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FOR JUSTICE

COMPONENTS OF A
BILL TO MODERNIZE
THE VOTER
REGISTRATION SYSTEM

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INTRODUCTION

Experts, election officials, and policymakers across the country are recognizing the need to modernize our outdated, paper-based voter registration systems. Those systems are overly costly, inefficient, error-prone, and can unnecessarily exclude eligible voters. Fortunately, new technologies in place nationwide, coupled with new procedures being used successfully in states across the country, point the way to an improved Twenty-First Century voter registration system.¹ As more and more states are discovering, a modern voter registration system boosts registration rates, increases the accuracy of the voter rolls, and reduces the opportunity for fraud, while saving millions of dollars a year.²

This issue brief outlines suggested components of a bill to modernize the voter registration system and identifies some key strategy decisions to be made. It also provides sample legislative language to use in each section. Each state is, of course, different, and we would be happy to assist policymakers and advocates in drafting a bill tailored to any particular state.

Overall, the main components of a fully modernized voter registration system are: (1) one-stop automated registration of eligible citizens who interact with other government agencies; (2) permanent voter registration, so that once a voter is registered, she stays registered regardless of whether she moves within the state; (3) an online interface to check and update registration information; and (4) fail-safe provisions so that voters can correct errors or omissions on the voter rolls up through Election Day.

¹ VOTER REGISTRATION MODERNIZATION: COLLECTED REPORTS AND PAPERS (Wendy Weiser, ed., Brennan Center for Justice 2009), *available at*

http://www.brennancenter.org/content/resource/voter_registration_modernization_collected_reports_and_papers; For more information on our work, please visit our Voter Registration Modernization homepage, *available at* http://www.brennancenter.org/content/pages/voter_registration_modernization.

² CHRISTOPHER PONOROFF, VOTER REGISTRATION IN A DIGITAL AGE (Wendy Weiser, ed., Brennan Center for Justice, 2010), *available at*

http://www.brennancenter.org/content/resource/voter_registration_in_a_digital_age; State-by-state reports and updates on voter registration modernization are on the Brennan Center website, *available at* http://www.brennancenter.org/content/pages/voter_registration_modernization_states.

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I. TITLE

The bill needs a title. One possibility is the “Act to Modernize Voter Registration.”

II. FINDINGS

This section states the findings and principles that make the bill worthwhile or necessary. We recommend that the findings include:

- A statement about the costly and inefficient nature of the state’s current paper-based, voter-initiated registration system;
- A statement about how the current voter registration system is error-prone, causing inaccurate and bloated voter rolls and erroneous disenfranchisement of eligible voters;
- A statement about how modernizing the voter registration system reduces the costs of administering voter registration (along with examples of cost savings achieved in other jurisdictions);
- A statement about how modernizing the voter registration system increases the efficiency of voter registration systems, reducing duplicative data entry, increasing the accuracy of the system, and spreading work out over a rational schedule rather than in a compressed time frame right before a major election;
- A statement about how modernizing the voter registration system leads to more accurate and complete voter rolls, with fewer errors, duplicate records, and outdated records (along with examples from other states that have modernized components of their registration systems);
- A statement about how modernizing the voter registration system increases voter registration (along with examples from other states that have modernized components of their registration systems);
- A statement about how modernizing the voter registration system reduces the potential for voter registration fraud; and
- A statement about how voter registration is the gateway to voting, how voting is a fundamental right, and how important voting is to democracy.

For facts and research supporting each of these statements, see http://www.brennancenter.org/content/pages/voter_registration_modernization.

III. PURPOSES

This section explains why the bill should be enacted. For example:

PURPOSES.—The purposes of this Act are to increase the efficiency and rein in the total cost of voter registration for the State and its constituent governmental units, ensure that every eligible citizen in the State who would like to be registered to vote is registered, increase the completeness and accuracy of the statewide voter registration list, prevent erroneous

disenfranchisement of eligible citizens, promote greater participation of eligible voters in elections, and reduce the incidence of voter registration fraud.

