

Testimony of Adam Gitlin

**Brennan Center for Justice at NYU School of Law
Before the Detroit Voting Rights Town Hall Meeting:
“Setting the Democracy Agenda”**

**Hon. John Conyers and Hon. Brenda Lawrence
U.S. House of Representatives**

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Introduction

Good evening. My name is Adam Gitlin and I am a counsel in the Democracy Program at the Brennan Center for Justice at New York University School of Law.¹ I am also privileged to have been a poll watcher in downtown Detroit, and an organizer and poll worker elsewhere in the State of Michigan. I would like to thank Representatives Conyers and Lawrence for holding this hearing today and considering my testimony. I am honored to join this august panel of witnesses, and to discuss what we at the Brennan Center are seeing nationally and its implications for setting a pro-democracy agenda in voting.

The Brennan Center for Justice is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. We work on a range of issues pertaining to voting rights and elections, on which we have published many studies and reports.² We have worked to improve voter registration and the design of election materials, make voting machines more secure and accessible, and remove unnecessary barriers to participation. We have supported numerous national efforts to advance voting rights, including Rep. Conyers’s Democracy Restoration Act, which would restore voting rights in federal elections to 4.4 million Americans who are out of prison and living in our communities.

¹ This testimony has been prepared by a Center affiliated with New York University School of Law, but does not purport to present the school’s institutional views, if any.

² See, e.g., MYRNA PÉREZ, BRENNAN CTR. FOR JUSTICE, ELECTION INTEGRITY: A PRO-VOTER AGENDA (2016), available at https://www.brennancenter.org/sites/default/files/publications/Election_Integrity.pdf; BRENNAN CTR. FOR JUSTICE, THE CASE FOR VOTER REGISTRATION MODERNIZATION (2013), available at <http://www.brennancenter.org/sites/default/files/publications/Case%20Voter%20Registration%20Modernization.pdf>; KEESHA GASKINS & SUNDEEP IYER, THE CHALLENGE OF OBTAINING VOTER IDENTIFICATION (2012), available at http://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/Challenge_of_Obtaining_Voter_ID.pdf.

We have worked to protect the voting rights of Michiganders. This includes suing to require the counting of provisional ballots that voters cast in the wrong precinct but in the correct county, city, or township.³ We have pushed to prevent Michigan from restricting voter registration drives.⁴ And we have testified in support of reforming Michigan's redistricting process.⁵

This town hall meeting comes at a critical time for Michigan. The last presidential election saw less than 67% of its citizens turn out to vote, with lower turnout rates for black and Asian voters.⁶ In 2014 turnout was barely 47%,⁷ the lowest for a gubernatorial election in Michigan in over two decades. And while we are all excited by the turnout in this year's primary, we must remember that turnout in Michigan was still only 34 percent,⁸ barely one in every three registered voters. In Michigan and nationally, too many voters are not participating.

They are also heading to the polls for the first presidential election in 50 years without the full protections of the Voting Rights Act. This year, seventeen states will have new voting restrictions in place for the first time in a presidential election. And while Michigan may not have the history of restricting voting rights that some states do, it did have two townships covered under section 5 of the Voting Rights Act, and its recent history on this subject is hardly spotless. I am sure many in attendance this evening recall, for example, concerns only a few years ago about voters subject to foreclosure or eviction being challenged in the voting booth.

Congress can and should take action to help voters, in Michigan and across the nation. You have at your disposal many tools to combat barriers voters face to casting a ballot. Two in particular should rise to the front of a democracy-enhancing agenda: (1) Congress should restore the Voting Rights Act so that all Americans eligible to vote have the full protections of the Voting Rights Act against discrimination at the ballot box; and (2) Congress should pass automatic voter registration, which would increase registration rates, protect the integrity of the voter rolls, and save taxpayer dollars.

I. Efforts to Restrict the Right to Vote Must Be Stopped, and Congress Should Restore the Voting Rights Act

³ *Federal Court Rules in Michigan Voting Rights Case*, BRENNAN CTR. FOR JUSTICE, <https://www.brennancenter.org/press-release/federal-court-rules-michigan-voting-rights-case> (last visited June 24, 2016).

⁴ *See Michigan Governor Right to Veto Restrictive Voting Bill*, BRENNAN CTR. FOR JUSTICE, <https://www.brennancenter.org/press-release/michigan-governor-right-veto-restrictive-voting-bill> (last visited June 24, 2016).

⁵ Testimony of Myrna Perez and Justin Levitt before the Michigan House Judiciary Committee, Apr. 13, 2010, *available at* <https://www.brennancenter.org/sites/default/files/analysis/redistricting%20testimony%20before%20Michigan%20House%20Judiciary%20Committee.pdf>.

