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STUDENT POLICY NOTE

**VIEWING TENNESSEE'S NEW PHOTO IDENTIFICATION  
REQUIREMENTS FOR VOTERS THROUGH HISTORICAL AND  
NATIONAL LENS**

*Daniel Sullivan*

I. Introduction

In 2011, Tennessee became only the fifth U.S. state to strictly require photograph identification as a prerequisite to voting.<sup>1</sup> Over the past decade, a nationwide battle has been brewing over voter identification laws. In fact, “[s]ince 2001, nearly 1,000 bills have been introduced in a total of 46 states,” with 21 states passing “major [voter identification] legislation between 2003 and 2011.”<sup>2</sup> In 2011 alone, 34 states took up the issue, either “proposals for new voter ID laws in states that didn't already require voter ID at the polls (considered in 20 states), [or] proposals to strengthen existing voter ID requirements in order to require photo ID at the polls (considered in 14 states).”<sup>3</sup> Despite its prevalence in state legislatures last year, the debate shows no signs of slowing down, as

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<sup>1</sup> Michael Lollar, *Law Requiring Photo ID Puts Some Tennessee Voters in a Tizzy*, THE COMMERCIAL APPEAL, July 29, 2011, <http://www.commercialappeal.com/news/2011/jul/29/identity-crisis/>. See 2011 Tenn. Pub. Ch. 323; 2011 Tenn. SB 16. Governor Bill Haslam signed the 107<sup>th</sup> General Assembly's Senate Bill No. 16 into law on May 30, 2011.

<sup>2</sup> *Voter Identification Requirements*, NATIONAL CONFERENCE OF STATE LEGISLATURES <http://www.ncsl.org/legislatures-elections/elections/voter-id.aspx> (last visited July 17, 2012).

<sup>3</sup> *Id.*

legislation is pending in 32 states this year.<sup>4</sup>

Despite the majority of states taking on voter identification laws, only 14 states have passed strict photo identification measures,<sup>5</sup> with five blocked by governor veto.<sup>6</sup> Georgia, Indiana, Kansas, and Pennsylvania currently join Tennessee in requiring strict voter identification.<sup>7</sup> Meanwhile, Mississippi, South Carolina, and Texas are awaiting preclearance from the Department of Justice and/or the Federal District Court of Washington, D.C. under Section 5 of the Voting Rights Act of 1965,<sup>8</sup>

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<sup>4</sup> *Id.* These new proposals include “new voter ID proposals in 14 states, proposals to strengthen existing voter ID laws in ten states, and bills in nine states to amend the new voter ID laws passed in 2011.”

<sup>5</sup> “Strict” voter identification laws refer to provisions that state a ballot cannot be cast by a voter without first showing photo identification. “Voters who are unable to show ID at the polls are given a provisional ballot. Those provisional ballots are kept separate from the regular ballots. If the voter returns to election officials within a short period of time after the election (generally a few days [Three days in Tennessee]) and presents acceptable ID, the provisional ballot is counted. If the voter does not come back to show ID, that provisional ballot is never counted.” Non-strict voter identification laws allow voters to cast a regular ballot with a signed affidavit of identity or having a poll worker vouch for their identity due to a personal and previous relationship. *Voter Identification Requirements*, NATIONAL CONFERENCE OF STATE LEGISLATURES

<http://www.ncsl.org/legislatures-elections/elections/voter-id.aspx> (last visited July 17, 2012).

<sup>6</sup> *Id.* (Minnesota, Missouri, Montana, New Hampshire, and North Carolina).

<sup>7</sup> *Id.*

<sup>8</sup> Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (2006)). Section 5 is codified as amended at 42 U.S.C. § 1973c, outlining the procedures when voting qualification standards have been altered, particularly the preclearance procedure from the Department of Justice, and the subsequent appeal process, including the initial hearing by a three judge panel and the final appeal to the Supreme Court of the United States.

before their voter identification laws can go into effect.<sup>9</sup> Lastly, Alabama passed a law requiring strict photo identification starting in 2014 and will also have to receive preclearance under the Voting Rights Act prior to the effective date.<sup>10</sup>

It is not merely state legislatures who are shaping voter identification requirements across the country, but also the executive branch, through the Department of Justice, and the judiciary. The Supreme Court recently provided guidance on the issue in *Crawford v. Marion County Election Board* when it held that an Indiana law requiring photo identification to vote was constitutional.<sup>11</sup> Consequently, most states, including South Carolina and Texas, carefully crafted the language of their laws to conform to Indiana's constitutional model.<sup>12</sup> Despite the deference to the Supreme Court's decision, the Department of Justice has denied preclearance to both South Carolina and Texas.<sup>13</sup> As Texas' appeal reaches the courts, as "part

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<sup>9</sup> Horace Cooper, *Justice Department Plays Fast and Loose with Facts and Constitution in Challenging Texas Voter ID Law*, THE NATIONAL CENTER FOR PUBLIC POLICY RESEARCH (2012), available at <http://www.nationalcenter.org/NPA633.html>. See Also *Voter Identification Requirements*, *supra* note 2 (Explaining South Carolina's and Texas' appeals following denial of preclearance from the Department of Justice).

<sup>10</sup> *Voter Identification Requirements*, *supra* note 2.

<sup>11</sup> *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008).

<sup>12</sup> Cooper, *supra* note 9.

<sup>13</sup> Letter from Thomas Perez, Assistant Attorney Gen., Dep't of Justice, to Keith Ingram, Dir. of Elections, Office of the Tex. Sec'y of State (Mar. 12, 2012) (available at [http://brennan.3cdn.net/fe6a21493d7ec1aafc\\_vym6b91dt.pdf](http://brennan.3cdn.net/fe6a21493d7ec1aafc_vym6b91dt.pdf)); Letter from Thomas Perez, Assistant Attorney Gen., Dep't of Justice, to C. Havird Jones, Jr., Assistant Deputy Attorney Gen., Office of the S.C. Attorney Gen. (Dec. 23, 2011) (available at [http://brennan.3cdn.net/594b9cf4396be7ebc8\\_0pm6i2fx6.pdf](http://brennan.3cdn.net/594b9cf4396be7ebc8_0pm6i2fx6.pdf)). <http://online.wsj.com/article/SB10001424052702304022004577516953618032404.html>.

