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FOR JUSTICE

VOTER REGISTRATION  
MODERNIZATION

POLICY SUMMARY

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The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. Our work ranges from voting rights to redistricting reform, from access to the courts to presidential power in the fight against terrorism. A singular institution – part think tank, part public interest law firm, part advocacy group – the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measurable change in the public sector.

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The Voting Rights and Elections Project works to expand the franchise, to ensure that every eligible American can vote, and to ensure that every vote cast is accurately recorded and counted. The Center's staff provides top-flight legal and policy assistance on a broad range of election administration issues, including voter registration systems, voting technology, voter identification, statewide voter registration list maintenance, and provisional ballots.

## ACKNOWLEDGMENTS

The Brennan Center would like to thank the Bullitt Foundation, the Carnegie Corporation, the Charles H. Revson Foundation, the Educational Foundation of America, the Ford Foundation, the Irving Harris Foundation, the JEHT Foundation, the Joyce Foundation, the Mitchell Kapor Foundation, the Open Society Institute, the Rockefeller Family Fund, the Tides Foundation, and the Wallace Global Fund for the generous support that made this paper possible. The statements made and the views expressed in this paper are solely the responsibility of the Brennan Center.

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## I. INTRODUCTION

Since the Florida election debacle in 2000 laid bare the way Americans cast and count votes, lawmakers and officials at federal, state, and local levels have made fitful progress toward building a modern and democratically inclusive election system. But the promise of a renewed democratic system has not been fully realized. Too often, when it comes to our election system, policymaking has devolved into partisan wrangling or become bogged down in arcane technicalities.

Today we have the opportunity for a major breakthrough for effective democracy. The 2008 election saw a record number of new voters. New election technology and the implementation of a recent federal law in the states make it possible to overcome the challenges with our voter registration system – the single greatest cause of voting problems in the United States. We can now truly modernize the voter registration process by upgrading to a system of voter registration modernization – a system where all eligible citizens are able to vote because the government has taken the steps to make it possible for them to be on the voter rolls, permanently. Citizens must take responsibility to vote, but government should do its part by clearing away obstacles to their full participation. The current voter registration system – which is governed by a dizzying array of rules and is susceptible to error and manipulation – is the largest source of such obstacles.

In 2001, a task force for a commission chaired by former Presidents Jimmy Carter and Gerald Ford concluded: “The registration laws in force throughout the United States are among the world’s most demanding ... [and are ] one reason why voter turnout in the United States is near the bottom of the developed world.”<sup>1</sup> Currently, eligible voters are not placed on electoral rolls unless they first take the initiative to register and satisfy state-imposed requirements for voter registration.<sup>2</sup> State officials must expend substantial resources manually processing each voter registration form, one-by-one, applying rules and procedures that vary from jurisdiction to jurisdiction. Eligible citizens’ voter registrations may be rejected if technical requirements are not met or canceled without notice. Political operatives may attempt to block certain citizens from the voter rolls by challenging their registrations or seeking to impose new technical hurdles to registration. Once they have registered, voters must start the process all over again virtually every time they move. The result is a system in which many eligible citizens are unable to vote.

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<sup>1</sup> Carter and Ford: National Election Commission, *Report of the Task Force on the Federal Election System*, chapter 2 “Voter Registration,” August 2001, available at [http://www.tcf.org/Publications/ElectionReform/99\\_full\\_report.pdf](http://www.tcf.org/Publications/ElectionReform/99_full_report.pdf).

<sup>2</sup> North Dakota does not require registration.

They fall off the rolls; they never sign up in the first place; they drift further away from electoral participation. Some fifty million eligible American citizens are not registered to vote. Most Americans take this system for granted, but it was not always this way, and it does not have to be this way forever.

The United States is one of the few industrialized democracies that place the onus of registration on the voter. In other democracies, the government facilitates voting by taking upon itself the responsibility to build voter rolls of all eligible citizens. Even in the United States, voter-initiated registration did not exist until the late nineteenth century. It was instituted then in many states with the intention of suppressing unpopular voters, especially former slaves and new European immigrants, and it continues to disenfranchise many Americans to this day.

Fortunately, in part because of new federal laws, states have made it easier to register to vote over the last several decades. The Voting Rights Act of 1965 struck down racially discriminatory barriers to voter registration, but did not require government to take more affirmative steps to ensure registration. The National Voter Registration Act of 1993 (NVRA), popularly known as “Motor Voter,” required government agencies such as departments of motor vehicles and public assistance offices to make voter registration services available to citizens. After the 2000 election, Congress passed the Help America Vote Act (HAVA), which mandated that states maintain computerized voter databases at the state level, rather than county by county. These databases are now in place in every state and can facilitate more complete and accurate voter rolls.

