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Denise Lieberman
denise@deniselieberman.com

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EMPHASIZING VOTING RIGHTS IN AND OUT OF THE CLASSROOM: A SERVICE LEARNING MODEL TOWARD ACHIEVING A JUST DEMOCRACY

DENISE LIEBERMAN*

INTRODUCTION

The right to vote—for the first time in a century—is constricting rather than expanding. New state restrictions on voting stand to make it significantly harder for millions of Americans to cast a ballot—disproportionately young voters, racial minorities, the elderly, the poor, and people with disabilities. Despite the Supreme Court’s pronouncements that voting is a fundamental right that “strike[s] at the heart of representative government,”¹ and that “every voter is equal to every other voter,”² the history and current state of affairs in the United States reveals the uncomfortable truth that all voters simply do not have an equal opportunity to cast ballots and have their votes counted. Until recently, however, the trend in lawmaking has aimed to rectify that disparity with laws expanding access to the franchise and granting government greater power to block laws that perpetuate disparities. Today, a growing body of evidence reveals a well-organized effort to turn back the clock.³

* Lieberman serves as Senior Attorney in the Voter Protection Program for Advancement Project, a national civil-rights action-tank based in Washington, D.C., which works to eliminate structural barriers to voting. Lieberman is also Adjunct Professor in the School of Law and the Department of Political Science at Washington University in St. Louis, where she previously held an appointment as visiting lecturer in the Department of Political Science from 2005–2010. Prior to that she served as Legal Director of the American Civil Liberties Union of Eastern Missouri, from 1997–2005.

1. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

2. *Gray v. Sanders*, 372 U.S. 368, 380 (1963).

3. Eliza Newlin Carney, *Voting: The Rising Degree of Difficulty*, NAT’L J. (Mar. 13, 2011, 12:05 PM), <http://nationaljournal.com/columns/rules-of-the-game/voting-the-rising-degree-of-difficulty-20110313> (“Many GOP-controlled legislatures are working from model legislation produced by the American Legislative Exchange Council, a conservative group that has received funding from the Charles G. Koch Charitable Foundation, the progressive group Campus Progress recently disclosed.”).

The threat to an inclusive democracy—one that features full participation by Americans in the electoral process—is quite real.⁴ On the heels of record voter registrations and turnout by minority voters in 2008 and conservative victories in the 2010 midterm elections was born a coordinated effort to pass new laws for voting that could neutralize the surges of black and brown and young voters that marked the 2008 election cycle. Twenty new laws passed in fourteen states in 2011 alone—with more proposals on the horizon in 2012—“could make it significantly harder for more than five million eligible voters to cast ballots in 2012” and beyond.⁵

These laws restrict voting in a number of different ways. For example, laws requiring documentary proof of citizenship to register to vote were introduced in twelve states in 2011 and passed in Kansas, Alabama, and Tennessee.⁶ Additionally, bills were introduced in thirty-four states in 2011 that would limit acceptable identification to non-expired state-issued photo ID.⁷ New voter ID restrictions were passed in eight states.⁸ Further, laws limiting early voting were introduced in nine states⁹ and passed in Florida, Georgia, Ohio, Tennessee, and West Virginia in 2011,¹⁰ reversing a decade-long trend of expanding options for advance voting.¹¹ Finally, new executive orders signed in Florida and Iowa in 2011 make it more difficult for people with criminal records to regain the right to vote, despite having paid their debt to society.¹² Collectively, these new laws “effectuate a trifecta of voter suppression—making it harder to register to vote, harder to cast a ballot, and harder to have a vote counted.”¹³

4. WENDY R. WEISER & LAWRENCE NORDEN, BRENNAN CTR. FOR JUSTICE, VOTING LAW CHANGES IN 2012, at 1 (2011), available at http://brennan.3cdn.net/a42d9fb1d3d4bb2f4a_40m6bji7n.pdf.

5. WEISER & NORDEN, *supra* note 4, at 1.

6. S.B. 256, 2011 Gen. Assemb., Reg. Sess. (Ala. 2011); H.B. 2067, 2011 Leg., Reg. Sess. (Kan. 2011); S.B. 352, 107th Gen. Assemb., Reg. Sess. (Tenn. 2011); WEISER & NORDEN, *supra* note 4, at 17.

7. WEISER & NORDEN, *supra* note 4, at 5.

8. *Id.*; Charlie Savage, *Holder Signals Tough Review of New State Laws on Voting*, N.Y. TIMES, Dec. 14, 2011, at A1.

9. WEISER & NORDEN, *supra* note 4, at 3.

10. H.B. 1355, 2011 Leg., Reg. Sess. (Fla. 2011); H.B. 92, 2011 Gen. Assemb., Reg. Sess. (Ga. 2011); H.B. 194, 129th Gen. Assemb., Reg. Sess. § 3509.01(B) (Ohio 2011); S.B. 923, 107th Gen. Assemb., Reg. Sess. (Tenn. 2011); S.B. 581, 80th Leg., 1st Sess. (W. Va. 2011).

11. WEISER & NORDEN, *supra* note 4, at 29.

12. *Id.* at 35.

13. *New State Voting Laws: Barriers to the Ballot?: Hearing Before the Subcomm. on the Constitution, Civil Rights & Human Rights, S. Comm. on the Judiciary*, 112th Cong. 2, at 19 (2011) [hereinafter *Browne-Dianis statement*] (statement of Judith Browne-Dianis, Co-Director, Advancement Project). A full transcript of the Senate testimony is available on the Advancement Project website at <http://www.advancementproject.org/sites/default/files/publications/Advancement%20Project%20Barriers%20to%20the%20Ballot%20Testimony%209-8-2011.pdf>.

My organization, Advancement Project, has characterized this trend as “the most significant rollback of voting rights in a century.”¹⁴ But despite growing attention by pundits and media, it is hard for many to appreciate the scope of this phenomenon; the impact seems too removed. For many, including the very students who stand to be disproportionately affected by new voting laws, the issues raised by studying election administration seem either like fodder for a partisan political debate or a theoretical problem; an academic exercise in discussing the abstract merits of policy proposals or the nuances of a court’s balancing test. But issues of election administration are inherently personal—legal questions related to election administration demand analysis of the impact on voters and cannot really be analyzed as hypotheticals. Barriers to voting are understood and remedied by studying the real-life impact on voters. Courses focusing on voting rights with a service learning component can generate a richer understanding of policy barriers—and solutions—to achieving a just democracy.

Too often, Election Law courses and texts fail to give significant time to administrative voting barriers, focusing largely instead on issues like redistricting and campaign finance regulations.¹⁵ While these are certainly important and worthy topics, they often overpower examination of systemic barriers to voting in courses on voting and elections, a study that can offer an incomparable lens for viewing inequality and civic participation in a democracy.

Universities and law schools should have an entire course dedicated to voting rights where examination of voter administration barriers plays not a secondary place, but the leading role. We cannot understand the debate over voter identification laws, for example, until we study not just statistics on how

14. *Id.*; see ADVANCEMENT PROJECT, WHAT’S WRONG WITH THIS PICTURE?: NEW PHOTO ID PROPOSALS PART OF A NATIONAL PUSH TO TURN BACK THE CLOCK ON VOTING RIGHTS iv (2011), available at <http://www.advancementproject.org/sites/default/files/Photo%20ID%20Report%20FINAL%204-6-2011.pdf> (“The forceful momentum on these voter suppression measures is the biggest legislative effort to scale back ballot access since the post-Reconstruction era, reversing a century-long trend of opening the ballot booth to groups that have been legally disenfranchised throughout our nation’s history.”).