IV. OTHER INTRODUCTORY MATTERS

A. Preservation of Existing Law

It would be helpful to include introductory sections defining the scope of the bill, and making clear that modernizing the voter registration system does not entail any change to voting eligibility, the authority of election officials to determine voter eligibility and engage in list maintenance activities, or the ability of citizens to decline to register to vote. For example:

- (a) **NO CHANGE TO VOTER QUALIFICATIONS.**—Nothing in this Act shall be construed to amend the substantive qualifications of an elector in this State established by [the state Constitution].
- (b) **NO CHANGE TO AUTHORITY TO MAINTAIN ROLLS.**—Nothing in this Act shall be construed to interfere with any election official’s authority or obligation, under state or federal law, to:
 - (1) determine whether any individual is qualified to be an elector; or
 - (2) conduct regular, nondiscriminatory list maintenance designed to ensure that persons who are ineligible to vote are not reflected as voters on the statewide voter registration list.
- (c) **OPT OUT.**—Nothing in this Act shall be construed to interfere with the right of any person to decline to be registered to vote for any reason.

B. Delegation

The model in this memorandum contemplates imposing obligations on the state’s chief election official. To the extent that it is unclear under a given state’s law whether duties assigned to the chief election official can be performed by other officials, including local election officials, it would be helpful to include a provision making it clear that duties may be assigned to other officials. In doing so, it should be clear that the chief election official is ultimately responsible for compliance with the provisions of the statute directed toward him or her. For example:

DELEGATION.—The [State’s chief election official] may, by regulation, delegate duties under this Act to other governmental units. Notwithstanding such delegation, the [State’s chief election official] shall be responsible for full compliance with the terms of this Act.

C. Definitions

In addition, it may be helpful to include a “Definitions” section defining terms that repeatedly appear in the statute and that are not otherwise defined in the state’s election law.

V. AUTOMATED, ONE-STOP VOTER REGISTRATION AND UPDATES

The heart of any bill to modernize the voter registration system is the automation of voter registration for eligible voters at designated government agencies. Under a one-stop, automated system, a designated agency, or “source agency,” would electronically transmit basic voter registration data for every eligible citizen who interacts with that agency to election authorities unless the citizen declines to be registered to vote. The transmission would be in a format that can be shared with the computerized voter registration database.

A. Source Agencies

The first decision that must be made is which agencies should serve as source agencies for voter registration. The agencies that should be selected are those that serve the largest number of eligible citizens, those that serve populations not captured on other source agencies’ lists, those that maintain computerized records, and those that already capture most or all of the information required for voter registration. In addition, a good bill should provide a mechanism for other source agencies to be added to the system over time.

At the very least, the bill should include all the agencies already required by federal and state law to provide voter registration services: state motor vehicle authorities, public assistance agencies, and agencies providing services to individuals with disabilities. In addition, the bill should include federal agencies that consent to a designation as voter registration agencies. Ideally, the bill should also include state educational institutions (many of which are already required by federal law to offer voter registration forms) as well as other agencies that serve under-registered populations. Individual states may have particular agencies, like the Alaska Permanent Fund, that are especially well-suited to voter registration. Overall, we recommend designating the following state agencies as source agencies for voter registration information:

- Agencies that are required by federal law to provide voter registration services, including the state motor vehicle authority; state agencies that provide public assistance; and state agencies that provide services to individuals with disabilities;
- State education agencies, including colleges and universities, and any state agency that maintains computerized records of high school students;
- In states that disenfranchise citizens upon their conviction for certain crimes, the state corrections, probation, or parole agency that has custody of those citizens when their voting eligibility is restored; and

- Other agencies as is practicable, including the state agency that provides unemployment insurance; the state revenue agency; and any federal agencies that agree to provide voter registration information (such as Medicare, the Social Security Administration (with respect to beneficiaries), U.S.C.I.S. (with respect to naturalized citizens), the Department of Defense (with respect to active duty military and their dependants), and the Department of Veteran Affairs).

Most of these agencies already maintain computerized records of the individuals they serve and collect all or almost all of the information required for voter registration.

