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THE NEW STATISTICS OF ESTATE PLANNING: LIFETIME AND POST-MORTEM WILLS, TRUSTS, AND CHARITABLE PLANNING

| | | |
|------|--|----|
| I. | Introduction | 2 |
| II. | The Health and Retirement Study | 3 |
| III. | General Demographic Trends Among U.S. Population Aged 55+ | 6 |
| A. | Births, Deaths, and Living Persons | 6 |
| 1. | Results | 6 |
| 2. | Discussion | 10 |
| B. | Childlessness | 12 |
| 1. | Results | 12 |
| 2. | Discussion | 13 |
| C. | Education | 13 |
| 1. | Results | 13 |
| 2. | Discussion | 14 |
| IV. | Trends in Estate Document Usage Among U.S. Population Aged 55+ | 15 |
| A. | Document Usage by Age | 15 |
| 1. | Results | 15 |
| 2. | Discussion | 16 |
| B. | Document Usage by Race and Ethnicity | 18 |
| 1. | Results | 18 |
| 2. | Discussion | 19 |
| C. | Document Usage by Offspring | 20 |
| 1. | Results | 20 |
| 2. | Discussion | 20 |
| D. | Document Usage by Education | 21 |
| 1. | Results | 21 |
| 2. | Discussion | 22 |
| E. | Document Usage by Gender and Marital Status | 23 |
| 1. | Results | 23 |
| 2. | Discussion | 24 |
| F. | Document Usage by Wealth | 25 |
| 1. | Results | 25 |
| 2. | Discussion | 26 |
| V. | Connecting Lifetime and Post-Mortem Results for Estate Document Usage | 27 |
| A. | Wills | 27 |
| 1. | Results | 27 |
| 2. | Discussion | 27 |
| B. | Trusts | 28 |
| 1. | Results | 28 |
| 2. | Discussion | 28 |
| VI. | Trends in Charitable Estate Planning Among U.S. Population Aged 55+ | 29 |
| A. | Charitable Planning by Age | 30 |
| 1. | Results | 30 |

| | | |
|----|--|----|
| 2. | Discussion | 30 |
| B. | Charitable Planning by Race and Ethnicity | 31 |
| 1. | Results | 31 |
| 2. | Discussion | 32 |
| C. | Charitable Planning by Offspring | 32 |
| 1. | Results | 32 |
| 2. | Discussion | 33 |
| D. | Charitable Planning by Education | 34 |
| 1. | Results | 34 |
| 2. | Discussion | 35 |
| | Appendix A: Methodology Notes | 35 |
| A. | Risk of 6th Year Bias | 35 |
| B. | Projections | 36 |
| C. | Post-Exit Information | 36 |
| D. | Education | 37 |
| E. | Childlessness | 37 |
| F. | Marriage | 38 |
| G. | Wealth | 38 |
| H. | Race and Ethnicity | 38 |
| I. | Post-Mortem Distributions | 39 |

*2 I. Introduction

What is “new” in **estate planning**? As always, there are new cases, new legislation, new regulations, and new drafting approaches.¹ Beyond these typical new legal developments, there are now new demographics and statistics.² These demographics and statistics are new for two reasons.³

*3 First, the upcoming demographics of the nation-especially among older adults-**will** differ notably from any seen before in our history.⁴ Not only **will** the size of the population in older age segments grow, but the characteristics of that population **will** differ substantially from previous generations.⁵ The findings reported below suggest that many of these changes and differences are directly impacting the amount and type of **estate planning** that occurs, and **will** continue to do so.⁶

Second, there is now a major source of new social science data on **estate planning** among older adults.⁷ In the past, statistical research on **estate planning** habits was limited to IRS tax data, small samples of probate data, or a handful of one-time surveys on current opinions or **planning** circumstances; but that changed.⁸ The Health and Retirement Study (HRS) -funded by the National Institute on Aging and administered by the Institute for Social Research at the University of Michigan-represents a major advance in our ability to track **estate planning** changes during life and distributions after death.⁹

II. The Health and Retirement Study

Although some results in this article come from U.S. Census data, the primary source of information is the HRS.¹⁰ Several features make this a remarkable source of information.¹¹

The HRS is nationally representative of the older adult population in the United States.¹² The HRS surveys are initially conducted in person.¹³ Thus, the results are not limited to people who willingly return mail surveys or take *4 phone call surveys.¹⁴ Households are selected based on a stratified probability sampling of household locations.¹⁵ The HRS uses a sophisticated weighting scheme to address both the sampling scheme and non-response bias to produce truly nationally representative data.¹⁶ Consequently, the results presented below are not simply the averages from these survey respondents, but are weighted to accurately represent the nation as a whole.¹⁷ The HRS has been nationally representative of the 55 and over

population in the United States since 1998, with some age segments having been represented since its origins in 1992.¹⁸ This allows tracking of national trends over time.¹⁹ Respondents are paid for their time, and the data is of the highest quality that exists in social science survey research.²⁰

The HRS is longitudinal in life and in death.²¹ A longitudinal survey tracks the same people over time.²² Post-mortem information is gathered from close relatives or caretakers to ascertain the ultimate distribution of all assets in the **estate**.²³ Where **estate** distributions have not been finalized, relatives or former caretakers continue to be interviewed every two years until final distribution takes place.²⁴ This longitudinal approach allows, for the first time, a connection of lifetime **estate planning** survey responses with post-death distributions.²⁵

The HRS is large; more than 26,000 individuals typically respond to the survey, which is administered every two years.²⁶ This large size is important when attempting to track **estate planning** behavior that is relatively uncommon, such as the use of trusts or the inclusion of a charitable recipient, especially among specific subsets of the population (e.g., those of a particular *5 age, race, ethnicity, wealth, education, etc.).²⁷ Due to the older age of many respondents and the long duration of this survey, over 12,000 survey respondents have died during the twenty-two-year history of the HRS and its predecessor surveys.²⁸ This means that for more than 12,000 decedents, years of **estate planning** question responses during their lifetime can be connected with post-mortem distributions.²⁹ Again, this large number of decedents is critical when attempting to examine relatively less common behavior, such as charitable **estate planning**.³⁰ So, although the HRS itself is not new, the survey is now accumulating sufficient numbers of decedents to allow for a confident analysis of less common **estate plans** even among relatively small population sub-segments.³¹

One final characteristic is especially useful for an exploration of charitable behavior: the HRS is not a survey about charitable giving.³² Surveys entirely focused on charitable behavior are likely to generate non-response bias for charitable questions.³³ People who do not donate may be more likely to simply avoid taking a survey about charitable giving.³⁴ Thus, the results of specifically charitable surveys often exclude a large segment of the population.³⁵ In contrast, the HRS is an extensive half-day survey on a variety of health and financial topics including only a few questions directly related to charitable giving and **estate planning**.³⁶ Beyond this, the sophisticated weighting scheme corrects for non-response bias related to the survey in general.³⁷ Thus, we can have confidence in the representative nature of the results.³⁸

For readers of a more technical bent, Appendix A includes a description of the data analysis issues associated with specific findings.³⁹ The HRS datasets are publicly accessible, and, through use of the Appendix, other researchers should be able to replicate and verify the results presented here.⁴⁰

*6 III. General Demographic Trends Among U.S. Population Aged 55+

Before reviewing the HRS results, it is useful to understand the general demographic framework and trends for the nation.⁴¹ We begin with a review of the simple quantity of people beginning at birth.⁴²

A. Births, Deaths, and Living Persons

1. Results

Table 1: Live Births in the United States⁴³

| Birth Year (est. current age) | Live Births | Birth Year (est. current age) | Live Births |
|----------------------------------|-------------|----------------------------------|-------------|
| 1915 (Age 100) | 2,965,000 | 1938 (Age 77) | 2,496,000 |
| 1916 (Age 99) | 2,964,000 | 1939 (Age 76) | 2,466,000 |
| 1917 (Age 98) | 2,944,000 | 1940 (Age 75) | 2,559,000 |
| 1918 (Age 97) | 2,948,000 | 1941 (Age 74) | 2,703,000 |
| 1919 (Age 96) | 2,740,000 | 1942 (Age 73) | 2,989,000 |
| 1920 (Age 95) | 2,950,000 | 1943 (Age 72) | 3,104,000 |
| 1921 (Age 94) | 3,055,000 | 1944 (Age 71) | 2,939,000 |
| 1922 (Age 93) | 2,882,000 | 1945 (Age 70) | 2,858,000 |
| 1923 (Age 92) | 2,910,000 | 1946 (Age 69) | 3,411,000 |
| 1924 (Age 91) | 2,979,000 | 1947 (Age 68) | 3,817,000 |
| 1925 (Age 90) | 2,909,000 | 1948 (Age 67) | 3,637,000 |
| 1926 (Age 89) | 2,839,000 | 1949 (Age 66) | 3,649,000 |
| 1927 (Age 88) | 2,802,000 | 1950 (Age 65) | 3,632,000 |
| 1928 (Age 87) | 2,674,000 | 1951 (Age 64) | 3,823,000 |
| 1929 (Age 86) | 2,582,000 | 1952 (Age 63) | 3,913,000 |
| 1930 (Age 85) | 2,618,000 | 1953 (Age 62) | 3,965,000 |
| 1931 (Age 84) | 2,506,000 | 1954 (Age 61) | 4,078,000 |
| 1932 (Age 83) | 2,440,000 | 1955 (Age 60) | 4,097,000 |
| 1933 (Age 82) | 2,307,000 | 1956 (Age 59) | 4,218,000 |
| 1934 (Age 81) | 2,396,000 | 1957 (Age 58) | 4,300,000 |
| 1935 (Age 80) | 2,377,000 | 1958 (Age 57) | 4,255,000 |
| 1936 (Age 79) | 2,355,000 | 1959 (Age 56) | 4,244,796 |
| 1937 (Age 78) | 2,413,000 | 1960 (Age 55) | 4,257,850 |

*7 The above table shows the live births for each year in the United States, along with the approximate current age of those in the cohort who are still living.⁴⁴ Much media discussion has been focused on the impact of the aging Baby Boom generation.⁴⁵ The magnitude of this boom can be seen when tracking the growth in births from the low in 1933 (2.3 million) to the high in 1957 (4.3 million).⁴⁶ This massive growth can lead to the impression that all older adult groups are “booming.”⁴⁷ Much less discussed in the media, however, is the “Baby Bust” that occurred during the depression years that preceded the Baby Boom.⁴⁸ In 1921, over 3 million babies were born, but this level was not reached again until 1943.⁴⁹ During the intervening years, the number of births declined substantially, reaching its lowest point in 1933 with only 2.3 million live births.⁵⁰ Thus, the demographics do not tell a story of all “boom,” but rather of “bust then boom.”⁵¹

