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

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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]

1. *See* current and prior issues of this journal.
2. *See* Part I.
3. *See* Part I.

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

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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.*

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

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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/wghtdoc.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.

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]

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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://mpra.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.

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 States[43]

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

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.

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

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]

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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.*

Table 2: Total Resident Population in the United States[55]

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

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.

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]

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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/mvsr/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/mvsr/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).

64. 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/mvsr/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

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]

(1997), http://www.cdc.gov/nchs/data/mvsr/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).

65. 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).

66. *See* James, *supra* note 43, at 9.

67. *See supra* Part III.A.

68. *See* James, *supra* note 43.

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

69. *See Growing Older in America: The Health and Retirement Study*, *supra* note 9.
70. *See* James, *supra* note 43.
71. *See Growing Older in America: The Health and Retirement Study*, *supra* note 9.
72. *See id.*
73. *See id.*
74. *See id.*
75. *See id.*
76. *See id.*
77. GIVING USA, THE ANNUAL REPORT ON PHILANTHROPY FOR THE YEAR 2013 (Chicago: Giving USA Foundation, 2014).
78. *See Growing Older in America: The Health and Retirement Study*, *supra* note 9.
79. *Id.*
80. Karen Donovan, *When Great Expectations Falter*, WEALTH MANAGEMENT (2006), http://wealthmanagement.com/archive/when-great-expectations-falter [http://perma.cc/L3HB-UBM9].
81 *See* University of Michigan, *supra* note 40.
82. *See id.*
83. *Id.*
84. *Id.*

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%

85. *See* Russell N. James III & Jackie Franey, *Trending Forward: Emerging Demographics Driving Planned Giving*, NATIONAL CONFERENCE ON PHILANTHROPIC PLANNING, October 15–17, 2013, 11, (analysis also based on data from BNY Wealth Management Clients); American Council on Gift Annuities, *2013 Survey of Charitable Gift Annuities* 20–21 (2014), *available at* http://www.acga-web.org/surveys-reports-conference-papers-and-brochures/61-acga-surveys/275-2013-survey-of-charitable-gift-annuities [http://perma.cc/9CJA-FSYS].

86. *See* PUB. HEALTH SERV., U.S. DEP'T OF HEALTH, EDUC., & WELFARE, FACTS OF LIFE AND DEATH, DHEW PUB. NO. (PHS) 79-1222 (1978).

87. *See* Russell N. James III, *Wills, Trusts, and Charitable Estate Planning: An Analysis of Document Effectiveness Using Panel Data*, 20 J. FIN. COUNSELING & PLAN. 3, 4 (2009).

88. *See* James, *supra* note 43, at 17.

89. *See* James, *supra* note 87, at 6.

90. *See Historical Table 2. Distribution of Women Age 40–50 by Number of Children Ever Born and Marital Status: CPS, Selected Years, 1970–2014*, U.S. CENSUS BUREAU (2015), http://www.census.gov/hhes/fertility/files/cps/historical/H2.xlsx [http://perma.cc/5CC7-RTN6].

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 Degree[101]

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%

91. *See* Russell N. James III, *Health, Wealth, and Charitable Estate Planning: A Longitudinal Examination of Testamentary Charitable Giving Plans*, 38 NONPROFIT & VOLUNTARY SECTOR Q. 1026, 1026–43 (2009).
92. James, *supra* note 43, at 12.
93. *Id.*
94. *Id.*
95. *Id.*
96. James, *supra* note 91, at 1033.
97. James, *supra* note 43, at 12.
98. *Id.*
99. *Id.*
100. *Id.*
101. *See id.* at 13.

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%

Table 4 demonstrates an unbroken trend of increasing education levels in the United States[102] 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

102. *See id.*
103. *See id*.
104. *See* James, *supra* note 91, at 1033.
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).
108. *See* James, *supra* note 107.

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 Age[114]

	Will Only			Funded Trust		
Year	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%

109. *See infra* Table 9: Use of Documents by Education Among U.S. Residents Age 55+.

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.

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%

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

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).

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

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123. *See* Susan N. Gary, *Applying Revocation-on-Divorce Statutes to Will Substitutes*, 18 QUINNIPIAC PROB. L.J. 83, 90–92 (2004); Susan N. Gary, *Transfer-On-Death Deeds: The Nonprobate Revolution Continues*, 41 REAL PROP. PROB. & TR. J. 529, 531–33 (2006); John H. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession*, 97 HARV. L. REV. 1108, 1114 (1984); Bruce H. Mann, *Formalities and Formalism in the Uniform Probate Code*, 142 U. PA. L. REV. 1033, 1060–61 (1994); Grayson M.P. McCouch, *Will Substitutes Under the Revised Uniform Probate Code*, 58 BROOK. L. REV. 1123, 1193 (1993).