Despite these advances, our voter-initiated registration system continues to impose significant administrative costs and costs on voters. As long as the government continues to rely on citizens to register themselves, opening up access means ceding more control to voters and those who assist them to determine when and how they register. Elections officials may be overwhelmed by the dual demands of processing the typical surge of registrations that come in at the last minute and planning for elections. If the system cannot keep up, votes inevitably will be lost. The patchwork of state rules and practices that serve a gate-keeping function to registration also keeps out eligible voters and makes the system vulnerable to partisan manipulation and error. Our current voter registration system is the single greatest source of disputes and litigation over election administration rules and practices.

This year, when surging citizen participation underscores the deep desire for a change in national direction, we see with renewed urgency the value in building a modern and fully participatory electoral system. Voter registration modernization creates voter rolls that are as comprehensive as possible well in advance of Election Day and provides a

fail-safe mechanism if an eligible voter shows up at the polls but cannot be found on the list. Such a system is routine in other countries, and because of the recent legal and technological advances in voter registration, it is now achievable here.

Federal action can begin to move the country toward this goal in short order. A system of modernized registration would build on existing policies and innovations undertaken by state and local officials. The next Congress can substantially speed up the process by:

- **Establishing a national mandate for voter registration modernization within each state;**
- **Providing federal funds for states to take steps toward voter registration modernization;**
- **Requiring “permanent voter registration” systems, so that once voters are registered, they will stay on the rolls when they move; and**
- **Requiring fail-safe procedures, so that eligible voters whose names do not appear on the voter rolls or whose information is not up to date can correct the rolls and vote on the same day.**

## II. VOTER REGISTRATION TODAY

Our democracy is a source of pride and strength, and our election system typically works reasonably well in determining outcomes. Even so, the election system is marred by gaps and prone to error and manipulation. Nearly a third of eligible citizens are not registered. Officials, in turn, face a biennial or quadrennial crush of new registrants, with attendant problems of list maintenance, political pressure and general confusion. Voters bear the brunt of these challenges.

### A. Registration is a Bureaucratic Obstacle to Voting

Today, the voter registration system is a significant barrier to voting in the United States. In the November 2004 presidential election, fully 28% of eligible Americans simply were not registered to vote. That’s over 50 million citizens who were not on the electoral rolls and could not vote on Election Day.<sup>3</sup> In November 2006, 32% of eligible Americans, or more than 65 million citizens, were not registered to vote.<sup>4</sup>

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<sup>3</sup> U.S. Census Bureau, Current Population Survey, *Voting and Registration in the Election of November 2006*, March 2006.

<sup>4</sup> U.S. Census Bureau, Current Population Survey, *Voting and Registration in the Election of November 2006*, June 2008.

Registration requirements are a barrier to voting for a number of reasons. The current system simply is not designed for a mobile society. In a country where one in six Americans moves in a year, the government does not routinely keep such people registered to vote, even if they stay in their own state. Harvard political scientist Thomas Patterson notes that two-thirds of non-voters in 2000 were ineligible to vote because they hadn't registered. "Of these, one in three was a former registered voter who had moved and hadn't re-registered."<sup>5</sup>

The current system is also prone to error, which can lead to disenfranchisement. For example, in the past few years, some states adopted policies requiring a perfect match between information on a voter registration form and information in other government databases, such as those maintained by motor vehicle authorities or the Social Security Administration, before registering the voter. If a state official made a data entry error, the voter would be disenfranchised by a typo. In jurisdictions with this policy, failures to match information typically barred about 20% of eligible registrants because of typos and similar errors. Typos can also make it difficult to find registered voters on the poll books, which also could lead to mistaken disenfranchisement. Errors in registration processes will not be eliminated by a modernized registration system, but that system will substantially reduce errors and will ensure that the burden of those errors do not fall on voters. In a modernized registration system, states will have greater ability to ensure more accurate voter rolls since they will be able to regularize their updates to the rolls using more advanced technology instead of processing hundreds of thousands of individual voter registration forms in the weeks before an election. Such a system would also have failsafe procedures like the ability to correct the rolls on Election Day, which means that if the government makes a mistake, it will not become the voter's problem. This will increase the incentive for states not to knock eligible voters off the rolls, because otherwise they will see increased use of fail-safe procedures, which will require greater resources than just getting it right in the first place.