It is important to note that births are not the only population driver in various age ranges.⁵² Improvements in medical technology, wars, changes in smoking behavior, and a variety of other mortality-related factors can dramatically influence these numbers.⁵³ Nevertheless, as seen in the following results, the total starting population size of a particular age cohort is still a major factor in predicting the number of living persons in later years.⁵⁴

*8 Table 2: Total Resident Population in the United States⁵⁵

| Year | Age 55-64 | Age 65-74 | Age 75-84 | Age 85+ |
|------|------------|------------|------------|-----------|
| 2001 | 31,780,000 | 20,364,000 | 12,471,000 | 4,437,000 |
| 2002 | 33,011,000 | 20,829,000 | 12,615,000 | 4,559,000 |
| 2003 | 33,983,000 | 21,657,000 | 12,774,000 | 4,684,000 |
| 2004 | 35,214,000 | 22,349,000 | 12,864,000 | 4,818,000 |
| 2005 | 36,503,000 | 22,934,000 | 12,943,000 | 4,968,000 |
| 2006 | 37,944,000 | 23,478,000 | 12,950,000 | 5,152,000 |
| 2007 | 38,550,000 | 24,990,000 | 12,884,000 | 5,333,000 |

| | | | | |
|------|------------|------------|------------|-----------|
| 2008 | 39,419,000 | 26,137,000 | 12,826,000 | 5,484,000 |
| 2009 | 40,272,000 | 27,248,000 | 12,751,000 | 5,636,000 |
| 2010 | 41,111,000 | 28,411,000 | 12,775,000 | 5,786,000 |
| 2011 | 41,900,000 | 29,524,000 | 12,798,000 | 5,910,000 |
| 2012 | 42,522,000 | 30,674,000 | 12,829,000 | 6,037,000 |
| 2013 | 42,992,000 | 31,581,000 | 12,931,000 | 6,176,000 |
| 2014 | 43,287,000 | 32,715,000 | 13,084,000 | 6,285,000 |

The depression-era baby bust is not just of historical interest, but also impacts the current population within certain age groups.⁵⁶ Since 2001, the population within most of the older age groups has expanded dramatically.⁵⁷ The number of people aged 55-64 has increased by over 14.5 million (nearly 60%), those aged 65-74 by over 7 million (38%), and those over age 85 by 1.8 million (nearly 42%).⁵⁸ In the midst of this growth, there is a gap.⁵⁹ During these same years, the 75-84 age group grew less than 5%.⁶⁰ In fact, the population in this group peaked in 2006 at 12.95 million, a level it did not *9 reach again until 2014.⁶¹ This flatness in the midst of growth on all sides reflects the gap created by the Baby Bust.⁶²

The impact of increased longevity and the Baby Bust is also seen in the tapering of the rate of growth in deaths since the year 2002.⁶³ From 1977 to 2001 the total number of annual deaths in the United States grew at a relatively steady pace, with the average growth rate at 1.0% per year.⁶⁴ *10 However, since 2002 the average growth rate has fallen to 0.3% per year.⁶⁵

2. Discussion

Although much attention is given to the growth-oriented demographic trends associated with the aging of baby boomers, the preceding Baby Bust also has immediate implications for **estate planning** and administration.⁶⁶ For example, the diminishing growth in total deaths results in a slowing growth in total decedents' **estates**.⁶⁷

Beyond the change in the overall number of decedent's **estates**, the reality of the sustained downward trend in births during the decade from 1924 to 1933 is particularly important for realized charitable **estate** transfers.⁶⁸ *11 Among the over 12,000 decedents who were lifetime respondents in the HRS study, 86.7% of all charitable **estate** dollars transferred came from decedents dying in their 80s.⁶⁹ This share drops to 62.2% when all charitable **estate** gifts are capped at \$1 million in value to reduce the influence of a few large **estate** gifts.⁷⁰ Nevertheless, in either analysis, decedents dying in their 80s transferred the bulk of all charitable **estate** dollars.⁷¹ Consequently, for those interested in **estate** transfers to nonprofit organizations, this is the critical age range to track.⁷² Table 1 shows that the lowest point of the Baby Bust was in 1933, meaning those who would currently be age 82.⁷³ Thus, we should reasonably expect the Baby Bust to notably impact overall charitable **estate** transfers.⁷⁴ Indeed, this expectation is what current numbers reflect.⁷⁵ According to Giving USA 2014 estimates, which incorporate IRS **estate** data, the average annual increase in charitable **estate** transfers during the 1980s was 13.5%.⁷⁶ In the 1990s the average annual increase was 11.5%, but since 2000 the average annual increase has only been 4.9%.⁷⁷

From Table 1, the lowest total births for a ten year span occurred from 1932 to 1941.⁷⁸ Thus, the lowest total births attributed to those who **will** then be in their 80s **will** occur in approximately 2021.⁷⁹ This suggests that the excitement about the much discussed wealth transfer for charities may still be a bit premature.⁸⁰ However, the population boom should ultimately have a positive impact on these numbers.⁸¹ From 2021 forward, the total population of those in their 80s might be expected to expand rapidly for at least twenty-five years, even without changes in longevity.⁸² Table 2 indicates this, given that the relatively rapid growth in the 55-64 and 65-74 age groups **will** ultimately, absent some unexpected change in mortality, translate into growth in the current slow growing category of age 75-84.⁸³

Not only do these general population trends affect ultimate charitable **estate** transfers, but they can also impact other **planned** charitable transfers.⁸⁴ For example, some evidence suggests that the establishment of charitable ***12** remainder trusts peaks at age 70-74, and the use of charitable gift annuities peaks at age 75-79.⁸⁵ Rapid population growth in these younger ages **will** occur prior to the growth of the population in their 80s.⁸⁶ Thus, population changes may spur growth in the creation of such charitable **plans** prior to its effect on actual post-mortem charitable **estate** transfers.⁸⁷

B. Childlessness

Beyond changes in the number of people in different age groups, there **will** also be changes in the typical characteristics of those people.⁸⁸ These differences in characteristics are particularly important when such factors are also associated with differences in the propensity to engage in various **estate planning** practices.⁸⁹

1. Results

Table 3: Percent Childless Women at Age 40-44 in U.S.⁹⁰

| Year (age in 2015) | Percent childless | Year (age in 2015) | Percent childless |
|-----------------------|-------------------|-----------------------|-------------------|
| 1976 (79-84) | 10.2% | 1988 (67-72) | 14.7% |
| 1977 (78-83) | 10.9% | 1990 (65-70) | 16.0% |
| 1979 (76-81) | 9.8% | 1992 (63-68) | 15.7% |
| 1980 (75-80) | 10.1% | 1994 (61-66) | 17.5% |
| 1981 (74-79) | 9.5% | 1995 (59-64) | 17.5% |
| 1982 (73-78) | 11.0% | 1998 (57-62) | 19.0% |
| 1983 (72-77) | 10.1% | 2000 (55-60) | 19.0% |
| 1984 (71-76) | 11.1% | 2002 (53-58) | 17.9% |
| 1985 (70-75) | 11.4% | 2004 (51-56) | 19.3% |
| 1986 (69-74) | 13.2% | 2006 (49-55) | 20.4% |

***13** 2. Discussion

As demonstrated later in Table 13 and elsewhere, childlessness is the single strongest demographic predictor of including a charitable recipient in one's **estate plan**.⁹¹ Because the childlessness factor is so important, related trends can have dramatic consequences for charitable **estate planning**.⁹² To illustrate these trends, the table above examines childlessness among women between 40-44 years old.⁹³ Viewing only this age range allows comparisons across different cohorts.⁹⁴ These trends forecast a dramatic increase in childlessness for the 70+ age group in the upcoming years, possibly doubling from current levels.⁹⁵ This increase in childlessness **will** occur at the same time as this older age group begins experiencing a significant and sustained rise in total population.⁹⁶ This combination creates a “multiplier” effect for charitable **estate planning** in future years.⁹⁷ Not only **will** there be an increased population within the age group but also a likely increased propensity within that larger population to engage in charitable **estate planning**.⁹⁸ This suggests that the positive population trends for future years discussed previously actually underestimates the likely increase in decedents charitable **estate** gifting.⁹⁹ Nevertheless, as demonstrated later, a relatively small proportion of charitable **estate** transfers are realized prior to age 80, suggesting that the most dramatic increases in the actual **estate** dollars charities receive may not be seen for several years.¹⁰⁰

C. Education

1. Results

Table 4: Share of Adults Age 55+ with at Least a Bachelor's Degree¹⁰¹

| Year | 55+ | 35-54 | Year | 55+ | 35-54 | Year | 55+ | 35-54 |
|------|-------|-------|------|-------|-------|------|-------|-------|
| 1979 | 9.7% | 17.4% | 1991 | 14.1% | 25.8% | 2003 | 21.7% | 29.9% |
| 1980 | 9.9% | 18.3% | 1992 | 14.2% | 25.7% | 2004 | 23.0% | 30.0% |
| 1981 | 10.2% | 18.9% | 1993 | 14.7% | 26.1% | 2005 | 23.3% | 29.7% |
| 1982 | 10.8% | 19.6% | 1994 | 15.1% | 26.7% | 2006 | 24.0% | 30.2% |
| 1983 | 11.6% | 21.2% | 1995 | 15.4% | 27.2% | 2007 | 24.3% | 31.2% |
| 1984 | 11.6% | 22.0% | 1996 | 16.5% | 27.0% | 2008 | 25.5% | 31.3% |
| 1985 | 11.7% | 23.0% | 1997 | 17.2% | 26.8% | 2009 | 26.4% | 30.9% |
| 1986 | 11.7% | 22.9% | 1998 | 17.8% | 27.4% | 2010 | 26.9% | 31.2% |
| 1987 | 12.1% | 23.7% | 1999 | 18.4% | 28.2% | 2011 | 27.2% | 32.1% |
| 1988 | 12.5% | 24.5% | 2000 | 18.9% | 28.5% | 2012 | 27.6% | 32.5% |
| 1989 | 13.3% | 25.5% | 2001 | 19.6% | 29.1% | 2013 | 28.2% | 33.6% |
| 1990 | 13.9% | 25.4% | 2002 | 20.7% | 29.2% | 2014 | 28.3% | 35.3% |

***14** Table 4 demonstrates an unbroken trend of increasing education levels in the United States¹⁰² This trend in the younger age segment (35-54) shows that the increasing levels of education among the 55+ age segment **will** continue over the next twenty years as this younger group transitions into the 55+ age segment.¹⁰³ Additionally, the duration of this trend among the 55+ age population shows that the older segments of that population **will** see strong growth for many years to come.¹⁰⁴ For example, the 90+ age segment in 2014 is the survivor of the 55+ age segment in 1979, meaning that we can predict increasing education levels for future 90+ age segments by observing the 55+ trends starting in 1979.¹⁰⁵