Sample bill language designating state agencies as voter registration sources and providing for the addition of voter registration sources is as follows:

- (a) SOURCE AGENCIES.—The following agencies are designated as source agencies for voter registration under this Act:
 - (1) [Insert numbered list of agencies and entities]; and
 - (2) Any other reliable State government source as the chief election official may designate.
- (b) ADDITIONAL SOURCES.—
 - (1) The [State’s chief election official] shall receive data from any federal source that agrees to submit personal identification information to the State for voter registration purposes; and
 - (2) The [State’s chief election official] may designate additional state agencies to serve as sources for voter registration. In designating an agency under this paragraph, the [State’s chief election official] shall consider—
 - (A) the likelihood that source records reflect a large number of eligible citizens;
 - (B) the extent to which source records reflect eligible citizens who would not otherwise be registered under this Act;
 - (C) the accuracy of personal identification data in source records;
 - (D) the cost of processing source data; and
 - (E) any additional factors designated by the chief election official as reasonably related to accomplishing the purposes of this Act.

B. Requirement for Automated Transfer of Registration Information

The bill should require source agencies to transmit electronically to election officials certain basic information about individuals who do not decline voter registration, in a format that can be reviewed by election officials and translated and uploaded onto the statewide computerized voter registration database. In addition, the bill should require source agencies to transmit any address or name updates to their records to ensure that the voter rolls are kept up-to-date. The bill should preserve voters’ right

to decline to be registered to vote and/or to indicate that their address changes do not reflect changes in voting residence. Overall, we recommend that the transmitted data include, wherever available:

- Given name(s) and surname(s);
- Mailing address and residential address, and any indication that an address change is not for voting purposes;
- Date of birth;
- Citizenship;
- Driver's license or state ID card number, and either the full Social Security number or the last four digits of the SSN, as appropriate;
- Email address;
- Phone number; and
- An image of the individual's signature.

Here is sample bill language to that effect:

DATA TRANSFER.—

- (1) Each source agency listed or designated under subsection XX of this Act shall electronically transmit to [the State's chief election official] the information described in this paragraph for each person described in paragraph (2) of this section.
 - (A) The information transmitted shall include, where available:
 - (i) [Insert numbered list of required information];
 - (ii) Date, time, and nature of the last change to the information; and
 - (iii) Any additional information designated by the [State's chief election official] for such purposes and reasonably related to the management of elections.
 - (B) If information is sent pursuant to paragraph (2) because it has changed since the last transmission from the source agency, the source agency shall transmit both the new information and the prior information reflected in the last transmission, labeled accordingly.
- (2) A source agency is required to transmit information relating to a person pursuant to paragraph (1) if the source agency's records indicate that:
 - (A) the person is a U.S. citizen*;
 - (B) the person is [insert age of pre-registration or registration] or more years old;
 - (C) the person did not decline voter registration; and
 - (D) the information has been added or changed since the last transmission from the source agency to [the State's chief election official].

*Note: If a source agency does not currently collect or record information indicating whether an individual is a U.S. citizen, then subparagraph (2)(A) should reflect the state’s choice of how to obtain affirmation of prospective registrants’ eligibility to vote. This is discussed further in subsection C below.

C. Voter Registration Information Not Currently Collected by Source Agencies

Some source agencies may not currently collect some of the information required or useful for voter registration, such as affirmation of citizenship, digitized signatures, or party affiliation preference. For information on the data maintained in most state lists, see the Brennan Center’s report, at http://www.brennancenter.org/content/pages/voter_registration_modernization_government_lists.

To address this issue, an initial policy decision must be made as to which records will be sent from source agencies to election authorities and how to collect any information missing from those records.

Under any circumstance, source agencies that already collect reliable citizenship information about some or all of their clients should be required to transmit to election officials the records of all voting-age citizens who do not opt out of registration.

With respect to clients for whom agencies do not have all the necessary information—*e.g.*, in cases where agency records do not indicate a client’s citizenship—there are two possible policy choices: (1) the source agency can collect the information needed to complete the registration on a voluntary basis, and only send election officials the records for clients whose eligibility is known; or (2) the agency can send election officials the records of all clients, even those for whom eligibility is not yet known, and election officials can screen for eligibility through other means. The states that have automated their voter registration processes at DMVs to date have chosen the first option. There may not be a one-size-fits-all solution that can be adopted in every source agency; it may be preferable to adopt different procedures at different agencies.