⁶ U.S. Census Bureau, *Voting and Registration in the Election of November 2012 – Detailed Tables, Table 4b*, *available at* <https://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html> (last visited June 27, 2016).

⁷ U.S. Census Bureau, *Voting and Registration in the Election of November 2014, Table 4B*, *available at* <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-577.html> (last visited June 27, 2016).

⁸ Joel Kurth et al., *Record 2.5M turnout for Michigan primary*, THE DETROIT NEWS, Mar. 9, 2016, *available at* <http://www.detroitnews.com/story/news/politics/elections/2016/03/08/state-projects-record-mich-primary-turnout-voters/81508988/> (last visited June 27, 2016).

The Voting Rights Act must be restored because the right to vote is under attack in a way we have not seen since after Reconstruction, more than a century ago. The recent wave of voting restrictions is the product of a concerted push to restrict voting by legislative majorities that swept into office in 2010. It represents a sharp reversal for a country whose historical trajectory has been to expand voting rights and make the process more convenient and accessible.

One particular example merits discussion. In 2011, in a highly racially charged environment, Texas's legislature passed the strictest photo ID law in the country. The legislature designed the law with surgical precision to allow some people to participate and others not. For example, the list of acceptable IDs excludes student IDs from Texas's public universities, but includes licenses to carry concealed firearms.

Texas's law has been declared illegal by three different courts, including a unanimous panel of the Fifth Circuit. But Texas has persisted in imposing this discriminatory requirement upon voters. We are currently awaiting a decision of the entire Fifth Circuit and expect to receive an answer before August. This is a case that we expect to end up before the U.S. Supreme Court.

Restrictions like Texas's are all the harder to stop in the wake of the Supreme Court's decision in *Shelby County v. Holder*.⁹ Three years ago this past Saturday, that case gutted the Voting Rights Act by rendering inoperable the requirement that jurisdictions with histories of racial discrimination seek Department of Justice preclearance before making changes to their election practices or procedures. Indeed, the first court to rule the Texas photo ID law invalid had assessed its legality under the preclearance provisions of the Voting Rights Act. Immediately after *Shelby County* eviscerated the preclearance requirement, Texas, Mississippi, Alabama, and North Carolina moved forward with anti-voter policies.¹⁰

The ability of the preclearance requirement to protect fair and equal access to the ballot box is beyond dispute; it required that a covered jurisdiction demonstrate that the proposed change to election practices or procedures had no discriminatory purpose or result *before* the jurisdiction could move forward with the change. Section 5 has been credited with not only deterring and blocking harmful changes, but opening access to the political process, enabling minority legislators to be elected, and increasing the transparency of election-law changes, among other benefits. Without the preclearance provision, we are forced into case-by-case litigation that is lengthy and extraordinarily expensive. In Texas we have secured three court victories, but nonetheless the photo ID law has been imposed upon voters in multiple elections.

We thank Representatives Conyers and Lawrence for your continued support for restoring the Voting Rights Act. We urge you to convince other members of Michigan's delegation and the rest of Congress to do the same.

⁹ 133 S.Ct. 2612 (2013).

¹⁰ TOMAS LOPEZ, BRENNAN CTR. FOR JUSTICE, *SHELBY COUNTY: ONE YEAR LATER 2-3* (2014), available at http://www.brennancenter.org/sites/default/files/analysis/Shelby_County_One_Year_Later.pdf.

II. Congress Should Pass Automatic Voter Registration

In addition to restoring the Voting Rights Act, Congress should enact national reforms to increase access to the franchise for eligible voters. Today the most potent of these reforms is automatic voter registration, which could add up to 50 million voters to the rolls if implemented correctly.¹¹

Every election cycle, millions of Americans have trouble casting ballots or are unable to vote entirely because of problems with voter registration. One in eight voter registration records has a serious error, and one in four eligible Americans is not even registered to vote, according to the Pew Center on the States.¹² Modern technology lets us deposit checks on our smartphones, yet too many states and localities still rely on paper registration records, often rife with errors, to maintain the voter rolls.

An automatic registration system goes a long way toward solving these problems. Under this system, eligible citizens are automatically registered to vote when they interact with certain government agencies, unless they decline registration. Everyone has the opportunity to “opt out,” and nobody is registered against their will.¹³

Automatic registration has two key components. The first is the transfer of voter registration information electronically, instead of through a paper registration form. Brennan Center research has shown that this upgrade can save costs, boost registration, and increase the accuracy of the rolls.¹⁴ The second is the switch from an opt-in system, where an eligible citizen must take affirmative steps to become registered, to an opt-out system, where unless the eligible citizen affirmatively declines registration, she will be registered. This is a subtle but powerful change, because as behavioral science has shown, our tendency as humans is to choose the default option.¹⁵

¹¹ See generally BRENNAN CTR. FOR JUSTICE, *THE CASE FOR AUTOMATIC, PERMANENT VOTER REGISTRATION* (2015), available at https://www.brennancenter.org/sites/default/files/publications/Case_for_Automatic_Permanent_Voter_Registration.pdf.