of a flurry of legal action in the past two years surrounding the Voting Rights Act,”<sup>14</sup> it is a real possibility that the Supreme Court may revisit the Voting Rights Act of 1965, particularly Section 5.<sup>15</sup>

The recent push for more stringent voter identification requirements has been widely debated, with strong convictions on both sides,<sup>16</sup> and not surprisingly, down party lines.<sup>17</sup> While voter fraud concerns may be valid, all citizens’ right to vote must be fiercely protected,

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<sup>14</sup> Devlin Barrett, *U.S., Texas Clash Over Voter-ID Law*, WALL ST. J., July 9, 2012,

<sup>15</sup> See generally Barrett, *supra* note 14 (stating “The... cases represent part of a flurry of legal action in the past two years surrounding the Voting Rights Act, raising expectations among some experts the Supreme Court will review the law after the November election.”); Charles P. Pierce, *A National Campaign vs. Voting Rights... Goes National*, ESQUIRE, The Politics Blog (July 9, 2012, 10:00 AM), <http://www.esquire.com/blogs/politics/voting-rights-act-dc-circuit-court-10487202?hootPostID=2f4807f10b2b65f6c70beb69aa71bddb> (“Texas is challenging Section 5 and, through it, *de facto*, the entire enforcement mechanism of the VRA....”); Drew Singer, *Texas Says Voter ID Law Needed to Combat Election Fraud*, CHI. TRIB., July 9, 2012, [http://articles.chicagotribune.com/2012-07-09/news/sns-rt-us-usa-texas-voterbre8681h7-20120709\\_1\\_voter-id-law-texas-voters-voter-fraud](http://articles.chicagotribune.com/2012-07-09/news/sns-rt-us-usa-texas-voterbre8681h7-20120709_1_voter-id-law-texas-voters-voter-fraud) (stating “Texas hopes the case will eventually lead to a U.S. Supreme Court ruling that the Voting Rights Act, passed in 1965 amid civil rights protests to protect minority voters, has outlived its usefulness.”).

<sup>16</sup> Stephen Ansolabehere & Nathaniel Persily, *Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements*, 121 HARV. L. REV. 1737, 1738-39 (2008) (“When critics point to the lack of prosecutions or reported incidences of voter impersonation fraud, defenders of such laws reply, in part, that successful fraud goes undetected. When defenders of voter ID argue that such laws lead to very few people being turned away from the polls or having their votes uncounted, critics respond that even a violation of the voting rights of a few is constitutionally impermissible....”).

<sup>17</sup> WENDY R. WEISER AND LAWRENCE NORDEN, BRENNAN CENTER FOR JUSTICE, *VOTING LAW CHANGES IN 2012* 8-9 (2011).

especially in light of voting rights' evolution in America. Most states that have enacted new voter identification laws have included provisions in their laws to alleviate opponents' concerns of disenfranchising voters and to maintain constitutionality.<sup>18</sup> However, these protections often do not go far enough, or are omitted from some states' laws. On its face, the requirement to show photo identification before voting should not be controversial. Yet the United States has struggled to provide voting equality since its inception, often having to overcome overt racism and fluid barriers to voting. With political undertones, disproportionate disenfranchisement, and a statistically weak justification, the new photo identification laws are not sound policy.

## II. Historical Development of Voting Rights

### A. Voting Rights Expansion

With identification widely required in every day transactions of the American citizen and the legitimate state interest to assure authentic elections of public officials,<sup>19</sup> the fears present during the voter identification debate cannot be truly understood without a historical understanding of the United States voting rights evolution. When the United States' Constitution was adopted and ratified in 1787, it remained silent on voter qualifications and rights.<sup>20</sup> Instead, those decisions were left to the states, with the predominant qualifications being a white male with property. With all remaining Colonial religion-

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<sup>18</sup> See *Voter Identification Requirements*

<sup>19</sup> *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181,191 (2008) ("The State has a valid interest in participating in a nationwide effort to improve and modernize election procedures that have been criticized as antiquated and inefficient.").

<sup>20</sup> See U.S. CONST.

based voting requirements eliminated by 1790, “60 to 70 [%] of adult white men could vote,” and in six states freed African Americans were allowed to vote as well.<sup>21</sup> It would take over 60 years for the next progression of voting rights to conclude, as North Carolina eliminated property requirements for white male voters in 1856, “effectively extending the right to vote to all white men within the United States.”<sup>22</sup>

As this tremendous expansion of white male voting occurred, African Americans were being denied the right to vote consistently as “[e]very new state that joined the Union after 1819 explicitly denied blacks the right to vote.”<sup>23</sup> Even as North Carolina ended property restrictions for white males, only Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont freely allowed African Americans the right to vote without “significant restrictions.”<sup>24</sup> Often overshadowed by the struggle by later Jim Crow laws, it was not only African Americans who were disenfranchised at the time; Mexican Americans living in western states were given U.S. citizenship in 1848 as the Mexican American War ended, but their newly acquired voting rights were effectively barred with property and literacy restrictions.<sup>25</sup>

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<sup>21</sup> Steven Mintz, *Winning the Vote: A History of Voting Rights*, THE GILDER LEHRMAN INSTITUTE OF AMERICAN HISTORY, <http://www.gilderlehrman.org/history-by-era/government-and-civics/essays/winning-vote-history-voting-rights> (last accessed July 10, 2012) (Maryland, Massachusetts, New York, North Carolina, Pennsylvania, and Vermont).

<sup>22</sup> *Voting Rights Act Timeline*, AMERICAN CIVIL LIBERTIES UNION 1 (Mar. 4, 2005), [http://www.aclu.org/files/assets/voting\\_rights\\_act\\_timeline20111222.pdf](http://www.aclu.org/files/assets/voting_rights_act_timeline20111222.pdf).

<sup>23</sup> Mintz, *supra* note 21.