If a state chooses to have the source agency screen for eligibility and only transmit the records of voting-age citizens, we recommend that each of the agency’s clients be required to indicate whether or not she consents to voter registration before she completes her transaction with the agency. In Delaware, for example, an applicant for a driver’s license or renewal cannot normally complete her driver’s license transaction without answering “yes” or “no” to a question that asks whether she consents to voter registration. If she answers yes, the system asks a few additional questions so as to collect the remaining information relevant to voter registration. In utilizing any such protocol, it is also important to ensure that the agency’s clients clearly understand that when they are asked to provide additional information—such as citizenship or party preference—it is a strictly voluntary choice for voter registration purposes only, and will not be used for other purposes.

If a state chooses affirmatively to collect voter registration information and consent at source agencies, it may wish to include in the bill language specifically authorizing its source agencies to collect the information in question. For example:

INFORMATION COLLECTION. — Each source agency listed or designated under subsection XX of this Act shall, upon a first interaction with a person not previously served by the agency, or upon an interaction with a person served by the agency and leading to a change in personal identifying or contact information:

- (1) Notify each such person of the substantive qualifications of an elector in this State, using language approved by [the State’s chief election official];
- (2) Notify each such person that there is an opportunity to be registered to vote or update voter registration, but that voter registration is voluntary, and will not in any way affect the availability of services or benefits, nor be used for other purposes;
- (3) Ask each such person to indicate, after considering the substantive qualifications of an elector in this State, whether the person wishes to opt out of voter registration; and
- (4) For each such person who does not opt out of using that person’s agency records for voter registration, collect:
 - (A) A signed affirmation of eligibility;
 - (B) Party preference, if any; and
 - (C) Any additional information designated by the [State’s chief election official] for such purposes and reasonably related to the management of elections, and not otherwise collected by the agency in the normal course of business.

Furthermore, if agencies collect voter registration information and consent, special attention should be paid to the question asked of the clients they serve. Here are some suggestions:

- A. For those filling out paper or electronic forms:
 - “Check here if you DO NOT want us to send this information for the purpose of making sure that you are registered to vote, or that your voter registration is up to date”; or
 - Second best: “Would you like us to send your information to the [name of election authority] for the purpose of making sure that you are registered to vote, or that your voter registration is up to date?” (with checkboxes for “yes” and “no”);*
- B. If being asked by an employee of the source agency:

- “Would you like us to send your information to the [name of election authority] for the purpose of making sure that you are registered to vote, or that your voter registration is up to date?”* The employee must then indicate whether the voter said “yes” or “no” before finalizing the transaction.

* Note: The best practice to maximize the number of eligible citizens registered through efficient and reliable data collection at source agencies is to rely on opt-out procedures, rather than unweighted “yes” or “no” questions (marked by an asterisk above). Indeed, under federal law, change of address forms submitted to motor vehicle agencies *must* be used to update voter registration records unless the voter explicitly opts-out. Therefore, if a state chooses to use “yes” or “no” questions generally, it must create a different question for persons submitting changes of address to the state motor vehicle agency. On paper forms, the State would have to add language along the following lines: “If this is NOT a change of your voter registration address, please check here” and include a checkbox so that the individual can “opt-out.” For in-person transactions, the employee would state, “If you are registered to vote in [State], the change of address will also change your address for voter registration. Please tell me if this is not a change of your voter registration address too,” and would be required to so indicate on the electronic form. Although not explicitly required by federal law at agencies other than the motor vehicle agency, the best practice would be to follow a similar procedure at every source agency that accepts changes of address.

If agencies are asked to collect additional information, some of the information collected in the current registration process — like a written signature or a party affiliation — will be useful to, but not absolutely necessary for, registering eligible voters. The best practice is to collect much of this useful information in one single agency transaction, at the point of service. If such information is not collected, however, that lapse alone should not impede registration where the available data indicates that the individual is eligible to vote. Instead, correspondence or other future contact between election officials and the registered voter can be used to collect the information in question.

D. Frequency of Data Transmissions

Ideally, source agencies should transfer voter registration information on a real-time or daily basis. Less frequent data transmissions are also acceptable so long as they are regular, do not result in the transmission of large numbers of records close to an election, and provide for the timely transmission of records captured in the period before any election. A bill should include a floor for how frequently data must be transmitted from source agencies.