Placing the burden of registration on the voter also leaves our registration systems open to manipulation. Over the past few election cycles, there have been increased efforts to impose new restrictions on voter registration that fall more harshly on certain groups of voters. The "no match, no vote" rule in some states is one example that especially harms Latinos, Asian Americans, and married women, among others. Several states enacted cumbersome restrictions on voter registration drives, which typically target low-income, minority, and young voters, effectively stopping those drives. In Florida, the risk of huge fines for failure to meet short deadlines long before an election shut down registration efforts

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<sup>5</sup> Thomas Patterson, *The Vanishing Voter: Public Involvement in an Age of Uncertainty* (Knopf, 2002), 178.4.

by the state League of Women Voters for the first time in 70 years. Several states refuse to register voters who make technical errors on registration paperwork, like failure to check redundant boxes. Purges of the voter rolls, which are meant to remove people who have died, moved, or otherwise become ineligible, are typically done without standards or oversight, using error-prone processes that are vulnerable to manipulation by unscrupulous officials. A number of states have proposed, and one has enacted, documentation requirements for registering that many otherwise qualified registrants are unable to meet. Many of these barriers to registration can also emerge as misguided attempts to respond to surges in registration and bloated voter rolls. With modernized registration, officials can respond to these issues without disenfranchising voters.

The inadequacies of voter-initiated registration hit hardest when voters who thought that they successfully navigated the shoals turn up at the polls and find their names missing from the list. In most states, the only remedy is the opportunity to vote a provisional ballot. If the voter is not registered, her provisional ballot will not count. Even when voters submitted their registrations on time, many provisional ballots are not counted. Once again, the brunt of system failure falls on the voter.

To make matters worse, the burdens of registration do not fall equally on all Americans. Voter-initiated registration has a disproportionate impact on low-income citizens and those who are less educated. Such individuals are more likely to move more often and have to re-register with every move, to have unconventional living situations that do not easily meet residency requirements (such as temporary shelters), to lack access to the Internet with its information on how to register and its easily accessible forms, to lack dependable transportation for registering in person or at a motor vehicle office, and to lack substantial leisure time in which to figure out registration requirements in their state and to fulfill them. They should not be prevented by a bureaucratic requirement from exercising their most fundamental civic right.

Not getting on the voter rolls is an obvious barrier to voting – registration is a necessary prerequisite to voting. But not being on the voter rolls in advance of an election also has repercussions that make it less likely an eligible citizen will vote. Such a citizen will not receive a sample ballot, or the location of their polling place, or other official notice from the state than an election is imminent. They will not receive mailings from candidates or be canvassed by volunteers. They will not be called by pollsters or contacted by non-partisan groups doing voter education. In short, they will not receive any of the individualized contact that we know is *the* most important spur to voter turnout. Requiring government officials to create a complete list of eligible voters draws disenfranchised citizens into the body politic in multiple ways.

## **B. Voter-Initiated Registration Impedes Election Administration**

When voters are required to register themselves, they may make mistakes, including unnecessarily submitting multiple forms. They may not understand how to complete the forms or inadvertently leave off information. They may use a different form of their name than appears in motor vehicle or Social Security databases, making it more difficult to verify their information. They may submit new registration forms when they move instead of filing changes of address. They may believe that they need to re-register for each election. Correcting these mistakes adds time to the official processing of forms; refusing to make corrections – or to allow registrants to make them – bars the voter from the polls for errors that have nothing to do with eligibility.

Leaving registration up to individual voters also makes it harder to keep the lists current. Voters rarely cancel their registration when they move. The names of voters who are no longer qualified to vote in a particular location remain on the list, along with those of voters who have died. Although federal law recognizes the need to clean registration rolls, officials first must complete procedures designed to ensure that they do not delete eligible voters from the rolls. In the meantime, bloated rolls fuel fear-mongering about the potential for fraud, which in turn serves as an excuse for voter suppressive legislation or unlawful purges of the voter rolls.

A voter-initiated or “bottom up” registration system creates special difficulties for administrators in the month before Election Day. They may find it difficult to process the large numbers of forms that invariably are submitted at the close of the registration period. The last-minute rush is wholly predictable – the IRS estimates that more than 20% of taxpayers wait until the last minute to file their taxes – but it nevertheless strains the resources of local officials. They may not be able to process all the forms in time for Election Day. Moreover, not knowing well in advance how many forms will come in makes it difficult rationally to allocate among precincts the necessary voting machines, paper ballots, and poll workers. Long lines and disenfranchised voters are the predictable result.