<sup>24</sup> *Id.*

<sup>25</sup> See *Voting Rights Act Timeline*, *supra* note 22 (“The Treaty of

Despite the expansion of citizenship and voting rights that occurred in the early 19<sup>th</sup> century, a larger battle was brewing in the country, and it was not until the Civil War ended that the United States began to truly assimilate minority groups into the voter pool. A year after the war concluded, the Civil Rights Act of 1866 was enacted,<sup>26</sup> granting citizenship to “all persons born in the United States,”<sup>27</sup> regardless of race or color,<sup>28</sup> and “without regard to any previous condition of involuntary servitude....”<sup>29</sup> This language provided the basis for the citizenship clause of the Fourteenth Amendment, included, in part, to quell fears that the Civil Rights Act of 1866 would be repealed or limited.<sup>30</sup> Despite this vast expansion of rights for African Americans and other minorities in the wake of the Civil War, the right to vote was not included. Hence, in 1869 Congress passed the last of the Reconstruction amendments, the Fifteenth Amendment, which states: “The right of citizens of the United States to vote shall not be denied or abridged by the United States *or by any State* on

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Guadalupe-Hidalgo end[ed] the Mexican American War, giving Mexicans in Arizona, California, New Mexico and Texas U.S. citizenship... Property and literacy requirements are imposed to keep them from voting, along with violence and intimidation.”).

<sup>26</sup> Law Library of Congress, *Fourteenth Amendment and Citizenship*, LIBRARY OF CONGRESS (Apr. 30, 2012), [http://www.loc.gov/law/help/citizenship/fourteenth\\_amendment\\_citizenship.php](http://www.loc.gov/law/help/citizenship/fourteenth_amendment_citizenship.php). The Civil Rights Act of 1866 was originally passed in 1865 but was defeated by presidential veto.

<sup>27</sup> Civil Rights Acts of 1866, ch. 31, § 1, 14 Stat. 27 (1866) (current version at 42 U.S.C.S. § 1982 (2012)). This did not include persons “subject to any foreign power, excluding Indians not taxed.”

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Law Library of Congress, *supra* note 26. *See also* U.S. CONST. amend. XIV § 1.



account of race, color or previous condition of servitude.”<sup>31</sup>

Nearly a hundred years after the birth of the United States of America, men of all races were constitutionally guaranteed the right to vote. It would be another fifty years before women, of all races, were given the right to vote.<sup>32</sup> However, as time would tell, there is a vast difference between the right to vote and being able to vote; following a wave of expanded voting rights through Reconstruction, a coming contraction of voting rights, capped by the infamous Jim Crow laws, threatened to nullify the progress made in the century after the birth of America.

#### B. Contraction of Voting Rights and the Rise of Disenfranchisement

As opponents argue strict photo identification will do, the events of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries did not rescind voting rights per se,<sup>33</sup> but instead restricted

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<sup>31</sup> U.S. CONST. amend. XV § 1 (emphasis added). The requisite number of states ratified the Fifteenth Amendment less than a year after passing, on February 3, 1870.

<sup>32</sup> See U.S. CONST. amend XIX § 1. See also *Voting Rights Act Timeline*, *supra* note 22 (“Voting rights for women were first proposed in July 1848, at the Seneca Falls Woman’s Rights Convention .... It took 72 years of protest and activism for the Nineteenth Amendment to become law. The measure was ratified by a single vote margin in the Tennessee state legislature on August 18, 1920, and became national law eight days later.”)

<sup>33</sup> See *Voting Rights Act Timeline*, *supra* note 22. While most of the efforts only placed restrictions and encumbrances on the voting process, some citizens did lose their right to vote. In 1882, the Chinese Exclusion Act denied citizenship, and therefore voting rights, to Chinese Americans. Meanwhile, Native Americans faced their own challenges to voting. *Elk v. Wilkins*, 112 U.S. 94 (1884), held that Native Americans were not citizens without approval by the United States, and that the Fifteenth Amendment was not applicable to Native Americans. The Dawes General Allotment Act of 1887 went as far to

them to the point of de facto rescission.<sup>34</sup> It began with the the “election” of Rutherford B. Hayes in 1876,<sup>35</sup> when the Hayes-Tilden compromise ended Reconstruction and “thus guarantee[d] home rule – meaning white control – in the South.”<sup>36</sup> With the end of Reconstruction, state legislatures in the South began to employ various measures to disenfranchise African American voters, including “district gerrymandering, purposeful closing of black polling places, poll taxes, literacy tests, grandfather clauses, and above all else, waves of Ku Klux Klan terrorism in the form of lynchings and vigilante violence against blacks and white

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demand that Native Americans renounce their tribes to gain citizenship and the right to vote. Even after the Indian Naturalization Act of 1890, creating a process for Native Americans to gain United States citizenship, Native Americans were restricted from voting in state and local elections, thanks to rulings such as *Opsahl v Johnson*, 163 N.W. 988 (1917), which held that the Native Americans had not sufficiently adopted the language, customs, and habits of civilization.

<sup>34</sup> See, e.g., Karyn L. Bass, *Are We Really Over the Hill Yet? The Voting Rights Act at Forty Years: Actual and Constructive Disenfranchisement in the Wake of Election 2000 and Bush v. Gore*, 54 DEPAUL L. REV. 111, 116-17 (2004).

<sup>35</sup> See Richard Wormser, *Hayes-Tilden Election (1876)*, Jim Crow Stories, PUBLIC BROADCASTING SERVICE (2002), [http://www.pbs.org/wnet/jimcrow/stories\\_events\\_election.html](http://www.pbs.org/wnet/jimcrow/stories_events_election.html) (Democrat candidate Samuel J. Tilden received 184 electoral votes, one shy of the majority, and Republican candidate Rutherford B. Hayes received 165 electoral votes in 1866. Twenty electoral votes were still in dispute, with 19 of those coming from southern states controlled by Democrats, although Republicans maintained control of the election boards in all three states. The election was marred with fraud, violence, and intimidation, particularly in the southern states. Enough votes were thrown out to guarantee a Hayes victory, however Southern Democrats would not accept the result until a compromise was struck.)

<sup>36</sup> *Id.* Accord Bass, *supra* note 34, at 116 (“In direct response to the post-Civil War amendments, the South enacted a number of ‘legal and extralegal’ reforms to limit the political power of freed black men and to enable the Southern Caste system to continue.”).

civil rights activists in the South.”<sup>37</sup> While each of these hindered the ability of African Americans to exercise their newly acquired right to vote, this paper will only discuss the most analogous to the photograph identification requirement now required in Tennessee, poll taxes, despite other “Jim Crow Laws” present in the South, such as literacy tests, and new registration systems,<sup>38</sup> and those alike in northern and western states.<sup>39</sup>

The most infamous form of historical disenfranchisement may be the poll tax,<sup>40</sup> as there would eventually be a constitutional amendment ratified in 1964 to prohibit its use in federal elections.<sup>41</sup> The use of poll taxes as a form of disenfranchisement began in Georgia in 1871.<sup>42</sup> An even more severe form of the tax, the cumulative poll tax, was introduced in Georgia in 1877, forcing “white and black men between 21 and 60 years of age [to] pay a sum of money for every year since their twenty-first birthday, or since the law took effect.”<sup>43</sup> The effects of the poll tax were sudden and immediate, with overall voter turnout reduced by 16-28%. Within the African American community turnout was nearly cut in

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<sup>37</sup> Bass, *supra* note 34, at 116 (citing Alexander Keyssar, *THE RIGHT TO VOTE* 105-27 (2000)).

