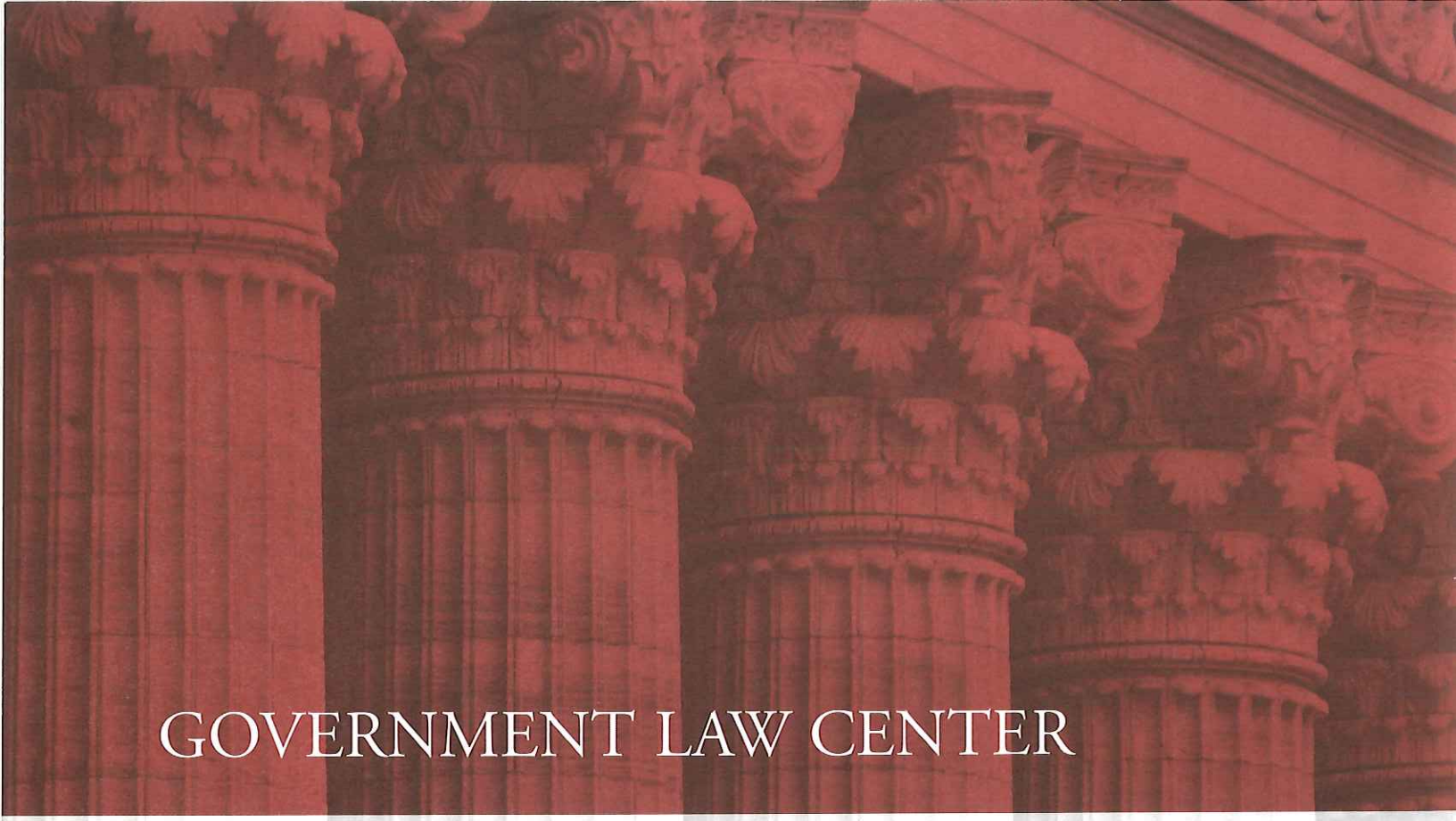

GOVERNMENT LAW CENTER

2016 Warren M. Anderson Legislative Breakfast Seminar Series

"Increasing Voter Turnout: How Do We Make Democracy Work?"

April 19, 2016

ALBANY LAW SCHOOL

Increasing Voter Turnout: How Do We Make Democracy Work?

April 19, 2016

SPEAKER BIOGRAPHIES

ALPHONSO B. DAVID, ESQ., is an attorney, law professor and policy advisor with significant litigation and management experience in the public, private, and not-for-profit sectors. In 2015, Mr. David was appointed by Governor Andrew Cuomo to serve as Counsel to the Governor. In this role, he functions as the Governor's chief counsel and principal legal advisor, and oversees all significant legal and policy deliberations affecting New York State including evaluating proposed legislation, implementing laws and policies, and formulating the State's posture in both affirmative and defensive litigation. Prior to this appointment, Mr. David served for four years in the Governor's cabinet as the Deputy Secretary and Counsel for Civil Rights, the first position of its kind in New York State. In this capacity, he was responsible for a full range of legal, policy, legislative and operational matters affecting civil rights and labor throughout the State. Mr. David also previously served as Special Deputy Attorney General for Civil Rights for the Office of the New York State Attorney General, where he managed up to a dozen assistant attorneys general on a variety of investigations and affirmative litigation, including employment and housing discrimination, fair lending, reproductive rights and anti-bias claims. In addition, he previously served as Deputy Commissioner and Special Counselor at the New York State Division of Human Rights, a litigation associate at the law firm Blank Rome LLP, and a staff attorney at the Lambda Legal Defense and Educational Fund. At Lambda Legal, Mr. David litigated precedent-setting civil rights cases across the nation affecting lesbian, gay, bisexual and transgender individuals and those living with HIV. He handled both affirmative and defensive matters relating to marriage, parenting rights, discrimination in schools, and access to health care. For the past decade, he has also served as an Adjunct Professor of Law, first at Fordham University Law School and currently at Benjamin N. Cardozo School of Law, where he teaches ''Constitutional Law: Sexuality and the Law.'' Mr. David is a graduate of the University of Maryland and Temple University School of Law. He served as a judicial clerk to the Honorable Clifford Scott Green in the United States District Court for the Eastern District of Pennsylvania.

DENORA GETACHEW, ESQ., serves as Campaign Manager and Legislative Counsel for the Brennan Center's Democracy Program, where she manages advocacy initiatives aimed at improving our nation's democracy and voting system. In particular, she provides strategic leadership for legislative and policy campaigns related to modernizing voter registration processes and reducing the influence of money in politics. Prior to joining the Brennan Center, Ms. Getachew served as Policy Director for then-Public Advocate Bill de Blasio working with diverse stakeholders to shape the Office's policy priorities. She also worked for Citizens Union of the City of New York/Citizens Union Foundation, a century-old good government group, as the Policy Director and Legislative Attorney. Prior to working at Citizens Union, Ms. Getachew was the

Legislative Director at the New York State Trial Lawyers Association, a state trade association focused on protecting consumers. Ms. Getachew began her legal career as Legislative Attorney for the New York City Council's Governmental Operations Committee, where she authored legislation and advanced policy reform to improve the City's lobbying laws, campaign finance system, and processes for administering elections. Ms. Getachew received a J.D. from Fordham University School of Law and a B.S. from John Jay College of Criminal Justice, CUNY.

JOHN NONNA, ESQ., is a litigation partner in the firm of Squire Patton Boggs, and co-managing partner of the firm's New York office. He is a fellow of the American College of Trial Lawyers. Mr. Nonna has balanced his law practice with public service. He served as a Village Justice, Trustee and Mayor of Pleasantville, N.Y., before serving on the Westchester County Board of Legislators. On the Board of Legislators he was Chair of the Legislation Committee, where he helped to develop legislation to ban discrimination based upon source of income, and shepherded the enactment of term limits and ethics reform. Mr. Nonna is currently serving as co-chair of the Board of Directors of the Lawyers Committee for Civil Rights Under Law. He has been engaged in pro bono legal representation particularly in the area of voting rights as co-counsel with the Lawyers Committee and other civil rights groups. He was co-counsel with the Lawyers Committee for one of the intervenors in *Shelby County v. Holder*. He also served as pro bono counsel in cases successfully challenging voter identification laws and compliance with the National Voter Registration Act. Mr. Nonna has been active in the New York State Bar Association as Chair of the Commercial and Federal Litigation Section and member of the Special Committee on Voter Participation which supported reform of New York's election laws to include early voting, among other modernizations. He currently chairs the Committee on Federal Legislative Priorities which has advocated for preservation of funding for the Legal Services Corporation. He also serves on the Special Committee on the New York State Constitution and as a pro bono mediator in the mediation program of the United States District Court for the Southern District of New York. Mr. Nonna obtained a BA degree from Princeton University. After obtaining a law degree from New York University Law School, he served as law assistant to the Honorable Domenick Gabrielli, Associate Justice of the New York Court of Appeals.

RICHARD RIFKIN, ESQ., is Special Counsel to the New York State Bar Association, former Counsel to Governors David Paterson and Eliot Spitzer, and former Executive Director of the New York State Ethics Commission. Rifkin was admitted to the Bar and entered into the private practice of law in 1966. From 1970 to 1973, he served during the Session as Staff Counsel to Assemblyman Leonard Stavinsky. He was appointed Counsel to the Bronx Borough President in 1973. In 1979, Attorney General Abrams appointed Mr. Rifkin Deputy First Assistant Attorney General; and in 1984, Counsel to the Attorney General; and in 1991, First Assistant Attorney General. From 1994 to 1999, Rifkin served as Executive Director of the State Ethics Commission. He was appointed in 1999 by Attorney General Spitzer as Deputy Attorney General for the Office's State Counsel Division. In 2007, he was appointed Special Counsel to the Governor, where he remained until June 2008, when he assumed his current position of Special Counsel

to the New York State Bar Association. Since 1984, Mr. Rifkin has served as a member of the Chief Administrative Judge's Advisory Committee on Civil Practice. He has served on various committees of the New York City Bar Association and New York State Bar Association, and was, for two terms, a member of the House of Delegates of the latter. Rifkin received a B.A. degree, *magna cum laude*, from Washington and Jefferson College, having been elected to Phi Beta Kappa, and was awarded an LL.B. degree by Yale Law School.

Increasing Voter Turnout:
How Do We Make Democracy Work?

April 19, 2016

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2016 Warren M. Anderson Legislative Breakfast Seminar Series

Increasing Voter Turnout: How Do We Make Democracy Work?

The popular vote is the cornerstone of the American Government yet despite its importance, voter turnout has been in decline for the last century.[1] In 1840, voter turnout for the presidential elections began to surpass those for midterm elections.[2] The 2014 census surveyed 47,593 eligible voters and, among the reasons voters provided for not voting were the following: busy schedules (28%), disinterest (16%), unpopular candidate (8%), and polling place inconvenience (2%).[3] Among eligible voters, age and ethnic background appear to have significant impact on voter turnout. Young voters appear less likely to vote.[4] In 2014, the number of young voters who voted fell to 23.1% turnout.[5] Statistics also show that the lowest voter turnout tends to be among Asian and Hispanic voters.[6] Factors that are likely to contribute to low voter turnout among these populations are: gerrymandering of electoral districts, special interest group involvement, and voter registration requirements.[7]

Gerrymandering significantly discourages voters by instilling the belief that their vote does not matter and will not make a difference in the election process. This belief greatly affects a voter's motivation to get to the polls.[8] The effect of gerrymandering is illustrated by *Pope v. County of Albany*. The court in *Pope* held that Albany County Commission's redistricting, achieved through the passage of a local law, violated the Voting Rights Act insomuch as this law "interacted with social and historical conditions to cause an inequality in the opportunities

[1] Michael McDonald, *National General Election VEP Turnout Rates, 1789-Present*, United States Election Project (June 11, 2014), http://www.electproject.org/national-1789-present.

[2] *Id*.

[3] U.S. Census Bureau, Voting and Registration in the Election of November 2014, tbl. (2014).

[4] Thom File, *Who Votes? Congressional Elections and the American Electorate: 1978-2014*, Population Characteristics P20-577, 5 (2015), https://www.census.gov/content/dam/Census/library/publications/2015/demo/p20-577.pdf.

[5] *Id*.

[6] *Id*.

[7] Jeff Wice, *New York State's Voting Laws Hurting Anti-Establishment Candidates, N.Y. Election News: (Sept. 27, 2015, 6:15 PM), https://nyelectionsnews.wordpress.com/2015/09/*.

[8] Richard Fausset, North Carolina Exemplifies National Battles Over Voting, N.Y. Times (March 10, 2016), http://www.nytimes.com/2016/03/11/us/north-carolina-voting-rights-redistictricting-battles.html.

enjoyed by black and white voters to elect their preferred representatives." [9] These inequalities contribute to the perception that one's vote does not matter.

Additionally, voters may become reluctant to vote because of the considerable impact special interest groups have on whom is elected and the legislation that is passed.[10] The Supreme Court's decision in *Citizens United v. FEC* restricted government contracts on certain aspects of campaign finance, particularly as they affect corporations.[11] Special interests have a large impact on who is elected into public office and which legislation ultimately gets adopted.[12] Specifically, distrusting voters view special interest contributions via loosely regulated campaign finance laws as obstacles to effective democracy. Contributions from special interests to campaigns can create the perception that influence can be bought, limiting equal representation. [13]

Several states have enacted legislation to improve voter registration but these have not necessarily resulted in an increase in voter turnout. A recent study found that low turnout figures are possibly a result of the inconvenience and the missed opportunities eligible voters' face, such as, going grocery shopping instead of waiting in line to vote.[14] Convenience is at the crux of getting the infrequent voter to the polls.[15] This includes a voter's accessibility to the polling place.[16] Several states have enacted legislation to improve voter registration and turnout rates. In 2003 Larimer County, Colorado, placed polling locations closer to a person's work, effectively increasing the number of workers in proximity to a polling location by twenty-five percent.[17] They used twenty-two polling locations in total, down from the previous 143 in 2002, but

[9] Pope v. County of Albany, 94 F. Supp. 3d 302, 351, 2015 U.S. Dist. LEXIS 36299, *121 (N.D.N.Y 2015); Goosby II, 180 F. 3d at 496 (citing Gingles, 478 U.S. at 47).
[10] Richard Fausset, *N.C. Exemplifies Nat'l Battles Over Voting*, N.Y. Times (March 10, 2016), http://www.nytimes.com/2016/03/11/us/north-carolina-voting-rights-redistictricting-battles.html.
[11] *Citizens United v. FEC*, 558 U.S. 310, 372, 130 S. Ct. 876, 917, 175 L. Ed. 2d 753, 803, (U.S. 2010).
[12] Jeff Wice, *New York State's Voting Laws Hurting Anti-Establishment Candidates*, N.Y. Election News: (Sept. 27, 2015, 6:15 PM), https://nyelectionsnews.wordpress.com/2015/09/
[13] Jeff Wice, *Voter Fatigue in N.Y.*, N.Y. Election News: (Dec. 7, 2015, 11:28 AM).
[14] 9 Robert M. Stein & Greg Vonnahme, Engaging the Unengaged Voter: Voter Centers and Voter Turnout, 70 J. POL. 487, 487–88 (2008).
[15] *Id.* At 489.
[16] *Id.* At 489-490.
[17] *Id.* at 491

allowed voters to vote at any voting center. As a result, the counts saw a 2.6% increase of infrequent voters getting to the polls.[18]

More recently, Hawaii overhauled its voter registration laws. Hawaii had the lowest voter turnout of the fifty states in the 2012 presidential election.[19] The state has since bolstered its voter registration by allowing potential voters to register online and enacting same-day registrations and voting.[20] A 2013 study shows that, during presidential elections, when a state offers same day registration, that state saw an average voter turnout that was ten percentage points higher than those states that did not.[21]

Age, race and passion for civic engagement are also contributing factors to an increase or decrease of voter turnout in the state. Voting rates for young people have been significantly lower than other populations. Historically, white voters have voted at higher rates than any other racial or ethnic group. More recently Black voters have voted at similar rates as white voters in certain elections, however, the 2008 presidential election between Senator Barack Obama and Senator John McCain, Black voters surpassed White voters by a 2.1% margin.[22] Latino and Asian voters typically have lower participation rates than their white voter counterparts. Research indicates that people who do vote tend to be older with a formal education, higher income, and live in a rural setting.[23]

It can be argued that New York State is a national role model in terms of its policies geared towards improving voter turnout. However, voter turnout has been lower over the past few years in the state.[24] New York was ranked 47th in the nation in voter registration with less than 64% of eligible residents registered to vote in 2012. New York was ranked 49th in the nation for voter turnout in 2014.[25] Government intervention such as the National Voter

[18] *Id.* at 494
[19] National Conference of State Legislatures et al., *States Aim to Improve Voter Turnout*, THE CANVASS: ST. & ELECTION REFORM, Aug. 2014, at 1.
[20] *Id.*
[21] ESTELLE H. ROGERS, PROJECTVOTE, SAME-DAY REGISTRATION 2 (2013).
[22] Joshua Harder & Jon A. Krosnick, *Why Do People Vote? A Psychological Analysis of the Causes of Voter Turnout* (2008), 525 Journal of Social Issues 64, no. 3: 525-549.
[23] *Id.*
[24] *Id.*
[25] *Id.*

Registration Act of 1993[26] and New York Executive Order 136[27] increased voter registration, but failed to succeed in encouraging people to vote on Election Day. In 2010 in New York State, there was a five million person gap between registered voters and people who voted in the gubernatorial election of 2010.[28]

These recently introduced bills are designed to increase voter turnout in New York State. Assembly Bill A913 would permit a voter to vote at a polling place closest to his or her residence, allowing voters a more accessible polling place, particularly for those without transportation. Assembly Bill A6334 would authorize early voting at primary and generally elections.[29] Finally, Assembly Bill A600 would require the posting of sample ballots on the board of elections' website as soon as it is available, allowing voters to preview the ballot potentially making the voting process quicker and more efficient, resulting in shorter lines at the polls.[30]

It is essential that, in the future, eligible voters from all demographic groups become engaged in the voting process. Through the use of technology and voter education, it is possible that under-engaged groups will be better represented at the polls. Although the lowest turnout of eligible voters seems to fall in the minority and younger-age categories, recent trends in the 2008 and 2012 election have shown that past voting patterns are shifting. Through legislative actions and continued proactive measures to engage under-represented voters, it is possible that there could be an increase of eligible voters at the polls in the coming years.

[26] 52 U.S.C. §20501-20511 (*Nat'l Voter Reg Act*)(1993).
[27] Exec. Order No. 136, NY-CCRR (March 3, 1990).
[28] Evan Mastronardi and Keiko Sometani, *An Analysis of Voter Turnout in New York* (May. 21, 2015), 3 http://www.citizensunion.org/www/cu/site/hosting/Reports/Final_CityCollegeCapstoneReport-VoterTurnout_May2015.pdf
[29] Assemb. A913, 2016 Leg., 202nd Sess. (N.Y. 2016); Assemb. A6334, 2016, Leg. 202nd Sess. (N.Y. 2015).
[30] Assemb. A600, 2016 Leg., 202nd Sess. (N.Y. 2015).

Link to 2016-17 Executive Budget Article VII Legislation
Good Government and Ethics Reform

https://www.budget.ny.gov/pubs/executive/eBudget1617/fy1617artVIIbills/GGER.pdf

2016-17 Executive Budget Article VII

Legislation Good Government and Ethics Reform

Part F – Enhancing Voter Opportunities

§ 17. Paragraph a of subdivision 12 of section 80 of the legislative law, as amended by section 9 of part A of chapter 399 of the laws of 2011, is amended to read as follows:

a. [Notwithstanding the provisions of article six of the public officers law, the only records of the commission which shall be available for public inspection and copying are:

(1) the terms of any settlement or compromise of a complaint or referral or report which includes a fine, penalty or other remedy reached after the commission has received a report from the joint commission on public ethics pursuant to subdivision fourteen-a of section ninety-four of the executive law;

(2) generic advisory opinions;

(3) all reports required by this section; and

(4) all reports received from the joint commission on public ethics pursuant to subdivision fourteen-a of section ninety-four of the executive law and in conformance with paragraph (b) of subdivision nine-b of this section.] Commission records created after the effective date of the chapter of the laws of two thousand sixteen which amended this paragraph shall be made available for public inspection and copying pursuant to the provisions of article six of the public officers law.

§ 18. This act shall take effect immediately provided, however, that sections two, three, four, five, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this act shall take effect January 1, 2017.

PART F

Section 1. Section 5-212 of the election law is REPEALED and a new section 5-212 is added to read as follows:

§ 5-212. Motor vehicle registration. 1. In addition to any other method of voter registration provided for in this article, any qualified person shall be automatically applied for registration and enrollment simultaneously with and upon application for a motor vehicle driver's license, a driver's license renewal or an identification card if such a card is issued by the department of motor vehicles in its normal course of business unless such qualified person declines such application for registration and enrollment at the time of making an application for a motor vehicle driver's license, driver's license renewal or an identification card if such card is issued by the department of motor vehicles in its normal course of business.

2. The department of motor vehicles, with the approval of the state board of elections, shall design a form or forms which shall, in addition to eliciting such information as may be required by the department of motor vehicles for a driver's license, a driver's license renewal, a change of address notification or an identification card, serve as an application for registration and enrollment, or a registration necessitated by a change of residence. Only one signature shall be required to meet the certification and attestation needs of the portion of the form pertaining to the application for a driver's license, a driver's license renewal, a change of address notification or an identification card, and the portion of the form pertaining to voter registration and enrollment. The cost of such forms shall be borne by the department of motor vehicles.

3. The voter registration portion of such form shall:

(a) not require any information that duplicates the information required on the application for the driver license portion and shall require only such additional information as will enable election offi-

cials to assess the applicant's eligibility to register to vote, prevent duplicate registration and to administer voter registration and other parts of the election process;

(b) include a statement of the eligibility requirements for voter registration and shall require the applicant to attest by his or her signature that he or she meets those requirements under penalty of perjury unless such applicant declines such registration;

(c) inform the applicant, in print identical to that used in the attestation section of the following:

(i) voter eligibility requirements;

(ii) penalties for submission of false registration application;

(iii) that the office where applicant registers shall remain confidential and the information be used only for voter registration purposes;

(iv) if the applicant declines to register, such applicant's declination shall remain confidential and be used only for voter registration purposes;

(d) include a box for the applicant to check to indicate whether the applicant would like to decline to register to vote along with the statement in prominent type, "IF YOU DO NOT CHECK THIS BOX, YOU PROVIDE YOUR SIGNATURE ON THE SPACE PROVIDED BELOW, AND YOU ARE AT LEAST 18 YEARS OF AGE OR OLDER, YOU WILL HAVE PERSONALLY APPLIED TO REGISTER TO VOTE AT THIS TIME.";

(e) include a space for the applicant to indicate his or her choice of party enrollment, with a clear alternative provided for the applicant to decline to affiliate with any party;

(f) include the statement, "If you would like help in filling out the voter registration application form, we will help you. The decision

whether to seek or accept help is yours. You may fill out the application form in private.";

(g) include the statement, "If you believe that someone has interfered with your right to register or decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the state board of elections (address and toll free telephone number).";

(h) include a toll free number at the state board of elections that can be called for answers to registration questions; and

(i) include any other information that is necessary to comply with the requirements of the National Voter Registration Act.

4. The department of motor vehicles shall transmit that portion of the form which constitutes the completed application for registration or change of address form to the appropriate board of elections not later than ten days after receipt except that all such completed applications and forms received by the department between the thirtieth and twenty-fifth day before an election shall be transmitted in such manner and at such time as to assure their receipt by such board of elections not later than the twentieth day before such election. All transmittals shall include original signatures.

5. Completed application forms received by the department of motor vehicles not later than the twenty-fifth day before the next ensuing primary, general or special election and transmitted by such department to the appropriate board of elections so that they are received not later than the twentieth day before such election shall entitle the applicant to vote in such election provided the board determines that the applicant is otherwise qualified.

6. Disclosure of voter registration information, including a declination to register, by the department of motor vehicles, its agents or employees, for other than voter registration purposes, shall be deemed an unwarranted invasion of personal privacy pursuant to the provisions of subdivision two of section eighty-nine of the public officers law and shall constitute a violation of this chapter.

7. Application forms shall be processed by the board of elections in the manner prescribed by section 5-210 of this title or, if the applicant is already registered to vote from another address in such county or city, in the manner prescribed by section 5-208 of this title. The board shall send the appropriate notice of approval or rejection as required by either subdivision nine of such section 5-210 or subdivision five of such section 5-208.

8. Strict neutrality with respect to a person's party enrollment shall be maintained and all persons seeking voter registration forms and information shall be advised that government services are not conditioned on being registered to vote.

9. No statement shall be made nor any action taken to discourage the applicant from registering to vote.

10. The department of motor vehicles shall provide to each person who chooses to register to vote the same level of assistance provided to persons in connection with the completion of the agency's requisite information, unless such person refuses such assistance.

11. The state board shall adopt such rules and regulations as may be necessary to carry out the requirements of this section. The board shall also adopt such rules and regulations as may be necessary to require county boards and the department of motor vehicles to provide the state board with such information and data as the board deems necessary to

assess compliance with this section and to compile such statistics as may be required by the federal elections commission.

12. The state board shall develop and distribute public information and promotional materials relating to the purposes and implementation of this program.

13. The state board shall prepare and distribute to the department of motor vehicles written instructions as to the implementation of the program and shall be responsible for establishing training programs for employees of the department of motor vehicles involved in such program.

14. The commissioner of motor vehicles shall take all actions which are necessary and proper for the implementation of this section. The commissioner of motor vehicles shall designate one person within the agency as the agency voter registration coordinator who will, under the direction of the state board of elections, be responsible for the voter registration program in such agency.

15. Notwithstanding subdivision six of section 5-210 of this title and any other law to the contrary, an applicant who is less than eighteen years of age who improperly fails to decline to vote in accordance with the provisions of this section shall not be guilty of any crime as the result of the applicant's failure to make such declination.

§ 2. Paragraph (a) of subdivision 2 of section 5-712 of the election law, as amended by chapter 200 of the laws of 1996, is amended to read as follows:

(a) The board of elections shall also send a confirmation notice to every registered voter for whom it receives a notice of change of address to an address not in such city or county which is not signed by the voter. Such change of address notices shall include, but not be limited to, notices of change of address received pursuant to subdivi-

sion eleven of section 5-211 and subdivision [six] four of section 5-212 of this article, notice of change of address from the United States Postal Service through the National Change of Address System or from any other agency of the federal government or any agency of any state or local government and notice of a forwarding address on mail sent to a voter by the board of elections and returned by the postal service. Such confirmation notices shall be sent to such new address.

§ 3. Subdivision 5 of section 5-210 of the election law is amended by adding a new paragraph (n) to read as follows:

(n) The form of application required by section 5-212 of this title shall be deemed to meet the requirements of this section.

§ 4. Subdivision 27 of section 1-104 of the election law is amended to read as follows:

27. The term "personal application" means a signed writing which may be delivered by mailing [or], in person, or electronically.

§ 5. Section 3-400 of the election law is amended by adding a new subdivision 9 to read as follows:

9. Notwithstanding any inconsistent provisions of this article, election inspectors or poll clerks, if any, at polling places for early voting, shall consist of either board of elections employees who shall be appointed by the commissioners of such board or duly qualified individuals, appointed in the manner set forth in this section. Appointments to the offices of election inspector or poll clerk in each polling place for early voting shall be equally divided between the major political parties. The board of elections shall assign staff and provide the resources they require to ensure wait times at early voting sites do not exceed thirty minutes.