2. Discussion

As demonstrated below, higher levels of education are associated with a greater propensity to engage in **estate planning** in general and charitable **estate planning** in particular.¹⁰⁶ This is true even after accounting for differences in wealth and income, and may be especially important for gifts to educational institutions.¹⁰⁷ Consequently, this trend in education levels may once again serve as a multiplier for coming years of charitable **estate planning**; not only **will** older age populations increase, but these larger populations **will** have an increasing propensity to engage in charitable **estate planning**.¹⁰⁸ Additionally, results below demonstrate that education is also a strong and increasingly positive predictor of using a funded living trust, suggesting similarly multiplicative positive trends for the use of that ***15** particular **estate planning** instrument.¹⁰⁹

IV. Trends in **Estate** Document Usage Among U.S. Population Aged 55+

The remainder of the article **will** examine statistical results from the HRS.¹¹⁰ The HRS asks respondents, “Do you have a **will** that is written and signed?” and includes responses of “No **will**, but have a trust” and “Yes, **will** and trust.”¹¹¹ Additionally, respondents are asked “Have you put any of your assets into a trust?”¹¹² Respondents are categorized as having a funded inter vivos trust for the purposes of **estate planning** if they indicate having a funded trust in response to the second question.¹¹³

A. Document Usage by Age

1. Results

Table 6: Use of Documents by Age¹¹⁴

| Year | Will Only | | | Funded Trust | | |
|-------------|-----------|-------|-------|--------------|-------|-------|
| | 55-64 | 65-74 | 75+ | 55-64 | 65-74 | 75+ |
| 1998 | 44.9% | 56.6% | 64.2% | 4.7% | 8.8% | 11.2% |
| 2000 | 44.8% | 54.4% | 61.7% | 5.7% | 10.3% | 13.5% |
| 2002 | 44.6% | 53.1% | 62.0% | 5.5% | 10.7% | 13.9% |
| 2004 | 41.5% | 51.1% | 58.1% | 5.6% | 13.1% | 17.7% |
| 2006 | 40.8% | 49.9% | 59.1% | 6.3% | 12.9% | 17.6% |
| 2008 | 38.2% | 47.4% | 58.2% | 6.0% | 12.9% | 17.6% |
| 2010 | 35.8% | 46.9% | 56.6% | 6.2% | 12.7% | 18.2% |
| 2012 | 32.8% | 46.1% | 55.8% | 6.6% | 11.7% | 18.8% |
| 2014 (est.) | 31.5% | 44.1% | 54.6% | 6.7% | 12.7% | 20.1% |

*16 The results above indicate a consistent drop in the share of older adults using a **will** without a funded trust.¹¹⁵ This decline is remarkable in its consistency, having continued in every survey year since 1998 for both the 55-64 and 65-74 age groups.¹¹⁶ In contrast to the decline in the use of **wills** without funded trusts, the use of funded trusts has increased over the same time across all 55+ age segments.¹¹⁷ The increase has been strongest among the oldest sub-segment (75+) where usage increased more than two-thirds from 1998 to 2012.¹¹⁸ However, the increase in the use of funded trusts has not been able to fully offset the relatively substantial decline in the use of **wills** without trusts, leading to a declining percentage of older adults who have either a **will** or a funded trust.¹¹⁹ This decline in the presence of any comprehensive **estate planning** documents has been sharpest among the 55-64 age group (dropping 10.2%, from 49.6% in 1998 to 39.4% in 2012), but relatively mild among the oldest age group (dropping only 0.8%, from 75.4% in 1998 to 74.6% in 2012).¹²⁰

2. Discussion

Although the survey contains no information about titling or beneficiary designations, this decline in the overall use of **estate planning** documents occurred during a time when the availability of non-probate transfers was expanding.¹²¹ For example, in 2009 the Uniform Law Commission approved the Uniform Real Property Transfer on Death Act strengthening the trend of jurisdictions that had previously adopted statutes permitting non-probate transfers of real **estate** through transfer-on-death deeds: Missouri (1989), Kansas (1997), Ohio (2000), New Mexico (2001), Arizona (2002), Nevada (2003), Colorado (2004), Arkansas (2005), Wisconsin (2006), and Montana (2007).¹²² This rapid expansion in transfer-on-death deeds arose in the larger context of rapid expansion in the availability and use of non-probate transfers *17 in general, sometimes referred to as the “non-probate revolution.”¹²³ Thus, it is plausible that this rapid expansion in non-probate transfer legislation explains, at least in part, the substantial decline in the use of **will** documents.¹²⁴

An additional potential source of the reduction in **planning**, may relate to the substantial increase of the **estate** tax credit over this period of time.¹²⁵ In 1998, the first year of results, the **estate** tax credit exempted \$625,000 of assets while by 2010 the, at that point optional, exemption equivalent had risen to \$5,000,000.¹²⁶ Thus, some part of the decline in **will** documents could relate to those who might have otherwise been motivated to complete **estate planning** documents for tax **planning** purposes, but found themselves below the new, higher exemption equivalent levels.¹²⁷ In addition to this direct impact on **planning** for those no longer subject to **estate** taxation, there may have been a spillover impact as **estate** tax **planning** issues gradually became less relevant for a large share of the population, potentially leading to less discussion of **estate** tax **planning** in popular press venues.¹²⁸

The driver of this reduction in comprehensive **estate planning** documents has been the drop, among all age groups, in the presence of a **will** without a funded trust.¹²⁹ Between 1998 and 2012, the share of the population using a **will** alone dropped 12.1 % among those age 55-64, 10.5% among those 65-74, and 8.4% among those 75 and older.¹³⁰

In the midst of the strong decrease in the use of a **will** without an inter vivos trust as the **planning** document, funded trusts have experienced a substantial increase, especially among those aged 75 and older.¹³¹ This suggests a widening “**planning** gap” in the sense of there being a larger share of older adults without any comprehensive **planning** documents and, simultaneously, a larger share with funded trust **planning** documents.¹³² The increase in the use of funded trusts occurs despite the previously noted *18 realities that this was a time of increasing **estate** tax exemptions and increasing availability of non-probate transfer (pay-on-death) options which, like funded inter vivos trusts, can avoid the probate process.¹³³

One possible explanation for the differing trends in the use of **wills** and funded trusts is an intentional shift towards probate avoidance, potentially due to marketing strategies emphasizing the alleged horrors of the probate process, simultaneously expressed by an increasing use of funded trusts as well as other non-probate transfers.¹³⁴ To the extent that the oldest adults (75 and above) were more familiar with the legislatively older probate avoidance strategy of using inter vivos trusts and less familiar with the recent changes in, for example, transfer-on-death deeds, older adults may have been more likely to express this shift towards probate avoidance with a funded trust.¹³⁵ This could explain why the drop in the share of individuals with any **planning** documents has been less significant for the oldest age group.¹³⁶ However, because the data shows only the change in the usage of **wills** and funded trusts, any increase in the use of non-probate transfers remains speculative.¹³⁷

B. Document Usage by Race and Ethnicity

1. Results

Table 7: Use of Documents by Race and Ethnicity (Age 55+)¹³⁸

| Year | Will Only | | | Funded Trust | | |
|-------------|------------|------------|----------|--------------|------------|----------|
| | White (NH) | Black (NH) | Hispanic | White (NH) | Black (NH) | Hispanic |
| 1998 | 60.2% | 21.9% | 19.5% | 9.0% | 1.3% | 1.9% |
| 2000 | 58.7% | 22.6% | 19.8% | 10.8% | 1.0% | 2.5% |
| 2002 | 58.0% | 23.3% | 18.6% | 10.8% | 1.4% | 2.5% |
| 2004 | 54.2% | 20.9% | 16.7% | 12.4% | 1.7% | 3.3% |
| 2006 | 53.7% | 21.7% | 17.4% | 12.6% | 1.3% | 4.2% |
| 2008 | 52.1% | 22.1% | 16.4% | 12.6% | 1.9% | 4.7% |
| 2010 | 50.5% | 20.2% | 15.0% | 12.9% | 1.5% | 3.9% |
| 2012 | 48.9% | 18.8% | 15.0% | 13.1% | 1.5% | 3.4% |
| 2014 (est.) | 47.2% | 18.8% | 13.9% | 13.7% | 1.7% | 3.9% |

*19 This table demonstrates the dramatic difference in the use of **planning** documents by non-Hispanic whites and either minority group.¹³⁹ The gap between non-Hispanic whites and the other groups in the use of a **will** alone fell somewhat between 1998 and 2012.¹⁴⁰ This was due to the more rapid decline in the use of a **will** alone among non-Hispanic whites.¹⁴¹ Between 1998 and 2012, the use of the **will** alone decreased 11.3% among non-Hispanic whites, but only 3.1% among non-Hispanic blacks, and 4.5% among Hispanics.¹⁴² In the midst of the declining use of the **will** alone, all groups experienced an increase in the use of funded trusts during this time.¹⁴³ Although the absolute increase was the greatest among non-Hispanic whites (up 4.1%), Hispanics experienced the greatest increase relative to their original usage rates in 1998, with the share of Hispanics using a funded trust nearly doubling.¹⁴⁴ Although Hispanics were less likely than non-Hispanic blacks to have any **planning** documents (**will** or trust), Hispanics were much more likely to have a funded trust.¹⁴⁵

2. Discussion

Much of the differences in **planning** documents among these groups may be attributed to differences in wealth holding.¹⁴⁶ In 1998, non-Hispanic whites in this age category held, on average, 4.7 times the wealth of non-Hispanic blacks and 4.2 times the wealth of Hispanics.¹⁴⁷ Although by 2012 this had fallen to 3.8 and 3.2 times, respectively, the wealth disparities remained dramatic.¹⁴⁸ As demonstrated later, wealth is a major predictor of the usage of **estate planning** documents.¹⁴⁹ What is not fully explained by wealth differences, however, is the relatively dramatic increase in the use of funded trusts among Hispanics.¹⁵⁰