<sup>38</sup> *White Only: Jim Crow in America*, SMITHSONIAN NATIONAL MUSEUM OF AMERICAN HISTORY 1, <http://americanhistory.si.edu/brown/history/1-segregated/white-only-1.html> (last visited July 14, 2012).

<sup>39</sup> Mintz, *supra* note 21.

<sup>40</sup> A poll tax required prospective voters to pay a tax in return for the ability to vote.

<sup>41</sup> U.S. CONST. amend. XXIV § 1.

<sup>42</sup> Elizabeth Anderson & Jeffrey Jones, *Race, Voting Rights, and Segregation: Direct Disenfranchisement* (Sept. 2002), <http://www.umich.edu/~lawrace/>.

<sup>43</sup> Clarissa Myrick-Harris & Norman Harris, *Atlanta in the Civil Rights Movement*, ATLANTA REGIONAL COUNCIL FOR HIGHER EDUCATION (2005),

half.<sup>44</sup> The poll tax spread quickly as an effective way to disenfranchise African American voters and by 1904 every former confederate state had adopted either the poll tax or the cumulative poll tax.<sup>45</sup> The continued use of the poll tax was not solely the work of southern legislatures, as the Supreme Court upheld the constitutionality of the poll tax as a “legitimate device for raising revenue”<sup>46</sup> in *Breedlove v. Suttles*.<sup>47</sup> However, following the ratification of the Twenty-Fourth Amendment, the Supreme Court protected voters from the same tax, declaring unconstitutional a Virginia law that forced voters to choose between a poll tax or a “burdensome”<sup>48</sup> certificate of residency six months before the election.<sup>49</sup> It would not be until the Voting Rights Act of 1965, and an independent declaration of unconstitutionality by the Supreme Court in 1966,<sup>50</sup> that the poll tax would finally meet its demise.<sup>51</sup>

### C. The Voting Rights Act of 1965

Despite all the advances made in the voting rights movement by constitutional amendment, perhaps the most tangible protections came through the Voting Rights Act of 1965, President Lyndon B. Johnson’s uncompromising

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[http://www.atlantahighered.org/civilrights/essay\\_detail.asp?phase=1](http://www.atlantahighered.org/civilrights/essay_detail.asp?phase=1).

<sup>44</sup> Anderson, *supra* note 42 (citing J. Morgan Kousser, *THE SHAPING OF SOUTHERN POLITICS: SUFFRAGE RESTRICTION AND THE ESTABLISHMENT OF THE ONE-PARTY SOUTH, 1880-1910* 67-68 (1974)).

<sup>45</sup> Anderson, *supra* note 42.

<sup>46</sup> *Id.*

<sup>47</sup> *Breedlove v. Suttles*, 302 U.S. 277 (1937).

<sup>48</sup> Anderson, *supra* note 42.

<sup>49</sup> *Harman v. Forssenius*, 380 U.S. 528 (1965).

<sup>50</sup> *See Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966).

<sup>51</sup> Anderson, *supra* note 42.

initiative.<sup>52</sup> The bill was the culmination of over 100 years of struggle for equality, and the landmark legislation helped to wind down the Civil Rights movement, legislatively and practically.<sup>53</sup> Upon signing, President Johnson delivered a powerful speech and foreshadowed the fight over voter identification requirements today: "This law covers many pages. But the heart of the act is plain. Wherever, by clear and objective standards, States and counties are using regulations, or laws, or tests to deny the right to vote, then they will be struck down."<sup>54</sup> The Voting Rights Act has been amended and renewed four times since its passage,<sup>55</sup> most recently in 2006 when it was extended through 2031.<sup>56</sup>

The Voting Rights Act of 1965 was primarily passed as an extension of the 1957, 1960, and 1964 Civil Rights Acts<sup>57</sup> and as an enforcement tool for the Twenty--Fourth amendment.<sup>58</sup> The previous ten years provided new enforcement powers for the executive branch, judicial oversight of voter rights implementation, and the limitation

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<sup>52</sup> See Bruce Ackerman & Jennifer Nou, *Canonizing the Civil Rights Revolution: The People and the Poll Tax*, 103 NW. U. L. REV. 63, 87-88 (2009).

<sup>53</sup> See Generally, *Voting Rights Act Timeline*, *supra* note 22 (*Brown v. Board of Education*, 347 U.S. 483 (1954), ending racial segregation in schools, was decided in 1954. Congress passed Civil Rights Acts in 1957, 1960, and 1964 to further reduce race based discrimination in the country. )

<sup>54</sup> Remarks in the Capitol Rotunda at the Signing of the Voting Rights Act, 1 PUB. PAPERS 409 (August 6, 1965).

<sup>55</sup> *History of Federal Voting Rights Laws: The Voting Rights Act of 1965*, DEPT. OF JUSTICE, [http://www.justice.gov/crt/about/vot/intro/intro\\_b.php](http://www.justice.gov/crt/about/vot/intro/intro_b.php) (last accessed July 14, 2012).

<sup>56</sup> *Bush signs Voting Rights Act extension*, ASSOCIATED PRESS (July 27, 2006, 11:27 PM), <http://www.msnbc.msn.com/id/14059113/#.UARrq44yHww>.

<sup>57</sup> *The Voting Rights Act of 1965*, *supra* note 55.

<sup>58</sup> Ackerman, *supra* note 52, at 87.

of both the poll tax and literary tests.<sup>59</sup> However, the latest example of terror and violence,<sup>60</sup> the fiercest of disenfranchisement tools available to those opposed to voting equality that underlies the whole evolution of civil rights,<sup>61</sup> provided the catalyst needed for President Johnson and the legislative body he previously ran to produce a bill that marks the pinnacle of voting rights expansion.