Currently, voter registration drives by civic groups play a vital role in making sure citizens are registered, especially in low-income, minority, and student communities. Yet a system that depends upon millions of applications, on paper, submitted by individuals or community groups is susceptible to error. In the recent election, some expressed strong concern at reports that individuals attempted to register false names. Those problems would be eliminated if the government created and maintained the voter registration list in the first place.

The current voter registration system is costly and inefficient. Although updating the system will take some time and money, once upgraded, a system of modernized voter

registration will be more efficient and less costly to administer. This will free up resources for states to better manage elections in other respects.

### III. A MODERNIZED REGISTRATION SYSTEM

New technologies, new understanding of election administration, and a surge in political interest all create an opportunity for reform the likes of which we have not seen for a long time.

#### A. The Moment for Reform

A move to significant national voter registration legislation makes sense now, for several reasons. Most importantly, the remedy is available, and the potential for political will is strong. Thanks to the Help America Vote Act of 2002, states are now required to maintain computerized statewide voter registration lists. The new databases make it far easier to manage information about voters, including name or address changes that do not affect eligibility. When a person moves within a state, for example, officials can transfer the voter's registration to the appropriate new location with a click of a button. There is no excuse for burdening the voter with responsibility for re-registration, as most states now do.

To strengthen voting and modernize our current voter registration system, we need one fundamental change: responsibility for voter registration must be transferred to the government. That shift would produce two clear improvements over the current process: (1) more eligible citizens would be properly registered and able to vote on Election Day, and (2) election officials could organize the process to avoid last-minute crunches and misallocation of resources. But the shift would have another effect, perhaps less concrete or immediate, but ultimately just as important: because the responsibility would lie with the government, the valence of voter registration would change. It would be the obligation of the government to ensure that every eligible American is able to cast a vote on Election Day if they take responsibility to do so. Rather than a problem the voter herself must solve, the government's obligation to ensure that all eligible voters are registered would become part of the way we think about the right to vote itself.

#### B. Models for Reform

How would the government fulfill its obligation to ensure that all eligible voters are registered? There are several methods states, municipalities, or even the federal government could use to manage this task, including using existing government lists of eligible citizens, enumeration of citizens, running affirmative voter registration drives, fully imple-

menting and expanding the National Voter Registration Act, or some combination of any or all of these.

***Using existing lists.*** The most likely option draws on other governmental lists to build the voter rolls. Although the United States does not have a residence registry or a national health care system that provides a list of all eligible voters, states have a variety of databases that compile information about their citizens—databases maintained by motor vehicle departments, income tax authorities, and social service agencies, for example. States could use these lists to build and update their voter rolls. Many of these lists already include all the information necessary to determine voter eligibility, and those that do not can easily be modified to include that information. Already, many of these agencies are required under the National Voter Registration Act to provide voter registration services, a duty that has been ignored in many states over the last decade. Building a list with existing data would help ensure every eligible citizen gets added to the rolls. The Selective Service uses a similar method to build its list of male citizens over eighteen. States could also fully implement the National Voter Registration Act to move closer to the goal of modernized registration.

***Enumeration.*** Another option is a system of enumeration, like a census. Local officials could begin by sending out mail surveys to each address on record in their jurisdiction, asking citizens over the age of 18 to complete, sign, and return a form. They could follow up with those who do not respond by going door-to-door, making a special effort to enumerate those who are unlikely to be reached by a mailing, such as the homeless or those who do not live at fixed addresses. Currently, Massachusetts runs an annual state census along these lines, which is used primarily for creating jury lists. Because the census is conducted on the local level, city officials are able to use other municipal records to guarantee that they reach every citizen within geographic limits.

Under any system of voter registration modernization, newly eligible voters must be added to the rolls and already registered voters must be tracked as they move from place to place. To capture newly eligible voters, registration should be made an automatic part of becoming a citizen, turning voting age, or being discharged from prison, probation, and parole. States can update their data by using change of address information filed with the Post Office or other government agencies, tracking changes to the databases they used to build their list, or running periodic censuses. Specific procedures would be necessary for certain groups of voters, such as military and overseas voters, who pres-

ent special circumstances. Of course, the ability to “opt-out” from registration must be available for any U.S. citizen who prefers to remain unregistered for whatever reason.<sup>6</sup>

## **C. A Federal Voter Registration Modernization Act**

To move the nation toward voter registration modernization, federal legislation will most likely be necessary. Such a system, to achieve genuine universality, will need to have several key elements. It would have as its core a national requirement that states take responsibility for registering all eligible citizens, with some flexibility for states to innovate, and the federal financial support necessary to enable states to achieve the goal of modernized registration. But there will be manifest complexities. To cite a single example, states will need to ensure that citizens with more than one residence are registered at the correct one for voting purposes.