*20 C. Document Usage by Offspring

1. Results

Table 8: Use of Documents by Offspring Among Age 55+¹⁵¹

| | No Offspring | Children only | Grand-children | Will Only Funded Trust | | |
|-----------|--------------|---------------|----------------|-------------------------------|---------------|----------------|
| | | | | No Offspring | Children only | Grand-children |
| 1998 | 52.9% | 53.1% | 54.1% | 5.5% | 6.7% | 8.2% |
| 2000 | 51.9% | 53.5% | 52.3% | 6.7% | 7.3% | 9.8% |
| 2002 | 53.2% | 50.8% | 51.9% | 6.7% | 8.0% | 9.8% |
| 2004 | 47.1% | 48.7% | 48.0% | 8.9% | 10.2% | 11.0% |
| 2006 | 47.3% | 49.3% | 47.2% | 8.4% | 8.7% | 11.5% |
| 2008 | 44.7% | 45.4% | 46.0% | 7.2% | 8.9% | 11.7% |
| 2010 | 40.0% | 43.3% | 44.6% | 8.1% | 9.8% | 11.6% |
| 2012 | 38.3% | 41.2% | 42.8% | 9.6% | 11.0% | 11.1% |
| 2014 est. | 35.8% | 39.2% | 41.3% | 9.5% | 11.4% | 11.8% |

Those with no offspring were consistently less likely to have either **planning** document as compared to those with children only.¹⁵² Similarly, those with children only were consistently less likely to have either **planning** document compared to those with grandchildren (although some part of this difference is likely age related).¹⁵³ All categories experienced similar decreases in the use of **will** documents without a funded trust, and similar increases in the use of funded trusts.¹⁵⁴

2. Discussion

The **estate planning** practices of those with no offspring are particularly important for charitable organizations, as childlessness is a critical indicator of the propensity to include charitable beneficiaries in the **estate plan**.¹⁵⁵ Thus, the overall decrease in comprehensive **planning** documents by this group, from 58.4% in 1998 to 47.9% in 2012 may have a negative impact on charitable transfers to the extent that such **plans** are replaced by intestacy or non-probate transfers without charitable beneficiaries.¹⁵⁶

*21 D. Document Usage by Education

1. Results

Table 9: Use of Documents by Education among U.S. Residents Age 55+¹⁵⁷

| Year | Graduate School | Bachelor's Graduate | Will Only Some College | HS Graduate | <HS Graduate |
|------|-----------------|---------------------|-------------------------------|-------------|--------------|
| 1998 | 79.0% | 74.0% | 68.3% | 63.3% | 44.4% |
| 2000 | 78.3% | 75.2% | 67.4% | 63.2% | 43.2% |
| 2002 | 78.5% | 74.5% | 65.8% | 62.1% | 41.0% |
| 2004 | 75.0% | 71.6% | 60.7% | 59.0% | 38.7% |

| | | | | | |
|--------------|-------|-------|-------|-------|-------|
| 2006 | 75.5% | 71.2% | 59.7% | 57.7% | 37.8% |
| 2008 | 73.7% | 69.3% | 57.0% | 55.0% | 36.0% |
| 2010 | 70.8% | 66.4% | 53.2% | 52.9% | 34.0% |
| 2012 | 70.5% | 63.8% | 51.7% | 50.9% | 30.8% |
| 2014 est. | 68.7% | 62.6% | 48.7% | 49.0% | 29.4% |
| Funded Trust | | | | | |
| 1998 | 15.4% | 12.9% | 10.4% | 7.0% | 3.2% |
| 2000 | 17.7% | 15.9% | 11.4% | 8.2% | 3.5% |
| 2002 | 16.4% | 14.1% | 11.3% | 8.1% | 4.2% |
| 2004 | 17.5% | 15.5% | 12.2% | 9.8% | 4.8% |
| 2006 | 17.8% | 16.7% | 11.4% | 9.9% | 4.4% |
| 2008 | 18.4% | 16.4% | 10.6% | 9.5% | 4.8% |
| 2010 | 17.8% | 14.6% | 10.9% | 9.7% | 4.5% |
| 2012 | 18.2% | 16.0% | 10.1% | 9.3% | 4.8% |
| 2014 est. | 18.5% | 15.7% | 10.3% | 9.8% | 5.0% |

Across the period of time examined, higher levels of education were consistently associated with a greater likelihood of having comprehensive **planning** documents of either type.¹⁵⁸ Those with the highest education were more than twice as likely to have a **will** alone and three to four times more likely to have a funded trust, as compared to those with the lowest *22 education.¹⁵⁹ This disparity makes sense given both the potential complexity of the **planning** process and the association of greater wealth with higher levels of education.¹⁶⁰ However, the rapid decline in the use of **wills** alone (without a funded trust) was not limited to those in any particular education level.¹⁶¹ The overall decline in the use of a **will** without a funded trust was similar among various education groups, dropping 8.5% for those with graduate education, 10.2% for those with only a bachelor's degree, 16.6% for those with only some college, 12.4% for those with only a high school diploma, and 13.6% for those without a high school diploma between 1998 and 2012.¹⁶² Conversely, the use of funded trusts grew in almost every education category, except those with some college.¹⁶³

2. Discussion

Clearly, education levels are strongly associated with the tendency to engage in **estate planning**.¹⁶⁴ In 2012, 88.7% of those aged 55+ with a graduate education had **planning** documents, while only 35.6% of those without a high school diploma did.¹⁶⁵ This correlation may aid readers to predict that increases in education may result in increased use of **will** documents, without a funded trust, because such usage increases with higher education.¹⁶⁶ For example, in 1998, 63.3% of those with only a high school diploma had a **will** without a funded trust, while 74% of those with only a bachelor's degree did.¹⁶⁷ Subsequent to 1998, education levels rose.¹⁶⁸ The 1998 HRS data showed 34.1% of the 55+ population with only a high school diploma and 8.8% with only a bachelor's degree.¹⁶⁹ By 2012, the share of the 55+ population with only a high school diploma had fallen to 30.6%, while those with only a bachelor's degree had increased to 14%.¹⁷⁰ However, in the same time span, the share of those with a **will** (without a funded trust) among those with a bachelor's degree fell from 74% to 63.8%.¹⁷¹ This 63.8% propensity to have a **will** (without a funded trust) for those with a bachelor's degree in 2012 was roughly the same propensity (63.3%) as those with only *23 a high school diploma in 1998.¹⁷² Due to this offsetting trend, the increase in education levels did not generate an increase in overall use of **will** documents without funded trusts.¹⁷³

In contrast, the tendency to use a funded trust increased among almost all education levels.¹⁷⁴ To the extent that these propensities remain the same (or continue their growth) in the future, the ongoing increase in education among the 55+ age segment should predict even greater growth in the propensity to use funded trusts in future years in the overall population.¹⁷⁵

E. Document Usage by Gender and Marital Status

1. Results

Table 10: Use of Documents by Gender and Marital Status among Age 55+¹⁷⁶

| | Will Only | | | Funded Trust | | |
|-----------|--------------------|------------------|----------------|--------------------|------------------|----------------|
| | Married Households | Single Female HH | Single Male HH | Married Households | Single Female HH | Single Male HH |
| 1998 | 56.0% | 52.4% | 44.3% | 8.8% | 5.8% | 6.7% |
| 2000 | 54.5% | 50.4% | 44.6% | 10.3% | 7.6% | 7.0% |
| 2002 | 52.9% | 51.2% | 46.2% | 10.4% | 7.5% | 6.8% |
| 2004 | 49.6% | 47.1% | 40.3% | 11.6% | 9.5% | 8.1% |
| 2006 | 48.8% | 46.8% | 41.4% | 11.7% | 10.0% | 7.5% |
| 2008 | 47.3% | 44.9% | 38.5% | 11.7% | 10.0% | 7.9% |
| 2010 | 46.1% | 41.7% | 36.3% | 12.0% | 10.1% | 6.5% |
| 2012 | 43.9% | 41.4% | 34.5% | 12.4% | 9.3% | 6.9% |
| 2014 est. | 42.3% | 39.2% | 32.8% | 12.8% | 10.3% | 6.8% |

In this table, the label “married” includes all those who were married or living with a partner as if married.¹⁷⁷ Over this time, married households were more likely to have **wills** or funded trusts as compared with single households.¹⁷⁸ In all years, single female households were more likely to ***24** have a **will** only as compared to single male households.¹⁷⁹ This gap varied from 5% to 8% each year, but with no clear trends.¹⁸⁰ Single females exhibited relatively strong growth in the use of funded trusts, but single males did not match that growth.¹⁸¹ Although single males were more likely to have funded trusts than were single females in 1998, this trend reversed in 2000.¹⁸² In subsequent years, the relatively greater propensity of single females to have living trusts as compared with single males notably increased.¹⁸³

2. Discussion

To the extent that married couples tend to complete **estate planning** together, examining associations between **planning** and gender requires a consideration of marital status as well as the individual respondent's gender.¹⁸⁴ Single male households were consistently the least likely to have **planning** documents while married households were the most likely.¹⁸⁵ All groups substantially decreased their propensity to use a **will** alone.¹⁸⁶ However, single male households did not simultaneously increase their propensity to use a funded trust, as did both married and single female households.¹⁸⁷ Although not proven, this evidence from single households suggests that women might be relatively important in motivating the commonly joint decision to complete **estate planning** documents among married couples.¹⁸⁸

*25 F. Document Usage by Wealth

1. Results

Table 11: Use of Documents by Wealth among Age 55+¹⁸⁹

| Year | Will Only | | | | |
|------|-----------|---------|---------|---------|------------|
| | Top 20% | 60%-80% | 40%-60% | 20%-40% | Bottom 20% |
| 1998 | 61.8% | 67.7% | 61.4% | 47.1% | 27.7% |
| 2000 | 59.8% | 63.9% | 61.0% | 48.6% | 26.0% |
| 2002 | 58.8% | 64.4% | 59.3% | 46.8% | 27.9% |

| | | | | | |
|--------------|-------|-------|-------|-------|-------|
| 2004 | 55.6% | 58.8% | 56.3% | 42.4% | 24.7% |
| 2006 | 52.9% | 58.6% | 54.4% | 45.0% | 25.9% |
| 2008 | 52.7% | 56.1% | 52.7% | 41.5% | 23.6% |
| 2010 | 53.6% | 53.2% | 51.6% | 41.8% | 24.5% |
| 2012 | 52.3% | 52.6% | 48.7% | 36.3% | 19.9% |
| 2014 est. | 51.1% | 49.8% | 47.2% | 35.9% | 20.1% |
| Funded Trust | | | | | |
| 1998 | 21.9% | 9.1% | 4.8% | 1.8% | 0.5% |
| 2000 | 25.4% | 12.3% | 5.3% | 2.1% | 0.8% |
| 2002 | 25.8% | 11.5% | 6.0% | 2.0% | 1.1% |
| 2004 | 27.8% | 13.9% | 7.7% | 2.6% | 1.1% |
| 2006 | 29.8% | 14.4% | 7.0% | 2.8% | 1.3% |
| 2008 | 29.3% | 14.4% | 6.8% | 2.3% | 1.1% |
| 2010 | 28.7% | 15.9% | 8.6% | 2.8% | 1.0% |
| 2012 | 29.4% | 15.6% | 8.3% | 3.0% | 0.9% |
| 2014 est. | 30.2% | 16.8% | 9.1% | 3.1% | 0.9% |