§ 6. Section 4-117 of the election law is amended by adding a new subdivision 1-a to read as follows:

1-a. The notice required by subdivision one of this section shall include the dates, hours and locations of early voting for the general and primary election. The board of elections may satisfy the notice requirement of this subdivision by providing in the notice instructions to obtain the required early voting information from a website of the board of elections and providing a phone number to call for such information.

§ 7. Subdivision 2 of section 8-100 of the election law, as amended by chapter 335 of the laws of 2000, is amended to read as follows:

2. Polls shall be open for voting during the following hours: a primary election from twelve o'clock noon until nine o'clock in the evening, except in the city of New York and the counties of Nassau, Suffolk, Westchester, Rockland, Orange, Putnam and Erie, and in such city or county from six o'clock in the morning until nine o'clock in the evening; the general election from six o'clock in the morning until nine o'clock in the evening; a special election called by the governor pursuant to the public officers law, and, except as otherwise provided by law, every other election, from six o'clock in the morning until nine o'clock in the evening; early voting hours shall be as provided in section 8-600 of this article.

§ 8. Subdivision 1 of section 8-102 of the election law is amended by adding a new paragraph (k) to read as follows:

(k) Voting at each polling place for early voting shall be conducted in a manner consistent with the provisions of this article, with the exception of the tabulation and proclamation of election results which

shall be completed according to subdivisions eight and nine of section 8-600 of this article.

§ 9. Section 8-104 of the election law is amended by adding a new subdivision 7 to read as follows:

7. This section shall apply on all early voting days as provided for in section 8-600 of this article.

§ 10. Paragraph (b) of subdivision 2 of section 8-508 of the election law, as amended by chapter 200 of the laws of 1996, is amended to read as follows:

(b) The second section of such report shall be reserved for the board of inspectors to enter the name, address and registration serial number of each person who is challenged on the day of election or on any day in which there is early voting pursuant to section 8-600 of this article, together with the reason for the challenge. If no voters are challenged, the board of inspectors shall enter the words "No Challenges" across the space reserved for such names. In lieu of preparing section two of the challenge report, the board of elections may provide, next to the name of each voter on the computer generated registration list, a place for the inspectors of election to record the information required to be entered in such section two, or provide at the end of such computer generated registration list, a place for the inspectors of election to enter such information.

§ 11. Article 8 of the election law is amended by adding a new title 6 to read as follows:

TITLE VI

EARLY VOTING

Section 8-600. Early voting.

8-602. State board of elections; powers and duties for early voting.

§ 8-600. Early voting. 1. Beginning the thirteenth day prior to any general, primary or special election for any public or party office, and ending on and including the second day prior to such general, primary or special election for such public or party office, persons duly registered and eligible to vote at such election shall be permitted to vote as provided in this title. The board of elections of each county and the city of New York shall establish procedures, subject to approval of the state board of elections, to ensure that persons who vote during the early voting period shall not be permitted to vote subsequently in the same election.

2. (a) The board of elections of each county or the city of New York shall designate polling places for early voting in each county, which may include the offices of the board of elections, for persons to vote early pursuant to this section. There shall be so designated at least one early voting polling place for every full increment of fifty thousand registered voters in each county; provided, however, the number of early voting polling places in a county shall not be required to be greater than seven, and a county with fewer than fifty thousand voters shall have at least one early voting polling place.

(b) The board of elections of each county or the city of New York may establish additional polling places for early voting in excess of the minimum number required by this subdivision for the convenience of eligible voters wishing to vote during the early voting period.

(c) Notwithstanding the minimum number of early voting poll sites otherwise required by this subdivision, for any primary or special election, upon majority vote of the board of elections, the number of

early voting sites may be reduced if the board of elections reasonably determines a lesser number of sites is sufficient to meet the needs of early voters.

(d) Polling places for early voting shall be located to ensure, to the extent practicable, that eligible voters have adequate equitable access, taking into consideration population density, travel time to the polling place, proximity to other locations or commonly used transportation routes and such other factors the board of elections of the county or the city of New York deems appropriate. The provisions of section 4-104 of this chapter, except subdivisions four and five of such section, shall apply to the designation of polling places for early voting except to the extent such provisions are inconsistent with this section.

3. Any person permitted to vote early may do so at any polling place for early voting established pursuant to subdivision two of this section in the county where such voter is registered to vote. Provided, however, (i) if it is impractical to provide each polling place for early voting all appropriate ballots for each election to be voted on in the county, or (ii) if permitting such persons to vote early at any polling place established for early voting would make it impractical to ensure that such voter has not previously voted early during such election, the board of elections may designate each polling place for early voting only for those voters registered to vote in a portion of the county to be served by such polling place for early voting, provided that all voters in each county shall have one or more polling places at which they are eligible to vote throughout the early voting period on a substantially equal basis.

4. (a) Polls shall be open for early voting for at least eight hours between seven o'clock in the morning and eight o'clock in the evening each week day during the early voting period.

(b) At least one polling place for early voting shall remain open until eight o'clock in the evening on at least two week days in each calendar week during the early voting period. If polling places for early voting are limited to voters from certain areas pursuant to subdivision three of this section, polling places that remain open until eight o'clock shall be designated such that any person entitled to vote early may vote until eight o'clock in the evening on at least two week days during the early voting period.

(c) Polls shall be open for early voting for at least five hours between nine o'clock in the morning and six o'clock in the evening on each Saturday, Sunday and legal holiday during the early voting period.

(d) Nothing in this section shall be construed to prohibit any board of elections from establishing a greater number of hours for voting during the early voting period beyond the number of hours required in this subdivision.

(e) Early voting polling places and their hours of operation for early voting at a general election shall be designated by May first of each year pursuant to subdivision one of section 4-104 of this chapter. Notwithstanding the provisions of subdivision one of section 4-104 of this chapter requiring poll site designation by May first, early voting polling places and their hours of operation for early voting for a primary or special election shall be made not later than forty-five days before such primary or special election.

5. Each board of elections shall create a communication plan to inform eligible voters of the opportunity to vote early. Such plan may utilize

any and all media outlets, including social media, and shall publicize: the location and dates and hours of operation of all polling places for early voting; an indication of whether each polling place is accessible to voters with physical disabilities; a clear and unambiguous notice to voters that if they cast a ballot during the early voting period they will not be allowed to vote election day; and if polling places for early voting are limited to voters from certain areas pursuant to subdivision three of this section, the location of the polling places for early voting serving the voters of each particular city, town or other political subdivision.

6. The form of paper ballots used in early voting shall comply with the provisions of article seven of this chapter that are applicable to voting by paper ballot on election day and such ballot shall be cast in the same manner as provided for in section 8-312 of this article, provided, however, that ballots cast during the early voting period shall be secured in the manner of voted ballots cast on election day and such ballots shall not be canvassed or examined until after the close of the polls on election day, and no unofficial tabulations of election results shall be printed or viewed in any manner until after the close of polls on election day.

7. Voters casting ballots pursuant to this title shall be subject to challenge as provided in sections 8-500, 8-502 and 8-504 of this article.

8. Notwithstanding any other provisions of this chapter, at the end of each day of early voting, any early voting ballots that have not been scanned because a ballot scanner was not available or because the ballot has been abandoned by the voter at the ballot scanner shall be cast in a manner consistent with section 9-110 of this chapter, except that any

ballots that would otherwise be scanned at the close of the polls pursuant to such section shall be scanned at the close of each day's early voting.

9. The board of elections shall secure all ballots and scanners used for early voting from the beginning of the early voting period through the close of the polls of the election on election day. As soon as the polls of the election are closed on election day, and not before, inspectors or board of elections employees shall follow all relevant provisions of article nine of this chapter that are not inconsistent with this section, for canvassing, processing, recording, and announcing results of voting at polling places for early voting, and securing ballots, scanners, and other election materials.

§ 8-602. State board of elections; powers and duties for early voting. Any rule or regulation necessary for the implementation of the provisions of this title shall be promulgated by the state board of elections provided that such rules and regulations shall include provisions to ensure that ballots cast early, by any method allowed under law, are counted and canvassed as if cast on election day. The state board of elections shall promulgate any other rules and regulations necessary to ensure an efficient and fair early voting process that respects the privacy of the voter. Provided, further, that such rules and regulations shall require that the voting history record for each voter be continually updated to reflect each instance of early voting by such voter.

§ 12. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to any election held 120 days or more after it shall have taken effect;

provided, however that sections one, two, three and four of this act shall take effect on April 1, 2017.

PART G

Section 1. The New York state comptroller, or his or her designee, the attorney general of the state of New York, or his or her designee, the chief information officer of the office of information technology services, or his or her designee and the commissioner of general services, or his or her designee, are hereby directed to review, examine and make recommendations concerning the feasibility of assigning a single identifying code to contractors, vendors and other payees to track such entities and expenditures. This group shall submit a report to the governor, temporary president of the senate, and the speaker of the assembly on or before January 1, 2017, of its findings and recommendations.

§ 2. This act shall take effect immediately.

PART H

Section 1. Subdivisions (b), (h) and (w) of section 1-c of the legislative law, subdivisions (b) and (h) as added by chapter 2 of the laws of 1999 and subdivision (w) as added by section 8 of part A of chapter 399 of the laws of 2011, are amended and a new subdivision (x) is added to read as follows:

(b) The term "client" shall mean every person or organization who retains, employs or designates any person or organization to carry on

133 S.Ct. 2612 (2013)

SHELBY COUNTY, ALABAMA, Petitioner
v.
Eric H. HOLDER, Jr., Attorney General, et al.

No. 12-96.

Supreme Court of United States.

Argued February 27, 2013.
Decided June 25, 2013.

2617 *2617 Bert W. Rein, for Petitioner.

Donald E. Verrilli, Jr., Solicitor General, for Federal Respondent.

Debo P. Adegbile, for Respondents Bobby Pierson, et al.

2618 *2618 Frank C. Ellis, Jr., Wallace, Ellis, Fowler, Head & Justice, Columbiana, AL, Bert W. Rein, William S. Consovoy, Thomas R. McCarthy, Brendan J. Morrissey, Wiley Rein LLP, Washington, DC, for Petitioner.

Kim Keenan, Victor L. Goode, Baltimore, MD, Arthur B. Spitzer, Washington, D.C., David I. Schoen, Montgomery, AL, M. Laughlin McDonald, Nancy G. Abudu, Atlanta, GA, Steven R. Shapiro, New York, NY, for Respondent-Intervenors Bobby Pierson, Willie Goldsmith, Sr., Mary Paxton-Lee, Kenneth Dukes, and Alabama State Conference of the National Association for the Advancement of Colored People.

Sherrilyn Ifill, Director-Counsel, Debo P. Adegbile, Elise C. Boddie, Ryan P. Haygood, Dale E. Ho, Natasha M. Korgaonkar, Leah C. Aden, NAACP Legal Defense & Educational Fund, Inc., New York, NY, Joshua Civin, NAACP Legal Defense & Educational Fund, Inc., Washington, DC, Of Counsel: Samuel Spital, William J. Honan, Harold Barry Vasios, Marisa Marinelli, Robert J. Burns, Holland & Knight LLP, New York, NY, for Respondent-Intervenors Earl Cunningham, Harry Jones, Albert Jones, Ernest Montgomery, Anthony Vines, and William Walker.

Donald B. Verrilli, Jr., Solicitor General, Thomas E. Perez, Assistant Attorney General, Sri Srinivasan, Deputy Solicitor General, Sarah E. Harrington, Assistant to the Solicitor General, Diana K. Flynn, Erin H. Flynn, Attorneys, Department of Justice, Washington, D.C., for Federal Respondent.

Jon M. Greenbaum, Robert A. Kengle, Mark A. Posner, Maura Eileen O'Connor, Washington, D.C., John M. Nonna, Patton Boggs LLP, New York, NY, for Respondent-Intervenor Bobby Lee Harris.

Chief Justice ROBERTS delivered the opinion of the Court.

The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem. Section 5 of the Act required States to obtain federal permission before enacting any law related to voting — a drastic departure from basic principles of federalism. And § 4 of the Act applied that requirement only to some States — an equally dramatic departure from the principle that all States enjoy equal sovereignty. This was strong medicine, but Congress determined it was needed to address entrenched racial discrimination in voting, "an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution." *South Carolina v. Katzenbach*, 383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). As we explained in upholding the law, "exceptional conditions can justify legislative measures not otherwise appropriate." *Id.,* at 334, 86 S.Ct. 803. Reflecting the unprecedented nature of these measures, they were scheduled to expire after five years. See Voting Rights Act of 1965, § 4(a), 79 Stat. 438.

Nearly 50 years later, they are still in effect; indeed, they have been made more stringent, and are now scheduled to last

until 2031. There is no denying, however, that the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions. By 2009, "the racial gap in voter registration and turnout [was] lower in
2619 the States originally *2619 covered by § 5 than it [was] nationwide." *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U.S. 193, 203-204, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009). Since that time, Census Bureau data indicate that African-American voter turnout has come to exceed white voter turnout in five of the six States originally covered by § 5, with a gap in the sixth State of less than one half of one percent. See Dept. of Commerce, Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Nov. 2012) (Table 4b).

At the same time, voting discrimination still exists; no one doubts that. The question is whether the Act's extraordinary measures, including its disparate treatment of the States, continue to satisfy constitutional requirements. As we put it a short time ago, "the Act imposes current burdens and must be justified by current needs." *Northwest Austin*, 557 U.S., at 203, 129 S.Ct. 2504.

I

A

The Fifteenth Amendment was ratified in 1870, in the wake of the Civil War. It provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," and it gives Congress the "power to enforce this article by appropriate legislation."

"The first century of congressional enforcement of the Amendment, however, can only be regarded as a failure." *Id.,* at 197, 129 S.Ct. 2504. In the 1890s, Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia began to enact literacy tests for voter registration and to employ other methods designed to prevent African-Americans from voting. *Katzenbach*, 383 U.S., at 310, 86 S.Ct. 803. Congress passed statutes outlawing some of these practices and facilitating litigation against them, but litigation remained slow and expensive, and the States came up with new ways to discriminate as soon as existing ones were struck down. Voter registration of African-Americans barely improved. *Id.,* at 313-314, 86 S.Ct. 803.

Inspired to action by the civil rights movement, Congress responded in 1965 with the Voting Rights Act. Section 2 was enacted to forbid, in all 50 States, any "standard, practice, or procedure ... imposed or applied ... to deny or abridge the right of any citizen of the United States to vote on account of race or color." 79 Stat. 437. The current version forbids any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973(a). Both the Federal Government and individuals have sued to enforce § 2, see, *e.g., Johnson v. De Grandy*, 512 U.S. 997, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994), and injunctive relief is available in appropriate cases to block voting laws from going into effect, see 42 U.S.C. § 1973j(d). Section 2 is permanent, applies nationwide, and is not at issue in this case.

Other sections targeted only some parts of the country. At the time of the Act's passage, these "covered" jurisdictions were those States or political subdivisions that had maintained a test or device as a prerequisite to voting as of November 1, 1964, and had less than 50 percent voter registration or turnout in the 1964 Presidential election. § 4(b), 79 Stat. 438. Such tests or devices included literacy and knowledge tests, good moral character requirements, the need for
2620 vouchers from registered voters, and the like. § 4(c), *id.,* at 438-439. A *2620 covered jurisdiction could "bail out" of coverage if it had not used a test or device in the preceding five years "for the purpose or with the effect of denying or abridging the right to vote on account of race or color." § 4(a), *id.,* at 438. In 1965, the covered States included Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. The additional covered subdivisions included 39 counties in North Carolina and one in Arizona. See 28 C.F.R. pt. 51, App. (2012).

In those jurisdictions, § 4 of the Act banned all such tests or devices. § 4(a), 79 Stat. 438. Section 5 provided that no change in voting procedures could take effect until it was approved by federal authorities in Washington, D.C. — either the Attorney General or a court of three judges. *Id.,* at 439. A jurisdiction could obtain such "preclearance" only by

proving that the change had neither "the purpose [nor] the effect of denying or abridging the right to vote on account of race or color." *Ibid.*

Sections 4 and 5 were intended to be temporary; they were set to expire after five years. See § 4(a), *id.,* at 438; *Northwest Austin, supra,* at 199, 129 S.Ct. 2504. In *South Carolina v. Katzenbach,* we upheld the 1965 Act against constitutional challenge, explaining that it was justified to address "voting discrimination where it persists on a pervasive scale." 383 U.S., at 308, 86 S.Ct. 803.

In 1970, Congress reauthorized the Act for another five years, and extended the coverage formula in § 4(b) to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1968. Voting Rights Act Amendments of 1970, §§ 3-4, 84 Stat. 315. That swept in several counties in California, New Hampshire, and New York. See 28 C.F.R. pt. 51, App. Congress also extended the ban in § 4(a) on tests and devices nationwide. § 6, 84 Stat. 315.

In 1975, Congress reauthorized the Act for seven more years, and extended its coverage to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1972. Voting Rights Act Amendments of 1975, §§ 101, 202, 89 Stat. 400, 401. Congress also amended the definition of "test or device" to include the practice of providing English-only voting materials in places where over five percent of voting-age citizens spoke a single language other than English. § 203, *id.,* at 401-402. As a result of these amendments, the States of Alaska, Arizona, and Texas, as well as several counties in California, Florida, Michigan, New York, North Carolina, and South Dakota, became covered jurisdictions. See 28 C.F.R. pt. 51, App. Congress correspondingly amended sections 2 and 5 to forbid voting discrimination on the basis of membership in a language minority group, in addition to discrimination on the basis of race or color. §§ 203, 206, 89 Stat. 401, 402. Finally, Congress made the nationwide ban on tests and devices permanent. § 102, *id.,* at 400.

In 1982, Congress reauthorized the Act for 25 years, but did not alter its coverage formula. See Voting Rights Act Amendments, 96 Stat. 131. Congress did, however, amend the bailout provisions, allowing political subdivisions of covered jurisdictions to bail out. Among other prerequisites for bailout, jurisdictions and their subdivisions must not have used a forbidden test or device, failed to receive preclearance, or lost a § 2 suit, in the ten years prior to seeking bailout. § 2, *id.,* at 131-133.

We upheld each of these reauthorizations against constitutional challenge. See *Georgia v. United States,* 411 U.S. 526,
2621 93 S.Ct. 1702, 36 L.Ed.2d 472 (1973); *City of* *2621 *Rome v. United States,* 446 U.S. 156, 100 S.Ct. 1548, 64 L.Ed.2d 119 (1980); *Lopez v. Monterey* ***County***, 525 U.S. 266, 119 S.Ct. 693, 142 L.Ed.2d 728 (1999).

In 2006, Congress again reauthorized the Voting Rights Act for 25 years, again without change to its coverage formula. Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act, 120 Stat. 577. Congress also amended § 5 to prohibit more conduct than before. § 5, *id.,* at 580-581; see *Reno v. Bossier Parish School Bd.,* 528 U.S. 320, 341, 120 S.Ct. 866, 145 L.Ed.2d 845 (2000) (*Bossier II*); *Georgia v. Ashcroft,* 539 U.S. 461, 479, 123 S.Ct. 2498, 156 L.Ed.2d 428 (2003). Section 5 now forbids voting changes with "any discriminatory purpose" as well as voting changes that diminish the ability of citizens, on account of race, color, or language minority status, "to elect their preferred candidates of choice." 42 U.S.C. §§ 1973c(b)-(d).

Shortly after this reauthorization, a Texas utility district brought suit, seeking to bail out from the Act's coverage and, in the alternative, challenging the Act's constitutionality. See *Northwest Austin,* 557 U.S., at 200-201, 129 S.Ct. 2504. A three-judge District Court explained that only a State or political subdivision was eligible to seek bailout under the statute, and concluded that the utility district was not a political subdivision, a term that encompassed only "counties, parishes, and voter-registering subunits." *Northwest Austin Municipal Util. Dist. No. One v. Mukasey,* 573 F.Supp.2d 221, 232 (D.D.C.2008). The District Court also rejected the constitutional challenge. *Id.,* at 283.

We reversed. We explained that "`normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case.'" *Northwest Austin, supra,* at 205, 129 S.Ct. 2504 (quoting *Escambia* ***County*** *v. McMillan,* 466 U.S. 48, 51, 104 S.Ct. 1577, 80 L.Ed.2d 36 (1984) (*per curiam*)). Concluding that "underlying constitutional concerns," among other things, "compel[led] a broader reading of the bailout provision," we construed the

statute to allow the utility district to seek bailout. *Northwest Austin,* 557 U.S., at 207, 129 S.Ct. 2504. In doing so we expressed serious doubts about the Act's continued constitutionality.

We explained that § 5 "imposes substantial federalism costs" and "differentiates between the States, despite our historic tradition that all the States enjoy equal sovereignty." *Id.,* at 202, 203, 129 S.Ct. 2504 (internal quotation marks omitted). We also noted that "[t]hings have changed in the South. Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Id.,* at 202, 129 S.Ct. 2504. Finally, we questioned whether the problems that § 5 meant to address were still "concentrated in the jurisdictions singled out for preclearance." *Id.,* at 203, 129 S.Ct. 2504.

Eight Members of the Court subscribed to these views, and the remaining Member would have held the Act unconstitutional. Ultimately, however, the Court's construction of the bailout provision left the constitutional issues for another day.

B

Shelby County is located in Alabama, a covered jurisdiction. It has not sought bailout, as the Attorney General has recently objected to voting changes proposed from within the **county**. See App. 87a-92a. Instead, in 2010, the **county** sued the Attorney General in Federal District Court in Washington, D.C., seeking a declaratory judgment that sections
2622 4(b) and 5 *2622 of the Voting Rights Act are facially unconstitutional, as well as a permanent injunction against their enforcement. The District Court ruled against the **county** and upheld the Act. 811 F.Supp.2d 424, 508 (2011). The court found that the evidence before Congress in 2006 was sufficient to justify reauthorizing § 5 and continuing the § 4(b) coverage formula.

The Court of Appeals for the D.C. Circuit affirmed. In assessing § 5, the D.C. Circuit considered six primary categories of evidence: Attorney General objections to voting changes, Attorney General requests for more information regarding voting changes, successful § 2 suits in covered jurisdictions, the dispatching of federal observers to monitor elections in covered jurisdictions, § 5 preclearance suits involving covered jurisdictions, and the deterrent effect of § 5. See 679 F.3d 848, 862-863 (2012). After extensive analysis of the record, the court accepted Congress's conclusion that § 2 litigation remained inadequate in the covered jurisdictions to protect the rights of minority voters, and that § 5 was therefore still necessary. *Id.,* at 873.

Turning to § 4, the D.C. Circuit noted that the evidence for singling out the covered jurisdictions was "less robust" and that the issue presented "a close question." *Id.,* at 879. But the court looked to data comparing the number of successful § 2 suits in the different parts of the country. Coupling that evidence with the deterrent effect of § 5, the court concluded that the statute continued "to single out the jurisdictions in which discrimination is concentrated," and thus held that the coverage formula passed constitutional muster. *Id.,* at 883.

Judge Williams dissented. He found "no positive correlation between inclusion in § 4(b)'s coverage formula and low black registration or turnout." *Id.,* at 891. Rather, to the extent there was any correlation, it actually went the other way: "condemnation under § 4(b) is a marker of *higher* black registration and turnout." *Ibid.* (emphasis added). Judge Williams also found that "[c]overed jurisdictions have *far more* black officeholders as a proportion of the black population than do uncovered ones." *Id.,* at 892. As to the evidence of successful § 2 suits, Judge Williams disaggregated the reported cases by State, and concluded that "[t]he five worst uncovered jurisdictions ... have worse records than eight of the covered jurisdictions." *Id.,* at 897. He also noted that two covered jurisdictions — Arizona and Alaska — had not had any successful reported § 2 suit brought against them during the entire 24 years covered by the data. *Ibid.* Judge Williams would have held the coverage formula of § 4(b) "irrational" and unconstitutional. *Id.,* at 885.

We granted certiorari. 568 U.S. ___, 133 S.Ct. 594, 184 L.Ed.2d 389 (2012).

II

In *Northwest Austin,* we stated that "the Act imposes current burdens and must be justified by current needs." 557 U.S., at 203, 129 S.Ct. 2504. And we concluded that "a departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets." *Ibid.* These basic principles guide our review of the question before us.[1]

2623 *2623 **A**

The Constitution and laws of the United States are "the supreme Law of the Land." U.S. Const., Art. VI, cl. 2. State legislation may not contravene federal law. The Federal Government does not, however, have a general right to review and veto state enactments before they go into effect. A proposal to grant such authority to "negative" state laws was considered at the Constitutional Convention, but rejected in favor of allowing state laws to take effect, subject to later challenge under the Supremacy Clause. See 1 Records of the Federal Convention of 1787, pp. 21, 164-168 (M. Farrand ed. 1911); 2 *id.,* at 27-29, 390-392.

Outside the strictures of the Supremacy Clause, States retain broad autonomy in structuring their governments and pursuing legislative objectives. Indeed, the Constitution provides that all powers not specifically granted to the Federal Government are reserved to the States or citizens. Amdt. 10. This "allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States." *Bond v. United States,* 564 U.S. ___, ___, 131 S.Ct. 2355, 2364, 180 L.Ed.2d 269 (2011). But the federal balance "is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power." *Ibid.* (internal quotation marks omitted).

More specifically, "`the Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections.'" *Gregory v. Ashcroft,* 501 U.S. 452, 461-462, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991) (quoting *Sugarman v. Dougall,* 413 U.S. 634, 647, 93 S.Ct. 2842, 37 L.Ed.2d 853 (1973); some internal quotation marks omitted). Of course, the Federal Government retains significant control over federal elections. For instance, the Constitution authorizes Congress to establish the time and manner for electing Senators and Representatives. Art. I, § 4, cl. 1; see also *Arizona v. Inter Tribal Council of Ariz., Inc.,* ___ U.S., at ___-___, 133 S.Ct., at 2253-2254. But States have "broad powers to determine the conditions under which the right of suffrage may be exercised." *Carrington v. Rash,* 380 U.S. 89, 91, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965) (internal quotation marks omitted); see also *Arizona, ante,* at ___ U.S., at ___-___, 133 S.Ct. at 2257-2259. And "[e]ach State has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen." *Boyd v. Nebraska ex rel. Thayer,* 143 U.S. 135, 161, 12 S.Ct. 375, 36 L.Ed. 103 (1892). Drawing lines for congressional districts is likewise "primarily the duty and responsibility of the State." *Perry v. Perez,* 565 U.S. ___, ___, 132 S.Ct. 934, 940, 181 L.Ed.2d 900 (2012) (*per curiam*) (internal quotation marks omitted).