15. Rick Hasen, Professor of Law and Political Science at University of California-Irvine School of Law, has compiled an informal survey of all Election Law courses offered nationwide. See ELECTION L. BLOG, <http://electionlawblog.org/> (click “Election Law Teacher Database” under “Election Law Resources”). As of September 2, 2011, the list contained almost 100 entries, only a handful of which indicated a focus on voting rights. *Id.* None indicated they were offered as service learning courses. *Id.* Two blog entries on Professor Hasen’s website also indicate that issues of campaign finance and redistricting tend to be core focal points of many Election Law courses. Rick Hasen, *Repository of Election Law Teaching Materials*, ELECTION L. BLOG (June 27, 2005, 2:10 PM), <http://electionlawblog.org/archives/003647.html>; Rick Hasen, *More Election Law Course Syllabi*, ELECTION L. BLOG (Sept. 17, 2010, 8:41 AM), <http://electionlawblog.org/?p=15839>.

many people lack such ID, but the challenges these individuals face in getting one.¹⁶ We cannot understand the potentially disenfranchising application of otherwise legal voter challenge activity until we see how such challenges are waged at the polls and their impact on voters. And we cannot understand the impact felon disenfranchisement laws today without understanding their historical link to Jim Crow.

Accordingly, not only should a curriculum focus on barriers to voting and their histories, but it should also give students an opportunity to experience the voting process today. A service learning component to a Voting Rights course can elicit a deeper understanding of the limitations on voting and advance civic participation in ways that are essential to overcoming entrenched barriers. The service learning component takes problems beyond the hypothetical, which can be very powerful for an age group with little or no experience voting. Exposure to the process can help students understand (and effectively analyze potential remedies to) systemic inequalities in the process.

I taught two versions of upper-level undergraduate pre-law courses on voting rights at Washington University in St. Louis with a focus on limitations and expansions of voting rights, and it was barely sufficient to delve into the nuances and implications of historic and current barriers to voting. My first Voting Rights course at Washington University was an experimental service learning course during the Fall 2008 semester that coincided with the 2008 presidential elections. The course, a joint program of the university's Political Science Department and Gephardt Institute for Public Service, had students serve as voter registrars; teach inner city and suburban high school students about voting rights; participate in election board trainings to assess the sufficiency of election administration; and serve as poll workers, election judges, and election monitors on Election Day. Students could then document the experiences of voters and participate in and oversee the application of voting laws to voters they encountered. Students had to incorporate this information into final research papers examining the sufficiency of proposed solutions to a specific administrative voting barrier. The course generated positive feedback from students and may be a model on which to better develop students' understanding of voting and core values of democracy. The next offering of the course the following year also emphasized voting rights, but without the service learning component. While it generated terrific debate and good scholarship, I believe it lacked the same impact on student understanding of the issues that the service learning course provided.

The struggle for voting rights in this country has been a long, painful, and bloody process that goes back to our nation's founding. And even after the ratification of the Fifteenth Amendment prohibiting denial of the right to vote

16. See, e.g., ADVANCEMENT PROJECT, *supra* note 14 at 6–8.

based on race, people continued to suffer, fight, and even die for the right to express this basic act of citizenship.¹⁷ But to many students—and even many leaders—that is a lesson in history. New laws stand to turn back the clock and erect barriers that could have long-lasting consequences on participatory democracy.¹⁸ Effective courses emphasizing historical and current barriers to voting and examining their real-life impact through a service learning component can help us truly understand the problem and provide a valuable step toward crafting effective solutions.

I. UNDERSTANDING OF IMPACT IS ESSENTIAL TO LEGAL OUTCOMES

I come to teaching as a practitioner, not as an academic. I believe that students gain by seeing how lawyers and policy makers craft strategy to address real-life disputes. Admittedly, this is a messy process. As a civil rights lawyer, I struggle daily to better understand and more effectively communicate the ways my clients and constituencies are impacted by voting laws. In this field, one thing is clear: courts and legislatures need to see the real-life impact on voters in order to understand the problem and to fashion remedies. This is difficult where the disparities are systemic and entrenched in seemingly neutral practices. Lawyers, judges, and legislators are challenged to articulate the harm and craft remedies that work. Take, for example, the entrenched debate over voter identification laws.

As I documented in an Advancement Project report, the most pervasive and arguably the most controversial new threat to voting rights has been strict voter identification restrictions requiring voters to present non-expired state-issued photo ID to vote.¹⁹ Such measures were introduced in thirty-four states in 2011; in fact, only three states without an ID requirement failed to consider a voter identification proposal in 2011.²⁰

In 2011, laws restricting voter identification to non-expired state-issued photo ID were signed into law in seven states: Alabama, Kansas, Rhode Island,

17. *Browne-Dianis statement*, *supra* note 13, at 3.

18. *Carney*, *supra* note 3.

The movement to challenge voters in person is only one prong of a multi-part national campaign to fight supposed fraud by erecting new barriers to voting. These include proposed photo IDs and proof-of-citizenship bills; plans to eliminate same-day voter registration, and efforts to restrict voting access for students and felons. The movement is fueled in part by new GOP legislative majorities.

Id.

19. ADVANCEMENT PROJECT, *supra* note 14, at iv.

20. *Voter Identification Requirements*, NAT'L CONF. ST. LEGISLATURES, <http://www.ncsl.org/legislatures-elections/elections/voter-id-state-requirements.aspx#2011> (last updated Feb. 21, 2012).

South Carolina, Tennessee, Texas, and Wisconsin.²¹ Bills were also passed but vetoed by governors in five states.²² Missouri passed a resolution to place a photo ID ballot initiative before voters in 2012,²³ a route similar to a voter initiative that passed in Mississippi in November 2011.²⁴ While they vary from state to state, these laws restrict the form of identification voters would be allowed to show in order to cast a ballot, barring use of many previously acceptable forms of ID that can effectively verify a voter's identity, such as an expired driver's license, a license from another state, a government employee ID, a student ID, or even a voter registration card.

One challenge is understanding that the debate is not really about whether voters should have to identify themselves; most already do. Federal law requires it of first time voters by mail,²⁵ and most states already required all voters to present ID to vote.²⁶ The question is how restrictive the forms of acceptable ID can be. While eight states had photo ID laws before 2011, only Georgia and Indiana prevented voters without requisite ID from casting a regular ballot;²⁷ the others allowed voters without ID to vote a regular ballot upon completion of an affidavit attesting to their identity. Most of the new laws are more restrictive than even laws in Indiana and Georgia in the forms of allowable ID and the allowances for those who do not have one.²⁸

The legal issues raised by these new laws are varied, complex and decidedly voter-specific. For example, Texas, South Carolina, Mississippi, and Alabama—states subject to preclearance requiring government approval of any new voting law pursuant to Section 5 of the Voting Rights Act²⁹—must

21. H.B. 19, 2011 Leg., Reg. Sess. (Ala. 2011); H.B. 2067, 2011 Leg., Reg. Sess. (Kan. 2011); S. 400 Sub. A, 2011 Gen. Assemb., Jan. Sess. (R.I. 2011); H. 3003, 119th Gen. Assemb., Reg. Sess. (S.C. 2011); S.B. 16, 107th Gen. Assemb., 2011 Reg. Sess. (Tenn. 2011); S.B. 14, 82d Leg., Reg. Sess. (Tex. 2011); Assemb. B. 7, 2011 Assemb., Reg. Sess. (Wis. 2011).

22. *Browne-Dianis statement*, *supra* note 13, at 3; see S.F. 509, 87th Leg., Reg. Sess. (Minn. 2011); S.B. 3, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011); H.B. 152, 62d Leg., Reg. Sess. (Mont. 2011); S.B. 129, 2011 Gen. Ct., Reg. Sess. (N.H. 2011); H.B. 351, 2011 Gen. Assemb., Reg. Sess. (N.C. 2011).

