

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CITY OF EL CENIZO, TEXAS, *et al.*;
Plaintiffs,

v.

STATE OF TEXAS, *et al.*,
Defendants.

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CIVIL ACTION NO. 5:17-cv-404-OG

DECLARATION OF JACQUELINE L. WATSON

Pursuant to 28 U.S.C. § 1746, I, Jacqueline L. Watson, declare the following:

1. My name is Jacqueline L. Watson, I am more than 18 years of age, and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct, and I am competent to testify to them.

2. I am an attorney in private practice with Walker Gates Vela PLLC, located at 505 East Huntland Drive, Suite 300, Austin, TX 78752. I am a member in good standing in all courts of the State of Texas. My state bar number is 24013717. I have been practicing immigration law since 1999, and I am board certified in Immigration and Nationality Law by the Texas Board of Legal Specialization. I practice in all areas of immigration law, including but not limited to employment based immigrant and non-immigrant visas, family based immigration, acquired and derivative citizenship, naturalization, and defense from removal.

3. I am the former (2015-2016) chair of the Texas Chapter of the American Immigration Lawyers Association. Previously, I served the Chapter as its DPS Liaison (2009-2011) and as Chair of the State Legislative Committee (2007-2015). My resume is attached as Exhibit A.

SUMMARY OF OPINION

4. The City of Austin has asked me to provide my opinions concerning Senate Bill No. 4 (SB 4) and how its detention requirements interact with Texas law concerning driver's licenses and identification cards. I have read and reviewed SB 4. I have also reviewed State code provisions and State regulations concerning driver's licenses and identification cards.

5. SB 4 references driver's licenses and "similar government-issued identification" in two locations. In its amendment to Texas Code of Criminal Procedure, Article 2.251, SB 4 imposes a duty on law enforcement agencies to verify whether a person in custody is subject to a "detainer request" from Immigration and Customs Enforcement (ICE) prior to their release. *See* TEX. CODE OF CRIM. PROC, Art. 2.251(a). If the person in custody is subject to an ICE detainer request, the law enforcement agency is required to "comply with, honor, and fulfill any [ICE] request." *Id.* An agency is excused from the Article 2.251(a) requirement if the person in custody presents proof of lawful immigration status as demonstrated by a Texas driver's license or "similar government-issued identification." *Id.*, Art. 2.251(b).

6. If an agency violates Article 2.251, the State Attorney General may seek imposition of a civil penalty. TEX. GOV'T CODE §§ 752.055, 752.056. If any elected or local official "adopt[s], enforce[s], or endorse[s]" a policy that violates Article 2.251, the Attorney General can seek to remove them from office. *Id.*, § 752.0565. If a chief of police violates Article 2.251, he or she may be prosecuted for a Class A misdemeanor. TEX. PEN. CODE § 39.07. The chief would have an affirmative defense if the person in custody presents proof of lawful immigration status as demonstrated by a Texas driver's license or "similar government-issued identification." *Id.*, § 39.07(c).

7. By these provisions, SB 4 will require law enforcement agencies to maintain custody of any individual who cannot present Texas state identification for purposes of determining whether ICE has sent a detainer request.

8. This requirement is problematic because many people are lawfully in Texas but do not have a Texas driver's license or Texas identification card.

9. In this declaration, I will address two principal reasons why lawfully present individuals lack identification.

10. First, to obtain Texas identification, an applicant needs to present proof of status. In most instances, the State relies on a federal immigration document verification system, SAVE (the "Systematic Alien Verification for Entitlements" program), to determine whether someone is lawfully present. Unfortunately, the SAVE system is incomplete and thus many individuals who are lawfully present cannot obtain State identification.

11. Second, many non-immigrants do not have current State identification. Many factors influence why a Texas resident may not have identification, including wealth, time, and geographic location.

12. Because many lawfully present individuals will not have government identification, under SB 4 these individuals will be subject to unnecessary detention by law enforcement agencies that fear severe penalties for failing to comply with the requirements of Texas Code of Criminal Procedure, Article 2.251.

OPINION #1: MANY IMMIGRANTS WHO ARE LAWFULLY PRESENT CANNOT OBTAIN A TEXAS DRIVER'S LICENSE OR IDENTIFICATION CARD

13. The Texas Transportation Code authorizes the Department of Public Safety to create an application process for Texas driver's licenses and identification cards (known as "personal identification certificates"). TEX. TRANSP. CODE § 521.141; *see also id.*, § 521.101.

14. To obtain either a driver's license or identification card, an applicant must present proof of lawful status. *Id.*, § 151.142(a). I have attached as Exhibit 2 a copy of the application, which provides a list of acceptable forms immigration documents. This list itself is outdated; for example, an acceptable document is a "stamped I-94." Form I-94 is no longer stamped and issued to an entrant to the United States. It is instead available as a print-out of the Customs and Border Protection (CBP) website. The inaccuracy of the DPS list highlights one difficulty of State regulation of immigration law, namely: the ever-changing federal documentary scheme.

15. DPS utilizes the SAVE system to verify the validity of the federal immigration documents that an applicant for a driver license or identification card presents. SAVE is not a database; it instead relies on information from three separate agencies within the Department of Homeland Security (DHS): CBP, Immigration and Customs Enforcement (ICE), and US Citizenship and Immigration Services (USCIS). Each agency independently maintains its own databases and are separately responsible for the veracity of information and the speed at which the information is entered.

16. Verification of immigration documents by SAVE is a three-step process. Some immigration documents can be immediately verified, and if so an identification can be immediately issued if the applicant satisfies all other requirements. If instant verification cannot be accomplished, a secondary check can take between three and five business days. *See* www.dhs.gov/telecon-recap-immigration-status-verification-drivers-licenses-public-benefits-and-social-security. If documentation cannot be verified in the second step, DPS will be directed by SAVE to request further information and/or documentation from the applicant and submit form G-845. *Id.* This third step can take between 10 and 20 business days. *Id.* If after the third step the

applicant's documentation cannot be verified, SAVE will instruct DPS to tell the applicant to contact the agencies directly to correct any errors in their databases. *Id.*

17. The burden then falls on the applicant to convince CBP, ICE, and/or USCIS to update and correct its records. This task involves finding an agency officer willing to make the corrections and to make them in a timely manner. Not every agency has a "customer service" department that is staffed by officers authorized to make corrections in their database. In my experience, database correction, even when possible, can take weeks or even months to achieve. SAVE is operated by USCIS which makes very clear that it does not make benefit eligibility determinations and can only verify the status claimed by an applicant based on the documents he or she presents.

18. There have been recurring problems with the SAVE system that arise precisely because SAVE does not determine the "lawful status" of an individual and instead can only confirm the veracity of their proffered documentation. The problems with SAVE have been acknowledged by no less than the Fifth Circuit Court of Appeals. See *Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524, 533-34 (5th Cir. 2013). Under the complex federal immigration scheme, ultimate determinations of "status" are made in an administrative process that often involves various agencies. See www.americanimmigrationcouncil.org/research/systemic-alien-verification-entitlements-save-program-fact-sheet. For example, a child under 18 who bears lawful permanent residency will automatically become a United States citizen by operation of law upon the naturalization of the custodial parent. 8 U.S.C. § 1431. A child who acquires citizenship in this manner may apply directly for a U.S. passport with the Department of State. This child's "status," however, is not verifiable by SAVE because the child's citizenship status is not reflected in any of the three

Department of Homeland Security databases perused by SAVE. This child would therefore suffer delays in the issuance of his Texas-issued identification.

19. Another very frequent problem with DPS's verification of "lawful status" using SAVE occurs when a person has an application for benefits that is pending. Applicants with a non-frivolous application for asylum, a change in nonimmigrant status, an extension of nonimmigrant status, or an adjustment of nonimmigrant status to that of lawful permanent resident, are permitted to remain in the United States during the pendency of their application, but the databases upon which SAVE relied may not be able to reflect a particular "status" of the individual. For example, under 8 CFR § 274a.12(b)(19), the timely filing of an extension of status allows some nonimmigrant workers a continuation of status and work authorization for up to 240 days past the original expiration as reflected on form I-94. The USCIS database is incapable of explaining this provision of the regulations to SAVE to communicate to DPS. An applicant in this situation may not be verifiable by SAVE, which will cause significant delays in the issuance of a Texas identification document.

20. Finally, as noted above, incorrect or delayed input of information on the part of the agencies which communicate with SAVE will cause significant delays in the issuance of an identification. By way of example, in my practice I have seen many applicants granted asylum and refugee status suffer considerable delays in the issuance of Texas identification documents because, although their federally-issued documents are facially valid, one or more agencies have not timely updated their own databases. These asylees and refugees, who are already faced with language barriers and unfamiliarity with the U.S. bureaucratic system, are then tasked by DPS to correct their own federal records. The delays in these matters are not insignificant.

21. In each example above, the applicant will be "lawfully present" or have some type of "lawful status" but will not have any state-issued identification as contemplated in SB4. The problems inherent in the "lawful status" determination utilized by DPS through the SAVE program creates a situation in which Texas residents whose presence in the United States is authorized by federal immigration authorities will nonetheless be subject to warrantless detention due to their inability to produce a Texas ID.

OPINION #2: MANY TEXANS WHO CAN PROVE LAWFUL PRESENCE STILL DO NOT HAVE A DRIVER'S LICENSE OR IDENTIFICATION CARD

22. For many reasons, many Texans do not have a current driver's license or identification card. Factors include ability to pay fees, ability to obtain time to travel to a Department of Public Safety office, and ability to travel sometimes long distances to DPS offices.

23. In my practice as an immigration attorney, I am familiar with clients who can obtain proof of lawful status but who still do not possess current State identification. Language barriers, unfamiliarity with the State bureaucracy, inability to request time off from work, issues with the SAVE system which I have discussed above all contribute to clients' reasons for delaying or foregoing the attainment of a Texas identification.

24. I am also familiar with ongoing litigation concerning "Voter ID" requirements in Texas. I have reviewed district court and 5th Circuit opinions in the matter of *Veasey v. Abbott*, and I have also reviewed several expert reports that were produced at the district court level, which concern the difficulty many Texans have in obtaining State identification.

25. The problems discussed in these reports reflect the experiences of many of my clients with authorization to remain in the United States, but who remain unable to obtain any form of Texas identification. The vast majority of my clients are of Hispanic or Latino origin. The reports in the voter ID cases almost unanimously argue that the lack of state-issued photo ID is a

problem that disparately affects the Hispanic population. *See* Barry Burden Supplemental Declaration, Doc. 478-1 at 1-2, attached as Exhibit B.

26. The Center for Public Policy Priorities estimates that 4.2 million immigrants reside in Texas, with close to three-fourths or 3 million being of Hispanic origin (from Central or South America, Mexico, or the Caribbean). *See* http://forabettertexas.org/images/EO_2014_09_PP_Immigration.pdf. Of the total immigrant population, close to 64% are either naturalized citizens or permanent residents. *Id.* The total Hispanic population in Texas is 10,405,000. *See* www.pewhispanic.org/states/state/tx/. Although most Texans of Hispanic origin are therefore either lawful immigrants or U.S. citizens, the reports state that approximately 11.4% of Latinos in Texas lack a photo ID. *See* Matt Barreto and Gabriel Sanchez Expert Report, Doc. 370 at 3-4, attached as Exhibit C. Hispanics are without a doubt more likely to be questioned about immigration status under the mandates of SB 4.


27. Poverty, according to these reports, is the main contributor to the lack of ID, and Hispanics are 33% of Hispanics in Texas live in poverty. *See* Barry Burden Declaration, Doc. 391-1 at page 14, attached as Exhibit D. Those living in poverty tend to have jobs that do not allow them the time off that is required to deal with the rigors of obtaining a Texas ID. *See* Jane Henrici Declaration, Doc. 369-1 at 17, attached as Exhibit E. As stated above, even legal immigrants may spend a disproportionate amount of time to obtain a Texas ID due to the SAVE verification and documentation requirements.

28. The reports point to other reasons for a lack of state-issued photo ID which affect new immigrants at higher rates. The lack of private transportation can affect the ability to obtain a photo ID; this is a problem that new immigrants often face. *See* Gerald Webster Supplemental Expert Report, Doc. 479-1 at 6, attached as Exhibit F. Lack of reliable transportation makes it

difficult to travel to remote DPS offices during their limited office hours. *See* Barrieto-Sanchez Ex. C, at 18. Thus, although many Hispanic Texas residents have legal status, due to SAVE and other factors to include poverty and inaccessibility, they will not be able to obtain a Texas identification sufficient to meet the requirements of SB 4.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, Texas, on the 19th day of June, 2017.



JACQUELINE L. WATSON

EXHIBIT A

Jacqueline L. Watson

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Austin, Texas 78702

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EXPERIENCE

Walker Gates Vela, PLLC

Partner, 10/2016 to Present

- Chief Legal Officer/VP of Legal Services of immigration and criminal defense firm
- Supervise litigation and casework for all legal staff

Law Office of Thomas Esparza, Jr.

Associate Attorney, 10/2011 to 09/2017

- Represent clients in complex immigration matters in administrative hearings before the Department of Homeland Security, Department of State, and the Executive Office for Immigration Review
- Represent clients in immigration matters before the federal courts
- Counsel clients in a variety of immigration matters, including asylum, deportation, family-based immigration, business immigration, acquired/derivative citizenship, and naturalization
- Appointed counsel for immigration matters regarding juveniles in Travis County
- Advise criminal counsel on immigration consequences of criminal pleas for noncitizens

Hines & Leigh, P.C., Austin, TX

Associate Attorney, 4/2004 to 10/2011

- Represent clients in administrative hearings and federal courts
- Counsel clients in a variety of immigration matters, including asylum, deportation, family-based immigration, business immigration, and naturalization

State Bar of Texas, Austin, TX

Staff Attorney, 4/2003 to 4/2004

- Provided state support services to pro bono attorneys and legal aid organizations in Texas
- Coordinated statewide initiatives to increase access to justice for low-income Texans

Political Asylum Project of Austin, Austin, TX

General Counsel, 5/2001 to 4/2003

- Managing attorney for non-profit organization providing legal assistance to low-income immigrants in Central Texas
- Drafted agency policies and procedures
- Prepared grant requests and reports
- Created and maintained agency databases
- Supervised all legal personnel and *pro bono* volunteers
- Counseled and represented clients in immigration matters
- PAPA was voted "Best Legal Services" Critics Picks by the *Austin Chronicle*, 2002

Staff Attorney, 12/1999 to 5/2001

- Represented immigrant victims of family violence in administrative proceedings
- Provided training on immigration law for *pro bono* attorneys, law enforcement agencies, and social services providers
- Represented detained immigrants and asylum seekers in administrative hearings
- Conducted "know-your-rights" presentations to detainees

- Coordinated meetings with government representatives to monitor the delivery of rights presentations to detainees

Office of Attorney General, State of Texas, Austin, TX

Law Clerk, 11/1998 to 11/1999

- Engaged in legal research and writing in the areas of insurance practices, public utility law, consumer protection, charitable trusts, and antitrust

University of Texas School of Law, Immigration Clinic, Austin, TX

Student Attorney, 1/1999 to 7/1999

- Represented clients in immigration proceedings under the direction of the clinic attorney

Kemp, Smith, Duncan and Hammond, El Paso, TX

Summer Law Clerk, 5/1998 to 7/1998

- Conducted legal research and writing in the areas of immigration law, environmental law, and civil litigation

University of Texas School of Law, Austin, TX

Research Assistant, 10/1997 to 5/1998

- Conducted legal research for academic publications on state and local law

University of Texas at El Paso, El Paso, TX

Graduate Teaching Assistant, 8/1995 to 5/1996

- Assisted professors in the political science department in teaching and class preparation

Research Assistant, 5/1995 to 8/1995

- Engaged in archival research and data collection for academic publication on local politics

EDUCATION

University of Texas School of Law, Austin, TX

J.D., 1999

University of Texas at El Paso, El Paso, TX

B.A. with honors, Political Science with minor in Russian Studies, 1995

BAR ADMISSION AND OTHER MEMBERSHIP

- Texas Bar, November 1999 (#24013717)
- U.S. Court of Appeals, Fifth Circuit
- U.S. District Court, Western District of Texas
- Board-Certified in Immigration and Nationality Law, Texas Board of Legal Specialization, December 2006 to present
- Austin Bar Association
- Bar Association of the Federal Fifth Circuit
- Member of the Bell County Bar Association, 2010-2011
- American Immigration Lawyers Association (AILA), member, 2000-present; Texas, Oklahoma, and New Mexico Chapter Executive Committee Member 2012 to present
- National Lawyer's Guild, National Immigration Project, member, 2002-2014
- Charter member, Immigration and Nationality Law Section, State Bar of Texas, 2009 to present
- National Legal Aid and Defender Association (NLADA), member, 2003-2004

LANGUAGES

- Spanish (fluent)
- Russian (intermediate)

PUBLICATIONS

- "Family Law, Immigrants, and Violence," *Texas Bar Journal*, November 2003.
- "U.S. Supreme Court Upholds Detention of Immigrants without a Bond Hearing in *Demore v. Kim*." *LegalFront*, July-September 2003 (with Henry Cruz).
- "Immigration Law and Domestic Violence." *Texas Council on Family Violence Law Enforcement Manual*, 2003.
- "After judge's ruling, lives left in limbo," TribTalk, A publication of the Texas Tribune, February 19, 2015 (<https://www.tribtalk.org/2015/02/19/after-judges-ruling-lives-left-in-limbo/>).

PRESENTATIONS

- Frequent speaker for the annual State Bar of Texas annual Advanced Immigration Law Course
- Frequent speaker for the American Immigration Lawyers Association National and Texas Chapter conferences
- Frequent speaker for the University of Texas School of Law annual Immigration and Nationality Law Conference

RELATIVE LEADERSHIP AND PROFESSIONAL EXPERIENCE

- Panel Member, Grievance Committee of the State Bar of Texas, District 9, 2016-2018
- Chair of the American Immigration Lawyers Association Texas, Oklahoma, and New Mexico Chapter, 2015-2016
- Member, Board of Governors, American Immigration Lawyers Association, 2015-2016
- Member and Parliamentarian, Board of Directors, Teaching Mentoring Communities (TMC), 2014 to Present
- Planning Committee, University of Texas Annual Conference on Immigration and Nationality Law, 2009-2012; Co-Chair 2013-Present
- Legislative Committee Chair for the American Immigration Lawyers Association Texas, Oklahoma, and New Mexico Chapter, 2009 to present
- Conference Planning Committee, American Immigration Lawyers Association 2013 Fall Conference
- Planning Committee, State Bar of Texas Advanced Immigration Law Course, 2011, 2017
- Member, Board of Directors, Helping the Aging, Needy & Disabled, Inc. (HAND) of Austin, 2009-2011
- *Pro bono* attorney for Volunteer Legal Services of Central Texas
- People's Law School speaker on Immigration Law, sponsored by the Lawyer Referral Service of Central Texas. 2009-2014
- Participant, *CAMP Career Day*, St. Edward's University, 2006-2011
- Community Advisory Committee Member, Bob Bullock Texas State History Museum, "Forgotten Gateway" immigration exhibit, 2007 to 2010
- *Pro bono* attorney and mentor, American Gateways
- *Pro bono* attorney, Volunteer Legal Services of Central Texas
- Panel participant, *Women's Legislative Days*, January 29, 2007
- *Pro-bono* legal services to unaccompanied minors in Texas Sheltered Care
- Participant, *Latino Leadership Council Summit*, University of Texas at Austin, October 23, 2004

AWARDS AND RECOGNITION

- Selected for inclusion in the Immigration Law section of the *Rising Stars* list published in *Texas Super Lawyers* magazine, 2009, 2010, and 2011

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,

Plaintiffs,

v.

RICK PERRY, *et al.*,

Defendants.

Civil Actions No. 2:13-cv-193 (NGR)
(Consolidated Case)

**UNITED STATES' NOTICE OF FILING OF THE
SUPPLEMENTAL EXPERT REPORT OF DR. BARRY BURDEN**

At the Court's direction, the United States hereby files the supplemental expert report of Dr. Barry Burden, which is attached hereto.

Date: August 15, 2014

KENNETH MAGIDSON
United States Attorney
Southern District of Texas

Respectfully submitted,

MOLLY J. MORAN
Acting Assistant Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2014, I served a true and correct copy of the foregoing via the Court's ECF system on the following counsel of record:

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,

Plaintiffs,

v.

RICK PERRY, *et al.*,

Defendants.

Civil Actions No. 2:13-cv-193 (NGR)

SUPPLEMENTAL DECLARATION OF DR. BARRY C. BURDEN

Pursuant to 28 U.S.C. § 1746, I, Barry C. Burden, make the following declaration:

1. The purpose of this reply report is to respond to the reports of defense experts M.V. Hood III and Jeffrey Milyo and to reflect new analysis conducted by Stephen Ansolabehere based on corrected data provided by the State of Texas. I limit my response to areas of their reports that touch upon my expert report submitted to the court on June 27, 2014, and amended on July 1, 2014. I address five areas of disagreement.

Dr. Ansolabehere's Analysis

2. Dr. Milyo observes that I refer to Dr. Ansolabehere's estimates of the number of registered voters who lack ID to vote under SB 14 "without caveats or concerns" (§§ 50-51). It was not within the scope of my report to analyze those data directly or to engage in comprehensive scrutiny of the analyses. Dr. Ansolabehere's estimate that approximately 9% of registered voters in Texas lack suitable ID did not appear out of line with estimates from expert analyses conducted in other states.¹ Likewise, I was aware of other research by Dr. Ansolabehere reporting that "deadwood" on registration rolls was quite low in Texas.²
3. After my report was submitted, the State of Texas revealed that it had delivered incomplete data to Dr. Ansolabehere.³ Dr. Ansolabehere's updated estimates based on corrected data from the state produce lower "no match" rates between the state voter registration file and

¹ For example, *Frank v. Walker*, No. 11-cv-1128, 2014 WL 1775432, at *12 (E.D. Wis. 2014), observed that approximately 9% of registered voters in the state lacked suitable ID.

² See Figure 3.6 of Stephen Ansolabehere and Eitan Hersh (2014), "Registration and Voting: A View from the Top," in *The Measure of American Elections*, eds. Barry C. Burden and Charles Stewart III, New York, NY: Cambridge University Press. Dr. Milyo cites an older, working paper version of what became the Ansolabehere and Hersh publication (Milyo footnote 28).

³ Declaration of John W. Crawford, July 22, 2014.

DMV records. But in every analysis he conducts using the new data—whether using Catalyst racial classifications, ecological regression, or homogeneous Census blocks—blacks and Latinos remain significantly less likely than Anglos to possess ID for voting. Indeed, racial and ethnic disparities persist even after applying the many weights and adjustments introduced by Dr. Hood and Dr. Milyo.

4. As I explained in my initial report, matching of DPS and voter registration files is a conservative methodology for estimating how many Texas residents lack ID (§ 89). Approximately 2.5 million citizens in Texas who would otherwise be eligible to vote do not even appear in the voter file because they are currently not registered to vote. Unregistered individuals are almost certainly much more likely to lack ID than registered individuals. Dr. Hood’s reanalysis of the Barreto-Sanchez survey verifies this. Generalizing across the many estimates that Dr. Hood provides indicates that the share of the electorate without ID is roughly twice as high when the population is expanded from registered voters to all eligible citizens.⁴

Dr. Milyo’s Dismissal of Costs

5. Dr. Milyo is correct in his suggestion that voter turnout is affected by each of the factors included in the calculus of voting model. Dr. Milyo has rightly set out the model as predicting that an individual will vote when $(p \times B - C) + D > 0$, where p is the probability that a voter casts a decisive vote, B is the benefit to the voter of having his or her preferred candidate win, C is the cost of voting for the individual, and D is the non-instrumental value of voting (including factors such as expressing one’s identity and fulfilling a sense of civic duty) (§ 133). This formulation is widely used in political science and is a common way for scholars to understand the turnout decision. As the Aldrich article Dr. Milyo discusses explains, “This model has been tested extensively, all tests find that the C , D , and B terms are strong predictors of turnout” (p. 252).⁵
6. That field experiments Dr. Milyo describes show some effects on turnout when people are given messages about civic duty (D), but this does not render the cost term irrelevant. One of the early studies of this type found that a “civic duty” message has an effect of 9.1% on turnout. A message that the “election is close” (p) found an even larger 12.1% effect.⁶ This suggests that the $p \times B$ combination is not necessarily “extremely small” or that the “theory is falsified,” as Dr. Milyo asserts (§ 132). Moreover, the civic duty term does not necessary dominate cost considerations or other factors in the model. In more recent field experiments, a civic duty message had a mere 1.8% effect and was less impactful than three other messages.⁷ But the question in this case is not where cost ranks relative to the many other factors.

⁴ See Hood Report tables 10A, 10B, 10C, 10D, 11A, and 11B.

⁵ John H. Aldrich (1993), “Rational Choice and Turnout,” *American Journal of Political Science* 37:246-278.

⁶ Alan S. Gerber and Donald P. Green (2000), “The Effects of Canvassing, Telephone Calls, and Direct Mail on Voter Turnout: A Field Experiment,” *American Political Science Review* 94:653-663.

⁷ Alan S Gerber, Donald P. Green, and Christopher W. Larimer (2008), “Social Pressure and Voter Turnout: Evidence from a Large-Scale Field Experiment,” *American Political Science Review* 102:33-48.

7. The decision to vote is sensitive enough to costs that even Election Day weather has been shown to depress turnout, as demonstrated in a study by Gomez and Hansford.⁸ The authors of the study reference the Aldrich article and point out that while many observers believe costs of voting to be low, “we find that voters seem to be rather sensitive to what is presumably a minor increase in participation costs—the weather” (p. 659). It would thus not be surprising that more direct costs imposed on voters by the state would also have sizable effects on participation.
8. Many recent studies have demonstrated the effects of state-imposed costs on turnout, particularly with regard to travel costs. Haspel and Knotts show that increasing the distance from one’s residence to the polling place by just two-thirds of a mile decreased turnout in an Atlanta mayoral election by five percentage points for those with a vehicle available and 25 points for those without a car available.⁹ Dyck and Gimpel’s study of Clark County, Nevada in 2002 finds that an increase in distance from one’s residence to the precinct polling place dropped turnout by between 1.4 and 4.5 percentage points.¹⁰ Brady and McNulty show that relocating polling places in California in 2003 reduced overall turnout by a net of 1.85 percentage points.¹¹ McNulty, Dowling, and Ariotti show that consolidating polling places for a voter in a school district election in upstate New York reduced participation by about seven percentage points.¹² As another example, the burden of voter registration has been shown to decrease overall voter turnout by anywhere from two to 14 percentage points.¹³ Leighley and Nagler’s analysis shows that state laws that allow Election Day registration or absentee voting may reduce costs and increase turnout in nontrivial ways.¹⁴
9. Given these studies and other contemporary scholarship, Dr. Milyo’s assertion that simply by “referencing” Aldrich’s landmark article I am “reaching backward into the past and skipping over the fundamental lessons from much more recent empirical scholarship on the determinants of voting” (¶ 140) is baseless. In summary, this research, which Dr. Milyo largely omits from his rebuttal report, shows that while the precise effects vary by the

⁸ Thomas G. Hansford and Brad T. Gomez (2010), “Estimating the Electoral Effects of Voter Turnout,” *American Political Science Review* 104:268-88.