Not only do States retain sovereignty under the Constitution, there is also a "fundamental principle of *equal* sovereignty" among the States. *Northwest Austin, supra,* at 203, 129 S.Ct. 2504 (citing *United States v. Louisiana,* 363 U.S. 1, 16, 80 S.Ct. 961, 4 L.Ed.2d 1025 (1960); *Lessee of Pollard v. Hagan,* 3 How. 212, 223, 11 L.Ed. 565 (1845); and *Texas v. White,* 7 Wall. 700, 725-726, 19 L.Ed. 227 (1869); emphasis added). Over a hundred years ago, this Court explained that our Nation "was and is a union of States, equal in power, dignity and authority." *Coyle v. Smith,* 221 U.S. 559, 567, 31 S.Ct. 688, 55 L.Ed. 853 (1911). Indeed, "the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized." *Id.,* at 580, 31 S.Ct. 688. *Coyle* concerned the admission of new
2624 States, and *Katzenbach* rejected the notion that the principle *2624 operated as a *bar* on differential treatment outside that context. 383 U.S., at 328-329, 86 S.Ct. 803. At the same time, as we made clear in *Northwest Austin,* the fundamental principle of equal sovereignty remains highly pertinent in assessing subsequent disparate treatment of States. 557 U.S., at 203, 129 S.Ct. 2504.

The Voting Rights Act sharply departs from these basic principles. It suspends "*all* changes to state election law — however innocuous — until they have been precleared by federal authorities in Washington, D.C." *Id.,* at 202, 129 S.Ct. 2504. States must beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own, subject of course to any injunction in a § 2 action. The Attorney General has

60 days to object to a preclearance request, longer if he requests more information. See 28 C.F.R. §§ 51.9, 51.37. If a State seeks preclearance from a three-judge court, the process can take years.

And despite the tradition of equal sovereignty, the Act applies to only nine States (and several additional counties). While one State waits months or years and expends funds to implement a validly enacted law, its neighbor can typically put the same law into effect immediately, through the normal legislative process. Even if a noncovered jurisdiction is sued, there are important differences between those proceedings and preclearance proceedings; the preclearance proceeding "not only switches the burden of proof to the supplicant jurisdiction, but also applies substantive standards quite different from those governing the rest of the nation." 679 F.3d, at 884 (Williams, J., dissenting) (case below).

All this explains why, when we first upheld the Act in 1966, we described it as "stringent" and "potent." *Katzenbach,* 383 U.S., at 308, 315, 337, 86 S.Ct. 803. We recognized that it "may have been an uncommon exercise of congressional power," but concluded that "legislative measures not otherwise appropriate" could be justified by "exceptional conditions." *Id.,* at 334, 86 S.Ct. 803. We have since noted that the Act "authorizes federal intrusion into sensitive areas of state and local policymaking," *Lopez,* 525 U.S., at 282, 119 S.Ct. 693, and represents an "extraordinary departure from the traditional course of relations between the States and the Federal Government," *Presley v. Etowah* ***County*** *Comm'n,* 502 U.S. 491, 500-501, 112 S.Ct. 820, 117 L.Ed.2d 51 (1992). As we reiterated in *Northwest Austin,* the Act constitutes "extraordinary legislation otherwise unfamiliar to our federal system." 557 U.S., at 211, 129 S.Ct. 2504.

B

In 1966, we found these departures from the basic features of our system of government justified. The "blight of racial discrimination in voting" had "infected the electoral process in parts of our country for nearly a century." *Katzenbach,* 383 U.S., at 308, 86 S.Ct. 803. Several States had enacted a variety of requirements and tests "specifically designed to prevent" African-Americans from voting. *Id.,* at 310, 86 S.Ct. 803. Case-by-case litigation had proved inadequate to prevent such racial discrimination in voting, in part because States "merely switched to discriminatory devices not covered by the federal decrees," "enacted difficult new tests," or simply "defied and evaded court orders." *Id.,* at 314, 86 S.Ct. 803. Shortly before enactment of the Voting Rights Act, only 19.4 percent of African-Americans of voting age were registered to vote in Alabama, only 31.8 percent in Louisiana, and only 6.4 percent in Mississippi. *Id.,* at 313, 86 S.Ct.
2625 803. Those figures were roughly *2625 50 percentage points or more below the figures for whites. *Ibid.*

In short, we concluded that "[u]nder the compulsion of these unique circumstances, Congress responded in a permissibly decisive manner." *Id.,* at 334, 335, 86 S.Ct. 803. We also noted then and have emphasized since that this extraordinary legislation was intended to be temporary, set to expire after five years. *Id.,* at 333, 86 S.Ct. 803; *Northwest Austin, supra,* at 199, 129 S.Ct. 2504.

At the time, the coverage formula — the means of linking the exercise of the unprecedented authority with the problem that warranted it — made sense. We found that "Congress chose to limit its attention to the geographic areas where immediate action seemed necessary." *Katzenbach,* 383 U.S., at 328, 86 S.Ct. 803. The areas where Congress found "evidence of actual voting discrimination" shared two characteristics: "the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points below the national average." *Id.,* at 330, 86 S.Ct. 803. We explained that "[t]ests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." *Ibid.* We therefore concluded that "the coverage formula [was] rational in both practice and theory." *Ibid.* It accurately reflected those jurisdictions uniquely characterized by voting discrimination "on a pervasive scale," linking coverage to the devices used to effectuate discrimination and to the resulting disenfranchisement. *Id.,* at 308, 86 S.Ct. 803. The formula ensured that the "stringent remedies [were] aimed at areas where voting discrimination ha[d] been most flagrant." *Id.,* at 315, 86 S.Ct. 803.

C

Nearly 50 years later, things have changed dramatically. **Shelby County** contends that the preclearance requirement, even without regard to its disparate coverage, is now unconstitutional. Its arguments have a good deal of force. In the covered jurisdictions, "[v]oter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Northwest Austin*, 557 U.S., at 202, 129 S.Ct. 2504. The tests and devices that blocked access to the ballot have been forbidden nationwide for over 40 years. See § 6, 84 Stat. 315; § 102, 89 Stat. 400.

Those conclusions are not ours alone. Congress said the same when it reauthorized the Act in 2006, writing that "[s]ignificant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices." § 2(b)(1), 120 Stat. 577. The House Report elaborated that "the number of African-Americans who are registered and who turn out to cast ballots has increased significantly over the last 40 years, particularly since 1982," and noted that "[i]n some circumstances, minorities register to vote and cast ballots at levels that surpass those of white voters." H.R.Rep. 109-478, at 12 (2006), 2006 U.S.C.C.A.N. 618, 627. That Report also explained that there have been "significant increases in the number of African-Americans serving in elected offices"; more specifically, there has been approximately a 1,000 percent increase since 1965 in the number of African-American elected officials in the six States originally covered by the Voting Rights Act. *Id.,* at 18.

2626 *2626 The following chart, compiled from the Senate and House Reports, compares voter registration numbers from 1965 to those from 2004 in the six originally covered States. These are the numbers that were before Congress when it reauthorized the Act in 2006:

	1965			2004		
	White	Black	Gap	White	Black	Gap
Alabama	69.2	19.3	49.9	73.8	72.9	0.9
Georgia	62.[6]	27.4	35.2	63.5	64.2	-0.7
Louisiana	80.5	31.6	48.9	75.1	71.1	4.0
Mississippi	69.9	6.7	63.2	72.3	76.1	-3.8
South Carolina	75.7	37.3	38.4	74.4	71.1	3.3
Virginia	61.1	38.3	22.8	68.2	57.4	10.8

See S.Rep. No. 109-295, p. 11 (2006); H.R.Rep. No. 109-478, at 12. The 2004 figures come from the Census Bureau. Census Bureau data from the most recent election indicate that African-American voter turnout exceeded white voter turnout in five of the six States originally covered by § 5, with a gap in the sixth State of less than one half of one percent. See Dept. of Commerce, Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Table 4b). The preclearance statistics are also illuminating. In the first decade after enactment of § 5, the Attorney General objected to 14.2 percent of proposed voting changes. H. R Rep. No. 109-478, at 22. In the last decade before reenactment, the Attorney General objected to a mere 0.16 percent. S.Rep. No. 109-295, at 13.

There is no doubt that these improvements are in large part *because of* the Voting Rights Act. The Act has proved immensely successful at redressing racial discrimination and integrating the voting process. See § 2(b)(1), 120 Stat. 577. During the "Freedom Summer" of 1964, in Philadelphia, Mississippi, three men were murdered while working in the area to register African-American voters. See *United States v. Price*, 383 U.S. 787, 790, 86 S.Ct. 1152, 16 L.Ed.2d 267 (1966). On "Bloody Sunday" in 1965, in Selma, Alabama, police beat and used tear gas against hundreds marching in support of African-American enfranchisement. See *Northwest Austin, supra,* at 220, n. 3, 129 S.Ct. 2504 (THOMAS, J., concurring

in judgment in part and dissenting in part). Today both of those towns are governed by African-American mayors. Problems remain in these States and others, but there is no denying that, due to the Voting Rights Act, our Nation has made great strides.

Yet the Act has not eased the restrictions in § 5 or narrowed the scope of the coverage formula in § 4(b) along the way. Those extraordinary and unprecedented features were reauthorized — as if nothing had changed. In fact, the Act's unusual remedies have grown even stronger. When Congress reauthorized the Act in 2006, it did so for another 25 years on top of the previous 40 — a far cry from the initial five-year period. See 42 U.S.C. § 1973b(a)(8). Congress also expanded the prohibitions in § 5. We had previously interpreted § 5 to prohibit only those redistricting plans that would have the purpose or effect of worsening the position of minority groups. See *Bossier II*, 528 U.S., at 324, 335-336, 120
2627 S.Ct. 866. In 2006, Congress amended § 5 to prohibit laws that could have favored such groups *2627 but did not do so because of a discriminatory purpose, see 42 U.S.C. § 1973c(c), even though we had stated that such broadening of § 5 coverage would "exacerbate the substantial federalism costs that the preclearance procedure already exacts, perhaps to the extent of raising concerns about § 5's constitutionality," *Bossier II, supra*, at 336, 120 S.Ct. 866 (citation and internal quotation marks omitted). In addition, Congress expanded § 5 to prohibit any voting law "that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States," on account of race, color, or language minority status, "to elect their preferred candidates of choice." § 1973c(b). In light of those two amendments, the bar that covered jurisdictions must clear has been raised even as the conditions justifying that requirement have dramatically improved.

We have also previously highlighted the concern that "the preclearance requirements in one State [might] be unconstitutional in another." *Northwest Austin*, 557 U.S., at 203, 129 S.Ct. 2504; see *Georgia v. Ashcroft*, 539 U.S., at 491, 123 S.Ct. 2498 (KENNEDY, J., concurring) ("considerations of race that would doom a redistricting plan under the Fourteenth Amendment or § 2 [of the Voting Rights Act] seem to be what save it under § 5"). Nothing has happened since to alleviate this troubling concern about the current application of § 5.

Respondents do not deny that there have been improvements on the ground, but argue that much of this can be attributed to the deterrent effect of § 5, which dissuades covered jurisdictions from engaging in discrimination that they would resume should § 5 be struck down. Under this theory, however, § 5 would be effectively immune from scrutiny; no matter how "clean" the record of covered jurisdictions, the argument could always be made that it was deterrence that accounted for the good behavior.

The provisions of § 5 apply only to those jurisdictions singled out by § 4. We now consider whether that coverage formula is constitutional in light of current conditions.

III

A

When upholding the constitutionality of the coverage formula in 1966, we concluded that it was "rational in both practice and theory." *Katzenbach*, 383 U.S., at 330, 86 S.Ct. 803. The formula looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both.

By 2009, however, we concluded that the "coverage formula raise[d] serious constitutional questions." *Northwest Austin*, 557 U.S., at 204, 129 S.Ct. 2504. As we explained, a statute's "current burdens" must be justified by "current needs," and any "disparate geographic coverage" must be "sufficiently related to the problem that it targets." *Id.,* at 203, 129 S.Ct. 2504. The coverage formula met that test in 1965, but no longer does so.

Coverage today is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s. But such tests have been banned nationwide for over 40 years. § 6, 84 Stat. 315; § 102, 89 Stat. 400. And voter registration and turnout numbers in the

covered States have risen dramatically in the years since. H.R.Rep. No. 109-478, at 12. Racial disparity in those numbers was compelling evidence justifying the preclearance remedy and the coverage formula. See, *e.g.,* *Katzenbach, supra*, at 313, 329-330, 86 *2628 S.Ct. 803. There is no longer such a disparity.

2628

In 1965, the States could be divided into two groups: those with a recent history of voting tests and low voter registration and turnout, and those without those characteristics. Congress based its coverage formula on that distinction. Today the Nation is no longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were.

B

The Government's defense of the formula is limited. First, the Government contends that the formula is "reverse-engineered": Congress identified the jurisdictions to be covered and *then* came up with criteria to describe them. Brief for Federal Respondent 48-49. Under that reasoning, there need not be any logical relationship between the criteria in the formula and the reason for coverage; all that is necessary is that the formula happen to capture the jurisdictions Congress wanted to single out.

The Government suggests that *Katzenbach* sanctioned such an approach, but the analysis in *Katzenbach* was quite different. *Katzenbach* reasoned that the coverage formula was rational because the "formula... was relevant to the problem": "Tests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." 383 U.S., at 329, 330, 86 S.Ct. 803.

Here, by contrast, the Government's reverse-engineering argument does not even attempt to demonstrate the continued relevance of the formula to the problem it targets. And in the context of a decision as significant as this one — subjecting a disfavored subset of States to "extraordinary legislation otherwise unfamiliar to our federal system," *Northwest Austin, supra*, at 211, 129 S.Ct. 2504 — that failure to establish even relevance is fatal.

The Government falls back to the argument that because the formula was relevant in 1965, its continued use is permissible so long as any discrimination remains in the States Congress identified back then — regardless of how that discrimination compares to discrimination in States unburdened by coverage. Brief for Federal Respondent 49-50. This argument does not look to "current political conditions," *Northwest Austin, supra,* at 203, 129 S.Ct. 2504, but instead relies on a comparison between the States in 1965. That comparison reflected the different histories of the North and South. It was in the South that slavery was upheld by law until uprooted by the Civil War, that the reign of Jim Crow denied African-Americans the most basic freedoms, and that state and local governments worked tirelessly to disenfranchise citizens on the basis of race. The Court invoked that history — rightly so — in sustaining the disparate coverage of the Voting Rights Act in 1966. See *Katzenbach, supra,* at 308, 86 S.Ct. 803 ("The constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects.").

But history did not end in 1965. By the time the Act was reauthorized in 2006, there had been 40 more years of it. In assessing the "current need[]" for a preclearance system that treats States differently from one another today, that history cannot be ignored. During that time, largely because of the Voting Rights Act, voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African-Americans attained political office in record numbers. And yet the coverage formula that Congress *2629 reauthorized in 2006 ignores these developments, keeping the focus on decades-old data relevant to decades-old problems, rather than current data reflecting current needs.

2629

The Fifteenth Amendment commands that the right to vote shall not be denied or abridged on account of race or color, and it gives Congress the power to enforce that command. The Amendment is not designed to punish for the past; its purpose is to ensure a better future. See *Rice v. Cayetano,* 528 U.S. 495, 512, 120 S.Ct. 1044, 145 L.Ed.2d 1007 (2000) ("Consistent with the design of the Constitution, the [Fifteenth] Amendment is cast in fundamental terms, terms transcending the particular controversy which was the immediate impetus for its enactment."). To serve that purpose, Congress — if it is to divide the States — must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. It cannot rely simply on the past. We made that clear in *Northwest Austin,* and we make it

clear again today.

C

In defending the coverage formula, the Government, the intervenors, and the dissent also rely heavily on data from the record that they claim justify disparate coverage. Congress compiled thousands of pages of evidence before reauthorizing the Voting Rights Act. The court below and the parties have debated what that record shows — they have gone back and forth about whether to compare covered to noncovered jurisdictions as blocks, how to disaggregate the data State by State, how to weigh § 2 cases as evidence of ongoing discrimination, and whether to consider evidence not before Congress, among other issues. Compare, *e.g.,* 679 F.3d, at 873-883 (case below), with *id.,* at 889-902 (Williams, J., dissenting). Regardless of how to look at the record, however, no one can fairly say that it shows anything approaching the "pervasive," "flagrant," "widespread," and "rampant" discrimination that faced Congress in 1965, and that clearly distinguished the covered jurisdictions from the rest of the Nation at that time. *Katzenbach, supra,* at 308, 315, 331, 86 S.Ct. 803; *Northwest Austin,* 557 U.S., at 201, 123 S.Ct. 2504.

But a more fundamental problem remains: Congress did not use the record it compiled to shape a coverage formula grounded in current conditions. It instead reenacted a formula based on 40-year-old facts having no logical relation to the present day. The dissent relies on "second-generation barriers," which are not impediments to the casting of ballots, but rather electoral arrangements that affect the weight of minority votes. That does not cure the problem. Viewing the preclearance requirements as targeting such efforts simply highlights the irrationality of continued reliance on the § 4 coverage formula, which is based on voting tests and access to the ballot, not vote dilution. We cannot pretend that we are reviewing an updated statute, or try our hand at updating the statute ourselves, based on the new record compiled by Congress. Contrary to the dissent's contention, see *post,* at 2644, we are not ignoring the record; we are simply recognizing that it played no role in shaping the statutory formula before us today.

The dissent also turns to the record to argue that, in light of voting discrimination in **Shelby County**, the **county** cannot complain about the provisions that subject it to preclearance. *Post,* at 2644-2648. But that is like saying that a driver pulled over pursuant to a policy of stopping all redheads cannot complain about that policy, if it turns out his license has
2630 expired. **Shelby** *2630 **County's** claim is that the coverage formula here is unconstitutional in all its applications, because of how it selects the jurisdictions subjected to preclearance. The **county** was selected based on that formula, and may challenge it in court.

D

The dissent proceeds from a flawed premise. It quotes the famous sentence from *McCulloch v. Maryland,* 4 Wheat. 316, 421, 4 L.Ed. 579 (1819), with the following emphasis: "Let the end be legitimate, let it be within the scope of the constitution, and *all means which are appropriate, which are plainly adapted to that end,* which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *Post,* at 2637 (emphasis in dissent). But this case is about a part of the sentence that the dissent does not emphasize — the part that asks whether a legislative means is "consist[ent] with the letter and spirit of the constitution." The dissent states that "[i]t cannot tenably be maintained" that this is an issue with regard to the Voting Rights Act, *post,* at 2637, but four years ago, in an opinion joined by two of today's dissenters, the Court expressly stated that "[t]he Act's preclearance requirement and its coverage formula raise serious constitutional questions." *Northwest Austin, supra,* at 204, 129 S.Ct. 2504. The dissent does not explain how those "serious constitutional questions" became untenable in four short years.

The dissent treats the Act as if it were just like any other piece of legislation, but this Court has made clear from the beginning that the Voting Rights Act is far from ordinary. At the risk of repetition, *Katzenbach* indicated that the Act was "uncommon" and "not otherwise appropriate," but was justified by "exceptional" and "unique" conditions. 383 U.S., at 334, 335, 86 S.Ct. 803. Multiple decisions since have reaffirmed the Act's "extraordinary" nature. See, *e.g., Northwest Austin, supra,* at 211, 129 S.Ct. 2504. Yet the dissent goes so far as to suggest instead that the preclearance requirement

and disparate treatment of the States should be upheld into the future "unless there [is] no or almost no evidence of unconstitutional action by States." *Post,* at 2650.

In other ways as well, the dissent analyzes the question presented as if our decision in *Northwest Austin* never happened. For example, the dissent refuses to consider the principle of equal sovereignty, despite *Northwest Austin*'s emphasis on its significance. *Northwest Austin* also emphasized the "dramatic" progress since 1965, 557 U.S., at 201, 129 S.Ct. 2504, but the dissent describes current levels of discrimination as "flagrant," "widespread," and "pervasive," *post,* at 2636, 2641 (internal quotation marks omitted). Despite the fact that *Northwest Austin* requires an Act's "disparate geographic coverage" to be "sufficiently related" to its targeted problems, 557 U.S., at 203, 129 S.Ct. 2504, the dissent maintains that an Act's limited coverage actually eases Congress's burdens, and suggests that a fortuitous relationship should suffice. Although *Northwest Austin* stated definitively that "current burdens" must be justified by "current needs," *ibid.,* the dissent argues that the coverage formula can be justified by history, and that the required showing can be weaker on reenactment than when the law was first passed.

There is no valid reason to insulate the coverage formula from review merely because it was previously enacted 40 years ago. If Congress had started from scratch in 2006, it plainly could not have enacted the present coverage formula.
2631 It would have been irrational for Congress to distinguish *2631 between States in such a fundamental way based on 40-year-old data, when today's statistics tell an entirely different story. And it would have been irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time. But that is exactly what Congress has done.

*** * ***

Striking down an Act of Congress "is the gravest and most delicate duty that this Court is called on to perform." *Blodgett v. Holden*, 275 U.S. 142, 148, 48 S.Ct. 105, 72 L.Ed. 206 (1927) (Holmes, J., concurring). We do not do so lightly. That is why, in 2009, we took care to avoid ruling on the constitutionality of the Voting Rights Act when asked to do so, and instead resolved the case then before us on statutory grounds. But in issuing that decision, we expressed our broader concerns about the constitutionality of the Act. Congress could have updated the coverage formula at that time, but did not do so. Its failure to act leaves us today with no choice but to declare § 4(b) unconstitutional. The formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance.

Our decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in § 2. We issue no holding on § 5 itself, only on the coverage formula. Congress may draft another formula based on current conditions. Such a formula is an initial prerequisite to a determination that exceptional conditions still exist justifying such an "extraordinary departure from the traditional course of relations between the States and the Federal Government." *Presley*, 502 U.S., at 500-501, 112 S.Ct. 820. Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.

The judgment of the Court of Appeals is reversed.

It is so ordered.

Justice THOMAS, concurring.

I join the Court's opinion in full but write separately to explain that I would find § 5 of the Voting Rights Act unconstitutional as well. The Court's opinion sets forth the reasons.

"The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem." *Ante,* at 2618. In the face of "unremitting and ingenious defiance" of citizens' constitutionally protected right to vote, § 5 was necessary to give effect to the Fifteenth Amendment in particular regions of the country. *South Carolina v. Katzenbach*, 383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). Though § 5's preclearance requirement represented a "shar[p] depart[ure]" from "basic principles" of federalism and the equal sovereignty of the States, *ante,* at 2622, 2623, the Court upheld the measure against early constitutional challenges because it was necessary at the time to address "voting

discrimination where it persist[ed] on a pervasive scale." *Katzenbach, supra,* at 308, 86 S.Ct. 803.

Today, our Nation has changed. "[T]he conditions that originally justified [§ 5] no longer characterize voting in the covered jurisdictions." *Ante,* at 2618. As the Court explains: "`[V]oter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented
2632 levels.'" *Ante,* at 2625 (quoting *Northwest Austin Municipal Util. Dist. No. One v. Holder,* *2632 557 U.S. 193, 202, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009)).

In spite of these improvements, however, Congress *increased* the already significant burdens of § 5. Following its reenactment in 2006, the Voting Rights Act was amended to "prohibit more conduct than before." *Ante,* at 2621. "Section 5 now forbids voting changes with `any discriminatory purpose' as well as voting changes that diminish the ability of citizens, on account of race, color, or language minority status, `to elect their preferred candidates of choice.'" *Ante,* at 2621. While the pre-2006 version of the Act went well beyond protection guaranteed under the Constitution, see *Reno v. Bossier Parish School Bd.*, 520 U.S. 471, 480-482, 117 S.Ct. 1491, 137 L.Ed.2d 730 (1997), it now goes even further.

It is, thus, quite fitting that the Court repeatedly points out that this legislation is "extraordinary" and "unprecedented" and recognizes the significant constitutional problems created by Congress' decision to raise "the bar that covered jurisdictions must clear," even as "the conditions justifying that requirement have dramatically improved." *Ante,* at 2627. However one aggregates the data compiled by Congress, it cannot justify the considerable burdens created by § 5. As the Court aptly notes: "[N]o one can fairly say that [the record] shows anything approaching the `pervasive,' `flagrant,' `widespread,' and `rampant' discrimination that faced Congress in 1965, and that clearly distinguished the covered jurisdictions from the rest of the Nation at that time." *Ante,* at 2629. Indeed, circumstances in the covered jurisdictions can no longer be characterized as "exceptional" or "unique." "The extensive pattern of discrimination that led the Court to previously uphold § 5 as enforcing the Fifteenth Amendment no longer exists." *Northwest Austin, supra,* at 226, 129 S.Ct. 2504 (THOMAS, J., concurring in judgment in part and dissenting in part). Section 5 is, thus, unconstitutional.

While the Court claims to "issue no holding on § 5 itself," *ante,* at 2631, its own opinion compellingly demonstrates that Congress has failed to justify "`current burdens'" with a record demonstrating "`current needs.'" See *ante,* at 2622 (quoting *Northwest Austin, supra,* at 203, 129 S.Ct. 2504). By leaving the inevitable conclusion unstated, the Court needlessly prolongs the demise of that provision. For the reasons stated in the Court's opinion, I would find § 5 unconstitutional.

Justice GINSBURG, with whom Justice BREYER, Justice SOTOMAYOR, and Justice KAGAN join, dissenting.

In the Court's view, the very success of § 5 of the Voting Rights Act demands its dormancy. Congress was of another mind. Recognizing that large progress has been made, Congress determined, based on a voluminous record, that the scourge of discrimination was not yet extirpated. The question this case presents is who decides whether, as currently operative, § 5 remains justifiable,[1] this Court, or a Congress charged with the obligation to enforce the post-Civil War Amendments "by appropriate legislation." With overwhelming support in both Houses, Congress concluded that, for two prime reasons, § 5 should continue in force, unabated. First, continuance would facilitate completion of the impressive gains thus far made; and second, continuance would guard against backsliding. Those assessments were well within
2633 Congress' province to make and *2633 should elicit this Court's unstinting approbation.

I

"[V]oting discrimination still exists; no one doubts that." *Ante,* at 2619. But the Court today terminates the remedy that proved to be best suited to block that discrimination. The Voting Rights Act of 1965 (VRA) has worked to combat voting discrimination where other remedies had been tried and failed. Particularly effective is the VRA's requirement of federal preclearance for all changes to voting laws in the regions of the country with the most aggravated records of rank discrimination against minority voting rights.

A century after the Fourteenth and Fifteenth Amendments guaranteed citizens the right to vote free of discrimination on

the basis of race, the "blight of racial discrimination in voting" continued to "infec[t] the electoral process in parts of our country." *South Carolina v. Katzenbach*, 383 U.S. 301, 308, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). Early attempts to cope with this vile infection resembled battling the Hydra. Whenever one form of voting discrimination was identified and prohibited, others sprang up in its place. This Court repeatedly encountered the remarkable "variety and persistence" of laws disenfranchising minority citizens. *Id.,* at 311, 86 S.Ct. 803. To take just one example, the Court, in 1927, held unconstitutional a Texas law barring black voters from participating in primary elections, *Nixon v. Herndon*, 273 U.S. 536, 541, 47 S.Ct. 446, 71 L.Ed. 759; in 1944, the Court struck down a "reenacted" and slightly altered version of the same law, *Smith v. Allwright*, 321 U.S. 649, 658, 64 S.Ct. 757, 88 L.Ed. 987; and in 1953, the Court once again confronted an attempt by Texas to "circumven[t]" the Fifteenth Amendment by adopting yet another variant of the all-white primary, *Terry v. Adams*, 345 U.S. 461, 469, 73 S.Ct. 809, 97 L.Ed. 1152.