23. S.J.R. 2, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011).

24. Voter Identification Initiative, (Miss. 2011), *available at* <http://www.sos.ms.gov/Elections/Initiatives/Initiatives/27text.pdf>. Initiative 27 was passed as an amendment to the state constitution and now awaits Department of Justice approval in accordance with preclearance requirements in Section 5 of the Voting Rights Act. *State Pushing Voter ID Law*, CLARIONLEDGER.COM (Mar. 17, 2012, 10:27 PM), <http://www.clarionledger.com/article/20120318/NEWS/203180346/State-pushing-voter-ID-law>.

25. 42 U.S.C. § 15483(b) (2006).

26. *Voter Identification Requirements*, *supra* note 20.

27. *Browne-Dianis statement*, *supra* note 13, at 3; see GA. CODE ANN. § 21-2-417 (2011); IND. CODE §§ 3-5-2-40.5, 3-11-8-25.1 (2011).

28. *Browne-Dianis statement*, *supra* note 13, at 3.

29. Pub. L. No. 89-110, § 5, 79 Stat. 437, 439 (codified as amended at 42 U.S.C. § 1973c (2006)).

demonstrate that their new law was not enacted for a discriminatory purpose and will not have a discriminatory effect on minority voters.³⁰ The Department of Justice is charged with examining whether the state has proven that change will not have a retrogressive or other discriminatory effect when compared to existing law.³¹ Where such a diminution occurs, preclearance must be denied.³² The Justice Department refused to clear both Texas³³ and South Carolina's new photo ID law finding "significant racial disparities."³⁴ In rejecting South Carolina's law—the first time it had rejected such a law since 1994—the Justice Department noted that minority voters were 20% more likely to lack a state-issued ID compared to white voters and thus were "disproportionately represented, to a significant degree," among those who stood to be "rendered ineligible" to vote under the law.³⁵ In rejecting Texas's law, the Justice Department found that "Hispanic registered voters are more than twice as likely as non-Hispanic registered voters to lack such identification,"³⁶ and included a discussion of the real-life barriers voters face in getting ID, such as difficulty getting a birth certificate, or lack of access to an office to get the ID.³⁷ Both South Carolina and Texas have filed lawsuits in the U.S. District Court for the District of Columbia seeking clearance of their photo ID laws.³⁸ The issue will come down to the specific impact on minority voters in those states.

In Wisconsin, Kansas, Tennessee, and Rhode Island, where new voting laws are not subject to Justice Department review, implementation is underway

30. See, e.g., *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 328 (2000); *Beer v. United States*, 425 U.S. 130, 141 (1976); 28 C.F.R. § 51.52(a) (2011). Discriminatory purpose is defined broadly and "is not limited to a purpose to retrogress." Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act, 76 Fed. Reg. 7470, 7471 (Feb. 9, 2011).

31. See 42 U.S.C. § 1973c(b) & (d) (2006).

32. See *Georgia v. Ashcroft*, 195 F. Supp. 2d 25, 74 (D.D.C. 2002) ("[T]his rule mandates that preclearance be denied . . . if a new system places minority voters in a weaker position than the existing system." (citation omitted)).

33. Letter from Thomas E. Perez, Asst. Att'y Gen. to Keith Ingram, Tx. Dir. of Elections (Mar. 12, 2012), available at <http://electionlawblog.org/wp-content/uploads/doj-texas-redistricting-objection.pdf>.

34. Letter from Thomas E. Perez, Asst. Att'y Gen., to C. Havird Jones, Jr., S.C. Asst. Deputy Att'y Gen. 3 (Dec. 23, 2011), available at <http://s3.documentcloud.org/documents/279907/doj-south-carolina-voting.pdf>.

35. *Id.* at 3, 5.

36. Letter from Thomas E. Perez to Keith Ingram, *supra* note 33, at 2.

37. *Id.* at 3.

38. Complaint for Declaratory Judgment, *South Carolina v. United States*, No. 1:12-cv-00203 (D.D.C. Jan. 24, 2012), available at <http://www.scag.gov/wp-content/uploads/2012/02/2012-02-07-Complaint-Voter-ID.pdf>; Expedited Complaint for Declaratory Judgment, *Texas v. Holder*, No. 1:12-cv-00128 (D.D.C. Jan. 24, 2012), available at https://www.oag.state.tx.us/news/pubs/releases/2012/012312texas_complaint.pdf.

in preparation for the 2012 elections.³⁹ These laws could be subject to challenge, such as the lawsuit we filed challenging Wisconsin's photo ID law,⁴⁰ under Section 2 of the Voting Rights Act, which prohibits the use of any electoral practice or procedure that results in the "denial or abridgement of the right of any citizen of the United States to vote on account of race or color."⁴¹ A violation is established where:

[B]ased on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [protected class] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.⁴²

Thus, vote diminution can be established where a group has "less opportunity than other members of the electorate to participate in the political process."⁴³

These laws could also face scrutiny under the Fourteenth Amendment to the U.S. Constitution, such as a suit filed in December 2011 by the American Civil Liberties Union and the National Law Center for Homelessness & Poverty challenging Wisconsin's new photo ID law.⁴⁴ The suit names as plaintiffs seventeen eligible voters who may be unable to vote under the new law.⁴⁵ In addition to arguing that the law constitutes a "poll tax" in violation of the twenty-fourth amendment, the plaintiffs brought a Fourteenth Amendment challenge which would require a balancing test of the burden to voting against the state's interests in the law.⁴⁶ If an equal protection challenge is being brought on behalf of a subclass of racial minorities, then the court will apply a strict scrutiny test, requiring the state to demonstrate that the law is narrowly tailored to a compelling state interest;⁴⁷ but here, the law will be subject to the less strict "flexible" balancing test used in *Crawford v. Marion County Election Board*, weighing the asserted injury to the right to vote against the "precise interests put forward by the State as justifications for the burden

39. *Browne-Dianis statement*, *supra* note 13, at 3.

40. Complaint, *Jones v. Deininger*, No. 12-CV-185 (E.D. Wis. Feb. 23, 2012), *available at* <http://www.advancementproject.org/sites/default/files/publications/WI%20Complaint%20filed%202-23-12.pdf>.

41. 42 U.S.C. § 1973(a).

42. 42 U.S.C. § 1973(b).

43. *Id.*

44. *Frank v. Walker*, No. 2:11-cv-01128, (E.D. Wis. Dec. 13, 2011), *available at* http://www.aclu.org/files/assets/20111213_wisconsin_photo_id_complaint_-_efiled.pdf.

45. *Id.* at 1.

46. *See, e.g., id.* at 45.

47. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

imposed by its rule.”⁴⁸ This will require understanding of the specific ways that voters are harmed by the law.

The laws may also face challenge under state constitutions, such as suits filed by the NAACP Milwaukee Branch and Voces de la Frontera challenging Wisconsin’s new photo ID law under Article III, Section 1 of the Wisconsin State Constitution, alleging that it abridges the right to vote.⁴⁹ The suit names as plaintiffs “[t]welve voters who have been forced to incur unreasonable amounts of time and expense attempting to obtain their photo IDs.”⁵⁰ The League of Women Voters of Wisconsin has also filed suit alleging that the legislature lacked authority under the state constitution to impose the photo ID requirements.⁵¹ Judges in both of those cases have issued injunctions, finding the law in conflict with the Wisconsin State Constitution.⁵² A state constitutional claim was successful in challenging Missouri’s photo ID law in 2006.⁵³

States considering ballot measures could face challenges to their sufficiency under state law, such as the claim filed by Advancement Project and others in July 2011 arguing that Missouri’s photo ID ballot title is deceptive and misleading to voters and should be decertified.⁵⁴

48. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 190 (2008) (quoting *Burdick*, 504 U.S. at 434). In *Crawford*, the Court examined the burden on the right to vote and found that the voter ID law “impose[d] only a limited burden on voters’ rights,” and that the “precise interests” advanced by the state were sufficient to outweigh that burden. *Id.* at 202–03 (quoting *Burdick*, 504 U.S. at 434, 439).