⁹ Moshe Haspel and H. Gibbs Knotts (2005), “Location, Location, Location: Precinct Placement and the Costs of Voting,” *Journal of Politics* 67:560-73.

¹⁰ Joshua J. Dyck and James G. Gimpel (2005), “Distance, Turnout, and the Convenience of Voting,” *Social Science Quarterly* 86:531-548.

¹¹ Henry E. Brady and John E. McNulty (2011), “Turnout Out to Vote: The Costs of Finding and Getting to the Polling Place,” *American Political Science Review* 105:1-20.

¹² John E. McNulty, Conor M. Dowling, and Margaret H. Ariotti (2009), “Driving Saints to Sin: How Increasing the Difficulty of Voting Dissuades Even the Most Motivated Voters,” *Political Analysis* 17:435-55.

¹³ For example, see Barry C. Burden and Jacob R. Neiheisel (2013), “Election Administration and the Pure Effect of Voter Registration on Turnout,” *Political Research Quarterly* 66:77-90; Raymond E. Wolfinger and Steven J. Rosenstone (1980), *Who Votes?* Yale University Press; G. Bingham Powell Jr. (1986), “American Voter Turnout in Comparative Perspective,” *American Political Science Review* 80:17-43.

¹⁴ Jan E. Leighley and Jonathan Nagler (2014), *Who Votes Now? Demographics, Inequality, and Turnout in the United States*, Princeton, NJ: Princeton University Press.

electoral context, the election parameters controlled by the government do in fact shape the costs of voting in significant ways. Dr. Milyo does not dispute these studies.

10. In the face of this research, Dr. Milyo asserts that “post-registration election procedures . . . have fairly modest, insignificant or even perverse effect on voter turnout” (§ 14). Even if this statement were true, it does not bear on the relevant question in this case: whether SB 14 imposes a heavier burden on minority voters. Indeed, research by Wolfinger, Highton, and Mullen establishes that an array of “post-registration” procedures impose costs on voters that translate into disparate effects on their participation. The authors’ analysis of the 2000 election showed that increasing the costs of voting by shortening polling hours and not mailing sample ballots decreased turnout by 4 percentage points among whites, but by 4.8 points among blacks and 6.8 points among Latinos.¹⁵ Dr. Milyo is certainly aware of this research, as he participated in a reanalysis of the underlying data, but he failed to address these findings in his report. Moreover, Dr. Milyo’s reanalysis of the Wolfinger, Highton, and Mullen data in a later article does not investigate the critical racial and ethnic differences.¹⁶
11. In general, disruptions to voting habits also raise costs and deter participation. It is little surprise, then, that changes to election procedures can deter voting. SB14 is likely to exacerbate differences in political participation by Anglos on the one hand and by blacks and Latinos on the other because blacks and Latinos have fewer of the socioeconomic resources necessary to pay the costs imposed on the voting process by SB 14.
12. Of the four terms in the calculus of voting model, cost is the only one that is set by law and controlled by the state. Both classic and contemporary research has shown that government-controlled costs affect electoral participation once other factors are taken into account. But turnout is not the determinative consideration for judging the impact of SB 14. As my initial report contended, the law imposes a disproportionate burden on blacks and Latinos because the ability to meet costs varies by race and ethnicity. As I discuss further below, turnout cannot measure the impact of SB 14 unless a researcher is able to control for the other terms in the calculus of voting. None have been able to do so thus far.

Dr. Hood’s Comparison of State ID Laws

13. Dr. Hood contends that SB 14 is “very similar” to the voter ID laws in Georgia and South Carolina (p. 6). In rating the relative strictness of the laws, he describes Texas as being “in the middle” of the other two states (p. 9). Table 1 is offered as summary evidence of this assertion. Dr. Hood’s portrayal of the laws is misleading in important ways.
14. Dr. Hood describes the exception for absentee voters as an “accommodation” (p. 5). My initial report showed that the absentee exception, in combination with limitations on who may vote absentee, in fact inappropriately creates two classes of voters (§§ 83 and 100). Without a factual justification, SB 14 imposes a heavier burden on in-person voters, who are

¹⁵ Raymond E. Wolfinger, Benjamin Highton, and Megan Mullin (2005), “How Postregistration Laws Affect the Turnout of Citizens Registered to Vote,” *State Politics & Policy Quarterly* 5:1-23

¹⁶ David Primo, Matthew L. Jacobsmeier, and Jeffrey Milyo (2007), “Estimating the Impact of State Policies and Institutions with Mixed-Level Data,” *State Politics & Policy Quarterly* 7:446-459.

disproportionately black and Latino, than on absentee voters, who are disproportionately Anglo (¶¶ 80-82 and Table 3).

15. Not imposing the ID requirement on those 65 and over may be seen as a courtesy to senior citizens, but it also imposes a disproportionate burden on minority voters. Anglos in Texas are twice as likely as blacks to be 65 or older and nearly three times as likely as Latinos to be 65 or older.¹⁷ Likewise, the allowance for a select group of people with disabilities or who have recently experienced a natural disaster may technically be accommodations, but these two exceptions are narrowly defined and seldom used. Such narrow exceptions will have little ameliorative effect on the disproportionate burden of SB 14.
16. Dr. Hood's Table 1 suggests that a free ID is as easy to get in Texas as in South Carolina. That is not so. Registered voters in South Carolina who lack one of the approved forms of ID may get one for free at the voter registration and elections office in every county. In Texas counties, the office may be a DPS office, a county office, or a temporary mobile unit, and Texas counties are far larger than those in South Carolina. In South Carolina, all one needs to do to obtain a voter ID is to provide date of birth and the last four digits of his or her Social Security Number. Unlike in Texas, no documents are needed.
17. Dr. Hood's Table 1 also suggests that Georgia and Texas allow about the same number of IDs for voting; each of the states' columns has the same number of Xs. But the final row conceals a great number of options that are allowed in Georgia under the heading of "Federal/State/Local Government Employee ID," including forms of ID that have nothing to do with employment. As Dr. Hood acknowledges (p. 7), this includes "any 'valid photo ID from any branch, department, agency, or entity of the U.S Government, Georgia, or any county, municipality, authority or other entity of this state' including state universities and colleges. Acceptable sources thus include a wide range of federal employee IDs, Georgia employee IDs, county employee IDs, municipal employee IDs, and 62 state universities and colleges' IDs."¹⁸ Thus, Table 1 would more accurately contain many Xs to indicate the various IDs that are accepted in Georgia but are not allowed in Texas. In addition, unlike in Texas, in Georgia a voter's driver's license may be used regardless of how long it has been expired.
18. Dr. Hood's Table 1 also omits the critical failsafe created by South Carolina's "reasonable impediment" provision. In South Carolina a voter without ID may bring a non-photo registration card to the polling place and sign an affidavit explaining that he or she faced a "reasonable impediment" to procuring ID. Valid impediments include such things as illness, work, transportation, lack of a birth certificate, family duties, or "any other obstacle you find reasonable."¹⁹ As the opinion of a federal court addressing the South Carolina ID law explains, "Any reason that the voter *subjectively* deems reasonable will suffice, so long as it is not false" and allowing "the sweeping reasonable impediment provision in Act R54

¹⁷ According to 2010 Census data, 15.4% of Anglos in Texas are 65 or older, whereas only 5.6% of Hispanics and 7.6% of non-Hispanic blacks are 65 or older. Notably, these data do not distinguish between citizens and non-citizens.

¹⁸ <http://sos.ga.gov/admin/files/acceptableID.pdf>

¹⁹ South Carolina State Election Commission, http://www.scvotes.org/2012/09/24/photo_id_requirements.

eliminates any disproportionate effect or material burden that South Carolina’s voter ID law otherwise might have caused.” Therefore, “all voters in South Carolina who previously voted with (or want to vote with) a non-photo voter registration card may still do so, as long as they state the reason that they have not obtained a photo ID.”²⁰

Relevance of Scholarly Literature

19. Dr. Hood and Dr. Milyo refer to a scholarly literature examining the effects of voter ID laws, but the research they cite is not a reliable guide in this case. They contend that studies of voter ID laws find their overall effects on turnout to be near zero. However, the studies in question are limited by the short time period and the small and non-comparable set of states being analyzed. The studies they cite rely on data collected from elections mostly conducted between 2000 and 2010. Most of those studies do not differentiate between strict voter ID laws such as SB 14 and less strict versions, such as those in many states that allow use of non-photo ID or permit a voter without an ID to cast a valid ballot after signing an affidavit affirming his or her identity. Lumping these heterogeneous types of ID requirements together obscures the potential for rather different effects.
20. Few states had strict voter ID laws in the 2000s. Georgia and Indiana enacted strict photo voter ID laws in 2005.²¹ The next wave of adoptions did not take place until Kansas, Mississippi, and Tennessee were added in 2011.²² Having only two states provides little statistical “leverage” because of the sizable generalizations that must be made from a small number of unusual cases to the much larger set of hypothetical cases. Furthermore, many of the studies of voter ID effects that Dr. Milyo cites predate the recent expansion and do not account for the significant differences among ID laws across the states. SB 14 is stricter than the Georgia and Indiana laws that were the focus of those studies and has more potential to depress voter turnout.
21. The best scholarly guide to this literature is by Erikson and Minnite.²³ Erikson and Minnite’s article demonstrates that the inability to establish the statistical significance of voter ID laws is largely an artifact of limited statistical power. In particular, they remind researchers that there are simply too few states with comparable laws to produce reliable estimates. As they warn, “Until we have more experience with restrictive voter ID laws that are already on the books, and therefore, more data to analyze, survey findings and database matching showing thousands, perhaps millions of citizens lacking government-issued photo ID should raise red flags for policy-makers and voting rights advocates alike that these laws could prevent eligible voters from voting” (p. 98). They go on to recommend relying instead on survey and

²⁰ *South Carolina v. United States*, 898 F. Supp. 2d 30, 34, 36, 40 (D.D.C. 2012) (three-judge court).

²¹ Georgia’s implementation was delayed until a federal court injunction was removed in 2007.

²² See the NCSL’s compilation of voter ID laws (<http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>) and Rene R. Rocha and Tesuya Matsubayashi (2014), “Politics of Race and Voter ID Laws in the States: The Return of Jim Crow?” *Political Research Quarterly* 67:666-679 (cited as a 2013 article by Dr. Hood in footnote 34).

²³ Robert S. Erikson and Lorraine C. Minnite (2009), “Modeling Problems in the Voter Identification-Voter Turnout Debate,” *Election Law Journal* 8:85-101.

database matching methodologies, precisely the sort of evidence plaintiffs have placed before the court in this case (p. 98).

Analyses of Voter Turnout

22. Perhaps realizing the limitations of existing studies, Dr. Hood attempts to analyze the effects of SB 14 on voter turnout by examining recent elections in Georgia, Mississippi, and Texas that took place before and after implementation of voter ID laws. At first blush, this seems like a useful approach. However, familiarity with research on different types of elections and voters shows that it is not. Even setting aside the point in the previous paragraph about the noncomparability of voter ID laws in these three states, and even if turnout were a useful standard for judging the result of SB 14 on minority voters, Dr. Hood's approach is uninformative. The reason is that the elections he examines are the ones least likely to be influenced by a voter ID law.
23. The elections Dr. Hood analyzes are the 2013 special primary, special primary run-off, and special general elections in South Carolina's first congressional district; the 2014 primary election and primary election run-off in Mississippi; and the 2013 constitutional amendment election and 2014 primary in Texas. These elections involve highly selective participation by a small number of voters relative to a federal general election, let alone a presidential election. By my rough calculations, none of these elections saw turnout higher than 20% among eligible voters and several were below 10%. It is risky to generalize about how SB 14 will operate in a statewide general election based on several elections in three states where 80% to 90% of voters did not participate.
24. Dr. Hood's comparison is not productive for assessing the effects of the law because it could easily result in faulty conclusions. Voters who participate in a primary election or a low salience constitutional referendum vote are unrepresentative of the general electorate and are the voters least likely to be affected significantly by a voter ID law. The voting habits of primary voters should not be generalized to other elections because these elections differ from general elections in several important ways. Primary voters are a select set of motivated individuals who wish to participate in an intra-party nomination contest. Political science research shows that—compared to general election voters—primary election voters are often more partisan, more educated, have higher incomes, have a greater sense of efficacy, and have more consistent histories of voter participation.²⁴ The same skew is true in other low turnout elections such as the 2013 constitutional amendment election in Texas, but is even evident in midterm elections when they are compared to presidential elections. Voters in lower profile elections tend to possess the traits that make them least likely to have their voting habits interrupted by a change in the law. Put in terms of the calculus of voting, voters in low turnout elections have more of the resources needed to overcome the "costs" of voting

²⁴ For a brief summary of research on presidential primaries, see the following reviews of research: Brian F. Schaffner (2011), *Politics, Parties, and Elections in America*, 7th ed., Boston, MA: Cengage Learning, p. 174; Karen M. Kaufmann, John R. Petrocik, and Daron R. Shaw (2008), *Unconventional Wisdom: Facts and Myths about American Voters*, New York, NY: Oxford University Press, p. 197. State and congressional primaries are likely to be even less representative and typically generate lower levels of voter turnout.

and see more benefit from participating. In contrast, the electorate in a presidential contest includes voters who do not participate in other elections, who are by definition marginal and more likely to be influenced by costs imposed by election laws.

25. In addition, most of the electoral activity in this select set of elections was focused on Republican candidates and the Republican Party. Latino voters are more likely to vote in Democratic primaries; this is even truer for black voters.²⁵ They are unlikely to comprise many of the participants that Dr. Hood examines. In all three states, the primaries either saw higher participation in the Republican balloting or were exclusively for Republicans. Participants in these unrepresentative, idiosyncratic, low-turnout races involve mostly highly resourced Anglos. They thus have little to say about the burdens of SB 14 or its likely effects on turnout in a general election.
26. Dr. Hood also investigates the effects of Georgia’s voter ID law by comparing the 2004 and 2008 elections (Figure 1). This initially seems like a reasonable approach because 2004 and 2008 are the two presidential elections that bracketed the adoption of the law. Similarly, an unpublished report by Dr. Milyo attempts to estimate the effects of Indiana’s law on turnout by comparing the 2002 and 2006 midterm elections.²⁶ However, this simple method suffers from what social scientists called a “confound,” specifically the problem of history.²⁷ This makes the analysis unreliable for determining the causal effects of the law.
27. In the case of Dr. Hood’s study, the 2008 election differed from 2004 in two important ways that do not involve the presence or absence of a voter ID law. First, Barack Obama was on the ballot in 2008, but not in 2004. As the first black candidate to be nominated by a major party, he generated unusually high levels of enthusiasm and participation among black voters. Second, Georgia was more politically competitive in 2008 than in 2004. The final vote share margin between the two parties fell from 16.6 percentage points in 2004 to 5.2 percentage points in 2008. This made Georgia the seventh most competitive of the 50 states and was connected to increased campaign activity and voter participation. Due to Obama’s presence on the ballot and a more competitive campaign environment, it is unsurprising that black registration and turnout rates in Georgia increased between 2004 and 2008, notwithstanding the introduction of Georgia’s voter ID law. Dr. Hood’s inference from these data that voter ID did not impose a significant barrier to participation is unwarranted.
28. Dr. Milyo contends that the 2002 and 2006 elections “offer a nearly ideal natural experiment for identifying the effects of photo ID on turnout. This is because there were no other major changes in Indiana election laws during this time period, so the impact of photo ID will not

²⁵ As but one reminder of the overall preference among these groups for Democratic candidates, the 2012 national election exit polls indicate that the share voting Democratic for president was 41% among Anglos, 71% among Latinos, and 93% among blacks.

²⁶ Jeffrey Milyo (December 2007), “The Effect of Photographic Identification on Voter Turnout in Indiana: A County-Level Analysis,” Institute of Public Policy Report 10-2007.

²⁷ Concerns about the “history” threat to causal inference and related confounds are standard topics covered in courses on empirical research design. The classic statement appears in the textbook, Donald T. Campbell and Julian Stanley (1963), *Experimental and Quasi-Experimental Designs for Research*, Chicago, IL: Rand McNally.

be confounded with other changes in state election administration” (p. 4). While it is true that there were no other major changes in Indiana’s elections laws in this period, Dr. Milyo overlooks any number of other confounding historical factors that bias the estimates. Among the many confounding factors he ignores are changes in the candidates, issues, and competitiveness of races between the two elections. In 2006, three incumbent members of Indiana’s congressional delegation were defeated, and a U.S. Senate seat was on the ballot, albeit in a weakly contested race. By contrast, in 2002 no House incumbent was successfully challenged and there was no U.S. Senate seat on the ballot, although there was one congressional contest for an open seat. Dr. Milyo’s simple before-and-after analysis in a single state cannot distinguish between the effects of voter ID and those due to other changes in the state’s electoral environment.

29. Beyond the methodological flaws in the approach used by Dr. Hood and Dr. Milyo is the broader question of whether turnout analysis is the correct way to measure the burden that SB 14 places on minority voters. Voter turnout is affected by many factors, so a focus on that metric obscures the differential burden imposed by the law that must blacks and Latinos must overcome to participate in the electoral process. Putting the discussion in terms of the calculus of voting, the appropriate analysis should not simply count up what share of each racial and ethnic group paid the costs of voting. Rather, the questions are whether the state effectively charged each group a different rate and whether groups are equally able to pay the rate charged. Dr. Hood’s statement that “ID disparity only matters, however, if it ultimately causes a disparity in voter turnout” is a misguided standard for assessing the impact of SB 14 on blacks and Latinos.

I declare under penalty of perjury the foregoing is true and correct. Executed this 15th day of August, 2014.



Barry C. Burden

EXHIBIT C

**ACCEPTED PHOTO IDENTIFICATION
AND DIFFERENT SUBGROUPS IN THE ELIGIBLE VOTER
POPULATION, STATE OF TEXAS, 2014**

**Expert Report Submitted on Behalf of Plaintiffs
in *Veasey v. Perry*, Case 2:13-cv-00193**

**Matt A. Barreto, Ph.D., University of Washington
Gabriel R. Sanchez, Ph.D., University of New Mexico**

June 27, 2014

I. Introduction and Question Presented

The primary objective of this research report is to determine the current rates of possession, and lack of possession, of accepted photo identification among the eligible voting population in the state of Texas. More specifically, plaintiffs in *Veasey v. Perry*, no. 2:13-cv-00193, retained the report authors, Drs. Barreto and Sanchez, to create a research design that would allow for an examination of whether Latino and Black eligible voters in the state of Texas are more or less likely than eligible non-Hispanic White voters to possess accepted photo ID, and if any differences in possession are statistically significant. The research design defined accepted photo ID as being the types of ID generally required by SB 14 to cast an in-person ballot in Texas that will be counted, for example certain types of ID that either are current or expired in the past 60 days, hereinafter called “accepted ID” or “unexpired ID”– to match the provision in the law. We also address certain related questions, such as whether those who currently lack an accepted photo ID correctly comprehend the types of photo ID acceptable under SB 14 and whether this population faces potential burdens in acquiring accepted photo ID, including whether the answers to these questions differ by race. In addition to assessing differences between Whites, Blacks, and Latinos, we also assess the extent to which differences exist among other subgroups such as by gender and socioeconomic status.

Dr. Matt Barreto is currently an Associate Professor of Political Science, and Director of the Washington Institute for the Study of Ethnicity, Race & Sexuality (WISER), at the University of Washington, Seattle. He is also an affiliated faculty, and former executive committee member, of the Center for Statistics and the Social Sciences (CSSS) at UW, and an adjunct Associate Professor at the UW School of Law. Dr. Barreto completed a Ph.D. in Political Science, with an emphasis on racial and ethnic politics in the U.S., political behavior, and public opinion, at the University of California, Irvine in 2005.

Over the past eight years, Dr. Barreto has collaborated closely on research related to voter identification laws with Professor Gabriel R. Sanchez. Dr. Sanchez is currently an Associate Professor of Political Science at the University of New Mexico, Albuquerque, and Executive Director of the Robert Wood Johnson Center for

Health Policy at UNM. Dr. Sanchez received his Ph.D. in Political Science, with an emphasis on racial and ethnic politics in the U.S., political behavior, and public opinion, at the University of Arizona in 2005.

In 2012, Drs. Barreto and Sanchez co-authored an expert report on possession of voter ID in the state of Wisconsin for the *Frank v. Walker* lawsuit. The two scholars also co-authored a second expert report in 2012 on possession of voter ID in the state of Pennsylvania in *Applewhite v. Commonwealth of Pennsylvania*. In both instances, the presiding judge relied on the data presented in our expert reports in declaring voter ID laws unlawful under state (Pennsylvania) and federal (Wisconsin) legal provisions.

Dr. Barreto and Dr. Sanchez have together designed multiple surveys about voter ID, and co-authored conference papers and published research on voter ID laws in peer-reviewed academic journals. We have implemented more than 100 public opinion surveys and have, in total, published 5 books and well over 60 peer-reviewed academic research articles, over 20 book chapters in academic research volumes between the two of us.

We were assisted in our research by Ms. Hannah Walker, a Ph.D. student at the University of Washington. Ms. Walker has previously served as our research assistant on two prior surveys and expert reports on possession of voter identification. Both of our full CV's are included as appendices C and D.

While the full methodology, statistical analysis and findings are detailed throughout this report, a short overview of the most relevant findings are offered first:

- As compared to eligible non-Hispanic White voters, Black and Latino eligible voters in Texas are less likely to possess a photo ID (state or federal) acceptable under SB 14 which requires that the ID is unexpired. These differences between White voters and each minority group of voters are statistically significant. More specifically, while only 4.7% of non-Hispanic White eligible voters lack an accepted ID, 8.4% of Black eligible voters, and 11.4% of Latino eligible voters lack accepted ID. Thus, eligible Black voters are 179 percent more likely to lack an accepted photo ID than are non-Hispanic Whites.

Eligible Latino voters are 242 percent more likely to lack an accepted photo ID than are non-Hispanic Whites. Applying the results of the survey to the Texas citizen voting age population (as of 2012), there are approximately 1.2 million total eligible voter in Texas who lack accepted voter ID.

- Black and Latino eligible voters are less likely than non-Hispanic Whites to have heard of an EIC. Among those who lack an unexpired photo ID, 18.2% of Whites have heard of an EIC, compared to only 13% of Blacks for whom the same is true.
- As compared to eligible non-Hispanic White voters, eligible Black and Latino voters are more likely to lack an accepted photo ID and report facing potential burdens in obtaining an Election Identification Certificate (EIC) ID, creating a potential double-burden for Blacks and Latinos. While 4.5% of non-Hispanic Whites lack an accepted ID and will face at least one major potential burden in obtaining an ID, 6.1% of Blacks lack an accepted ID and will face at least one potential burden, and 9.1% of Latinos lack an ID and will face at least one potential burden in obtaining an ID. The difference between Whites and Latinos is statistically significant.

To test these questions a survey was designed specifically focused on the Texas photo ID law which went into effect in 2013. This research approach has three critical advantages for the purpose of identifying potential disparities in access to accepted forms of identification: 1) the use of a survey provides the opportunity to directly ask residents of Texas whether they are in possession of accepted photo ID and the underlying documents that may be used to obtain an accepted ID, 2) this study is focused on eligible voters and has sizable samples of non-Hispanic Whites, Blacks, and Latinos appropriate for statistical analysis, and 3) the survey also measured knowledge among respondents of the Texas identification law, and other potential barriers to access to obtaining an EIC. This approach is an ideal way to assess rates of possession of accepted photo ID because eligible voters were contacted directly and asked what types of identification and other documents they currently possess. Other methods, such as examining existing large public databases, also may be used to

provide information on the types of ID that individuals possess, depending on factors such as whether each type of relevant ID is recorded in a database and whether the relevant databases are available for review. While very useful, a database review may be limited to assessing ID possession among individuals included on the list of registered voters (if there is no database list of all eligible voters), whereas this research was able to assess how the Texas voter ID law affects all eligible voters. Finally, a survey can ask more specifically about current physical possession of the relevant ID to capture any instances where IDs has been lost, stolen, misplaced, destroyed, etc. When combined with other approaches aimed at identifying the impact of the new law, the survey research discussed in this report helps provide a clear picture of the individuals across race, ethnicity, and other demographic factors who lack accepted ID.

In sum, the data obtained through this survey provides an accurate and reliable depiction of the rates of possession of accepted photo ID in Texas, and of certain related matters. Because the percentage figures set forth in this report were obtained from a survey, these figures should be interpreted as estimates and not exact numbers. However, using standard and well-accepted statistical techniques, the margins of error associated with the percentage estimates were all evaluated and determined to be well within conventional standards, and we likewise determined whether the differential rates between groups (most importantly, between non-Hispanic Whites, Blacks, and Latinos) are statistically significant.