¹² PEW CENTER ON THE STATES, *INACCURATE, COSTLY, AND INEFFICIENT: EVIDENCE THAT AMERICA’S VOTER REGISTRATION SYSTEM NEEDS AN UPGRADE 4-5* (2012), available at http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/PewUpgradingVoterRegistrationpdf.pdf.

¹³ See generally BRENNAN CTR. FOR JUSTICE, *AUTOMATIC AND PERMANENT VOTER REGISTRATION: HOW IT WORKS 3* (2015), available at https://www.brennancenter.org/sites/default/files/publications/Automatic_Permanent_Voter_Registration_How_It_Works.pdf.

¹⁴ HOLLY MALUK, MYRNA PEREZ, & LUCY ZHOU, *VOTER REGISTRATION IN A DIGITAL AGE: 2015 UPDATE* (2015), available at https://www.brennancenter.org/sites/default/files/publications/Voter_Registration_Digital_Age_2015.pdf; CHRISTOPHER PONOROFF, BRENNAN CTR. FOR JUSTICE, *VOTER REGISTRATION IN A DIGITAL AGE 14* (Wendy Weiser ed., 2010), available at https://www.brennancenter.org/sites/default/files/legacy/Democracy/Paperless_Registration_FINAL.pdf.

¹⁵ See, e.g., Alberto Abadie & Sebastian Gay, *The impact of presumed consent legislation on cadaveric organ donation: a cross-country study*, 25 J. HEALTH ECON. 599–620 (2006) (25-30% higher participation in organ-donation programs), available at <http://www.sciencedirect.com/science/article/pii/S016762960600004X>; James Choi et al., *Defined Contribution Pensions: Plan Rules, Participant Decisions, and the Path of Least Resistance*, 16

Support for automatic registration is growing across the country. It began with Oregon in 2015. The first state to implement the reform, Oregon has seen the rate of new DMV registrations quadruple relative to the old system—truly stunning results.¹⁶ California passed a law the same year, and officials there estimate that the law could add several million voters to the rolls.¹⁷ Vermont and West Virginia followed suit this year, and with bipartisan, near unanimous support. In the last few weeks, Connecticut adopted automatic registration administratively, and the Illinois legislature sent a bill to the governor’s desk for a signature. And just yesterday, the New Jersey Senate passed a bill, following the General Assembly’s passage of a similar version. All told, nearly 30 states have considered this reform in 2016.

Automatic registration in every state is a real possibility and should be a top priority for any pro-voter agenda, including here in Michigan. In Michigan the DMV has already transferred voter information electronically to election officials for almost 20 years, with digitized signatures shared between the two since 2007.¹⁸ Because moving to electronic transfer is the largest expenditure involved in implementing automatic registration, and Michigan’s DMV already does this, the reform could be adopted at the DMV with minimal expenditure. And because we know not every eligible voter is interacting frequently with the DMV, Michigan should also adopt automatic registration at other social-service agencies that collect the information necessary for voter registration.

Wide enfranchisement and a modern election system should become a *national* goal, and we urge you and your colleagues in Michigan’s congressional delegation to help the nation realize it. Rep. Steny Hoyer plans to introduce legislation implementing automatic registration and complementary reforms, and we should expect and demand a similar bill to be introduced in the Senate. Automatic registration should be a legislative priority for the Michigan delegation.

Conclusion

Thank you again for holding this hearing today, and for allowing us to testify. I am happy to answer any questions you have, and we stand ready to assist you as you move to restore the Voting Rights Act and consider automatic voter registration. They are two major steps toward making voting by all eligible citizens free, fair, and accessible.

TAX POLICY AND THE ECONOMY 67-114 (2002) (401(k) participation over 30 percentage points higher with automatic enrollment), *available at* <http://www.nber.org/papers/w8655.pdf>.

¹⁶ Jonathan Brater, *Automatic Voter Registration in Oregon a Huge Success*, BRENNAN CTR. FOR JUSTICE, Apr. 8, 2016, <https://www.brennancenter.org/blog/automatic-voter-registration-oregon-huge-success>.

¹⁷ California Secretary of State, *California New Motor Voter Act Passed by Legislature*, Sept. 11, 2015, <http://www.sos.ca.gov/administration/news-releases-and-advisories/2015-news-releases-and-advisories/california-new-motor-voter-act-passed-legislature/>.

¹⁸ PONOROFF, *supra* note 14, at 9, 15.