While the Act of 1965 was ambitious in all respects, Section 2 and Section 5 enabled the pivot towards true voting equality. Section 2 barred any “voting qualification or prerequisite to voting, or standard, practice or procedure” that denied or abridged the right to vote due to race or color.<sup>62</sup> This proclamation is so integral that it does not require reauthorization.<sup>63</sup> Section 5, however, was originally enacted for only five years and applied only to certain states according to a formula laid out in Section 4.<sup>64</sup> At the time of enactment, six states were subject to Section 5, all former Confederate states.<sup>65</sup> Three additional states

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<sup>59</sup> U.S. CONST. XXIV § 1. *See Introduction To Federal Voting Rights Laws: Before the Voting Rights Act*, DEPT. OF JUSTICE, [http://www.justice.gov/crt/about/vot/intro/intro\\_a.php](http://www.justice.gov/crt/about/vot/intro/intro_a.php) (last accessed July 14, 2012) (The Civil Rights Act of 1957 created the Department of Justice’s Civil Rights Division and granted injunctive relief powers to the Attorney General. The 1960 Act “permitted federal courts to appoint voting referees to conduct voter registration following a judicial finding of voting discrimination.”).

<sup>60</sup> *History of Federal Voting Rights Laws*, *supra* note 55.

<sup>61</sup> *See id.*

<sup>62</sup> Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 445 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (2006)).

<sup>63</sup> *Section 2 of the Voting Rights Act*, DEPT. OF JUSTICE, [http://www.justice.gov/crt/about/vot/sec\\_2/about\\_sec2.php](http://www.justice.gov/crt/about/vot/sec_2/about_sec2.php) (last accessed July 14, 2012) (“Section 2 is permanent and has no expiration date as do certain other provisions of the Voting Rights Act.”).

<sup>64</sup> *About Section 5 of the Voting Rights Act*, DEPT. OF JUSTICE, [http://www.justice.gov/crt/about/vot/sec\\_5/about.php](http://www.justice.gov/crt/about/vot/sec_5/about.php) (last accessed July 14, 2012).

<sup>65</sup> *Section 5 Covered Jurisdictions*, DEPT. OF JUSTICE,

were subjected in 1975, Alaska and Arizona as the first two outside of the South.<sup>66</sup> Currently, seven additional states have counties or towns subjected to Section 5 as well.<sup>67</sup> Section 5 barred changes to voting procedures and/or registration in the covered areas and suspended all practices in place in the states originally covered by the law until there was administrative review or a judicial decision.<sup>68</sup>

The Voting Rights Act of 1965 provided immediate results, both in voting and representation.<sup>69</sup> Most importantly, it withstood multiple legal challenges to its constitutionality.<sup>70</sup> In *South Carolina v. Katzenbach*, the expansion of voting rights came full circle, as the Court found that the Fifteenth Amendment granted Congress “full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting.”<sup>71</sup> Additionally, it upheld Section 5 of the Act, stating: “Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting,”<sup>72</sup> and that Congress acted “in a permissibly decisive manner.”<sup>73</sup>

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[http://www.justice.gov/crt/about/vot/sec\\_5/covered.php](http://www.justice.gov/crt/about/vot/sec_5/covered.php) (last accessed July 14, 2012). The states are Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. Section 5 became applicable on November 1, 1964 in each of the states by 30 FR 9897.

<sup>66</sup> *Id.* Alaska and Arizona each have their own large minority voting bloc, Native Americans and Hispanics, respectively. Texas was also added in 1975.

<sup>67</sup> *Id.* California, Florida, New York, North Carolina, and South Dakota have multiple counties covered by Section 5. Michigan and New Hampshire have particular townships covered by Section 5.

<sup>68</sup> *About Section 5 of the Voting Rights Act*, *supra* note 64.

<sup>69</sup> *See Voting Rights Act Timeline*, *supra* note 22.

<sup>70</sup> *See id.*

<sup>71</sup> *South Carolina v. Katzenbach*, 383 U.S. 301, 326 (1966); *Voting Rights Act Timeline*, *supra* note 22.

<sup>72</sup> *Katzenbach*, 383 U.S. at 328.

<sup>73</sup> *Id.* At 335. In full, the Court stated: “Congress knew that some of the States covered ... had resorted to the extraordinary stratagem of

The Supreme Court further expanded the scope of Section 5 in *Allen v. State Bd. Of Elections*,<sup>74</sup> when it read the Act broadly, finding “the legislative history on the whole supports the view that Congress intended to reach any state enactment which altered the election law of a covered State in even a minor way.”<sup>75</sup>

However, the Court has limited the Act as well. In *Beer v. United States*, the Court held that changes affecting minority communities could receive preclearance under Section 5 when they do not “lead to retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.”<sup>76</sup> Additionally, the Court held in *Mobile v. Bolden* that parties seeking relief under Section 2 of the Voting Rights Act must prove discriminatory intent instead of merely discriminatory results.<sup>77</sup> However this decision was invalidated in the 1982 amendment and reauthorization of the Voting Rights Act.<sup>78</sup> One of the more recent cases has provided the opening needed for the recent surge in voter identification law proposals; *Reno v. Bossier Parish School Board*, which held “that § 5 does not prohibit preclearance of a redistricting plan enacted with a discriminatory but

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contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees. Congress had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself. Under the compulsion of these unique circumstances, Congress responded in a permissibly decisive manner.”

<sup>74</sup> *Allen v. State Bd. Of Elections*, 393 U.S. 544 (1969).

<sup>75</sup> *Id.* At 566.

<sup>76</sup> *Beer v. United States*, 425 U.S. 130, 141 (1976); *Voting Rights Act Timeline*, *supra* note 22.

<sup>77</sup> *Voting Rights Act Timeline*, *supra* note 22; *See Mobile v. Bolden*, 446 U.S. 55 (1980).

