

**Testimony of
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Before the
Committee on Governmental Operations
Council of the City of New York
Hearing on Voting Registration and Election Resolutions
November 25, 2008**

On behalf of Brennan Center for Justice at NYU School of Law, we thank the Committee on Governmental Operations for holding this hearing and for providing us with the opportunity to discuss voter registration and election administration proposals.

The Brennan Center for Justice is a nonpartisan think tank and advocacy organization that focuses on issues of democracy and justice. We are deeply involved in the effort to ensure fair and accurate voting and voter registration systems, and to promote policies that maximize participation in elections in New York and throughout the nation. In this past election, through advocacy and litigation, we prevented more than 500,000 voters in Florida, Ohio, Colorado, Wisconsin, and Montana from disenfranchisement.

Put simply, the implicit question before us today is how to make it easier to register and vote. The three resolutions under discussion would be a step toward catching up to other states and rethinking New York's cumbersome election code and regulations. In general, the Brennan Center supports steps to ease election administration.

However, I'm here today to urge you to consider something in addition and even bolder. A system of universal or automatic voter registration. (Actually, Assemblyman Michael Gianaris sponsored similar legislation back in 2004.)

The 2008 general election will be remembered for many reasons. One relevant to today's hearing are the images of long lines of people snaking around blocks waiting to vote early. Yet, despite the spike in early balloting and the overall increase of five million voters from 2004, only about 62% of eligible voters went to the polls.² That is an improvement over the 60.6% in 2004, but still below the 1964 turnout of 64%.³

In the November 2004 presidential election, 28% of eligible Americans were not registered to vote. That's more than 50 million who were not on the electoral rolls and could not vote on Election Day.⁴ According to 2006 data from the U.S. Census Bureau and the New York State Board of Elections, about 21% of potential voters in New

¹ I am not an attorney, nor am I admitted to the bar. My testimony has been approved by attorneys at the Brennan Center.

² Brian C. Mooney, *Voter Turnout Didn't Set Record*, Boston Globe, November 14, 2008.

³ *Id.*

⁴ Wendy Weiser, Michael Waldman, Renee Paradis, Brennan Center for Justice at NYU School of Law, *Universal Registration Policy Summary*, (2008), available at http://www.brennancenter.org/content/resource/universal_voter_registration_draft_summary [herein *Universal Registration Policy Summary*].

York—*more than 3 million eligible voters*—were not registered to vote.⁵ Voter protection efforts, including the Election Protection toll-free hotline, in which the Brennan Center participated, consistently report that the single greatest source of voting problems is the registration system. New York is no exception.

Automatic voter registration is the most comprehensive means available to ensure all who are eligible may vote and to increase participation in the electoral system. In addition, it shifts the burden of registration from citizens and third-party organizations to the government, removes several barriers and smoothes election administration.

Voter registration laws weren't widely enacted in the United States until the 19th century. These laws were often used as a means to keep “undesirable voters” from the polls, including African-Americans, the working-class, immigrants, and the poor.⁶ Sadly, that discriminatory effect is still felt today.

In 2006, while nearly 70% of white voters were registered to vote nationally, only 61% of African American and 54% of Hispanic populations were.⁷ And, 82% of people earning over \$100,000 were registered, but the ratio drops precipitously in lower income categories: 67% of those who earn between \$30,000 to \$39,999; 66% of those who earn between \$20,000 to \$29,999; and 56% of those who earn less than \$20,000.⁸ Only 54% of the unemployed and the 48% who didn't graduate from high school are registered to vote.⁹

Under the current system of registration, voters often makes mistakes, including submitting multiple forms or omitting information. Voters may use a different form of their name than that which appears in Department of Motor Vehicles or Social Security databases. Fixing these errors delays processing of forms. If the information isn't corrected, the voter is barred from the polls for reasons having nothing to do with eligibility, through error-prone purges and “no match/no vote” policies. Essentially, it's disenfranchisement by typo.

With the burden resting upon the individual, it's also a challenge to keep lists current. Voters rarely cancel registrations when they move, leaving no-longer-valid records on voter lists. Such bloated lists fuel false claims about potential for fraud, thus giving way to suppression or unlawful purges.

Our highly mobile population exacerbates flaws in the system. More than two-fifths of nonvoters in 2000 were ineligible because they had moved and did not re-register.¹⁰

⁵ In 2006, the U.S. Census Bureau estimated New York state population to be 19,306,183, and 23.4% was under the age of 18. The New York State Board of Elections indicates there were 11,669,573 registered voters as of November 1, 2006.

⁶ Alexander Keyssar, *The Right to Vote* (Basic Books, 2000), 312.

⁷ U.S. Census Bureau, *Voting and Registration in the Election of November 2006*, at 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ Universal Registration Policy Summary, at 3. Thomas Patterson, *The Vanishing Voter: Public Involvement in an Age of Uncertainty* (Knopf, 2002), 178.

Populations that are more likely to relocate, including low-income citizens and those who are less educated, are disproportionately impacted by the burden of registering in each new location.¹¹

Finally, the rush to register voters as Election Day approaches creates a strain on the local boards of election to process the paperwork and update poll books. Without knowing in advance the actual total number of voters in a district, it is difficult to plan the allocation of voting equipment and poll workers.

The solution to all of these issues is universal voter registration. How can that be accomplished? There are a number of ways that can succeed. For example, through lists that already exist and by a process known as enumeration.

States have a variety of databases that have information on citizens including, DMV databases, state tax rolls, and social service lists. These would be the building blocks of a comprehensive voter registration roll. Another method of registration could be enumeration, like the decennial Census. The local boards could send out mail surveys to each known address asking citizens over 18 to complete the form and return it. Follow-up could be conducted by going door to door, making an effort to include those who do not live at a fixed address.

Back to resolutions under consideration. If New York added the millions of unregistered to the rolls, early in-person voting could be useful to reduce the strain on the election system. And a comment about electronic voter registration. While the intent is to ease administration, consider the demographics of citizens who are unregistered; they are the least likely to have access to the Internet. Electronic registration may theoretically lower a barrier, but this alone is probably little or no relief for most of those who aren't registered.

In sum, my colleagues and I thank you for this opportunity to testify and for your continued oversight of and concern for the electoral process. The Brennan Center is eager to work with the State and City Boards of Elections on the many issues discussed.

¹¹ Universal Registration Policy Summary, at 4.