



January 2014

# Photo ID Laws

by **Catherine M. Flanagan**  
and **Estelle H. Rogers**

As of 2013, 19 states had enacted laws requiring that a voter present photographic identification at the polls, many with no exceptions.<sup>1</sup> Although details of the laws vary, they all deter otherwise-eligible voters from going to the polls. Those hit hardest are the same groups traditionally marginalized in our election process: African Americans, Spanish speakers, low-income individuals, disabled voters, and youth. State legislatures passed these laws and other restrictive measures in a concerted response to the historic 2008 presidential election, when minority turnout surged.<sup>2</sup> The stated rationale for the measures—preventing voter fraud—is baseless. Photo ID laws prevent only one kind of voter fraud: impersonation at the polling place, in which an individual poses as a particular eligible voter and votes as that person. This sort of voter fraud is extremely rare.

The enactment of photo ID laws follows a historic trend going back to the 1890s when elites, citing the dangers of voter fraud, instituted voter registration systems that limited participation by newly freed blacks, immigrants, and the poor.<sup>3</sup> Further exclusionary measures utilized in the twentieth century included poll taxes, literacy tests, and confusing, restrictive voter registration rules. Although courts have ruled that poll taxes are unconstitutional,<sup>4</sup> today's strict photo ID laws are the functional equivalent for Americans who lack the required documentation.

Federal precedent dictates that states imposing these restrictions must provide free ID cards to those who need them.<sup>5</sup> However, those seeking an ID card typically must present underlying documentation such as a birth certificate, which itself costs money to acquire. Fees to obtain a birth certificate average \$10 to \$30,<sup>6</sup> a significant sacrifice for someone living near the poverty line. And some who have voted for years, particularly elderly, rural voters, never had a birth certificate because they were born at home.<sup>7</sup> Even in states that do not require underlying documentation, however, individuals who do not have access to transportation or time off from work will incur significant cost or hardship just in traveling to an office during business hours to obtain these IDs.

The impact of this “solution” to the phantom problem of voter impersonation is not trifling; millions of dollars must be devoted to implementation, free IDs, and voter education. While photo ID exacts a steep financial cost, disenfranchising our most vulnerable citizens takes an incalculable toll on democracy.

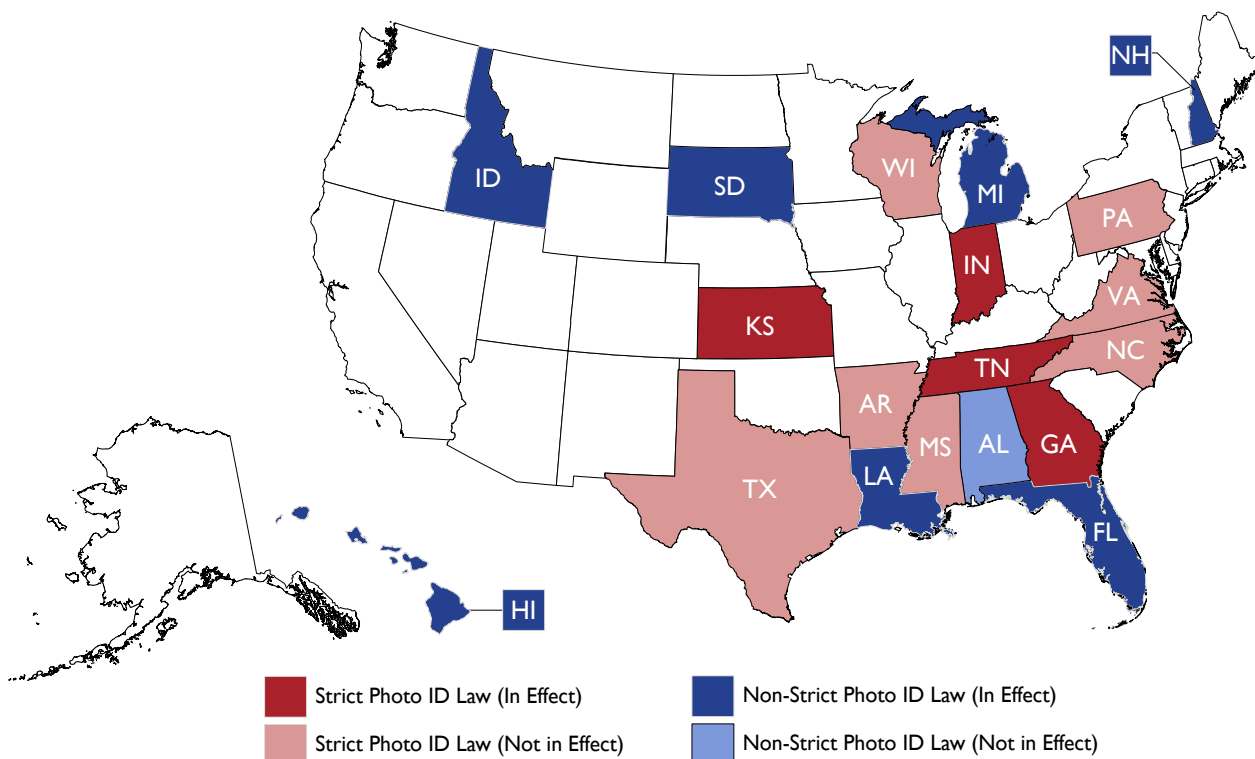
## Background

In the 2004 elections, only five states maintained photo ID laws. Each law was “non-strict,” allowing any individual who did not bring a photo ID to the polls to vote by signing a sworn affidavit attesting to his or her identity.<sup>8</sup> In 2006, Indiana became the first state to implement a “strict” photo ID law, requiring voters to present a photo ID at the polls without exception. At roughly the same time, Georgia and Missouri also enacted strict photo ID laws, but state courts initially blocked both laws on state constitutional grounds.<sup>9</sup> Other states then proceeded to enact either non-strict or strict voter ID laws.

In 2013 alone, six states passed voter ID laws,<sup>10</sup> making a total of 19 states with photo ID laws, 11 of which are strict.<sup>11</sup> The map below shows which states have passed a voter ID law, whether the law is strict or non-strict, and whether the law is currently in effect.

Most laws concerning voter ID requirements have been enacted at the state level. For instance, state law defines what constitutes a “valid” photo ID, typically defining it as an unexpired photo ID issued by the state or federal government that includes the voter’s current address and an expiration date.<sup>13</sup> The only federal law regarding identification requirements for voting is the Help America Vote Act (HAVA),<sup>14</sup> which provides that a first-time voter who registered by mail must show an ID upon voting if none was appended to his voter registration application, and if the driver’s license or Social Security number on the application does not match the state’s database. (If the voter did not register by mail, federal law requires no proof of identity whatsoever.) The types of ID permitted include a utility bill, bank statement, government check, paycheck, or government document that shows the voter’s name and address.