<sup>78</sup> *Voting Rights Act Timeline*, *supra* note 22.



nonretrogressive purpose.”<sup>79</sup>

The past decade has seen many changes in voter identification requirements, as discussed in the introduction. Like Tennessee, many states decided to require strict photo identification to vote. Unlike Tennessee, some states are subject to Section 5 of the Voting Rights Act of 1965. One such states, Texas, has taken an aggressive approach and is currently challenging the continued constitutionality of Section 5 and the Voting Rights Act.<sup>80</sup> Texas maintains that Section 5 creates a “two-tracked system of sovereignty” for states subject to Section 5 and those that are not.<sup>81</sup> Meanwhile, the Department of Justice, through United States Attorney General Eric Holder Jr., challenges Texas’ and other strict photo identification requirements as unconstitutional poll taxes in a different form.<sup>82</sup> Texas’ suit is one of many recent challenges to the Voting Rights Act; in the past two years there have been more lawsuits filed than “in the previous

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<sup>79</sup> *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 341 (2000). The 2006 Reauthorization of the Voting Rights Act of 1965 redefined § 5’s “purpose” as “any discriminatory purpose. *See also Voting Rights Act Timeline*, *supra* note 22

<sup>80</sup> Amended Complaint at 26, *Texas v. Holder*, No. 12-cv-00128 (D.D.C. argued July 10, 2012) (“The State of Texas is entitled to a declaratory judgment authorizing the immediate implementation of Senate Bill 14 because section 5 of the Voting Rights Act violates the Constitution.”) (available at [http://moritzlaw.osu.edu/electionlaw/litigation/documents/amendedcomplaint\\_006.pdf](http://moritzlaw.osu.edu/electionlaw/litigation/documents/amendedcomplaint_006.pdf)). *See, e.g.*, Drew Singer, *Texas to Test 1965 Voting Rights Law in Court*, REUTERS (July 8, 2012, 11:52 AM), <http://www.reuters.com/article/2012/07/08/us-usa-texas-voter-idUSBRE86706W20120708>.

<sup>81</sup> Amended Complaint, *supra* note 80, at 25.

<sup>82</sup> Eric Holder Jr., U.S. Attorney General, Department of Justice, Address at the NAACP 103<sup>rd</sup> Annual Convention (July 10, 2012); Bruce Ackerman & Jennifer Nou, *Texas’ Poll Tax in Disguise*, L.A. TIMES, July 15, 2012,

45 years combined.”<sup>83</sup> It is expected that the Supreme Court will hear arguments concerning the continued constitutionality of the Voting Rights Act as early as next term.<sup>84</sup>

### III. Viewing Tennessee’s New Law Through a National Lens

The courts will decide whether strict photo identification requirements are analogous to poll taxes. If they are, then the Twenty Fourth Amendment will bar the new laws. However, *Crawford v. Marion County Election Board* suggests that strict photo identification requirements like Indiana’s will withstand constitutional challenges.<sup>85</sup> As in Indiana, Tennessee will provide photo identification for free, provided voters can show proof of citizenship and two proofs of Tennessee residency.<sup>86</sup> Tennessee’s law also shows some leniency, allowing multiple forms of government issued photo identification, including expired driver licenses.<sup>87</sup> Furthermore, Tennessee retained an affidavit of identity as an avenue for indigent citizens to

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<http://www.latimes.com/news/opinion/commentary/la-oe-ackerman-texas-poll-tax-20120715,0,6684651.story>.

<sup>83</sup> Barrett, *supra* note 14.

<sup>84</sup> See, e.g., *id.*; Richard L. Hasen, *Holder’s Voting Rights Gamble*, SLATE (Dec. 30, 2011, 1:09 PM), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2011/12/the\\_obama\\_administration\\_s\\_risky\\_voter\\_id\\_move\\_threatens\\_the\\_voting\\_rights\\_act.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2011/12/the_obama_administration_s_risky_voter_id_move_threatens_the_voting_rights_act.html); Singer, *supra* note 80.

<sup>85</sup> See *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008).

<sup>86</sup> *Voter Photo ID*, TENNESSEE DEPARTMENT OF SAFETY AND HOMELAND SECURITY, <http://www.tn.gov/safety/photoids.shtml> (last accessed July 17, 2012).

<sup>87</sup> *Id.* See also *Voter Identification Requirements*, *supra* note 2 (Other strict photo identification states do not allow expired documents. Kansas only accepts expired documents if the bearer is 65 or older.

vote.<sup>88</sup>

Tennessee's new law only recently became effective, making it difficult to measure the impact it has had in the state. Therefore, it is easier to view the law's effects through a national scope. It is estimated that nationwide roughly "11 percent of American citizens do not possess a government-issued photo ID; that is over 21 million citizens,"<sup>89</sup> and "up to 10 percent of registered voters nationwide lack valid photo ID cards."<sup>90</sup> Estimates for Tennessee specifically range anywhere from 126,000 to 675,000 citizens.<sup>91</sup> As of 2010, it was estimated that Tennessee has a voting-eligible population of 4,621,705.<sup>92</sup> At the end of 2011, only 3,882,129 of these eligible voters

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Pennsylvania only allows expired licenses if it has been less than 12 months since expiration. Rhode Island's law, effective in 2014, will not permit any expired documents. South Carolina does not accept expired documents. Texas' proposed identification laws only allow expired certificate of citizenship.).

<sup>88</sup> Tenn. Code Ann. 2-7-112(f) (2011).

<sup>89</sup> WENDY R. WEISER and LAWRENCE NORDEN, BRENNAN CENTER FOR JUSTICE, VOTING LAW CHANGES IN 2012 2 (2011).

<sup>90</sup> Nick Wing, *Tennessee Voter ID Law Could Disenfranchise Thousands As State Program Fails to Reach Voters*, THE HUFFINGTON POST (July 12, 2012 6:38 PM), [http://www.huffingtonpost.com/2012/07/12/tennessee-voter-id-law-program\\_n\\_1669323.html](http://www.huffingtonpost.com/2012/07/12/tennessee-voter-id-law-program_n_1669323.html).

<sup>91</sup> Bill Dries, *Partisans Debate State Voter ID Law*, MEMPHIS DAILY NEWS, NOV. 2, 2011, <http://www.memphisdailynews.com/editorial/Article.aspx?id=63369> (State Democrats estimate that more than 675,000 Tennesseans do not have a driver's license or have a license with no photo. Tennessee Elections Coordinator, Mark Goins, estimates there are only 126,000 citizens that are of voting age and don't have a driver's license with photo identification.). See Also Wing, *supra* note 90 (Mark Goins estimate is likely based on reports that 126,000 registered senior voters have received driver's licenses issued without photographs.)