II. Survey Methodology

A. Survey Research is a Reliable and Trusted Method in the Social Sciences

Within social science research, public opinion and political behavior have been longstanding areas of significant consequence and interest. The primary reason for using survey research to study possession of accepted photo ID is simple: if you want to know if the population has the required ID, just ask them. Early on, “pollsters” learned that you could learn a great deal about voter attitudes, and possibly even predict election results, through large quantitative surveys of the public. Over the past decades, the science of public opinion

surveys has expanded greatly and great expertise has been developed in how to accurately sample, construct, implement and analyze survey data.¹ Survey research has become a hallmark of social science research, such that at a typical Political Science academic conference more than 500 different research papers using survey data are regularly presented. When surveys are implemented accurately, results generated from a sample of the population can be inferred to the larger population from which the sample is drawn, given the appropriate sampling error, or confidence interval that must always be accounted for.² Survey research is a standard and widely accepted practice in social science and government research. The U.S. government regularly relies on survey methodology exactly like that relied upon in this expert report, in its collection of data and statistics, such as the U.S. Census American Community Survey and Current Population Survey, the Bureau of Labor Statistics Unemployment Survey, and surveys by the National Institutes of Health, the Department of Defense, and the Internal Revenue Service. In fact, the Office of Management and Budget has a division called the “Federal Committee on Statistical Methodology” which has reviewed best practices in survey research and recommended random digit dial (“RDD”) as a method to avoid non-coverage bias because it samples all known telephone numbers.³ According to Michael Link, formerly a research scientist for the Centers for Disease Control and Prevention, “For more than three decades, RDD telephone surveys have been the predominant method for conducting surveys of the general public.”⁴

The most important starting point for sound survey research is to acquire an accurate sample frame from which to draw the eventual sample of people interviewed. If the sample is reflective of the larger population, and the survey is administered randomly, without bias, and with an adequate sample size and response rate the

¹ For example, see Harold Lasswell, *Democracy Through Public Opinion*. 1941; Harry Alpert, “Public Opinion Research as Science.” *Public Opinion Quarterly*. 20(3). 1956; and Robert Groves et. al. *Survey Methodology*, 2nd ed. 2009.

² Claes-Magnus Cassell et. al., *Foundations of inference in survey sampling*. 1977; Barry Graubard and Edward Korn, “Survey inference for subpopulations.” *American Journal of Epidemiology*. 144(1). 1996.

³ Federal Committee on Statistical Methodology. Statistical Working Paper 17 – Survey Coverage. 1990.
<http://www.fcsm.gov/working-papers/wp17.html>

⁴ Address-Based Versus Random-Digit Dial Sampling: Comparison of Data Quality from BRFSS Mail and Telephone Surveys. 2005.
http://www.fcsm.gov/05papers/Link_Mokdad_et al_IIB.pdf

results of the eventual survey can be considered as statistically reliable estimate, at least for those questions directed at all persons sampled.⁵ According to Henry Brady, Professor of Political Science at the University of California, Berkeley, “Scientific surveys are one of these tools, and they have been widely used in the social sciences since the 1940s. No other method for understanding politics is used more, and no other method has so consistently illuminated political science theories with political facts... They provided the gold standard for measuring citizen opinions... No other social science method has proven so valuable.”

B. Principal Focus: Racial Disparities in Possession of ID in Texas

Specifically, the current study is focused on whether eligible Latino, eligible Black and eligible non-Hispanic White eligible voters in Texas have statistically different rates of possession of accepted photo ID, and the survey was designed to address the provisions of the Texas law. For example, when respondents were asked to confirm that they had an “up-to-date” driver’s license or other accepted form of photo ID, survey interviewers confirmed that, for those types of ID that expire, the ID was either current or had expired within the last 60 days – to match the provision in the law. Respondents were also asked to indicate whether they were in possession of any of the accepted forms of photo ID⁶: a Texas driver’s license, a Texas personal ID card that was issued by the DPS, a Texas Election Identification Certificate card, a Texas concealed handgun license, a U.S. passport, a U.S. military ID card with photograph, or a U.S. citizenship certificate containing their photograph. This information provided directly by respondents was utilized to create our measure of accepted ID that is used throughout the report.

This study was designed to assess if there were any statistically significant differences in rates of possession, or lack of possession, of accepted photo ID based on race and ethnicity. To assess this, the survey started by asking respondents to provide their race/ethnicity (see Appendix B for full survey questionnaire).

⁵ Richard Scheaffer et. al. *Elementary Survey Sampling*, 7th ed. 2012; Robert Groves, *Survey Errors and Survey Costs*, 2nd ed. 2004.

⁶ Photo ID Required for Texas Voters: information guide posted online: <http://votetexas.gov/wp-content/uploads/2013/09/poster-8.5x14-aw.pdf>

Respondents could self-report their racial or ethnic group, and like the Census, respondents were allowed to select one or more racial groups.⁷ After establishing eligibility to participate in the survey, all respondents were asked: “Just to make sure we get a representative sample of people here in Texas, can you tell me what your race or ethnicity is?” Respondents could select White or Anglo, Black or Black, Hispanic or Latino, Asian American, Native American, or Other.

To assess the differential rates of possession of accepted photo ID, in-group percentages are presented for individuals who do not possess the various forms of photo ID as well as for potential burdens faced for White,⁸ Latino, and Black respondents to the survey. In addition to the frequencies associated with possession of accepted forms of ID, results from a series of statistical tests are presented to determine whether eligible Latino and Black voters in Texas are disproportionately impacted by the Texas voter ID law. In this case, logistic regression was utilized to determine whether or not different groups (racial groups in this case) are distinct from each other when observing binary outcomes, such as possession of acceptable photo ID. Logistic regression is the most appropriate statistical analysis to test these relationships for two reasons: first, because the outcome variable of interest, possession of an accepted photo ID, is binary and logistic regression is best at estimating a 0,1 binary dependent variable, and second, because the regression provides a more precise, accurate, and strict test of statistical significance than does a chi-square or t-test comparison of means. Although we find similar results for the chi-square and t-tests in our analysis, the results of the regression analysis provide a direct test of whether possession rates of acceptable ID vary in a statistically significant manner for Blacks or Latinos, as compared to Whites.

As is the norm in the social sciences, standard levels of significance are utilized of .001, .010, .050, and .100 to determine if a result is statistically significant. The following symbols in the tables provide an indication

⁷ Out of entire sample of 2,344 respondents there were 5 respondents who said they were both Hispanic and white. In this case, we included these as part of the Hispanic group and not as white, consistent with the United States Census. In total, there were 21 respondents who stated more than one race/ethnicity which accounted for less than 1 percent of all cases analyzed.

⁸ Hereinafter in this report, the category/label “White” is used to refer to non-Hispanic Whites.

of the confidence level and degree of statistical significance for the observed difference between minority groups and whites:

*** $Pr < .001$ ** $Pr < .010$ * $Pr < .050$ ‡ $Pr < .100$. For example, if a relationship is marked with a ** symbol, we can say that the observed difference between Latinos and whites would achieve statistical significance at 99% certainty – that is, we have 99% statistical certainty that the difference we observe is real and not the result of sampling error. Similarly, if the pr value is .050, then we can say that the observed difference would achieve statistical significance at 95% certainty. The statistical significance, or confidence interval, essentially takes into account the survey margin of error, and degree of difference in results to determine if the differences observed are real and true.

We also occasionally present raw number estimates of the number of persons affected. These estimates are included to provide further insight into the scope of the effects of SB 14, and are not used to assess the presence or extent of differential effects by group since that differential analysis necessarily depends upon comparisons of the rates among the different groups. The raw number estimates are extrapolations based on applying the survey's percentage estimates to the Census data for the citizen voting age population of Texas.

Finally, it was critical that respondents to the survey were both residents of Texas and eligible to vote. The survey therefore started with the following question that was used as a screener for eligibility to participate in the study:

“Okay, just to make sure you are eligible to take part in our survey about voting, can you confirm that you are 18 or over, and currently a U.S. citizen, and are not currently on probation, parole, or extended supervision for a felony conviction, and you have lived here in Texas for more than 30 days?”

At the end of the survey, respondents were asked to confirm they were a resident of the state of Texas, and any individual who provided a response to these items that would make them ineligible to vote were excluded from the study, ensuring that the analysis is focused on eligible voters in Texas. Therefore, any relationships between

race and ethnicity and possession of accepted photo identification are specific to the voting eligible population of the state.

C. The Additional Questions: Differences by Other Demographic Indicators

In addition to race and ethnicity, our analysis includes a focus on the demographic indicators of gender, age, income, and education. Similar to the approach with race, percentages for individuals who do not possess the various forms of photo ID are presented for each category of these other demographic variables. For example, rates of possession for the following income categories are presented: less than \$20,000, \$20,000 to \$40,000, \$40,000 to \$60,000, \$60,000 to \$80,000, \$80,000 to \$100,000, \$100,000 to \$150,000 and greater than \$150,000 annual household income. Likewise, similar categorical break-outs for age and education groupings are presented, as are comparisons between men and women. A series of logistic regression analyses were also conducted for these additional demographic indicators to assess whether there were statistically significant differences in possession of accepted forms of ID due to gender, income, age, and educational attainment. This additional information will provide a more comprehensive picture of how the Texas law could impact voters from the state, with a specific focus on assessing statistically significant differences in possession rates of accepted forms of ID across race, ethnicity, gender and socio-economic factors.

D. Texas Demographics

Previous studies focused on other states indicate that voter ID laws have the potential to disproportionately affect specific segments of the population, including racial and ethnic minorities, the elderly population, and those of low socio-economic status.⁹ Given the diversity of Texas, it is relevant to extend a similar analysis to this state.

⁹ Barreto, Matt, Stephen Nuño, and Gabriel Sanchez. 2009. "The Disproportionate Impact of Voter-ID Requirements on the Electorate—New Evidence from Indiana." *PS: Political Science & Politics*. 42 (January)

According to data from the US Census Bureau, among the citizen adult population in Texas, 37.9% is Hispanic or Latino, 11.5% is Black and 44.8% is non-Hispanic White. In terms of age, one-third of the population is 18-34, and another 14.5 percent are over the age of 65. Moreover, 18.9% have not completed high school, and when coupled with those with *only* a high school degree or equivalent, nearly 45 percent of the adult population in Texas has just a high school degree or less. Finally, a full quarter of the households in Texas earn less than \$25,000 per year. Thus, the demographic portrait of Texas is one that is diverse along racial and ethnic bounds, as well as socioeconomically. As one of the largest states in the country, with more than 16.5 million adult citizens as of the 2012 Census ACS, voter identification laws have the potential to impact a large number of individuals in Texas. Further, as discussed in the next section, census demographics are used in weighting the sample to help ensure that the survey data are accurately reflective of the demographics of Texas.

E. Survey Design

In designing a survey, researchers must consider three important topics to ensure their project is of the highest quality and follows social scientific standards. Two of the three relate to the design of the survey, and are discussed in this subsection of the report.

The first issue concerns the population for which inferences will be made and the method of interacting with that population. In this case, inferences will be made about the rates of possession of accepted photo identification for the eligible voting population in the state of Texas (and related matters). With this in mind, the most accurate and efficient way to contact this population should be determined. The most common approaches are through the use of (1) random digit dial and (2) household listed samples.

Random digit dial, or RDD, takes the known area codes and prefixes for a given geographic area, and randomly generates the last four digits of phone numbers and calls those numbers entirely at random. This increases the likelihood that every possible phone number in Texas has an equal chance of being called.

A second approach that is also used quite extensively is randomly calling listed household samples. Rather than calling randomly generated phone numbers (some of which may not exist), a listed sample starts with the known universe of actual phone numbers for landline and/or cell phone subscribers that currently reside in a geographic area (Texas in this case). Listed samples are far more efficient than pure RDD because they greatly reduce the number of “dead numbers” dialed and allow interviewers to focus on known working phone numbers. Listed samples are especially useful if researchers are interested in drilling down into a particular sub-group within the population such as racial or ethnic minorities, or registered voters. Sample vendors can sell a listed sample of all households in a particular area, or they can provide sample records for just Hispanic households. Likewise, sample vendors sell lists of known cell phone/wireless phone numbers for particular geographic areas, and those can then be randomly dialed as part of a survey. One of the advantages of using a survey firm with extensive experience purchasing lists is that the firm is able to secure these lists from the most reputable vendors available. This includes being able to secure cell-phone users who may have cell-phone numbers from outside of Texas but who actually reside within the state.

For this particular survey, several sample components were used. First, an RDD sample of 800 eligible voters representative of the full demographics of Texas was targeted (the survey ended up contacting 804 such eligible voters). This initial sample provides the survey power to analyze internal variation within the state’s overall population. Second, in order to reach a reliable sample of Black and Latino eligible voters, two separate listed-sample oversamples of Black and Hispanic eligible voters were undertaken, so that when point estimates are provided for these two groups they each surpass $n=800$ in the sample. These robust samples provide the ability to explore variation within each population as needed, and ensure that the margins of error associated with our results are well within accepted levels. In both instances, the survey reached eligible voters in landline

and cell-phone-only households.¹⁰ Sample sizes and configurations are set forth in table A, and further discussed below.

Table A: Sample composition

	RDD	Listed
White	532	135
Black	77	724
Latino	136	666
Other	59	15
Total	804	1,540

The second issue to ensure that a survey meets all social science standards concerns the design and construction of the survey questionnaire itself. In designing the questionnaire, researchers should follow best practices established by existing social science research, as well as groups such as the American Association of Public Opinion Research (AAPOR). It is important that questions are direct, objective, and neutral, not meant to lead respondents to give one particular answer over another, and should give respondents an appropriate range of available answer choices. With modern survey technology, questionnaires should always be programmed to rotate question wording, randomize answer choices, rotate options forward-to-back and more, to ensure that no priming takes place whereby respondents lean towards one type of answer because it is always read as the first option. For example, if a survey always led with the negative option for a question assessing approval of the President – strongly disapprove – researchers might end up with an over-estimation of respondents who pick strongly disapprove because they hear that first. For this project, we strictly followed the best social science practices for designing and implementing a survey.

The full questionnaire is included as an appendix to this document (Appendix B) so that readers can see that all of these criteria were followed in designing and implementing this survey. In this instance, the survey

¹⁰ Cell phone respondents may also include current residents of Texas who have a non-Texas area code, but who appear on a listed sample of Texas households.

questionnaire contained five main sections: first, screening questions to establish eligibility to participate in the study; second, questions focused on accepted photo ID; third, questions that probed rates of possession of documentary proof of citizenship, identity, and residency; fourth, questions about possible burdens to acquire an EAC; and fifth, demographic questions concerning the sample.

F. Survey Execution

The third issue to ensure that a survey meets social science standards concerns the implementation of the survey instrument. In executing a survey, all possible respondents must have an equal chance to respond, participate, and be included. For example, if potential respondents were only called at home at 1:00 pm in the afternoon on Fridays, this would result in a sample that would be distinct from the overall population of Texas since many would not be able to participate in the study because they would have been at work during the call time. Instead, researchers should take an approach that gives each potential respondent an equal opportunity to be included in the survey.

The actual phone calls and implementation of the current survey was handled by Pacific Market Research (PMR), a market research firm in Renton, Washington, under our supervision and direction. This is a highly reputable survey firm that has implemented many surveys for applied, legal and academic research¹¹ including surveys implementing similar designs as that used here for the purposes of exploring differences in public opinion and voting behavior. Further, Pacific Market Research implemented the surveys we performed for similar voter ID studies in the litigation noted above in Pennsylvania and Wisconsin, and the courts in those cases found the survey data to be reliable and consistent with accepted social science practices.

¹¹ The surveys conducted by Pacific Market Research include surveys for the U.S. Internal Revenue Service and the U.S. Department of Defense, surveys to study juror pool knowledge of pending cases and to study public opinion and voter participation among Whites, Hispanics, Blacks, and Asian Americans, and proprietary market research for firms such as Microsoft, AT&T, and T-Mobile.

As discussed above, two sampling approaches were used in this survey. First, PMR implemented a pure RDD approach obtaining an overall sample of 804 Texas eligible voters. Numbers were randomly generated, and then randomly selected phone numbers were dialed. To target Latino and Black eligible voters for separate oversamples, PMR procured a listed sample of Black and Hispanic households in Texas, and then randomly selected phone numbers to be dialed. An additional sample list, of known cell/wireless-only households, also was used to ensure that residents who do not have a landline telephone were still included in the survey. This step was important, as more and more people are moving toward cell phone usage and cancelling their land-line telephones. Adding a cell-phone sample ensures that the data can speak to all aspects of the Texas population. In all cases, calls were made from 4pm – 9pm central time Monday through Friday, and 12pm – 8pm central time Saturday and Sunday, beginning on March 16, 2014, and continuing until April 18, 2014. Landline numbers were auto-dialed and wireless numbers were manually dialed. If a respondent completed the survey, or refused to participate, that respondent was taken off the call list for future calls. Phone numbers were dialed and re-dialed up to five times in order to avoid any possible non-response bias that may result from only making one or two attempts per number. A full analysis of the data indicates that non-response bias did not present any problems in this study, given that up to five call-back attempts were used, and thus did yield hard-to-reach respondents. Phone numbers were “released” in batches of 100, and dialed until all numbers were exhausted, and then a second batch was made available, and so on.

Respondents had the choice of completing the interview in English, or in Spanish, and among self-identified Hispanic respondents, 60% took the survey in English, and 40% in Spanish. Among Whites and Blacks, 100 percent took the survey in English. Making the survey available in both English and Spanish is critical, as many Latinos in Texas prefer to take surveys in Spanish even if they are able to do so in English. This ensures that the responses provided by respondents are accurate and not biased by communication issues related to language effects.

Overall, Pacific Market Research reported a Response Rate-3 of 26.3 percent and a Cooperation Rate-3 of 39.2 percent, calculated as per the American Association of Public Opinion Research (AAPOR) guidelines.¹² In the field of survey research, response rates between 20 and 30 percent are considered to be accurate and in an accepted range, and this project falls within that range.¹³

After collecting the data for the main Texas sample, and the Black and Hispanic oversamples, underlying demographic characteristics of the respective samples were examined and compared to the known universe estimates for each from the 2012 U.S. Census, *American Community Survey* for Texas. Where there were any discrepancies, a weighting algorithm was applied to balance the sample, called raking ratio estimation,¹⁴ so that the final samples that were tabulated for the analysis were in line with the U.S. Census estimates for Texas. For example, it is well known in survey research that people under 25 years old are harder to reach than older people who are over age 65. If 8% of survey respondents are age 18-24 years old, but census data tells us they are actually 14% of the eligible voting population, then each young person needs to be “up-weighted” so that collectively they represent 14% of the sample. Overall, the discrepancies between the collected data and the Census population estimates were quite small, and therefore the resulting weights that were employed were also quite small. Still, by weighting the data to known ACS demographics for each group, or for the state at large, this helps to ensure that the sample generated for the report is reflective of the overall population of Texas and, consequently, that the inferences made regarding possession rates of accepted ID (and related matters) are reflective of that target population as well. Weighting of survey data is a very common and accepted approach in social science research, especially when inferences are made to the larger population.¹⁵

¹² For more on AAPOR guidelines: http://www.aapor.org/Response_Rates_An_Overview1.htm. The response rate refers to percent of individuals who agreed to take the survey out of the overall number of cases in the sample. In contrast, the cooperation rate refers the percent of individuals who agreed to take the survey out of the overall number of individuals actually reached by researchers.

¹³ Scott Keeter et. al. 2006. “Gauging the Impact of Growing Nonresponse on Estimates from a National RDD Telephone Survey,” *Public Opinion Quarterly*. 70(5)

¹⁴ Michael Battaglia et. al. 2004. “Tips and Tricks for Raking Survey Data (a.k.a. Sample Balancing)” Proceedings of the Survey Research Methods Section, American Statistical Association.

¹⁵ Eun Sul Lee and Ronald Forthofer. 2006. *Analyzing Complex Survey Data*. Sage Publications.

III. Impact of the Texas Photo ID Law

As of 2014, Texas now generally requires that individuals provide accepted photo identification before they are issued a regular ballot when seeking to vote in person on election day or as part of in-person early voting. Acceptable identification includes a Texas driver's license, a Texas personal ID card that was issued by the DPS, a Texas Election Identification Certificate, a Texas concealed handgun license, a U.S. passport, a U.S. military ID card with photograph, or a U.S. citizenship certificate containing photograph. All forms of identification, aside from a U.S. citizenship certificate, must be current or have expired within 60 days of the election. The ID must have the individual's name printed on it and that name must be substantially similar to the name in the voter registration file.

A. Impact of SB 14 on the Overall Population of Texas Eligible Voters

Among the overall population of eligible voters in Texas a sizeable portion do not possess an acceptable form of photo ID. According to the estimates obtained from the survey, 7.2 percent of eligible voters do not possess an accepted photo ID. In terms of a raw number extrapolation, approximately 1.2 million eligible voters currently do not possess an accepted ID in Texas.

The survey further found that a lack of accurate information may affect the ability of eligible voters lacking an acceptable photo ID to obtain the required photo ID. While 92.8 percent have an accepted photo ID, 97.2 percent of Texas eligible voters believe they currently have an accepted photo ID. If they believe they currently possess an accepted ID, these eligible voters with an expired or incorrect type of ID may be less likely to go to obtain a new or corrected ID than those who know they lack accepted ID simply because they believe they are already in compliance with the law. Further, we find a large number of eligible individuals do not possess documentary proof of citizenship and documentary proof of identity used to acquire an accepted form of photo ID. Among those who currently lack ID and thus generally not eligible to vote in person, 26.5 percent do not currently possess underlying documents used to obtain an EIC.

Finally, when asked how easy or difficult it will be to visit a DPS or County Clerk office to obtain an EIC, an overwhelming 91 percent of Texans who currently lack an ID state they will face at least one potential burden in doing so. Such burdens might include not being able to visit the office during limited operating hours, getting a ride or public transportation, or paying the costs associated with underlying documents, any of which independently present problems when attempting to access and EIC.

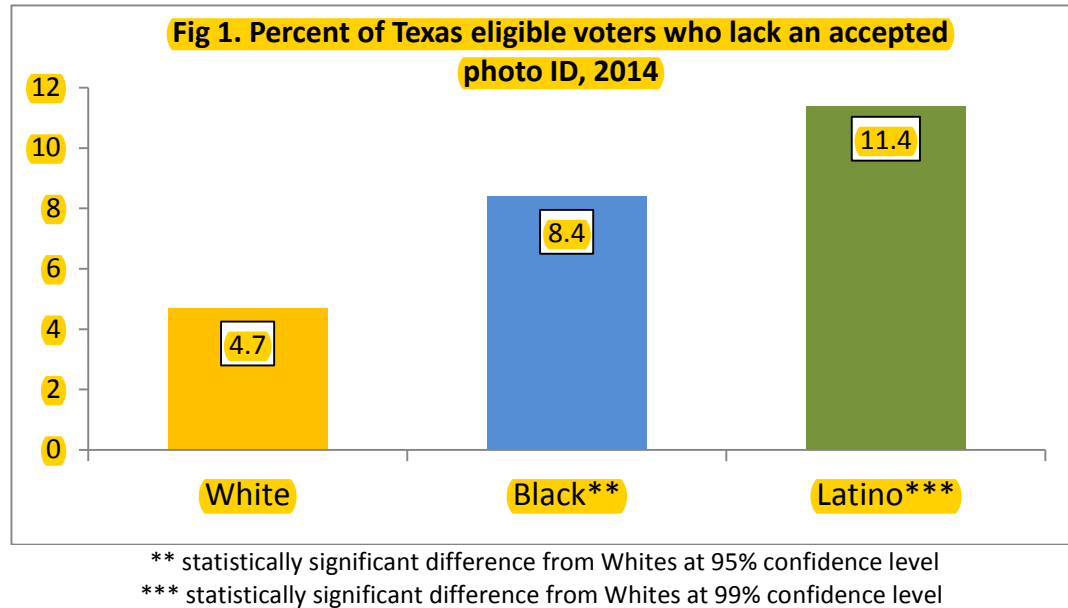
This initial overview indicates that there is a significant segment of the Texas population that lacks the accepted forms of identification. The next section of the analysis focuses specifically on whether possession rates of accepted ID vary significantly across racial and ethnic groups.

B. Disparate Rates by Race/Ethnicity

1. Rates of possession of accepted photo ID for eligible voters by race/ethnicity

We find differences in possession rate by race/ethnicity. Eligible Black and Latino voters disproportionately lack an accepted photo ID in Texas. In fact, the relationship between race/ethnicity and possession of an accepted photo ID is statistically significant at a very rigorous level utilized in social science research (Table 1). Among Latino eligible voters, 11.4 percent lack an accepted form of photo ID, and 8.4 percent of Black eligible voters lack an accepted form of photo ID, compared to only 4.7 percent of White eligible voters (Table 1). This means that Blacks are 1.78 times more likely *to lack* accepted ID, and Latinos are 2.42 times more likely *to lack* accepted ID than are Whites.¹⁶ In terms of raw numbers, we may extrapolate that 180,000 Black and 555,000 Latino eligible voters do not possess accepted photo ID (Table 1). Taken together, more than 730,000 Black and Latino citizens, who are otherwise eligible to vote do not possess any of the photo ID generally required under Texas law for in-person voting.

¹⁶ We arrive at this by dividing the rate of Latinos who lack ID (11.4) by the rate of Whites who lack ID (4.7) to get 1.78; and likewise for Blacks who lack ID (8.4) divided by 9.3 to get 1.42



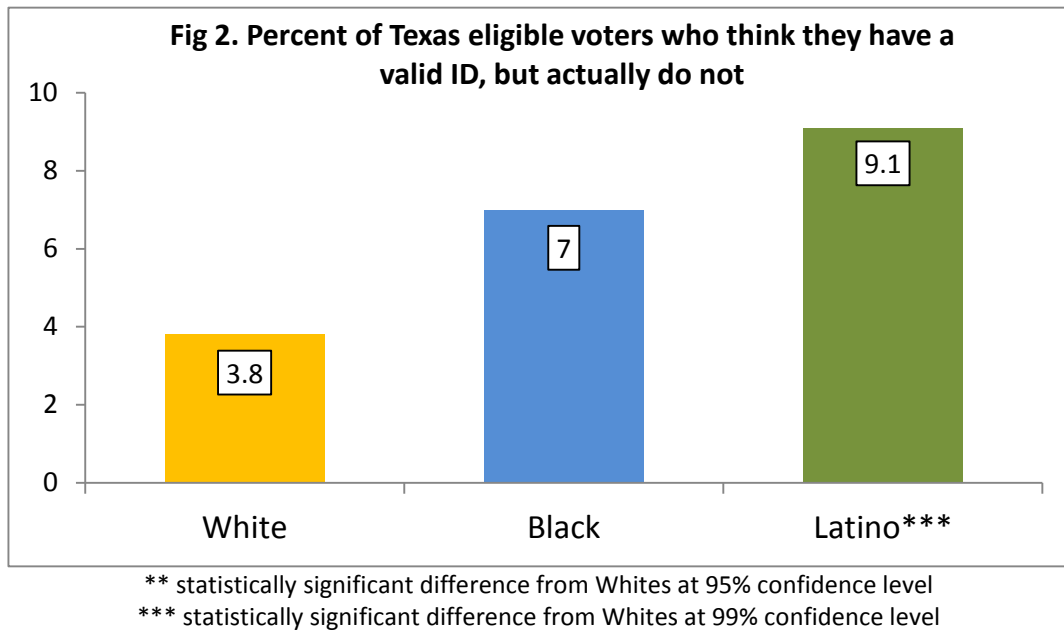
2. Rates of possession of accepted ID for registered voters and actual voters by race/ethnicity

The next step in the analysis was to examine the relative rates of possession, or lack of possession, of ID among those already registered to vote, by race and ethnicity. This analysis builds on the previous section and provides an assessment of the impact of the new law on both eligible voters as well as those who were already registered to vote at the time of the survey interview. Similar to the patterns among the overall population of eligible voters, possession of accepted photo ID among registered voters also varies significantly by race and ethnicity. While 2.1 percent of white registered voters do not possess an accepted photo ID, 4.9 percent of Black and 6.8 percent of Latino registered voters lack accepted photo ID (Table 2). Further, both difference between Black and White registered voters, and Latino and White registered voters are statistically significant at the 99% level.