### Photo ID Laws as of 2013 <sup>12</sup>



## Concerns with Photo ID

### *Photo ID Laws Disproportionately Burden Historically Marginalized Groups*

Research confirms what common sense tells us: more people participate in elections when laws are changed to mitigate the difficulty of voting, and fewer people participate when rules make voting more time consuming or expensive.<sup>15</sup> Minorities and low-income persons are most susceptible to disenfranchisement when laws create obstacles to voting.<sup>16</sup>

Across the general population, approximately 11% of Americans do not have a photo ID and will be denied the right to vote in states where it is required unless they can obtain one.<sup>17</sup> But there are vast inequities in the distribution of this burden. Only 8 percent of whites do not have photo ID, but the rate balloons for groups historically marginalized in the election process. For African Americans, the rate is 25 percent, more than three times that of whites. Similarly, 16 percent of Hispanics, 18 percent of the elderly, and 18 percent of youth ages 18–24 have no photo ID. Lower income people lack photo ID at a 15 percent rate.<sup>18</sup>

Studies in Indiana, California, Washington, and New Mexico—the latter three of which do not have strict photo ID requirements—confirm these disparities between voters of color and whites.<sup>19</sup> Similarly, in Wisconsin, nonwhites lack driver's licenses, the most commonly held photo ID, at a higher rate than do other demographic groups, according to a study of that state's voters.<sup>20</sup> The Department of Justice concluded that in Texas, Hispanic registered voters are between 46.5 percent and 120 percent more likely to lack either a driver's license or a state-issued photo ID.<sup>21</sup> Although income is an important factor in access to photo ID, racial minorities are less likely to have access to identification regardless of income.<sup>22</sup> And, because

nonwhites are disproportionately low-income, comprising 58 percent of low-income people in America,<sup>23</sup> minority status and low-income status overlap.

Various factors contribute to lower-income individuals lacking strict photo ID. As a group, they are less likely to have driver's licenses.<sup>24</sup> Lower-income individuals also tend to be more mobile than other groups, so even if they have a driver's license, it is less likely to show a current address, which is often a requirement.<sup>25</sup> The same is true for young people and students, who also change residences more often than other demographic groups.<sup>26</sup> There is evidence that young African Americans lack photo ID at even greater rates than other youth.<sup>27</sup> Individuals from the targeted groups who live in urban areas and depend less on cars may lack driver's licenses at a higher rate than their suburban and rural counterparts.<sup>28</sup>

### *Photo ID Laws' Effect on Turnout*

The bottom line question is the extent to which photo ID laws actually depress the vote of traditionally marginalized demographic groups. Unfortunately, there is no reliable direct evidence on this point. The 2008 election was the first presidential election in which strict photo ID bills were implemented,<sup>29</sup> but since then, social scientists have been unable to devise research tools and methods necessary to isolate the influence on voter turnout of any single factor such as lack of required photo ID. As social scientists Robert Erickson and Lorraine Minnite explain, "While we do not conclude that voter ID rules have no effect on turnout, our data and tools are not up to the task of making a compelling statistical argument for an effect."<sup>30</sup> Apart from technical methodological difficulties,<sup>31</sup> myriad causes in addition to voting requirements contribute to turnout on Election Day, including the weather, the particular candidates involved, and the presence of state or local ballot initiatives.<sup>32</sup> It is far easier

to determine the extent to which portions of the population have the prerequisites for voting than to determine definitively the prerequisites' effect.

### *“Free” Photo IDs Are Anything But*

Although federal court precedent requires states with photo ID requirements to provide an ID free of charge,<sup>33</sup> the steps required to obtain it can be arduous and costly. When laws increase the money and time required to vote, the voters most likely to be deterred are those with fewer resources and less education.<sup>34</sup> Strict photo ID laws trigger this dynamic because the groups most likely to need a free ID are also most likely to lack the underlying documents, as well as the time, money, and transportation necessary to get them.<sup>35</sup>

For example, lower-income people who make less than \$25,000 per year are only half as likely to have a birth certificate, passport, or naturalization papers.<sup>36</sup> Voters needing state-issued non-driver ID cards—all individuals who do not drive—must typically pay fees of \$15 to \$30 for documents such as birth certificates, which are usually necessary to get a free photo ID.<sup>37</sup> Moreover, voters may face a bureaucratic Catch-22: in some jurisdictions, to get the free ID they need a birth certificate, but to get the birth certificate, they need a photo ID.<sup>38</sup> In addition, many individuals do not have access to their out-of-state birth certificates, and some rural or elderly voters never had a birth certificate at all.<sup>39</sup>

Apart from the cost of obtaining underlying documents, the practical difficulties of taking the steps to get the free photo IDs are onerous. The very groups that are more likely to lack photo ID also have disproportionately low access to a vehicle to transport them to the government office where the free photo ID or underlying documents, like birth certificates, are offered.<sup>40</sup> In 2012, for example, there were 450,000 eligible voters living in the 10 states with strict photo ID requirements who had no access to a vehicle and resided more than 10 miles from the

nearest state office that issues free photo IDs more than two days a week.<sup>41</sup> Although transportation may be less of a problem for urban voters, long lines frequently are found at state offices located in metropolitan areas, forcing a voter to take time off from work. This may pose an insurmountable problem for lower-income workers.

There is no legal protection for employees needing to leave work to get a photo ID. Federal law requires employers to allow workers time off to vote, but no state allows time off to obtain the requisite photo ID.<sup>42</sup> Moreover, very few offices offering the IDs are open outside of regular business hours.<sup>43</sup> At least five states that have either proposed or enacted photo ID bills, including Alabama, Kansas, Mississippi, Texas, and Wisconsin, have no ID-issuing offices open on Saturdays. In South Carolina, only six of the state's 68 offices are open on Saturdays.<sup>44</sup>

Those who already struggle economically have trouble paying for necessary documents, traveling to an office issuing IDs, and taking extensive time from work to do so. Texas' strict photo ID law was initially denied preclearance by a federal court panel on this basis. The court concluded that the law abridges or denies the right to vote because not only did it require a \$22 fee for a birth certificate, it also forced voters to take time from work to obtain the ID.<sup>45</sup> Because the court did not preclear the law, Texas could not implement it.

However, in June 2013, the Supreme Court essentially removed the preclearance process as a bar to the Texas photo ID program. In *Shelby County v. Holder*,<sup>46</sup> the Court struck down the coverage formula in the Voting Rights Act that determined which jurisdictions are required to obtain federal preclearance for changes to their election laws. Immediately after the opinion was issued, Texas announced it would implement its photo ID law. Similarly, Mississippi—another formerly covered jurisdiction whose photo ID law had not been



precleared—also announced that it would proceed with enforcing its photo ID law, which it currently plans to do by July 2014.<sup>47</sup> On August 22, 2013, The Department of Justice filed suit in Texas against the ID provision, seeking relief under Section 3 of the Voting Rights Act, which allows a court to impose a preclearance requirement in cases of intentional discrimination.<sup>48</sup> Several other Voting Rights Act Section 2 discrimination cases brought by private parties against the provision also remain pending, and have been consolidated for trial along with the DOJ case.<sup>49</sup>

## Litigation Challenging Strict Photo ID Laws

Legal challenges to strict photo ID laws have enjoyed mixed success, often depending on the type of challenge brought. Unfortunately, courts have not uniformly held that strict photo ID laws impose illegal, disproportionate burdens on groups historically marginalized in the election process.

The cases variously assert federal constitutional claims, state constitutional claims, and violations of both Section 2 and the now-gutted Section 5 of the Voting Rights Act of 1965.