E. Requirement to Register Eligible Citizens

Once source agencies transfer registration data, election officials should register all eligible citizens whose information they receive. Here is sample bill language concerning the obligation to register individuals whose data has been transferred:

REGISTRATION UPON REVIEW.—

- (1) If information transferred pursuant to subsection XX reflects a person not included on the statewide voter registration list, and if the available age, citizenship, and residency information reliably indicate that the person meets the qualifications to vote in the State, [the State's chief election official] shall ensure that such eligible citizen is registered as a voter and is added to the statewide voter registration list.
- (2) Notwithstanding paragraph (1) of this subsection, [the State's chief election official] shall ensure that any person who has declined voter registration is not automatically registered as a voter.
- (3) If the information transferred pursuant to subsection XX reflects a person already included on the statewide voter registration list, and if the information reliably indicates a more recent to the person's name or address, [the State's chief election official] shall ensure that the person's records on the statewide voter registration list are updated accordingly.

F. Voter Notification

A bill should require that notice be sent to (a) all new registrants, (b) all voters with a change of address who have not had the opportunity to indicate that the address change is not for voting purposes, (c) all voters with a change of name or eligibility, and (d) any voter whose voter record would be removed as a duplicate or ineligible record, unless the status as a duplicate or ineligible record is certain beyond a reasonable doubt. The notice should include:

- the voter's name, date of birth, and residential address as reflected on the voter rolls;
- a statement that the voter's registration information has been updated automatically;
- a statement of the qualifications to be an elector;
- a statement that it is illegal for a person who is not qualified to be an elector to vote in an election (this statement should be printed in larger text than the rest of the notice);
- a statement notifying the voter to notify an election official if the voter does not meet the qualifications to be an elector;
- a statement alerting the voter that he or she may opt out of voter registration, or request a change to registration information, at any time by contacting an election official; and
- contact information for the appropriate election official, including the website address of voter registration information system described below.

Election officials should be permitted to combine these notifications with other election-related mailings, as long as the registration information is prominent. Election officials should be encouraged to send these notices by verified email where possible, to increase the efficiency and reduce the cost of notification.

Sample bill language on voter notification is as follows:

- (a) IN GENERAL.—The [State’s chief election official] shall ensure that each voter whose information is changed on the statewide voter registration list is promptly sent written notice of the change.
- (b) E-MAIL.— Any notice required by this section may be sent by e-mail, but only if the voter in question has confirmed the validity of his or her e-mail address by responding to a message sent to that e-mail address no more than 3 days before the notice required by this section is sent.
- (c) CONTENT.—Any notice required by this section shall contain, at a minimum, the following:
 - (1) [Insert numbered list of required information]; and
 - (2) any other information that the chief election official deems necessary to fulfill the obligations of this Act, State law, or federal law.
- (d) COMBINED NOTICES.—Any notice required by this section may be sent with other notices required or permitted by law.

G. Alternative Structure

The sections above walk through the basic process for automating the transfer of registration information: designating state agency sources, collecting information at those sources, transmitting the information of eligible citizens to election officials, and registering voters (or updating existing registration records) upon review of the transmitted information. The best practice is to reflect the essential elements of this basic structure in legislation, so that all stakeholders have the same points of reference for how the process should work.

However, a state may instead choose to focus a bill on the desired outcome of the modernization process, leaving the process to the discretion of the state’s chief election official and to officials in the source agencies. Such an approach allows greater flexibility, but also increases the likelihood of disputes or gaps in implementation.

In addition to designating source agencies as in section A. above, sample bill language under this alternative approach might read as follows:

AUTOMATED REGISTRATION.—

- (1) Each source agency listed or designated under subsection XX of this Act shall collect and electronically transmit to [the State’s chief election official] the information necessary to ensure that each eligible citizen reflected in the records of the source agency who has not opted out of voter registration is promptly registered to vote at that citizen’s current address.
- (2) [The State’s chief election official] shall ensure that each eligible citizen reflected in records transferred pursuant to paragraph (1) of this subsection is promptly registered

to vote at that citizen's current address, and promptly notified of any such registration or update, with an opportunity to correct an error.