Table 11 shows document usage by wealth quintile.¹⁹⁰ Wealth was a particularly strong factor in predicting the presence of a funded trust.¹⁹¹ The propensity to have a funded trust roughly doubled at each higher wealth quintile.¹⁹² Although the propensity to have a funded trust increased over time for each of the wealth categories, this growth was the strongest among *26 the wealthiest groups.¹⁹³

In contrast to funded trusts, the highest wealth quintile was not usually the most likely to have a **will** document alone.¹⁹⁴ In most years, using a **will** without a funded trust was most common among the second-highest wealth quintile.¹⁹⁵ In fact, rates of using a **will** alone were often lower for the highest wealth quintile than for those in the middle quintile.¹⁹⁶

2. Discussion

The tendency for wealthier people to be more likely to have **planning** documents is not surprising, as there are more assets to transfer.¹⁹⁷ However, in recent years the difference in the presence of **planning** documents by wealth quintile has grown.¹⁹⁸ The overall propensity to have some **planning** documents (either **will** or trust) fell only 2% for the wealthiest quintile (83.7% in 1998 to 81.7% in 2012).¹⁹⁹ Other wealth quintiles fell from 7.4 to 9.6 % during the same time.²⁰⁰ Thus, the strong decline in the use of **planning** documents is largely driven by those outside of the top 20% of wealth holders.²⁰¹ Similarly, the propensity to use funded trusts has increased most rapidly among the wealthiest, growing 7.5 % from 1998 to 2012, while the growth in the lower wealth groups has been smaller at 0.4 and 1.2 % for the lowest and second lowest quintiles respectively.²⁰²

These results are consistent with the hypothesis that the 55+ population is shifting away from probate **planning**, with wealthier people shifting toward funded trust **planning** and the less wealthy shifting toward non-probate transfer titling.²⁰³ Although no data for the use of non-probate transfer titling is available in this dataset, it is reasonable to speculate that the less wealthy may be more likely to use such relatively simple and easy devices as a means to avoid probate.²⁰⁴

*27 V. Connecting Lifetime and Post-Mortem Results for **Estate** Document Usage

A. **Wills**

1. Results

In total, 12,022 survey respondents have died since the inception of the HRS.²⁰⁵ Among those, 7,150 indicated in their last interview prior to death that they had a signed and witnessed **will**.²⁰⁶ Of these, 317 **estates** had not been fully distributed at

the time of the most recent interview, meaning that future probate administration was still possible.²⁰⁷ This leaves 6,833 fully distributed **estates** where the decedent had indicated in his or her most recent survey prior to death that the decedent had a signed and witnessed **will**.²⁰⁸ Among these, the **will** was probated in only 38.4% of the cases.²⁰⁹ In 16.8% of these cases, the heirs indicated that they found no **will**.²¹⁰ However, in the remaining cases (44.8%), survivors indicated that there was a **will** document, but it was not used.²¹¹ In 18.1% of the cases, the **estate** was otherwise distributed without the use of probate.²¹² In 11.2% of cases there was a funded trust making distributions.²¹³ In 9.8% of cases, the survivors indicated there was nothing much of value in the **estate**, so they did not utilize the probate process.²¹⁴ Finally, in 5.6% of cases, survivors did not provide a reason as to why they did not use the **will**.²¹⁵

2. Discussion

The statistical impact of non-probate transfers is seen most starkly in these results.²¹⁶ These results give confirmation to those suggesting that **estate** transfers are largely a non-probate affair.²¹⁷ Indeed, even among those reporting having signed and witnessed **wills**, the post-mortem use of a **will** in *28 a probate proceeding is relatively rare.²¹⁸ The concept of **estate planning**, as being controlled by a single testamentary **will** document, appears not to fit the modern reality of post-mortem distribution.²¹⁹ Even in the 38.4% of cases where lifetime reported **wills** were probated, this only means that the **will** likely controlled at least one asset.²²⁰ Even in those cases, non-probate transfers may still have transferred the bulk of assets.²²¹ In over 18% of cases, the heirs indicated the presence of a post-mortem **will** document, but by non-probate transfers other than a trust document (i.e., “**estate** otherwise distributed”), controlled all assets.²²²

These results amplify the relative weakness of a **will** in ultimately disposing of the assets of the **estate**, a result that **will** likely continue given the expansive use of transfer-on-death type non-probate transfers.²²³ The reality that most reported **wills** ultimately control no assets highlights the need for comprehensive **estate planning** advice.²²⁴

B. Trusts

1. Results

Additionally, 1,102 decedents had indicated in their last interview prior to death that they had a funded trust.²²⁵ Of these, 17 **estates** had not been fully distributed at the time of the most recent post-mortem data collection, meaning that future administration was still possible.²²⁶ Among the 1,085 fully distributed **estates**, survivors confirmed the post-mortem presence and operation of a funded trust in 77.2% of these cases.²²⁷ In 10% of cases, no trust was reported, but a **will** document was probated.²²⁸ In the remaining 12.8% of cases, no trust was reported, and either there was nothing much of value or the **estate** was otherwise divided.²²⁹

2. Discussion

As compared with 38.4% of cases in which having a self-reported **will** resulted in an actual probated **will** at death, 77.2% of cases of reported funded trusts during life resulted in the report of a functioning funded trust after *29 death.²³⁰ An additional 10% reported that transfers were made through a probated **will**.²³¹ Thus, only 12.8% of these **estates** were transferred without the use of **planning** documents.²³² The relative effectiveness of lifetime reported trusts, as compared with **wills**, is especially notable given the private nature of trusts.²³³ The nearest relatives are required by law to be notified of a **will** probate process, but no such notification is required of a funded trust where the relatives are not beneficiaries.²³⁴ This suggests that the near

relatives interviewed might be less likely to know of the existence of a trust, which is private, than of a probated **will**, which is public.²³⁵ In other words, the 71.6% of lifetime reported **wills** not probated would likely be an accurate number, where the 22.8% of lifetime reported trusts not controlling assets after death is more of a ceiling where, given the private nature of trusts, the actual percentage for trusts not in post-mortem use might be even lower, thus increasing the actual gap in post-mortem usage between **wills** and trusts.²³⁶

VI. Trends in Charitable **Estate Planning** Among U.S. Population Aged 55+

Among the over 12,000 decedents in the HRS, the percentage of distributed **estates** where any transfers were received by various common recipients were: offspring (e.g., child or grandchild) 58.1%, spouse 47.1%, charity 9.5%, other relatives 9.1%, siblings 5.7%, friends 4.2%.²³⁷ Thus, charity was the most common **estate** recipient following the spouse or descendants.²³⁸ The investigation of charitable **estate planning** is particularly relevant for legal practice as a wide range of techniques exists to generate tax advantages for those who wish to make a post-mortem transfer to charity.²³⁹

*30 A. Charitable **Planning** by Age

1. Results

Table 11: U.S. Adults Age 55+ With a Charitable Component in **Estate Planning** Documents by Age²⁴⁰

| Year | Among all | | | Among those with documents | | |
|---------|-----------|-------|------|----------------------------|-------|-------|
| | 55-64 | 65-74 | 75+ | 55-64 | 65-74 | 75+ |
| 1998 | 4.1% | 4.6% | 7.1% | 8.3% | 7.1% | 9.5% |
| 2000 | 5.0% | 5.7% | 7.5% | 9.9% | 9.0% | 10.0% |
| 2002 | 5.1% | 5.7% | 7.2% | 10.2% | 8.9% | 9.5% |
| 2004 | 5.1% | 4.6% | 7.1% | 11.0% | 7.4% | 9.6% |
| 2006 | 5.4% | 5.3% | 7.3% | 11.6% | 8.7% | 9.7% |
| 2008 | 4.9% | 5.2% | 7.7% | 11.2% | 8.8% | 10.2% |
| 2010 | 5.1% | 5.7% | 7.0% | 12.2% | 9.6% | 9.5% |
| 2012 | 4.5% | 6.0% | 6.7% | 11.5% | 10.4% | 9.1% |
| 2014(p) | 4.7% | 6.0% | 6.8% | 12.3% | 10.5% | 9.2% |

Among the U.S. population of adults aged 55 and above who have completed a **will** or trust, there has been an increasing trend to include a charity as a beneficiary.²⁴¹ However, as shown in Tables 6-11, a smaller proportion of the 55+ age group in the U.S. reports having a **will** or funded trust.²⁴² The net effect of these two trends is the relatively flat trend, seen above, in overall charitable **planning** in the population.²⁴³ It is important to note that these increasing trends are not related to the increasing size of the older adult population, as here the trend is following the percentage of the population with a **will** or trust, rather than the total number.²⁴⁴

2. Discussion

Although older adults are increasingly less likely to have **planning** documents, those who do have such documents are increasingly more likely to include a charitable component in their **plans**.²⁴⁵ Thus, it is becoming increasingly important for planners who draft **will** or trust documents to be familiar with charitable **estate planning** and the variety of options available

*31 in such **planning**.²⁴⁶ This trend is likely to continue given the increasing levels of childlessness and education, both of which-as demonstrated below-are associated with charitable **estate planning**.²⁴⁷

The strongest growth in charitable **planning** among those with documents occurred in the younger (55-64) age segment.²⁴⁸ To the extent that this trend in the younger (55-64) age group continues, we might expect to see similar positive trends eventually develop in the older age categories as this younger generation gradually moves its way into the older ages.²⁴⁹

B. Charitable **Planning** by Race and Ethnicity

1. Results

Table 12: U.S. Adults Age 55+ With a Charitable Component in **Estate Planning** Documents By Race and Ethnicity²⁵⁰

| Year | Among all | | | Among those with documents | | |
|-----------|------------|------------|----------|----------------------------|------------|----------|
| | White (NH) | Black (NH) | Hispanic | White (NH) | Black (NH) | Hispanic |
| 1998 | 5.8% | 1.2% | 1.4% | 8.5% | 5.3% | 6.7% |
| 2000 | 6.8% | 1.7% | 1.1% | 9.9% | 7.3% | 4.9% |
| 2002 | 6.7% | 2.3% | 1.1% | 9.7% | 9.3% | 5.3% |
| 2004 | 6.4% | 1.9% | 0.8% | 9.7% | 8.7% | 4.1% |
| 2006 | 6.8% | 2.1% | 1.2% | 10.4% | 9.2% | 5.7% |
| 2008 | 6.6% | 1.9% | 1.4% | 10.4% | 8.0% | 6.8% |
| 2010 | 6.7% | 1.6% | 1.4% | 10.8% | 7.4% | 7.8% |
| 2012 | 6.5% | 1.5% | 1.4% | 10.6% | 7.5% | 7.7% |
| 2014 est. | 6.6% | 1.5% | 1.4% | 11.0% | 7.6% | 8.2% |