<sup>92</sup> Dr. Michael McDonald, *2010 General Election Turnout Rates*, UNITED STATES ELECTIONS PROJECT, GEORGE MASON UNIVERSITY, Dec. 28, 2011, [http://elections.gmu.edu/Turnout\\_2010G.html](http://elections.gmu.edu/Turnout_2010G.html).

were registered.<sup>93</sup> Applying the ten percent national estimate and combining it with the average of state specific estimates, there could be roughly 421,000 Tennessee citizens, or approximately 10.8% of the electorate, directly affected by the new voter identification laws.<sup>94</sup> Assuming voter turnout is similar to that for the 2008 Presidential election,<sup>95</sup> 279,291 likely voters could be deterred from voting by the new law. Despite a Tennessee program designed to help eligible voters obtain the requisite voter identification, early returns show it has hardly made a dent in the affected populations, issuing only 20,923 photo identification cards.<sup>96</sup>

Subjecting approximately seven percent of likely voters to burdensome voting processes should never be accepted in a country that values the power of voting and treasures the constitutional right to vote so dearly.<sup>97</sup>

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<sup>93</sup> TENNESSEE DIVISION OF ELECTIONS, VOTER REGISTRATION: DECEMBER 1, 2011 SIX MONTH SUMMARY REPORT at 2 (available at <http://www.tn.gov/sos/election/data/reg/2011-12.pdf>).

<sup>94</sup>  $(126,000 + 675,000 + 462,000) / 3 = 421,000$ .  $421,000 / 3,882,129$  (figure from VOTER REGISTRATION: DECEMBER 1, 2011 SIX MONTH SUMMARY REPORT, *supra* note 93) =  $.108445649 \approx 10.8\%$ .

<sup>95</sup> TENNESSEE DIVISION OF ELECTIONS, STATISTICAL ANALYSIS OF VOTER TURNOUT FOR THE NOVEMBER 4, 2008 ELECTION at 2 (available at <http://www.tn.gov/sos/election/data/turnout/2008-11.pdf>).

<sup>96</sup> Chris Kromm, *Tennessee Program to Provide Photo IDs Missing Most Voters Who Need It*, THE INSTITUTE FOR SOUTHERN STUDIES (July 12, 2012, 11:11 AM), <http://www.southernstudies.org/2012/07/tennessee-program-to-provide-photo-ids-missing-most-voters-who-need-it.html> (In an email to Facing South, Jennifer Donnals of the Tennessee Department of Safety and Homeland Security stated, "As of Monday, July 9 our department had issued 20,923 state IDs for voting purposes to citizens in Tennessee."). Based on the likely voter number calculated in the prior sentence, over 258,000 eligible, likely voters remain without proper identification.

<sup>97</sup> Show where 7% number comes from.

If there were a compelling reason to do so, however, it would be to deter fraud and ensure that no illegitimate votes dilute the value of legitimate ones.<sup>98</sup> Nationwide, though, there has been no significant data to indicate widespread voter fraud, particularly the kind of fraud that photo identification requirements address.<sup>99</sup> According to a former member of the Commission on Federal Election Reform, “a photo ID requirement would prevent over 1,000 legitimate votes (perhaps over 10,000 legitimate votes) for every single improper vote prevented.”<sup>100</sup> More troubling, studies consistently show that the most likely to be disenfranchised by photo identification requirements are minorities, the elderly, the poor, and young adults.<sup>101</sup> While at least ten percent of eligible voters do not have valid photo identification for voting, “25 percent of African

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<sup>98</sup> See *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008).

<sup>99</sup> See *Policy Brief on Voter Identification*, BRENNAN CENTER FOR JUSTICE, (Sept. 2006), [http://www.brennancenter.org/content/resource/policy\\_brief\\_on\\_voter\\_identification/](http://www.brennancenter.org/content/resource/policy_brief_on_voter_identification/) (In Ohio there were “four instances of ineligible persons voting or attempting to vote... a rate of .00004%. Georgia’s Secretary of State “could not recall one documented case of voter fraud relating to the impersonation of a registered voter at the polls during her ten-year tenure.” Finally, since 2002, there have only been “86 individuals...convicted of federal crimes relating to election fraud (including several offenses not remedied by identification requirements), while 196,139,871 ballots have been cast in federal general elections.”); Judith Browne Dianis, *Five Myths About Voter Fraud*, WASH. POST, Oct. 7, 2011, [http://www.washingtonpost.com/opinions/five-myths-about-voter-fraud/2011/10/04/gIQAkjoYTL\\_story.html](http://www.washingtonpost.com/opinions/five-myths-about-voter-fraud/2011/10/04/gIQAkjoYTL_story.html) (“An investigation of fraud allegations in Wisconsin in 2004 led to the prosecution of 0.0007 percent of voters. From 2002 to 2005, the Justice Department found, only five people were convicted for voting multiple times. In that same period, federal prosecutors convicted only 86 people for improper voting.”).

<sup>100</sup> Dianis, *supra* note 99.

<sup>101</sup> *Id.*

Americans, 15 percent of those earning less than \$35,000, 18 percent of citizens age 65 or older and 20 percent of voters age 18 to 29” do not.<sup>102</sup> Coincidentally, perhaps, these groups tend to vote Democrat.<sup>103</sup>

#### IV. Conclusion

The Tennessee law is not as restrictive as other states’ similar measures. It retains the affidavit of identity

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<sup>102</sup> *Id.* See also *Policy Brief on Voter Identification*, *supra* note 99 (“The impact of ID requirements is even greater for the elderly, students, people with disabilities, low-income individuals, and people of color...Fewer than 3 percent of Wisconsin students have driver’s licenses listing their current address. The same study found that African Americans have driver’s licenses at half the rate of whites, and the disparity increases among younger voters; only 22% of black men aged 18-24 had a valid driver’s license. Not only are minority voters less likely to possess photo ID, but they are also more likely than white voters to be selectively asked for ID at the polls.”); Weiser, *supra* note 89 at 1 (“These new restrictions fall most heavily on young, minority, and low-income voters, as well as on voters with disabilities. This wave of changes may sharply tilt the political terrain for the 2012 election.”)