### *Federal Constitutional Challenges*

Advocates have challenged strict voter ID laws under the U.S. Constitution as imposing a severe and unconstitutional burden on the right to vote as protected by the Equal Protection Clause, and as imposing an unconstitutional poll tax under the 24th Amendment. However, since the Supreme Court's 2008 ruling in *Crawford v. Marion County Election Board*,<sup>50</sup> which held Indiana's strict photo ID law constitutional, further federal constitutional challenges have not been fruitful.

*Crawford* rejected the argument that Indiana's law imposed a severe burden on the right to vote.<sup>51</sup> The

trial court in that case held that the plaintiffs failed to produce evidence of any particular voters who would be adversely affected by the law.<sup>52</sup> But, interestingly, the Supreme Court upheld the law without any evidence that voter impersonation fraud had ever occurred in Indiana.<sup>53</sup> When adopted, Indiana's photo identification law was widely considered one of the strictest voter identification laws in the country,<sup>54</sup> requiring most Indiana in-person voters to produce state- or federally-issued identification.<sup>55</sup> A voter without acceptable identification may cast a provisional ballot but must present photo ID within 10 days of the election to prove her identity in order for the vote to count.<sup>56</sup> The law does not require absentee voters to produce ID.<sup>57</sup>

Following *Crawford*, the 11th Circuit Court of Appeals rejected a federal constitutional challenge to Georgia's strict voter ID law. In 2005, before *Crawford* was decided, a federal trial court had preliminarily enjoined the 2005 version of Georgia's law as a poll tax because it had required payments to vote, including a \$20 fee for a photo ID card.<sup>58</sup> The Georgia legislature then revised the law, requiring boards of elections to provide free photo IDs to registered voters who indicated they had no acceptable form of ID.<sup>59</sup> The new version was also enjoined for a then-imminent primary election (and several other injunctions and stays followed).

Evidence before the trial court had shown that nearly a quarter of the state's registered voters aged 65 or over did not have a driver's license or state identification card, and nearly a third of African American voters in this age group lacked such identification. Although African Americans comprised 27.8% of the voter roll, they represented 35.6% of those lacking a driver's license or Georgia ID card.<sup>60</sup> Georgia was not making enough of an effort to educate voters about the ID requirement or the availability of free IDs, and voters had insufficient time and ability to navigate the absentee voting process before the primary.<sup>61</sup> The court found the law unduly burdened the right to vote

because it prevented a large number of Georgians from voting. Further, it held the law unconstitutional because it was not narrowly tailored to the government's asserted interest in fighting fraud.<sup>62</sup>

However, the case was appealed, and the 11th Circuit reversed, holding that the revised law passed constitutional muster under *Crawford*. As in *Crawford*, the court did not require the state to show any specific instances of voter fraud justifying the law.<sup>63</sup> Instead, it characterized the laws' burdens on voters as "ordinary" even though the most marginalized voters must take an extra step of going to county offices to obtain the free photo ID solely to vote.<sup>64</sup> Georgia's strict voter ID law remains in effect.

Arizona's strict photo ID law also survived a federal challenge. The plaintiffs claimed that because many voters without photo ID had to purchase documents to get a free ID, the law amounted to a poll tax. The 9th Circuit Court of Appeals held that a requirement to obtain documents to get a free ID was not a poll tax because it was not a fee for voting and that the "minimal" burden of paying for underlying documents was justified by the state's interest in preventing voter fraud.<sup>65</sup>

In view of these post-*Crawford* outcomes, it is not surprising that legal challenges to voter ID laws have largely shifted away from asserting federal constitutional claims.<sup>66</sup> Instead, state constitutions and the federal Voting Rights Act of 1965 have offered greater protection for voters who lack photo ID.

### ***State Constitutional Challenges***

Several state courts have held that their state constitutions prohibit a strict photo ID law. In 2006, for example, the Missouri Supreme Court rejected the state's strict voter ID law on state constitutional

grounds, concluding that the "express constitutional protection of the right to vote differentiate[s] the Missouri constitution from its federal counterpart."<sup>67</sup> The court found that Missouri citizens lacking photo ID would need to pay fees for the necessary underlying documents. These fees, the court held, functioned as a payment to vote. Furthermore, the law's cumbersome procedures placed an unconstitutional burden on the right to vote.<sup>68</sup> The court rejected the state's argument that the law was necessary to prevent fraud because "voter impersonation fraud [was] not a problem in Missouri,"<sup>69</sup> and also found that the law failed to prevent either absentee voter fraud or registration fraud, implicitly recognizing that photo ID laws deter only voter impersonation.<sup>70</sup> Because the law burdened the right to vote without addressing a genuine problem that actually exists in Missouri, it violated the state constitution's equal protection clause by placing burdens on only some voters and not others.<sup>71</sup> Following this decision, proponents of photo ID have pushed for an amendment of the state constitution so as to permit such laws. So far, they have been unsuccessful.<sup>72</sup>

In January, 2014, Pennsylvania's strict photo ID law was permanently enjoined as facially unconstitutional under the state's constitution, which recognizes the right to vote as fundamental.<sup>73</sup> The court found that the state failed to provide voters a non-burdensome method of obtaining a free photo ID, which was a constitutional prerequisite.<sup>74</sup> The challenged statute required that the state provide voters without ID liberal access to a free ID, and the court concluded that the government's implementation schemes, although revised repeatedly, continuously presented unreasonable barriers that violated both the statutory mandate and the constitution.<sup>75</sup> The agency offices issuing the free IDs were sparsely located with limited hours of operation, and multiple visits were often required.

Flawed communication and record-keeping by agencies resulted in mistaken denials of requests for the ID.<sup>76</sup> The court found that voter fraud, which a credible expert concluded was “exceedingly rare” in Pennsylvania, failed to justify the burdens imposed.<sup>77</sup> The state’s efforts to educate the public about the shifting ID requirements were criticized as “misinformation” which exacerbated the burdens.<sup>78</sup> However, the court declined to find that the statute violated the state constitution’s Equal Protection guarantees.<sup>79</sup>

Two pending lawsuits that challenge Wisconsin’s strict voter ID law as violating the state constitution use different claims and evidentiary records. In *Milwaukee Chapter of the NAACP v. Walker*, the court blocked the law after concluding that it violated the right to vote guaranteed by Wisconsin’s constitution.<sup>80</sup> In addition to evidence showing that hundreds of thousands of registered voters and eligible citizens lack the requisite photo ID,<sup>81</sup> the court found persuasive “evidence of specific individuals who experienced difficulty and expense obtaining a drivers license or a DMV photo [ID].”<sup>82</sup> The court emphasized that, in contrast to the very real problems the law created for many voters, there was no problem of fraud to justify it. Indeed, despite voter fraud investigations conducted since 2004, there was not a single prosecution of voter impersonation—which is, the court recognized, the only type of fraud the photo ID law could prevent.<sup>83</sup> The court also criticized the law for lacking a fail-safe mechanism for eligible voters who appear at the polls without the required ID,<sup>84</sup> stating it was obligated to “consider the actual impact of the statute rather than simply deferring to the stated purpose of the law.”<sup>85</sup> The state has appealed.