During this era, the Court recognized that discrimination against minority voters was a quintessentially political problem requiring a political solution. As Justice Holmes explained: If "the great mass of the white population intends to keep the blacks from voting," "relief from [that] great political wrong, if done, as alleged, by the people of a State and the State itself, must be given by them or by the legislative and political department of the government of the United States." *Giles v. Harris*, 189 U.S. 475, 488, 23 S.Ct. 639, 47 L.Ed. 909 (1903).

Congress learned from experience that laws targeting particular electoral practices or enabling case-by-case litigation were inadequate to the task. In the Civil Rights Acts of 1957, 1960, and 1964, Congress authorized and then expanded the power of "the Attorney General to seek injunctions against public and private interference with the right to vote on racial grounds." *Katzenbach*, 383 U.S., at 313, 86 S.Ct. 803. But circumstances reduced the ameliorative potential of these legislative Acts:

> "Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration.
> 2634 Alternatively, certain local officials have defied *2634 and evaded court orders or have simply closed their registration offices to freeze the voting rolls." *Id.,* at 314, 86 S.Ct. 803 (footnote omitted).

Patently, a new approach was needed.

Answering that need, the Voting Rights Act became one of the most consequential, efficacious, and amply justified exercises of federal legislative power in our Nation's history. Requiring federal preclearance of changes in voting laws in the covered jurisdictions — those States and localities where opposition to the Constitution's commands were most virulent — the VRA provided a fit solution for minority voters as well as for States. Under the preclearance regime established by § 5 of the VRA, covered jurisdictions must submit proposed changes in voting laws or procedures to the Department of Justice (DOJ), which has 60 days to respond to the changes. 79 Stat. 439, codified at 42 U.S.C. § 1973c(a). A change will be approved unless DOJ finds it has "the purpose [or] ... the effect of denying or abridging the right to vote on account of race or color." *Ibid.* In the alternative, the covered jurisdiction may seek approval by a three-judge District Court in the District of Columbia.

After a century's failure to fulfill the promise of the Fourteenth and Fifteenth Amendments, passage of the VRA finally led to signal improvement on this front. "The Justice Department estimated that in the five years after [the VRA's] passage, almost as many blacks registered [to vote] in Alabama, Mississippi, Georgia, Louisiana, North Carolina, and South Carolina as in the entire century before 1965." Davidson, The Voting Rights Act: A Brief History, in Controversies in Minority Voting 7, 21 (B. Grofman & C. Davidson eds. 1992). And in assessing the overall effects of the VRA in 2006, Congress found that "[s]ignificant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices. This progress is the direct result of the Voting

Rights Act of 1965." Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (hereinafter 2006 Reauthorization), § 2(b)(1), 120 Stat. 577. On that matter of cause and effects there can be no genuine doubt.

Although the VRA wrought dramatic changes in the realization of minority voting rights, the Act, to date, surely has not eliminated all vestiges of discrimination against the exercise of the franchise by minority citizens. Jurisdictions covered by the preclearance requirement continued to submit, in large numbers, proposed changes to voting laws that the Attorney General declined to approve, auguring that barriers to minority voting would quickly resurface were the preclearance remedy eliminated. *City of Rome v. United States,* 446 U.S. 156, 181, 100 S.Ct. 1548, 64 L.Ed.2d 119 (1980). Congress also found that as "registration and voting of minority citizens increas[ed], other measures may be resorted to which would dilute increasing minority voting strength." *Ibid.* (quoting H.R.Rep. No. 94-196, p. 10 (1975)). See also *Shaw v. Reno,* 509 U.S. 630, 640, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993) ("[I]t soon became apparent that guaranteeing equal access to the polls would not suffice to root out other racially discriminatory voting practices" such as voting dilution). Efforts to reduce the impact of minority votes, in contrast to direct attempts to block access to the ballot, are aptly described as "second-generation barriers" to minority voting.

2635 *2635 Second-generation barriers come in various forms. One of the blockages is racial gerrymandering, the redrawing of legislative districts in an "effort to segregate the races for purposes of voting." *Id.,* at 642, 113 S.Ct. 2816. Another is adoption of a system of at-large voting in lieu of district-by-district voting in a city with a sizable black minority. By switching to at-large voting, the overall majority could control the election of each city council member, effectively eliminating the potency of the minority's votes. Grofman & Davidson, The Effect of Municipal Election Structure on Black Representation in Eight Southern States, in Quiet Revolution in the South 301, 319 (C. Davidson & B. Grofman eds. 1994) (hereinafter Quiet Revolution). A similar effect could be achieved if the city engaged in discriminatory annexation by incorporating majority-white areas into city limits, thereby decreasing the effect of VRA-occasioned increases in black voting. Whatever the device employed, this Court has long recognized that vote dilution, when adopted with a discriminatory purpose, cuts down the right to vote as certainly as denial of access to the ballot. *Shaw,* 509 U.S., at 640-641, 113 S.Ct. 2816; *Allen v. State Bd. of Elections,* 393 U.S. 544, 569, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969); *Reynolds v. Sims,* 377 U.S. 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). See also H.R.Rep. No. 109-478, p. 6 (2006) (although "[d]iscrimination today is more subtle than the visible methods used in 1965," "the effect and results are the same, namely a diminishing of the minority community's ability to fully participate in the electoral process and to elect their preferred candidates").

In response to evidence of these substituted barriers, Congress reauthorized the VRA for five years in 1970, for seven years in 1975, and for 25 years in 1982. *Ante,* at 2620-2621. Each time, this Court upheld the reauthorization as a valid exercise of congressional power. *Ante,* at 2620. As the 1982 reauthorization approached its 2007 expiration date, Congress again considered whether the VRA's preclearance mechanism remained an appropriate response to the problem of voting discrimination in covered jurisdictions.

Congress did not take this task lightly. Quite the opposite. The 109th Congress that took responsibility for the renewal started early and conscientiously. In October 2005, the House began extensive hearings, which continued into November and resumed in March 2006. S.Rep. No. 109-295, p. 2 (2006). In April 2006, the Senate followed suit, with hearings of its own. *Ibid.* In May 2006, the bills that became the VRA's reauthorization were introduced in both Houses. *Ibid.* The House held further hearings of considerable length, as did the Senate, which continued to hold hearings into June and July. H.R. Rep. 109-478, at 5; S. Rep. 109-295, at 3-4. In mid-July, the House considered and rejected four amendments, then passed the reauthorization by a vote of 390 yeas to 33 nays. 152 Cong. Rec. H5207 (July 13, 2006); Persily, The Promise and Pitfalls of the New Voting Rights Act, 117 Yale L.J. 174, 182-183 (2007) (hereinafter Persily). The bill was read and debated in the Senate, where it passed by a vote of 98 to 0. 152 Cong. Rec. S8012 (July 20, 2006). President Bush signed it a week later, on July 27, 2006, recognizing the need for "further work ... in the fight against injustice," and calling the reauthorization "an example of our continued commitment to a united America where every person is valued and treated with dignity and respect." 152 Cong. Rec. S8781 (Aug. 3, 2006).

In the long course of the legislative process, Congress "amassed a sizable record." *Northwest Austin Municipal Util. Dist.*

2636 *No. One v. Holder,* 557 U.S. 193, 205, 129 *2636 S.Ct. 2504, 174 L.Ed.2d 140 (2009). See also 679 F.3d 848, 865-873 (C.A.D.C.2012) (describing the "extensive record" supporting Congress' determination that "serious and widespread intentional discrimination persisted in covered jurisdictions"). The House and Senate Judiciary Committees held 21 hearings, heard from scores of witnesses, received a number of investigative reports and other written documentation of continuing discrimination in covered jurisdictions. In all, the legislative record Congress compiled filled more than 15,000 pages. H.R. Rep. 109-478, at 5, 11-12; S. Rep. 109-295, at 2-4, 15. The compilation presents countless "examples of flagrant racial discrimination" since the last reauthorization; Congress also brought to light systematic evidence that "intentional racial discrimination in voting remains so serious and widespread in covered jurisdictions that section 5 preclearance is still needed." 679 F.3d, at 866.

After considering the full legislative record, Congress made the following findings: The VRA has directly caused significant progress in eliminating first-generation barriers to ballot access, leading to a marked increase in minority voter registration and turnout and the number of minority elected officials. 2006 Reauthorization § 2(b)(1). But despite this progress, "second generation barriers constructed to prevent minority voters from fully participating in the electoral process" continued to exist, as well as racially polarized voting in the covered jurisdictions, which increased the political vulnerability of racial and language minorities in those jurisdictions. §§ 2(b)(2)-(3), 120 Stat. 577. Extensive "[e]vidence of continued discrimination," Congress concluded, "clearly show[ed] the continued need for Federal oversight" in covered jurisdictions. §§ 2(b)(4)-(5), *id.,* at 577-578. The overall record demonstrated to the federal lawmakers that, "without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years." § 2(b)(9), *id.,* at 578.

Based on these findings, Congress reauthorized preclearance for another 25 years, while also undertaking to reconsider the extension after 15 years to ensure that the provision was still necessary and effective. 42 U.S.C. § 1973b(a)(7), (8) (2006 ed., Supp. V). The question before the Court is whether Congress had the authority under the Constitution to act as it did.

II

In answering this question, the Court does not write on a clean slate. It is well established that Congress' judgment regarding exercise of its power to enforce the Fourteenth and Fifteenth Amendments warrants substantial deference. The VRA addresses the combination of race discrimination and the right to vote, which is "preservative of all rights." *Yick Wo v. Hopkins,* 118 U.S. 356, 370, 6 S.Ct. 1064, 30 L.Ed. 220 (1886). When confronting the most constitutionally invidious form of discrimination, and the most fundamental right in our democratic system, Congress' power to act is at its height.

The basis for this deference is firmly rooted in both constitutional text and precedent. The Fifteenth Amendment, which targets precisely and only racial discrimination in voting rights, states that, in this domain, "Congress shall have power to
2637 enforce this article by appropriate legislation."[2] In choosing this language, the *2637 Amendment's framers invoked Chief Justice Marshall's formulation of the scope of Congress' powers under the Necessary and Proper Clause:

> "Let the end be legitimate, let it be within the scope of the constitution, and *all means which are appropriate, which are plainly adapted to that end,* which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *McCulloch v. Maryland,* 4 Wheat. 316, 421, 4 L.Ed. 579 (1819) (emphasis added).

It cannot tenably be maintained that the VRA, an Act of Congress adopted to shield the right to vote from racial discrimination, is inconsistent with the letter or spirit of the Fifteenth Amendment, or any provision of the Constitution read in light of the Civil War Amendments. Nowhere in today's opinion, or in *Northwest Austin,*[3] is there clear recognition of the transformative effect the Fifteenth Amendment aimed to achieve. Notably, "the Founders' first successful amendment told Congress that it could `make no law' over a certain domain"; in contrast, the Civil War Amendments used "language

[that] authorized transformative new federal statutes to uproot all vestiges of unfreedom and inequality" and provided "sweeping enforcement powers ... to enact `appropriate' legislation targeting state abuses." A. Amar, America's Constitution: A Biography 361, 363, 399 (2005). See also McConnell, Institutions and Interpretation: A Critique of *City of Boerne v. Flores,* 111 Harv. L.Rev. 153, 182 (1997) (quoting Civil War-era framer that "the remedy for the violation of the fourteenth and fifteenth amendments was expressly not left to the courts. The remedy was legislative.").

The stated purpose of the Civil War Amendments was to arm Congress with the power and authority to protect all persons within the Nation from violations of their rights by the States. In exercising that power, then, Congress may use "all means which are appropriate, which are plainly adapted" to the constitutional ends declared by these Amendments. *McCulloch,* 4 Wheat., at 421. So when Congress acts to enforce the right to vote free from racial discrimination, we ask not whether Congress has chosen the means most wise, but whether Congress has rationally selected means appropriate to a legitimate end. "It is not for us to review the congressional resolution of [the need for its chosen remedy]. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did." *Katzenbach v. Morgan,* 384 U.S. 641, 653, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966).

Until today, in considering the constitutionality of the VRA, the Court has accorded Congress the full measure of respect
2638 its *2638 judgments in this domain should garner. *South Carolina v. Katzenbach* supplies the standard of review: "As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting." 383 U.S., at 324, 86 S.Ct. 803. Faced with subsequent reauthorizations of the VRA, the Court has reaffirmed this standard. *E.g., City of Rome,* 446 U.S., at 178, 100 S.Ct. 1548. Today's Court does not purport to alter settled precedent establishing that the dispositive question is whether Congress has employed "rational means."

For three reasons, legislation *re*authorizing an existing statute is especially likely to satisfy the minimal requirements of the rational-basis test. First, when reauthorization is at issue, Congress has already assembled a legislative record justifying the initial legislation. Congress is entitled to consider that preexisting record as well as the record before it at the time of the vote on reauthorization. This is especially true where, as here, the Court has repeatedly affirmed the statute's constitutionality and Congress has adhered to the very model the Court has upheld. See *id.,* at 174, 100 S.Ct. 1548 ("The appellants are asking us to do nothing less than overrule our decision in *South Carolina v. Katzenbach*..., in which we upheld the constitutionality of the Act."); *Lopez v. Monterey **County**,* 525 U.S. 266, 283, 119 S.Ct. 693, 142 L.Ed.2d 728 (1999) (similar).

Second, the very fact that reauthorization is necessary arises because Congress has built a temporal limitation into the Act. It has pledged to review, after a span of years (first 15, then 25) and in light of contemporary evidence, the continued need for the VRA. Cf. *Grutter v. Bollinger,* 539 U.S. 306, 343, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003) (anticipating, but not guaranteeing, that, in 25 years, "the use of racial preferences [in higher education] will no longer be necessary").

Third, a reviewing court should expect the record supporting reauthorization to be less stark than the record originally made. Demand for a record of violations equivalent to the one earlier made would expose Congress to a catch-22. If the statute was working, there would be less evidence of discrimination, so opponents might argue that Congress should not be allowed to renew the statute. In contrast, if the statute was not working, there would be plenty of evidence of discrimination, but scant reason to renew a failed regulatory regime. See Persily 193-194.

This is not to suggest that congressional power in this area is limitless. It is this Court's responsibility to ensure that Congress has used appropriate means. The question meet for judicial review is whether the chosen means are "adapted to carry out the objects the amendments have in view." *Ex parte Virginia,* 100 U.S. 339, 346, 25 L.Ed. 676 (1880). The Court's role, then, is not to substitute its judgment for that of Congress, but to determine whether the legislative record sufficed to show that "Congress could rationally have determined that [its chosen] provisions were appropriate methods." *City of Rome,* 446 U.S., at 176-177, 100 S.Ct. 1548.

In summary, the Constitution vests broad power in Congress to protect the right to vote, and in particular to combat racial discrimination in voting. This Court has repeatedly reaffirmed Congress' prerogative to use any rational means in exercise of its power in this area. And both precedent and logic dictate that the rational-means test should be easier to

satisfy, and the burden on the statute's challenger should be higher, when what is at issue is the reauthorization of a
2639 remedy that the Court has previously affirmed, and that Congress found, from contemporary evidence, *2639 to be working to advance the legislature's legitimate objective.

III

The 2006 reauthorization of the Voting Rights Act fully satisfies the standard stated in *McCulloch,* 4 Wheat., at 421: Congress may choose any means "appropriate" and "plainly adapted to" a legitimate constitutional end. As we shall see, it is implausible to suggest otherwise.

A

I begin with the evidence on which Congress based its decision to continue the preclearance remedy. The surest way to evaluate whether that remedy remains in order is to see if preclearance is still effectively preventing discriminatory changes to voting laws. See *City of Rome,* 446 U.S., at 181, 100 S.Ct. 1548 (identifying "information on the number and types of submissions made by covered jurisdictions and the number and nature of objections interposed by the Attorney General" as a primary basis for upholding the 1975 reauthorization). On that score, the record before Congress was huge. In fact, Congress found there were *more* DOJ objections between 1982 and 2004 (626) than there were between 1965 and the 1982 reauthorization (490). 1 Voting Rights Act: Evidence of Continued Need, Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 2d Sess., p. 172 (2006) (hereinafter Evidence of Continued Need).

All told, between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory. H.R.Rep. No. 109-478, at 21. Congress found that the majority of DOJ objections included findings of discriminatory intent, see 679 F.3d, at 867, and that the changes blocked by preclearance were "calculated decisions to keep minority voters from fully participating in the political process." H.R. Rep. 109-478, at 21 (2006), 2006 U.S.C.C.A.N. 618, 631. On top of that, over the same time period the DOJ and private plaintiffs succeeded in more than 100 actions to enforce the § 5 preclearance requirements. 1 Evidence of Continued Need 186, 250.

In addition to blocking proposed voting changes through preclearance, DOJ may request more information from a jurisdiction proposing a change. In turn, the jurisdiction may modify or withdraw the proposed change. The number of such modifications or withdrawals provides an indication of how many discriminatory proposals are deterred without need for formal objection. Congress received evidence that more than 800 proposed changes were altered or withdrawn since the last reauthorization in 1982. H.R.Rep. No. 109-478, at 40-41.[4] Congress also received empirical studies
2640 finding that DOJ's requests for more information had a significant effect on the degree to which covered *2640 jurisdictions "compl[ied] with their obligatio[n]" to protect minority voting rights. 2 Evidence of Continued Need 2555.

Congress also received evidence that litigation under § 2 of the VRA was an inadequate substitute for preclearance in the covered jurisdictions. Litigation occurs only after the fact, when the illegal voting scheme has already been put in place and individuals have been elected pursuant to it, thereby gaining the advantages of incumbency. 1 Evidence of Continued Need 97. An illegal scheme might be in place for several election cycles before a § 2 plaintiff can gather sufficient evidence to challenge it. 1 Voting Rights Act: Section 5 of the Act — History, Scope, and Purpose: Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 1st Sess., p. 92 (2005) (hereinafter Section 5 Hearing). And litigation places a heavy financial burden on minority voters. See *id.,* at 84. Congress also received evidence that preclearance lessened the litigation burden on covered jurisdictions themselves, because the preclearance process is far less costly than defending against a § 2 claim, and clearance by DOJ substantially reduces the likelihood that a § 2 claim will be mounted. Reauthorizing the Voting Rights Act's Temporary Provisions: Policy Perspectives and Views From the Field: Hearing before the Subcommittee on the Constitution, Civil Rights and Property Rights of the Senate Committee on the Judiciary, 109th Cong., 2d Sess., pp. 13, 120-121 (2006). See also Brief for States of New York, California, Mississippi, and North Carolina as *Amici Curiae* 8-9 (Section 5

"reduc[es] the likelihood that a jurisdiction will face costly and protracted Section 2 litigation").

The number of discriminatory changes blocked or deterred by the preclearance requirement suggests that the state of voting rights in the covered jurisdictions would have been significantly different absent this remedy. Surveying the type of changes stopped by the preclearance procedure conveys a sense of the extent to which § 5 continues to protect minority voting rights. Set out below are characteristic examples of changes blocked in the years leading up to the 2006 reauthorization:

> • In 1995, Mississippi sought to reenact a dual voter registration system, "which was initially enacted in 1892 to disenfranchise Black voters," and for that reason, was struck down by a federal court in 1987. H.R.Rep. No. 109-478, at 39.
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> • Following the 2000 census, the City of Albany, Georgia, proposed a redistricting plan that DOJ found to be "designed with the purpose to limit and retrogress the increased black voting strength ... in the city as a whole." *Id.,* at 37 (internal quotation marks omitted).
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> • In 2001, the mayor and all-white five-member Board of Aldermen of Kilmichael, Mississippi, abruptly canceled the town's election after "an unprecedented number" of African-American candidates announced they were running for office. DOJ required an election, and the town elected its first black mayor and three black aldermen. *Id.,* at 36-37.
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> • In 2006, this Court found that Texas' attempt to redraw a congressional district to reduce the strength of Latino voters bore "the mark of intentional discrimination that could give rise to an equal protection violation," and ordered the district redrawn in compliance with the VRA. *League of United Latin American Citizens v. Perry,* 548 U.S. 399, 440 [126 S.Ct. 2594, 165 L.Ed.2d 609] (2006). In response, 2641 *2641 Texas sought to undermine this Court's order by curtailing early voting in the district, but was blocked by an action to enforce the § 5 preclearance requirement. See Order in *League of United Latin American Citizens v. Texas,* No. 06-cv-1046 (WD Tex.), Doc. 8.
>
> • In 2003, after African-Americans won a majority of the seats on the school board for the first time in history, Charleston **County**, South Carolina, proposed an at-large voting mechanism for the board. The proposal, made without consulting any of the African-American members of the school board, was found to be an "`exact replica'" of an earlier voting scheme that, a federal court had determined, violated the VRA. 811 F.Supp.2d 424, 483 (D.D.C.2011). See also S.Rep. No. 109-295, at 309. DOJ invoked § 5 to block the proposal.
>
> • In 1993, the City of Millen, Georgia, proposed to delay the election in a majority-black district by two years, leaving that district without representation on the city council while the neighboring majority-white district would have three representatives. 1 Section 5 Hearing 744. DOJ blocked the proposal. The **county** then sought to move a polling place from a predominantly black neighborhood in the city to an inaccessible location in a predominantly white neighborhood outside city limits. *Id.,* at 816.
>
> • In 2004, Waller **County**, Texas, threatened to prosecute two black students after they announced their intention to run for office. The **county** then attempted to reduce the availability of early voting in that election at polling places near a historically black university. 679 F.3d, at 865-866.
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> • In 1990, Dallas **County**, Alabama, whose **county** seat is the City of Selma, sought to purge its voter rolls of many black voters. DOJ rejected the purge as discriminatory, noting that it would have disqualified many citizens from voting "simply because they failed to pick up or return a voter update form, when there was no valid requirement that they do so." 1 Section 5 Hearing 356.

These examples, and scores more like them, fill the pages of the legislative record. The evidence was indeed sufficient to support Congress' conclusion that "racial discrimination in voting in covered jurisdictions [remained] serious and pervasive." 679 F.3d, at 865.[5]

Congress further received evidence indicating that formal requests of the kind set out above represented only the tip of the iceberg. There was what one commentator described as an "avalanche of case studies of voting rights violations in the covered jurisdictions," ranging from "outright intimidation and violence against minority voters" to "more subtle forms
2642 of voting rights deprivations." Persily 202 *2642 (footnote omitted). This evidence gave Congress ever more reason to conclude that the time had not yet come for relaxed vigilance against the scourge of race discrimination in voting.

True, conditions in the South have impressively improved since passage of the Voting Rights Act. Congress noted this improvement and found that the VRA was the driving force behind it. 2006 Reauthorization § 2(b)(1). But Congress also found that voting discrimination had evolved into subtler second-generation barriers, and that eliminating preclearance would risk loss of the gains that had been made. §§ 2(b)(2), (9). Concerns of this order, the Court previously found, gave Congress adequate cause to reauthorize the VRA. *City of Rome*, 446 U.S., at 180-182, 100 S.Ct. 1548 (congressional reauthorization of the preclearance requirement was justified based on "the number and nature of objections interposed by the Attorney General" since the prior reauthorization; extension was "necessary to preserve the limited and fragile achievements of the Act and to promote further amelioration of voting discrimination") (internal quotation marks omitted). Facing such evidence then, the Court expressly rejected the argument that disparities in voter turnout and number of elected officials were the only metrics capable of justifying reauthorization of the VRA. *Ibid.*

B

I turn next to the evidence on which Congress based its decision to reauthorize the coverage formula in § 4(b). Because Congress did not alter the coverage formula, the same jurisdictions previously subject to preclearance continue to be covered by this remedy. The evidence just described, of preclearance's continuing efficacy in blocking constitutional violations in the covered jurisdictions, itself grounded Congress' conclusion that the remedy should be retained for those jurisdictions.

There is no question, moreover, that the covered jurisdictions have a unique history of problems with racial discrimination in voting. *Ante,* at 2624-2625. Consideration of this long history, still in living memory, was altogether appropriate. The Court criticizes Congress for failing to recognize that "history did not end in 1965." *Ante,* at 2628. But the Court ignores that "what's past is prologue." W. Shakespeare, The Tempest, act 2, sc. 1. And "[t]hose who cannot remember the past are condemned to repeat it." 1 G. Santayana, The Life of Reason 284 (1905). Congress was especially mindful of the need to reinforce the gains already made and to prevent backsliding. 2006 Reauthorization § 2(b)(9).

Of particular importance, even after 40 years and thousands of discriminatory changes blocked by preclearance, conditions in the covered jurisdictions demonstrated that the formula was still justified by "current needs." *Northwest Austin*, 557 U.S., at 203, 129 S.Ct. 2504.

Congress learned of these conditions through a report, known as the Katz study, that looked at § 2 suits between 1982 and 2004. To Examine the Impact and Effectiveness of the Voting Rights Act: Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 1st Sess., pp. 964-1124 (2005) (hereinafter Impact and Effectiveness). Because the private right of action authorized by § 2 of the VRA applies nationwide, a comparison of § 2 lawsuits in covered and noncovered jurisdictions provides an appropriate yardstick for measuring differences between covered and noncovered jurisdictions. If differences in the risk of voting discrimination between covered and
2643 noncovered jurisdictions had disappeared, one would *2643 expect that the rate of successful § 2 lawsuits would be roughly the same in both areas.[6] The study's findings, however, indicated that racial discrimination in voting remains "concentrated in the jurisdictions singled out for preclearance." *Northwest Austin*, 557 U.S., at 203, 129 S.Ct. 2504.

Although covered jurisdictions account for less than 25 percent of the country's population, the Katz study revealed that they accounted for 56 percent of successful § 2 litigation since 1982. Impact and Effectiveness 974. Controlling for population, there were nearly *four* times as many successful § 2 cases in covered jurisdictions as there were in noncovered jurisdictions. 679 F.3d, at 874. The Katz study further found that § 2 lawsuits are more likely to succeed

when they are filed in covered jurisdictions than in noncovered jurisdictions. Impact and Effectiveness 974. From these findings — ignored by the Court — Congress reasonably concluded that the coverage formula continues to identify the jurisdictions of greatest concern.

The evidence before Congress, furthermore, indicated that voting in the covered jurisdictions was more racially polarized than elsewhere in the country. H.R.Rep. No. 109-478, at 34-35. While racially polarized voting alone does not signal a constitutional violation, it is a factor that increases the vulnerability of racial minorities to discriminatory changes in voting law. The reason is twofold. First, racial polarization means that racial minorities are at risk of being systematically outvoted and having their interests underrepresented in legislatures. Second, "when political preferences fall along racial lines, the natural inclinations of incumbents and ruling parties to entrench themselves have predictable racial effects. Under circumstances of severe racial polarization, efforts to gain political advantage translate into race-specific disadvantages." Ansolabehere, Persily, & Stewart, Regional Differences in Racial Polarization in the 2012 Presidential Election: Implications for the Constitutionality of Section 5 of the Voting Rights Act, 126 Harv. L.Rev. Forum 205, 209 (2013).