124. *See* Gary, *supra* note 123, at 531–33.

125. *See* David Joulfaian, *The Federal Estate Tax: History, Law, and Economics* (Jan. 2011), *available at* http://news.heartland.org/sites/default/files/joulfaian_ssrn-id1579829.pdf [http://perma.cc/8MHD-DBFZ].

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.*

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]

	Will Only			Funded Trust		
Year	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%

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.*

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]

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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.*

C. Document Usage by Offspring

1. Results

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

	Will Only			Funded Trust		
	No Offspring	Children only	Grand-children	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]

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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.

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	Some College	HS Graduate	<HS Graduate
			Will Only		
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

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.*

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

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+.

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

172. *See id.*
173. *See id.*
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.*
178. *Id.*

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]

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179. *Id.*
180. *Id.*
181. *Id.*
182. *Id.*
183. *Id.*
184. *See id.*
185. *Id.*
186. *Id.*
187. *Id.*
188. *See* Elizabeth Goldsmith, *Women and Estate Planning*, 7 J. PRACT. EST. PLAN. 25, 25–46 (2005–2006).

F. Document Usage by Wealth

1. Results

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

Year	Top 20%	60%–80%	40%–60%	20%–40%	Bottom 20%
			Will Only		
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

189. *Growing Older in America: The Health and Retirement Study*, *supra* note 9.
190. *Id.*
191. *See id.*
192. *See supra* Table 11.

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]

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193. *Id.*
194. *Id.*
195. *Id.*
196. *Id.*
197. Deborah A. Geier, *Fundamental Tax Reform: Incremental Versus Fundamental Tax Reform and the Top One Percent*, 56 SMU L. REV. 99, 141 (2003).
198. *See supra* Table 11.
199. *Id.*
200. *Id.*
201. *Id.*
202. *Id.*
203. *See supra* Part IV.A.
204. *See supra* Part IV.A.

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

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205. *See Health and Retirement Study: 2012 Exit – Data Description and Usage*, *supra* note 28.
206. *Id.*
207. *Id.*
208. *Id.*
209. *Id.*
210. *See supra* Part IV.F.1.
211. *See supra* Part IV.A.1.
212. *Growing Older in America: The Health and Retirement Study*, *supra* note 9.
213. *See supra* Part IV.A.1.
214. *Growing Older in America: The Health and Retirement Study*, *supra* note 9.
215. *Id.*
216. *See supra* Part IV.A.1.
217. JESSE DUKEMINIER ET AL., WILLS, TRUSTS, AND ESTATES 38–39 (8th ed. 2009) (explaining that "[m]ost property transferred at death passes outside of probate through a non-probate mode of transfer," including joint tenancy property, life insurance, contracts with payable-on-death (POD) provisions, and interests in trust).

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 he 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

218. *See supra* Part V.A.1.
219. *See supra* Part IV.A.1.
220. *See supra* Part V.A.1.
221. *See supra* Part IV.A.1.
222. *See supra* Part V.A.1.
223. *See supra* Parts IV.A.2, V.A.1.
224. *See Growing Older in America: The Health and Retirement Study*, *supra* note 9.
225. *Id.*
226. *Id.*
227. *Id.*
228. *Id.*
229. *Id.*

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]

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230. *Id.*
231. *Id.*
232. *Id.*
233. *See* Bradley E.S. Fogel, *Trust me? Estate Planning with Revocable Trusts*, 58 ST. LOUIS U. L. J. 804, 817 (2013–2015); Frances H. Foster, *Privacy and the Elusive Quest for Uniformity of Law of Trusts*, 38 ARIZ. T. L. J. 713, 721 (2006).
234. Foster, supra note 233, at 721–24; Larry S. Dushkes, *Special Notice Provisions Applicable to Probate Proceedings*, 37 L.A. LAW 11, 11 (2014–2015).
235. *Id.*
236. *Id.*
237. *See* Dept. of Health & Human Servs., *supra* note 9.
238. *Id.*
239. *See* THOMAS J. RAY, JR., CHARITABLE GIFT PLANNING: A PRACTICAL GUIDE FOR THE ESTATE PLANNER, (A.B.A., 2d ed. 2006); Anita J. Siegel, *Charitable Planning: A Primer*, 263 N.J. LAW. 61, 61–63 (2010); Winton C. Smith Jr., *Charitable Gift Planning*, 8 J. PRACT. EST. PLAN. 17 (2006–2007).