3. Public knowledge of voter ID Law in Texas by race/ethnicity

As noted above, one challenge facing eligible voters in Texas without an accepted photo ID is that they correctly understand the voter ID law. In this regard, we find that Blacks and Latinos will be disadvantaged as compared to Whites: 7.0% of Blacks and 9.1% of Latinos indicate in the survey that they believe they have an

accepted photo ID when in fact they do not have an accepted photo ID, compared to 3.8% among Whites (Table 5).



4. Rates of possession of documentary proof of citizenship and identity among eligible voters who do not possess a photo ID

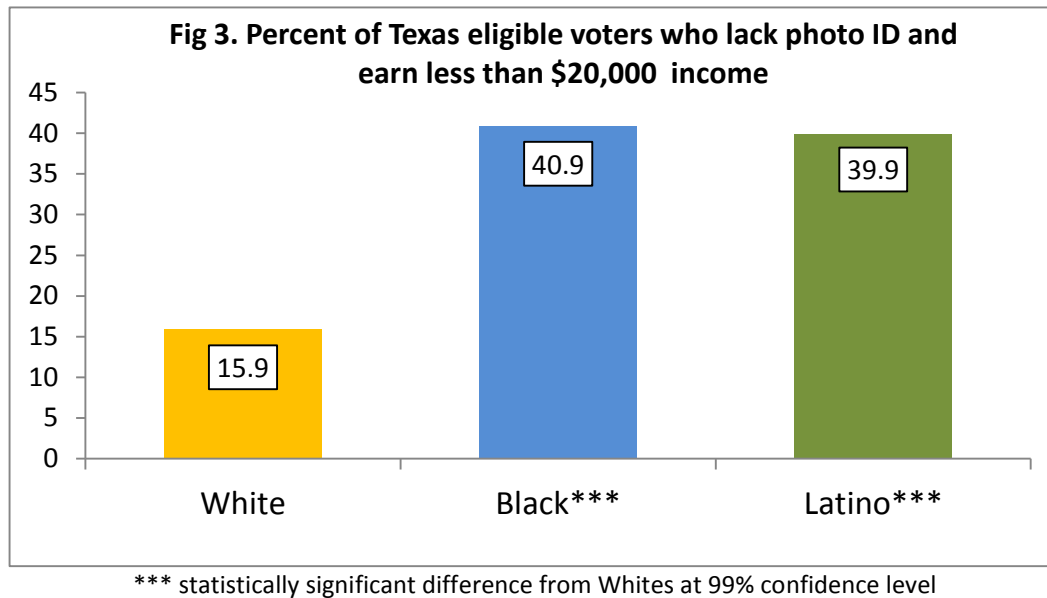
The next step in the analysis was to determine the proportion of voters who not only lack possession of an acceptable form of ID, but who may lack documents used to acquire an accepted photo ID. In this case, we specifically focused on the regulations and requirement to obtain an EIC for purposes of voting. More specifically, questions were asked focused on the possession of documentary proof of citizenship and documentary proof of identity – which are both used to acquire an EIC.

Overall, the data show that about one out of four (26.4%) Texans who lack an unexpired ID also lack the underlying documents required to obtain an ID (Table 7). Among Blacks who lack an unexpired ID, 30.4% do not have underlying documents used to obtain an ID, while 23.4% of Latinos lack these underlying documents (Table 7).

5. Are Latinos and Blacks who lack a photo ID disproportionately lower in socioeconomic status than Whites?

Among those who lack a photo ID, some amount of resources are likely needed to obtain an accepted ID. For example, citizens without accepted ID and without the requisite underlying documents will have to have the proper information and know-how to navigate the bureaucratic systems to obtain copies of birth certificates, naturalization records, social security cards, marriage or divorce certificates and so on. In addition, those without accepted ID may have to take time off work or school to visit the appropriate state or county office, and find a means of transportation to and from. Under any scenario, eligible voters who lack ID will face some potential burdens in attempting to obtain an accepted ID.

As compared to the population who already has an unexpired ID, Texas eligible voters who lack ID are disproportionately low-income, with 44.7% of those who lack ID reporting an annual household income of less than \$20,000 in 2013 (compared to only 12.8% of those who have an ID for whom the same is true). As socioeconomic and demographic research has extensively documented, Latinos and Blacks in Texas are far more likely to be in the lowest income bracket than are Whites. Looking just at respondents who lack an unexpired ID, 61% of Blacks earn less than \$20,000 annual household income, as do 51% of Latinos – compared to 23% of Whites who earn less than \$20,000. Thus, any burdens related to obtaining underlying documents that involve direct or indirect financial costs will disproportionately affect Black and Latino eligible voters in Texas.



Beyond income, we find other major discrepancies between minorities and Whites in terms of socioeconomic status (Figure 4). For example, among eligible voters who lack and unexpired ID, 39% of Whites are homeowners compared to just 29% of Blacks and just 33% of Latinos. And in terms of educational attainment, just 10.2% of Whites who lack ID did not complete a High School degree, compared to 27.6% of Blacks and 61.4% of Latinos who do not have a High School degree. These significant socioeconomic disparities will create real world differences in the burdens faced by Blacks and Latinos in attempting to obtain an accepted photo ID.

Figure 4: Summary Socioeconomic Characteristics of Eligible Voters who Lack an Unexpired ID by Race

	White	Black	{B - W}	Latino	{L - W}
Own their own home	39	29	-10	33	-6
Lived 2 years or less at current address	14.6	36.5***	+21.9	14.7	+0.1
Did not complete HS	10.2	35.6	+25.4	51.6***	+41.4
Less than \$20K annual income	22.9	61.5**	+38.6	51.4***	+28.5

** statistically significant difference from Whites at 95% confidence level

*** statistically significant difference from Whites at 99% confidence level

C. Possession of Accepted photo ID and Other Demographic Indicators

Although the primary focus of this report centers on race and ethnicity, a secondary question of interest is whether rates of possession of required forms of ID vary due to other demographic factors. The next section of the report examines the relationship between gender, age, education, and income with possession of accepted forms of photo ID among eligible voters in Texas.

1. Rates of possession of accepted ID by age

The analysis by age cohort indicates that younger eligible voters disproportionately lack an accepted photo ID. Overall, just 85.2% of eligible voters in Texas age 18-24 have a proper photo ID that can be used for voting, while 14.8% lack an ID. This is over three times the rate of lacking an ID of middle-age voters, age 35-54. What's more, these younger eligible voters are the most likely to wrongly believe that a Texas state university ID would count for purposes of voting – 73.8% of those age 18-24 who lack an unexpired photo ID think a university ID can be used to comply with the voter ID law.

3. Rates of possession of accepted ID by educational attainment

Exhibiting one of the clearest direct relationships among all demographic categories, the level of educational attainment of eligible voters is strongly related to possession of an accepted photo ID. Eligible voters who have not earned a high school degree are statistically less likely to possess an acceptable photo ID. Among those without a high school degree, 14.7% lack an accepted photo ID, compared to only 1.6% of college graduates who lack an accepted photo ID. What's more, we find that eligible voters without a high school degree are the least likely to have heard of an EIC – at just 13% who lack an unexpired photo ID and say they know about the EIC. Finally, those in the lowest educational category also have the highest probability of lacking underlying documents that may be used to obtain an EIC with 36% stating they do not these underlying

documents. The relationship between education and possessing underlying documents necessary to obtain an EIC among those who lack an unexpired ID is statistically significant.

4. Rates of possession of accepted photo ID by income

Across all categories, individuals who make less than \$20,000 a year are less likely than their wealthier counterparts to possess an accepted photo ID, at the strictest level of statistical significance in the social sciences (99%). Just over 21% (21.4%) of eligible voters who earn less than \$20,000 annually do not have an accepted ID. On the other end of the income scale, just 2.6% of eligible voters who earn \$100,000 to \$150,000 lack photo ID and just 2% of those who earn over \$150,000 lack photo ID. This means that the poorest citizens in Texas are over four times more likely to lack an accepted photo ID than the wealthiest citizens in Texas. What's more, there continues to be a lack of accurate information as we find that 22.5% of those earning less than \$20,000 annually believe they have a proper ID, but in fact they do not. Finally, the data demonstrates that lower income respondents are the most likely to lack underlying documents that may be used to obtain an EIC.

Summary of Section IV: Impact of the Texas ID Law on Eligible Voters

In sum, Texas's voter ID law, which generally requires individuals to possess an accepted form of photo ID in order to cast an in-person ballot that will be counted, disproportionately affects racial and ethnic minorities. The results indicate that approximately 11.4 percent of Latino eligible voters and 8.4 percent of Black eligible voters lack an accepted form of photo ID, compared to only 4.7 percent of White eligible voters. This means that Blacks eligible voters are 1.78 times more likely *to lack* accepted ID, and Latino eligible are 2.4 times more likely *to lack* accepted ID than are Whites. When assessing the estimates of the number of people who will be impacted by the voter ID law in Texas, more than 180,000 Black and 555,000 Latino citizens in Texas, who are otherwise eligible to vote, will not have access to the ballot box because they do not possess an

accepted photo ID as defined by current Texas law. Beyond possession of accepted photo ID, racial and ethnic disparities were identified in knowledge and familiarity with the voter ID law.

In addition to Latinos and Blacks, the analysis indicates that other demographic groups are less likely to possess the required forms of ID generally needed to vote in person under the new law. Those with a lower socio-economic level see statistically significant disparities when compared to voting-eligible persons with a high socio-economic level. Statistically significant differences in rates of possession of accepted photo ID also were found by age groups among eligible voters.

V. Potential Burdens Faced in Acquiring an EIC

In addition to directly investigating the percentage of eligible voters in Texas who currently lack the photo-identification generally required for in-person voting by the new law, our study included the potential impact of increased costs or barriers to voting more broadly on voter participation. This additional analysis was motivated by the consideration that the new law could increase the cost of electoral participation by increasing the financial, time, and information costs of this activity; this, in turn, could impact turnout rates of eligible voters in Texas. More specifically, eligible voters who lack an ID may face costs such as the following to obtain an EIC: (1) learning where to go to obtain an EIC; (2) gathering all necessary documents to present to the issuing official; (3) obtaining transportation to obtain an EIC; and (4) taking time to visit an appropriate office during business hours. We asked a battery of questions aimed at assessing whether respondents who lack a driver's license or ID card feel as though a number of increased costs or burdens associated with acquiring the ID would pose a problem for them if they attempted to obtain an EIC.

A. Political Science Research Shows That Added Costs May Decrease Participation

In his seminal work, *An Economic Theory of Democracy* (1957), Anthony Downs articulated a rational choice theory of voting behavior that predicts individuals will vote when the benefits of doing so outweigh the

costs.¹⁷ This theory has been verified over time by political scientists who have identified institutional constraints (e.g. registration and voting requirements) as the chief source of cost imposition to voters.¹⁸ For example, Rosenstone and Wolfinger found that strict registration laws, including deadlines and limited office hours, reduce overall turnout.¹⁹ It is important to note that, with relatively low perceived benefits to voting among the electorate, even small increases to barriers to the ballot box can have a marked impact on turnout.

Beyond the resource-based cost-benefit analysis that voters confront in a Downsian environment, it is relevant to take into account the history of overt racial exclusion at the ballot box in the United States that researchers have found has restricted voting rates among non-White citizens. Voting rules and regulations have been directly tied to the exclusion of Blacks, Latinos, and Native Americans, primarily in the South and Southwest, since the 15th Amendment proclaimed the right to vote shall not be denied on account of race or color. Some scholars who study voting rights have argued that a high percentage of changes to voting requirements in the South from 1870 to 1964 were intended to limit or deny Blacks the right to vote (Davidson 1992; Grofman and Handley 1991). This history implies that institutional requirements for registration and voting have both direct and indirect racial effects, which indicates a need to explore whether the potential burdens associated with the new law in Texas differ by race and ethnicity.

Despite the passage of the VRA the relationship between obstacles to voting and race remains relevant today. Research has shown that several voting practices – including drawing district lines that fragment minority voting populations, holding at-large elections, and changing city boundaries in order to manage the

¹⁷ Downs, Anthony. 1957: *An Economic Theory of Democracy*. New York: Harper & Row.

¹⁸ See for example: Piven, Frances Fox, and Cloward, Richard A. 1988. *Why Americans Don't Vote*. New York: Pantheon Books. Verba, Sidney, Kay Schlozman, and Henry Brady. 1995. *Voice and Equality: Civic Voluntarism in American Politics*. Cambridge, MA: Harvard University Press.

¹⁹ Rosenstone, Steven and Raymond Wolfinger. 1978. "The Effect of Registration on Voter Turnout." *The American Political Science Review*, 72 (1), 22-45.

racial composition of the population – can negatively impact minority voters.²⁰ Recently, for example, extensive analysis by Herron and Smith (2012; 2013) found that efforts to curb early voting in Florida disproportionately affected Blacks and Latinos.²¹

Not only do increased barriers to the ballot box decrease turnout among the electorate (and particularly those with fewer resources), removing barriers to voting has been found to increase turnout among these segments of the population. For example, research following the passage of the 1965 Voting Rights Act found that this major legislation along with other reforms that eliminated policies like white primaries in the South and other discriminatory practices such as poll taxes and literacy tests significantly increased participation among groups targeted by the laws.²² By 1967, the registration gap between Blacks and whites in Alabama had closed by nearly 12 percentage points; in North Carolina it closed by nearly 20 percentage points; and, in Mississippi Black registration jumped from 6.7 percent in 1965, to 59.8 percent in 1967.²³ Similarly, with the extension of the VRA to language minorities in 1975, Hispanic registration and turnout rates increased.²⁴ Additional empirical analysis of the effect of a wider set of reforms supports the hypothesis that reducing institutional barriers to voting may expand participation among groups that tend to turnout at low rates.²⁵

²⁰ See, e.g., Davidson, Chandler. 1992. "The Voting Rights Act: A Brief History." In *Controversies in Minority Voting*, ed. Bernard Grofman and Chandler Davidson. Washington, DC: Brookings Institution.

²¹ Michael Herron and Daniel A. Smith. 2013. "House Bill 1355 and Voter Registration in Florida," *State Politics and Policy Quarterly*.; Michael Herron and Daniel A. Smith. 2012. "Souls to the Polls: Early Voting in Florida in the Shadow of House Bill 1355," *Election Law Journal* 11 (3): 331-47.

²² Davidson, Chandler. 1992. "The Voting Rights Act: A Brief History." In *Controversies in Minority Voting*, ed. Bernard Grofman and Chandler Davidson. Washington, DC: Brookings Institution.; Grofman, Bernard and Handley, Lisa. 1991. "The Impact of the Voting Rights Act on Black Representation in Southern State Legislatures." *Legislative Studies Quarterly*, 16(1): 111-128.

²³ Grofman, Bernard and Handley, Lisa. 1991. "The Impact of the Voting Rights Act on Black Representation in Southern State Legislatures." *Legislative Studies Quarterly*, 16(1): 111-128.

²⁴ Rosenstone, Steven J., and Hansen, John Mark. 1993. *Mobilization, Participation, and Democracy in America*. New York: Macmillan Publishing.

²⁵ See: Rosenstone, Steven and Raymond Wolfinger. 1978. "The Effect of Registration on Voter Turnout." *The American Political Science Review*, 72 (1), 22-45.; Campbell, Angus, Converse, Philip E., Miller, Warren E., and Stokes, Donald E. 1960. *The American Voter*. Chicago: University of Chicago Press.; Katosh, John P., and Traugott, Michael W. (1982). Costs and values in the calculus of voting. *American Journal of Political Science* 26: 361.; Jackson, Robert A. 1993. "Voter Mobilization in the 1986 Midterm Election." *Journal of Politics*, 55:1081-1099.; Kim, Jae-On, Petrocik, John R., and Enokson, Stephen N. 1975. "Voter turnout among the American states: Systemic and Individual components." *American Political Science Review*, 69: 107-131.

Similar to the role of race for increased costs, the positive effects associated with decreasing costs of participation also vary by race and ethnicity. For example, the National Voter Registration Act (NVRA) passed in the early 1990's increased registration among minorities more significantly than among whites.²⁶ The NVRA was designed to ease voter registration by incorporating registration into the activities of the department of motor vehicles and public assistance agencies, thereby increasing access. As a result, public assistance agencies registered three percent of new white registrants, seven percent of new Black voters and six percent of new Latino voters. These findings suggest that institutional rules related to voting impact minorities more than Whites. The section below provides discussion of the results from our survey that explores the reported obstacles associated with obtaining the required ID by race in the state of Texas.

B. Reported Obstacles to Acquiring an EIC by Race/Ethnicity

We begin our discussion of the burdens issue with the results from our survey items on this topic among eligible voters. Here we focus on two groups: eligible voters who lack an accepted ID, and eligible voters who reported they lacked an accepted type of photo ID that is both unexpired and has a name that matches that on the voter rolls.²⁷ We present results by race and ethnicity to assess how minority eligible voters will be impacted and whether or not a substantial proportion will face additional potential burdens. Our findings indicate that a high percentage of Black and Latino eligible voters will encounter potential burdens in their pursuit of an accepted photo ID.

²⁶ Wolfinger, Raymond, and Jonathan Hoffman. 2001. "Registering and Voting with Motor Voter." *PS Political Science and Politics*, 34 (1), 85-92.

²⁷ By "name match," we mean instances where survey respondents reported that the name on their accepted SB 14 photo identification does not exactly match their name as it appears on the registration rolls. The ability of these voters to cast an in-person ballot that counts will depend on whether election officials determine that the two name versions for each voter are "substantially similar" or not. The survey data relating to name matching therefore represent an outer boundary of persons who may face an obstacle in voting in person notwithstanding their possession of accepted ID. In order to fully resolve the name mismatch issue, some voters may have to visit a DPS facility to update their identification. Accordingly, in reporting survey data regarding potential burdens involved in going to a DPS office, we separately report data for: a) those who lack an accepted ID; and b) a combination of those who lack accepted ID and those who have a name mismatch issue.

When we look at the percentage of eligible voters who view getting time off of work as a problem we see marked differences by race and ethnicity. More specifically, among those who lack an accepted ID, while 38.7% of White eligible voters report that getting time off from work would be a problem, 40% of Blacks and 54.2% of Latinos report that this would be a problem (Table 14). Getting time off from work to attain an EIC is therefore a burden for nearly a third of White, a third of Black, and over half of Latino eligible voters who lack an unexpired photo ID. We also explored the potential burdens associated with obtaining an EIC among eligible voters who do not possess an unexpired ID without name match and see similar patterns. More specifically, while 31.2% of White eligible voters without an ID with a matching name report getting time off from work or school to be a problem, 36.1% if Black and 53.8% of Latinos in this situation report this to be a burden (Table 15). We see a sizable percentage of eligible voters across racial and ethnic groups also indicating that using or paying for public transportation would be a problem for them. Among those who lack an unexpired ID, 37.7% of Whites, 38.1% of Blacks and 36.1% of Latinos would be burdened by having to use public transit to get an EIC (Table 16). Among the broader group of individuals for whom a name match would also be a problem, 34.9% of White, 32.4% of Black, and 39.7% of Latino eligible voters without an appropriate ID would be burdened by having to use public transportation to obtain the EIC to vote (Table 17). Finally, we were interested in learning whether being able to make to the DPS office during their normal business hours would be a problem for eligible voters. Here we find that a large percentage of eligible voters, regardless of race, would be burdened by having to get to the office during their normal office hours. Among those who lack an unexpired ID, 55.7% of Whites, 45% of Blacks and 43.4% of Latinos report that this issue would be a problem for them (Table 18). Similarly, among those for whom a name match would be a problem, 44.4% of White, 37.8% of Black, and 40% of Latino eligible voters say that getting to the DPS office during their normal business hours would be burdensome (Table 19). This segment of our analysis reveals that a substantial segment of eligible voters would be burdened by the need to acquire the accepted ID.

C. Reported Obstacles to Acquiring an EIC by Other Demographic Groups

Potential burdens to accessing an accepted ID additionally vary by gender, age, education and income.

In terms of gender, we find that women without an unexpired photo ID (52.9%) are more likely to have problems using or paying for public transportation than their male counterparts (24.5%). There are also marked differences in perceived burdens based on age. For example, the youngest cohort of eligible voters will have the most difficult time getting time off from work to acquire the accepted ID, as 82.1% of 18-24 year olds without an unexpired ID report that this will be a problem compared to 53.1% among those in the next age bracket, 25-34 year olds. Finally, we see that education has a marked impact on perceived burdens associated with acquiring the accepted ID. For example, while over 39.4% of eligible voters regardless of education level view using or paying for public transportation to obtain an ID as a problem, this burden is great for those with less than a high school education, as 42% of respondents who lack an unexpired ID, and who have the lowest educational attainment report that this would pose a problem.

D. Implications of the Texas Voter ID Law

The disparate impact of the Texas Voter ID law that we have documented in this report have important implications for electoral outcomes. The implication for those who lack a valid photo ID on Election Day is that they will be unable to vote. Thus the law has the potential to make the vote less effective, for certain protected classes of citizens. Here, we assess whether or not voting preferences of minorities and Whites in Texas are polarized or not. Evidence from Texas suggests a political environment characterized by racially divergent voting interests.

First, public opinion surveys in Texas indicate that policy attitudes towards immigration laws are racially divergent. When asked about their perspective on whether or not local law enforcement should enforce

federal immigration law, 46 percent of white survey respondents said local law enforcement should be required to enforce it, compared to only 18 percent of Hispanic respondents who said the same and 32 percent of Blacks.²⁸ Further public opinion data demonstrate racially polarized policy interests in Texas, beyond issues of immigration. When asked about their support for ending bilingual education, 55 percent of whites strongly supported an end to bilingual education, compared to only 22 percent of Hispanics and 30 percent of Blacks.²⁹ Similarly, when asked whether they favored repealing the section of the 14th amendment of the Constitution that establishes citizenship by birthright, 63 percent of whites favored ending birthright citizenship, compared to only 34 percent of Hispanics and 32 percent of Blacks.³⁰ Thus, public opinion data that suggest Whites diverge in their policy interests from Hispanics in Texas.

Second, exit polls from the last several presidential races in Texas indicate clearly that the voting preferences of Texans varies significantly by race. For example, in the 2010 election, 69 percent of Whites voted in favor of Rick Perry for Governor, compared to 11 percent of Blacks and 19 percent of Hispanics³¹. In the 2008 presidential election, 26 percent of Whites voted for Barack Obama compared to 98 percent of Blacks and 63 percent of Hispanics³². Also in 2008, election results for U.S. Senate reveal stark differences in voting patterns by race with 27 percent of Whites voting for Noriega, 89 percent of Blacks for Noriega and 61 percent of Hispanics for Noriega³³. In the 2006 election for U.S. Senate in Texas, 68 percent of Whites voted Hutchison, compared to 26 percent of Blacks and 44 percent of Hispanics.³⁴ In 2004, just 25 percent of Whites voted for John Kerry in the presidential contest, compared to 83 percent of Blacks and 50 percent of

²⁸ UT-Austin/Texas Tribune Poll (a). May 2011. "Local Law Enforcement of Federal Immigration Law." Texas Politics Project. http://texaspolitics.laits.utexas.edu/11_6_0.html

²⁹ UT-Austin/Texas Tribune Poll. May 2010. "Support for Ending Bilingual Education." Texas Politics Project. http://texaspolitics.laits.utexas.edu/11_6_0.html

³⁰ UT-Austin/Texas Tribune Poll (b). February 2011. "14th Amendment Repeal." Texas Politics Project. http://texaspolitics.laits.utexas.edu/11_6_0.html

³¹ www.cnn.com/ELECTION/2010/results/polls/#TCG00p1 and also http://latinodecisions.files.wordpress.com/2010/12/tx_nov21.pdf

³² www.cnn.com/ELECTION/2008/results/polls/#TXP00p1

³³ www.cnn.com/ELECTION/2008/results/polls/#TXS01p1

³⁴ www.cnn.com/ELECTION/2006/pages/results/states/TX/S/01/epolls.0.html

Hispanics.³⁵ In the 2000 presidential election, a clear majority of Whites supported Bush, while an overwhelming majority of Blacks³⁶ and 66 percent of Hispanics³⁷ supported Gore. And in the 1996 presidential election, 31 percent of Whites voted for Bill Clinton compared to 88 percent of Blacks and 75 percent of Hispanics.³⁸

Furthermore, recent court cases associated with the state-wide redistricting cases in Texas have found evidence of racially polarized voting. In *LULAC v. Perry* the court found “severe” racially-polarized voting in Texas, according to an analysis by Kristen Clarke-Avery.³⁹ Indeed, the court wrote in the *LULAC* decision, “The District Court found ‘racially polarized voting’ in south and west Texas, and indeed ‘throughout the State.’” Because nearly all elections in Texas are partisan, some argue that the differences between whites and minorities are simply driven by partisanship and not race. However this is irrelevant to the inquiry of whether or not whites and minorities vote differently. The question is here is just simply whether or not Blacks and Latinos – who are less likely to possess a valid photo ID – have different voting preferences than Whites. The reason for their preferences are not relevant. In *Teague v. Attala County*, 92 F.3d 283, 285 (5th Cir. 1996), the court held that the plaintiffs did not have disprove other factors other than race affect voting patterns, rather just focusing on the results of elections and showing Blacks and Whites had substantially different voting patterns was enough to meet the Gingles standards. That is, other factors can be associated with voting, but the only standard is whether or not different racial groups are voting differently.