In other words, a governing political coalition has an incentive to prevent changes in the existing balance of voting power. When voting is racially polarized, efforts by the ruling party to pursue that incentive "will inevitably discriminate against a racial group." *Ibid.* Just as buildings in California have a greater need to be earthquake-proofed, places where there is greater racial polarization in voting have a greater need for prophylactic measures to prevent purposeful race discrimination. This point was understood by Congress and is well recognized in the academic literature. See 2006 Reauthorization § 2(b)(3), 120 Stat. 577 ("The continued evidence of racially polarized voting in each of the jurisdictions covered by the [preclearance requirement] demonstrates that racial and language minorities remain politically vulnerable"); H.R.Rep. No. 109-478, at 35 (2006), 2006 U.S.C.C.A.N. 618; Davidson, The Recent Evolution of Voting Rights Law Affecting Racial and Language Minorities, in Quiet Revolution 21, 22.

The case for retaining a coverage formula that met needs on the ground was therefore solid. Congress might have been
2644 charged with rigidity had it afforded covered *2644 jurisdictions no way out or ignored jurisdictions that needed superintendence. Congress, however, responded to this concern. Critical components of the congressional design are the statutory provisions allowing jurisdictions to "bail out" of preclearance, and for court-ordered "bail ins." See *Northwest Austin*, 557 U.S., at 199, 129 S.Ct. 2504. The VRA permits a jurisdiction to bail out by showing that it has complied with the Act for ten years, and has engaged in efforts to eliminate intimidation and harassment of voters. 42 U.S.C. § 1973b(a) (2006 ed. and Supp. V). It also authorizes a court to subject a noncovered jurisdiction to federal preclearance upon finding that violations of the Fourteenth and Fifteenth Amendments have occurred there. § 1973a(c) (2006 ed.).

Congress was satisfied that the VRA's bailout mechanism provided an effective means of adjusting the VRA's coverage over time. H.R.Rep. No. 109-478, at 25 (the success of bailout "illustrates that: (1) covered status is neither permanent nor over-broad; and (2) covered status has been and continues to be within the control of the jurisdiction such that those jurisdictions that have a genuinely clean record and want to terminate coverage have the ability to do so"). Nearly 200 jurisdictions have successfully bailed out of the preclearance requirement, and DOJ has consented to every bailout application filed by an eligible jurisdiction since the current bailout procedure became effective in 1984. Brief for Federal Respondent 54. The bail-in mechanism has also worked. Several jurisdictions have been subject to federal preclearance by court orders, including the States of New Mexico and Arkansas. App. to Brief for Federal Respondent 1a-3a.

This experience exposes the inaccuracy of the Court's portrayal of the Act as static, unchanged since 1965. Congress designed the VRA to be a dynamic statute, capable of adjusting to changing conditions. True, many covered jurisdictions have not been able to bail out due to recent acts of noncompliance with the VRA, but that truth reinforces the congressional judgment that these jurisdictions were rightfully subject to preclearance, and ought to remain under that regime.

IV

Congress approached the 2006 reauthorization of the VRA with great care and seriousness. The same cannot be said of the Court's opinion today. The Court makes no genuine attempt to engage with the massive legislative record that Congress assembled. Instead, it relies on increases in voter registration and turnout as if that were the whole story. See *supra,* at 2641-2642. Without even identifying a standard of review, the Court dismissively brushes off arguments based on "data from the record," and declines to enter the "debat[e about] what [the] record shows." *Ante,* at 2629. One would expect more from an opinion striking at the heart of the Nation's signal piece of civil-rights legislation.

I note the most disturbing lapses. First, by what right, given its usual restraint, does the Court even address **Shelby County's** facial challenge to the VRA? Second, the Court veers away from controlling precedent regarding the "equal sovereignty" doctrine without even acknowledging that it is doing so. Third, hardly showing the respect ordinarily paid when Congress acts to implement the Civil War Amendments, and as just stressed, the Court does not even deign to grapple with the legislative record.

A

2645 **Shelby County** launched a purely facial challenge to the VRA's 2006 reauthorization. *2645 "A facial challenge to a legislative Act," the Court has other times said, "is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987).

"[U]nder our constitutional system[,] courts are not roving commissions assigned to pass judgment on the validity of the Nation's laws." *Broadrick v. Oklahoma*, 413 U.S. 601, 610-611, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). Instead, the "judicial Power" is limited to deciding particular "Cases" and "Controversies." U.S. Const., Art. III, § 2. "Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court." *Broadrick*, 413 U.S., at 610, 93 S.Ct. 2908. Yet the Court's opinion in this case contains not a word explaining why Congress lacks the power to subject to preclearance the particular plaintiff that initiated this lawsuit — **Shelby County**, Alabama. The reason for the Court's silence is apparent, for as applied to **Shelby County**, the VRA's preclearance requirement is hardly contestable.

Alabama is home to Selma, site of the "Bloody Sunday" beatings of civil-rights demonstrators that served as the catalyst for the VRA's enactment. Following those events, Martin Luther King, Jr., led a march from Selma to Montgomery, Alabama's capital, where he called for passage of the VRA. If the Act passed, he foresaw, progress could be made even in Alabama, but there had to be a steadfast national commitment to see the task through to completion. In King's words, "the arc of the moral universe is long, but it bends toward justice." G. May, Bending Toward Justice: The Voting Rights Act and the Transformation of American Democracy 144 (2013).

History has proved King right. Although circumstances in Alabama have changed, serious concerns remain. Between 1982 and 2005, Alabama had one of the highest rates of successful § 2 suits, second only to its VRA-covered neighbor Mississippi. 679 F.3d, at 897 (Williams, J., dissenting). In other words, even while subject to the restraining effect of § 5, Alabama was found to have "deni[ed] or abridge[d]" voting rights "on account of race or color" more frequently than nearly all other States in the Union. 42 U.S.C. § 1973(a). This fact prompted the dissenting judge below to concede that "a more narrowly tailored coverage formula" capturing Alabama and a handful of other jurisdictions with an established track record of racial discrimination in voting "might be defensible." 679 F.3d, at 897 (opinion of Williams, J.). That is an understatement. Alabama's sorry history of § 2 violations alone provides sufficient justification for Congress' determination in 2006 that the State should remain subject to § 5's preclearance requirement.[7]

2646 *2646 A few examples suffice to demonstrate that, at least in Alabama, the "current burdens" imposed by § 5's preclearance requirement are "justified by current needs." *Northwest Austin*, 557 U.S., at 203, 129 S.Ct. 2504. In the interim between the VRA's 1982 and 2006 reauthorizations, this Court twice confronted purposeful racial discrimination in Alabama. In *Pleasant Grove v. United States*, 479 U.S. 462, 107 S.Ct. 794, 93 L.Ed.2d 866 (1987), the Court held that

Pleasant Grove — a city in Jefferson **County**, **Shelby County's** neighbor — engaged in purposeful discrimination by annexing all-white areas while rejecting the annexation request of an adjacent black neighborhood. The city had "shown unambiguous opposition to racial integration, both before and after the passage of the federal civil rights laws," and its strategic annexations appeared to be an attempt "to provide for the growth of a monolithic white voting block" for "the impermissible purpose of minimizing future black voting strength." *Id.,* at 465, 471-472, 107 S.Ct. 794.

Two years before *Pleasant Grove,* the Court in *Hunter v. Underwood,* 471 U.S. 222, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985), struck down a provision of the Alabama Constitution that prohibited individuals convicted of misdemeanor offenses "involving moral turpitude" from voting. *Id.,* at 223, 105 S.Ct. 1916 (internal quotation marks omitted). The provision violated the Fourteenth Amendment's Equal Protection Clause, the Court unanimously concluded, because "its original enactment was motivated by a desire to discriminate against blacks on account of race[,] and the [provision] continues to this day to have that effect." *Id.,* at 233, 105 S.Ct. 1916.

Pleasant Grove and *Hunter* were not anomalies. In 1986, a Federal District Judge concluded that the at-large election systems in several Alabama counties violated § 2. *Dillard v. Crenshaw Cty.*, 640 F.Supp. 1347, 1354-1363 (M.D.Ala.1986). Summarizing its findings, the court stated that "[f]rom the late 1800's through the present, [Alabama] has consistently erected barriers to keep black persons from full and equal participation in the social, economic, and political life of the state." *Id.,* at 1360.

The *Dillard* litigation ultimately expanded to include 183 cities, counties, and school boards employing discriminatory at-large election systems. *Dillard v. Baldwin Cty. Bd. of Ed.,* 686 F.Supp. 1459, 1461 (M.D.Ala.1988). One of those defendants was **Shelby County**, which eventually signed a consent decree to resolve the claims against it. See *Dillard v. Crenshaw Cty.*, 748 F.Supp. 819 (M.D.Ala.1990).

Although the *Dillard* litigation resulted in overhauls of numerous electoral systems tainted by racial discrimination, concerns about backsliding persist. In 2008, for example, the city of Calera, located in **Shelby County**, requested preclearance of a redistricting plan that "would have eliminated the city's sole majority-black district, which had been created pursuant to the consent decree in *Dillard*." 811 F.Supp.2d 424, 443 (D.D.C.2011). Although DOJ objected to the plan, Calera forged ahead with elections based on the unprecleared voting changes, resulting in the defeat of the incumbent African-American councilman who represented the former majority-black district. *Ibid.* The city's defiance required DOJ to bring a § 5 enforcement action that ultimately yielded appropriate redress, including restoration of the majority-black district. *Ibid.;* Brief for Respondent-Intervenors Earl Cunningham et al. 20.

A recent FBI investigation provides a further window into the persistence of racial discrimination in state politics. See
2647 *United States v. McGregor,* 824 F.Supp.2d *2647 1339, 1344-1348 (M.D.Ala.2011). Recording devices worn by state legislators cooperating with the FBI's investigation captured conversations between members of the state legislature and their political allies. The recorded conversations are shocking. Members of the state Senate derisively refer to African-Americans as "Aborigines" and talk openly of their aim to quash a particular gambling-related referendum because the referendum, if placed on the ballot, might increase African-American voter turnout. *Id.,* at 1345-1346 (internal quotation marks omitted). See also *id.,* at 1345 (legislators and their allies expressed concern that if the referendum were placed on the ballot, "`[e]very black, every illiterate' would be `bused [to the polls] on HUD financed buses'"). These conversations occurred not in the 1870's, or even in the 1960's, they took place in 2010. *Id.,* at 1344-1345. The District Judge presiding over the criminal trial at which the recorded conversations were introduced commented that the "recordings represent compelling evidence that political exclusion through racism remains a real and enduring problem" in Alabama. *Id.,* at 1347. Racist sentiments, the judge observed, "remain regrettably entrenched in the high echelons of state government." *Ibid.*

These recent episodes forcefully demonstrate that § 5's preclearance requirement is constitutional as applied to Alabama and its political subdivisions.[8] And under our case law, that conclusion should suffice to resolve this case. See *United States v. Raines,* 362 U.S. 17, 24-25, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960) ("[I]f the complaint here called for an application of the statute clearly constitutional under the Fifteenth Amendment, that should have been an end to the question of constitutionality."). See also *Nevada Dept. of Human Resources v. Hibbs,* 538 U.S. 721, 743, 123 S.Ct. 1972,

155 L.Ed.2d 953 (2003) (SCALIA, J., dissenting) (where, as here, a state or local government raises a facial challenge to a federal statute on the ground that it exceeds Congress' enforcement powers under the Civil War Amendments, the challenge fails if the opposing party is able to show that the statute "could constitutionally be applied to *some* jurisdictions").

This Court has consistently rejected constitutional challenges to legislation enacted pursuant to Congress' enforcement powers under the Civil War Amendments upon finding that the legislation was constitutional as applied to the particular set of circumstances before the Court. See *United States v. Georgia*, 546 U.S. 151, 159, 126 S.Ct. 877, 163 L.Ed.2d 650 (2006) (Title II of the Americans with Disabilities Act of 1990 (ADA) validly abrogates state sovereign immunity "insofar as [it] creates a private cause of action ... for conduct that *actually* violates the Fourteenth Amendment"); *Tennessee v. Lane*, 541 U.S. 509, 530-534, 124 S.Ct. 1978, 158 L.Ed.2d 820 (2004) (Title II of the ADA is constitutional "as it applies to the class of cases implicating the fundamental right of access to the courts"); *Raines*, 362 U.S., at 24-26, 80 S.Ct. 519 (federal statute proscribing deprivations of the right to vote based on race was constitutional as applied to the state officials before the Court, even if it could not constitutionally be applied to other parties). A similar approach is warranted here.[9]

2648 *2648 The VRA's exceptionally broad severability provision makes it particularly inappropriate for the Court to allow **Shelby County** to mount a facial challenge to §§ 4(b) and 5 of the VRA, even though application of those provisions to the **county** falls well within the bounds of Congress' legislative authority. The severability provision states:

> "If any provision of [this Act] or the application thereof to any person or circumstances is held invalid, the remainder of [the Act] and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby." 42 U.S.C. § 1973p.

In other words, even if the VRA could not constitutionally be applied to certain States — *e.g.,* Arizona and Alaska, see *ante,* at 2622 — § 1973p calls for those unconstitutional applications to be severed, leaving the Act in place for jurisdictions as to which its application does not transgress constitutional limits.

Nevertheless, the Court suggests that limiting the jurisdictional scope of the VRA in an appropriate case would be "to try our hand at updating the statute." *Ante,* at 2629. Just last Term, however, the Court rejected this very argument when addressing a materially identical severability provision, explaining that such a provision is "Congress' explicit textual instruction to leave unaffected the remainder of [the Act]" if any particular "application is unconstitutional." *National Federation of Independent Business v. Sebelius*, 567 U.S. ___, ___, 132 S.Ct. 2566, 2639, 183 L.Ed.2d 450 (2012) (plurality opinion) (internal quotation marks omitted); *id.,* at ___, 132 S.Ct., at 2641-2642 (GINSBURG, J., concurring in part, concurring in judgment in part, and dissenting in part) (slip op., at 60) (agreeing with the plurality's severability analysis). See also *Raines*, 362 U.S., at 23, 80 S.Ct. 519 (a statute capable of some constitutional applications may nonetheless be susceptible to a facial challenge only in "that rarest of cases where this Court can justifiably think itself able confidently to discern that Congress would not have desired its legislation to stand at all unless it could validly stand in its every application"). Leaping to resolve **Shelby County's** facial challenge without considering whether application of the VRA to **Shelby County** is constitutional, or even addressing the VRA's severability provision, the Court's opinion can hardly be described as an exemplar of restrained and moderate decisionmaking. Quite the opposite. Hubris is a fit word for today's demolition of the VRA.

B

The Court stops any application of § 5 by holding that § 4(b)'s coverage formula is unconstitutional. It pins this result, in large measure, to "the fundamental principle of equal sovereignty." *Ante,* at 2623-2624, 2630. In *Katzenbach,* however, the Court held, in no uncertain terms, that the principle "*applies only to the terms upon which States are admitted to the Union,* and not to the remedies for local evils which have subsequently appeared." 383 U.S., at 328-329, 86 S.Ct. 803 (emphasis added).

2649 *2649 *Katzenbach,* the Court acknowledges, "rejected the notion that the [equal sovereignty] principle operate[s] as a

bar on differential treatment outside [the] context [of the admission of new States]." *Ante,* at 2623-2624 (citing 383 U.S., at 328-329, 86 S.Ct. 803) (emphasis omitted). But the Court clouds that once clear understanding by citing dictum from *Northwest Austin* to convey that the principle of equal sovereignty "remains highly pertinent in assessing subsequent disparate treatment of States." *Ante,* at 2624 (citing 557 U.S., at 203, 129 S.Ct. 2504). See also *ante,* at 2630 (relying on *Northwest Austin*'s "emphasis on [the] significance" of the equal-sovereignty principle). If the Court is suggesting that dictum in *Northwest Austin* silently overruled *Katzenbach*'s limitation of the equal sovereignty doctrine to "the admission of new States," the suggestion is untenable. *Northwest Austin* cited *Katzenbach*'s holding in the course of *declining to decide* whether the VRA was constitutional or even what standard of review applied to the question. 557 U.S., at 203-204, 129 S.Ct. 2504. In today's decision, the Court ratchets up what was pure dictum in *Northwest Austin,* attributing breadth to the equal sovereignty principle in flat contradiction of *Katzenbach.* The Court does so with nary an explanation of why it finds *Katzenbach* wrong, let alone any discussion of whether *stare decisis* nonetheless counsels adherence to *Katzenbach*'s ruling on the limited "significance" of the equal sovereignty principle.

Today's unprecedented extension of the equal sovereignty principle outside its proper domain — the admission of new States — is capable of much mischief. Federal statutes that treat States disparately are hardly novelties. See, *e.g.,* 28 U.S.C. § 3704 (no State may operate or permit a sports-related gambling scheme, unless that State conducted such a scheme "at any time during the period beginning January 1, 1976, and ending August 31, 1990"); 26 U.S.C. § 142(*l*) (EPA required to locate green building project in a State meeting specified population criteria); 42 U.S.C. § 3796bb (at least 50 percent of rural drug enforcement assistance funding must be allocated to States with "a population density of fifty-two or fewer persons per square mile or a State in which the largest **county** has fewer than one hundred and fifty thousand people, based on the decennial census of 1990 through fiscal year 1997"); §§ 13925, 13971 (similar population criteria for funding to combat rural domestic violence); § 10136 (specifying rules applicable to Nevada's Yucca Mountain nuclear waste site, and providing that "[n]o State, other than the State of Nevada, may receive financial assistance under this subsection after December 22, 1987"). Do such provisions remain safe given the Court's expansion of equal sovereignty's sway?

Of gravest concern, Congress relied on our pathmarking *Katzenbach* decision in each reauthorization of the VRA. It had every reason to believe that the Act's limited geographical scope would weigh in favor of, not against, the Act's constitutionality. See, *e.g., United States v. Morrison,* 529 U.S. 598, 626-627, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000) (confining preclearance regime to States with a record of discrimination bolstered the VRA's constitutionality). Congress could hardly have foreseen that the VRA's limited geographic reach would render the Act constitutionally suspect. See Persily 195 ("[S]upporters of the Act sought to develop an evidentiary record for the principal purpose of explaining why the covered jurisdictions should remain covered, rather than justifying the coverage of certain jurisdictions but not others.").

2650 In the Court's conception, it appears, defenders of the VRA could not prevail *2650 upon showing what the record overwhelmingly bears out, *i.e.,* that there is a need for continuing the preclearance regime in covered States. In addition, the defenders would have to disprove the existence of a comparable need elsewhere. See Tr. of Oral Arg. 61-62 (suggesting that proof of egregious episodes of racial discrimination in covered jurisdictions would not suffice to carry the day for the VRA, unless such episodes are shown to be absent elsewhere). I am aware of no precedent for imposing such a double burden on defenders of legislation.

C

The Court has time and again declined to upset legislation of this genre unless there was no or almost no evidence of unconstitutional action by States. See, *e.g., City of Boerne v. Flores,* 521 U.S. 507, 530, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997) (legislative record "mention[ed] no episodes [of the kind the legislation aimed to check] occurring in the past 40 years"). No such claim can be made about the congressional record for the 2006 VRA reauthorization. Given a record replete with examples of denial or abridgment of a paramount federal right, the Court should have left the matter where it belongs: in Congress' bailiwick.

Instead, the Court strikes § 4(b)'s coverage provision because, in its view, the provision is not based on "current conditions." *Ante,* at 2627. It discounts, however, that one such condition was the preclearance remedy in place in the covered jurisdictions, a remedy Congress designed both to catch discrimination before it causes harm, and to guard against return to old ways. 2006 Reauthorization § 2(b)(3), (9). Volumes of evidence supported Congress' determination that the prospect of retrogression was real. Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.

But, the Court insists, the coverage formula is no good; it is based on "decades-old data and eradicated practices." *Ante,* at 2627. Even if the legislative record shows, as engaging with it would reveal, that the formula accurately identifies the jurisdictions with the worst conditions of voting discrimination, that is of no moment, as the Court sees it. Congress, the Court decrees, must "star[t] from scratch." *Ante,* at 2630. I do not see why that should be so.

Congress' chore was different in 1965 than it was in 2006. In 1965, there were a "small number of States ... which in most instances were familiar to Congress by name," on which Congress fixed its attention. *Katzenbach,* 383 U.S., at 328, 86 S.Ct. 803. In drafting the coverage formula, "Congress began work with reliable evidence of actual voting discrimination in a great majority of the States" it sought to target. *Id.,* at 329, 86 S.Ct. 803. "The formula [Congress] eventually evolved to describe these areas" also captured a few States that had not been the subject of congressional factfinding. *Ibid.* Nevertheless, the Court upheld the formula in its entirety, finding it fair "to infer a significant danger of the evil" in all places the formula covered. *Ibid.*

The situation Congress faced in 2006, when it took up *re* authorization of the coverage formula, was not the same. By then, the formula had been in effect for many years, and *all* of the jurisdictions covered by it were "familiar to Congress by name." *Id.,* at 328, 86 S.Ct. 803. The question before Congress: Was there still a sufficient basis to support continued application of the preclearance remedy in each of those already-identified places? There was at that point no chance
2651 that the *2651 formula might inadvertently sweep in new areas that were not the subject of congressional findings. And Congress could determine from the record whether the jurisdictions captured by the coverage formula still belonged under the preclearance regime. If they did, there was no need to alter the formula. That is why the Court, in addressing prior reauthorizations of the VRA, did not question the continuing "relevance" of the formula.

Consider once again the components of the record before Congress in 2006. The coverage provision identified a known list of places with an undisputed history of serious problems with racial discrimination in voting. Recent evidence relating to Alabama and its counties was there for all to see. Multiple Supreme Court decisions had upheld the coverage provision, most recently in 1999. There was extensive evidence that, due to the preclearance mechanism, conditions in the covered jurisdictions had notably improved. And there was evidence that preclearance was still having a substantial real-world effect, having stopped hundreds of discriminatory voting changes in the covered jurisdictions since the last reauthorization. In addition, there was evidence that racial polarization in voting was higher in covered jurisdictions than elsewhere, increasing the vulnerability of minority citizens in those jurisdictions. And countless witnesses, reports, and case studies documented continuing problems with voting discrimination in those jurisdictions. In light of this record, Congress had more than a reasonable basis to conclude that the existing coverage formula was not out of sync with conditions on the ground in covered areas. And certainly **Shelby County** was no candidate for release through the mechanism Congress provided. See *supra,* at 2643-2645, 2646-2647.

The Court holds § 4(b) invalid on the ground that it is "irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time." *Ante,* at 2631. But the Court disregards what Congress set about to do in enacting the VRA. That extraordinary legislation scarcely stopped at the particular tests and devices that happened to exist in 1965. The grand aim of the Act is to secure to all in our polity equal citizenship stature, a voice in our democracy undiluted by race. As the record for the 2006 reauthorization makes abundantly clear, second-generation barriers to minority voting rights have emerged in the covered jurisdictions as attempted *substitutes* for the first-generation barriers that originally triggered preclearance in those jurisdictions. See *supra,* at 2634-2635, 2636, 2640-2641.

The sad irony of today's decision lies in its utter failure to grasp why the VRA has proven effective. The Court appears to

believe that the VRA's success in eliminating the specific devices extant in 1965 means that preclearance is no longer needed. *Ante,* at 2629-2630, 2630-2631. With that belief, and the argument derived from it, history repeats itself. The same assumption — that the problem could be solved when particular methods of voting discrimination are identified and eliminated — was indulged and proved wrong repeatedly prior to the VRA's enactment. Unlike prior statutes, which singled out particular tests or devices, the VRA is grounded in Congress' recognition of the "variety and persistence" of measures designed to impair minority voting rights. *Katzenbach,* 383 U.S., at 311, 86 S.Ct. 803; *supra,* at 2633. In truth, the evolution of voting discrimination into more subtle second-generation barriers is powerful evidence that a remedy as effective as preclearance remains vital to protect minority voting rights and prevent backsliding.

2652 Beyond question, the VRA is no ordinary legislation. It is extraordinary because *2652 Congress embarked on a mission long delayed and of extraordinary importance: to realize the purpose and promise of the Fifteenth Amendment. For a half century, a concerted effort has been made to end racial discrimination in voting. Thanks to the Voting Rights Act, progress once the subject of a dream has been achieved and continues to be made.

The record supporting the 2006 reauthorization of the VRA is also extraordinary. It was described by the Chairman of the House Judiciary Committee as "one of the most extensive considerations of any piece of legislation that the United States Congress has dealt with in the 27 & half; years" he had served in the House. 152 Cong. Rec. H5143 (July 13, 2006) (statement of Rep. Sensenbrenner). After exhaustive evidence-gathering and deliberative process, Congress reauthorized the VRA, including the coverage provision, with overwhelming bipartisan support. It was the judgment of Congress that "40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution." 2006 Reauthorization § 2(b)(7), 120 Stat. 577. That determination of the body empowered to enforce the Civil War Amendments "by appropriate legislation" merits this Court's utmost respect. In my judgment, the Court errs egregiously by overriding Congress' decision.

*** * ***

For the reasons stated, I would affirm the judgment of the Court of Appeals.

[1] Both the Fourteenth and Fifteenth Amendments were at issue in *Northwest Austin,* see Juris. Statement i, and Brief for Federal Appellee 29-30, in *Northwest Austin Municipal Util. Dist. No. One v. Holder,* O.T. 2008, No. 08-322, and accordingly *Northwest Austin* guides our review under both Amendments in this case.

[1] The Court purports to declare unconstitutional only the coverage formula set out in § 4(b). See *ante,* at 2631. But without that formula, § 5 is immobilized.

[2] The Constitution uses the words "right to vote" in five separate places: the Fourteenth, Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth Amendments. Each of these Amendments contains the same broad empowerment of Congress to enact "appropriate legislation" to enforce the protected right. The implication is unmistakable: Under our constitutional structure, Congress holds the lead rein in making the right to vote equally real for all U.S. citizens. These Amendments are in line with the special role assigned to Congress in protecting the integrity of the democratic process in federal elections. U.S. Const., Art. I, § 4 ("[T]he Congress may at any time by Law make or alter" regulations concerning the "Times, Places and Manner of holding Elections for Senators and Representatives."); *Arizona v. Inter Tribal Council of Ariz., Inc.,* ___ U.S. ___, ___-___, 133 S.Ct. 2247, ___-___, ___ L.Ed.2d ___ (2013).

[3] Acknowledging the existence of "serious constitutional questions," see *ante,* at 2630 (internal quotation marks omitted), does not suggest how those questions should be answered.

[4] This number includes only changes actually proposed. Congress also received evidence that many covered jurisdictions engaged in an "informal consultation process" with DOJ before formally submitting a proposal, so that the deterrent effect of preclearance was far broader than the formal submissions alone suggest. The Continuing Need for Section 5 Pre-Clearance: Hearing before the Senate Committee on the Judiciary, 109th Cong., 2d Sess., pp. 53-54 (2006). All agree that an unsupported assertion about "deterrence" would not be sufficient to justify keeping a remedy in place in perpetuity. See *ante,* at 2627. But it was certainly reasonable for Congress to consider the testimony of witnesses who had worked with officials in covered jurisdictions and observed a real-world deterrent effect.

[5] For an illustration postdating the 2006 reauthorization, see *South Carolina v. United States,* 898 F.Supp.2d 30 (D.D.C.2012), which involved a South Carolina voter-identification law enacted in 2011. Concerned that the law would burden minority voters, DOJ brought a § 5 enforcement action to block the law's implementation. In the course of the litigation, South Carolina officials agreed to binding

interpretations that made it "far easier than some might have expected or feared" for South Carolina citizens to vote. *Id.,* at 37. A three-judge panel precleared the law after adopting both interpretations as an express "condition of preclearance." *Id.,* at 37-38. Two of the judges commented that the case demonstrated "the continuing utility of Section 5 of the Voting Rights Act in deterring problematic, and hence encouraging non-discriminatory, changes in state and local voting laws." *Id.,* at 54 (opinion of Bates, J.).