In the second state constitutional challenge to Wisconsin’s strict voter ID law, *League of Women Voters of Wisconsin Education Network v. Walker*,<sup>86</sup> the appellate court rejected the argument that

the photo ID requirement improperly added a new qualification to vote in violation of Wisconsin’s constitution. The court held that the law was a permissible regulation allowing election officials to determine whether the voter had the qualifications required.<sup>87</sup> However, the opinion is not controlling in the NAACP case, which has different legal claims and a different factual record.<sup>88</sup> The Wisconsin Supreme Court has agreed to take up both cases.<sup>89</sup>

### *Challenges Under Section 5 of the Voting Rights Act*

Since states began enacting strict photo ID laws, Section 5 of the Voting Rights Act has provided crucial protection to racial and language minority voters. The recent Texas and South Carolina voter ID preclearance cases demonstrate this.<sup>90</sup> But in *Shelby County v. Holder*, the Supreme Court struck down the coverage formula that determines which jurisdictions Section 5 covers,<sup>91</sup> effectively gutting the preclearance requirement and leaving racial and language minority voters in the previously-covered jurisdictions without a meaningful pre-implementation remedy.

In *Holder v. Texas*, the court denied preclearance and, relying on undisputed evidence, found that “racial minorities in Texas are disproportionately likely to live in poverty and, because [the new photo ID law] will weigh more heavily on the poor,” the law would likely be retrogressive in violation of Section 5.<sup>92</sup> The court called the law’s requirements “strict, unforgiving burdens.”<sup>93</sup> These burdens included the cost of identification (including underlying documents), travel to a far away government office open during limited hours to obtain free ID,<sup>94</sup> and the law’s narrow list of valid ID options. The court emphasized that the legislature rejected several amendments to expand access, such as accepting student IDs.<sup>95</sup> Ten months after Texas was

enjoined from imposing these burdens on the poor, however, the Supreme Court, in effect, resurrected the law. The day the Shelby decision was issued, Texas announced that it would immediately enforce its photo ID law.<sup>96</sup>

In South Carolina, the give-and-take of the preclearance process resulted in officials mitigating the most restrictive aspects of the state's strict photo ID law. The South Carolina law required voters to present photo ID to vote a regular ballot but allowed them to cast a provisional ballot if there was "a reasonable impediment that prevents the elector from obtaining photographic identification."<sup>97</sup> The Justice Department initially blocked the law's implementation, in part because of the ambiguity in how the "reasonable impediment" provision would be applied, and because the state did not offer final details about the system that would issue and distribute the new free photo voter registration cards.<sup>98</sup> The Justice Department suggested that the state take measures to mitigate the law's racially discriminatory effects and then resubmit the law.<sup>99</sup>

South Carolina challenged the preclearance denial, but during the litigation, state officials finalized their interpretation of the law in ways that the court determined ameliorated the law's discriminatory impact. First, officials clarified the option allowing voters to vote without presenting a photo ID if they face a reasonable impediment to obtaining one by permitting voters to submit an affidavit stating the reason. The court identified several other improvements in the law: the acceptability of additional types of photo IDs, the availability of a free photo ID, and the expansion of acceptable underlying documentation for the ID, including utility bills, pay checks, government checks, and bank statements.<sup>100</sup> The law also required the state to conduct an "aggressive voter education program."<sup>101</sup> The court concluded that the law's modified procedure did not require a photo ID to

vote, in effect, because voters could vote with their non-photo ID by signing the affidavit listing any truthful reason for not obtaining a photo ID.<sup>102</sup> The "reasonable impediment" provision and its expansive interpretation were central to the decision: the court stated that the provision "eliminate[d] any disproportionate effect or material burden that South Carolina's voter ID law otherwise might have caused."<sup>103</sup>

The South Carolina preclearance process underscores Section 5's importance in delaying implementation of laws until states can take measures to mitigate their discriminatory impact. Although the court ultimately precleared the South Carolina law from 2013 forward, it blocked implementation in 2012 because there was insufficient time in the weeks before the election for voters without photo ID—who were disproportionately African American—to take steps to comply.<sup>104</sup> The preclearance process itself undoubtedly influenced state officials to adopt a less burdensome interpretation of the statute. As the concurring opinion noted, "[o]ne cannot doubt the vital function that Section 5 of the Voting Rights Act has played here. Without the review process under the Voting Rights Act, South Carolina's voter photo ID law certainly would have been more restrictive."<sup>105</sup> In addition to blocking discriminatory voting changes, Section 5 has also influenced the legislative and enforcement process of existing voter ID laws, resulting in more equitable, accessible election processes.<sup>106</sup>

### ***Section 2 of the Voting Rights Act and Future Challenges***

In the wake of the Shelby County case, and in jurisdictions not subject to preclearance, Section 2 offers an alternative basis for challenging discriminatory voter ID laws. Section 2 prohibits "voting practices that in the totality of circumstances result in discrimination on account of race."<sup>107</sup> Howev-



er, in contrast to Section 5, challengers have the burden of proof, and relief is not typically available in the pre-enforcement stage except by an extraordinary remedy, such as a preliminary injunction or temporary restraining order. Moreover, Section 2 cases entail expensive and time-consuming litigation by private parties.

Advocates and voters challenging Arizona's polling place voter identification law, passed by the voters in Proposition 200, brought a Section 2 challenge in addition to their constitutional claims, arguing that the requirement violated the rights of Latinos. Although the law's opponents argued the law diluted Latinos' voice in the political process and disproportionately denied their right to vote, the en banc 9th Circuit upheld the trial court's conclusion that there was no proof of a causal relationship between the law and any alleged discriminatory impact. For example, no evidence showed a causal connection between the identification law and observed differences in the voting rates of Latinos.<sup>108</sup> The court held it was not enough to show disproportionate impact on a racial minority; the plaintiff must show that the challenged photo ID law causes the disparity.<sup>109</sup> Based on this analysis and the trial court record, the Section 2 challenge failed. Other Section 2 challenges to strict voter identification laws are pending, including several lawsuits challenging Texas' voter ID law filed following the state's enforcement of the law after Shelby, two cases challenging Wisconsin's strict photo ID law, as well as Section 2 challenges to North Carolina's recently-enacted strict photo ID law.<sup>110</sup>

Section 3 of the Voting Rights Act offers another avenue for pre-clearance of discriminatory photo ID laws and other election changes. Under Section 3(c)'s "bail-in" provision, a court finding that an election change violates the Constitution may grant relief requiring the jurisdiction to pre-clear some or all future voting changes during a specified time

period.<sup>111</sup> Section 3 gives a court flexibility with which to consider the circumstances of the violation and structure a preclearance program to deter or block future violations. The Shelby decision striking down the coverage formula does not affect the bail-in option.<sup>112</sup>

The Department of Justice has filed suit in Texas against the ID law under Section 2, seeking a remedy under Section 3.<sup>113</sup> DOJ has also sued North Carolina under these provisions, challenging the state's recently-passed voter ID law as well as its cutbacks to early voting and other policies.<sup>114</sup>

## Extravagant Solution To A Nonexistent Problem

The severely disenfranchising effects of photo ID laws could be justified only by an equally extreme threat to our election system. Yet the facts show just the opposite – the kind of fraud photo ID would be able to prevent, voter impersonation fraud, is exceedingly rare. The Bush Administration made prosecution of voter fraud a high priority during the 2002 to 2005 period—in fact, eight U.S. Attorneys were fired because they were insufficiently energetic in investigating and bringing such cases.<sup>115</sup> Yet the government did not convict a single person of voter impersonation in the 2002 and 2004 elections, when 197 million votes were cast for federal candidates. The Department of Justice convicted 26 individuals of other forms of voter fraud, but none of the convictions involved evidence that the offender impersonated a real or fictitious voter.<sup>116</sup>

In waging the battle against phantom voter impersonators, states are not only undermining equality at the ballot box, but they are also depleting scarce public resources. Strict photo ID laws are expensive. Courts require states to provide free IDs, educate the public and poll workers about the require-

ment, conduct outreach to voters who lack ID, and fund offices that issue free ID. States considering such programs routinely produce vague or incomplete estimates of the funds required. Because the laws are relatively new, there is no uniform, coherent standard on which states can model the programs and predict their costs.