49. *Milwaukee Bd. v. Walker*, No. 11-CV-5492 (Dane Cty. Cir. Ct. 2011), *see Voces, NAACP, and Community Members File Lawsuit to Overturn Photo ID*, VOCES DE LA FRONTERA (Dec. 16, 2011), http://www.vdlf.org/about/media/press_releases.php?pid=144.

50. *Id.*

51. *League of Women Voters v. Walker*, No. 11-CV-4669 (Dane Cnty. Cir. Ct. 2011); *see League of Women Voters Challenges Wisconsin Voter ID Law*, League of Women Voters of Wis. (2011), available at http://www.lwvwi.org/Portals/0/News%20and%20Events/PDFS/InfoSheet_voterIDlawsuitFILED2011.pdf.

52. Barbara Rodriguez, *Second Judge Strikes Down State’s Voter ID Law*, GREENBAYPRESSGAZZETTE.COM (Mar. 12, 2012, 3:24 PM), <http://www.greenbaypressgazette.com/article/20120312/GPG0101/120312008/Second-judge-strikes-down-state-s-voter-ID-law>.

53. *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006).

54. *Petition, Aziz v. Mayer*, No. 11AC-CC00439 (July 6, 2011), available at <http://www.advancementproject.org/sites/default/files/Petition%20-%20FINAL.pdf> (arguing that the ballot title summary statement violates requirements of Mo. Rev. Stat. § 116.155.2); Denise Lieberman, *Civil Rights Group Sues Missouri Officials over “Deceptive and Misleading” Voter ID Ballot Initiative*, ADVANCEMENT PROJECT (July 7, 2011), http://www.advancementproject.org/news/press_releases/2011/07/civil-rights-groups-sue-missouri-officials-over-”deceptive-and-misleadin.

While federal courts upheld photo ID laws in Indiana and Georgia,⁵⁵ it is important to realize that the courts did not hold photo ID laws are per se constitutional; the cases were fact specific, and the real-life impact on voters an essential part of the inquiry. For example, in *Crawford v. Marion County Election Board*, the Court found the burden on voting mitigated in part because eligible voters without the requisite ID had ten days to return to the clerk's office with acceptable ID or to execute an exempting affidavit and still have their votes counted.⁵⁶ Under the new photo ID law passed in Wisconsin, in contrast, voters would have just three days;⁵⁷ in Texas, six.⁵⁸ In the Indiana and Georgia cases, the courts found the availability of absentee voting without a photo ID requirement to be a mitigating factor in the burden to voters,⁵⁹ while in Wisconsin, the ID requirement applies to absentee voters as well.⁶⁰ Further, the list of acceptable forms of ID is more expansive in Georgia and Indiana than under the new 2011 voter ID laws.⁶¹

This significantly limits the rates at which voters would have acceptable ID. In Indiana, the state acknowledged that 99% of voters had an acceptable ID.⁶² In contrast, 605,576 registered voters in Texas do not have a current state ID on file with the State Department of Public Safety.⁶³ South Carolina determined that 216,596 of its voters lack a driver's license or state identification.⁶⁴ Wisconsin estimates that 20% of its residents lack an ID

55. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008); *Common Cause/Ga. v. Billips (Common Cause III)*, 504 F. Supp. 2d 1333 (N.D. Ga. 2007), *vacated on other grounds*, 554 F.3d 1340 (11th Cir. 2009), *cert. denied*, 129 S. Ct. 2770 (2009). It is notable that Georgia's law was originally blocked by federal courts (*Common Cause/Ga. v. Billips*, 406 F. Supp. 2d 1326 (N.D. Ga. 2005)) and upheld only after several amendments.

56. *Crawford*, 553 U.S. at 199.

57. WIS. STAT. § 6.97(3)(b) (2011).

58. S.B. 14, 82d Leg., Reg. Sess. (Tex. 2011).

59. In *Common Cause III*, the court considered the availability of absentee voting for Georgia voters without photo ID as a mitigating factor. *Common Cause III*, 504 F.Supp.2d at 1379. In *Crawford*, the court found the burden on voting to be mitigated because "although it may not be a completely acceptable alternative, the elderly in Indiana are able to vote absentee without presenting photo identification." *Crawford*, 553 U.S. at 199, 201.

60. WIS. STAT. § 6.97(2) (2011).

61. Compare GA. CODE ANN. § 21-2-417(a) (2011), and IND. CODE §§ 3-5-2-40.5 (2011), with Assemb. B. 7, 2011 Assemb., Reg. Sess. (Wis. 2011), and S.B. 14, 82d Leg., Reg. Sess. (Tex. 2011).

62. *Crawford*, 553 U.S. at 218.

63. See, e.g., Letter from T. Christian Herren, Jr., Chief, Voting Section, U.S. Dept. of Justice, to Ann McGeehan, Dir. of Elections, State of Tex. (Sept. 23, 2011), available at http://brennan.3cdn.net/605e4ef6b1842ab7e7_t8m6bpr50.pdf.

64. Letter from Laughlin McDonald et al., Am. Civil Liberties Union Foundation, to T. Christian Herren, Chief, Voting Section, U.S. Dept. of Justice (Dec. 7, 2011), available at http://www.aclu.org/files/assets/supplemental_comment_letter_0.pdf.

required by the law.⁶⁵ Studies in Wisconsin have confirmed that racial minorities—especially African-American and Latino voters—are far less likely to have a Wisconsin state-issued ID, finding that roughly half of African-Americans and Hispanics in the state lack a valid driver’s license, compared to about 17% of white voters.⁶⁶ At the end of the day, while acknowledging “special burdens” placed on certain categories of voters, the Court in *Crawford* made clear that lawyers would have to produce voters whose burden was more than speculative.⁶⁷

And thus, even with the different legal standards that would apply to claims brought under the Voting Rights Act or those subject to differing levels of scrutiny under the Equal Protection Clause or state constitutional claims, the devil is in the details, and indeed, touches the very intimate lives and experiences of real voters. Our lead plaintiff in our Wisconsin suit, for example, has a valid and current Ohio driver’s license but cannot get an ID to vote in Wisconsin because she lacks a certified birth certificate, which the law requires to prove her identity and legal presence.⁶⁸ The reason she does not have a birth certificate is illuminating—born in the South during segregation, her mother was not welcome at her local hospital, and like many African-Americans of her era, she was born at home and no birth certificate was issued.⁶⁹ When she tried to prove her identity with grade school transcripts, she was told that the segregated school she attended no longer exists along with her records.⁷⁰ Students (and future lawyers and policy makers) are better equipped to understand the issue if they have the opportunity to interact with real voters and observe their experience voting. Groups have tried, with limited success, to tell these stories, the lawsuits peppered with individual tales of challenges faced by voters trying to get ID; Democracy North Carolina devoted a webpage to telling voter stories.⁷¹ My organization, Advancement

65. WIS. DEP’T OF ADMIN., DIV. OF EXEC. BUDGET & FIN., FISCAL ESTIMATE—2011 SESSION (2011).

66. John Pawasarat, *The Driver License Status of the Voting Age Population in Wisconsin*, UNIV. WIS.-MILWAUKEE EMP. & TRAINING INST. 4 (2005), available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>.

67. *Crawford*, 553 U.S. at 199.

68. Complaint, *Jones v. Deininger*, No. 12-CV-185 (E.D. Wis.) (Feb. 23, 2012), available at <http://www.advancementproject.org/sites/default/files/publications/WI%20Complaint%20filed%202-23-12.pdf>.