[6] Because preclearance occurs only in covered jurisdictions and can be expected to stop the most obviously objectionable measures, one would expect a *lower* rate of successful § 2 lawsuits in those jurisdictions if the risk of voting discrimination there were the same as elsewhere in the country.

[7] This lawsuit was filed by **Shelby County**, a political subdivision of Alabama, rather than by the State itself. Nevertheless, it is appropriate to judge **Shelby County's** constitutional challenge in light of instances of discrimination statewide because **Shelby County** is subject to § 5's preclearance requirement by virtue of *Alabama's* designation as a covered jurisdiction under § 4(b) of the VRA. See *ante,* at 2621-2622. In any event, **Shelby County's** recent record of employing an at-large electoral system tainted by intentional racial discrimination is by itself sufficient to justify subjecting the **county** to § 5's preclearance mandate. See *infra,* at 2646.

[8] Congress continued preclearance over Alabama, including **Shelby County**, *after* considering evidence of current barriers there to minority voting clout. **Shelby County**, thus, is no "redhead" caught up in an arbitrary scheme. See *ante,* at 2629.

[9] The Court does not contest that Alabama's history of racial discrimination provides a sufficient basis for Congress to require Alabama and its political subdivisions to preclear electoral changes. Nevertheless, the Court asserts that **Shelby County** may prevail on its facial challenge to § 4's coverage formula because it is subject to § 5's preclearance requirement by virtue of that formula. See *ante,* at 2630 ("The **county** was selected [for preclearance] based on th[e] [coverage] formula."). This misses the reality that Congress decided to subject Alabama to preclearance based on evidence of continuing constitutional violations in that State. See *supra,* at 2647, n. 8.

NYSBA

Special Committee on Voter Participation Final Report

Approved by the New York State Bar Association House of Delegates January 25, 2013

NEW YORK STATE BAR ASSOCIATION

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INTRODUCTION

In both national and local elections voter participation in the State of New York has for over a decade been far below that of most other states. Only 59% of those eligible to vote cast ballots in the 2008 Presidential Election. All told, in the last three elections before 2012 New York ranked 47th among the states in average voter turnout.[1] Only 35.5% of the voting eligible population (i.e., citizens over 18 who are not incarcerated for a felony or on felony parole) voted for the highest office on the ballot in the 2010 general election, putting New York in 48th place among the states, approximately 13% below the national average.[2] In the 2012 election, only 53.1% of eligible voters in New York cast ballots.[3] New York also compares unfavorably to other states in the percentage of its eligible citizens who are registered to vote: in 2010 New York had the sixteenth-worst registration rate of all states. Less than 64 percent of eligible New Yorkers were registered to vote as of 2010. Between 2008 and 2012 the total for voters registered in New York declined.[4]

By comparison with other states it is important that New York's voter participation numbers for presidential elections between 1984 and 2000 were far better than they have become in the last decade. In that earlier period New York's voter participation levels were close to and sometimes better than the national average.[5] That is especially important because it is in the period since 2000 that many other states—but not New York—have made significant changes to modernize their registration and voting practices. A number of those changes in other states, especially those as to registration, appear to have had a significant impact on the rate of voter participation. Whereas citizens of New York might once have seen themselves as on the cutting edge as to the registration and voting process, that is no longer the case.

[1] *See* 2008 General Election Turnout Rates, United States Elections Project (March 31, 2012), http://elections.gmu.edu/Turnout_2008G.html (voter participation in 2008); NEW YORK CITY, VOTER ACCESS IN NEW YORK 1 (Dec. 2010), *available at* http://www.nyc.gov/html/om/pdf/2010/pr492-10_proposal.pdf (ranking in last three federal elections before 2012).

[2] *See* 2010 General Election Turnout Rates, United States Elections Project (Dec. 28, 2011), http://elections.gmu.edu/Turnout_2010G.html. This ranking excludes the District of Columbia, which has no voting Congressional representation and thus lower voter participation in midterm elections. *Without Senators, D.C. Residents Look Elsewhere to Vote*, FOX NEWS, Oct. 31, 2010, *available at* http://www.foxnews.com/politics/2010/10/31/senators-dc-residents-look-vote/.

[3] *See* 2012 General Election Turnout Rates, United States Elections Project (Dec. 31, 2012), http://elections.gmu.edu/Turnout_2012G.html.

[4] *See* Voting and Registration in the Election of November 2010 – Detailed Tables, Table 4a, United States Census Bureau, *available at* http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2010/tables.html (last visited Dec. 1, 2012) (voter registration in 2010); Enrollment by County, New York State Board of Elections, http://www.elections.ny.gov/EnrollmentCounty.html (total voter registration in New York).

[5] *See* Turnout 1980-2012, United States Elections Project, *available at* http://elections.gmu.edu/voter_turnout.htm (last visited Dec. 1, 2012).

Recognizing these stark facts and what they mean as to the exercise by citizens of their right to vote and their participation in government, New York State Bar Association President Seymour James has made it a priority of his administration to sponsor the development of recommendations as to changes in the law and administration that would promote greater voter participation in New York. He has in turn formed this Special Committee on Voter Participation to provide such recommendations to the House of Delegates. When the Committee was formed he set out its charge in the following statement:

> In the United States, voting is one of our most fundamental rights, ensuring our ability to participate in the electoral process. The rate of voter participation in New York State is frequently ranked among the lowest in the nation. Measures to remove barriers to registration and voting and to encourage participation, while maintaining the integrity of the process, could go a long way to improve citizenship and civic engagement and enhance our democracy. The Special Committee on Voter Participation will consider possible reforms to remove obstacles to registration and voting, such as automatic voter registration and modernization of the registration process, extended cut-off dates for advance registration, increased penalties for voter intimidation and deceptive election practices, genuine early voting (permitting voters to vote on a voting machine in a designated location prior to Election Day), and no-fault absentee balloting (allowing voters to use absentee ballots without meeting defined criteria). The special committee will produce a report and recommendations with regard to reforms that could enhance civic participation in New York State.

Consistent with the President's charge, the Committee has developed the recommendations outlined and discussed in detail below. We believe that, if implemented, the changes we recommend would have a very significant impact on voter participation, bringing New York's rates of registration and voter participation up to levels of which the citizens of the state can and should be proud. Based on statistical analysis and experience in other states and other major democracies in the world that have modernized their registration and voting practices, we believe that moving New York's rate of voter registration and participation at least above 80% within a few years is an attainable goal if the changes we recommend are implemented.

THE COMPOSITION OF THE SPECIAL COMMITTEE

In bringing together the twenty-one lawyers who make up the Special Committee President James took care to assure that the Committee was balanced, especially as to possible perspectives on voting issues. The result is a Committee composed of ten Republicans, ten Democrats and one Independent. The Members are from all parts of New York State, six from New York City, eight from Westchester and Long Island and seven from upstate counties.

The Committee includes a former State Senator, a former Corporation Counsel, a former candidate for Governor, the former Dean of Fordham Law School and President of the New York City Bar, an Executive Committee member of the Republican Party in Westchester County, the Chair of the Republican Committee for the Town of Lewisboro, a recognized expert in election law, both large and small firm practitioners, and six women and minorities. The Committee Co-Chairs are a Republican and a Democrat and the Co-Chairs of the Committee's principal subcommittees are also of opposite parties.

As the Committee has done its work the balance of views expressed has proved to be very useful and, with the exception of one dissent as to the Committee's Recommendation as to adoption of Early In-Person Voting, the Committee's recommendations are the product of a full professional consensus.

THE SPECIAL COMMITTEE'S PROCESS

In doing its work, the Committee has reached out to important, interested and knowledgeable government and private groups and organizations so that it could benefit from their varying perspectives and their expertise. Invitations were extended to more than three hundred private and government organizations, offering those groups and organizations the opportunity to meet with the Committee, as many did, and to provide both pre-existing and new written materials for the Committee's consideration.[6] The Committee has found the contributions of those groups and organizations to be very helpful.[7]

As part of its process the Committee met on five different days with individuals representing various groups and organizations that responded to its invitations. Those organizations that both submitted comments and met with the Committee were the Brennan Center for Justice, Citizens Union, Common Cause, the Democratic Lawyers Council, DEMOS, the General Counsel for the New York City Board of Elections, the

[6] A list of those organizations that were invited to participate is set out in the Appendix at p. 53.

[7] A Glossary of the materials relied upon by the Committee appears in the Appendix at p. 63.

Lawyers' Committee for Civil Rights Under Law, the League of Women Voters New York, the Legal Counsel Division of the New York City Law Department, the NAACP's New York City Chapter, the New York City Bar Association, the New York State Attorney General's Office, the New York State Election Commissioners' Association, the New York Public Interest Research Group (NYPIRG) and Taking Our Seat. Organizations that submitted comments but did not meet with the Committee included the Heritage Foundation and several County Boards of Elections.

Consistent with the President's charge, the Committee initially identified a series of possible changes in the applicable law that should be considered, but not necessarily recommended, and then extended and modified that list as it met with the various groups and organizations and deliberated. The full Committee met to deliberate four times and the Registration and Voting Process Subcommittees each met twice.

The Co-Chairs extend their special thanks to Registration Subcommittee Co-Chairs Andrea Rendo and Fritz Schwarz, Voting Process Subcommittee Co-Chairs John Faso and John Nonna, and to Committee Members Henry Berger, J. R. Drexelius, Jr., Ross Galin, Adriene Holder, Marjorie Lindblom and Andrew Schlichter for their assistance in the drafting of the Committee's Report. Very special thanks go also to Kevin Getnick, the Committee's Administrative Liaison with the State Bar, for an exceptional job in support of the Committee's work.

RECOMMENDATIONS

MODERNIZATION OF REGISTRATION

The Committee's first and primary conclusion is that the State of New York needs to modernize its system for registering voters and that, if implemented, such modernization would result in a significant increase in voter participation. Such a change would also promise increased efficiency and accuracy in the voter rolls and a reduction in cost.

The experience in other states, countries and the Canadian provinces is that increased registration brings with it as a natural corollary increased voter participation. In the United States approximately 90% of registered voters participate in national elections. Consistent with that record, 89.4% of registered New Yorkers voted in the 2008 election.[8]

In order to substantially increase registration and with it voter participation, we strongly recommend that the registration process be modernized so that: (1) voter registration opportunities are affirmatively presented to citizens whenever they engage in a transaction with a state or federal agency, as a seamless and electronic part of that agency's existing process; and (2) voter registration opportunities are also made available online (apart from such transactions with government agencies), just as they are now available by regular mail. As in existing law, to assure the integrity of the process, we recommend that when registering at a state or federal agency all registrants be required to provide appropriate identification to confirm their status as eligible voters and provide a "wet signature" that will be retained as a permanent record. Consistent with current law, at the polls all new online or agency registrants or applicants whose identifying information has not yet been verified, should be required to present an ID that complies with the Help America Vote Act (HAVA)[9] and a "wet signature" before they are allowed to vote.

Experience in other jurisdictions shows that, after an initial investment, such increased reliance on available technology in the registration process will result in a significant increase in efficiency and accuracy in the voter rolls and a reduction in cost, while making it much easier to deal with voters' post-registration changes in residence. There is also good reason to think that such a system will reduce the potential for registration fraud.

[8] Voting and Registration in the Election of November 2008 – Detailed Tables, Table 4a, United States Census Bureau, *available at* http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html (last visited Dec. 1, 2012).

[9] 42 U.S.C. § 15301 *et seq.* (2002).

PRE-REGISTRATION OF 16 AND 17 YEAR-OLDS

As a complement to modernization of registration, we also recommend that a program for the voluntary pre-registration of 16 and 17 year-olds be developed. Citizens aged 18 to 24 have the lowest rate of registration in New York, and experience in other states and countries indicates that pre-registration of students before they reach 18 will significantly increase voter participation in that younger age group.

ELECTION DAY AND SAME DAY REGISTRATION

Although it would require a Constitutional Amendment and thus be more difficult, we also recommend that the state take the steps necessary to permit Election Day or, if there is early voting, Same Day Registration (registration at the polls at any time and place when the polls are open). The evidence is that such a practice, which is now used in several other states, will in itself increase registration and with it voter turnout. Also, it would permit those many otherwise frustrated citizens who have moved within New York, but are not yet registered to vote in their new Election District (about one-half of those who are registered but do not vote), to cast their ballots. Just as for the other new forms of registration that we recommend, we urge that appropriate identification and a "wet signature" be required at the point of registration to assure the integrity of the voting process.

Given especially the time it would take for a Constitutional Amendment and the need for further consideration of Election Day or Same Day Registration before it could be adopted, we urge that the other changes in registration practice that the Committee recommends not wait for Election Day or Same Day Registration to be adopted. In the interim, to the extent practicable, we suggest that Same Day or Election Day Registration be considered for adoption at the local level, consistent with the freedom afforded to towns and villages under the Constitution. Such initiatives at the local level could serve as a valuable first step for the rest of the state. We further recommend that in the interim the law be changed to require that registration be allowed up to ten days before an election (the Constitutional minimum) rather than the current twenty-five days.

IMPROVING VOTING PRACTICES

Although the Committee believes that making changes in the law to increase registration is the best way to increase voter participation, we would also recommend changes in the voting process that would improve the attractiveness of that process and

thereby encourage a greater number of eligible voters to cast ballots. For various, often very good reasons many voters complain about the trial of voting on Election Day, and doubtless that is one reason why many stay away. Accordingly, there is reason to believe that making the process significantly more attractive and accommodating will over time increase turnout. But even if it would not actually increase participation in itself, we think that the laws and practices of the state should be fashioned to assure that the voting process is made as accommodating as possible, while recognizing budgetary limits. For citizens exercising their right to vote the process should not be a trial.

EARLY IN-PERSON VOTING

As an important change in the voting process we recommend that a form of In-Person Early Voting be adopted. The practice of affording voters the option of voting in person earlier than Election Day has proved to be extremely popular in other states and we would expect it to be welcomed by those in New York. In-Person Early Voting makes it easier for many voters to get to the polls and, for some, it permits them more time on a non-working day to consider the ballot and then vote more carefully. Depending on how it is managed it can also reduce lines and waiting time. Although some argue that a Constitutional amendment would be necessary before such Early In-Person Voting would be permitted, we do not believe that an amendment would be required.

While we recommend the change we note that the case has not yet been made that early voting in itself actually increases voter turnout significantly. Although many states have adopted it, prior to the 2012 election statistical analysis focused on the states where early voting had been adopted did not show that there had been a meaningful increase in voter turnout as a result of early voting itself. Such an increase came only when it was joined with Same Day Registration.

Some have suggested that early voting serves only to make it more convenient for those who would have voted in any event and others have argued that, because the early voting periods have often been extended over two or more weeks, the customary efforts to mobilize voters and get them to the polls have been diluted, thus offsetting increases in turnout due to greater convenience for voters. Another concern is that spreading voting over weeks (the practice in most early voting states so far) tends to dilute the community spirit that typically attends Election Day, at least for national and statewide elections, and can thereby reduce voter interest. There is too the point frequently made that events very close to Election Day may impact voting decisions after early voters have already cast their ballots.

In addition, it is important in fashioning any Early In-Person Voting Plan that both cost and the need for reasonably accessible locations of poll sites in the early voting

period be considered. Often referred to as "Super Poll Sites" in states that have early voting, pre-Election Day polling places have typically been consolidated, thus increasing the distance voters must travel, as compared with the distance to their usual polling places. While many may vote at times that are for them more convenient, they often will need to travel further.

To deal with these various considerations, we urge that an Early In-Person Voting program be adopted that extends the time for voting back only through the weekend before Election Day and possibly, at the most, up to three additional days into the previous week. Although that would be less of an expansion of the voting period than in most other states that have adopted early voting, it would nevertheless make the voting hours more convenient for most of those who have difficulty voting on a particular Tuesday and it should also be sufficient to allow for the problems of most voters who have varying days off and, especially important, for different days of religious observance. It should also permit sufficient time for those who vote early but encounter specific problems, such as the not infrequent need to prove they are registered. The relatively shorter period would at the same time serve to preserve a community spirit and leave a more concentrated period for mobilization of voters. That could itself permit a greater voter turnout. Of course too the relatively limited expansion of the time for voting would reduce the problem that could arise from late breaking developments that might have an impact on voters' decisions.

In addition, a relatively shorter early voting period would presumably be less costly than a period extending over weeks. Among other things, we strongly recommend that some of that comparative cost saving be used to increase the number of polling places available to voters for the shorter period, permitting the polls to be more conveniently located. We recommend that decisions as to where the individual polling places should be located be left to local Boards of Election, recognizing, among other things, the great differences as to transportation options among regions in the state. Plainly, where it is a reasonable option, polling places should be near public transportation.

NO-EXCUSE ABSENTEE BALLOTS

Although we recommend adoption of Early In-Person Voting, we are not to the point of recommending use of "No-Excuse Absentee Ballots" or other forms of voting by mail not currently permitted. Instead of voting by mail we believe that the convenience of early voting should be provided by voting in-person. Such in-person voting is less likely to lead to errors and to be compromised by fraud.

As with Early In-Person Voting, the case has not been made that additional absentee voting actually will in itself result in a meaningful increase in voter turnout.

There are also concerns that use of No-Excuse Absentee Ballots can too easily result in citizens losing their votes due to mistakes, and that they can be too easily compromised by those seeking to literally stuff the ballot box. Adoption of No-Excuse Absentee Balloting also would require a Constitutional amendment.

Experience in other states shows a much higher percentage of No-Excuse Absentee Ballots being rejected due to errors than when voting is in person and, in particular, uncertainty as to the outcome of elections resulting from interpretation of handwriting and other disputed issues. While we expect that in actual practice convenience for those voting honestly would outweigh the risk of actual fraud, we see the risks that the voting process could be placed under a cloud by disputed interpretations of written ballots and possible fraud as being too great to move toward voting by mail at this time.

For those who need absentee ballots for the good reasons already set out in the law (such as military service, disabilities, and attendance at school) we see no reason for a change.

Beyond early voting we believe there are three additional important changes that should be implemented to make the voting process more accommodating for voters.

IMPROVED BALLOT DESIGN

First, we urge that the significant efforts already underway to improve ballot design be continued. Largely because ballot design rules were fashioned in a different era for different voting machines, the design of ballots is no longer as clear as it needs to be. We recommend the law's now outdated requirements be changed so that the new paper ballots can become user friendly. Among other changes, we would join the many who favor adoption of a larger minimum font size.

RECRUITING AND TRAINING POLL WORKERS

Second, we urge that the daunting challenge faced for each election in recruiting and training poll workers be addressed. Although the majority of poll workers are effective, pleasant, well-versed and professional, too many simply are not; and that can and does make the voting experience unduly prolonged, inconvenient and unpleasant for many. To address this problem, we have set out below various suggestions, including among others, steps to facilitate the service of state and city employees and students as poll workers, funding to permit expanded and improved training and increased use of the split shift so as to reduce poll worker fatigue.

It is a massive task to recruit and train so many for work at the polls every two years in a national election (36,000 are needed in New York City alone), and affording Boards of Elections that bear that daunting burden more options and resources is necessary. In any effort to increase the attractiveness of the voting process to the citizenry, increasing the professionalism of poll workers as a group is vital.

COMBATING DECEPTIVE PRACTICES

Third, we believe that the not infrequent use of deceptive practices to suppress votes is a very serious problem. Steps to mislead voters so that they do not vote, through the use of very misleading robo-calls for example, can effectively deprive many voters of their right to vote. As set out below, we believe that an increase in the penalties for such conduct (where it is deliberate and clearly misleading) is essential. The applicable law should include an enhanced threat of prison terms and application of necessary penalties for deceptive practices in elections, not just primaries as under existing law. Such increased penalties would parallel the penalties already existing for fraud in connection with the registration of voters.

OTHER INITIATIVES

We would add that in providing our recommendations we do not mean at all to express opposition to other potentially helpful changes in the law or practice. Voters have complained in the last two elections about lack of privacy in filling out and scanning the new paper ballots. Voter education is properly a subject that is receiving significant attention from Boards of Elections and others. There continues to be important focus on assuring that all polling places are disability-compliant. There are concerns about scanners not working as efficiently as they should. Confusion in the allocation of space and signage at polling places and the potential for consolidation of polling places made possible by the greater efficiency of the new voting machines are all matters under study; and we do not mean at all to discourage such efforts or others that may improve the voting process. Nor do we take any position here on such issues as the best date for primaries, campaign finance reform or the working of different branches of government, as they may bear on voter participation.

MODERNIZING THE REGISTRATION PROCESS

The most important step the state can take to increase voter turnout is to modernize the Voter Registration System. As the Attorney General of the United States has said:

> "[T]oday, the single biggest barrier to voting in this country is our antiquated registration system. According to the Census Bureau, of the 75 million adult citizens who failed to vote in the last presidential election, 60 million of them are not registered and, therefore, not eligible to cast a ballot."[10]

REGISTRATION AND THE FEDERAL GOVERNMENT

Although many Americans take it for granted that advance registration is a requirement for voting, in the first days of the United States eligibility was determined at the polls on Election Day. In the early 1800s local governments in some areas began initiating procedures to control access to the voting process.[11] Most states, however, had no voter registration requirements prior to the 1870s. As the electorate expanded through immigration and the Fifteenth Amendment's enfranchisement of former slaves, so too did calls for stricter controls on the registration and voting process, and in *Minor v. Happersett*, 88 U.S. 162 (1875), the Supreme Court upheld the power of an individual state to manage the right to vote. The majority of states adopted registration requirements between the 1870s and World War I. By 1929 all but three states required registration prior to an election.[12]

The civil rights era of the mid-20th century led to passage of the Voting Rights Act of 1965, which empowered the federal government to monitor discriminatory practices in designated areas of the country, including much of the South and, ultimately,

[10] Attorney General Eric Holder, Remarks as Prepared for Delivery at the Lyndon Baines Johnson Library & Museum (Dec. 13, 2011).

[11] ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES (2000).

[12] *See id.*

three counties in New York City.[13] In the South the new law led to an increase in African-American registration to 62% within a few years.[14]

Depressed and stagnant registration data in subsequent years led to federal efforts to reform the registration process. In 1993, the National Voter Registration Act (NVRA) was enacted.[15] The NVRA became known widely as the "Motor Voter" Act, as it allowed citizens to register to vote at their local department of motor vehicles (DMV), at all offices that provide public assistance or that are primarily engaged in providing services to persons with disabilities, and by mail.[16] A federal voter registration form was adopted so that it could serve as a substitute for state forms, and safeguards were enacted to protect improper purging of voters already registered. That law also provided that any change of address form submitted in accordance with state law to change an address on a driver's license would serve as notification of change of address for voter registration for federal elections, unless the voter stated that it was not to serve that function. For voters who register by mail, a state may (with certain exceptions) require people to vote in person if it is the first time they are voting in that jurisdiction.[17]

The events of the Bush/Gore election in 2000 that focused national attention on the voting process spurred passage of the Help America Vote Act of 2002 (HAVA).[18] In addition to requiring modernization of voting machinery and technology, that legislation required states to develop a centralized and computerized statewide voter registration list that is to contain the name and registration information for every legally registered voter in the state, with a unique identifier assigned to each person.[19] The list is to be "coordinated with other agency databases within the State," and all voter registration information obtained by any local election official must be entered into the list "on an expedited basis" at the time the information is provided. HAVA also required that the list be maintained regularly in order to remove ineligible voters. HAVA further provided that states could not accept a voter's registration for a federal elective office unless the applicant who had been issued a valid driver's license provided the license number.[20] As

[13] Voting Rights Act of 1965, 42 U.S.C. §§ 1973-1973aa-6 (1965). Section 5 of the Voting Rights Act, requiring preclearance, was applied to Bronx, Kings, and New York counties beginning in 1971. *See* Juan Cartagena, *Latinos and Section 5 of the Voting Rights Act: Beyond Black and White*, 18 NAT'L BLACK L.J. 201, 207-08 (2004-2005).

[14] *See* KEYSSAR, THE RIGHT TO VOTE, *supra.*

[15] National Voter Registration Act of 1993, 42 U.S.C. § 1973gg (1993).

[16] *See id.* § 1973gg-5 (voter registration agencies).

[17] *Id.* § 1973gg-4.

[18] 42 U.S.C. § 15301 *et seq.* (2002).

[19] *See* 42 U.S.C. § 15483(a)(1)(A).

[20] *Id.* § 303(a)(5).

a result, as have other states, New York has established a computerized statewide list of those registered to vote.

REGISTRATION AND THE NEW YORK CONSTITUTION AND STATUTES

The voter registration system in New York is a creation of the New York Constitution as well as of statute. Article II of the Constitution provides that "[e]very citizen shall be entitled to vote at every election" if he or she is at least 18 years old and has resided in the state, and in the county, city, or village, for 30 days preceding an election.[21] Article II contains a number of provisions relating to registration and voting, some of which are clearly mandatory. Section 5 requires that laws be made "for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters," which must be completed at least ten days before each election. Registration is not required for town and village elections, however, except by "express provision of law."[22] Section 7 specifies further that a signature is both necessary and sufficient to identify a voter: it requires the Legislature to "provide for the identification of voters through their signatures in all cases where personal registration is required" and to "provide for the signatures, at the time of voting," of all voters except those who are illiterate or disabled.[23]

Other provisions of Article II that affect registration are written to permit the Legislature to act, with certain restrictions. Section 6 allows (but does not require) the Legislature to provide for "a system or systems of registration whereby, upon personal application, a voter may be registered and his or her registration continued as long as the voter remains qualified to vote from an address within the jurisdiction of the board in which such voter is registered."[24] Section 9 allows the Legislature to permit someone who has been a state resident for 90 days preceding a presidential election to vote solely in that election, even if the voter recently moved within the state.[25]

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[21] N.Y. CONST. art. II § 1.

[22] *Id.* art. II § 5.

[23] *Id.* art. II § 7. Sections 3, 4, and 8 are also written as mandatory provisions. Section 3 deals with those who attempt to or do buy or sell their votes, or who have been convicted of "bribery or of any infamous crime." Section 4 specifies categories of persons who do not lose their residence for voting purposes even though they may not be physically present (*e.g.*, those in the U.S. armed services). Section 8 requires that all laws regarding boards or officers charged with registration of voters and distribution or counting of ballots provide for equal representation of the two political parties that received the highest number of votes in the preceding general election.

[24] *Id.* art. II § 6.

[25] Indeed, Section 9 even allows the Legislature to allow voters registered in New York to cast a ballot in a presidential election if they moved from New York within the previous year and are "not able to qualify to vote" in any other state. *Id.* art. II § 9.

Section 2, the only other section written using permissive rather than mandatory language, deals with absentee voting. *Id.* art. II § 2.

While the New York Constitution requires that registration be completed no later than ten days before an election, the Legislature has imposed a stricter requirement: citizens must submit their registrations no later than 25 days before an election.[26] Over the years the Legislature has imposed numerous and detailed requirements for registration of voters. As a result more than 100 sections of the state's election code, virtually all of which were written before the age of computers and the Internet, address issues relating to registration.