VI. REVIEW AND CORRECTION OF VOTER REGISTRATION INFORMATION

Because voters are best equipped to spot outdated or incorrect information in their own registration records, in a modern registration system, they should be given the ability and incentive to do so year-round. The more that voters update their address and name information through online and other automated systems, the less effort and resources that election officials will have to expend to update the voter rolls. Accordingly, a modern voter registration system should include an Internet and telephone accessible portal through which voters can check, confirm, or correct their registration information. Sample bill language creating such a portal is as follows:

- (a) VOTER REGISTRATION INFORMATION SYSTEM.—The [State's chief election official] shall establish a voter registration information system available—
 - (1) through a public website accessible from the website of the chief election official; and
 - (2) through a toll-free telephone number maintained by the chief election official.
- (b) FUNCTIONS.—The system established under subsection (a) must:
 - (1) provide a secure interface that allows any voter—
 - (A) to review the voter registration information represented on the statewide voter registration list for that voter;
 - (B) to submit a confidential request to correct or update the voter's voter registration information, which shall be processed as any other correction to voter registration information is processed; and
 - (C) to determine the location of the polling place to which the voter is assigned; and
 - (2) provide an interface that allows any person—
 - (A) to determine the location of the polling place associated with any residential address within the State; and
 - (B) to determine whether he or she is represented on the statewide voter registration list.
 - (3) provide a secure website interface that allows any eligible citizen who is not represented on the statewide voter registration list to correct the omission by confidentially submitting the data collected on a voter registration form to an election official. Such data shall be processed as a voter registration form is processed, subject to the requirements of section 303(b) of the Help America Vote Act of 2002 (42 U.S.C. § 15483(b)), except that the absence of a written signature shall not preclude the registration of an eligible citizen.

- (c) **LATE CORRECTION.**—For any eligible citizen attempting to use the system established under subsection (a) to submit information after the deadline established by State law for correcting registration errors or omissions, the system must notify the citizen at the time of the submission that the update will not take effect for the proximate election, and that the citizen may use the election-day procedure provided by subsection (d).
- (d) **ELECTION-DAY CORRECTION.**—An eligible citizen appearing on election day at the polling place serving the address at which he or she is eligible to vote, who is reflected inaccurately or incompletely in the statewide voter registration list or omitted entirely from that list, shall be permitted to vote a regular ballot after correcting the statewide voter registration list pursuant to this subsection.
- (1) An election official at the polling place shall confirm that the polling place is the voting location serving the address at which the citizen is eligible to vote, or provide the citizen with directions to the appropriate polling place.
 - (2) The election official shall offer the citizen a voter registration form promulgated by the chief election official, requesting information sufficient for registration, stating the qualifications to be an elector, and containing a prominent warning that it is illegal for a person who is not qualified to be an elector to vote in any election.
 - (3) The citizen shall complete the registration form, affirming the accuracy of the information therein and attesting that the citizen is eligible to vote.
 - (4) The citizen shall provide proof of identity and proof of residency.
 - (5) After Election Day, the registration form shall be delivered promptly to an election official, to be processed as a voter registration form is processed.

VII. PRIVACY AND SECURITY

Robust privacy and security protections are a key component of any modern voter registration system. This is particularly important in light of concerns about the accessibility of personal voter data.

A. Protections Against Access to Private Information

To protect against unnecessary access to private information, we recommend that a bill specifically:

- Prohibit public disclosure of certain voter information, including the source agency for a voter's registration, and any information not necessary for voter registration. Other information that should be protected against disclosure to any person other than the voter absent express permission from each voter includes: Social Security numbers and digits, driver's license numbers, signatures, phone numbers, and e-mail addresses.

- Prohibit the disclosure of information relating to persons in categories designated confidential by federal or state law, including victims of domestic violence or stalking, prosecutors and law enforcement personnel, and participants in a witness protection program.

Sample bill language for these protections is as follows:

- (a) PROTECTION OF SOURCE INFORMATION.—The identity of the source agency providing information under this Act relating to any individual shall not be disclosed to the public and shall be used only for voter registration purposes.
- (b) CONFIDENTIAL INFORMATION.—The [State’s chief election official] shall establish policies and enforcement procedures to maintain certain personal information within the statewide voter registration list and the lists provided by source agencies and list maintenance sources as confidential items available only to authorized users and prohibited from disclosure to unauthorized users. The items to be designated as confidential shall include:
 - (1) any portion of an individual’s Social Security number;
 - (2) any portion of an individual’s motor vehicle driver’s license number or state identification card number;
 - (3) any individual’s signature; and
 - (4) the personal residence and contact information of any person for whom state law requires confidentiality.
- (c) ADDITIONAL CONFIDENTIAL INFORMATION.—The [State’s chief election official] may designate information other than the information in subsection ((b) as confidential to the extent reasonably necessary to prevent identity theft or impersonation, but may not designate as confidential the name, address or date of registration of the voter, or where applicable, the self-identified racial category of the voter.