This ideal is based in the key opinion by Brennan in *Thornburg v. Gingles*, 478 U.S. 30, 44-45, 106 S.Ct. 2752, 2763, 92 L.Ed.2d 25 (1986). Specifically Brennan wrote that “it is the difference between the choices made by black and white voters and not the reason for the difference that leads to blacks having less

³⁵ <http://edition.cnn.com/ELECTION/2004/pages/results/states/TX/P/00/epolls.0.html>

³⁶ <http://www.ropercenter.uconn.edu/CFIDE/cf/action/catalog/abstract.cfm?type=&start=&id=&archno=USVNS2000-STELEC-TX&abstract=>

³⁷ http://wcvi.org/latino_voter_research/polls/tx/2000/latino_vote_for_candidates.html

³⁸ <http://cgi.cnn.com/ELECTION/TXPxp.html>

³⁹ http://writ.news.findlaw.com/commentary/20060724_clarke-avery.html

opportunity to elect their candidates of choice.” Justice Brennan advanced his evidentiary standard regarding racially polarized voting by repudiating certain arguments made by the state of North Carolina (and the United States as amicus). The state argued that statistical evidence must demonstrate not only that there is a correlation between race of the voters and their choice of candidates but also that race (as opposed to other factors such as socioeconomic status or party affiliation) is the principal reason for the voters' selections. According to the plurality, however, the proper inquiry under Section 2 is to ask *whether* voters of different race favor different candidates, not *why* they do so. Exploring the reasons for the relationship between race and votes cast interjects intent into the analysis, and “the legal concept of racially polarized voting incorporates neither causation nor intent,” according to Justice Brennan (p. 62).

Further, a clear and consistent finding in political science research proves that discriminatory attitudes and racial prejudice are the driving factor behind White party identification, and this is especially strong in Section 5 covered jurisdictions⁴⁰.

Even before the Obama elections, political scientists had amassed data, with a particular eye towards Section 5 covered jurisdictions and concluded that racial attitudes were driving partisanship and voting. Professor Jonathan Knuckey writes, “These findings suggest that race and racial attitudes continue to shape southern party politics in the early twenty-first century... racial attitudes will have been woven into the partisan fabric that now characterizes the ‘New South’s’ party system.”⁴¹ In subsequent analysis of race and partisanship, Knuckey concludes that “the increase in the effect of racial resentment should give pause to those

⁴⁰ Knuckey, Jonathan. 2005. “Racial Resentment and the Changing Partisanship of Southern Whites.” *Party Politics*, 11(1): 5-28; Carmines, Edward G., and Stimson, James A. 1989. *Issue Evolution: Race and the Transformation of American Politics*. Princeton: Princeton University Press; Morales, Dana Ables. 1999. “Racial Attitudes and Partisan Identification in the United States, 1980-1992.” *Party Politics*, 5(2): 191-198; Valentino, Nicholas A., and Sears, David O. 2005. “Old Times There Are not Forgotten: Race and Partisan Realignment in the Contemporary South.” *American Journal of Political Science*, 24(3): 672-688.

⁴¹ Knuckey, Jonathan. 2005. “Racial Resentment and the Changing Partisanship of Southern Whites.” *Party Politics*, 11(1): 5-28;

who would diminish the role that racial conservatism played as an explanation for Republican gains among southern whites in the 1990s.”⁴²

Following the election of Barack Obama in 2008 a number of political scientists took up the issue of racial prejudice and the White vote for Obama, relying on nationally reputable data sources and cutting edge research methodologies. Political Scientists Michael Tesler and David Sears find a very similar pattern to what Knuckey documented in the 1990s. Even after controlling for conservative ideology, they find “the most racially resentful were more than 70 percentage points more likely to support McCain in March 2008 than were the least racially resentful.”⁴³ In other research, Professor Michael Lewis-Beck summarizes the data succinctly when he writes, “The roots of Obama’s relative underperformance electorally can be laid at the feet of race prejudice.” Indeed, Political Scientist Ben Highton concludes his analysis of White vote for Obama in Southern states by noting, “at the state level, the influence of prejudice on voting was comparable to the influence of partisanship and ideology. Racial attitudes explain support for Obama and shifts in Democratic voting between 2004 and 2008.”⁴⁴

⁴² Jonathan Knuckey, 2006. “Explaining Recent Changes in the Partisan Identifications of Southern Whites.” *Political Research Quarterly*. Vol 59

⁴³ Michael Tesler and David Sears. 2010. *Obama’s Race: The 2008 Election and the Dream of a Post-Racial America*. University of Chicago. pp61.

⁴⁴ Highton, Ben. 2011. “Prejudice Rivals Partisanship and Ideology When Explaining the 2008 Presidential Vote across the States.” *PS: Political Science & Politics*. July.

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,

Plaintiffs,

v.

RICK PERRY, *et al.*,

Defendants.

Civil Actions No. 2:13-cv-193 (NGR)

UNITED STATES OF AMERICA,

Plaintiff,

TEXAS LEAGUE OF YOUNG VOTERS
EDUCATION FUND, *et al.*,

Plaintiff-Intervenors,

Civil Action No. 2:13-cv-263 (NGR)

TEXAS ASSOCIATION OF HISPANIC
COUNTY JUDGES AND COUNTY
COMMISSIONERS, *et al.*,

Plaintiff-Intervenors,

v.

STATE OF TEXAS, *et al.*,

Defendants.

TEXAS STATE CONFERENCE OF NAACP
BRANCHES, *et al.*,

Plaintiffs,

v.

NANDITA BERRY, *et al.*,

Defendants.

Civil Action No. 2:13-cv-291 (NGR)

BELINDA ORTIZ, *et al.*,

Plaintiffs,

v.

STATE OF TEXAS, *et al.*,

Defendants

Civil Action No. 2:13-cv-348 (NGR)

DECLARATION OF DR. BARRY C. BURDEN

Pursuant to 28 U.S.C. § 1746, I, Barry C. Burden, make the following declaration:

Background and Qualifications

1. My name is Barry C. Burden. I am a Professor of Political Science at the University of Wisconsin-Madison. I earned my Ph.D. at The Ohio State University in 1998. From 1999 to 2006 I was a faculty member in the Department of Government at Harvard University. I have been a full professor at the University of Wisconsin-Madison since 2006. A copy of my curriculum vitae is attached.
2. My expertise is in American politics with a focus on elections and voting, public opinion, representation, partisanship, and research methodology. I teach courses on these topics at both the undergraduate and graduate levels. I am author of the book *Personal Roots of Representation* (2007 Princeton University Press), co-author of *Why Americans Split Their Tickets* (2002 University of Michigan Press), and co-editor of *The Measure of American Elections* (2014 Cambridge University Press). I have also published approximately 40 articles in scholarly peer-reviewed journals such as the *American Political Science Review*, *American Journal of Political Science*, *Electoral Studies*, *Public Opinion Quarterly*, *Legislative Studies Quarterly*, *Public Administration Review*, *Election Law Journal*, and *Political Analysis*. I have served as a manuscript reviewer for

these and other academic journals. I am a member of the American Political Science Association and have been active in the profession, giving presentations at many conferences and universities. My research has been supported by grants won from sources including the Pew Charitable Trusts, the National Science Foundation, and the Dirksen Congressional Center.

3. My scholarly research has focused on elections and election administration. I am co-founder of the Election Administration Project at the University of Wisconsin-Madison. This project has produced research on election administration around the country. I have testified before state officials and the bipartisan Presidential Commission on Election Administration. I co-conducted the first independent evaluation of the Electronic Registration Information Center (ERIC), an initiative launched by seven states to modernize voter registration systems. Working with the Pew Center on the States, I am on the advisory board for the Election Performance Index. I serve on the editorial boards of *Electoral Studies* and *Election Law Journal*, and I am frequently contacted by civic organizations and journalists to speak about U.S. politics generally and election administration in particular. I have been quoted as a source in media outlets including *USA Today*, *The Wall Street Journal*, and *The New York Times*.
4. I testified as an expert witness on behalf of plaintiffs in the case of *League of United Latin American Citizens of Wisconsin v. Deininger*, No. 12-cv-185 (E.D. Wis.). I also serve as an expert witness in the ongoing case of *North Carolina State Conference of the NAACP v. McCrory*, No. 1:13-CV-658 (M.D.N.C.). I am being compensated by the United States at my standard rate of \$250 per hour for my work in this case.

Summary of Opinion

5. I have been asked to review SB 14, the voter identification (ID) law adopted by the State of Texas in 2011, as it relates to certain factors identified by the United States Senate as particularly relevant to assessing a claim brought under Section 2 of the Voting Rights Act. In this report, I consider evidence relating to these “Senate factors.” I believe that applying a social scientific lens provides a richer understanding of how SB 14 operates within the larger set of historical and demographic conditions in Texas. As part of my analysis of the Senate factors, I also evaluate how SB 14 compares to strict voter ID laws adopted by other states and how well it is grounded the State’s asserted interests.
6. Based on the review that follows, it is my considered opinion that SB 14 is likely to deter, or in some cases even prevent, black and Latino voters from casting effective ballots.¹ The law operates against a historical, socioeconomic, and political backdrop in ways that

¹ Throughout this report I use the terms “Latino” and “Hispanic” interchangeably. In general Latinos may also identify as white, black, or another racial category. Unless otherwise stated, blacks are assumed to be non-Hispanic. I use the term “Anglo” to refer to non-Hispanic whites. I make this distinction in the analysis that I conduct and attempt to verify that the same definitions are used in data I reference from other organizations. In some cases it is possible that other organizations use somewhat different definitions, allowing Latinos to be counted among whites. Following common parlance, I also use the term “minorities” to refer to blacks and Latinos jointly, even though in combination with other traditional minority groups they have technically become a majority of the Texas population.

will unduly burden minority voters relative to Anglos. Moreover, the law is not designed to address stated needs and does not include certain ameliorative provisions common in other state voter ID laws. The harmful effects of the law could have been avoided while better serving the State's purported interest in reducing vote fraud.

SB 14 and the Calculus of Voting

7. Generally speaking, SB 14 requires in-person voters in Texas to provide one of seven specific categories of photo identification. The accepted types of identification are a Texas driver license, Texas Election Identification Certificate (EIC), Texas Department of Public Safety personal identification (ID) card, U.S. military ID, U.S. citizenship certificate, U.S. passport, or a Texas Department of Public Safety license to carry a concealed handgun. The ID must include a photo of the voter and (with the exception of the citizenship certificate) must be current or expired no more than 60 days before voting. The name on the ID must be "substantially similar" to the name on the list of registered voters.
8. A voter who does not present acceptable identification may cast a provisional ballot. The voter then has until the sixth day after the election to provide acceptable identification to the voter registrar. There are only three narrow exceptions to the general requirement that the voter present one of seven prescribed forms of ID.²
9. The likely effects of SB 14 may be best understood using the theory of the "calculus of voting." The "calculus of voting" is the dominant theoretical framework used by scholars to study voter turnout. Dating back at least to Anthony Downs' seminal 1957 book, *An Economic Theory of Democracy*, researchers typically view the likelihood of voting as the result of a formula: a person is likely to vote when the probability of one's vote affecting the outcome of the election multiplied by the net psychological benefit of seeing one's preferred candidate is large. However, the objective likelihood of affecting the outcomes of most elections is exceedingly small.³ Accordingly, researchers often emphasize two other factors that affect whether a person votes.

² First, a voter may demonstrate at least a 50% disability rating from the Social Security Administration or Department of Veterans Affairs, declare that they lack a valid ID, and present a voter registration certificate showing the exemption for disability. According to the expert report of Professor Stephen Ansolabehere, as of January 15, 2014, only 18 disability applications had been processed. Second, a voter may cast a provisional ballot and then appear at the voter registrar's office within six days of the election to swear by affidavit that they have a religious objection to being photographed. Third, a voter may cast a provisional ballot and then appear at the voter registrar's office within six days of the election to swear by affidavit that they lack ID due to a natural disaster that occurred within the last 45 days of the election and was declared so by the Governor of Texas or President of the United States.

³ For an example see Andrew Gelman, Gary King, and John Boscardin (1998), "Estimating the Probability of Events That Have Never Occurred: When is Your Vote Decisive?," *Journal of the American Statistical Association* 93(441):1-9.

10. The first additional factor represents the “consumptive” benefits of voting. These include factors such as expressing one’s identity, supporting the democratic system, and fulfilling a sense of civic duty.⁴ These are positive factors that make voting more likely.
11. The second additional factor represents the “costs” associated with voting. These include the effort needed to become informed about the candidates and issues. Such costs are affected by a variety of factors such as the intensity of political campaigns that are largely outside the control of policy makers. But costs also include the time, skill, financial resources, and effort required to overcome the administrative requirements and other barriers to registering to vote and successfully casting a ballot. Although they are not the only factors determining whether a person votes, this latter set of costs are unique in that they are controlled by the state.
12. This “calculus of voting” framework suggests that for many individuals the decision to vote is made “on the margins.” This is because the decision is viewed as a “low cost, low benefit” calculation.⁵ Small changes in costs may alter the likelihood of voting dramatically. This means that disruptions to voting practices raise costs and deter participation. Changes to election procedures such as the location of polling places and the dates and hours of their operation have been shown to deter voting.⁶ Costs are especially consequential for people who suffer sociodemographic disadvantages and for non-habitual voters.
13. The expert report of Professor Stephen Ansolabehere in this case finds that over 1.2 million registered voters in Texas do not have acceptable ID to vote under SB 14. Both black and Latinos are substantially less likely than Anglos to possess acceptable ID.

The Voting Rights Act Amendments of 1982 and the Senate Factors

14. Section 2 of the Voting Rights Act was amended in 1982 as a direct response to the Supreme Court’s decision in *City of Mobile v. Bolden* (1980).⁷ The core purpose of the amendments was to clarify that Section 2 does not require proof of discriminatory purposes. Instead, proof that under the “totality of circumstances” the challenged practice “results” in minority citizens having “less opportunity than other members of the electorate to participate in the political process” is sufficient to establish a violation of the law.

⁴ See David Campbell (2006), *Why We Vote: How Schools and Communities Shape Our Civic Life*, Princeton, NJ: Princeton University Press. Benny Geys (2006), “‘Rational’ Theories of Voter Turnout: A Review,” *Political Studies Review* 4(1):16-35. William H. Riker and Peter C. Ordeshook (1968), “A Theory of the Calculus of Voting,” *American Political Science Review* 62(1):25-42.

⁵ John H. Aldrich (1993), “Rational Choice and Turnout,” *American Journal of Political Science* 37(1):246-78.

⁶ Henry E. Brady and John E. McNulty (2011), “Turnout Out to Vote: The Costs of Finding and Getting to the Polling Place,” *American Political Science Review* 105(1):1-20. John E. McNulty, Conor M. Dowling, and Margaret H. Ariotti (2009), “Driving Saints to Sin: How Increasing the Difficulty of Voting Dissuades Even the Most Motivated Voters,” *Political Analysis* 17(4):435-55. Moshe Haspel and H. Gibbs Knotts (2005), “Location, Location, Location: Precinct Placement and the Costs of Voting,” *Journal of Politics* 67(2):560-73.

⁷ *City of Mobile v. Bolden*, 446 U.S. 44 (1980).

15. The Senate report accompanying the 1982 amendments set out an illustrative list of seven enumerated factors and two additional (unenumerated) factors that are relevant to consider when evaluating the “totality of the circumstances.” These are often denoted as the Senate factors.

16. The Senate factors include:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. whether political campaigns have been characterized by overt or subtle racial appeals;
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.⁸

17. The Senate also recognized the following “[a]dditional factors that in some cases have had probative value as part of plaintiffs’ evidence to establish a violation”:

- whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group [and]
- whether the policy underlying the state or political subdivision’s use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.⁹

⁸ Pages 28-29 of Senate Committee on the Judiciary, S. Rep. 97-417, 97th Congress, 2nd Sess. (1982).

⁹ Page 29 of Senate Committee on the Judiciary, S. Rep. 97-417, 97th Congress, 2nd Sess. (1982).

18. I have spent considerable time examining the Senate factors, drawing upon my training as a scholar of electoral politics. These factors are important parts of the context in which SB 14 operates. Understanding them is consistent with the widely shared social scientific view that assessing a policy's effects must take account of the environment in which it is implemented. It is my opinion that the presence of relevant Senate factors in Texas helps to show how and why SB 14 makes it harder for the state's black and Latino voters to participate equally in the electoral process.

Background on Voter Participation in Texas

19. Before addressing specific Senate factors, I first document patterns of voter turnout in Texas. It is important to understand that the state has a poor record of overall voter participation. Moreover, Latino voter turnout in particular has long lagged behind that of Anglos. In the 2008, 2010, and 2012 elections, Texas ranked 48th, 49th, and 48th out of the 50 states and the District of Columbia in terms of voter turnout.¹⁰ In recent presidential and gubernatorial elections, Latino turnout has generally been 15 to 20 percentage points lower than that of Anglos.
20. To be more precise about turnout among racial and ethnic groups is difficult because of data limitations. The State of Texas does not record the races and ethnicities of its voters. Here I present the most common measures, which are drawn from the Census Bureau's Current Population Survey (CPS). Then I explain why CPS data make racial and ethnic disparities in turnout appear smaller than they really are.
21. CPS turnout rates for the five most recent federal general elections are reported in Table 1.¹¹ These data suggests that black turnout actually matched or surpassed Anglo turnout in 2008 and 2012, but fell below it in 2004, 2006, and 2010. Latino turnout lagged both black and Anglo turnout by a substantial amount all five elections.

¹⁰ These rankings are based on data in the Pew Election Performance Index drawn from voter turnout data provided by Professor Michael McDonald, available at <http://elections.gmu.edu> (last visited June 9, 2014). See http://www.pewstates.org/uploadedFiles/Flash_Library/PCS/Interactives/ElectionsPerformanceIndex/template.html#indicator (last visited May 31, 2014).

¹¹ Non-citizens are excluded from the calculations. Anglos are defined as "white non-Hispanic alone" and blacks are defined as "black alone." The Census Bureau's summary report on the 2012 election using CPS data follows this practice but also notes that "Use of the single-race populations does not imply that it is the preferred method of presenting or analyzing data." See footnote 2 of Thom File (2013), "The Diversifying Electorate—Voting Rates by Race and Hispanic Origins in 2012 (and Other Recent Elections)," Current Population Survey Reports, P20-569, U.S. Census Bureau.

Table 1. Estimated Voter Turnout in Texas based on the CPS (2004-2012)¹²

	2004	2006	2008	2010	2012
Anglo	64.5%	45.2%	64.7%	43.8%	60.9%
Black	57.7%*	36.7%*	64.9%	38.7%*	63.1%
Latino	41.6%*	25.4%*	37.8%*	23.1%*	38.8%*

22. The CPS is a valuable and widely used resource for understanding patterns in voter registration and turnout. However, there are systematic biases in the CPS that probably overstate black turnout in Texas relative to Anglos. In 2012 serious problems were revealed in trying to assess differences between minority and Anglo turnout rates, especially in the South. The problems appear to be a combination of two factors. First is the Census Bureau practice of coding respondents who do not answer the voting question as having not voted. Second is the phenomenon of “social desirability,” or the desire of respondents to give answers that conform to community norms.
23. As initial evidence of the problem, an analysis by journalist Nate Cohn shows that the CPS overestimated 2012 turnout by the largest amounts in states with larger black and Latino populations.¹³ Deeper scholarly research finds that the biases are due in part to increasing nonresponse rates to the CPS, rates that differ across racial and ethnic groups.¹⁴ This insight builds on earlier evidence showing that self-reported state voter registration rates were inflated due to disproportionate over-reporting by black respondents in the South.¹⁵ This conclusion conforms to research in which academic surveys have been merged with official voting records, repeatedly showing more over-reporting of turnout by blacks than by Anglos.¹⁶ In North Carolina where the state

¹² Because these are survey estimates, each is accompanied by a different statistical margin of error. For example, in 2012 the margin of error is 1.6 percentage points for Anglos, 3.8 points for blacks, and 3.3 points for Latinos. As a result, not all group differences will be statistically significant. An asterisk indicates the difference between the turnout rate for blacks or Latinos and the rate for Anglos in the same election is statistically significant at the 95% confidence level using a one-tailed *t*-test. Although the 95% level is a popular convention in the social sciences, researchers are free to use a variety of standards for significance depending on their personal preferences and demands of the data.

¹³ Nate Cohn, “Black Turnout in 2012 Might Not Have Been Historic: The Inherent Flaws of the Census’s Population Survey,” *New Republic*, May 15, 2013, available at <http://www.newrepublic.com/article/113224/black-turnout-2012-census-population-survey-might-be-wrong> (last visited May 29, 2014).

¹⁴ Aram Hur and Christopher H. Achen (2013), “Coding Voter Turnout Responses in the Current Population Survey,” *Public Opinion Quarterly* 77(4):985-993. Michael P. McDonald, “2012 Turnout: Race, Ethnicity, and the Youth Vote,” *The Huffington Post*, May 8, 2013, available at http://www.huffingtonpost.com/michael-p-mcdonald/2012-turnout-race-ethnicity_b_3240179.html (last visited May 29, 2014). Michael P. McDonald (2014), “What’s Wrong with the CPS?,” paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 3-6.

¹⁵ Robert A. Bernstein, Anita Chadha, and Robert Montjoy, (2003), “Cross-State Bias in Voting and Registration Overreporting in the Current Population Surveys,” *State Politics & Policy Quarterly* 3(4):367-86.

¹⁶ For example, see Paul R. Abramson and William Claggett (1991), “Racial Differences in Self-Reported and Validated Turnout in the 1988 Presidential Election,” *Journal of Politics* 53(1):186-97. Stephen Ansolabehere and Eitan Hersh (2011), “Who Really Votes?,” in *Facing the Challenge of Democracy*, ed. Paul M. Sniderman and Benjamin Highton, Princeton: NJ: Princeton University Press.

records the races of voters, I have shown that the CPS overestimated turnout in the 2012 election by only 0.8 percentage points for Anglos but 10.9 percentage points for blacks.¹⁷

24. These tendencies were exaggerated in 2012 due to the presence of Barack Obama's name on the ballot. Enthusiasm in the black community about Obama's candidacy would have heightened the over-reporting problem as a result of the social desirability of supporting his candidacy.¹⁸ Research indicates that over-reporting increases when a black respondent is represented by a black office holder¹⁹ or when a black candidate is running.²⁰

25. In summary, the CPS data portray Latino turnout as substantially lower than Anglo turnout in the last five general elections. The CPS portray black turnout as lower in three of the elections and equal to or higher than Anglo turnout only in 2008 and 2012. Yet scholarly research shows that black turnout is generally overstated and would be even more so in 2008 and 2012. It is thus plausible that black and Latino turnout levels have never surpassed those of Anglos in contemporary Texas elections. Even if black turnout did manage to reach parity with Anglo turnout in two elections, it would be a fragile plateau susceptible to disruption by changes in election law.

Senate Factor One

26. Senate Factor One considers whether there is history in the jurisdiction of "official voting-related discrimination."

27. There is a long history of discrimination against black and Latino voters in Texas. As the Texas State Historical Association summarizes,

Racial conflict is a basic feature of Texas history. From 1865 onward its primary political manifestation has been the struggle of African Americans to vote, have their ballots fairly counted, elect their preferred candidates, develop effective coalitions with other groups, and thereby achieve equality of opportunity in a white-dominated society that, from its beginning, relegated people of color to the state of an inferior caste.²¹

¹⁷ Sur-rebuttal expert report of Barry C. Burden, May 2, 2014, *North Carolina State Conference of the NAACP v. McCrory*, No. 1:13-CV-658 (M.D.N.C.).

¹⁸ Seth C. McKee, M.V. Hood III, and David Hill (2012), "Achieving Validation: Barack Obama and Black Turnout in 2008," *State Politics and Policy Quarterly* 12(1):3-22.

¹⁹ McKee, Hood, and Hill (2012).

²⁰ Benjamin J. Deufel and Orit Kedar (2010), "Race and Turnout in U.S. Elections: Exposing Hidden Effects," *Public Opinion Quarterly* 74(2):286-318. McKee, Hood, and Hill (2012). Stephen Ansolabehere and Eitan Hersh (2013), "Gender, Race, Age, and Voting: A Research Note," *Politics and Governance* 1(2):132-7.

²¹ Professor Chandler Davidson, "African Americans and Politics," *Handbook of Texas Online*, Texas State Historical Association, available at <https://www.tshaonline.org/handbook/online/articles/wmafr> (last visited June 24, 2014). This statement is based on an extensive bibliography of historical and academic books on race in Texas politics.

28. These discriminatory activities are undeniable. They include tactics such as voter intimidation, threats of violence, and even lynching. The conflict also played out in election laws. Rather than reiterate the lengthy history of vote discrimination in Texas, I briefly highlight some key legal examples to put recent developments in perspective.
29. For much of the state's history, Texas public officials and major party leaders were openly discriminatory toward black and Latino voters. For minority voters seeking relief in their efforts to be involved in electoral politics, federal legislation and federal courts were often the only recourse.
30. One tool used to exclude minority voters was the "white primary." Established by state law in 1923, it banned non-whites from voting in Democratic primary elections. Because Democrats were the dominant political party at the time, the party could essentially dictate who would win the general election via the primary. When the law was invalidated by the U.S. Supreme Court in *Nixon v. Herndon* (1927), the state parties adopted rules to ban non-whites.²² The party's rules were struck down in *Nixon v. Condon* (1932).²³ Not easily deterred, the Democratic state convention adopted a rule to keep non-whites from participating in primaries, a decision initially upheld by the Texas Attorney General and the courts.²⁴ The practice was eventually overturned by *Smith v. Allwright* (1944).²⁵ Party leaders turned to yet another alternative called the "Jaybird primary" in which a non-party association would initially screen candidates for nomination without allowing non-white voters to participate. This final gimmick was not eliminated until the case of *Terry v. Adams* (1953).²⁶ Thus ended a 30-year battle in which Texas officials invented a series of mechanisms for excluding minority voters, whose rights were repeatedly protected by federal courts.
31. The other tool used to disenfranchise minority voters in Texas was the poll tax. The tax was added to the Texas constitution in 1902. Under the poll tax, voters were required to pay a fee to register to vote and to present a poll tax receipt in order to cast a ballot, although even that system exempted elderly voters and permitted voters to complete an affidavit at the polling place establishing that they had paid the tax but misplaced the receipt.²⁷ That cost fell harder on blacks and Latinos, who had fewer financial resources than Anglos. In the midst of the civil rights era, the poll tax was nonetheless reaffirmed by Texas voters, who in a 1963 rejected a constitutional amendment to forbid it. Even after the passage of the VRA, the tax remained in place in state elections until adoption of the 24th Amendment to the U.S. Constitution and the decision in *Harper v. Virginia State*

²² *Nixon v. Herndon*, 273 U.S. 536 (1927).