69. *Id.*

70. Interview with Bettye Jones (Feb. 2012) (notes on file with author).

71. *Voter ID Stories*, DEMOCRACY N.C., <http://www.democracy-nc.org/VoterIDStories.html> (last visited Mar. 5, 2012).

Project, teamed up with Brave New Foundation Films to create a short documentary film portraying struggles of real-life voters.⁷²

The impact of voter ID restrictions can seem elusive because most of us have ID and do not have significant difficulties getting one. Finding affected voters is difficult, as they are already likely to be the most disenfranchised and invisible members of communities. One of my clients, the League of Young Voters of Wisconsin, empowers young people from poor and minority communities in Milwaukee to go back into those neighborhoods to identify and help affected voters get ID.⁷³ Their method? “We’re from the hood, so we know the neighborhoods,” one organizer in Milwaukee told me.⁷⁴ But while activists may know where to go, they may not always understand the nuances of the law or be able to effectively communicate it. I worked with a preeminent national group conducting voter registration in African-American communities in St. Louis, whose volunteers mistakenly turned away registrations from people who said they had been in jail, despite the fact that Missouri law allows people with prior felony convictions to register to vote once no longer under state oversight.⁷⁵ Similar confusion may make it difficult to identify voters affected by new photo ID laws as people often believe their IDs to be sufficient when they are not. In a national survey conducted after the November 2008 election, 95% of respondents said they had a state driver’s license, but 16% of them lacked a license that was both current (unexpired) and valid (has the correct name) as required by the new laws.⁷⁶

If those attempting to understand and address the problem do not understand the ways in which people are affected, they will be ill-equipped to effectively articulate the harm or craft suitable remedies. An effective service learning model can help bridge that gap by providing the nuanced education with the community engagement. After monitoring elections as part of my course in 2008, for example, one student wrote in her journal about challenges faced by poll workers understanding and applying voter ID laws: “the other poll workers really struggled with the issue when someone showed ID without

72. Bravenewfoundation, *Are the Koch Brothers Denying Your Right to Vote?*, ADVANCEMENT PROJECT (Nov. 6, 2011), <http://www.advancementproject.org/digital-library/media/are-the-koch-brothers-denying-your-right-to-vote>.

73. *About*, LEAGUE YOUNG VOTERS EDUC. FUND, <http://youngvoter.org/home/about> (last visited Mar. 5, 2012).

74. Interview with members of League of Young Voters, in Milwaukee, Wis. (Oct. 2011).

75. MO. REV. STAT. § 115.133.2(2) (2000).

76. R. MICHAEL ALVAREZ ET AL., SURVEY ON THE PERFORMANCE OF AMERICAN ELECTIONS 47, 131 (2009), available at <http://www.pewcenteronthestates.org/uploadedFiles/Final%20report20090218.pdf>.

a matching address.”⁷⁷ This reflected a common problem identified by the Missouri Secretary of State’s office that year—poll workers improperly requesting identification that wasn’t required by law. In testimony to the U.S. Senate Rules Committee following that election, Missouri Secretary of State Robin Carnahan provided the following testimony:

[N]early one out of every five complaints received by my office concerned a voter being asked for the wrong type of identification at the polls on Election Day. In fact, I was one of those voters. If it can happen to me and I’m the Secretary of State, it can happen to anyone.⁷⁸

Understanding the photo ID issue means understanding that the problem lies not just in who lacks an acceptable ID, but also the relative burden disproportionately placed on various categories of voters to obtaining one. Just as poll taxes didn’t create an express bar to voting, but made it harder for certain groups of voters to do so than others, so too do restrictive ID laws make it harder to vote for segments of the population that will have greater difficulty getting the requisite ID.

For example, to understand whether these photo ID restrictions have a disparate impact on minorities or young voters, we need to know more than the fact that African-Americans and students are twice as likely to lack a state issued ID compared to their white or middle-aged counterparts.⁷⁹ We also need to know that they and other minorities will have a more difficult time getting one—something difficult to appreciate until learning of a voter, like our lead plaintiff, impacted by these hurdles.

Indeed, the costs and challenges of obtaining ID can be substantial.⁸⁰ A study presented before American Political Science Association quantified that “immigrant and minority voters are significantly less likely” to have various forms of ID, including source documents, such as a birth certificate, necessary to get a state-issued photo ID needed to vote.⁸¹ The study concluded that

77. Journal Entry from Students in Voting Rights class at Washington University in St. Louis to author (Fall 2008) [hereinafter Student Journals].

Editor’s Note: Due to student privacy concerns, the *Saint Louis University Law Journal* did not have access to the student journals. The student journals remain on file with the author.

78. *Hearing on In-Person Voter Fraud: Myth and Trigger for Disenfranchisement?: Before the S. Comm. on Rules & Admin.*, (Mar. 12, 2008) (statement of Robin Carnahan, Mo. Sec’y of State) (transcript available at http://rules.senate.gov/public/?a=Files.Serve&File_id=4e170bbb-6438-4b7d-91bd-55bc201d074b).

79. Pawasarat, *supra* note 66, at 4–5.

80. See, e.g., ADVANCEMENT PROJECT, *supra* note 14, at 6–7.

81. MATT A. BARRETO, STEPHEN A. NUÑO & GABRIEL R. SANCHEZ, VOTER ID REQUIREMENTS AND THE DISENFRANCHISEMENTS OF LATINO, BLACK AND ASIAN VOTERS 1 (2007), available at http://brennan.3cdn.net/63836ceea55aa81ef4_hlm6bhkse.pdf.

“[b]ecause our data reflects the identification trends of actual voters, not just adult citizens, the findings go far to suggest that voter identification laws could immediately disenfranchise many Latino, Asian and African-American citizens.”⁸²

Getting the requisite ID can be difficult, or sometimes even impossible, due to challenges in procuring those source documents. This difficulty was explained by Judith Browne-Dianis, testifying before the Senate Subcommittee on the Constitution, Civil Rights, and Human Rights.⁸³

[A]s states implement provisions of the REAL ID Act [prior to the 2013 deadline], voters must present several underlying primary and secondary forms of identification, such as a certified birth certificate or passport, to prove identity, citizenship, and place of residence in order to get a state ID. In some instances, voters must present a social security card, proof of residence, court documents or marriage and divorce records if names have changed from that on their birth certificate. . . . In some states, it may cost up to \$45 for a birth certificate. A current U.S. passport can cost between \$85 and \$145, while naturalization papers can cost up to \$200. Making matters more difficult, seventeen states . . . require a photo ID before they will issue a copy of one's birth certificate, or alternatively require multiple pieces of secondary forms of ID to get a birth certificate, which is then necessary to prevent in order to get a photo ID. In some states, the wait to get a copy of a birth certificate or other records can be weeks or months.⁸⁴

Additionally, there may be other costs to would-be voters such as transportation to motor vehicle or social security offices and fees to get copies of underlying documents.⁸⁵ Further, underlying documents may be difficult or impossible to access for those born at home to midwives and do not have birth certificates, those with common law marriages and no court record of name change, those who lack transportation to offices to get the documents, or those whose records were destroyed in natural disasters.

The burden is heightened by closures of motor vehicle offices in states across the country dealing with crippling budget deficits. In Tennessee, only a third of counties have a license bureau; in Wisconsin, a quarter of motor

Controlling for age, income, and education, we find that immigrant and minority voters are significantly less likely to be able to provide multiple forms of identification, such as a copy of their original birth certificate, or a recent bank statement. In full, we asked respondents about their ability to provide approximately six unique forms of identification, and immigrant and minority voters were consistently less likely to have each form of identification.

Id.

82. *Id.*

83. *Browne-Dianis statement, supra* note 13.

84. *Id.* at 10–11.