For example, Indiana and Georgia both began implementing their photo ID laws in the 2006 – 2007 period, but they have incurred vastly different costs over their laws' first five years of implementation, as self-reported. Indiana expended more than \$12 million providing identification cards and educating the public,<sup>117</sup> while Georgia spent only \$1.6 million.<sup>118</sup> Furthermore, Indiana issued more free photo IDs than Georgia by a factor of 40,<sup>119</sup> possibly because Indiana accepts even fewer types of ID than does Georgia and thus had more citizens who lacked the required documents.<sup>120</sup>

Future costs of photo ID laws are often projected to advance strategic interests or to gain partisan advantage. In Pennsylvania, the Secretary of State estimated implementation costs at \$5 million, while the nonpartisan Pennsylvania Budget and Policy Center estimated it would require \$11 million.<sup>121</sup> The Secretary of State also underestimated the demand for free IDs by promoting a study estimating that 99% of voters currently had photo ID, while an analysis by the Philadelphia Inquirer determined that 9.2% of voters lack photo ID.<sup>122</sup> While some states appear to evaluate program needs and expenses conscientiously, other states seem to give fiscal costs short shrift. Proponents of the bill passed by the Missouri Legislature in 2011 provided a detailed estimate concluding the program would cost close to \$10 million. In contrast, Nebraska sponsors denied any meaningful fiscal impact, claiming that costs would be negligible.<sup>123</sup>

## Conclusion

The 11 states that have passed strict photo ID bills<sup>124</sup> did not do so based on a detached analysis of the danger presented by voter impersonation and the cost of deterring it—otherwise, the laws would have failed. Fueled by cynical, partisan self-interest, the proponents of these laws sought to depress the votes of eligible citizens. During the 2011 to 2012 period alone, lawmakers proposed 62 photo ID bills in 37 states.<sup>125</sup> In a telling comment, the Republican House Majority Leader of Pennsylvania candidly touted that state's strict photo ID law (before it was enjoined) as a major party achievement that would deliver the state's 20 electoral votes to Governor Romney in the 2012 election.<sup>126</sup> In the political maelstrom surrounding enactment and implementation of such bills, local election officials often provide the quiet voices of reason, questioning the need for expensive photo ID programs that only make their job harder.<sup>127</sup>

Advocates of fair and accessible elections must continue to scrutinize the disproportionate burdens strict photo ID requirements impose on vulnerable segments of our electorate. A developed factual record is crucial to winning reversals, whether through legislation, litigation, or advocacy.