Among those with a **will** or trust, non-Hispanic whites were only about 3 % more likely to include a charitable recipient than non-Hispanic blacks or Hispanics.²⁵¹ In some years, the difference was 1 percentage point or less.²⁵² However, due to a substantial difference in each group's propensity to have **planning** documents, as demonstrated in Table 7, there was a much *32 larger gap in the tendency to have a charitable **estate plan** in the group as a whole.²⁵³

2. Discussion

These results suggest that among those with **planning** documents, the tendency to include a charity was relatively similar among all three groups.²⁵⁴ This relative similarity in behavior is especially notable given the wealth differences between these groups.²⁵⁵ During these years, non-Hispanic white individuals in the survey with a **will** or trust held, on average, more than twice as many assets as non-Hispanic blacks or Hispanics.²⁵⁶ Thus, once engaging in formal **planning**, these minorities were quite generous in their gifts to charities.²⁵⁷ However, the difference in the propensity to have **planning** documents differed much more dramatically among these minority groups.²⁵⁸ The largest barrier to charitable **estate planning** among these minority groups appears to be the tendency to not have formal **will** or trust documents, rather than the relative tendency to include charity in such documents.²⁵⁹

C. Charitable **Planning** by Offspring

1. Results

Table 13: U.S. Adults Age 55+ with a Charitable Component in **Estate Planning** Documents by Offspring²⁶⁰

| Among all | | | | |
|-----------|----------------|---------------|--------------------------|------------------------|
| Year | Grand-children | Children only | No Offspring (unmarried) | No Offspring (married) |
| 1998 | 3.9% | 4.7% | 16.4% | 20.5% |

| | | | | |
|----------------------------|------|-------|-------|-------|
| 2000 | 4.5% | 6.9% | 16.3% | 26.8% |
| 2002 | 4.2% | 6.5% | 18.4% | 28.8% |
| 2004 | 4.0% | 6.5% | 16.4% | 25.4% |
| 2006 | 4.2% | 7.7% | 15.5% | 31.4% |
| 2008 | 4.2% | 7.1% | 15.2% | 24.7% |
| 2010 | 4.2% | 6.4% | 13.1% | 26.2% |
| 2012 | 3.9% | 5.8% | 13.1% | 25.8% |
| 2014 est. | 4.0% | 6.0% | 12.4% | 25.4% |
| Among those with documents | | | | |
| 1998 | 6.3% | 7.9% | 28.7% | 34.1% |
| 2000 | 7.2% | 11.5% | 29.7% | 40.5% |
| 2002 | 6.9% | 11.1% | 31.6% | 46.0% |
| 2004 | 6.8% | 11.1% | 30.9% | 41.2% |
| 2006 | 7.2% | 13.3% | 29.4% | 51.8% |
| 2008 | 7.3% | 13.2% | 30.5% | 45.0% |
| 2010 | 7.6% | 12.1% | 29.6% | 47.3% |
| 2012 | 7.3% | 11.3% | 29.9% | 46.6% |
| 2014 est. | 7.6% | 12.1% | 30.2% | 47.8% |

***33** The powerful influence of offspring on the presence of charitable **planning** is clearly demonstrated by the above results.²⁶¹ Nearly half of all married couples age 55+ with no offspring included a charitable component in their documents, when such documents existed.²⁶² In contrast, just over 7% of those with grandchildren included a charitable component in their existing documents.²⁶³ Previous research has demonstrated that childlessness is the single most powerful indicator of including a charitable component in the **estate plan**.²⁶⁴ This table shows just how wide the difference in charitable **planning** is based on this one factor.²⁶⁵

2. Discussion

The massive difference in the tendency to include charity in a charitable **estate plan** based on offspring can be useful to planners in two ways.²⁶⁶ First, knowing that an older (55+) married couple with no offspring has a roughly 50% likelihood of including a charity in their **will** or trust **plans** suggests that planners should be well prepared to discuss this topic with such clients.²⁶⁷ Second, because upcoming trends in childlessness among this older (55+) age group are well known, planners can anticipate a growing trend of ***34** including charity in **estate planning** documents, among those who complete such documents, for many years to come.²⁶⁸

D. Charitable **Planning** by Education

1. Results

Table 14: U.S. Adults Age 55+ with a Charitable Component in **Estate Planning** Documents by Education²⁶⁹

| Among all | | | | | |
|-----------|-------------|--------------|--------------|---------|----------|
| Year | Grad School | College Grad | Some College | HS Grad | <HS Grad |
| 1998 | 13.1% | 9.3% | 5.6% | 4.0% | 2.1% |
| 2000 | 15.7% | 10.3% | 6.3% | 4.4% | 2.3% |
| 2002 | 14.1% | 9.8% | 6.0% | 4.3% | 2.5% |
| 2004 | 13.9% | 9.3% | 4.8% | 4.0% | 2.0% |
| 2006 | 14.5% | 9.3% | 5.4% | 4.0% | 2.0% |
| 2008 | 14.5% | 8.2% | 5.1% | 3.7% | 2.1% |
| 2010 | 13.8% | 8.3% | 5.2% | 3.5% | 1.5% |
| 2012 | 12.7% | 8.1% | 4.8% | 3.3% | 1.5% |

| | | | | | |
|----------------------------|-------|-------|------|------|------|
| 2014 est. | 12.9% | 7.7% | 4.7% | 3.1% | 1.4% |
| Among those with documents | | | | | |
| 1998 | 16.6% | 12.5% | 8.2% | 6.4% | 4.7% |
| 2000 | 20.1% | 13.7% | 9.4% | 7.0% | 5.3% |
| 2002 | 17.9% | 13.2% | 9.1% | 6.8% | 6.0% |
| 2004 | 18.5% | 13.0% | 7.9% | 6.8% | 5.3% |
| 2006 | 19.3% | 13.1% | 9.1% | 6.9% | 5.2% |
| 2008 | 19.7% | 11.8% | 8.9% | 6.7% | 5.8% |
| 2010 | 19.5% | 12.5% | 9.8% | 6.6% | 4.4% |
| 2012 | 18.0% | 12.7% | 9.2% | 6.4% | 4.9% |
| 2014 est. | 18.7% | 12.3% | 9.6% | 6.4% | 4.7% |

Although demonstrating no strong trends over time, greater education was consistently associated with a greater propensity to engage in charitable **planning**, both among the 55+ population as a whole and among those with **planning** documents.²⁷⁰

*35 2. Discussion

Table 4 demonstrates that for the period reviewed here, education levels for this group rose.²⁷¹ As education levels rose, the propensity to include charity in **estate planning** documents, where such documents existed, remained stable.²⁷² To the extent this trend continues in the future, the rising levels of education shown in Table 4 may further increase the tendency to include charity in the **estate plan**.²⁷³ In other words, if the relatively greater propensity to include charity among more educated **estate planning** clients maintains, as in previous years, while the average education levels increase, as is already known by the education levels of upcoming age cohorts, this suggests an increasing overall tendency to include charity among those with comprehensive **estate planning** documents.²⁷⁴

It is also useful to note the inter-relationship between education levels and childlessness.²⁷⁵ Acquiring advanced education, as well as early stages of the careers available to those with advanced education, often involves the intentional postponement of child-bearing.²⁷⁶ This postponement can increase the ultimate level of childlessness.²⁷⁷ Conversely, childbearing at young ages makes the attainment of higher education less likely.²⁷⁸ Nevertheless, separate statistical analysis indicates that greater levels of education increase the propensity to include a charitable component in the **estate plan** even when controlling for childless, wealth, and income.²⁷⁹

Appendix A: Methodology Notes

A. Risk of 6th Year Bias

As people age, die, or drop out of the study, the ongoing sample from the HRS risks becoming less representative of the U.S. population over the age of 50 without continuing additions to the sample.²⁸⁰ In order to manage this problem, a new cohort of respondents are added into the study every six years.²⁸¹ It is possible that those with a lower sense of social responsibility are more likely to drop out after having initially experienced the effort *36 required to complete such a comprehensive survey.²⁸² As such, the waves following a group's inclusion of the survey may suffer from a selection bias as a result of the higher probability of drop out among these less pro-social respondents after the initial survey.²⁸³ To the extent that this pro-social characteristic also influences charitable **planning**, we would see a mechanism for relatively lower self-reported charitable **planning** behavior in the sixth years when new cohorts are initially added to the survey.²⁸⁴ In the HRS, these survey waves are in 1998, 2004, and 2010.²⁸⁵ A perusal of the trends in charitable **planning** propensity provides evidence that this may be occurring.²⁸⁶ Self-reported charitable **planning** appears to be relatively lower in these 6th year surveys.²⁸⁷ Comparing similar survey years may alleviate the concern about this bias.²⁸⁸ Thus, one could look at trends using 1998, 2004, and 2010 as

comparable data points.²⁸⁹ Additionally, one could look at the remaining years (2000, 2002, 2006, 2008 and 2012) as separately comparable trend data points.²⁹⁰

B. Projections

Projected numbers are based upon a combination of two ordinary least squares regressions.²⁹¹ The first projection results from using all years of data where the variable of interest is the outcome variable and the year is the independent variable.²⁹² The second projection results from using only the previous four observations (2006-2012).²⁹³ These two projections are averaged together, resulting in an overweighting of the trend from the most recent four observations.²⁹⁴

C. Post-Exit Information

In some cases the initial interview with surviving friends or relatives did not provide complete answers to all questions.²⁹⁵ At times this could relate to the time needed for completing **estate** administration.²⁹⁶ In these cases, *37 new interviews were conducted during subsequent survey years (i.e., every two years) to ascertain the missing information.²⁹⁷ Thus, a single decedent may have an exit interview and several post-exit interviews.²⁹⁸ In some cases, the information provided in a later interview differed from that provided in an earlier interview.²⁹⁹ In the analysis presented here, the presence of the following were counted as existing if they were reported to exist in any exit or post-exit survey and otherwise were assumed to be missing: a **will**; a funded trust; a probated **will**; a marriage at the time of death; a post-mortem transfer to a charity, spouse, offspring, sibling, relative or friend; a report that the **estate** had “nothing much of value,” or that the **estate** had been fully divided among the heirs.³⁰⁰

This article used the largest amount reported in any exit or post-exit interview for variables which included the number of children, size of charitable gift, and percentage of **estate** being transferred to charity.³⁰¹ For the following variable, this report uses the most recent non-missing observation including the size of the **estate**, an affirmative report that no **estate** documents could be found, and an affirmative report that the **estate** had not yet been distributed.³⁰²