<sup>103</sup> See Jonathan Chait, *2012 or Never*, N.Y. MAGAZINE, Feb. 26, 2012, <http://nymag.com/news/features/gop-primary-chait-2012-3/> (Discussing the changing demographics in America that shows “[e]very year, the nonwhite proportion of the electorate grows by about half a percentage point—meaning that in every presidential election, the minority share of the vote increases by 2 percent, a huge amount in a closely divided country.” Meanwhile, “The Republican Party had increasingly found itself confined to white voters, especially those lacking a college degree and rural whites....”); Mark Lopez & Paul Taylor, *Dissecting the 2008 Electorate: Most Diverse in U.S. History*, PEW RESEARCH CENTER (Apr. 30, 2009), <http://pewresearch.org/assets/pdf/dissecting-2008-electorate.pdf> (showing 95% of African-Americans, 67% of Latino voters, and 62% of Asian voters voted Democrat in the last election. Furthermore, whites made up the lowest percent of the electorate in history, while African Americans, Hispanics, and Asians each “accounted for unprecedented shares of the presidential vote in 2008.” A combination

for those with religious objections or indigent citizens.<sup>104</sup> Additionally, it allows expired forms of identification to be used. Its trial run, the 2012 Republican primary, showed mixed results with 154 ballots being blocked.<sup>105</sup> Despite the relatively low number of blocked ballots, it may not be indicative of the effects in the 2012 Presidential election, as the demographics of the electorate will be entirely different.<sup>106</sup> Tennessee's law does provide some protections for two of the most affected groups most likely to be affected, the elderly, with the free conversion of non-photo driver's licenses, and the poor, through the identity affidavit.<sup>107</sup> Yet it does not address minority voters and expressly burdened young voters, recently a more active voting bloc, especially among minorities, by omitting a provision allowing university identification to serve as proper identification to vote.<sup>108</sup> Finally, it does not affect

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of two of the most affected groups, African Americans aged 18 to 29 "increased their voter turnout rate by 8.7[%]".)

<sup>104</sup> *Voter Photo ID*, *supra* note 86.

<sup>105</sup> Mike Baker, *Voter ID Laws Could Block Thousands From Voting*, ASSOCIATED PRESS, July 8, 2012, [http://www.huffingtonpost.com/2012/07/08/voter-id-laws\\_n\\_1657027.html](http://www.huffingtonpost.com/2012/07/08/voter-id-laws_n_1657027.html) (Keesha Gaskins, senior counsel at the Brennan Center, stated, "These are still people who attempted to vote and who were unable to do so. When you compare that to the actual evidence of fraud, the difference is exponential.").

<sup>106</sup> *Tennessee Election Officials Optimistic About Voter ID Law, Despite Criticism*, FOX NEWS LATINO (Mar. 4, 2012), <http://latino.foxnews.com/latino/politics/2012/03/04/tennessee-election-officials-optimistic-about-voter-id-law-despite-criticism/> ("How many Latinos and African Americans do you think are voting in the Republican presidential primary in Tennessee (on Tuesday)?" Vanderbilt University political science professor Bruce Oppenheimer asked. "How many poor people? The groups who are voting in the Republican primary ... are not the people who are expected to be particularly disenfranchised by the new voter ID law.").

<sup>107</sup> *Voter Photo ID*, *supra* note 86.

<sup>108</sup> *Id.* See also Emily Schultheis, *Students Hit by Voter ID Restrictions*,

absentee voting, the most likely form of voter fraud.<sup>109</sup>

In light of the changing electorate in 2008,<sup>110</sup> the success of the Republican Party with a much different electorate makeup in 2010,<sup>111</sup> and the pursuit of photo identification laws nearly exclusive to Republican led state governments,<sup>112</sup> the political undertones of the voting identification changes are troubling. With the disproportionate effect of the new laws on growing and increasingly active minority populations, the new push becomes questionable. When viewed in conjunction with the historical barriers to voting and the struggle for expanded voting rights, seemingly innocuous identification measures are easily tied to nefarious intentions. It is not until the statistics of fraud are added to the equation, especially the type that these laws address, that the new law becomes practically indefensible. While photo identification requirements are pervasive in America today, whether it is for bank transactions, airline travel, or even

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POLITICO (Nov. 30, 2011), <http://www.politico.com/news/stories/1111/69465.html> ("Many college students don't have a valid ID from the state where they're attending school. In order to vote on or near campus, those students would need to apply for and get new state-issued IDs well in advance of primary day or Election Day."); Lopez, *supra* note 103 at 6 (Showing that voter participation was 2.1% higher for all 18-29 year old. Of that age group, Black voter turnout rose 8.7%, Hispanic 5.2%, and Asian 10.5%).

<sup>109</sup> See Weiser, *supra* note 17.

<sup>110</sup> Lopez, *supra* note 103.

<sup>111</sup> Chait, *supra* note 103 ("During the last midterm elections, the strategy succeeded brilliantly. Republicans moved further right and won a gigantic victory. In the 2010 electorate, the proportion of voters under 30 fell by roughly a third, while the proportion of voters over 65 years old rose by a similar amount—the white share, too.").

<sup>112</sup> Weiser, *supra* note 17, at 9-10 ("This year, in every case but one, strict voter ID bills were introduced by Republican legislators... With the exception of Rhode Island, every state that enacted stricter voter ID requirements this session had both houses and the governor's office controlled by Republicans.").



conferences denouncing photo identification requirements for voters,<sup>113</sup> this country has a complicated past dealing with voting rights. When the small amount of voter fraud is balanced with the large population that may be disenfranchised by the new laws around the country, voter photo identification laws are unsound policy, like “trying to kill a fly with a bazooka.”<sup>114</sup>

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<sup>113</sup> Sean Higgins, *Hey, They Can't Let Just Anybody In: Proper ID Needed to See Eric Holder Speech Denouncing Voter ID Laws*, WASH. EXAMINER, July 10, 2012, <http://washingtonexaminer.com/hey-they-cant-let-just-anybody-in-proper-id-needed-to-see-eric-holder-speech-denouncing-voter-id-laws/article/2501792>.

<sup>114</sup> Amy Bingham, *Voter ID: Poll Tax or Common Sense?*, ABC NEWS (July 12, 2012), <http://abcnews.go.com/Politics/OTUS/voter-id-poll-tax-common-sense/story?id=16758232#.UAY7HI4yHww> (Quoting Nathaniel Persily, “a voting law expert at Columbia Law School,” and co-author of *Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements*, *supra* note 16.).