## Notes

1. Voter Identification Requirements, Nat'l Conf. of State Legislatures, <http://www.ncsl.org/legislatures-elections/elections/voter-id.aspx> (last updated June 27, 2013).
2. Conor Dougherty, *Minority Turnout Was Critical to Obama's Election, Data Show*, Wall St. J. (July 21, 2009), <http://online.wsj.com/article/SB124813588601666995.html>.
3. See Frances Fox Piven & Richard A. Cloward, *Why Americans Still Don't Vote and Why Politicians Want It That Way* 83, 92 (Joshua Cohen ed., 2000) (discussing the history of U.S. voter registration); see also Lorraine Minnite, *The Politics of Voter Fraud*, Project Vote 3 [http://www.projectvote.org/images/publications/Policy%20Reports%20and%20Guides/Politics\\_of\\_Voter\\_Fraud\\_Final.pdf](http://www.projectvote.org/images/publications/Policy%20Reports%20and%20Guides/Politics_of_Voter_Fraud_Final.pdf) (last visited Sept. 12, 2013).
4. *Harman v. Forssenius*, 380 U.S. 528 (1965) (holding that poll taxes in federal elections violate the 24th Amendment); *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966) (holding that poll taxes in state elections violate the Equal Protection Clause of the Fourteenth Amendment).
5. See *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008).
6. Keesha Gaskins & Sundee Iyer, *The Challenge of Obtaining Voter Identification*, Brennan Ctr. for Justice 14, [http://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/Challenge\\_of\\_Obtaining\\_Voter\\_ID.pdf](http://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/Challenge_of_Obtaining_Voter_ID.pdf) (last updated July 29, 2012).
7. See Robert Greenstein, Leighton Ku, & Stacy Dean, *Survey Indicates House Bill Could Deny Voting Rights to Millions of U.S. Citizens* 3-4 (Sept. 22, 2006), <http://www.cbpp.org/files/9-22-06id.pdf> (describing how elderly, rural, and southern voters are less likely to have a birth certificate).
8. Ruth B. Mandel et al., *Report to the U. S. Election Assistance Commission on Best Practices to Improve Voter Identification Requirements Pursuant to the Help America Vote Act of 2002 Public Law 107-252 at 9* (2006), available at [http://www.eac.gov/assets/1/workflow\\_staging/Page/62.pdf](http://www.eac.gov/assets/1/workflow_staging/Page/62.pdf).
9. *Lake v. Perdue*, No. 2006-CV-119207 (Ga. Sup. Ct. 2006) (entering injunction), *vacated on other grounds by* 282 Ga. 348 (Ga. 2007); *Weinschenk v. Missouri*, 203 S.W.3d 201 (Mo. 2006).
10. In 2013, North Carolina and Virginia legislated new photo ID requirements, while Arkansas, North Dakota, Oklahoma, and Tennessee strengthened their existing photo ID laws. *Voter ID: 2013 Legislation*, Nat'l Conf. of State Legislatures, <http://www.ncsl.org/legislatures-elections/elections/voter-id-2013-legislation.aspx> (last updated Aug. 22, 2013).
11. Voter Identification Requirements, *supra* note 1.
12. *Id.*
13. See generally *Voter Identification Requirements*, *supra* note 1.
14. 42 U.S.C. § 15301 et seq.
15. Matt A. Barreto, Stephen A. Nuño, & Gabriel R. Sanchez, *Voter ID Requirements and the Disenfranchisement of Latino, Black and Asian Voters* 10, *Am. Pol. Sci. Ass'n Presentation* (Sept. 1, 2007), available at [http://faculty.washington.edu/mbarreto/research/Voter\\_ID\\_APSA.pdf](http://faculty.washington.edu/mbarreto/research/Voter_ID_APSA.pdf).
16. *Id.*
17. *Citizens Without Proof*, Brennan Ctr. for Justice 3 (Nov. 2006), [http://www.brennancenter.org/sites/default/files/legacy/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf).
18. *Id.* at 2. See also Matt A. Barreto et al., *Voter ID Requirements and the Disenfranchisements of Latino, Black and Asian Voters* (Sept. 1, 2007), available at [http://faculty.washington.edu/mbarreto/research/Voter\\_ID\\_APSA.pdf](http://faculty.washington.edu/mbarreto/research/Voter_ID_APSA.pdf).
19. Matt A. Barreto, Stephen Nuño, & Gabriel Sanchez, *The Disproportionate Impact of Voter-ID Requirements on the Electorate New Evidence from Indiana*, PS: Political Sci. & Politics 111, 114 (Jan. 2009), available at [http://faculty.washington.edu/mbarreto/papers/PS\\_VoterID.pdf](http://faculty.washington.edu/mbarreto/papers/PS_VoterID.pdf).
20. John Pawasarat, Univ. of Wisconsin-Milwaukee Employment and Training Institute, *The Driver License Status of the Voting Age Population in Wisconsin* 1 (2005), available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>.
21. See Letter from Assistant Attorney General Tom Perez to Texas Director of Elections Keith Ingram 3 (Mar. 12, 2012) available at <http://www.scribd.com/doc/85051426/DOJ-Letter-To-Texas-On-Voter-ID-Law>.
22. Examining various demographic groups' possession of multiple forms of identification, including photo ID and bank account ID, racial disparities were found across income categories. R. Michael Alvarez, *The Effect of Voter Identification Laws on Turnout*, California Institute of Technology Social Science Working Paper No. 1267R at 18 (2007) available at [http://vote.caltech.edu/sites/default/files/vtp\\_wp57.pdf](http://vote.caltech.edu/sites/default/files/vtp_wp57.pdf).
23. According to a 2009 Urban Institute study, 58% of low-income families are non-white, defined as having income that is 200% of the federal poverty level. Margaret C. Simms, Karina Fortuny, & Everett Henderson, *Racial and Ethnic Disparities Among Low-Income Families Fact Sheet 1*, available at [http://www.urban.org/uploadedpdf/411936\\_racialandethnic.pdf](http://www.urban.org/uploadedpdf/411936_racialandethnic.pdf). In 2013, an individual at 200% of the federal poverty guidelines has income of approximately \$23,000. See 2013 *Poverty Guidelines*, U.S. Department of Health and Human Services, <http://aspe.hhs.gov/poverty/13poverty.cfm#guidelines> (last visited Sept. 18, 2013).
24. Brian C. Tefft, Allan F. Williams, & Jurek G. Grabowski, *Timing of Driver's License Acquisition and Reasons for Delay among Young People in the United States, 2012 at 2*, AAA Foundation for Traffic Safety (August 2013), [https://www.aaafoundation.org/sites/default/files/Teen%20Licensing%20Survey%20FINAL\\_0.pdf](https://www.aaafoundation.org/sites/default/files/Teen%20Licensing%20Survey%20FINAL_0.pdf) (describing how lower-income individuals and racial minorities are less likely to obtain a driver's license within a year of the age eligibility than higher-income individuals and whites).
25. John Pawasarat, *supra* note 22.
26. *Id.* A 2005 study of African American adult citizens in Wisconsin revealed that in 55% of males and 49% of females did not have a driver's license. Among adult Hispanics, youth, the rates without drivers licenses were 46% for males and 59% for females. In contrast, only 20% of white males and 19% of females lacked a license. *Id.*
27. Cathy J. Cohen & Jon Rogowski, *Turning Back The Clock on Voting Rights: The Impact of New Photo Identification Requirements on Young People of Color*, Black Youth Project (2012), <http://research.blackyouthproject.com/files/2012/09/Youth-of-Color-and-Photo-ID-Laws.pdf>.
28. See, e.g., Brandon Schoettle & Michael Sivak, *The Reasons for the Recent Decline in Young Driver Licensing in the U.S.*, University of Maryland Transportation Research Institute 18-19 (2013) (describing how a substantial number of youth refrain from getting a driver's license because they prefer to walk, bike, or take public transit, which reflects America's increasing urbanization). As a concrete example, in urban Milwaukee County, which has the highest concentration of people of color, only 47% of African American adults and 43% of Hispanic adults have a valid drivers license. John Pawasarat, *The Driver License Status of the Voting Age Population in Wisconsin* 1-2, available at <http://www4.uwm.edu/eti/barriers/DriversLicense.pdf>.
29. See Ruth B. Mandel, *supra* note 8 at 9.
30. Robert S. Erikson & Lorraine C. Minnite, *Modeling Problems in the Voter Identification—Voter Turnout Debate*, *Columbia Election L.J.* 90 (2009), available at <http://www.columbia.edu/~rse14/erikson-minnite.pdf>.
31. *Id.*
32. See Carl Bialik, *Impact of States' Voter Laws Can Be Difficult to Identify*, Wall St. J., (October 19, 2012) <http://online.wsj.com/article/SB1000087239639044868204578064890976575334.html>.
33. See *Crawford*, 553 U.S. at 199 (holding that the ban on poll taxes in *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966) would invalidate Indiana's photo ID law if the law did not require the state Bureau of Motor Vehicles to provide free ID cards to voters).
34. See Matt A. Barreto, *supra* note 19 at 111.
35. Keesha Gaskins, *supra* note 6 at 5 (discussing older Americans' access to underlying documents).
36. *Citizens Without Proof*, *supra* note 19.
37. Keesha Gaskins, *supra* note 6 at 14.
38. See Vergie Redmond, *State Facing Voter ID Hurdles*, Jackson Free Press (July 5, 2012), <http://www.jacksonfreepress.com/news/2012/jul/05/state-facing-voter-id-hurdles>. However, some states have less stringent requirements about documents necessary for obtaining the free photo ID. Georgia, for instance, accepts an array of documents. See, e.g., Ga. Code Ann. § 21-2-417.1(a) (year?).
39. Robert Greenstein, *supra* note 7 at 3-4.
40. Keesha Gaskins, *supra* note 6 at 5.