OTHER REGISTRATION MODELS

Democratically elected governmental entities generally approach registration in one of two ways: by placing the burden primarily upon the individual voter to register, or by placing the burden on the state to register each individual.

WITHIN THE UNITED STATES

With the exception of North Dakota, which does not require registration at all, most U.S. states place the burden on the individual to register. New York's requirement that a prospective voter submit his registration not less than 25 days before an election places it at the extreme of advance registration requirements.[27] At the same time many other U.S. states are moving to registration systems that make it easier for voters to register, a very clear effort by those states to increase voter participation. Today, twelve states and the District of Columbia allow unregistered voters to register and vote on Election Day and/or during an early voting period prior to Election Day.[28]

In addition, several states have moved to allow Same Day Registration (SDR) (a combination of Early In-Person Voting with registration on the day of voting) and those states have historically led the nation in voter turnout, with average turnout rates as much as 10 to 12 percentage points higher than non-SDR states. In the 2008 presidential election, SDR states led the nation in turnout by 7 percentage points and by nearly 6 percentage points in the 2010 midterm elections.[29] For the 2010 election, turnout among

[26] N.Y. ELEC. LAW § 5-210.

[27] *Id.*

[28] Alaska, Connecticut, Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, North Carolina, Rhode Island, Wisconsin, Wyoming, and Washington, DC. Some of these states allow Election Day or Same Day Registration only for presidential elections.

[29] LAURA ROKOFF & EMMA STOKKING, DEMOS, SMALL INVESTMENTS, HIGH YIELDS: A COST STUDY OF SAME DAY REGISTRATION IN IOWA AND NORTH CAROLINA 1 (Feb. 2012), *available at* http://www.demos.org/sites/default/files/publications/SDR-CostStudy-Final.pdf; *see also* Craig Leonard Brians & Bernard Grofman, *Election Day Registration's Effect on U.S. Voter Turnout*, 82 SOCIAL SCIENCE QUARTERLY 170 (March 2001) (Election Day Registration predicted to increase turnout by 7 percentage points on average); JACOB NEIHEISEL & BARRY BURDEN, UNIVERSITY OF WISCONSIN-MADISON, THE EFFECT OF ELECTION DAY REGISTRATION ON VOTER TURNOUT AND ELECTION OUTCOMES 4 (Oct. 19, (….continued)

the eight states that at the time offered Same Day Registration averaged above 47 percent, compared to the national average of 41 percent.[30] Turnout in New York State was 35.5 percent for the 2010 general election.[31]

OTHER COUNTRIES

Other democratic nations use data gathered for other purposes to make sure that their citizens are registered to vote. These efforts have resulted in significantly higher voter participation than in the United States. Various methods are utilized by the governments of these nations to accomplish the goal of expanding the voter registration rolls (as well as making them more accurate) while, at the same time, reducing overall costs associated with the system.

France, for example, requires its citizens to register for selective service at age 18, and it communicates that information to the local voting authorities. Argentina communicates its census information to voting authorities to identify all citizens who have reached age 16 and to place those individuals on the rolls. It also automatically registers prisoners to vote upon completion of their sentences. Australia registers all citizens who have a mailing address, although unlike in the United States, voting is mandatory).

Perhaps the most instructive example from other countries is Canada, which now reports that 93% of eligible citizens are registered. Because of the obvious parallels between Canada's democracy and the make-up of its citizens and ours, it is a very attractive model to consider.

Canadian citizens, like those in the U.S., are highly mobile, with an estimated 15% of citizens changing their addresses annually. The Canadian model utilizes information from its national health program, DMV license and auto registration, postal addresses, tax agency information, citizenship registration and other local agency data to form a national database, as well as provincial registration records. Information is updated automatically when notification of an address change or name change is provided to the post office, tax authorities, or DMV. A significant investment in

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(continued….)

2011) (surveying literature indicating that Election Day Registration increases turnout anywhere from 3 to 14 percentage points), *available at* https://mywebspace.wisc.edu/bcburden/web/nb2.pdf.

[30] *See* 2010 General Election Turnout Rates, United States Elections Project (Dec. 28, 2011), http://elections.gmu.edu/Turnout_2010G.html; *see also* Same-Day Voter Registration, National Conference of State Legislatures (Sept. 24, 2012), *available at* http://www.ncsl.org/legislatures-elections/elections/same-day-registration.aspx (listing states with Same Day Registration, and dates when enacted). The figure for states with Same Day Registration is above 48 percent if North Carolina, which allows Same Day but not Election Day Registration, is excluded. This calculation excludes the District of Columbia. *See supra* n.3.

[31] 2010 General Election Turnout Rates, United States Elections Project, *supra*.

technology allows Canada to cross check the information, as well as to remove voters from the rolls or change their districts based on new information. Although the state takes on the burden of registering individuals, individual consent remains necessary on registration documents and the individual is still allowed to opt out of registration.

Paralleling its very high rate of voter registration is a relatively high rate of voter participation in its elections.[32]

IMPROVING VOTER REGISTRATION IN NEW YORK

WHY REGISTRATION

Evaluation of proposals for improving the registration system in New York should first take into consideration the valid reasons for having a voter registration system. What the provisions regarding registration in the New York Constitution show is an understandable tension between two competing goals: on the one hand, the goal of universal suffrage for all citizens; and on the other, an interest in making sure that only qualified persons are allowed to vote. This latter interest is defined not only in terms of being able to identify the voter, but also by requiring that voters have established a residence in a particular jurisdiction prior to the election, so that they may be deemed to have some real stake in the outcome of that election.

Administratively, voter registration is a useful tool so that polling places can be staffed adequately, enough voting machines can be provided, and voters receive the correct ballot for their locality. Voter registration also can be used to prevent (or prove) voting fraud, and it provides evidentiary information for use in any challenge to an election. Registration information is also needed to provide a basis for prospective candidates to obtain signatures on nominating petitions, and to permit political parties to encourage their supporters to vote.

Because voter registration controls access to the polls, it can also be used as an obstruction to those who are legitimately interested in exercising the franchise. Historically, the requirement to register well in advance of an election has proven difficult for many groups, including young people, low-income populations, African Americans, Latinos, and people who move frequently. Americans who change addresses can easily find themselves unable to vote in their new Election Districts. All too many

[32] *See* JENNIFER S. ROSENBERG & MARGARET CHEN, BRENNAN CENTER FOR JUSTICE, EXPANDING DEMOCRACY: VOTER REGISTRATION AROUND THE WORLD 6-8 (2009), *available at* http://brennan.3cdn.net/3234b49c4234d92bf3_3km6i2ifu.pdf; *compare* Elections Canada, Estimation of Voter Turnout 3 (April 2012), *available at* http://www.elections.ca/res/rec/part/estim/estimation41_e.pdf (58.5% of adult Canadians voted in 2011) *with* 2008 General Election Turnout Rates, United States Elections Project (March 31, 2012), http://elections.gmu.edu/Turnout_2008G.html (56.9% of all adults in the United States voted in 2008).

citizens fail to re-register to vote or update their voter registration records in time (at least 25 days before Election Day under current law) to cast their ballots on Election Day. In fact, among those previously registered, recent movers make up about 43 percent of all non-voters. Interest and motivation to vote typically rises dramatically in the final weeks before an election, just at the time when registration is no longer an option in New York.[33]

PREVENTING FRAUD AND ERROR

Although New York's outmoded paper-based system appears to be secure, appearances can be deceiving. In fact, having a system that relies on paper forms frequently results in errors when information is put into the statewide computerized list. Relying on people to change their registrations when they move leaves many people on the rolls long after they have moved away from their Election District, which means that some may be tempted to come back to their old residence in order to vote. Those who move to another county or state may well end up registered in more than one district, which at minimum imposes too great a burden to gather petition signatures from those who seek to run for office and also at least opens up the possibility that they or others might seek to vote more than once.

The Pew Center on the States estimates that nationwide our electoral lists contain 24 million flawed registrations, including 1.8 million deceased individuals who are still on the rolls and 12 million records containing inaccurate addresses.[34] Not only do flawed voter registration rolls create the potential for duplicate records, fraud, manipulation, and mistakes on Election Day, but errors also lead to problems in election administration, including the disenfranchisement of eligible voters because of human error.

New York's voter rolls are reportedly riddled with errors. A 2004 New York City study found typographical errors in 20 percent of voter registration records.[35] Two administrative failures in New York's 2008 election demonstrate how the current paper-reliant system creates the opportunity for error and disenfranchisement. During the Presidential election of 2008, the large number of paper registration forms received just before the voter registration deadline created processing backlogs and required voters to

[33] *See, e.g.*, Christopher Keating, *Republicans, Democrats Clash Over Election Day Voter Registration*, Hartford Courant, May 5, 2012, *available at* http://articles.courant.com/2012-05-05/news/hc-republicans-democrats-clash-over-election-day-voter-registration-20120505_1_voter-turnout-voter-fraud-new-voters (quoting Connecticut State Senator Gayle Slossberg).

[34] PEW CENTER ON THE STATES: INACCURATE, COSTLY AND INEFFICIENT: EVIDENCE THAT AMERICA'S VOTER REGISTRATION SYSTEM NEEDS AN UPGRADE 1, 3 (Feb. 2012), *available at* http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Upgrading_Voter_Registration.pdf.

[35] *See* Deborah Hastings, *Voter Registration Lists May Foil Voters,* WASH. POST, Oct. 25, 2006, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2006/10/25/AR2006102501139.html.

wait in long lines to sign hastily-printed supplemental poll books.[36] According to State Board of Elections officials, "60,000 to 70,000 voters [had] to sign supplemental books that were printed recently—a complication that could yield confusion on Election Day."[37]

In December 2008, the New York Post reported that the State Board of Elections had shipped 3,552 voter registration forms to the New York City Board of Elections in September, well before the voter registration deadline, but that these paper forms were ignored until November 6, two days after the election.[38] "'They were sitting in a hallway,' said one source. 'No one noticed.'"[39] Although the city board rushed to enter the registrations into the record before the results were certified, so that affidavit ballots would be properly counted, thousands of residents could have been disenfranchised by the error.

ONLINE REGISTRATION

THE HISTORICAL EXPERIENCE

In New York alone, over two million people move each year; of those, about one-half million move from one New York county to another.[40] Currently, each of the 57 counties in the state outside of New York City has its own Board of Elections and there is one Board of Elections for New York City. Under Article II, § 6 of the Constitution, every voter who moves to a new county, or to or from New York City, must re-register when they do. Paper forms must be entered individually into the voter registration database, creating a burden on the election officials and introducing the opportunity for error in the election rolls.[41]

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[36] Sewell Chan, *Elections Board Expects High Turnout and Long Lines, and Asks for Patience,* N.Y. TIMES, Oct. 28, 2008, *available at* http://www.nytimes.com/2008/10/29/nyregion/29ballots.html?_r=1.

[37] *Id.*

[38] David Seifman, *3,500 Voters 'Vanished' in Election Snafu*, N.Y. POST, Dec. 2, 2008, *available at* http://www.nypost.com/p/news/national/voters_vanished_in_election_snafu_kboMlLv8eHxBqHipSuIfdL; *see also* Testimony of Laura Seago before the New York City Council Committee on Governmental Operations 4 (Feb. 9, 2010), *available at* http://www.brennancenter.org/page/-/Democracy/NYC%20Governmental%20Ops%20Testimony%2002-09-10.pdf.

[39] *Id.*

[40] *See* U.S. Census Bureau, American Factfinder, New York: Selected Social Characteristics in the United States: 2010, *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_DP02&prodType=table (reporting that 2,048,967 New Yorkers had lived in their current residences for less than a year, and that of those, 466,420 had moved across county lines within New York in the past year).

[41] *See, e.g.,* N.Y. ELECT. LAW art. 5, tit. II, § 5-202 *et seq*. (Registration And Enrollment).

Election officials routinely report that dealing with address changes is the most time-consuming aspect of voter list maintenance.[42] Further, many voters who move do not realize until shortly before Election Day that they must change their registration. Some voters who have moved then return to their old polling place to cast a ballot that is invalid but is nevertheless recorded because, in the voter's old district, the county voting rolls have not yet been updated.

GOVERNOR CUOMO'S ONLINE REGISTRATION INITIATIVE

In August 2012, Governor Cuomo announced that online registration, including the ability to designate a party and to change an address, would be available through the "MyDMV" web portal (i.e., a secure portion of the website of the state Department of Motor Vehicles).[43] In addition to providing an online option to register, the new system also provides for computerized electronic data entry at each DMV location and, once it is fully implemented, electronic transmission of the registration applications to the county boards of election, thereby eliminating the need for manual data entry. As the Governor's office has explained, the new system is intended "to replace the vast majority of paper forms and allow for the centralization and digital transmission of voter registration applications."[44]

The ability to register online, while a significant step forward, is by no means a total modernization of the registration system. First, voter registration is limited to those persons who have a driver's license or non-driver ID through the Department of Motor Vehicles. The poor, the elderly, and many residents of New York City or other urban areas are unlikely to be able to participate because they do not have or need drivers licenses. One of the organizations that met with the Committee advised that only 64 percent of New York City residents have either form of identification.[45]

Second, since the DMV already asks people who are applying for new licenses, ID cards, or permits whether they want to register to vote, the online process will pick up as new voters only those who did not previously take such an existing opportunity to

[42] For an example outside of New York, *see* Maria Matthews, Florida Department of State, "Florida Voter Registration System, Address List Maintenance and Records (Eligibility) Maintenance," PowerPoint slides (Apr. 16, 2009), *available at* http://www.myfloridaelections.org/ew_pages/presentation.matthews.pptaddress_and_records_maintenance_12011.pdf (discussing the many complications concerning address changes).

[43] *See* Press Release, Governor Andrew M. Cuomo, Governor Cuomo Announces Reforms to Expand Access to Voter Registration (August 16, 2012), *available at* http://www.governor.ny.gov/press/08162012-voter-registration-reform; *see also* MYDMV, https://my.dmv.ny.gov/crm/ (last visited Dec. 1, 2012).

[44] *See* Press Release, Governor Andrew M. Cuomo, *supra*.

[45] *See also* FEDERAL HIGHWAY ADMINISTRATION, OUR NATION'S HIGHWAYS: 2011 (May 2010), *available at* http://www.fhwa.dot.gov/policyinformation/pubs/hf/pl11028/chapter4.cfm (58 percent of New York state residents are licensed drivers).

register. It will, however, allow changes of address to be entered, which is a notable improvement.

Third, creating an account with "MyDMV" is a prerequisite to registration. Having to go through this process may well discourage some people from using the website.

Fourth, and most important, the State Board of Elections website does not currently offer the option of online registration; nor does it direct people or make any reference to the MyDMV portal.[46] The closest the BOE website comes to allowing online registration is by providing a form that can be filled in online, which then must be printed, signed, and mailed by hand to the appropriate county Board of Elections. Indeed, as of the date of writing this report, a Google search for "New York voter registration online" leads only to the State BOE website and not to MyDMV, thereby making it even less likely that potential registrants will find the online registration option. Review of the websites of the Boards of Elections of the most populous counties in the state shows that while the New York City BOE and Monroe County BOE (Rochester) websites direct people to the MyDMV website, the counties near New York City and other large upstate counties do not.[47]

Notwithstanding all of these issues, and the short time that the online registration option has been available, the Governor announced at the end of September 2012 that more than 16,000 people, including 6,000 first-time voters, had already used the new service. The new option clearly is, therefore, filling a need and is a welcome first step in providing an alternative means of registering to vote.[48]

THE EXPERIENCE OF OTHER STATES WITH AUTOMATED AND ONLINE REGISTRATION

As of 2010, at least seven states had fully automated their voter registration process through their motor vehicle departments, with the result that their DMV offices collect and transmit voter registrations to election officials electronically so that they may

[46] *See* NEW YORK STATE BOARD OF ELECTIONS, http://www.elections.ny.gov/ (last accessed Dec. 1, 2012).

[47] *See* BOARD OF ELECTIONS IN THE CITY OF NEW YORK, http://vote.nyc.ny.us/html/voters/voters.shtml (New York City); VOTER REGISTRATION, http://www2.monroecounty.gov/elections-registration.php (Monroe County); NASSAU COUNTY BOARD OF ELECTIONS, http://www.nassaucountyny.gov/agencies/BOE/voter_registration.html (Nassau County); REGISTER TO VOTE, http://www.suffolkvotes.com/register.asp (Suffolk County); REGISTER TO VOTE, http://citizenparticipation.westchestergov.com/register-to-vote (Westchester County); http://www.dutchesselections.com/Voting_Info/Register_to_Vote/index.htm (Duchess County); VOTER REGISTRATION REQUIREMENTS, http://www.putnamcountyny.com/index.php/board-of-elections/voter-registration/ (Putnam County); ALBANY COUNTY BOARD OF ELECTIONS, http://www.albanycounty.com/vote/default.asp?id=217 (Albany County); ONONDAGA COUNTY BOARD OF ELECTIONS, http://www.ongov.net/elections/voterRegistration.html (Onondaga County) (all sites last visited Dec. 1, 2012).

[48] *See* Press Release, Governor Andrew M. Cuomo, Governor Cuomo Announces More Than 16,000 New Yorkers Use New Online Voter Registration Website (September 27, 2012), *available at* http://www.governor.ny.gov/press/09272012-16kusemydmv.

be uploaded directly into their voter registration systems.[49] Seventeen more states—and eighteen if New York is included—have partially automated systems.[50]

Most of the systems require affirmation that the person is a citizen who is eligible to register to vote and entry of information from the person's driver's license.[51] If an exact match is found to DMV records, the systems prompt the user to enter any additional information needed for registration, such as party preference. The signature is retrieved from the DMV system and supplied on a secure website to the county election officials. Once the county has accepted the registration, a confirmation card is mailed. In Delaware, the applicant is instructed to print, sign, and mail a copy of the form; if she does not, she can still cast a regular ballot on Election Day if she shows identification and signs a form at her polling place.

The states that have implemented paperless registration report that they save money by doing so. Maricopa County, Arizona, for example, reports that it costs an average of only 3 cents to process an electronic registration, but 83 cents to process a paper form. Considering also the savings from not having to print and handle paper forms the savings totaled $450,000 in 2008.[52] Similar savings have been reported in other states and in Canada. Savings of 30 million Canadian dollars were reported for each election cycle.[53] Online registration has also been found to help keep the rolls more accurate, by allowing voters to update their information. It also reduces the use of provisional ballots (affidavit ballots in New York), which are time-consuming to process and often result in votes not being counted.[54]

In 2012, seven states (Colorado, Delaware, Maryland, Nevada, Utah, Virginia, and Washington) formed the Electronic Registration Information Center (ERIC) as part of their efforts to improve the accuracy of voter registration records.[55] ERIC is "a non-

[49] CHRISTOPHER PONOROFF, BRENNAN CENTER FOR JUSTICE: VOTER REGISTRATION IN A DIGITAL AGE 3 (2010) (Arizona, Delaware, Florida, Kansas, Pennsylvania, Rhode Island, and Washington), *available at* http://brennan.3cdn.net/806ab5ea23fde7c261_n1m6b1s4z.pdf.

[50] *Id.* The Brennan Center reported in 2010 that Arkansas, California, Georgia, Kentucky, Michigan, New Jersey, North Carolina, South Carolina, South Dakota, and Texas had partially automated systems. In December 2011 the League of Women Voters cited the National Conference of State Legislatures as reporting that Colorado, Indiana, Louisiana, Maryland, Nevada, Oregon, and Utah had all passed bills permitting online voter registration. *See* LEAGUE OF WOMEN VOTERS OF NEW YORK STATE, INCREASING VOTER PARTICIPATION: OPPORTUNITIES IN NEW YORK STATE (Dec. 2011), *available at* http://www.lwvny.org/vote/2011/EarlyVote121311.pdf.

[51] *See generally* BRENNAN CENTER FOR JUSTICE: VOTER REGISTRATION IN A DIGITAL AGE 8-9, *supra*.

[52] *Id.* at 12-13.

[53] JENNIFER S. ROSENBERG & MARGARET CHEN, BRENNAN CENTER FOR JUSTICE, EXPANDING DEMOCRACY: VOTER REGISTRATION AROUND THE WORLD 8 (2009), *available at* http://brennan.3cdn.net/3234b49c4234d92bf3_3km6i2ifu.pdf.

[54] *See generally* PROJECT VOTE, PROVISIONAL VOTING (last accessed Dec. 1, 2012), *available at* http://www.projectvote.org/provisional-voting.html.

[55] *See* PEW CENTER ON THE STATES, ELECTRONIC REGISTRATION INFORMATION CENTER (ERIC) (Nov. 2, 2012), http://www.pewstates.org/research/featured-collections/electronic-registration-information-center-eric-85899426022.

profit organization with the sole mission of helping states to improve the accuracy of America's voter rolls and increase access to voter registration for all eligible citizens." The ERIC data center "allows states to securely and safely compare voter data, thereby improving the accuracy of their rolls." States that join ERIC gain access to "state-of-the-art technology to compare information on eligible voters from official data sources submitted by the states." Among other benefits, they receive reports "where there is a highly confident match indicating a voter moved or died, or the existence of a duplicate record." Participating states also receive information on unregistered citizens who may be eligible to vote, enabling the states to reach out to those citizens to encourage them to register. The interstate data exchange provided through ERIC does not result in giving up control of the state's own database; nor does it automatically update, add, or remove voter records on the state's lists.[56]

RECOMMENDATION OF ONLINE REGISTRATION FOR NEW YORK

The Committee endorses Governor Cuomo's online registration directive as an important first step in fully implementing online registration in New York. Significant additions and improvements are recommended to expand the program, while maintaining the integrity of the registration system.

The online system that affords voters an easy electronic opportunity to register should be expanded so that it is not limited to those who hold or seek driver's licenses or non-driver IDs at the Department of Motor Vehicles. This should be done in two ways. First, all state or city agencies that are designated as voter registration agencies under HAVA should incorporate voter registration into their data systems. In addition the new Health Benefit Exchange that will be created under the "Obamacare Program" should from inception include voter registration as part of its data system.

Procedures should be set up to transmit individual registration information electronically from those additional agencies to the appropriate Boards of Elections, just as with the MyDMV system. Changes of address, as well as initial registrations, should be incorporated into these systems. These changes should be targeted to occur within a short period of time—the Committee suggests a year—so that they will be available well before the next federal general election. As part of this modernization process the State Board of Elections should consider whether New York should join the group of states participating in the ERIC data exchange. To the extent that any agency does not already have automated systems, we expect that such systems will be developed, given the evident efficiencies.

[56] *See* PEW CENTER ON THE STATES, ELECTRONIC REGISTRATION INFORMATION CENTER (ERIC), FREQUENTLY ASKED QUESTIONS (Nov. 2, 2012), http://www.pewstates.org/research/analysis/electronic-registration-information-center-eric-frequently-asked-questions-85899426025.

In such updated systems there are various steps that can be taken to assure that the privacy of individuals is protected.

By way of example:

> [I]t is easy to institute protocols that limit the information provided from one government agency to another. Such protocols can be laid out in legislation, partnership agreements between agencies, or unilaterally applied by election authorities. For example, although Canada's federal election agency routinely receives data from 40 different government agencies, these agencies share only basic information about each eligible voter: name, sex, date of birth, address, and citizenship information, where available. The election registry does not identify the original source of its voter information, or other demographic or personal information about the voters on its rolls.
>
> Second, data-sharing can be a one-way street. For instance, election officials in Canada and Australia receive information from various government agencies, but they are not authorized to provide information back to their sources. As an additional protection against unauthorized access of voters' information, none of these other government databases are directly "linked" to the national voter database. Instead, information is typically transmitted through a secure FTP server or on hard media like CD-ROM.[57]

In addition to the foregoing changes at agencies of government, a user-initiated online registration system should be created that permits all citizens of the state who are eligible to vote to register and to update their addresses. For those who do not already have signatures on file, the requirement should be that they provide a "wet signature" and bring identification to the polls the first time they vote. If they will not be able to vote in person, they should be required to submit identification and a signed form to the Board of Elections in advance of the election. Such an approach would directly parallel the current practice for those who register by mail.[58]

We recommend too that the State Board of Elections change its website, as should each of the county boards of elections, to direct citizens to the MyDMV website or, after a more comprehensive online registration system is established, to that system.

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[57] JENNIFER S. ROSENBERG & MARGARET CHEN, BRENNAN CENTER FOR JUSTICE, EXPANDING DEMOCRACY: VOTER REGISTRATION AROUND THE WORLD 23 (2009), *available at* http://brennan.3cdn.net/3234b49c4234d92bf3_3km6i2ifu.pdf.

[58] *See* NATIONAL VOTER REGISTRATION FORM 1 (last revised March 1, 2006), *available at* http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration_1209_en9242012.pdf (general instructions for registration by mail).

As a further step, the registration system should be tied to other state and, if feasible, federal agencies, beyond those designated as voter registration agencies in HAVA, to pick up additional registrations and changes of address. Such agencies could include, at the state level, the New York Department of Revenue, and at the federal level, the Internal Revenue Service and Medicare.

On balance, the Committee has concluded that because it would result in a greater increase in voter registration, as it has in Canada,[59] it would be best to have the registration option for voters at the various government agencies be designed so that the voter will be registered unless he chooses to opt out and not be registered. While some Committee members have expressed concern that such an opt-out provision will result in registration of citizens who may not affirmatively want to be registered, those in favor of the opt-out provision have urged that since the effect of the registration is to permit the voter to exercise a right, weighting the system in favor of registration should not be a concern; and the potential voter can exercise discretion and opt-out.[60]

A further suggestion of the Committee is that consideration be given to allowing those registered voters who move within the state, not just those who move within a county as is the current practice, to vote by affidavit ballot and to have their registration confirmed by checking the statewide database as a condition for recording their vote. The argument for that change of practice is that, as required by HAVA, the state now has a statewide database of registered voters that can be checked to confirm registration, while the previous restriction on moves to just those within a county was the product of there historically only being county-wide databases of registered voters.

While the Committee recommends that consideration be given to changing the practice, significant concern has been raised as to whether a voter allowed to cast a ballot in a new Election District after such a check of the statewide database might too easily also vote in his original home district and then again cast a ballot in the new district. The concern is that it will be too difficult to check between counties to determine whether the voter has cast a ballot in the original home district.

We would add that one of the potential benefits of a computerized process with a likely broader reach should be a reduction in opportunities for registration fraud. Such fraud may be perpetrated by those who seek to establish as a residence a location that

[59] *See* ROSENBERG & CHEN, *supra*, at 6.

[60] The Committee also considered whether the National Change of Address System (*see* http://www.nationalchangeofaddress.com/) should be used to update voter registrations and concluded that reliance on such changes of address in and of themselves would create too great a chance of voter registrations being changed inadvertently. Use of the NCOA System as simply one element of a process that verifies changes of address could be useful, as shown by the Canadian experience, and the Committee does not intend to discourage such an effort.

does not qualify[61] and others may take steps intended to purportedly register as voters, individuals who do not exist.[62]

While some of the changes we recommend could be accomplished without enactment of new laws by the Legislature, we believe that it would be best if the full modernization of the system were to result from legislation. The Committee, therefore, recommends that the Governor and the State and County Boards of Elections work together to implement online and automated registration systems to the extent that they can within the next year and that legislation be enacted in the same period to accomplish the modernization of registration overall.