A. Charitable Planning by Age

1. Results

Table 11: U.S. Adults Age 55+ With a Charitable Component in Estate Planning Documents by Age[240]

	Among all			Among those with documents		
Year	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

240. *See* James, *supra* note 43.
241. *Id.*
242. *See supra* Part IV.
243. *See supra* Part IV.A.
244. *See supra* Part IV.A.
245. *See supra* Parts IV.A, VI.A.1.

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 Ethnicity[250]

	Among all			Among those with documents		
Year	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

246. *See* Ray, *supra* note 239.
247. *See infra* Appendix A.D–E.
248. *See* James, *supra* note 43, at 20.
249. *Id.*
250. *See* James, *supra* note 43, at 29.
251. *Id.*
252. *Id.*

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 Offspring[260]

Year	Grand-children	Children only	No Offspring (unmarried)	No Offspring (married)
	Among all			
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%

253. *See supra* Part IV.B.1.

254. *See* James, *supra* note 43, at 29.

255. James P. Smith, *Racial and Ethnic Differences in Wealth in the Health and Retirement Study*, 30 THE J. HUM. RESOURCES S158, S158-S183 (1995).

256. Russell N. James III, *Encouraging Generosity: The Demographics of Charitable Estate Planning* (unpublished lecture power point, Texas Tech University) *available at* http://www.slideshare.net/generosity/demographics-of-charitable-estate-planning [http://perma.cc/7665-UV6Y].

257. *See id.*

258. *See id.*

259. *See id.*

260. *See. id.*

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%

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

261. *See id.*
262. *See id.*
263. *See id.*
264. *See* James, *supra* note 91.
265. *See id.*
266. *See id.*
267. *See id.*

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 Education[269]

Year	Grad School	College Grad	Some College	HS Grad	<HS Grad
			Among all		
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]

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268. *See id.*
269. *See* James, *supra* note 256.
270. *See id.*

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

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271. *See* James, *supra* note 91.
272. *See* James, *supra* note 256.
273. *See supra* Table 4.
274. *See supra* Table 4.
275. Anders Björklund, *Does Family Policy Affect Fertility?* 19 J. POPULATION ECON. 3, 3–24 (2006).
276. *See id.*
277. Kamila Cygan-Rehm & Miriam Maeder, *The Effect of Education on Fertility: Evidence from a Compulsory Schooling Reform*, 25 LAB. ECON. 35, 35–48 (2013).
278. *See* James, *supra* note 91.
279. *See* Christensen, *supra* note 52.
280. *See Health and Retirement Study: 2012 Exit – Data Description and Usage*, *supra* note 28, at 5.
281. *See id.*

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,

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282. *See id.*
283. *See id.*
284. *See id.*
285. *See id.*
286. *See id.*
287. *See id.*
288. *Health and Retirement Study: Sample Sizes and Response Rates*, *supra* note 15, at 1.
289. *Id.*
290. *Id.*
291. *See supra* Part III.A.
292. *See supra* Part III.A.
293. *See supra* Part III.A.
294. *See supra* Part III.A.
295. *See* Juster & Suzman, *supra* note 20.
296. *See id.*

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

297. *See Health and Retirement Study: 2012 Exit – Data Description and Usage*, *supra* note 28.
298. *See id.*
299. *See id.*
300. *See id.*
301. *See id.*
302. *See id.*
303. *See supra* Part IV.D.I.
304. *See supra* Part III.B.2.
305. *See supra* Part III.B.2.
306. *See supra* Part III.B.2.

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]

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307. *See supra* Part III.B.2.
308. *See supra* Part III.B.2.
309. *See supra* Part IV.E.2.
310. *See supra* Part IV.E.2.
311. *See supra* Part IV.F.2.
312. *See supra* Part IV.F.
313. *See supra* Part IV.F.
314. *See supra* Part IV.B.
315. *See supra* Part IV.B.
316. *See supra* Part IV.B.
317. *See supra* Part IV.B.
318. *See supra* Part IV.B.

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]

319. *See supra* Part V.A.
320. *See supra* Part V.A.
321. *See supra* Part V.B.
322. *See supra* Part V.A.
323. *See supra* Part V.A.
324. *See supra* Part V.A.
325. *See supra* Part V.A.
326. *See supra* Part V.A.