41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.*
45. *Texas v. Holder*, 888 F.Supp. 2d 113, 140 (D.D.C. 2012), vacated and remanded, 570 U.S. \_\_\_, 133 S. Ct. 2886 (U.S. 2013). For further discussion of the challenge to Texas' strict voter ID and the Supreme Court decision invalidating the process for determining jurisdictions obligated to obtain preclearance, see *infra* at 7-9.
46. *Shelby County v. Holder*, 570 U.S. \_\_\_, 133 S.Ct. 2612 (2013).
47. Scott Applewhite, *For Republicans, no easy answers on Voting Rights Act*, CBS News (July 5, 2013), available at [http://www.cbsnews.com/8301-250\\_162-57592414/for-republicans-no-easy-answers-on-voting-rights-act](http://www.cbsnews.com/8301-250_162-57592414/for-republicans-no-easy-answers-on-voting-rights-act) (describing Texas' and Mississippi's decisions to enforce their photo ID laws after *Shelby*); Deborah Barfield Barry, "Groups say Miss. should take lesson from voter ID lawsuits in other states," *Clarion Ledger* (Oct. 9, 2013), <http://www.clarionledger.com/article/20131009/NEWS01/310090017/Groups-say-Miss-should-take-lesson-from-voter-ID-lawsuits-other-states> (last visited Oct. 11, 2013).
48. *United States v. Texas*, No. 2:13-cv-00263 (S.D.Tex. filed Aug. 22, 2013).
49. See Order, *Veasey v. Perry*, No. 2:13-cv-00193 (S.D.Tex. Jan. 10, 2014) (lead case consolidating *Ortiz v. Texas*, No. 2:13-cv-00348 (S.D.Tex. filed Nov. 5, 2013) with *Tex. State Caucus of NAACP Branches v. Steen*, No. 2:13-cv-00291 (S.D.Tex. filed Sep. 17, 2013), and *United States v. Texas*, No. 2:13-cv-00263).
50. 553 U.S. 181 (2008).
51. *Id.*
52. *Ind. Dem. Party v. Rokita*, 458 F.Supp. 2d 775, 820 (S.D.Ind. 2006), *aff'd sub nom. Crawford v. Marion County Election Bd.*, 472 F.3d 949 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008).
53. *Crawford*, 553 U.S. at 181-182.
54. See Mary Beth Schnieder, *Voter ID Law Looming for Hoosiers*, *Indystar.com* (Apr. 13, 2005) <http://www2.indystar.com/articles/6/236465-2566-098.html> (last visited June 13, 2013).
55. *Ind. Dem. Party*, 458 F.Supp. 2d 775 at 786.
56. *Crawford*, 458 F.Supp. 2d 775 at 185.
57. *Id.*
58. *Common Cause/Ga. v. Billups*, 406 F.Supp. 2d 1326 (N.D. Ga. 2005).
59. *Common Cause/Ga. v. Billups*, 504 F.Supp. 2d 1333, 1343 (N.D. Ga. 2007) order vacated and reentered, 554 F.3d 1340 (11th Cir. 2009).
60. *Common Cause/Ga. v. Billups*, 439 F.Supp. 2d 1294, 1311 (N.D. Ga. 2006).
61. *Id.* at 1346-49. In its findings, evidence showed that the absentee ballot process required a literacy level above that of most Georgians. *Id.* at 1316, 1348.
62. *Id.* at 1350-52.
63. *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1353-1354 (11th Cir. 2009) (citing *Am. Civil Liberties Union of N.M. v. Santillanes*, 546 F.3d 1313, 1323 (10th Cir. 2008)).
64. *Id.* at 1354.
65. *Gonzalez v. Arizona*, 677 F.3d at 407-10.
66. However, federal constitutional claims are currently at issue in one of the four Wisconsin voter ID challenges. *Frank v. Walker*, No. 2:11-cv-01128 (E.D.Wisc. filed Dec. 13, 2011) (class action claims challenging Wisconsin's photo ID law under federal Equal Protection clause).
67. *Weinschenk*, 203 S.W.3d 201, 211 (Mo. 2006).
68. *Id.* at 206.
69. *Id.*
70. *Id.*
71. *Id.* at 217-19.
72. See, e.g., Jason Hancock, *Court strikes down proposed Missouri voter ID amendment*, *The Kansas City Star* (Mar. 29, 2012), available at <http://www.kansascity.com/2012/03/29/3523436/court-strikes-down-proposed-missouri.html>; HB 48 webpage, *Missouri House of Representatives* (2013), <http://www.house.mo.gov/Bill-Summary.aspx?bill=HB%2048> (failed legislation in 2013 Missouri legislative session to amend Missouri Constitution to create strict voter ID law).
73. Determination on Declaratory Relief and Permanent Injunction, *Applewhite v. Commonwealth*, Case No. 330 M.D. 2012 at 35-37 (Pa. Commw. Ct. Jan. 17, 2014) available at <http://www.advancementproject.org/resources/entry/permanent-injunction-opinion-in-pennsylvania-voter-id-case#sthash.0SzL5vhy.dpuf>. The law was enjoined preliminarily twice, in October, 2012, governing the presidential election and in August 2013, governing the November 2013 municipal election. *Id.* at 2. Order available at: <http://www.aclupa.org/downloads/McGinleyPI81613.PDF>
74. *Id.* at 34.
75. *Id.* at 33-34.
76. *Id.* at 29, 37.
77. *Id.* at 33.
78. *Id.* at 33.
79. *Id.* at 48-49.
80. See Case No. 2012AP001652 (Wisc. Ct. App., State's Reply Br. filed Jan. 14, 2013).
81. Order for Judgment and Judgment Granting Declaratory and Injunctive Relief, *Milwaukee Branch of the NAACP v. Walker*, Case No. 11-CV-5492, at 11 (Wisc. Cir. Ct. July 17, 2012), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/PermanentInjunction.pdf>.
82. *Id.* at 12.
83. *Id.* at 12.
84. *Id.* at 19.
85. *Id.* at 12.
86. 834 N.W.2d 393 (2013)
87. *Id.* at 397 n.2.
88. See *id.*
89. *League of Women Voters of Wisconsin Education Network, Inc. v. Scott Walker*, Appeal Number 2012AP000584-A Case History, Wisconsin Court System, <http://wscca.wicourts.gov/appealHistory.xsl?sessionId=486059DEA4FEC9C77F1FE80EECAE-4CE0?caseNo=2012AP000584> (last visited Sept. 18, 2013).
90. See *South Carolina v. United States*, 898 F.Supp. 2d 30 (D.D.C. 2012); *Texas v. Holder*, 888 F.Supp. 2d at 115.
91. *Shelby County v. Holder*, 570 U.S. \_\_\_, 133 S.Ct. 2612 (2013).
92. *Texas v. Holder*, 888 F.Supp. 2d at 127.
93. *Id.* at 144.
94. *Id.* at 128-29, 140-141.
95. *Id.* at 144.
96. Press Release, Texas Sec'y of State, Photo ID Now Required for Voting in Texas (June 25, 2013), available at <http://www.sos.state.tx.us/about/newsreleases/2013/062513.shtml>.
97. *South Carolina v. U.S.*, 898 F.Supp. 2d at 37 (quoting S.C. Act R54, § 5).
98. Letter from DOJ to S.C. Asst. Atty. Gen. Jones 3-4 (Dec. 23, 2011), available at <http://www.brennancenter.org/sites/default/files/analysis/Justice-Department-Letter-To-South-Carolina-Blocking-Voter-ID-Law.pdf>.
99. *Id.*
100. *South Carolina v. United States*, 898 F.Supp. 2d at 33-34.
101. *Id.* at 34.



