration* reports based on the Current Population Survey (CPS). Percentages of particular groups of citizens who registered to vote through third party registrars are also based on the *Voting and Registration* reports and CPS data. 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.

Population growth projections are those created and published by the Census Bureau, based on 2000 Decennial Census figures.

Statistics regarding the size of racial and ethnic segments of the population, numbers of eligible voters of particular races and ethnicities, naturalized status among eligible voters, and percentages of the adult population that are non-citizens are based on the Census Bureau's American Community Survey (ACS) data, in most cases the 2011 one year data file (unless otherwise apparent: for example, data on the number of Latino teenage citizens in Indiana as of 2008 on page 16 is based on the 2006-08 three year data file). The ACS, like the CPS, is a national survey, and its figures on smaller sub-groups may be based on small sample sizes. ACS numbers are recalculated based on three and five year trends to control for the anomalies that may occur with small sample size; as of this writing, these three and five year calculations are not yet publicly available for the 2009-11 and 2007-11 periods; they have a smaller margin of error, in some cases, than the one year files we have utilized.

Although most of the figures cited herein are drawn from Census Bureau surveys other than the Decennial Census, it bears consideration that the most recent 2010 Decennial survey produced a 1.5% undercount of the Latino population. Structural barriers to accurately assessing the size and characteristics of the U.S. Latino population persist in spite of the heroic participation efforts of the Latino community, and innovations such as direct mailing of the bilingual census form.

Data on the racial and ethnic composition of the group of U.S. residents eligible to naturalize are based on DHS's annual publication, *Estimates of the Legal Permanent Resident Population*.

Where the data was available to the NALEO Educational Fund – specifically, regarding monthly new voter registrations in Illinois and Texas – through State Voices' Voter Activation Network, figures published herein are based on primary data from state records.

Voters Potentially Affected By Strict Voter ID Laws

Throughout this paper, total numbers of Latino voters in particular states who may be prevented from voting by strict voter ID laws are calculated 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 2007 survey, *Citizens Without Proof* (online at www.brennancenter.org/page/-/d/download_file_39242.pdf). The resulting number has been rounded to the nearest thousand to reflect the fact that these are only estimates of the numbers of eligible voters likely to lack government-issued photo ID. This methodology does not account for voters who may lack government-issued photo ID but may be able to satisfy voter ID requirements in some states with, for example, a qualifying student or tribal ID. However, it is consistent with the methodology employed by the Brennan Center in its 2011 report on the potential impact of restrictive voting laws, *Voting Law Changes in 2012*. The 16% estimate of Latinos lacking government-issued photo ID is also consistent with the results of other similar surveys as detailed herein.

Voters Potentially Affected By Early Voting Rollbacks

Unless otherwise specified (in, e.g., the case of Ohio), calculations of the number of voters who might wish to cast ballots on early voting days eliminated since 2008 do not account for year-to-year variations in the hours polls are open. To our knowledge, comprehensive data reflecting statewide early voting trends by hour of the day are not publicly available.

Discussion of early voting patterns and projections in Florida is based on the work of Professors Michael Herron of Dartmouth College and Daniel Smith of the University of Florida, who generously shared their results on the topic with the NALEO Educational Fund. Professors Herron and Smith matched early voting records obtained from Florida counties with the state voter file to determine the race of early voters in 2008; their work is thus based entirely on primary data. Their calculations of day by day vote totals broken down by voters' races and ethnicities exclude a relatively modest number of records that show an erroneous date outside the actual early voting period, as well as records that were matched to voters whose voter files contained an invalid race code. Included, however, are records matched to voters whose race was listed as "Unknown". Day by day vote totals also include a miniscule number of records that displayed other possible errors: for instance, votes recorded as being cast on a Sunday in a county that did not offer Sunday voting.

Data on early votes cast in Georgia in 2008, and on the race and ethnicity of Georgia early voters, are as published by the Georgia Secretary of State's office (online at <http://sos.georgia.gov/elections/earlyvotingstats08.htm>). In order to determine how many early and advance votes were cast in the state in 2008 during the voting period eliminated for 2012, we have relied on contemporaneous reports based on updates published by the Georgia Secretary of State in 2008, including analysis by Politico's Ben Smith and by various authors associated with the Daily Kos website.

Factors Excluded

This paper examines the impact of voting law and policy on in-person voting only. It does not treat absentee balloting procedures. In some states, however, voters subject to ID requirements when voting in-person may have the option of requesting and voting via absentee ballot without supplying ID. Voters unable to satisfy ID requirements applicable to in-person voting may or may not be aware of the full range of options available to them; in addition, they may or may not qualify to vote absentee depending on their state's policies. We do not have sufficient data to produce an estimate of how absentee ballot options may mitigate the negative effects of restrictive in-person voting policies.

In addition, advocates for equal, broad voter access have identified additional policies and factors that may make it more difficult for citizens to vote this fall and beyond, but which we have not addressed in this paper. We have chosen to focus herein on substantive changes to state laws, and on emerging issues whose influence and effect on Latino voters in particular has intensified over the most recent two years. The NALEO Educational Fund believes that additional considerations not treated herein have the potential to determine whether a significant number of Latino votes are cast and counted or not.

Among those factors that are not quantified herein but that may create barriers in the way of Latino voters are:

- Failure to fully implement the National Voter Registration Act's provisions requiring that those who use government services be offered the opportunity to register to vote;
- Failure to fully implement language assistance requirements pursuant to the VRA;
- Ineffective control of frivolous citizen challenges of voter qualifications; and
- Biased enforcement of ID laws and other election controls that result in closer and more exacting scrutiny of Latino voters.