D. Education

The weighting here may be less reliable because the weighting is not specifically designed to be used with separate education level categories, but simply reflects the respondent level weighting to project to a national population based upon age, gender, race, ethnicity, and marital status.³⁰³

E. Childlessness

In a few cases respondents answered the question regarding how many grandchildren they had with the answer “don't know.”³⁰⁴ In these cases, the assumption was made that the respondent had grandchildren, but was uncertain as to the number.³⁰⁵ Similarly, the few who did not answer the question were placed into the majority category of having grandchildren.³⁰⁶ The total number of these special cases varied from year to year, but the *38 number was typically less than 2% of the sample.³⁰⁷ Those labeled as without grandchildren were only those who affirmatively stated they had none.³⁰⁸

F. Marriage

The label “married” includes all those who were married or living with a partner as if they were married and is taken from the HRS Tracker File.³⁰⁹

G. Wealth

Wealth quintile cutoff points were calculated using the respondent weights from HRS data in each year.³¹⁰ Thus, more or less than 20% of the sample **will** fall into each quintile segment as the quintiles were based upon projected national population quintiles and not simply the sample quintiles.³¹¹ For 1998-2010 the wealth variable used was the imputed net wealth calculated by RAND and listed as the “H_ATOTA” variable.³¹² For 2012, the 2010 percentiles were used because the imputed net wealth numbers had not yet been released.³¹³

H. Race and Ethnicity

White or black are race categories and Hispanic is an ethnicity category meaning that the categories are not mutually exclusive.³¹⁴ Thus, the categories are Hispanic, non-Hispanic white, and non-Hispanic black.³¹⁵ A Hispanic individual is one who responds “Yes” to the question, “Do you consider yourself Hispanic or Latino?” and is taken from the HRS Tracker File.³¹⁶ For 2006 and later surveys, when respondents could identify with multiple racial categories, their race was the one that the respondent indicated they considered themselves primarily affiliated with.³¹⁷ However, the race category was used only when the respondent did not consider himself or herself to be Hispanic or Latino.³¹⁸

*39 I. Post-Mortem Distributions

The presence of a **will** was based upon the response to the question: “Did [[decedent's name] have a **will** that was written and witnessed?”³¹⁹ Whether or not a **will** had been probated was based upon the answer to the question: “Has [her/his] **will** been probated?”³²⁰ The presence of a funded trust was based upon the response to the question: “Before [her/his] death, had [decedent's name] put any of [her/his] assets into a trust?”³²¹ The division of assets among those with an unprobated **will** was based upon the response to the question: “The next questions are about [decedent name]'s assets and possessions, excluding any life insurance.³²² Have they been divided up among the heirs, have they not yet been distributed, was there nothing of much value to distribute, or what?”³²³ For **estates** in which multiple interviews were necessary to ascertain information (post-exit interviews), the decedent was considered to have no **will** only if a **will** was never reported as existing in any interview.³²⁴ A **will** was considered to have been probated if any interview indicated that the **will** had been probated, even if this answer was changed in a later interview.³²⁵ Finally, the classification of “Unprobated **will**: other” was given only if no reason for the lack of probating the **will** was ever given in any interview.³²⁶

Footnotes

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¹ See current and prior issues of this journal.

² See Part I.

- ³ See Part I.
- ⁴ See U.S. Dep't. of Health & Human Servs., Admin. on Aging, Aging Statistics, http://www.aoa.acl.gov/Aging_Statistics/index.aspx [[<http://perma.cc/QSJ5-Y47K>] (last visited Jan. 26, 2015).
- ⁵ See U.S. Dep't. of Health & Human Servs., Admin. on Aging, A Profile of Older Americans: 2013, available at http://www.aoa.acl.gov/Aging_Statistics/Profile/2013/docs/2013_Profile.pdf [[<http://perma.cc/J989-VKU8>] (last visited Jan. 26, 2015).
- ⁶ Id.
- ⁷ Id.
- ⁸ See Internal Revenue Serv., SOI Tax Stats - **Estate** Tax Year of Death Tables, available at <http://www.irs.gov/uac/SOI-Tax-Stats-Estate-Tax-Year-of-Death-Tables> [[<http://perma.cc/L7YB-FX7J>] (last visited Jan. 26, 2015); Michael J. Brunetti, The **Estate** Tax and Charitable Bequests: Elasticity Estimates Using Probate Records, 58 Nat'l Tax J. 165, 165-88 (2005); The Stelter Co., Discovering the Secret Giver: Groundbreaking Research on the Behavior of Bequest Givers in America, (2009), available at <http://www.stelter.com/footerfiles/researchwhitepapers.html> [[<http://perma.cc/MV9Q-JUQK>]; The Stelter Co., What Makes Them Give? (2013), available at <http://www.stelter.com/footerfiles/researchwhitepapers.html> [[<http://perma.cc/68FD-P43F>].
- ⁹ Grant number NIA U01AG009740. See Growing Older in America: The Health and Retirement Study, U.S. Dep't. of Health & Human Servs., Nat'l Inst. on Aging, Nat'l Inst. on Health, available at <http://hrsonline.isr.umich.edu/index.php?p=dbook> [[<http://perma.cc/9Z2X-72FZ>] (last visited Jan. 26, 2015).
- ¹⁰ Id.
- ¹¹ Id.
- ¹² Id.
- ¹³ Id.
- ¹⁴ Id.
- ¹⁵ See Health and Retirement Study: Sample Sizes and Response Rates, Univ. of Mich. Inst. for Soc. Research (Spring 2011) <http://hrsonline.isr.umich.edu/sitedocs/sampleresponse.pdf> [[<http://perma.cc/Z9HW-R82T>].
- ¹⁶ See Sampling Weights Revised for Tracker 2.0 and Beyond, Univ. of Mich. Inst. for Soc. Research, <http://hrsonline.isr.umich.edu/sitedocs/wgghtdoc.pdf> [[<http://perma.cc/U6S7-MBLT>] (last visited Jan. 26, 2015).
- ¹⁷ Id.
- ¹⁸ See Health and Retirement Study: Design History, Univ. of Mich. Inst. for Soc. Research (Dec. 2008) <http://hrsonline.isr.umich.edu/sitedocs/DesignHistory.pdf> [[<http://perma.cc/ZY9U-ZKH2>].

- 19 See id.
- 20 See F. Thomas Juster & Richard Suzman, An Overview of the Health and Retirement Study, 30 The J. of Hum. Resources (Special Issue on the Health and Retirement Study: Data Quality and Early Results) S7, S7-S56 (1995); Growing Older in America: The Health and Retirement Study, *supra* note 9.
- 21 Health and Retirement Study: Sample Evolution, 1992-1998, Univ. of Mich. Inst. for Soc. Research (Dec. 2008) <http://hrsonline.isr.umich.edu/sitedocs/surveydesign.pdf> [[<http://perma.cc/M87F-58WY>].
- 22 See id.
- 23 Id.
- 24 See Health and Retirement Study: 2012 Post-Exit Proxy - Data Description and Usage, Univ. of Mich. Inst. for Soc. Research (June 2012) <http://hrsonline.isr.umich.edu/modules/meta/2012/postexit/desc/px12dd.pdf> [[<http://perma.cc/4W9B-CBAM>].
- 25 See id.
- 26 See Growing Older in America: The Health and Retirement Study, *supra* note 9.
- 27 See *infra* Tables 6-14.
- 28 See Health and Retirement Study: 2012 Exit - Data Description and Usage, Univ. of Mich. Inst. for Soc. Research (Mar. 2015) <http://hrsonline.isr.umich.edu/modules/meta/2012/exit/desc/x12dd.pdf> [[<http://perma.cc/S7D8-TBN2>].
- 29 Id.
- 30 See id.
- 31 See id.
- 32 See Sampling Weights Revised for Tracker 2.0 and Beyond, *supra* note 16.
- 33 Nathan Berg, Non Response Bias, Munich Personal RePEc Archive Paper No. 26373, (2005), http://mpa.ub.uni-muenchen.de/26373/1/MPRA_paper_26373.pdf [[<http://perma.cc/2YSN-MHRH>].
- 34 See id.
- 35 See id.
- 36 See Growing Older in America: The Health and Retirement Study, *supra* note 9.
- 37 See Sampling Weights Revised for Tracker 2.0 and Beyond, *supra* note 16.

- 38 See id.
- 39 See infra Appendix A.
- 40 See Growing Older in America: The Health and Retirement Study, *supra* note 9.
- 41 See infra Part III.
- 42 See infra Part III.A.
- 43 See Russell N. James III, American Charitable Bequest Demographics (1992-2012), 9 (2013) www.encouragegenerosity.com/ACBD.pdf [<http://perma.cc/PS5M-ANGR>]. These statistics are taken from the U.S. Census Bureau Publication No. HS-13 Live Births, Deaths, Infant Deaths, and Maternal Deaths: 1900 to 2001.
- 44 Id.
- 45 See e.g., Google News search of “Baby Boom” generated an estimated 81,500 results while “Baby Bust” generated 628 results in a January 26, 2015 search.
- 46 See James, *supra* note 43.
- 47 See Google News, *supra* note 45.
- 48 See id.
- 49 See James, *supra* note 43.
- 50 See id.
- 51 James, *supra* note 43 at 9.
- 52 K. Christensen & J. W. Vaupel, Determinants of Longevity: Genetic, Environmental, and Medical Factors, 240 J. Internal Med. 333, 333-41 (1996).
- 53 Id.
- 54 Id.
- 55 See Publication NP-T3-B, Projections of the Total Resident Population by 5-Year Age Groups and Sex with Special Age Categories: Middle Series, 2001 to 2005, U.S. Census Bureau, Population Projections Program <http://www.census.gov/population/projections/files/natproj/summary/np-t3-b.pdf> [<http://perma.cc/5DFZ-UXRW>] (last visited Feb. 23, 2015); Publication NP-T3-C, Projections of the Total Resident Population by 5-Year Age Groups and Sex with Special Age Categories: Middle Series, 2006 to 2010, U.S. Census Bureau, Population Projections Program <http://www.census.gov/population/projections/files/natproj/summary/np-t3-c.pdf> [<http://perma.cc/CR8F-9A8S>] (last visited Feb. 23, 2015); Publication NP-T3-D, Projections of the Total Resident Population by 5-Year

Age Groups and Sex with Special Age Categories: Middle Series, 2011 to 2015, U.S. Census Bureau, Population Projections Program <http://www.census.gov/population/projections/files/natproj/summary/np-t3-d.pdf> [[<http://perma.cc/3JEY-BKPX>] (last visited Feb. 23, 2015).