²³ *Nixon v. Condon*, 286 U.S. 73 (1932).

²⁴ *Grovey v. Townsend*, 295 U.S. 45 (1935).

²⁵ *Smith v. Allwright*, 321 U.S. 649 (1944).

²⁶ *Terry v. Adams*, 345 U.S. 461 (1953). For a historical review of these cases, see Robert Brischetto, David R. Richards, Chandler Davidson, and Bernard Grofman (1994), "Texas," in *Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990*, eds. Chandler Davidson and Bernard Grofman, Princeton, NJ: Princeton University Press.

²⁷ Donald S. Strong (1944), "The Poll Tax: The Case of Texas," *American Political Science Review* 38(4):693-709.

Board of Elections (1966).²⁸ Research shows that the lingering effects of the poll tax depressed non-white turnout until at least 1980.²⁹

32. Even when the poll tax was finally eradicated, Texas lawmakers “promptly replaced the tax with an almost equally onerous annual voter registration system.”³⁰ The system, which was eventually ended by *Beare v. Smith* (1971), required registration during a four-month window that ended almost eight months before the general election.³¹ A system adopted by the state four years later would have required essentially every Texas resident to re-register, but it was halted under Section 5 of the Voting Rights Act.

33. Finally, federal courts have frequently intervened to correct discriminatory legislative redistricting efforts in Texas. As a review of voting rights litigation by Robert Brischetto and colleagues explains,

The elimination of barriers to voting and registration in Texas did not often result in the election of minority candidates [because of] structural roadblocks, the most notable of which were multimember districts (including at-large elections), racial gerrymandering, and malapportionment.³²

34. Following the 1970 reapportionment, the case of *White v. Regester* (1973) upheld a federal court decision finding intentional discrimination in redistricting through the use of multimember districts.³³ After the next round of redistricting, the Attorney General objected to the configurations of two congressional districts under Sections 5 of the VRA.³⁴ More recently, in *LULAC v. Perry* (2006) the Supreme Court rejected a congressional district for violating Section 2 of the VRA because the legislature had reduced the percentage of Latinos in the district once they were “becoming increasingly politically active and cohesive,” which the Court found to “bear[] the mark of intentional discrimination.”³⁵ Only two years ago, a three-judge federal court found in *Texas v. United States* (2012) that congressional and state legislative redistricting maps reflected intentional discrimination.³⁶

35. Brief histories of the white primary, the poll tax, voter registration, and redistricting show the inventive ways in which Texas party and public officials have operated to deter

²⁸ *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966).

²⁹ John E. Filer, Lawrence W. Kenny, and Rebecca B. Morton (1991), “Voting Laws, Educational Policies, and Minority Turnout,” *Journal of Law and Economics* 34(2):371-393.

³⁰ Brischetto et al. (1994), p. 240.

³¹ *Beare v. Smith*, 321 F. Supp. 1100 (S.D. Tex. 1971) (three-judge court), *aff’d*, *Beare v. Briscoe*, 498 F.2d 244 (5th Cir. 1974) (per curiam).

³² Brischetto et al. (1994), p. 244.

³³ *White v. Regester*, 412 U.S. 755 (1973).

³⁴ *Upham v. Seamon*, 456 U.S. 37 (1982).

³⁵ *LULAC v. Perry*, 548 U. S. 399 (2006).

³⁶ *Texas v. United States*, 887 F. Supp. 2d 133 (D.D.C. 2012) (three-judge court), *vacated on other grounds*, 133 S. Ct. 2885 (2013).

voting by blacks and Latinos. Policy makers in Texas engaged in repeated, purposefully discriminatory devices to deter minority participation and to dilute minority voting strength. Texas fought stubbornly to protect and sustain these practices, even in the face of federal legislation and judgments from federal courts.

Senate Factor Two

36. Senate Factor Two addresses whether voting is “racially polarized.” Following the standard established by the U.S. Supreme Court in *Thornburg v. Gingles* (1986), racial polarization may be defined as a “consistent relationship between [the] race of the voter and the way in which the voter votes.”³⁷
37. Ethnic and racial polarization in voting patterns is an essential feature of elections in Texas. Exit polls provide insight into the substantial differences in voting preferences across racial and ethnic groups. Since 2002 exit polls have been conducted by the National Election Poll (NEP), a consortium of major television networks and the Associated Press.³⁸ The NEP combines surveys of voters as they leave polling places in combination with select pre-election surveys of early voters. The results are then weighted to match the actual election outcome. Despite their imperfections, exit polls are useful for academic researchers comparing demographic groups. Exit polls reduce problems associated with surveys that take place in the days following an election: misreporting of turnout by nonvoters, faulty memories by respondents, and social desirability effects that appear once it is known who won the election.³⁹
38. Table 2 shows the breakdown of the votes cast for Republican candidates for President or Texas Governor by Anglos, Latinos, and blacks in recent Texas elections. The difference in partisan voting rates between Anglos and Latinos ranges from a low of 13 percentage points in the unusual 2006 election to 38 points in the 2008 election. The gap between Anglos and blacks is more severe, ranging from 28 percentage points in 2006 to a remarkable 71 points in 2008.

³⁷ *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).

³⁸ Before 2003 the organization was known as Voter News Services.

³⁹ See Samuel J. Best and Brian S. Krueger (2012), *Exit Polls: Surveying the American Electorate, 1972-2010*, Thousand Oaks, CA: CQ Press.

Table 2. Voting for the Republican Candidate in Texas (2004-2012)⁴⁰

	2004	2006	2008	2010	2012
Anglo	74%	44%	73%	69%	70%
Latino	49%	31%	35%	38%	42%
Black	17%	16%	2%	11%	9%

39. These gaping racial and ethnic differences are much greater than among other sociodemographic groups. For example, in the 2008 election in Texas the gaps in voting preferences were only 21 percentage points between the young (18-29) and old (65 and over), seven points between men and women, 25 points between those in big cities and those in small towns, 36 points between low income (under \$15,000) and high income (\$200,000 or more), and 26 points between the least educated (less than high school) and most educated (postgraduate study).⁴¹ The degree of racial and ethnic polarization in voting thus exceeds that of most other demographic group differences in Texas elections.
40. The exit polls conform with patterns found in other election data. A review of voting rights issues in Texas by Professors Charles Bullock and Keith Gaddie shows that voting preferences in congressional districts frequently differ between minority and Anglo voters by 30 to 50 percentage points.⁴² In reviewing the analyses of several other experts in the case of *Perez v. Texas*, Professor John Alford, who was retained as an expert by the State of Texas, also shows that the voting preferences of Anglos and minorities in recent Texas general elections is often 30 to 70 percentage points.⁴³
41. Because the voting patterns were apparent in 2004 and 2010, polarization is not simply an artifact of the 2008 and 2012 election in which one of the major party candidates was black. The degree of racial polarization also shows little sign of abating. The gaps between Anglos and minorities were of similar magnitude in 2012 as they were in 2004. Legislators would have been aware of the differing preferences of black and minority voters as they developed and enacted SB 14.

⁴⁰ Percentages reflect votes for the Republican presidential or gubernatorial candidate. The 2006 gubernatorial campaign featured two independent candidates who jointly received over 30% of the vote. Texas was not included in the NEP exit polls in 2012; data for that year are drawn from a pre-election survey of likely voters conducted by YouGov. See Table 1 of the YouGov October 31-November 3, 2012 survey of likely voters in Texas, available at http://cdn.yougov.com/cumulus_uploads/document/uj7wo27oq7/ygTabs_november_likelyvoters_TX.pdf (last visited May 29, 2014). Computing statistical significance in exit polls is extremely difficult, but estimates from other experts indicate that all of the group differences in Table 2 are highly likely to be significant by conventional standards. See “What is the Sampling Error for Exit Polls” by Mark Blumenthal, available at http://www.mysterypollster.com/main/2004/12/what_is_the_sam.html (last visited June 23, 2014).

⁴¹ These figures are drawn from NEP data reported by *The New York Times*, available at <http://elections.nytimes.com/2008/results/states/exitpolls/texas.html> (last visited May 29, 2014).

⁴² See the chapter on Texas and especially Table 8.8 in Charles S. Bullock III and Ronald Keith Gaddie (2009), *The Triumph of Voting Rights in the South*, Norman, OK: University of Oklahoma Press.

⁴³ See Table 3 of the “Expert Report of John R. Alford, Ph.D.,” entered for multiple cases led by *Perez v. State of Texas*, No. 5:11-ca-360 (W.D. Tex.).

Senate Factor Five

42. Senate Factor Five assesses the extent to which “minority group members bear effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process.”
43. Blacks and Latinos suffer severe and enduring disparities in education, health, employment, income, and transportation in part due to state policies that have done little to remedy glaring inequalities. Stemming in large part from historic legacies of unequal treatment, segregation, and discrimination, Anglos, blacks, and Latinos experience markedly different outcomes in these areas. The state’s history of racial discrimination and disparities bears directly on the impact that voting practices have on the ability of minority voters to participate in the political process and influence the outcomes of elections. I consider a few of the key disparities in education, income, and employment, and explain how they relate to the “calculus of voting.”
44. Anglos and minorities in Texas display enduring gaps in educational attainment. Data from the U.S. Department of Education show that the high school completion rate among 25 year olds was 91.7% for Anglos, 85.4% for blacks, and 58.6% for Latinos.⁴⁴ The same data show that rates of bachelor’s degree completion were 33.7% for Anglos, 19.2% for blacks, and 11.4% for Latinos.
45. Numerous studies have shown that educational attainment is usually the single best predictor of whether an individual votes.⁴⁵ This is largely because education lowers the “costs” of voting by providing a host of benefits. These include the skills to understand public affairs, direct information about the electoral process, access to social networks that facilitate political engagement, and a sense of confidence or efficacy that facilitates participation even when the rules are changed.⁴⁶
46. There are glaring differences between Anglos and minorities in Texas when it comes to basic income and employment markers.⁴⁷ For example, Census Bureau data show that while only 12% of Anglos live below the poverty line, 29% of blacks and 33% of Latinos do.⁴⁸ Median household income in Texas is estimated at \$63,393 for Anglos but only

⁴⁴ National Center for Education Statistics, Digest of Education Statistics, “Percent of Persons Age 25 and Over with High School Completion or Higher and a Bachelor’s or Higher Degree, by Race/Ethnicity and State: 2008-2010,” available at http://nces.ed.gov/programs/digest/d12/tables/dt12_015.asp (last visited June 3, 2014).

⁴⁵ Steven J. Rosenstone and John Mark Hansen (1993), *Mobilization, Participation and Democracy in America*, Macmillan. Sidney Verba, Kay Lehman Schlozman, and Henry E. Brady (1995), *Voice and Equality: Civic Volunteerism in American Politics*, Harvard University Press. Rachel Milstein Sondheimer and Donald P. Green (2010), “Using Experiments to Estimate the Effects of Education on Voter Turnout,” *American Journal of Political Science* 54(1):174-89.

⁴⁶ For example, see Sidney Verba, Kay Lehman Schlozman, and Henry E. Brady (1995), *Voice and Equality: Civic Volunteerism in American Politics*, Cambridge, MA: Harvard University Press.

⁴⁷ These data are based on the Census Bureau’s American Community Survey 5-year estimates for 2012.

⁴⁸ The Henry J. Kaiser Family Foundation, “Poverty Rate by Race/Ethnicity,” available at <http://kff.org/other/state-indicator/poverty-rate-by-raceethnicity/> (last visited June 3, 2014).

\$37,906 for blacks and \$38,848 for Latinos. The unemployment rate is 6.1% for Anglos, 12.8% for blacks, and 8.5% for Latinos. These are stark economic inequalities.

47. Income sharply influences voter participation. Individuals with lower household incomes are significantly less likely to vote, in part because it is more costly for them to make time to do so.⁴⁹ Education and income are predictive in large part because they lower the “costs” of voting when the voting habit is interrupted. In part because of other disadvantages they suffer, the unemployed find it much more difficult to overcome the costs of voting.⁵⁰
48. Individuals with lower incomes are also less likely to own an automobile. Recent Census Bureau data show that the share of households lacking at least one vehicle for transportation is 3.9% for Anglos, 7.0% for Latinos, and 12.9% for blacks.⁵¹ Other Census data show that, among workers at least 16 years of age, Anglos are 49% of the population in Texas, they constitute only 28% of those taking public transportation to work.⁵² In contrast, Latinos comprise 34% of the population but 37% of public transportation users. Blacks are only 11% of the population but 27% of public transportation users. Because they are less likely to drive and own automobiles, minority populations in Texas would have less incentive to hold valid driver licenses. According to the analysis conducted by Professor Ansolabehere, the driver license is the form of SB 14 ID most commonly held by registered voters in Texas.
49. There are significant health disparities between Anglos and minorities in Texas. Based on survey data from the U.S. Centers for Disease Control, blacks and Latinos are much more likely to report being in only “fair” or “poor” health, to lack a personal doctor, to lack health insurance, to have not visited a doctor in the past year due to the cost.⁵³ Many of these disparities are approximately on the order of a ratio of two to one.
50. Scholarly research shows that health influences voter participation in part because it raises costs associated with voting. Research by Professors Lisa Schur, Douglas Kruse, and colleagues shows that having an illness or disability makes the typical person approximately 20 percentage points less likely to vote. Disability often isolates people from social networks that would otherwise draw them into politics, in addition to increasing the direct costs associated with the voting process.⁵⁴

⁴⁹ See references in previous footnotes.

⁵⁰ Kay Lehman Schlozman and Sidney Verba (1979), *Injury to Insult: Unemployment, Class, and Political Response*, Cambridge, MA: Harvard University Press.

⁵¹ 2010-2012 American Community Survey 3-year estimates.

⁵² 2008-2012 American Community Survey 5-year estimates.

⁵³ See tables provided by The Henry J. Kaiser Family Foundation, “Texas: Minority Health,” available at <http://kff.org/state-category/minority-health/?state=TX> (last visited June 3, 2014).

⁵⁴ Lisa Schur, Todd Shields, Douglas Kruse, and Kay Schriener (2002), “Enabling Democracy: Disability and Voter Turnout,” *Political Research Quarterly* 55(1):167-90. Lisa Schur, Douglas Kruse, and Peter Blanck (2013), *People with Disabilities: Sidelined or Mainstreamed?*, New York, NY: Cambridge University Press.

51. These glaring disparities in life outcomes have a direct bearing on the impact of state election laws on minority voting rates. Decades of political science research demonstrate that voter participation is significantly affected by the same demographic characteristics that so strongly separate Anglos from minorities in Texas. Stated in a different way, there is a strong overlap between the socioeconomic markers that separate Anglos from minorities in Texas and the markers that allow citizens to bear the costs of voting. As a result, despite the fact that the voter ID requirements imposed by SB 14 appear to be uniform, the law is in fact more burdensome for black and Latino residents because they interact with longstanding and significant disparities in areas such as education, employment, and health.

Senate Factor Seven

52. Senate Factor Seven evaluates “the extent to which members of the minority group have been elected to public office in the jurisdiction.” Blacks and Latinos have long been underrepresented in public life in Texas. Progress has been slow in the wake of the tremendous discrimination that minorities experienced for decades in their effort to be represented in public office. While many of those overt barriers have fallen, minorities generally remain underrepresented.
53. According to 2013 data, blacks hold 11.1% of seats in the Texas state legislature.⁵⁵ Latinos hold 21.1% of seats in the state legislature. These figures fall below the groups’ shares of the population. Census data from 2012 show that blacks are 13.3% and Latinos are 30.3% of the citizen population in Texas.⁵⁶ Even these achievements are recent and result largely from four decades of successful redistricting litigation and administrative enforcement under the Voting Rights Act.⁵⁷
54. The disparities are more severe outside the state legislature. Expanding beyond the state legislature shows that minority groups remain underrepresented in public office. Taking a wide range of federal, state, and local offices into account, one analysis finds that in 2000 only 1.7% of Texas elected officials were black.⁵⁸ A similar analysis of Latinos in 2003 finds that they comprise approximately 7.1% of Texas elected officials.⁵⁹

⁵⁵ The Texas state legislature has a total of 181 seats. The source for these data report only 180 filled seats in 2013, which might be due to a vacancy caused by the death of State Senator Mario Gallegos. “Race and Ethnicity in the Texas Legislature, 1937-2013,” available at

http://www.laits.utexas.edu/txp_media/html/leg/features/0304_02/race.html (last visited May 30, 2014).

⁵⁶ See Table 4b from the 2012 CPS voting and registration report, available at

<http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html> (last visited May 30, 2014).

⁵⁷ Brischetto et al. (1994), p. 240.

⁵⁸ “Number of Black Elected Officials in Texas, 1970-2000,” available at

http://www.laits.utexas.edu/txp_media/html/vce/features/0503_03/blacks.html (last visited May 30, 2014).

⁵⁹ “Number of Latino Elected Officials in Texas, 1974-2003,” available at

http://www.laits.utexas.edu/txp_media/html/vce/features/0503_04/latinos.html (last visited June 12, 2014). More recent data provided by the National Association of Latino Elected Officials suggests that the percentage has increased to about 9% in recent years: http://www.naleo.org/downloads/NALEO_Ed_Fund_TX_2011.pdf (last visited June 12, 2014).

55. This underrepresentation matters to minority voters. Political science research has identified underrepresentation as an important condition among the totality of circumstances under which voting laws operate. Such research often finds that minority representation in elective office reduces political alienation among minority constituents and increases minority turnout.⁶⁰

Second Unenumerated Senate Factor

56. The second unenumerated factor identified in the Senate report is whether the policy is “tenuous.” As the Senate report explains,

If the procedure markedly departs from past practices or from practices elsewhere in the jurisdiction, that bears on the fairness of its impact. But even a consistently applied practice premised on a racially neutral policy would not negate a plaintiff’s showing through other factors that the challenged practice denies minorities fair access to the process.⁶¹

57. A substantial discussion is necessary to address this factor. SB 14 is not justified by basic facts about the Texas electorate, is not well designed to improve Texas election processes, and is an abrupt change to voting practices in Texas. Following the calculus of voting theory, the law will impact Texas residents most who have a less-established voting habit and are disadvantaged by demographic characteristics that make it more difficult for them to bear the newly-imposed and unevenly-experienced costs of voting.

58. In addition, the law applies only to in-person voting, which is used more by minority voters. SB 14 does not apply at all to mail balloting,⁶² which is used more often by Anglo voters. As such, the law counterintuitively imposes new burdens on voters in the domain where fraud is less likely and racial and ethnic disparities are greater.

⁶⁰ Lawrence Bobo and Franklin D. Gilliam, Jr. (1990), “Race, Sociopolitical Participation, and Black Empowerment,” *American Political Science Review* 84(2):377-383. Claudine Gay (2001), “The Effect of Black Congressional Representation on Political Participation,” *American Political Science Review* 95(3):589-602. Danny Hayes and Seth C. McKee (2012), “The Intersection of Redistricting, Race, and Participation,” *American Journal of Political Science* 56(1):115-130. Adrian D. Pantoja and Gary M. Segura (2003), “Does Ethnicity Matter? Descriptive Representation in Legislatures and Political Alienation Among Latinos,” *Social Science Quarterly* 84(2):441-460. Rene R. Rocha, Caroline J. Tolbert, Daniel C. Bowen, and Christopher J. Clark (2010), “Race and Turnout: Does Descriptive Representation in State Legislatures Increase Minority Voting?,” *Political Research Quarterly* 63(4):890-907. Kenny J. Whitby (2007), “The Effect of Black Descriptive Representation on Black Electoral Turnout in the 2004 Elections,” *Social Science Quarterly* 88(4):1010-1023.

⁶¹ Footnote 177 of Senate Committee on the Judiciary, S. Rep. 417, 97th Cong., 2nd Sess. (1982).

⁶² I use the terms “mail” and “absentee” interchangeably to indicate ballots that voters return by mail. The practice is also sometimes called “early voting by mail.” In-person voters include those voting on election day and those voting at early voting locations.

SB 14 Is a Sharp Break with Existing Practices

59. A brief history of recent voter ID requirements demonstrates how quickly and dramatically Texas has ratcheted up the demands on voters. SB 14 goes well beyond the minimum identification requirements in the federal Help America Vote Act of 2002 (HAVA) and lacks most of the ameliorative provisions available even in other states with strict voter ID laws.
60. In 1997, Texas adopted HB 331. This law placed additional demands on voters to establish their identities. Under HB 331, in addition to executing an affidavit, a registered voter who lacked a registration certificate had to show an acceptable form of ID. The law allowed a wide range of documents to satisfy the ID requirement: Texas driver license, Texas personal ID card, a photo ID that “establishes the person’s identity,” a birth certificate, citizenship papers, U.S. passport, pre-printed checks, mail from a government entity, two other forms of personal identity, or any other ID permitted by the Texas Secretary of State.⁶³ Alternatively, a poll worker could vouch for the voter’s identity.
61. Before SB 331, a Texas voter whose name appeared on the registration list was required to present a voter registration certificate (a non-photo ID mailing from the county elections registrar) or to execute an affidavit stating that he or she does not have the certificate at the polling place when attempting to vote.
62. In 2003, Texas further modified its ID requirements. HB 1549 made minor modifications to voter identification requirements, mainly to create a class of provisional ballots in compliance with HAVA. Section 303(b) of HAVA requires states to verify the identities of in-person voters who have registered by mail and either (1) have not previously voted in a federal election in the state of registration or (2) have not previously voted a federal election in the specific jurisdiction of registration if the state does not have a HAVA-compliant computerized voter registration list. For this limited set of voters, acceptable identification is defined as a current and valid photo identification (not necessarily a driver license or state ID), utility bill, bank statement, government check, paycheck, or other government document showing the voter’s name and address. Repeat voters or those who registered in person are not required under HAVA to present identification to vote.
63. As of May 2014, 19 states and the District of Columbia still operate with the minimum HAVA requirements and thus do not require most voters to produce ID to vote.⁶⁴ States that do not require ID cover a wide range of regions and demographics, including states such as New Mexico, Minnesota, Nebraska, and West Virginia. There is no evidence that vote fraud or even public belief in vote fraud is more common in these states. I return to this point later in the report.

⁶³ Texas Election Code § 63.0101.

⁶⁴ National Conference of State Legislatures, “Voter Identification Requirements,” available at <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> (last visited May 27, 2014).

64. In contrast, SB 14 represents a sharp escalation to voter ID requirements in Texas and replaces existing laws, even though they were not shown to be inadequate. SB 14 imposed substantially stricter requirements than the only two strict photo voter ID laws in place at the time that Texas enacted it: Indiana and Georgia. Even among the small set of states with strict voter ID laws now in place, Texas stands out as especially stringent.
65. The National Conference of State Legislatures (NCSL) lists seven other states as having “strict photo ID” laws and three other states as having “strict non-photo ID laws.”⁶⁵ The NCSL listing also suggests that Alabama could be labeled as a “strict photo ID” state. To this list I add South Carolina because it enumerates a limited set of acceptable photo IDs for voting. This results in a set of 12 state voter ID laws that might be seen to as appropriate comparators to SB 14.
66. Reviewing the details of the laws in these 12 states reveals that a number of them have adopted a variety of provisions to mitigate the harsh impact that a strict ID law might otherwise have on voters. These states demonstrate that it is possible to have a strict voter ID regime that is much more accommodating of the costs of voting. Texas legislators were well aware of these ameliorative options and chose to exclude nearly all of them.
67. SB 14 enumerates seven specific forms of ID that may be used for voting. Some states with strict photo voter ID laws and strict non-photo ID laws instead prescribe requirements for acceptable IDs, rather than limiting voter to a small enumerated set. For example, Arizona, Indiana, Mississippi, Ohio, and Virginia require only that the photo ID be issued by the federal government or the state government. Georgia allows any photo ID card issued by the state or the federal government or an employee ID with a photograph issued by the federal government, the State, or any county, municipality, board, authority or other entity of the state. Alabama, Kansas, and Tennessee go further and allow voters to present IDs issued by other states. Arizona allows for use of two non-photo IDs with the name and address of the voter instead of a photo ID. SB 14 allows none of these options.
68. SB 14 does not permit student IDs for purposes of voting, even those issued by public colleges and universities in the state. This prohibits use of IDs certain to be held a large group of residents enrolled in postsecondary institutions. In contrast, several other strict ID states allow student IDs. Strict ID states such as Georgia, Indiana, and Mississippi allow ID from state colleges and universities. Alabama, Arkansas, Kansas, and Virginia allow student IDs from both public and private universities. SB 14 omits all of these forms of ID.

⁶⁵ National Conference of State Legislatures, “Voter Identification Requirements,” available at <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> (last visited May 27, 2014). Virginia is included because its voter ID law is effective on July 1, 2014. New Hampshire and North Carolina are not included because their voter ID laws do not go into effect until 2015 and 2016, respectively.

69. SB 14 requires that IDs have not expired more than 60 days before the election (allowing only the narrow exceptions described above). Other strict ID states tend to be more forgiving. Alabama only requires that IDs have not expired more than four years before the election. Mississippi allows IDs to be expired up to 10 years. Georgia and Tennessee allow IDs to be indefinitely expired. Kansas does not require that IDs include expiration dates at all. SB 14 does not allow for any of these alternatives.
70. It is notable that SB 14 permits use of a citizenship certificate, which lacks an expiration date. Other strict voter ID states allow for IDs that are either expired or lack expiration dates. For purposes of establishing a voter's identity, there is not a consistent rationale for requiring that the ID not be expired.
71. SB 14 does not permit use of tribal IDs. This is despite the fact that there are three federally recognized tribes in Texas, as well as one tribe recognized only by the State.⁶⁶ Tribal IDs may be used for voting in strict ID states including Alabama, Arizona, Georgia, Mississippi, and North Dakota. SB 14 excludes this option.
72. Several strict ID states permit an even wider range of IDs for voting. Virginia allows use of employee ID cards from private employers. In Kansas, a voter may present a public school district employee ID, public high school student ID, city library card, emergency management card, or municipal pool pass.⁶⁷ Missouri and Ohio permit a voter to show a utility bill, bank statement, or government paycheck. SB 14 prohibits all of these alternative means to establish identity.
73. South Carolina allows a voter who faced a "reasonable impediment" to obtaining an acceptable photo ID to vote after signing an affidavit.⁶⁸ Indiana and Tennessee also have exemptions for voters who cannot obtain ID because they are indigent.⁶⁹ SB 14 does not allow for these options.
74. Alabama permits a voter to cast a regular ballot if two election officials can sign sworn statements saying that they know the voter. SB 14 does not permit poll workers to vouch for a voter who lacks ID, even if the poll workers can establish a voter's identity through personal knowledge.
75. Strict voter ID states generally have a location to obtain a free state ID for the purposes of voting in every county. For example, in Alabama, residents may generally register to vote, apply for free voter IDs, and cast early ballots at a county clerk's office. Every

⁶⁶ The Alabama-Coushatta, Kickapoo Traditional, and Yseta Del Sur Pueblo are recognized by the United States. The Lipan Apache tribe is recognized only by Texas. See <http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx> (last visited June 19, 2014).