The new Congress should be prepared to enact a federal bill that phases in voter registration modernization. The bill should have four main components: (1) a mandate for states to enact systems of automatic or affirmative voter registration designed to capture all eligible citizens; (2) a requirement that registration be permanent as long as a voter remains resident within the same state; (3) fail-safe mechanisms for eligible citizens whose names are missing from the voter rolls or whose registration information is inaccurate or out of date to correct these errors or omissions before and on Election Day and to vote; and (4) sufficient funding to enable states to transition effectively to voter registration modernization.

### **1. Automatic or Affirmative Registration**

Federal law should require states to establish a program of automatic or affirmative registration of all eligible citizens, phased in over a number of years. While the mandate could be flexible to enable states to experiment with new ways of registering voters, it should ensure that the government assumes the responsibility for building a complete and accurate voter list so that every eligible citizen is able to vote and to have her vote counted. Unless a state devises an alternative program that meets federal standards, the law should require states automatically to include on the voter rolls all eligible citizens found on other selected government lists. Government lists appropriate for automatic registration include the databases maintained by motor vehicle authorities, public assistance agen-

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<sup>6</sup> Some Americans do not register to vote because they want to avoid being put on jury duty lists. To prevent this disincentive, many states no longer use the voter rolls to build their jury lists. In those that do, a system of modernized registration would have the added benefit of creating more complete jury lists. Opting into or out of voter registration should have no effect on the obligation to perform jury duty.

cies, disability agencies, and state tax authorities, as well as lists of newly eligible citizens provided by schools, the U.S. Bureau of Citizenship and Immigration Services, and corrections authorities. Voters should have the ability to opt-out of the system, but opt-in should not be required. Because the list would be automatically generated from a variety of sources, there should be a robust process for purging duplicate records, along with robust protections against erroneous purges.

## **2. Permanent Registration**

The second component of a voter registration reform bill is a requirement that states institute statewide permanent registration. Under such a system, once a voter is on the rolls, she would be permanently registered within the state and able to vote without re-registering even if she moved within the state or changed her name. This could be accomplished by automatic address updates using changes of address filed with the Post Office and other government agencies, as is currently done in some form in a number of states. Special registration and address update procedures would be available for military and overseas voters, students, and others whose voting residence may be different from their mailing address. If the state has not tracked the address or name change in the statewide voter registration database before Election Day, the voter would be able to update her registration record at the polling place associated with her current address when she goes to vote. One in six Americans moves every year, most within the state, and now that voter registration databases are maintained at the state level, there is no reason to require voters to re-register every time they cross county or other internal lines.

## **3. Fail-Safe Registration and Correction of the Voter Rolls**

Even under the most aggressive list-building and address update systems administered with the best care, some voters are bound to fall through the cracks. To ensure that eligible voters are not deprived of the franchise simply because of government mistakes, any system of modernized registration must include fail-safe procedures to ensure that eligible citizens can correct the voter rolls both before and on Election Day. Allowing registration and voting on the same day, as nine states already do, ensures that voters do not bear the brunt of government mistakes and significantly boosts turnout without imposing major costs. A state with a well-functioning system of automatic and permanent registration will see little use of these fail-safe mechanisms. Because these fail-safes provide a corrective to problems with any voter registration system, they should be implemented immediately.

#### **4. Federal Funding for Voter Registration**

Such a bold national goal must be accompanied by ample national resources to help states complete the transition. Congress provided funds to help states make the technological improvements required under the Help America Vote Act, and a generous federal investment also is essential to the success of voter registration reform. Federal financial support for modernized state registration systems should cover all elements of the reform, including automatic, permanent, and fail-safe registration. It should include support for upgrading and making necessary changes to state voter registration databases as well as other state databases used for voter registration purposes. It could also include postage rebates, free access to the National Change of Address database for use in updating registration records, support for efforts to build Internet and telephone portals for checking and updating registration records, and support for any additional staffing needs on Election Day.

States should have latitude to use federal funds for innovative programs that improve voter registration systems. What might work in an area with a predominantly urban population might be less effective in a rural area and vice versa. Congress must appropriate sufficient funding to enable states to devise creative solutions, while requiring that any funded programs demonstrably expand the voter rolls, especially in areas with historically low registration rates.



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