⁵⁶ See Frank B. Hobbs & Bonnie L. Damon, 65+ in the United States, *Current Population Rep.*, Special Stud. 23, 23-190 (1996).

⁵⁷ See *supra* Part III.A.

⁵⁸ See *id.*

⁵⁹ See *id.*

⁶⁰ See *supra* Table 2.

⁶¹ See *id.*

⁶² See *id.*

⁶³ Centers for Disease Control, Vital Statistics of the United States, 1977, http://www.cdc.gov/nchs/data/vsus/mort77_2a.pdf (last visited Feb. 23, 2015) (for data on 1977); Centers for Disease Control, Vital Statistics of the United States, 1993, Volume II-Mortality, Part A, http://www.cdc.gov/nchs/data/vsus/mort93_2a.pdf (last visited Feb. 23, 2015) (for data on 1978-1993); Centers for Disease Control, Births and Deaths: United States, 1995, 45 Monthly Vital Statistics Report 3, (1996) http://www.cdc.gov/nchs/data/nvsr/supp/mv45_03s2.pdf (last visited Feb. 23, 2015) (for data on 1994); Centers for Disease Control, Births and Deaths: United States, 1995, 45 Monthly Vital Statistics Report 11 (1997), http://www.cdc.gov/nchs/data/nvsr/supp/mv45_11s2.pdf (last visited Feb. 23, 2015) (for data on 1995); Centers for Disease Control, Deaths: Final Data for 1996, 47 Monthly Vital Statistics Report 9 (1998), http://www.cdc.gov/nchs/data/nvsr/nvsr47/nvs47_09.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 1997, 47 Monthly Vital Statistics Report 19 (1999), http://www.cdc.gov/nchs/data/nvsr/nvsr47/nvs47_19.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 1998, 48 Monthly Vital Statistics Report 11 (2000), http://www.cdc.gov/nchs/data/nvsr/nvsr48/nvs48_11.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 1999, 49 Monthly Vital Statistics Report 8 (2001), http://www.cdc.gov/nchs/data/nvsr/nvsr49/nvsr49_08.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 2000, 40 Monthly Vital Statistics Report 15 (2002), http://www.cdc.gov/nchs/data/nvsr/nvsr50/nvsr50_15.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 2001, 52 Monthly Vital Statistics Report 3 (2003), http://www.cdc.gov/nchs/data/nvsr/nvsr52/nvsr52_03.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 2002, 53 Monthly Vital Statistics Report 5 (2004), http://www.cdc.gov/nchs/data/nvsr/nvsr53/nvsr53_05acc.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 2003, 54 Monthly Vital Statistics Report 13 (2006), http://www.cdc.gov/nchs/data/nvsr/nvsr54/nvsr54_13.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 2004, 55 Monthly Vital Statistics Report 19 (2007), http://www.cdc.gov/nchs/data/nvsr/nvsr55/nvsr55_19.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 2005, 56 Monthly Vital Statistics Report 10 (2008), http://www.cdc.gov/nchs/data/nvsr/nvsr56/nvsr56_10.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 2006, 57 Monthly Vital Statistics Report 14 (2009), http://www.cdc.gov/nchs/data/nvsr/nvsr57/nvsr57_14.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 2007, 58 Monthly Vital Statistics Report 19 (2010), http://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58_19.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 2008, 59 Monthly Vital Statistics Report 10 (2011), http://www.cdc.gov/nchs/data/nvsr/nvsr59/nvsr59_10.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 2009, 60 Monthly Vital Statistics Report 3 (2011), http://www.cdc.gov/nchs/data/nvsr/nvsr60/nvsr60_03.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 2010, 61 Monthly Vital Statistics Report 4 (2013), http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_04.pdf (last visited Feb. 24, 2015); Centers for Disease Control, Deaths: Final Data for 2011, 61 Monthly Vital Statistics Report 6 (2012), http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_06.pdf (last visited Feb. 24, 2015).

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- 105 *Id.*
- 106 See *infra* Table 9, Use of Documents by Education Among U.S. Residents Age 55+; *infra* Table 13: U.S. Adults Age 55+ with a Charitable Component in **Estate Planning** Documents by Education.
- 107 See Christensen & Vaupel, *supra* note 52; Russell N. James III, Distinctive characteristics of educational donors, 8 Int'l Jour. Educ. Advancement 3, 3-12 (2008).
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- 110 See *id.*

- 111 See Growing Older in America: The Health and Retirement Study, *supra* note 9.
- 112 See *id.*
- 113 See *id.* It is possible that a person could have put assets into a trust for purposes other than **estate planning** and simultaneously not have used an inter vivos trust (or a **will**) for **estate planning**. See *id.* The questions used in the HRS unfortunately do not permit clear identification of anyone who may be in this circumstance. See *id.* Given that the most common use of funded trusts would likely be in the context of a funded inter vivos trust for **estate planning** purposes, this article **will** assume that someone reporting having funded a trust with assets has a trust intended for **estate planning** purposes. See *id.* Separately, if a respondent indicated they had a trust in response to the first question, but did not indicate that they had placed any assets into a trust in the second question, it is assumed they had only a testamentary trust. See *id.* Thus, if someone indicated they had a trust, but did not indicate that they had put any assets into the trust, then the person would fall into the “**will** only” category. See *id.* In this way both testamentary trusts included in a **will** and unfunded living trusts are treated similarly as being essentially equivalent to a “**will** only.” See *id.* The responses of “Yes, **will** and trust” or “No **will**, but have a trust” to the first question cannot be used as a completely reliable measure, because such a response had to be volunteered by the respondent and was not an alternative specifically suggested to respondents. See *id.*
- 114 See Growing Older in America: The Health and Retirement Study, *supra* note 9.
- 115 See *id.*
- 116 See *id.*
- 117 See *id.*
- 118 See *id.*
- 119 See *id.*
- 120 See *id.*
- 121 See *id.*
- 122 Unif. Real Prop. Transfer on Death Act §§ 1-21, 8 U.L.A. 136-40 (Supp. 2009). See *Ariz. Rev. Stat. Ann.* § 33-405 (West 2015); *Ark. Code Ann.* § 18-12-608 (West 2015); *Colo. Rev. Stat.* § 15-15-404 (West 2015); *Kan. Stat. Ann.* § 59-3501 (West 2015); *Mont. Code Ann.* § 72-6-121 (West 2015); *Mo. Ann. Stat.* § 461.025 (West 2015); *Nev. Rev. Stat. Ann.* § 111.109 (West 2015); *N.M. Stat.* § 45-6-401 (West 2015); *Ohio Rev. Code Ann.* § 5302.22 (West 2015); *Wis. Stat. Ann.* § 705.15 (West 2015).
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- ¹²⁶ See id.
- ¹²⁷ See id.
- ¹²⁸ See id.
- ¹²⁹ See generally Growing Older in America: The Health and Retirement Study, supra note 9. (discussing the ongoing study that tracks trends in the usage of retirement **planning** documents).
- ¹³⁰ See id.
- ¹³¹ See id.
- ¹³² See id.
- ¹³³ See Joseph S. Mattina, *The Probate Court and the Non-Probate Revolution*, 13 *Quinnipiac Prob. L. J.* 409 (1999).
- ¹³⁴ See id.
- ¹³⁵ See Growing Older in America: The Health and Retirement Study, supra note 9.
- ¹³⁶ See id.
- ¹³⁷ See id.
- ¹³⁸ See id.
- ¹³⁹ See generally id. White or black are race categories and Hispanic is an ethnicity category meaning that the categories are not mutually exclusive. Id. Thus, I separate the categories as Hispanic, non-Hispanic white, and non-Hispanic black. Id. A Hispanic individual is one who responds “Yes” to the question “Do you consider yourself Hispanic or Latino?” and is taken from the Health and Retirement Study Tracker File. Id.
- ¹⁴⁰ See id.
- ¹⁴¹ See id.
- ¹⁴² See id.
- ¹⁴³ See id.

- 144 Growing Older in America: The Health and Retirement Study, *supra* note 9.
- 145 *Id.*
- 146 *Id.*
- 147 *Id.*
- 148 *Id.*
- 149 *Id.*
- 150 See Health and Retirement Study: Sample Sizes and Response Rates, *supra* note 15. Note that the HRS “oversamples” Hispanic respondents, meaning that a larger share of Hispanics are included in the survey than their representative share of the population, giving an even greater confidence to the results in this category. *Id.*
- 151 Growing Older in America: The Health and Retirement Study, *supra* note 9.
- 152 *Id.*
- 153 See *id.*
- 154 *Id.*
- 155 See James, *supra* note 91; *infra* Table 13: U.S. adults age 55+ with a charitable component in **estate planning** documents by offspring.
- 156 Growing Older in America: The Health and Retirement Study, *supra* note 9.
- 157 *Id.*
- 158 See Health and Retirement Study: 2012 Post-Exit Proxy - Data Description and Usage, *supra* note 24. Education levels are calculated based on respondent's reported years of formal education. *Id.* The category of “some college” includes those with 13, 14, or 15 years of education, which would encompass associate degree graduates. *Id.* The category of “college grad” includes only those who have 16 years of education. *Id.* Any formal education beyond the bachelor's level results in inclusion in the “graduate school” category. *Id.*
- 159 See *supra* Table 9: Use of Documents by Education Among U.S. Residents Age 55+.
- 160 See Francisco H. G. Ferreira, Education For the Masses? The Interaction Between Wealth, Educational and Political Inequalities, 9 *Econ. of Transition* 533, 533-52 (2001).
- 161 See *supra* Table 9: Use of Documents by Education Among U.S. Residents Age 55+.
- 162 See *id.*

- [163](#) See id.
- [164](#) See id.
- [165](#) See id.
- [166](#) See id.
- [167](#) See id.
- [168](#) See supra Table 4: Share of Adults Age 55+ with at least a Bachelors Degree.
- [169](#) See James, supra note 43.
- [170](#) See id.
- [171](#) See supra Table 9: Use of Documents by Education Among U.S. Residents Age 55+.
- [172](#) See id.
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- [174](#) Id.
- [175](#) See supra Table 4: Share of Adults Age 55+ with at Least a Bachelor's Degree.
- [176](#) Growing Older in America: The Health and Retirement Study, supra note 9.
- [177](#) Id.
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- 205 See Health and Retirement Study: 2012 Exit - Data Description and Usage, *supra* note 28.
- 206 *Id.*
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- 213 See *supra* Part IV.A.1.
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- 221 See *supra* Part IV.A.1.
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- 224 See Growing Older in America: The Health and Retirement Study, *supra* note 9.

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- 318 See supra Part IV.B.
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- 321 See supra Part V.B.
- 322 See supra Part V.A.
- 323 See supra Part V.A.
- 324 See supra Part V.A.
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