- Prohibit source agencies from transmitting information other than that required for voter registration or specified information relevant to the administration of elections.

B. Protections Against Misuse of Information

To protect against misuse of voter registration information, we recommend that the bill:

- Prohibit public disclosure or use of information regarding an individual’s decision *not* to register to vote or *not* to affirm his or her eligibility for any reason (including citizenship), for any purpose other than administering the voter registration system, including for law enforcement purposes other than those relating to voter fraud and other election crimes.

- Prohibit the use of the voter registration database or lists transmitted by source agencies to election authorities to determine the citizenship status of any individual for any non-election-related purpose.
- Limit the use of voter registration information for law enforcement purposes. Specifically, the bill should (1) prohibit the use of voter registration records to determine an individual's citizenship for law enforcement purposes other than those relating to voter fraud and other election crimes; (2) prohibit discrimination against individuals who decline to register or to affirm their citizenship; and (3) require clear notice to all registrants that ineligible persons, including non-citizens, are not entitled to vote, and provide a reasonable opportunity for any ineligible person who is inadvertently added to the voter rolls to notify election officials.
- Prohibit the use of voters' registration information for commercial purposes.

Sample bill language for these protections is as follows:

- RESTRICTION ON USE OF REGISTRATION RECORDS.—No person acting under color of law may use the statewide voter registration list to attempt to determine the citizenship status of any individual for any purpose other than voter registration, election administration, or the enforcement of laws against election crimes.
- RESTRICTION ON USE OF INFORMATION.—No information relating to an individual's absence from the statewide voter registration list or an individual's declination to supply information for voter registration purposes at a source agency may be disclosed to the public, or used for any purpose other than voter registration, election administration, or the enforcement of laws against election crimes.
- NONDISCRIMINATION.—No person acting under color of law may discriminate against any individual on the basis of the individual's absence from the statewide voter registration list, the information supplied by the individual for voter registration purposes at a source agency, or the individual's declination to supply such information, except as required to administer elections or enforce election laws.

C. Protection of Right Not To Be Registered

It is also necessary to ensure that an individual's right to opt out of the voter registration process is protected. We therefore recommend that a bill expressly safeguard the opt-out right, and that it further prohibit election officials from disclosing information relating to persons who have opted out of voter registration. Sample bill language for these protections is as follows:

- EXCLUSION FROM VOTER LIST.—The [State's chief election official] shall ensure that, upon receipt and verification of a person's express request to opt out of voter registration, the person's name and registration record is so designated, unless and until the voter consents to registration. Nothing in this section shall preclude a person who has

previously declined voter registration from subsequently registering to vote.

- (b) EXCLUSION FROM OTHER LISTS.—The [State’s chief election official] shall ensure that election officials shall not provide the record of any person who has opted out of voter registration, in whole or in part, to any third party for any purpose other than the compilation of a jury list.

D. General Security and Privacy Protections

To protect the security and privacy of the voter rolls in general, we recommend:

- Requiring the chief election official to develop, publish, and enforce a privacy and security policy detailing use limitations (including user authorizations) and security safeguards to protect voters’ personal information in the data transfer process, the online or telephone interface, and the maintenance of the voter registration database. Ideally, the official should also develop and publish list maintenance standards, including the standards used to identify records that are duplicate, outdated, or have a change in eligibility.
- Requiring the State’s chief election official to retain records of changes to voter records (including removals and updates) for a specified period of time. [This may be required by 42 U.S.C. § 1773gg-6(i).]