⁶⁷ "Photographic Identification Frequently Asked Questions," available at http://www.gotvoterid.com/pdf/FAQs_for_PhotoID.pdf (last visited June 10, 2014).

⁶⁸ The voter technically casts a provisional ballot, but the ballot will be counted with regular ballots as long as the voter presents a registration card and the county election commission does not deem the affidavit as false.

⁶⁹ In both states, the voter casts a provisional ballot, but the ballot will be counted if the voter returns to the election board and executes an affidavit to this effect.

county in Arkansas has a county clerk. In Georgia, free voter ID cards are issued by both the Department of Driver Services and county registrars. Every county has a registrar. Moreover, early voting generally takes place at the registrar's office. In Indiana, free state ID cards are distributed by the Indiana Bureau of Motor Vehicles, which has an office in every county. In Mississippi, voter ID cards are available for free at the offices of circuit clerks, where they can also verify birth certificate information from multiple states free of charge, and where absentee voters may also cast their ballots. Every county has at least one circuit clerk. SB 14 does not guarantee that each county provides access to free state IDs.

76. At present, only 189 out of 254 Texas counties have TxDPS locations. That is, more than 25% of counties lack the office that distributes state IDs for purposes of voting.⁷⁰ Sixty-one counties have voluntarily agreed to process EIC applications through other offices such as the county clerk, sheriff, or judge.⁷¹ Affidavits from representatives in 44 of these counties indicates that they have delivered few EICs and their future participation remains voluntary.⁷²
77. A somewhat unique feature of SB 14 compared to other strict voter ID laws is that it allows a voter to use citizenship papers as ID to vote. However, this accommodation is of limited value because few residents are likely to carry citizenship documentation with them in the way that other IDs are routinely carried. The U.S. Certificate of Naturalization (Form N-550) and Certificate of Citizenship (Form N-560) are printed on 8.5 by 11 inch paper, making them much larger than other IDs. This makes the forms inconvenient to carry in a pocket, wallet, or purse. In addition, the certificate is valuable and a replacement is difficult to obtain. The replacement fee is \$345, and obtaining a replacement may require an interview with the Department of Homeland Security.⁷³ As a result, holders of these documents have an incentive to keep them secure but not necessarily easily accessible locations.
78. When SB 14 was being crafted, the legislature had the opportunity to incorporate ameliorative provisions available in other strict voter ID states. Figure 1 lists ameliorative provisions that were either omitted from SB 14 or rejected from inclusion in SB 14. Legislators tabled or rejected a series of amendments to include many of these provisions. These amendments would have waived fees for people unable to afford documents needed to acquire an EIC, funded the expenses of Texans who must travel to obtain an EIC, included student IDs and Medicare IDs as acceptable forms of ID, required TxDPS locations to be open in the evenings and on weekends, and allowed poor voters to cast

⁷⁰ Texas Department of Public Safety, Search for Driver License Offices, available at http://www.txdps.state.tx.us/administration/driver_licensing_control/rolodex/search.asp (last visited June 10, 2014).

⁷¹ TxDPS, "County Locations Issuing Election Identification Certificates," available at

<http://www.txdps.state.tx.us/DriverLicense/documents/EICCountyrun.pdf> (last visited June 19, 2014).

⁷² These declarations have been included in an appendix to the report of Professor Gerald Webster in this case.

⁷³ Form N-565 Instructions, available at <http://www.uscis.gov/sites/default/files/files/form/n-565instr.pdf> (last visited June 24, 2014).

provisional ballots without ID.⁷⁴ These ameliorative provisions would have been especially helpful for black and Latino voters because they are disproportionately burdened by SB 14.

Figure 1: Rejected or Omitted Ameliorative Provisions

• Any Federal ID	• Employee ID
• Any State ID	• Tribal ID
• Municipal ID	• Indigence Exemption
• ID from Other States	• Vouching
• Student ID	• Reasonable Impediment Exemption
• Lengthier Grace Period for Expired ID	• Availability of No-Fee ID in Every County

79. Texas legislators were aware of the many ameliorative provisions in other strict voter ID states. This was demonstrated by legislative proponents of SB 14 who stated on multiple occasions that the law was modeled after those in Indiana and Georgia.⁷⁵ Yet the law does not include the accommodations available in those two states. This further suggests that SB 14 is not well grounded. The lack of factual support for the law is addressed more extensively below.

SB 14 is Unjustified in Creating Two Classes of Voters

80. SB 14 only requires photo ID of in-person voters. Absentee voters face no new ID requirements under the law. This creates an inequality in how absentee voters and in-person voters are treated. Because the use of mail ballots is greater among Anglos, the seemingly race-neutral imposition of ID requirements for in-person voters falls more heavily on blacks and Latinos.

81. As Table 3 shows, Anglos have comprised a larger share of mail voters in recent general elections. As a result, a larger share of black and Latino voters are burdened by the ID requirements in SB 14. In fact, the differences between Anglo and Latino mail voting rates were not statistically significant until 2008. SB 14 was enacted just three years later.

⁷⁴ See page 144 of *Texas v. Holder*, 888 F. Supp. 2d 113 (D.D.C. 2012) (three-judge court), *vacated and remanded*, 133 S. Ct. 2886 (2013).

⁷⁵ For example, see statements about student IDs in legislative transcripts featuring Senator Troy Fraser, Texas State Senate, Committee of the Whole Senate (January 25, 2011, p. 205) and Senator Rodney Ellis, Texas State Senate, Senate Floor Debate (January 26, 2011, p. 11).

Table 3. Voters Voting by Mail in Texas (2004-2012)⁷⁶

	2004	2006	2008	2010	2012
Anglo	5.2%	3.9%	6.3%	6.1%	6.2%
Black	4.7%	5.5%	2.9% ^{**}	4.7%	5.2%
Latino	3.7%	5.9%	2.0% ^{**}	3.9% [*]	3.5% ^{**}

82. The unequal treatment of in-person and mail voters under SB 14 thus compounds differences in the degree to which minority voters hold the IDs needed to vote in person. A larger share of black and Latino voters will need to secure ID under SB 14, despite the fact that they have fewer of the resources needed to do so.
83. Professor Stephen Ansolabehere's expert report shows that blacks and Latinos are less likely to possess acceptable ID under SB 14. Applying ecological regression to data from the Texas Election Administration Management (TEAM) database maintained by the State of Texas, he found that the share lacking ID was 5.3% for Anglos, 8.8% for Latinos, and 13.2% for Blacks. Applying the racial categorization algorithm used by Catalist to the TEAM database yielded similar rates of 7.3% for Anglos, 11.1% for Latinos, and 15.0% for blacks. Creating two classes of voters thus places a greater burden on minority voters because they are more likely to lack ID to vote under SB 14 and are more likely to vote in person rather than by mail.
84. Black and Latino voters are less likely than Anglo voters to possess the identification necessary to cast a regular in-person ballot. As a result, they will be more likely than Anglos to be required to apply for Election Identification Certificates (EICs). As with driver licenses and personal ID cards, EICs are distributed through the Department of Public Safety (TxDPS). To be eligible for an EIC, a person must be eligible to vote, a U.S. citizen, at least 17 years and 10 months old, and a resident of Texas. To demonstrate citizenship a person must provide a U.S. passport, birth certificate, or certification of citizenship (although possession of a valid passport or a citizenship certificate with a photograph would eliminate the need for an EIC). To demonstrate identity, a person must present (1) an expired Texas driver license or ID card, (2) two of the following: birth certificate or citizenship papers, or (3) a birth certificate or citizenship papers without a photograph along with one of 28 other supporting documents.⁷⁷
85. These transactions must be conducted in person at a TxDPS office. The availability of these offices and the cost of documents are crucial in determining how much SB 14

⁷⁶ Data are drawn from the Current Population Survey (CPS) November voting and registration supplements. Percentages are weighted by the variable PWSSWGT. This "basic CPS weight" adjusts for respondent selection probabilities affected by nonresponse and demographic factors including age, race, sex, and state of residence. See "Current Population Survey, November 2012 Voting and Registration Supplement File, Technical Documentation, CPS—12." Asterisks indicate differences between the mail voting rate for blacks or Latinos and the rate for Anglos in the same election are statistically significant at either the 90% (*) or 95% (**) confidence level using a one-tailed *t*-test.

⁷⁷ A detailed list is available at <http://www.txdps.state.tx.us/DriverLicense/eicDocReqmnts.htm> (last visited May 30, 2014).

deters minority voter participation. As noted above, roughly one in four counties lacks a TxDPS office. Those that do have offices may have limited availability. For example, Culberson County, which is more than 75% Latino, has one DPS location, which is only open on Wednesdays 9:00 a.m. to 1:00 p.m. and 2:00 p.m. to 5:00 p.m., or seven hours per week. The Secretary of State and TxDPS have offered mobile stations in a number of counties to provide greater access to EICs. However, many of the stations are present in a county only for one day, which appears insufficient for servicing a county population that lacks ready access to a TxDPS office.

86. A common form of documentation needed to obtain ID for voting under SB 14 is the birth certificate. The State of Texas generally charges \$22.00 for a birth certificate. Texas Administrative Code, Title 25, § 181.22(t) states that non-statutory birth certificate fees shall be waived for the purpose of obtaining an EIC, although a surcharge of \$2.00 may still be imposed. It thus appears that birth certificate might be available at below the \$22.00 standard, but neither the state nor local officials have adopted specific provisions to publicize this option.⁷⁸ For example, the state's web sites describing how to obtain birth certificates⁷⁹ and EICs⁸⁰ fail to provide information about the partial fee waiver.
87. The applicant for a Texas birth certificate must also provide ID. Acceptable identification includes a "primary" source such as an unexpired driver license, government ID card, or military ID or two "secondary" sources such as student ID, a primary source that is expired, a signed Social Security card, passport, Medicare or Medicaid card, or employee ID card.⁸¹ This circular set of rules will create a "Catch-22" for many people. If a voter is applying for an EIC because he or she lacks the other forms of ID needed to vote under SB 14, then the voter will also lack of many of the forms of ID need to obtain the EIC. For example, one form of acceptable secondary ID is a Social Security card. To obtain a replacement Social Security card, a person must present a form of identification that includes a name, birthdate or age, and preferably a recent photograph. Examples include a driver license, passport, medical card, medical record, employee ID, student ID, and life insurance policy.⁸² It would not be easy for many of the voters who lack the documentation needed to obtain a birth certificate to muster the documentation needed to obtain an EIC and vice versa.
88. Even if Texas distributed birth certificates for free, a large share of the state's population would not benefit because they were born elsewhere. Approximately 40% of Texas residents were born out of state.⁸³ In addition, more than 1.3 million Texans are both U.S.

⁷⁸ Deposition of Victor Farinelli, Electronic Registration Manager, Texas Department of State Health Services Vital Statistics Unit, May 9, 2014, p. 116.

⁷⁹ See http://www.dshs.state.tx.us/vs/reqproc/certified_copy.shtm (last visited June 13, 2014).

⁸⁰ See <http://www.dps.texas.gov/DriverLicense/electionID.htm> (last visited June 13, 2014).

⁸¹ Texas Administrative Code, Title 25, § 181.1.

⁸² Social Security Administration, available at <https://faq.ssa.gov/ics/support/kbanswer.asp?deptID=34019&task=knowledge&questionID=3609> (last visited June 5, 2014).

⁸³ U.S. Census Bureau, "Lifetime Mobility in the United States: 2010."

citizens and were born in another country.⁸⁴ Acquiring a birth certificate from another state or country—if the certificate even exists—could well be more difficult and expensive than buying one from the State of Texas. Because of their greater mobility, lower rates of ID holding, and few resources, it is likely that blacks and Latinos in particular will find themselves in a sort of “revolving door” in which they lack the documentation and resources needed to procure one of the limited forms of ID to vote under SB 14.

89. Professor Ansolabehere’s expert report calculates that 1.1 million registered voters in Texas lack accepted ID to vote under SB 14. That figure is even larger if one includes the additional 2.5 million people estimated to be eligible but not yet registered to vote.⁸⁵ These people not only must devote time and effort to become informed about the process. They must also pay literal financial costs to obtain necessary documentation required by SB 14.

SB 14 is Not Well Reasoned and Will Have Little Effect on Voter Fraud

90. SB 14 is not well-designed if its aim is to address the state’s purported interest in reducing voter fraud or to boost public confidence in elections. By limiting the law’s application to in-person votes, it counter-intuitively imposes new burdens on the form of voting that is least susceptible to fraud.
91. In-person voter fraud is extremely rare in Texas elections. A thorough analysis of voter fraud allegations by News21, an investigative reporting project based at Arizona State University, shows little evidence of in person voter impersonation. For the period from 2000 to 2012, the database lists only one conviction of a voter and two other pending cases.⁸⁶ Similarly, a report by Texas Attorney General Gregory Abbott listed 66 cases of “voting irregularities” investigated by his office between 2004 and 2012, but at most only six cases involved charges of in-person voter impersonation or related crimes.⁸⁷ Based on the testimony of Major Forest Mitchell from the Special Investigations Office of the Texas Attorney General’s office, it is not apparent that any of those would have been prevented by SB 14.⁸⁸

⁸⁴ Data are from the American Community Survey 2012. The 1-year, 3-year, and 5-year estimates range between 1.34 and 1.44 million people. Many such individuals will possess a citizenship certificate, but some may have lost the certificate and lack the resources to obtain a duplicate.

⁸⁵ Professor Michael McDonald estimates the 2012 voting eligible population to be 16,100,196 (see http://elections.gmu.edu/Turnout_2012G.html, last visited June 25, 2014). Professor Ansolabehere’s expert report in this case estimates there are 13,515,671 registered voters in Texas. This leaves approximately 2.5 million people who are eligible to vote but not registered.

⁸⁶ This is based on the Texas cases listed in the “Election Fraud in America” database, available <http://votingrights.news21.com/interactive/election-fraud-database/> (last visited May 29, 2014).

⁸⁷ Wayne Slater, “Few Texas Voter-Fraud Cases Would Have Been Prevented by Photo ID Law, Review Shows,” *The Dallas Morning News*, September 8, 2013, available at <http://www.dallasnews.com/news/politics/headlines/20130908-few-texas-voter-fraud-cases-would-have-been-prevented-by-photo-id-law-review-shows.ece> (last visited May 28, 2014).

⁸⁸ Trial Testimony of Forest Mitchell, Special Investigations Office, Office of the Texas Attorney General, July 9, 2012, pp. 49-69.

92. To put these numbers in perspective, in the seven general elections in Texas between 2000 and 2012 there were over 43,000,000 ballots cast.⁸⁹ Even setting aside the millions of ballots cast in primary, municipal, and special elections, the frequency of crimes that SB 14 would address is miniscule.
93. Several elected officials who played central roles in the passage and implementation of SB 14 appear either to be misinformed about the nature of the law or to be purposely spreading false information. Misportrayals of the law by its advocates provide further evidence that its purported justifications are “tenuous” within the meaning of the Senate Factor.
94. Attorney General Gregory Abbott has misstated the effects of the law. To defend SB 14, he highlighted that federal officials “arrested a Texas woman for illegally voting five times in a state election.”⁹⁰ But SB 14 would have done nothing to prevent that behavior: the person was accused of mailing multiple *absentee* ballots and nothing in SB 14 would prevent her from doing so again because SB 14 does not require ID to cast an absentee ballot.
95. SB 14 focuses on a rare form of election crime while ignoring where vote fraud more frequently occurs: through absentee ballots. Political scientist John Fortier, now at the Bipartisan Policy Center, summarizes the prevailing view among political scientists and policy analysts. His treatment of this issue is worth quoting at length:

While there will always be disagreement over the seriousness of election fraud in general, both sides to this argument agree on one important matter: The most likely avenue for voter fraud is absentee balloting, which offers more opportunities for it than the traditional polling place. . . . At a polling place today, the ballot is secure. Voters must present themselves and at least declare who they are in person. In many states, they may have to show a form of identification. The ballot is not to be handled by poll workers, other voters, party officials, spouses, relatives, or companions of the voter. The voter casts or deposits the ballot without assistance, in a privacy booth or curtained stall that allows him or her to do so in complete secrecy. No one can influence the voter while voting, not see the completed ballot. . . . Absentee ballots have none of these protections.⁹¹

⁸⁹ See data provided by Professor Michael McDonald’s United States Elections Project, available at http://elections.gmu.edu/voter_turnout.htm (last visited May 28, 2014).

⁹⁰ “Attorney General Abbott Statement on DOJ Lawsuits Challenging Texas Voter ID and Redistricting Laws,” available at <https://www.texasattorneygeneral.gov/oagNews/release.php?id=4507> (last visited June 9, 2014).

⁹¹ John C. Fortier (2006), *Absentee and Early Voting: Trends, Promises, and Perils*, Washington, DC: The AEI Press.

96. Senator Troy Fraser, the chief sponsor of SB 14, appeared unaware of the effect of existing provisions in Texas law for addressing voter fraud. During the Senate debate, Fraser was asked several questions by Senator Juan Hinojosa.

Sen. Hinojosa: Do you know how many people are registered to vote here in the State of Texas?

Sen. Fraser: Oh, I do—I'm sorry. I do not know.

Sen. Hinojosa: Approximately, 13 million. . . . And do you know how many voted in the last election?

Sen. Fraser: No. I'm not advised on that either. I'm sorry.

Sen. Hinojosa: Close to 5 million voters voted this last election. And do you know how many people were arrested or prosecuted or indicted for trying to use somebody else's voter registration card?

Sen. Fraser: I'm sorry, not—no. I do not have that number.

Sen. Hinojosa: None?

Sen. Fraser: I don't—I don't have the number, I'm sorry. I'm not advised.

(p. 240).⁹² It is probable that more knowledge about the efficacy of existing election law would have steered the legislature toward a rather different law than is represented in SB 14.

97. The stated purposes of SB 14 are unsupported by evidence. State Representative Patricia Harless, the lead House sponsor of SB 14, asserted in her opening statement in favor of the bill that “this is about restoring confidence in election process” (p. 911). She further explained that “This [bill] will increase turnout of all voters because of the restored confidence that their vote counts” (p. 919).⁹³ These statements are contrary to scholarly research on the relationship between strict voter ID laws and public confidence.

98. Even if public confidence in Texas elections needed to be “restored,” political science research shows that there is no relationship between the strictness of state voter ID laws and voter confidence. Based on analysis of national surveys conducted in 2006, 2007, and 2008, Professor Stephen Ansolabehere concludes that:

ID laws will have little or no effect on the confidence in the electoral system or the belief in the incidence of fraud. Those beliefs, wherever they come from, are no different when a stricter ID law is in place and enforced than when less invasive voter-authentication methods are used.

⁹² Senate Committee of the Whole Transcript, January 25, 2011.

⁹³ Texas House of Representatives Journal, 82nd Legislature.

(p. 130).⁹⁴ He summarizes that an individual's "Belief in the frequency of election fraud is uncorrelated with the propensity to vote" (p. 129). Related research Ansolabehere conducted with law Professor Nathaniel Persily similarly finds that:

[T]here is little or no relationship between beliefs about the frequency of fraud and electoral participation. . . . Nor does it appear to be the case that universal voter identification requirements will raise levels of trust in the electoral process.

(p. 1759).⁹⁵

99. Voter confidence is affected by factors other than ID laws. The most relevant of these is whether a person votes by mail or in person. Research by Professor Paul Gronke shows that rather than being influenced by voter ID laws, voter confidence is improved when a voter's preferred candidate won the election, when polling places appear to be well-run, and—importantly for SB 14—when a voter votes in person rather than by mail.⁹⁶ Research by Professors Michael Alvarez, Thad Hall, and Morgan Llewellyn also finds that mail voters are less confident than polling place voters that their ballots are counted properly.⁹⁷
100. Counter-intuitively, SB 14 creates two classes of voters by imposing ID requirements on in-person voters but not on those who vote by mail, even though mail voters report less confidence in the election system. This inequality runs counter to professional understandings of where vote fraud is mostly likely to occur and imposes heavier burdens on black and Latinos voters.
101. SB 14 is lacking in a factual basis because it imposes new burdens on in-person voters but not those who vote by mail. This is despite the clear evidence that mail ballots are less secure and that mail ballot voters are less confident about the election system. This detachment from the facts about vote fraud imposes greater burdens on in-person voters who are disproportionately black and Latino.

⁹⁴ Stephen Ansolabehere (2009), "Effects of Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day," *PS: Political Science & Politics* 42(1):127-130.

⁹⁵ Stephen Ansolabehere and Nathaniel Persily (2008), "Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements," *Harvard Law Review* 121(7):1737-1774.


⁹⁶ Paul Gronke (forthcoming August 2014), "Voter Confidence as a Metric of Election Performance," in Barry C. Burden and Charles Stewart III, eds., *The Measure of American Elections*, New York, NY: Cambridge University Press.

⁹⁷ R. Michael Alvarez, Thad E. Hall, and Morgan H. Llewellyn (2008), "Are Americans Confident Their Ballots Are Counted?," *Journal of Politics* 70(3):754-766.

Conclusion

102. I conclude that the implementation of SB 14 will likely have a differential impact on voting participation by blacks and Latinos in Texas. The law disproportionately increases the costs of voting on minority voters for whom voting is already significantly more costly. The law is not well reasoned and lacks a basis in fact. SB 14 does not include the ameliorative provisions that exist in strict voter ID laws in other states after which the law is presumably modeled. SB 14 is not designed to confront the most common forms of voter fraud and will not raise public confidence in the system. It creates two classes of voters, requiring more of in-person voters who are disproportionately black and Latino. The law thus is not realistically linked to a valid state interest and imposes unequal burdens on minorities to comply. This is precisely the kind of action that Section 2 of the Voting Rights Act was designed to prevent. For all of the reasons outlined above, it is my opinion that the law will result in minority voters being denied an equal opportunity to participate in, and influence the outcome of, elections in Texas.

I declare under penalty of perjury the foregoing is true and correct. Executed this 5th day of July, 2014.


Barry C. Burden

APPENDIX A Curriculum Vitae

Barry C. Burden

Contact

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Academic Positions

Professor of Political Science, University of Wisconsin-Madison (2006-present)

Associate Chair/Director of Graduate Studies (2007-2012)

Associate Professor of Government, Harvard University (2003-2006)

Assistant Professor of Government, Harvard University (1999-2003)

Assistant Professor of Political Science, Louisiana State University (1998-1999)

Education

Ph.D. The Ohio State University (1998)

B.A. Wittenberg University (1993)

Authored or Co-Authored Books

Burden, Barry C. 2007. *Personal Roots of Representation*. Princeton, NJ: Princeton University Press. [Reviewed in *Choice*, *Democratization*, *Journal of Politics*, *Legislative Studies Section Newsletter*, *Political Studies Review*, & *Polity*]

Burden, Barry C., and David C. Kimball. 2002. *Why Americans Split Their Tickets: Campaigns, Competition, and Divided Government*. Ann Arbor, MI: The University of Michigan Press. [Reviewed in *Campaigns & Elections Magazine*, *Choice*, *Journal of Politics*, *Legislative Studies Section Newsletter*, *National Journal*, *Party Politics*, *Perspectives on Politics*, *Political Science Quarterly*, *Public Choice*, & *VOX POP.*]

Edited Books

- Burden, Barry C., and Stewart, Charles III, eds. Forthcoming. *The Measure of American Elections*. New York, NY: Cambridge University Press.
- Hershey, Marjorie Randon (editor), Barry C. Burden (associate editor), and Christina Wolbrecht (associate editor). Forthcoming. *CQ Guide to Political Parties*. Thousand Oaks, CA: Sage Publications.
- Burden, Barry C., editor. 2003. *Uncertainty in American Politics*. New York, NY: Cambridge University Press. [Reviewed in *Choice*, *Perspectives on Political Science*, *Political Studies Review*, & *Public Choice*.]

Refereed Journal Articles

- Burden, Barry C., and Amber Wichowsky. Forthcoming. “Economic Discontent as a Mobilizer: Unemployment and Voter Turnout.” *Journal of Politics*.
- Burden, Barry C., Bradley Jones, and Michael S. Kang. Forthcoming. “Nominations and the Supply of Candidates: The Connection between Sore Loser Laws and Congressional Polarization.” *Legislative Studies Quarterly*.
- Burden, Barry C. David T. Canon, Kenneth R. Mayer, and Donald P. Moynihan. 2014. “Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform.” *American Journal of Political Science* 58:95-109. [Featured in a variety of outlets including The Atlantic Wire, *The New York Times*, Pew Research Center FactTank, The Huffington Post, *The Deseret News*, National Review Online, *The Baltimore Sun*, *Orlando Sentinel*, and elsewhere]
- Burden, Barry C. Forthcoming. “Economic Accountability and Strategic Calibration in Japan’s Liberal Democratic Party.” *Party Politics*.
- Burden, Barry C. David T. Canon, Stéphane Lavertu, Kenneth R. Mayer, and Donald P. Moynihan. 2013. “Selection Methods, Partisanship, and the Administration of Elections.” *American Politics Research* 41:903-36.
- Burden, Barry C., and Jacob R. Neihsel. 2013. “Election Administration and the Pure Effect of Voter Registration on Turnout.” *Political Research Quarterly* 66:77-90.
- Burden, Barry C. David T. Canon, Kenneth R. Mayer, Donald P. Moynihan. 2012. “The Effect of Administrative Burden on Bureaucratic Perception of Politics: Evidence from Election Administration.” *Public Administration Review* 72:741-51.
- Neihsel, Jacob R., and Barry C. Burden. 2012. “The Effect of Election Day Registration on Voter Turnout and Election Outcomes.” *American Politics Research* 40:636-64. [Featured on the *Wall Street Journal*’s Ideas Market blog]

- Burden, Barry C. David T. Canon, Kenneth R. Mayer, Donald P. Moynihan. 2011. "Early Voting and Election Day Registration in the Trenches: Local Officials' Perceptions of Election Reform." *Election Law Journal* 10:89-102.
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- Berry, Christopher R., Barry C. Burden, and William G. Howell. 2010. "After Enactment: The Lives and Deaths of Discretionary Programs." *American Journal of Political Science* 54:1-14.
- Burden, Barry C. 2009. "The Dynamic Effects of Education on Voter Turnout." *Electoral Studies* 28:540-9.
- Burden, Barry C., and D. Sunshine Hillygus. 2009. "Opinion Formation, Polarization, and Presidential Reelection." *Presidential Studies Quarterly* 39:619-35.
- Burden, Barry C. 2009. "Candidate-Driven Ticket Splitting in the 2000 Japanese Elections." *Electoral Studies* 28:33-40.
- Burden, Barry C., and Gretchen Helmke. 2009. "The Comparative Study of Split-Ticket Voting." *Electoral Studies* 28:1-7. [Introduction to a Special Issue co-edited with Gretchen Helmke.]
- Burden, Barry C. 2008. "The Social Roots of the Partisan Gender Gap." *Public Opinion Quarterly* 72:55-75.
- Burden, Barry C. 2007. "Ballot Regulations and Multiparty Politics in the States." *PS: Political Science & Politics* 40:669-73.
- Burden, Barry C. 2006. "A Tale of Two Campaigns: Ralph Nader's Strategy in the 2004 Presidential Election." *PS: Political Science and Politics* 39:871-4.
- Burden, Barry C., and Casey A. Klofstad. 2005. "Affect and Cognition in Party Identification." *Political Psychology* 26:869-86.
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- Burden, Barry C. 2005. "Ralph Nader's Campaign Strategy in the 2000 U.S. Presidential Election." *American Politics Research* 33:672-99.
- Burden, Barry C., and Tammy M. Frisby. 2004. "Preferences, Partisanship, and Whip Activity in the House of Representatives." *Legislative Studies Quarterly* 29:569-90.
- Burden, Barry C. 2004. "A Technique for Estimating Candidate and Voter Positions." *Electoral Studies* 23:623-39.