85. *Id.* at 11.

vehicle offices are open one day a month or less (in contrast, Indiana has accessible motor vehicle offices with full time hours in every county).⁸⁶ In a comment letter to the Justice Department regarding its review of Texas's photo ID law, Advancement Project documented thirty-four counties in Texas with no Department of Public Safety Office for obtaining an ID.⁸⁷ In four of those, the Hispanic population is over seventy-five percent.⁸⁸ There are another ninety counties where the office has been temporarily closed or has reduced hours.⁸⁹ In all, the research revealed that between the office closings and reduced hours, over 400,000 Latinos and nearly 94,000 African-Americans live in 127 counties in Texas without access to a Department of Public Safety Office.⁹⁰ This is exacerbated by a lack of public transportation. In Texas, minorities are more likely to lack access to mass transit than whites, furthering the challenges of getting an ID.⁹¹ In rejecting Texas's Photo ID law, the Department of Justice found these details compelling.⁹²

These are only a few of the many nuanced ways that photo ID restrictions impact voters. Regardless of one's position on the merits of the state's interest in such laws, (though numerous studies document that incidents of in-person voter impersonation, the only malady voter ID restrictions address, is virtually non-existent⁹³), it is critical that those studying the issue understand the "weeds." Why? Because in the weeds is where people's stories reside. Civil rights law is about telling people's stories—stories that students cannot appreciate until they have some exposure to the process and the people those processes affect. It was the collective impact of voters' challenges in getting a state ID that led the Missouri Supreme Court to conclude in 2006 that Missouri's photo ID law was tantamount to a "poll tax" and unconstitutionally disenfranchised voters.⁹⁴ Until we truly understand the ways in which barriers

86. *Id.* at 13.

87. Letter from Advancement Project et al. to T. Christian Herren, Jr., Chief, Voting Section, U.S. Dept. of Justice, Exhibit C (Sept. 14, 2011) [hereinafter Advancement Project Letter], available at <http://advancementproject.org/sites/default/files/publications/Comment%20Letter%20Under%20Section%205%20-%20Submission%202011-2775.pdf>.

88. *Browne-Dianis statement*, *supra* note 13, at 14.

89. Advancement Project Letter, *supra* note 87, at Exhibit D–E.

90. *Browne-Dianis statement*, *supra* note 13, at 14.

91. *Id.*

92. Letter from Thomas E. Perez to Keith Ingram, *supra* note 33, at 4–5.

93. See, e.g., LORRAINE C. MINNITE, *THE MYTH OF VOTER FRAUD* (2010) (showing that allegations of widespread voter impersonation fraud at the polls are unsupported by empirical evidence).

94. *Weinschenk v. State*, 203 S.W.3d 201, 213–14 (Mo. 2006).

[I]n addition to the monetary costs imposed on persons seeking to obtain the proper photo ID, the process to do so imposes additional practical costs, including navigating state and/or federal bureaucracies, and travel to and from the Department of Revenue and other government agencies. One of these practical costs is the time it takes to receive the

to voting impede equal representation, we cannot understand how the shameful legacy of voting in this country continues to weave systematically in the process today nor are we able to craft solutions that effectuate a more just and equitable system of representation. Therein lies the value of the service learning component to voting rights—it gives students the opportunity to interact with voters and observe the administration of these laws first-hand.

II. A SERVICE LEARNING MODEL FOR VOTING RIGHTS

The impact analysis required by the courts in legal challenges to voting restrictions is one reason that a service learning component to Voting Rights courses can be an effective way to generate a deeper understanding of the impact of voting laws. But this model has benefits beyond helping students more effectively understand the substantive legal and policy material. It also promotes civic engagement among a population with historically low rates of civic participation. People who become civically engaged at a young age tend to stay engaged throughout their lives. One study from University of California Los Angeles found that combining the civic engagement with classroom activity is more effective than civic engagement alone at generating positive and lasting outcomes.⁹⁵

My Voting Rights course structured service learning requirements to coincide with academic study in the classroom. Students had to participate in at least one organized service learning activity per month in September, October, and November that required them to apply classroom study to real life experience. During study of historical barriers to voting, students conducted student teaching activities on the history of voting at urban high schools and neighborhood associations in St. Louis. During study of voter registration, some students underwent certification by the St. Louis City and St. Louis County Election Boards to become deputy voter registrars in the community, and others participated in voter registration drives on campus. During study of current debates on voting, some students met with election officials and analyzed records related to voter turnout, polling place resources, and provisional ballot distribution; others created student voting rights pamphlets

appropriate documentation. In Missouri, the waiting period for a birth certificate alone is six to eight weeks. In Louisiana, the birthplace of many Katrina refugees who have taken shelter in Missouri, the processing period is eight to ten weeks. Should citizens need additional documents, the bureaucratic hurdles and waiting periods would increase.

Id. at 208–09.

95. ALEXANDER W. ASTIN ET AL., *HOW SERVICE LEARNING AFFECTS STUDENTS 1* (2000), available at <http://epic.cuir.uwm.edu/ISL/pdfs/asthow.pdf>. Results from this study were derived from a quantitative longitudinal study of a national sample of students at diverse colleges and universities and a qualitative study of students and faculty who participated in service learning at a subset of these institutions. *Id.*

and organized Voting Rights Workshops on campus; others attended Election Board trainings to serve as poll workers and election judges.

On Election Day, all students had to serve as a poll worker, an election judge, or a non-partisan poll monitor to document incidents and assist voters in answering questions or resolving disputes. Students were placed at demographically diverse locations, with some serving at student polling sites on campus, others serving in historically disenfranchised precincts, and others serving in more affluent precincts that historically recorded fewer voting problems. The resulting discussions comparing their experiences were illuminating. Students turned in a weekly journal of their experiences and we fostered class discussion around specific policy debates to allow students to share their perspectives from outside the classroom.

As a final project, students incorporated insights from their experiences outside the classroom in a research paper analyzing policy proposals aimed at rectifying an identified barrier to voting. The project required them to apply their own experience and that of voters they met to the social science and legal research available on the issue. Students gave oral presentations of their topic and discussed how the service learning impacted their understanding of the debate.

The journal entries and in-class discussions of students' experiences were important to generating well-formed perspectives. The UCLA study found quantitative and qualitative evidence that providing students with an opportunity to "process" the service experience with each other is a powerful component of both community service and service learning.⁹⁶ (The study even found that service learning can have a positive impact on a student's LSAT score, but only if the student effectively processes the service activity.⁹⁷)

The study noted that adequate training for service activities is essential;⁹⁸ therefore, ensuring that students feel prepared to meet their responsibilities adds to their learning benefit. In my course, we tied service activities to the classroom curriculum. One student wrote in her journal, after attending a poll worker training at the St. Louis County Election Board, "I felt pretty smart at my election judge training session because of all the issues we discussed in class. It was nice to already know about what forms of ID were acceptable, restrictions on electioneering, challengers and the like."⁹⁹ Another student wrote, "Provisional ballots did not seem to be a big hot button issue to me before reading up on it. As a result, I made sure to brush up on who can be issued a provisional ballot in St. Louis County."¹⁰⁰

96. *Id.* at 33.

97. *Id.* at ii.

98. *Id.* at iv.

99. Student Journals, *supra* note 77.

100. *Id.*

The UCLA study also found that more than 80% of students felt that adding service to class activity was valuable.¹⁰¹ The comments of my students in their journals following their Election Day service activity seem to bear this out. One student wrote, "After spending six months organizing and coordinating Washington University's voter registration and Get Out The Vote efforts, working as an assistant supervisor of elections at the Friedman Lounge polling place was an appropriate, and extraordinary, capstone experience."¹⁰² Another wrote, "Although not a fundamental right guaranteed by our constitution, voting is the cornerstone of our democracy. Facilitating the exercise of this right and responsibility was a rewarding experience I will carry with me forever."¹⁰³ A third found, "It was a very memorable experience being on the front lines of democracy as a poll monitor."¹⁰⁴

Some students discussed the opportunity itself.