Sample bill language for these protections is as follows:

- (a) PRIVACY AND SECURITY STANDARDS.—The [State’s chief election official] shall, as provided in this subsection, establish standards and procedures to safeguard the privacy of the State’s residents and the integrity and security of the information used pursuant to this Act.
- (1) PRIVACY AND SECURITY POLICY.—The [State’s chief election official] shall publish and enforce a privacy and security policy specifying each class of users who shall have authorized access to the statewide voter registration list, specifying for each such class the permissions and levels of access to be granted, and setting forth other safeguards to protect the privacy and security of the information on the statewide voter registration list.
- (2) NO UNAUTHORIZED ACCESS.—The [State’s chief election official] shall establish policies and enforcement procedures to prevent unauthorized access to the statewide voter registration database and to any list provided by a source agency or list maintenance source.
- (3) INTER-AGENCY TRANSFERS.—The [State’s chief election official] shall establish policies and enforcement procedures to maintain security during inter-agency transfers of information required or permitted under this Act. Each source agency participating in such inter-agency transfers of information shall facilitate and comply

with such policies. Nothing in this subsection shall prevent a source agency from establishing and enforcing additional security measures to protect the confidentiality and integrity of inter-agency data transfers.

- (b) RECORDS RETENTION.—The [State’s chief election official] shall, as provided in this subsection, establish standards and procedures to maintain all election records required for purposes of this Act, including for the purpose of determining the eligibility of persons casting provisional ballots. Records for voters who have been retained on the statewide voter registration database but identified as ineligible to vote within the State, or removed from the statewide voter registration list due to ineligibility, shall be maintained and kept available until at least the date of the second general election for Federal office that occurs after the date that the voter was identified as ineligible.

VIII. REGULATORY AUTHORITY

Some of the most technical aspects of a modernized voter registration system are best left to administrative officials acting through the regulatory process. To the extent that details are not specified in a bill, the bill should grant express regulatory authority to the actors who will fill in the blanks, to ensure that procedures are developed with the benefit of notice and comment. Sample bill language is as follows:

IN GENERAL.—[The State’s chief election official] shall promulgate such rules and regulations as necessary to implement the provisions of this Act, including but not limited to:

- (1) procedures that ensure the reliable transfer and validation of data described in section XX of this Act;
- (2) procedures to determine whether information transferred from multiple sources relates to the same person;
- (3) procedures that resolve information transferred from multiple sources relating to the same person;
- (4) procedures that ensure that each voter appears only once on the statewide voter registration list;
- (5) procedures that ensure the security and privacy of data transmitted under section XX of this Act or reviewed or submitted through system described in section XX of this Act.

IX. REPORTING

Public confidence in a modern voter registration system increases with the transparency of the system, and information about the relative effectiveness of portions of the system can be used to further increase returns over time. Accordingly, robust public reporting requirements should be imposed. Sample bill language is as follows:

- (a) IN GENERAL.—The [State’s chief election] official shall produce an annual public report for submission to the legislature, including:
 - (1) the number of records that have been transferred under section XX of this Act, by source;
 - (2) the number of voters newly added to the statewide voter registration list because of records transferred under section XX of this Act, by source;
 - (3) the number of voters on the statewide voter registration list whose information was updated because of records transferred under section XX of this Act, by source;
 - (4) [the number of records transferred under section XX of this Act, by source, that do not relate to individuals affirmatively identified as eligible to vote;]
 - (5) the number of persons who opted out of voter registration;
 - (6) the number of voters who submit requests to update or correct voter registration information through the system established by subsection XX of this Act, by type of information updated;
 - (7) the number of voters who submit voter registration forms using the online procedure described in subsection XX of this Act; and
 - (8) the number of voters who correct voter registration information using the election-day procedure described in subsection XX of this Act.
- (b) CONFIDENTIALITY.—Any report produced under this section shall exclude any information that identifies any person personally.

If you have any questions or would like assistance, please contact Wendy Weiser at wendy.weiser@nyu.edu or (212) 998-6730.

ABOUT THE BRENNAN CENTER FOR JUSTICE

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.

ABOUT THE BRENNAN CENTER'S VOTING RIGHTS AND ELECTIONS PROJECT

The Voting Rights and Elections Project works to expand the franchise, to ensure that every eligible American can vote, and 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.

This is one in a series of white papers on Voter Registration Modernization. The first, Voter Registration Modernization, sets forth more detailed policy arguments in favor of modernizing America's voter registration system. Others include *Expanding Democracy: Voter Registration Around the World*, which examines international methods of voter registration; *Permanent Voter Registration*, which analyzes systems of statewide permanent registration; and *When Voters Move*, which examines how states handle voters who move. All the white papers are available on the Brennan Center's website, at www.brennancenter.org.

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