- Burden, Barry C. 2004. "Candidate Positioning in U.S. Congressional Elections." *British Journal of Political Science* 34:211-27.
- Burden, Barry C., and Anthony Mughan. 2003. "The International Economy and Presidential Approval." *Public Opinion Quarterly* 67:555-78.
- Burden, Barry C., and Joseph Neal Rice Sanberg. 2003. "Budget Rhetoric in Presidential Campaigns from 1952 to 2000." *Political Behavior* 25:97-118.
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- Burden, Barry C. 2002. "When Bad Press is Good News: The Surprising Benefits of Negative Campaign Coverage." *Harvard International Journal of Press/Politics* 7:76-89.
- Burden, Barry C. 2002. "United States Senators as Presidential Candidates." *Political Science Quarterly* 117:81-102. [Featured in David S. Broder's *Washington Post* column.]
- Burden, Barry C. 2000. "Voter Turnout and the National Election Studies." *Political Analysis* 8:389-98.
- Burden, Barry C., Gregory A. Caldeira, and Tim Groseclose. 2000. "Measuring the Ideologies of U.S. Senators: The Song Remains the Same." *Legislative Studies Quarterly* 25:237-58. [Reprinted in Carl Grafton and Anne Permaloff, ed. 2005. *The Behavioral Study of Political Ideology and Public Policy Formation*, Lanham, MD: University Press of America.]
- Burden, Barry C., and Steven Greene. 2000. "Party Attachments and State Election Laws." *Political Research Quarterly* 53:57-70.
- Burden, Barry C., and Anthony Mughan. 1999. "Public Opinion and Hillary Rodham Clinton." *Public Opinion Quarterly* 63:237-50. [Featured in *The Chronicle of Higher Education* and Richard Morin's *Washington Post National Weekly Edition* column.]
- Burden, Barry C., and Marni Ezra. 1999. "Calculating Voter Turnout in U.S. House Primary Elections." *Electoral Studies* 18:89-99.
- Lacy, Dean, and Barry C. Burden. 1999. "The Vote-Stealing and Turnout Effects of Ross Perot in the 1992 U.S. Presidential Election." *American Journal of Political Science* 43:233-55.
- Burden, Barry C., and David C. Kimball. 1998. "A New Approach to the Study of Ticket Splitting." *American Political Science Review* 92:533-44. [Reprinted in Richard G. Niemi and Herbert F. Weisberg, ed. 2001. *Controversies in Voting Behavior*, 4th ed. Washington, DC: CQ Press.]
- Burden, Barry C. 1997. "Deterministic and Probabilistic Voting Models." *American Journal of Political Science* 41:1150-69.

Book Chapters

- Vidal, Logan, and Barry C. Burden. Forthcoming. "Voter Registration." In *American Governance*, ed. Stephen L. Schechter. Farmington Hills, MI: Cengage Learning.
- Burden, Barry C., and Charles Stewart III. Forthcoming. "Introduction to the Measure of American Elections." In *The Measure of American Elections*, eds. Barry C. Burden and Charles Stewart III. New York, NY: Cambridge University Press.
- Burden, Barry C. Forthcoming. "Registration and Voting: A View from the Top." In *The Measure of American Elections*, eds. Barry C. Burden and Charles Stewart III. New York, NY: Cambridge University Press.
- Hillygus, D. Sunshine, and Barry C. Burden. 2013. "Mass Polarization During the Bush Presidency." In *Taking the Measure: The Presidency of George W. Bush*, ed. Donald R. Kelley and Todd G. Shields. College Station, TX: Texas A&M University Press.
- Burden, Barry C. 2013. "The Nominations: Ideology, Timing, and Organization." In *The Elections of 2012*, ed. Michael Nelson. Washington, DC: CQ Press.
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- Burden, Barry C., and Philip Edward Jones. 2009. "Strategic Voting in the USA." In *Duverger's Law of Plurality Voting: The Logic of Party Competition in Canada, India, the United Kingdom, and the United States*, ed. Bernard Grofman, André Blais, and Shaun Bowler. New York, NY: Springer.
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- Burden, Barry C. 2008. "Multiple Parties and Ballot Regulations." In *Democracy in the States: Experiments in Elections Reform*, ed. Bruce E. Cain, Todd Donovan, and Caroline J. Tolbert. Washington, DC: Brookings Institution Press.
- Burden, Barry C. 2005. "Laws Governing Suffrage." In *Guide to Political Campaigns in America*, ed. Paul S. Herrnson. Washington, DC: CQ Press.

- Burden, Barry C. 2005. "Family Feud in Massachusetts: How Intraparty Dynamics Influence Redistricting." In *Redistricting in the New Millennium*, ed. Peter F. Galderisi. Lanham, MD: Lexington Books.
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- Burden, Barry C. 2003. "Everything but Death and Taxes: Uncertainty and American Politics." In *Uncertainty in American Politics*, ed. Barry C. Burden. New York, NY: Cambridge University Press.
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- Mughan, Anthony, and Barry C. Burden. 1998. "Hillary Clinton and the President's Reelection." In *Reelection 1996: How Americans Voted*, ed. Herbert F. Weisberg and Janet M. Box-Steffensmeier. Chatham, NJ: Chatham House Publishers.
- Burden, Barry C., and Aage R. Clausen. 1998. "The Unfolding Drama: Party and Ideology in the 104th House." In *Great Theatre: The American Congress in the 1990s*, ed. Herbert F. Weisberg and Samuel C. Patterson. New York, NY: Cambridge University Press.
- Mughan, Anthony, and Barry C. Burden. 1995. "The Candidates' Wives." In *Democracy's Feast: Elections in America*, ed. Herbert F. Weisberg. Chatham, NJ: Chatham House Publishers.

Book Reviews

- Burden, Barry C. 2014. Review of *Getting Primaried: The Changing Politics of Congressional Primary Challenges* by Robert G. Boatright. Ann Arbor, MI: University of Michigan Press. *Congress & the Presidency* 41:132-4.
- Burden, Barry C. 2009. Review of *Minority Report: Evaluating Political Equality in America* by John D. Griffin and Brian Newman. Chicago, IL: University of Chicago Press. *Public Opinion Quarterly* 73:590-2.
- Burden, Barry C. 2009. Review of *The American Voter Revisited*, ed. Michael S. Lewis-Beck, William G. Jacoby, Helmut Norpoth, and Herbert F. Weisberg. Ann Arbor, MI: University of Michigan Press. *Political Science Quarterly* 124:344-6.

- Burden, Barry C. 2003. Review of *Learning by Voting: Sequential Choices in Presidential Primaries and Other Elections* by Rebecca B. Morton and Kenneth C. Williams. *Public Choice* 114:248-51.
- Burden, Barry C. 2002. Review of *Elements of Reason: Cognition, Choice, and the Bounds of Rationality*, ed. Arthur Lupia, Mathew D. McCubbins, and Samuel L. Popkin. *Journal of Economic Literature* 40:928-9.

Reports

- Burden, Barry C., and Brian J. Gaines. 2013. “Administration of Absentee Ballot Programs.” Testimony and report to the Presidential Commission on Election Administration. Hearing in Denver, CO. August 8.
- Burden, Barry C., and Jeffrey Milyo. 2013. “The Recruitment and Training of Poll Workers.” Testimony and report to the Presidential Commission on Election Administration. Hearing in Cincinnati, OH. September 20.
- Burden, Barry C. 2010. *Polling Place Incidents in the November 2008 General Election*. Report to the Wisconsin Government Accountability Board.
- Burden, Barry C., David T. Canon, Stéphane Lavertu, Kenneth R. Mayer, and Donald P. Moynihan. 2009. *2008 Wisconsin Election Data Collection Grant Program Evaluation Report*. Report to the Wisconsin Government Accountability Board.
- Burden, Barry C., and Janet M. Box-Steffensmeier. 1998. “Vote Likelihood and Institutional Trait Questions in the 1997 NES Pilot Study.” Report to American National Election Study Board of Overseers.

Other Publications

- Burden, Barry C. 2014. “How Political Scientists Informed the President about Election Reform.” The Monkey Cage blog. Posted January 23.
- Burden, Barry C., and Kevin J. Kennedy. 2013. “State Ranks High on Election Performance.” *Milwaukee Journal Sentinel*. February 7.
- Burden, Barry C., David T. Canon, Kenneth R. Mayer, and Donald P. Moynihan. 2012. “Election-Day Registration Works Here.” *Milwaukee Journal Sentinel*. December 26.
- Burden, Barry C. 2012. “A Portrait of the Wisconsin Municipal Clerk.” *The Municipality*. Volume 106, Number 5.

- Burden, Barry C. 2011. “Polarization, Obstruction, and Governing in the Senate.” *The Forum*. Volume 9, Issue 4.
- Burden, Barry C., and Kenneth R. Mayer. 2010. “Voting Early, but Not So Often.” *The New York Times*, October 25.
- Burden, Barry C. 2009. “Representation as a Field of Study.” In *The Future of Political Science: 100 Perspectives*, ed. Gary King, Kay Lehman Schlozman, and Norman Nie. New York, NY: Routledge.
- Burden, Barry C. 2004. “An Alternative Account of the 2004 Presidential Election.” *The Forum*. Volume 2, Issue 4.
- Burden, Barry C. 2003. “Chronology of the 2000 Presidential Campaign.” In *Models of Voting in Presidential Elections: The 2000 U.S. Election*, ed. Herbert F. Weisberg and Clyde Wilcox. Stanford, CA: Stanford University Press.
- Burden, Barry C. 1998. “Chronology of the 1996 Presidential Campaign.” In *Reelection 1996: How Americans Voted*, ed. Herbert F. Weisberg and Janet M. Box-Steffensmeier. Chatham, NJ: Chatham House Publishers.
- Burden, Barry C. 1995. “Chronology of the 1992 Presidential Campaign.” In *Democracy’s Feast: Elections in America*, ed. Herbert F. Weisberg. Chatham, NJ: Chatham House Publishers.

Honors and Awards

- Robert H. Durr Award – *given by the Midwest Political Science Association for the best paper applying quantitative methods to a substantive problem in political science* – “Election Laws and Partisan Gains: The Effects of Early Voting and Same Day Registration on the Parties’ Vote Shares,” with David Canon, Kenneth Mayer, and Donald Moynihan (2014)
- H. I. Romnes Faculty Fellow, UW Graduate School (2010-2015)
- Licking Valley Schools “Wall of Pride” Award (2009) – *given annually to alumni who distinguished themselves professionally or made notable contributions to society*
- Hamel Family Faculty Fellow, UW College of Letters and Science (2008-2013)
- University Residence Hall Favorite Instructor Award (2007)
- Nominated for Harvard University Everett Mendelsohn Excellence in Graduate Mentoring Award (2006)
- Emerging Scholar Award (2005) – *given by the Political Organizations and Parties section of APSA for significant research by a scholar receiving her or his doctorate within the past seven years*

Wittenberg University Outstanding Young Alumnus Award (2002) – *given to a graduate of the last decade to recognize professional achievement*

Council of Graduate Schools/University Microfilms International Distinguished Dissertation Award (2000) – *given to recognize best dissertation completed nationwide in the social sciences between 1998 and 2000*

Nominated for Harvard University Joseph R. Levenson Memorial Teaching Prize (2000)

AAA Award for superior instruction of freshman students (1999)

OSU Presidential Fellow (1998)

Francis R. Aumann Award for best OSU graduate student conference paper (1996 & 1997)

Malcolm Jewell Award (1996) – *best graduate student paper presented at the 1995 Southern Political Science Association meeting*

Ohio Board of Regents Fellow (1993-1995)

ΦBK (1993)

Wittenberg University Student Leader of the Year (1992-1993)

Jeffrey Y. Mao Alumni Award in Political Science (1992)

Grants

UW Graduate School Research Committee, “Political Participation among Older Americans” (2014-2015, co-PI with Moynihan)

Center for Demography of Health and Aging, “Political Participation of Older Americans: The Role of Social and Genetic Factors” (co-PI with Jason M. Fletcher and Donald P. Moynihan, 2013-2014)

Pew Charitable Trusts, \$46,400 for “Measuring Elections Performance Project,” (with head PI Charles Stewart III, 2012-2013)

Wisconsin Government Accountability Board, \$43,234 for “Analysis of Polling Place Incident Logs” (head PI with Canon, Mayer, and Moynihan, 2011-2012)

UW Graduate School Research Committee, “The Consequences of Electing Election Officials” (2009-2010)

Pew Center on the States, Making Voting Work: \$49,400 for “Early Voting and Same Day Registration in Wisconsin and Beyond” (head PI with Canon, Mayer, and Moynihan, 2008-2009)

U.S. Election Assistance Commission, Election Data Collection Grant Program: responsible for \$212,442 of \$2,000,000 grant to the Wisconsin Government Accountability Board (head PI with Canon, Mayer, and Moynihan, 2008-2010)

UW Graduate School Research Committee: “The Puzzling Geography of Federal Spending,” (2007-2008)

UW Graduate School Research Committee: “The Political Economy of the Japanese Gender Gap” (2006-2007)

CAPS faculty research conference: \$36,500 for “Democracy, Divided Government, and Split-Ticket Voting” (2006)

Joseph H. Clark fund award: “The Limits of Representation” (2004-2006)

Reischauer Institute of Japanese Studies: “Accountability, Economics, and Party Politics in Japan” (2004-2006)

Time-sharing Experiments in the Social Sciences: “Affect and Cognition in Party Identification” (with Casey A. Klofstad, 2004)

Harvard Faculty of Arts & Sciences Course Innovation Funds: “The Practice of Political Science” (2003)

Dirksen Congressional Center Congressional Research Award: “The Discharge Rule and Majoritarian Politics in the House of Representatives” (2002-2003)

Reischauer Institute of Japanese Studies Curriculum Enrichment Grant: “Electoral Politics in America and Japan” (2002)

CBRSS research program grant: “Affect and Cognition in Party Identification” (2001)

Joseph H. Clark fund award: “Affect and Cognition in Party Identification” (2001-2002)

Joseph H. Clark fund award: “Ideology in Congressional Elections” (2000-2001)

National Science Foundation Doctoral Dissertation Improvement Grant: “Candidates’ Positions in Congressional Elections” (1997)

Teaching and Advising

Undergraduate courses:

- Introduction to American Politics
- Elections and Voting Behavior
- Political Behavior
- American Public Opinion
- Election Reform in America
- The Politics of Congress/The Legislative Process
- Techniques of Political Analysis

Electoral Politics in America and Japan
The Practice of Political Science Research

Graduate courses:

American Politics Field Seminar
Mass Political Behavior
Congress and Legislative Politics
American Electoral Politics
Readings on Advanced Statistical Methods
Quantitative Research Design
American Political Institutions
Readings on Interest Group Politics
Research Workshop in American Politics
Political Science as a Discipline and Profession

Harvard Ph.D. advising (year and placement):

Benjamin Deufel (2006 Greenberg Quinlan Rosner Research)
Tammy M. Frisby (2006 Stanford University-Lane Center)
Michael Kang (2009 Emory University-School of Law)
Andrew Karch (2003 University of Texas & University of Minnesota)
Casey A. Klostad (2005 University of Miami)
Robert Van Houweling (2003 University of Michigan & UC-Berkeley)
Carl Albert Dissertation Award for best dissertation in legislative studies

Wisconsin Ph.D. advising (year and placement):

Danna Basson (2007 Mathematica Policy Research)
Amy Bree Becker, Journalism & Mass Communication (2010 Towson University & Loyola University Maryland)
Deven Carlson (2012 University of Oklahoma)
Amnon Cavari (2011 Interdisciplinary Center-IDC Israel)
George C. Edwards III Dissertation Award for best dissertation in presidency research
Meghan Condon (2012 Loyola University Chicago)
APSA section on Experimental Research best dissertation award
William Egar (ABD)
Erika Franklin Fowler (2006 RWJ Scholar in Health Policy & Wesleyan University)
Hannah Goble (2009 Texas Christian University)
Matthew Holleque, *chair* (2012 Obama for America)
Bradley Jones, *chair* (ABD)
Dimitri Kelly, *chair* (2013 Linfield College)
Yujin Kim, *chair* (ABD)
Paul Lachelier, Sociology (2007 Stetson University)
Ruoxi Li (ABD)

Jeremy Menchik (2011 Stanford Shorenstein Center post-doc & Boston University)
 Daniel Metcalf
 Jacob Neiheisel, *chair* (2013 Denison University & University of Buffalo)
 Joel Rivlin (ABD MSHC Partners & Pivot)
 Rajen Subramanian (2008 Abt Associates)
 Amber Wichowsky, *chair* (2010 Yale CSAP Fellowship & Marquette University)
Carl Albert Dissertation Award for best dissertation in legislative studies

Reviewing Activities

Journal manuscript reviews:

Acta Politica, American Journal of Political Science, American Political Science Review, American Politics Quarterly, American Politics Research, American Review of Politics, British Journal of Political Science, Comparative Political Studies, Congress & the Presidency, Election Law Journal, Electoral Studies, European Journal of Political Research, International Journal of Forecasting, International Organization, Journal of Law, Economics, and Organization, Journal of Politics, Journal of Theoretical Politics, Journal of Women, Politics, & Policy, Legislative Studies Quarterly, Party Politics, Perspectives on Politics, Political Analysis, Political Behavior, Political Communication, Political Psychology, Political Research Quarterly, Political Science Quarterly, Politics & Gender, Politics and Policy, Presidential Studies Quarterly, Public Choice, Public Opinion Quarterly, Rationality and Society, Research and Politics, Quarterly Journal of Political Science, Social Science Quarterly, Sociological Forum, Sociological Methods and Research, State Politics & Policy Quarterly, Statistical Science, & World Politics

Book manuscript reviews:

Addison Wesley Longman, Atomic Dog Publishing, Brookings Institution Press, Cambridge University Press, CQ Press, Oxford University Press, and University of Chicago Press

Tenure and promotion reviews:

Dartmouth College, Florida State University, Fordham University, Louisiana State University, Temple University, Texas Tech University, Tulane University, University of British Columbia, University of California-Berkeley, University of California-Riverside (twice), University of Chicago (public policy), University of Houston, University of Massachusetts-Dartmouth, University of Maryland (twice), University of Missouri-Columbia, University of Missouri-St. Louis, University of North Carolina at Charlotte, University of Notre Dame, University of Pennsylvania, University of Texas-Dallas, & Washington State University

External review committee, Union College Department of Political Science (*chair*, 2010)

Other reviews:

Canada Research Chair College of Reviewers, Radcliffe Institute Fellows, National Science Foundation, Robert Wood Johnson Scholars in Health Policy, Time-sharing Experiments in the Social Sciences (TESS)

Professional and University Service

Journal editorial boards:

Election Law Journal editorial board (2013-present)
Electoral Studies editorial board (2011-present)
Political Research Quarterly (2014-present)
Legislative Studies Quarterly editorial board (2011-2013)

Other boards and councils:

Election Performance Index Advisory Board, Pew Center on the States (2010-2014)
Elections, Public Opinion, and Voting Behavior section Communications Director (2012-2015)
Legislative Studies section council (2009-2011)
Political Organizations and Parties section council (2005-2007)
Ad Hoc Committee on Member Communications (2013)
Project Vote Smart Advisory Board (2007-)

Conference program organizer:

Political Organizations and Parties, APSA annual meeting (2006)
Political Methodology, SPSA annual meeting (2001)

Award committees:

Political Organizations and Parties/*Party Politics* award committee for the best paper presented at the 2006 APSA annual meeting (*chair*, 2007)
Political Organizations and Parties Emerging Scholar Award committee (*chair*, 2013)

Campus presentations:

Dartmouth College, Northwestern University, Stanford University, SUNY-Stony Brook, University of Houston, University of Minnesota, University of Missouri-Columbia, University of Notre Dame, University of Rochester, University of Texas at Austin, Utah State University (twice), Wittenberg University, & Yale University (twice)

Public and community presentations:

Boston Museum of Science, Brookings Institution, Civitas, National Legislative Program Evaluation Society, Newton Center for Lifetime Learning, Reach Out Wisconsin, Senior

Summer School, UW-Extension College Days, Vantage Point, Wisconsin Academy of Sciences, Arts, and Letters, Wisconsin Department of Revenue, and alumni events in Wisconsin and New York City

Affiliations:

Election Administration Project (*co-founder*, 2008-present)
 Wisconsin Advertising Project team (2008-present)
 La Follette School of Public Affairs, Faculty Associate (2007-present)
 Center for Demography of Health and Aging (2013-present)
 Political Behavior Research Group (2006-present)
 Institute for Quantitative Social Science, Faculty Associate (1999-2006)
 Political Psychology and Behavior Workshop (*co-founder*, 2000-2006)
 Center for American Political Studies, Executive Committee (2001-2006) & Steering Committee (2003-2004)
 Program on US-Japan Relations, Faculty Affiliate (2004-2006)
 Weatherhead Center for International Affairs, Faculty Associate (2005-2006)
 Harvard Kennedy School, Mid-Career MPA Summer Program (2001-2005 & 2007-2012)
 Summer Institute in Political Psychology (1995 & 1997)

Harvard committee service:

American Politics Faculty Search (1998-1999, 2001-2002, 2002-2003, & 2005-2006)
 Graduate Admissions (1999-2000)
 Government Concentration/Board of Senior Examiners (2000-2001 & 2004)
 Teaching Fellow Coordinator (2003-2004)
 American Politics Field Coordinator (2005-2006)
 Center for Government and International Studies, Subcommittee on Teaching and Conference Spaces (2003)
 Truman Scholarship Nomination (2000-2001)
 Eben Fiske Studentship Nomination (2004-2005)
 Political Communication Faculty Search, Kennedy School of Government (2004-2005)

Wisconsin committee service:

Faculty Senate (2006-2007)
 Associate Chair/Director of Graduate Studies (2007-2012)
 Graduate Admissions and Fellowships, *chair*
 Graduate Program Committee, *chair*
 Teaching Assistant Evaluation Committee, *chair*
 L&S Teaching Fellow Anniversary Symposium Planning Committee (2009-2010)
 L&S C-GRS Faculty Executive Committee (2009-2010)
 Graduate School Social Studies Fellowships Committee (2010-2013)
 Social Studies Divisional Executive Committee (2013-2014)
 Faculty Recruitment Committee (2013-2014)

American Politics Search Committee, *chair*
Preliminary Examination Appeals Committee (2013-2014)

Occasional source for media coverage of politics including abcnews.com, *Atlanta Journal-Constitution*, Associated Press, *The Baltimore Sun*, *The Baton Rouge Advocate*, Bloomberg News, *The Boston Herald*, cbsnews.com, *Campaigns & Elections Magazine*, *Chicago Tribune*, *Christian Science Monitor*, *Cleveland Plain Dealer*, *Congressional Quarterly Weekly Report*, *The Daily Caller*, *Dallas Morning News*, *Des Moines Register*, forbes.com, Fox News, *Glamour*, *The Globe and Mail* (Canada), *The Guardian* (UK), *The Harvard Crimson*, *Harvard Political Review*, *The Hill*, *International Herald Tribune*, *Kansas City Star*, *Los Angeles Times*, *The London Times*, *Le Monde*, *The New Orleans Times-Picayune*, *National Journal*, *The New Republic*, *New Scientist*, *New York Post*, *The New York Times*, *Newsday*, *Newsweek*, *el Nuevo Herald*, *Omaha World Herald*, *PBS NewsHour*, *Pittsburgh Post-Gazette*, Politico.com, Reuters, Salon.com, States News Service, *USA Today*, *Veja* (Brazil), *The Wall Street Journal*, *The Washington Post*, *The Washington Times*, *Wisconsin Law Journal*, *Yomiuri Shimbun*, *Greater Boston* on WGBH, NECN, *Nitebeat with Barry Nolan*, *Odyssey* on Chicago Public Radio, and many local television, radio, and newspaper outlets

Featured in *An Unreasonable Man*, an independent documentary film about the life and career of Ralph Nader (2006)

Consulting

Research consultant, via Research Triangle International Institute and the Pew Charitable Trusts, for evaluation of the Electronic Registration Information Center (2012-2014)

Expert witness, *League of United Latin American Citizens of Wisconsin et al. v. Judge David G. Deininger et al.*, case 12-CV-00185, U.S. District Court, Eastern District of Wisconsin (2013)

Expert witness, *North Carolina State Conference of the NAACP et al. v. Patrick Lloyd McCrory et al.*, case 13-CV-658, U.S. District Court, Middle District of North Carolina (2014)

Academic researcher, Presidential Commission on Election Administration, established by presidential Executive Order 13639 (2013)

EXHIBIT E