This is the first election I have felt a strong connection to. I am proud of my Election Day experience as a poll monitor. I can't help but feel that I contributed to the preservation of democracy and in my own little way had an impact on the election. This was a great experience for me and I am really happy I got the opportunity to do it.¹⁰⁵

Another student wrote, "Voting was always important to me, but I had never considered becoming part of the process by working on Election Day. I am really excited about having an active roll [sic] in the process. It is something that I probably never would have done without taking this class."¹⁰⁶

One student wrote about working a voter registration drive. "I enjoyed this experience and was glad that it was required because I probably would not have done it if it was optional."¹⁰⁷

Students also demonstrated the ability to apply their service experience to the academic material they studied, as seen in journal entries suggesting substantive administrative reforms following their Election Day service experience.

I found that few of the poll workers I worked with were adequately trained on provisional balloting, and at times presented it to voters as an option when in fact they should not have. Election authorities need to train poll workers to see provisional ballots not as a safety valve but rather as a measure of last resort.¹⁰⁸

101. ASTIN ET AL., *supra* note 95, at iii.

102. Student Journals, *supra* note 77.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. Student Journals, *supra* note 77.

108. *Id.*

Going forward, I believe there is room for improvement in the way we run elections. . . . On a state level, expanding early voting would further decrease lines on Election Day and increase the franchise amongst individuals who do not get time off from work to vote on election day. . . . On a county level, increasing the number of paper ballots and phasing out electronic voting machines will cut down on lines and decrease technical difficulties that slow things down on Election Day.¹⁰⁹

Notably, given the major role of race in issues of voting rights, the UCLA study found that students' commitment to racial understanding and commitment to activism were "significantly affected" by participation in course-based service over generic community service.¹¹⁰ "That service learning has an independent effect both on a student's commitment to promoting racial understanding and activism is noteworthy. This suggests that service learning provides a concrete means by which institutions of higher education can educate students to become concerned and involved citizens."¹¹¹

In our Washington University course, student journals suggest that their service activities illuminated race and class disparities in voting for the students in ways they likely would not have otherwise appreciated. "Looking at the appropriation of resources around St. Louis, there continues to exist a great disparity in the treatment of St. Louis City precincts and St. Louis County precincts. This inconsistency in appropriation of resources results in a cleavage between poor and affluent, black and white."¹¹² Another student wrote:

It was especially interesting to see what was happening here in St. Louis and how people were handling problems. I knew that lines at inner city voting polls were extremely long but I did not realize how chaotic the atmosphere really was. When I worked at the St. Louis County polling place, I did not witness anything like that first hand.¹¹³

The UCLA study found that both faculty and students develop a heightened sense of civic responsibility when they participate in service-learning courses.¹¹⁴ A number of my students indicated in their journals that they would remain civically engaged in issues of voting rights as a result of taking the course:

My experience working the polls on Nov. 4 enabled me to see all my work leading up to Election Day come to fruition. Seeing students who I registered to vote, and then encouraged to vote, actually cast their ballot is something I do

109. *Id.*

110. ASTIN ET AL., *supra* note 95, at 15.

111. *Id.* at 17.

112. Student Journals, *supra* note 77.

113. *Id.*

114. ASTIN ET AL., *supra* note 95, at 59.

not have to wait until one day to cherish. I look forward to working the polls in future elections.¹¹⁵

I would not have thought of working the polls on Election Day before taking this class but I think that it is something I would like to do in the future as well. Although stressful at times, it was a wonderful day and I was glad to be able to participate in such an important process.¹¹⁶

Incorporating service learning into a course on voting rights can enhance the effect on civic engagement because of the relevancy of the topic to students. Young people are less likely to vote than other age groups and more likely to be impacted by barriers to voting, including being direct targets for voter identification restrictions, voter registration restrictions and efforts to eliminate same day voter registration.

With respect to voter identification restrictions, studies show that almost 20% of young voters age 18–24 lack a current state ID.¹¹⁷ This number may be significantly higher for college students who are far less likely to have a non-expired ID from the state of their current residence with a current address. In Wisconsin, which enacted the nation's toughest voter ID restriction in 2011,¹¹⁸ Federal Highway Administration data of citizens aged 18–23 found that the share of persons without a driver's license ranged from 32.5% for 18-year-olds to 18.1% for 23-year-olds.¹¹⁹

When age and race are considered together, the disparities become far more pronounced. One study by the University of Wisconsin found that an astounding 78% of African-American males (as compared with 36% of white males) aged 18–24 in Wisconsin lack a state driver's license, and 66% of African-American females (as compared with 25% of white females) aged 18–24 lack a Wisconsin driver's license.¹²⁰ The study also found a disparate impact on Latino voters: 57% of young Latino males, as compared to 36% of white males age 18–24, lack a driver's license.¹²¹ Nationwide, this issue has galvanized young people on campuses across the country, while leaving many young people discouraged that the surge in youth voting seen in 2008 could be elusive going forward.

115. Student Journals, *supra* note 77.

116. *Id.*

117. BRENNAN CTR. FOR JUSTICE, CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION 3 (2006), available at http://www.brennancenter.org/page/-/download_file_39242.pdf.

118. See Assemb. B. 7, 2011 Assemb., Reg. Sess. (Wis. 2011).

119. Spencer Overton, *Voter Identification*, 105 MICH. L. REV. 631, 659 (2007).

120. John Pawasarat, *supra* note 66, at 4–5 (2005).

121. *Id.*

Students in my course seemed to get a lot out of seeing their peers participate in the voting process and helping them do so. One student who served as a poll worker at a campus polling location wrote,

Not long after we began setting up the polling place a crowd started to build outside. At 5:30 a.m. the line was [sic] already a hundred feet long; by the time we opened the poll at 6, more students were in line than I had ever seen up so early in the morning.¹²²

Helping at the problem table was probably the most stressful part of the day. We had voters who were just not in the system. They were not in the books, the palm pilot and headquarters was not able to find them. Yet they were sure that they were registered and should be able to vote.¹²³

Discussing a service learning experience registering students to vote, one student wrote,

With all the questions we fielded that day it has become much more apparent to me the difficulties many face when registering. Washington University students are some of the brightest in the country and many could not figure things out. I just imagined what is faced by those who have less education or those who have difficulty reading.¹²⁴

The experience fostered a renewed interest in reducing barriers to voter registration for young voters among one student:

Students face extraordinary difficulties when exercising or attempting to exercise the right to vote. Many of these difficulties relate to registration issues and contribute to the disenfranchisement of a number of otherwise eligible student voters. A number of these problems include the inability to register before the deadline, having an out-of-state ID rejected as a form of identification, having registration information challenged disproportionately at the polls, or having registration verification notifications returned as undeliverable as a result of administrative errors or an inability to process or accept on-campus dorm addresses. In these situations, students are forced to cast provisional ballots. This is unfortunate considering that provisional ballots are only counted if cast in the correct polling location and if the voter's registration information is located. As a result, this process is prone to error and creates an enormous obstacle for students.¹²⁵

In some cases, student involvement led to substantive advocacy. During the duration of the course, several students met with election officials in St. Louis County regarding policies for purging from the voter roll students who had moved on campus. The election board's failure to include campus box numbers on mailings to students made this process difficult, since all student

122. Student Journals, *supra* note 77.

123. *Id.*

124. *Id.*

125. *Id.*

residences have a central mailing address. During the 2006 elections, hundreds of students were purged or turned away from their polls due to notices returned because they lacked campus box numbers, so the students advocated to include campus box numbers on the mailings to facilitate the process. One student wrote of the follow-up to this advocacy in 2008:

Put simply, they did not uphold their end of the bargain, and I, along with Mail Services and other Gephardt Institute Staff, had to sort through close to 4,000 election notification cards, looking up each student box number by hand. Had Mail Services not been so cooperative and had they followed their normal procedure of returning all mail without a campus box number on it, all those cards would have been sent back to the election board and those student voters purged from the rolls. The fact that the election board came so close to allowing that to happen is, in my opinion, irresponsible government.¹²⁶

The students' action that facilitated the resending of the notices prevented fellow students from being purged during the 2008 elections. Unfortunately, the same did not occur in 2010. Though the Voting Rights course was not offered during Fall 2010 semester, many of my students who had participated in 2008 returned to volunteer for the Election Protection efforts I coordinate to monitor polls and address voter problems at the polls in St. Louis. Their presence proved meaningful and resulted in legal advocacy on behalf of students who were improperly purged from the rolls in 2010 after moving on campus when the postcard notices were returned to election authorities as undeliverable. Because of the students volunteering that day, we promptly learned that some students who had moved on campus were being turned away at the campus polling site without being allowed to cast provisional ballots. The students knew just how to conduct the interviews and this helped spearhead legal advocacy with St. Louis County Election Officials to ensure that provisional ballots got counted, and to advocate for better training on provisional ballot use for poll workers.¹²⁷

This example demonstrates the legacy of civic engagement a course like this can leave. Despite that Washington University did not offer the Service Learning Voting Rights course again, I continued to encourage students in my subsequent Voting Rights course and other pre-law courses to volunteer on Election Day. Dozens of undergraduate and law students served as election monitors in 2010. We also reached out to students at Saint Louis University and Saint Louis University School of Law and other area campuses. This helped increase awareness of voter issues on campus, and when a restrictive voter identification law was introduced in the Missouri Legislature in 2011,

126. *Id.*

127. See Letter from author to St. Louis County Board of Elections (Nov. 11, 2010), available at <http://www.advancementproject.org/sites/default/files/publications/STLCO%20Purge%20Letter.pdf>.

Saint Louis University students became engaged in making fellow students and legislators aware of the impact of the voter identification restrictions on students without Missouri driver's licenses. Students traveled to Jefferson City to testify and the student government submitted a petition to legislators with scores of signatures. Two of those affected students are now plaintiffs in our lawsuit to strike down SJR2, Missouri's photo ID ballot initiative.¹²⁸

CONCLUSION

The Service Learning Voting Rights course was effective at giving students a richer understanding of historic and current restrictions on voting, led to greater civic engagement outside the classroom, and even resulted in substantive administrative advocacy and reforms to local election procedures. Many of the students have remained engaged in subsequent election protection efforts.

To my knowledge the Voting Rights course has not been offered as a service learning course at Washington University since the semester I taught it. I was told it was the first service learning course offered by the Gephardt Institute in partnership with the Department of Political Science, and while Washington University offers more than forty-five service learning courses, none of the current service learning grant recipients cover programs related to voting rights.¹²⁹ A service learning component is a perfect accompaniment to a course on voting rights, and imparts civic engagement and heightened understanding of race and class disparities as well as a richer understanding of substantive policy and legal issues. However, even if not offered as a service learning course, instructors can take steps to offer students insights into the real impact of voting policies and cases. When I taught Voting Rights as a traditional classroom course, I incorporated multi-media components, including showing portions of the films *Iron Jawed Angels*,¹³⁰ *Mississippi America*,¹³¹ and *Election Day*.¹³² And I invited guest speakers from the Secretary of State's Office, the St. Louis Election Board, the Disability Vote Project, and a voting machine security specialist. These guests helped bring current debates alive.

Courses on voting rights must go beyond the pages of a case book and this is why the traditional model fails to do justice to so many voting administration issues. Voting rights is about more than judicial opinions or legislation.

128. Petition, *Aziz v. Mayer*, No. 11AC-CC00439 (July 6, 2011), available at <http://www.advancementproject.org/sites/default/files/Petition%20-%20FINAL.pdf>; Lieberman, *supra* note 54.

129. See *Gephardt Institute Names Service-Learning Grant Recipients*, WASH. U. ST. LOUIS (Jan. 25, 2011), <http://news.wustl.edu/news/Pages/21786.aspx>.

130. *IRON JAWED ANGELS* (HBO Films 2004).

131. *MISSISSIPPI, AMERICA* (PBS Video 1995).

132. *ELECTION DAY* (Docurama Films 2007).

Elections are largely run by county-level local election officials, many reforms are administrative in nature, and disputes are frequently settled by court decree or injunctive relief that may not be documented in a published court opinion.¹³³

As part of work on the Civil Rights Litigation Clearinghouse at Washington University, I helped establish an undergraduate independent study course in which students analyzed the actual pleadings and consent decrees in voting rights cases—giving them greater insight into the actual evidence and impact of potential reforms. Exposure to real people, real cases, and real pleadings brought issues home for students and should be incorporated in some way into any course on voting rights.

In the end, advances in law come from the stories of people affected by those laws. And nothing tells the story of who we are as a nation more than how we regulate who can participate in the voting process and how they do so. Instructors can help bring these stories alive for students to advance a richer understanding of what it means to be a democracy. New voting laws represent a major legislative trend towards restricting the franchise, the likes of which we have not seen in a century. This speaks to the need for courses that explore access to the ballot box, and how systemic barriers can make democracy elusive. Voting is the only government institution that is ideally truly classless, placing the poor on equal footing with the rich, non-whites on equal footing with whites.

Historically we have struggled with this basic concept of electoral equality, and have spent much the last century crafting laws to combat our shameful history and eradicate barriers to the ballot box. New trends stand to turn back the clock with deeply entrenched consequences. Between 1890 and 1910, in a rash of new post-reconstruction voting laws that implemented poll taxes, grandfather clauses, white primaries, and literacy tests, African-Americans, who had just gained the right to vote several decades before, were removed from the voter rolls in large numbers that took decades to regain.¹³⁴ 2008 for the first time saw African-American voter turnout nearly match that of whites.¹³⁵ For example, in 1896, Louisiana had over 130,000 African-Americans registered to vote.¹³⁶ The state enshrined new voting requirements in its constitution in 1898 and by 1900, fewer than 5,000 African-Americans

133. See, e.g., Margo Schlanger & Denise Lieberman, *Using Court Records for Research, Teaching, and Policy Making: The Civil Rights Litigation Clearinghouse*, 75 UMKC L. REV. 155, 157–58 (2006).

134. ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* 111–16 (2000).

135. PEW RESEARCH CENTER, *DISSECTING THE 2008 ELECTORATE: MOST DIVERSE IN U.S. HISTORY* ii (Apr. 30, 2009), available at <http://www.pewhispanic.org/files/reports/108.pdf> (finding an African-American voter turnout of 65.2% compared to white voter turnout of 66.1%).

136. KEYSSAR, *supra* note 134, at 114.

were registered to vote, and by 1910, just 730 remained.¹³⁷ These restrictions were not limited to Louisiana; by 1910, only four percent of black males in Georgia were registered to vote.¹³⁸ It took just two decades to nearly eliminate that voting population. It wasn't until after *Brown v. Board of Education*¹³⁹ that the first series of civil rights laws began to effectively whittle away at this structure. The legacy of this history is difficult to dismantle and lives on in the stories of the five million voters potentially affected by this year's new voting laws. Coursework emphasizing the nature of the right to vote combined with community engagement to see those rights in action can help students understand the nature of democracy, encourage civic responsibility, and expand participation of young people in voting.

137. *See id.*138. *Id.* at 115.

139. 347 U.S. 483 (1954).