102. *Id.* at 32.
103. *Id.* at 40.
104. *Id.* at 49-50.
105. *South Carolina v. United States*, 898 F. Supp. 2d at 53-54 (Bates, J., concurring).
106. See *South Carolina v. United States*, 898 F. Supp. 2d at 35-36 (quoting Trial Tr. 148:10-15). See also Myrna Perez & Vishal Agraharkar, *If Section 5 Falls, New Voting Implications*, Brennan Ctr. for Justice 5 (June 12, 2013), [http://www.brennancenter.org/sites/default/files/publications/Section\\_5\\_New\\_Voting\\_Implications.pdf](http://www.brennancenter.org/sites/default/files/publications/Section_5_New_Voting_Implications.pdf).
107. *Gonzalez v. Arizona*, 677 F.3d 383, 404-407 (9th Cir. 2012) (en banc).
108. *Id.* at 404-407.
109. *Id.* at 404-407.
110. See *supra* notes 48-49; *Jones v. Deininger*, No. 2:12-cv-00185 (E.D. Wisc. Filed Feb. 23, 2012); *Frank v. Walker*, No. 2:11-cv-01128 (E.D. Wisc. filed Dec. 13, 2011); *League of Women Voters of North Carolina v. Howard*, No. 1:13-cv-00660 (M.D.N.C. filed Aug. 12, 2013); *North Carolina State Conference of the NAACP v. McCrory*, No. 1:13-cv-658 (M.D.N.C. filed Aug. 12, 2013); *United States v. North Carolina*, No. 1:13-cv-00861 (M.D.N.C. filed Sep. 30, 2013).
111. 42 U.S.C. § 1973a(c).
112. For an example of commentary on Section 3 in the wake of *Shelby*, see Richard Pildes, *One Easy but Powerful Way to Amend the VRA*, Elec. L. Blog (June 28, 2013), <http://electionlawblog.org/?p=52349>. See also Travis Crum, *The Voting Rights Act's Secret Weapon: Pocket Trigger Litigation and Dynamic Preclearance*, 1119 Yale L.J. 1992 (2010), available at <http://www.yalelawjournal.org/the-yale-law-journal/note/the-voting-rights-act-s-secret-weapon-pocket-trigger-litigation-and-dynamic-preclearance>.
113. *United States v. Texas*, No. 2:13-cv-00263 (S.D. Tex. filed Aug. 22, 2013).
114. *United States v. North Carolina*, No. 1:13-cv-00861 (M.D.N.C. filed Sep. 30, 2013).
115. Adam Zagorin, *Bush v. Congress Over Attorneygate*, Time Magazine online (Mar. 20, 2007), available at <http://www.time.com/time/nation/article/0,8599,1600940,00.html>.
116. Expert Report of Lorraine Minnite, *Applewhite v. Commonwealth of Pennsylvania*, No. 330 4 (MD 2012), available at <http://www.aclupa.org/downloads/Minnite.pdf>.
117. Sean Greene, *Debate over photo ID at the polls shifts to costs*, ElectionLine, (Mar. 17, 2011), <http://www.electionline.org/index.php/2011/586-electionlineweekly-march-17-2011>.
118. *Id.*
119. *Id.*
120. Georgia issued approximately 25,000 free photo IDs during this five-year period; in contrast, Indiana issued 771,017 over only four years. Nicholas Anhut, Nina Huntington, & Melissa Young, *Voter Identification: The True Costs: An Analysis of Minnesota's Voter Identification Amendment 12* (2012), <http://purl.umn.edu/123582>. This difference is even more striking in light of Georgia's voting-age population (7,424,198 persons) being much larger than Indiana's voting-age population (4,947,915 persons). U.S. Census Bureau, *American Community Survey 1-Year Estimate Table ID B01001, Georgia* (2012), available at [http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/12\\_1YR/B01001/0400000US13](http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/12_1YR/B01001/0400000US13) (describing Georgia's population by age and sex); U.S. Census Bureau, *American Community Survey 1-Year Estimate, Table ID B01001, Indiana* (2012), available at [http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/12\\_1YR/B01001/0400000US18](http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/12_1YR/B01001/0400000US18) (describing Indiana's population by age and sex).
121. Kelly Phillips Erb, *Taxpayers Spend Millions on New Voter ID Laws* (Mar. 26, 2012), available at <http://www.forbes.com/sites/kellyphillips/2012/03/26/taxpayers-spend-millions-on-new-voter-id-laws>.
122. Bob Warner, *Voter ID law may affect more Pennsylvanians that previously estimated*, Philadelphia Inquirer (July 5, 2012), available at [http://articles.philly.com/2012-07-05/news/32537732\\_1\\_voter-id-new-voter-id-cards](http://articles.philly.com/2012-07-05/news/32537732_1_voter-id-new-voter-id-cards).
123. Sean Greene *supra* note 117.
124. *Voter Identification Requirements*, *supra* note 1.
125. Ethan Magoc, *Flurry of Photo ID Laws Tied to Conservative Washington Group*, News 21 (Aug. 12, 2012), <http://votingrights.news21.com/article/movement>.
126. Aaron Blake, *Everything You Need To Know About The Pennsylvania Voter ID Fight*, Wash. Post (Oct. 2, 2012), <http://www.washingtonpost.com/blogs/the-fix/wp/2012/10/02/the-pennsylvania-voter-id-fight-explained>.
127. E.g., Madeleine Baran, *Mansky, local election official, concerned about voter ID requirements*, MPR News (Mar. 22, 2012), <http://minnesota.publicradio.org/display/web/2012/03/22/voter-id-joe-mansky-reaction>; Jennifer Jacobs, *Iowa county elections officials oppose bill to require photo ID to vote*, Des Moines Register.com (Feb. 14, 2011), <http://blogs.desmoinesregister.com/dmr/index.php/2011/02/14/iowas-county-elections-officials-oppose-bill-to-require-photo-id-to-vote>.

## About the Authors

**Catherine M. Flanagan** is Senior Election Counsel with Project Vote's Public Agency Registration Program, working through litigation and advocacy to ensure compliance with the National Voter Registration Act of 1993 across the country. Ms. Flanagan founded and managed a program providing pro bono legal representation for indigent survivors of domestic violence in the District of Columbia. She also served as a trial and appellate attorney at the U.S. Department of Justice, Environment Division, and advised the Assistant Attorney General on policy and legislative matters. Ms. Flanagan earned a BA, magna cum laude, from the University of Pennsylvania, and a JD and a MA in English from the University of Virginia. She is a contributing editor of the Washington Independent Review of Books.

**Estelle H. Rogers** is Project Vote's Legislative Director. In this position, she coordinates the organization's policy work on both state and federal levels, including interacting directly with legislators and staff, writing testimony and public education materials, and building coalitions with other organizations. She is the co-author of a chapter in the 2012 publication, *America Votes*, 2nd ed., a publication of the American Bar Association. Among her other publications are two law review articles and a chapter in the book *Changing America*, a 1992 publication presenting a comprehensive policy agenda to the incoming Clinton administration.

**Project Vote is a national nonpartisan, non-profit organization that promotes voting in historically underrepresented communities. Project Vote takes a leadership role in nationwide voting rights and election administration issues, working through research, litigation, and advocacy to ensure that our constituencies can register, vote, and cast ballots that count.**

## Disclaimer

The information contained in this document is for general guidance only. It should not be used as a substitute for consultation with professional legal or other competent advisers. Project Vote is not responsible for any errors or omissions, or for the results obtained from the use of this information.

*©2014 by Project Vote. This paper is covered by Creative Commons "Attribution-NonCommercial-ShareAlike" license. (See <http://creativecommons.org>.) This work may be reproduced in whole or in part for non-commercial use. Reproduction or adaptation must attribute Project Vote, and must bear the Creative Commons "Attribution-NonCommercial-ShareAlike" license. Please notify Project Vote if reproducing or adapting this work.*

*"Project Vote" is a trademark of Project Vote, and registered in the U.S. Patent and Trademark Office. The Project Vote logo is a trademark or common law mark of Project Vote.*