PRE-REGISTRATION OF 16-YEAR-OLDS

In New York and other states, registration of those 18 to 29 years old has traditionally lagged registration for all other age groups.[63] To address this problem, several states have adopted the practice of pre-registering those between 16 and 18 so that they are already registered when they reach voting age; and in those states youth turnout has increased.[64] In those states efforts are made to reach out to students to remind them of what will become their civic duty and to invite them to voluntarily pre-register. Special focus is on the time when they apply for a driver's license after they turn 16 as a time to invite their registration.[65]

Given the experience in other states, we believe that it would be wise for New York to adopt such a pre-registration program. Especially with the registration process already modernized at the Motor Vehicles Bureau, it should be relatively easy to pre-

[61] *People of the State of New York v. John O'Hara,* 96 N.Y.2d 378, 385, 754 N.E.2 155, 158, 729 N.Y.S.2d 396, 400 (2001); *Wit v. Berman*, 306 F.3d 1256 (2002).

[62] Eric Shawn, *ACORN Pleads Guilty to Voter Registration Fraud in Nevada*, FOX NEWS (Apr. 6, 2011), http://www.foxnews.com/politics/2011/04/06/acorn-pleads-guilty-voter-registration-fraud-nevada; Horace Cooper: *Victims of Voter Fraud: Poor and Disadvantaged are Most Likely to Have Their Vote Stolen*, 635 NATIONAL POLICY ANALYSIS (Aug. 2012), *available at* http://www.nationalcenter.org/NPA635.html.

[63] ERIN FERNS LEE, PROJECT VOTE, ENFRANCHISING AMERICAN YOUTH (Sept. 2010), *available at* http://www.whatkidscando.org/youth_on_the_trail_2012/pdf/2010_Policy_Paper-Enfranchising_American_Youth.pdf; *see also* Stephen Ansolabehere, et al., *Movers, Stayers, and Registration: Why Age is Correlated with Registration in the U.S.*, QUARTERLY JOURNAL OF POLITICAL SCIENCE 333 (Oct. 14, 2011), *available at* http://www.kellogg.northwestern.edu/research/fordcenter/documents/12.04.12%20Ansolabehere_mobility_model_v6%201.pdf.

[64] PROJECT VOTE, EXPANDING THE YOUTH ELECTORATE THROUGH PREREGISTRATION (March 2010), *available at* http://www.whatkidscando.org/youth_on_the_trail_2012/pdf/2010%20Legislative%20Brief%20-%20Preregistration.pdf; MICHAEL MCDONALD, GEORGE MASON UNIVERSITY, VOTER PREREGISTRATION PROGRAMS (Nov. 2009), *available at* http://elections.gmu.edu/Preregistration_Report.pdf. State preregistration statutes include HAW. REV. STAT. § 11-12(b) and OR. REV. STAT. § 247.016.

[65] *Id.* at 6-8.

register those between 16 and 18 when they first apply for their driver's licenses. Such 16 to 18 year-olds may well also interact with other state and federal agencies and they could be readily included in ongoing efforts to make registration available at those agencies. Such 16-year-olds are also very likely to feel comfortable registering online.

We would add that such an effort could profitably be joined with civic education for high school students that would, among other things, encourage them to exercise their right to vote when they become eligible.

ELECTION DAY AND SAME DAY REGISTRATION

Those states that permit voters to register on Election Day or during an early voting period experience significantly higher voter turnout than in New York. "[F]or the 2008 presidential election, five of the six states with the highest turnout in the country were states with same-day registration."[66]

Election Day Registration permits eligible voters to both register and vote up until and on Election Day. Same Day Registration applies when there is Early In-Person Voting and permits eligible voters to both register and vote at the polls during the Early Voting period. Studies have demonstrated that implementing EDR or SDR improves voter turnout by approximately 6 to 8 percent.[67] Regarding EDR, in 2009 Steve Carbó, Senior Program Director at Demos, testified:

> In 2004, Demos commissioned two distinguished political scientists to study the potential impact of Election Day Registration in New York were the state to adopt it. Their subsequent report predicted substantial increases in voter turnout, in line with the experience of EDR states. Professors Jonathan Nagler and R. Michael Alvarez forecast an 8.6 percent increase in voter turnout in presidential elections. They went on to predict particularly even better results for citizens who have the greatest difficulty in maintaining an up-to-date voter registration record. Professors Nagler and Alvarez calculated the following:
>
> - A 12.3 percentage point increase in turnout by 18-to-25-year-olds.

[66] Assistant Attorney General Thomas Perez, Remarks at the George Washington University Law School Symposium (Nov. 16, 2012).

[67] *See supra* n. 29; *see also infra* n. 68.

- A 9.8 percentage point increase in turnout by those with a grade school education or less.

- An 11 point increase in turnout by Latinos, and an 8.7 percentage point increase in turnout by African Americans.

- A 10.1 percentage point increase in turnout by those who have lived at their current address for less than six months.

- A 12.2 percentage point increase in turnout by naturalized citizens.[68]

Carbó testified that we can reasonably expect similar results, provided that New York adopts Election Day or Same Day Registration as in other states.

It is generally accepted that in the absence of a Constitutional Amendment, EDR and SDR cannot be adopted in New York. That is so because the Constitution explicitly limits registration so that it can be accomplished only up to 10 days before an election.[69]

Given the very likely increase in voter participation that would result, we recommend that the necessary steps be taken to remove that Constitutional barrier to Election or Same Day Registration and adopt Election Day and, with Early Voting, Same Day Registration.

Understanding the difficulties in making such a change and the time it will take, in the interim while a Constitutional amendment is considered, we recommend that the Legislature take the more limited step of amending state law to change the registration deadline to the constitutionally permissible 10 days prior to Election Day, down from the current 25 days. This would allow a larger number of voters to participate and would reduce the problems confronted by those who move within the state but often do not register at their new district as promptly as they could.

We also recommend that pending the adoption of Election Day or Same Day Registration statewide, consideration be given to adopting Election Day or Same Day Registration for local elections in which the stringent constitutional 10-day before election rule does not apply. Such local experiments in towns and villages, which would be consistent with the Constitution,[70] could provide a valuable first step for the state.

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[68] Testimony of Steven Carbó, Senior Program Director, Demos, Hearing of the New York State Standing Comm. on Elections (April 25, 2009), *available at* http://www.demos.org/sites/default/files/publications/FINAL%20NY%20Senate%20EDR%20testimony%204-25-09%20FINAL.pdf.

[69] N.Y. CONST. art. II § 5.

[70] *Id.* ("Such registration shall not be required for town and village elections except by express provision of law.").

THE VOTING PROCESS

In addition to recommending changes in the state's registration process, the Committee also recommends that significant changes be made in the voting process to make that process more accommodating. Voting should not be a trial for voters, as it often is.

EARLY IN-PERSON VOTING

Early In-Person Voting has proved to be very popular in the many states where it has been adopted. Altogether thirty-two states have instituted such Early In-Person Voting, with the voting before Election Day often taking place at either consolidated or temporary poll sights, frequently referred to as "Super-Poll" sights. For such polling places various states use county offices, libraries, clerk's offices, firehouses, schools, churches and even in some cases shopping centers. As set out in a report to the Florida State Senate by its Committee on Ethics and Elections, "[e]arly voting gives busy people or those with special needs a more convenient opportunity to vote. Persons with weekday time limitations such as long distance commuters and hourly wage earners can use the weekend during the early voting period to cast a ballot. Early voting also provides those with disabilities an opportunity to cast a ballot when time and crowds are less of a factor."[71]

The practice began in the late 1980s[72] and, due to its popularity, it has spread through the country. It is, for example, particularly popular in Texas where more than 25% of the total votes have come to be cast in the designated period before Election Day. It is noticeable that in those states that have gone to early voting the percentage of total voters taking advantage of the early voting opportunity has climbed steadily over time.

Of the states that have adopted the practice so far, the average number of days for early voting is 19, and some states have extended that period to over a month.[73] They have clearly chosen to do so because of the convenience it brings to voters. However, to

[71] FLORIDA SENATE, COMMITTEE ON ETHICS AND ELECTIONS, THE EFFECT OF EARLY VOTER TURNOUT IN FLORIDA ELECTIONS: 2010 UPDATE, INTERIM REPORT 2011-118 (Oct. 2010), *available at* http://www.flsenate.gov/Committees/InterimReports/2011/2011-118ee.pdf.

[72] BARRY BURDEN ET AL., UNIVERSITY OF WISCONSIN-MADISON, ELECTION LAWS, MOBILIZATION, AND TURNOUT: THE UNANTICIPATED CONSEQUENCES OF ELECTION REFORM 17 (Jan. 5, 2012), *available at* http://electionadmin.wisc.edu/bcmm12.pdf; Testimony of John C. Fortier, American Enterprise Institute, *Voting By Mail: An Examination of State and Local Experience*, S. Comm. on Rules and Administration 4 (May 5, 2010), *available at* http://www.aei.org/files/2010/05/05/FortierTestimony051010.pdf.

[73] NATIONAL CONFERENCE OF STATE LEGISLATURES: ABSENTEE AND EARLY VOTING, *available at* http://www.ncsl.org/legislatures-elections/elections/absentee-and-early-voting.aspx (Sept. 4, 2012) ; *see also* LONG DISTANCE VOTER (Nov. 19, 2012), *available at* http://www.longdistancevoter.org/early_voting_rules (describing early voting rules for each state).

reduce cost those states have commonly located polling places so that most voters do have to travel a considerable distance to cast their ballots.

While such Early In-Person Voting has been very popular the record does not establish that there has been a significant increase in voter turnout as a result of the practice alone. Some studies have shown a 1% or possibly a 3% increase in voter participation over time.[74] Others suggest that there may have in some cases actually been a resulting decrease in voter participation, notwithstanding the popularity of the practice.[75]

Although that is the record when Early In-Person Voting has been adopted alone, it is important that even critics of early voting have acknowledged that the combination of Early In-Person Voting and Same Day Registration has a positive effect on voter turnout.[76]

One study has suggested that a reason why voter turnout has not increased when Early Voting alone is adopted – even though it is evident that many voters find it convenient – is that the convenience that may well bring some voters to the polls is offset by the fact that the extended period has the effect of limiting and diluting the efforts of those who seek to mobilize voters.[77] Assuming that to be correct, it would appear that the longer the early voting period the more it may limit voter mobilization.

It has been suggested too that the practice may in some elections mean that votes will be cast before significant pre-election events that would otherwise have influenced voters. Also, it has been argued that the greater cost and burden on election officials outweighs the interest of the voters in a convenient process. It has also been urged that by spreading the voting over an extended period the community spirit that typically attends election day—which can stimulate voter interest—is likely to be lost.[78]

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[74] FLORIDA SENATE, COMMITTEE ON ETHICS AND ELECTIONS, THE EFFECT OF EARLY VOTER TURNOUT IN FLORIDA ELECTIONS: 2010 UPDATE, INTERIM REPORT 2011-118 at 5 (Oct. 2010), *available at* http://www.flsenate.gov/Committees/InterimReports/2011/2011-118ee.pdf (surveying literature); JAN LEIGHLEY AND JONATHAN NAGLER, PEW CHARITABLE TRUSTS, MAKING VOTING WORK, THE EFFECTS OF NON-PRECINCT VOTING REFORMS ON TURNOUT, 1972-2008 at 16 (Jan. 2010) , *available at* http://www.pewtrusts.org/uploadedFiles/wwwpewcenteronthestatesorg/Initiatives/MVW/Leighley_Nagler.pdf (calculating a 2.8 percent increase in turnout for 45-day early voting period).

[75] *See, e.g.*, BURDEN ET AL., ELECTION LAWS, MOBILIZATION, AND TURNOUT, *supra*.

[76] BARRY BURDEN, ET AL., UNIVERSITY OF WISCONSIN-MADISON, THE EFFECTS AND COSTS OF EARLY VOTING, ELECTION DAY REGISTRATION, AND SAME DAY REGISTRATION IN THE 2008 ELECTIONS 2 (Dec. 21, 2009), *available at* http://www.pewtrusts.org/uploadedFiles/wwwpewcenteronthestatesorg/Initiatives/MVW/UWisconsin.pdf.

[77] *See* BURDEN, ELECTION LAWS, MOBILIZATION, AND TURNOUT: THE UNANTICIPATED CONSEQUENCES OF ELECTION REFORM, *supra*.

[78] *See, e.g.*, Ann Gerhart, *Election 'Day'? With Early Voting, It's More Like Election Month*, WASH. POST, Nov. 5, 2012, *available at* http://www.washingtonpost.com/politics/decision2012/election-day-with-early-voting-its-more-like-election-month/2012/11/05/5a6a3786-2768-11e2-b2a0-ae18d6159439_story.html.

While we fully respect the foregoing concerns, it is the conclusion of the Committee, with one dissent, that it would be well for New York to adopt Early In-Person Voting as the cornerstone for an overall effort to make the voting experience more accommodating for the voter. To the extent that the voting experience for voters has often been a trial due to long lines or the difficulty of voting on one specific day, early voting may well improve their experience and over time encourage them to vote regularly.

To enhance the likelihood that adopting the practice will increase voter participation, we believe that a shorter period than that adopted in most other states would be best for New York. We believe that such a shorter period, the weekend and Monday before Election Day—and at most the three preceding days of the prior week—would not only limit the cost but more likely preserve the community spirit and interest of voters that can be lost over a longer period. It would also tend to allow for more of the traditional mobilization of voters that might be diluted with a longer period.

We would also strongly recommend that since a shorter period would be less costly than the practice in other states, some of the comparative cost savings be used to establish more convenient polling places during the shorter time. That too would likely encourage voters and could increase turnout.

As to the actual location of polling places we would recommend leaving that to the individual Boards of Election because of the wide variation in transportation options among the various Election Districts throughout the state. While it is evident that, where practical, polling places would best be near public transportation, the possibility of that will vary greatly from one part of the state to another.

Similarly, recognizing the widely varying circumstances in the Election Districts across the state, we would leave to local Boards the choice of best steps to assure that records of those who voted are kept and poll books updated over the Early Voting period.

It will also be important that legislation adopting Early Voting include provision for appropriate funding.

A DISSENT

Special Committee Member John Faso dissents from the Committee's Recommendation of Early In-Person Voting. His reasons for dissent are the following:

> "The special committee has undertaken an important task and I applaud the co-chairs for their diligent efforts in preparing this important report. In the main, I am in agreement with most of the proposals contained in the report but disagree with the recommendation in support of early voting in New York State.

Our task was to consider proposals which would increase voter participation in the state. All the evidence which I have reviewed regarding early voting indicates strongly that it does not increase voter participation. While it may increase convenience of some voters who would otherwise vote on Election Day, it does not increase the size of the turnout.

Curtis Gans is the Director of the Center for the Study of the American Electorate. Gans is perhaps the most preeminent student of American voting habits and has conducted numerous studies of the US electorate over the past 35 years. Gans has concluded that early voting is of little benefit and may actually act to reduce voter turnout.[79] Gans is also dismissive of so-called "convenience voting", particularly early voting, no-excuse absentee voting and mail voting – arguing that these devices "do not enhance and may hurt turnout". He also worries that early voting will increase the chance that many voters will have cast a ballot prior to a last minute event such as a terrorist event or candidate health event, which might otherwise affect a vote.[80]

Another expert, in testimony before the US Senate in 2010, summarized his findings regarding early voting as follows:

"In anything but very low turnout local elections, absentee and early voting do not increase turnout. Studies continue to be done, and this is a common finding. Essentially the same people who would go to a polling place to vote on Election Day are motivated to vote by mail or to show up at early voting places. New voters are not attracted to elections because of these processes."[81]

The Committee recognizes that early voting is unlikely to increase voter participation but attempts to "split the baby" with its recommendation that early voting be adopted in the days just prior to the General Election. It does so from a belief that early voting will be more convenient for citizens. Indeed, it may be more convenient for some who would otherwise be showing up on Election Day. However, the recommendation

[79] Curtis Gans, Committee for Study of the American Electorate, Making it Easier Doesn't Work – No Excuse Absentee and Early Voting Hurt Voter Turnout; Create Other Problems (September 13, 2004), *available at* http://www1.american.edu/ia/cfer/research/csae_09132004.pdf.

[80] Curtis Gans, Much-hyped Turnout Record Fails to Materialize/Convenience Voting Fails to Boost Balloting (November 6, 2008), *available at* www.american.edu/spa/cdem/upload/csae2008gpprfull.pdf.

[81] Testimony of John C. Fortier, American Enterprise Institute, *Voting By Mail: An Examination of State and Local Experience*, S. Comm. on Rules and Administration 4 (May 5, 2010), *available at* http://www.aei.org/files/2010/05/05/FortierTestimony051010.pdf.

ignores the cost to taxpayers. A new law imposing early voting on counties and the City of New York represents yet another unfunded mandate on local governments. Boards of Elections would have to staff multiple early voting sites on additional days prior to the General Election, resulting in additional costs for personnel. The days immediately prior to a General Election are also filled with frenetic activity in the Board of Elections, making it unlikely that they have the resources or staff to conduct early voting at such times.

Fiscal realities in our state at this time make it highly unlikely that state government would pay for such costs. I question whether the convenience for some is worth the ultimate cost to taxpayers, especially when early voters are likely the same people who would otherwise turnout on Election Day.

There are other reasons why I remain troubled by early voting. Early voting reduces the communitarian aspect of Election Day, where our citizens come forth from disparate locations to participate on the same day in a solemn moment to choose their elected representatives. There is a benefit to the vast majority of people, having the same information (or misinformation) casting their ballots on the same day. We should also recognize that reasons why some people do not vote has little to do with burdens of registration or election procedure and more to do with an alienation from the political system or simply a blissful and willful ignorance of the process. While regrettable, I am hard-pressed to think that new voting procedures will alter such opinions.

For the foregoing reasons, I respectfully dissent from the special committee's recommendation on this topic."

John J. Faso

NO-EXCUSE ABSENTEE BALLOTS

As an alternative to traditional voting, No-Excuse Absentee Ballots—which allow voters to cast ballots by mail without going to their designated Election Day poll sites and without any excuse—are another way to make it easier to vote.

In New York, however, absentee voting is significantly curtailed by explicit Constitutional language that permits absentee voting only when a voter is or expects to be absent from his or her county or city of residence on Election Day, or is physically unable to vote. Other states are considerably more lenient—and in fact a majority now permit

some form of No-Excuse Absentee Voting. Because the Committee recognizes that eliminating the current restrictions on absentee balloting could increase voter participation, it has considered whether New York should follow the lead of the numerous other states that have instituted the practice.

ABSENTEE VOTING IN NEW YORK

Under the New York Election Law, pursuant to Article II, Section 2 of the New York Constitution, [82] absentee voting is authorized in only very specific circumstances, when the voter expects to be:

(a) absent from the county of his or her residence [or New York City] on election day;

(b) unable to appear personally at the polling place of the election district in which he or she is a qualified voter because of illness or physical disability or duties related to the primary care of one or more individuals who are ill or physically disabled, or because he or she will be or is a patient in a hospital;

(c) an inmate or patient of a veteran's administration hospital; or

(d) absent from his or her voting residence because he or she is detained in jail awaiting action by a grand jury or awaiting trial, or confined in jail or prison after a conviction for an offense other than a felony, provided that he or she is qualified to vote in the election district of his or her residence.[83]

While these requirements were recently made more permissive—and as of 2010 no longer require that a voter be "unavoidably" absent because of vacation or "duties, occupation, business, or studies require him to be elsewhere"[84]—they nevertheless require that, unless a New York voter is or will be disabled, ill, a primary caregiver, an inmate, or a hospital patient, he or she must be entirely absent from his or her county (or New York City) on Election Day in order to vote via absentee ballot. As a result, typically a relatively small number of New York voters vote absentee. According to a 2010 U.S. Election Assistance Commission survey, approximately 3% of New York

[82] More specifically, article II, section 2 provides as follows:

> The legislature may, by general law, provide a manner in which, and the time and place at which, qualified voters who, on the occurrence of any election, may be absent from the county of their residence or, if residents of the city of New York, from the city, and qualified voters who, on the occurrence of any election, may be unable to appear personally at the polling place because of illness or physical disability, may vote and for the return and canvass of their votes.

N.Y. CONST. art. II, § 2.

[83] N.Y. ELEC. LAW § 8-400.

[84] The laws relating to absentee ballots were also altered such that a voter now need only "expect" that he or she will meet one of the statutory criteria. *Id.*

voters voted via absentee ballot in the 2010 election,[85] compared with estimates that nearly 20% of voters nationally voted absentee.[86]

ABSENTEE VOTING IN OTHER STATES

As of July 2011, twenty-seven states and the District of Columbia permitted No-Excuse Absentee Balloting.[87] Seven of those states and the District of Columbia, also permitted permanent No-Excuse Absentee Voting, pursuant to which voters automatically receive absentee ballots.[88] Two states, Oregon and Washington, conduct elections exclusively by mail[89] – and a very significant number of voters in Arizona, California and Colorado cast their ballots by mail as well.[90]

In the twenty-seven states that permit No-Excuse Absentee Voting, approximately 22% of all votes were submitted by mail. In states where No-Excuse Absentee Voting is not allowed, only approximately 6% of the votes were mailed.[91] According to the 2010 U.S. Election Assistance Commission survey, the states with the highest percentages of absentee ballots cast in the 2010 election—Colorado (69.4%), Arizona (60.9%), California (40.5%)—all allow No-Excuse Absentee Voting.[92]

Among other things, allowing No-Excuse Absentee Voting can potentially reduce administrative costs by reducing the need for poll workers and poll sites.

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[85] U.S. ELECTION ASSISTANCE COMMISSION, THE 2010 ELECTION ADMINISTRATION AND VOTING SURVEY: A SUMMARY OF KEY FINDINGS 22 (Dec. 2011), *available at* http://www.eac.gov/assets/1/Documents/990-281_EAC_EAVS_508_revised.pdf.

[86] Adam Liptak, *As More Vote by Mail, Faulty Ballots Could Impact Elections*, N.Y. TIMES (Oct. 6, 2012), *available at* http://www.nytimes.com/2012/10/07/us/politics/as-more-vote-by-mail-faulty-ballots-could-impact-elections.html?pagewanted=all.

[87] NATIONAL CONFERENCE OF STATE LEGISLATURES: ABSENTEE AND EARLY VOTING, *available at* http://www.ncsl.org/legislatures-elections/elections/absentee-and-early-voting.aspx (Sept. 4, 2012) (listing states).

[88] *Id.* (listing states). Several other states – including New York – provide permanent absentee ballots to voters who meet certain criteria, such as having permanent disabilities. *Id.*; *see also* N.Y. ELEC. LAW § 8-400(4) ("A voter who claims permanent illness or physical disability may make application for an absentee ballot and the right to receive an absentee ballot for each election thereafter as provided herein without further application, by filing with the Board of Elections an application which shall contain a statement to be executed by the voter.").

[89] *See* NATIONAL CONFERENCE OF STATE LEGISLATURES, *supra*.

[90] *See Voting by Mail*, N.Y. TIMES, Oct. 6, 2012, *available at* http://www.nytimes.com/interactive/2012/10/07/us/voting-by-mail.html (estimating that 66% of Colorado voters voted by mail in 2010); MARK DICAMILLO & MERVIN FIELD, THE FIELD POLL, 3-4 (Nov. 6, 2012), *available at* http://field.com/fieldpollonline/subscribers/Rls2434.pdf (estimating that the November 2012 election was the first general election in which more than half of California voters (51%) voted by mail).

[91] Charles Stewart III, *Losing Votes by Mail*, 13 N.Y.U. J. LEG. & PUB. POLICY 573, 582 (2010).

[92] U.S. ELECTION ASSISTANCE COMMISSION: 2010 ELECTION ADMINISTRATION AND VOTING SURVEY 21 (Dec. 2011), *available at* http://www.eac.gov/assets/1/Documents/990-281_EAC_EAVS_508_revised.pdf. Note, however, that (1) the U.S. Election Assistance Commission survey does not always clearly distinguish between absentee voting and voting by mail, and (2) that survey only reflects voting patterns in those election jurisdictions that responded.

As with Early In-Person Voting the case has not been made that use of No-Excuse Absentee Ballots increases voter participation significantly.[93]

THE CONSEQUENCES OF EXPANDING ABSENTEE VOTING

At the same time, there are significant concerns about the effects of No-Excuse Absentee Voting. First, there are reports in various states that indicate that a much higher percentage of ballots cast by mail are rejected because of mistakes in their preparation and not infrequent reports of doubts about the reliability of election results due to disputes over whether such ballots have been cast properly. At least one commentator has suggested that there is a failure rate of up to 21% as the result of requested ballots not reaching voters, mailed ballots not reaching election officials, and election officials rejecting submitted absentee ballots.[94]

Also, an important concern is that permitting No-Excuse Absentee Voting provides increased opportunities for fraud, whether by creating opportunities for third parties to improperly assist voters with absentee ballots or collect multiple ballots and submit them, effectively stuffing the ballot box. As one commentator has said:

> Ever since absentee balloting first became an option in the early 20th century, the risks of fraud and coercion with this method have been debated. In particular, some critics think that a large expansion of absentee voting would threaten the security of the ballot. Though there is a solid paper trail left behind from this kind of voting and no chance of machine malfunction, this method is seen as being less secure because a voter's identity is not verified in the same ways as in-person voting. There is no way of knowing whether a voter actually filled out a ballot by him or herself, or whether someone (e.g., a caretaker) filled it out for them, had the voter sign the form, and sent it in.[95]

RECOMMENDATION

Although the Committee appreciates the convenience for voters in using No-Excuse Absentee Ballots, we are not to the point of recommending a change in the law favoring such ballots. Our view instead is that Early In-Person Voting is preferable as a

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[93] *But see* JAN LEIGHLEY AND JONATHAN NAGLER, PEW CHARITABLE TRUSTS, MAKING VOTING WORK, THE EFFECTS OF NON-PRECINCT VOTING REFORMS ON TURNOUT, 1972-2008 at 16 (Jan. 2010) , *available at* http://www.pewtrusts.org/uploadedFiles/wwwpewcenteronthestatesorg/Initiatives/MVW/Leighley_Nagler.pdf (finding that "contrary to conventional wisdom, no-fault absentee voting *has* raised turnout").

[94] Adam Liptak, *As More Vote by Mail, Faulty Ballots Could Impact Elections*, N.Y. TIMES (Oct. 6, 2012), *available at* http://www.nytimes.com/2012/10/07/us/politics/as-more-vote-by-mail-faulty-ballots-could-impact-elections.html?pagewanted=all.

[95] LEAGUE OF WOMEN VOTERS OF NEW YORK STATE, INCREASING VOTER PARTICIPATION: OPPORTUNITIES IN NEW YORK STATE 8 (Dec. 2011), *available at* http://www.lwvny.org/vote/2011/EarlyVote121311.pdf.

way to increase voter convenience and that it comes without the attendant problems that have been reported in other states to result from the use of mailed ballots.

The Committee is concerned by the reports of cases where a significantly higher percentage of votes were ultimately rejected because of mistakes made by voters in filling in or signing their ballots and elections that were in doubt because of their dependence on the count of absentee ballots which were subject to interpretation. It is also concerned by reports of and the potential for fraud with such ballots. While we believe that far more honest voters would benefit from the convenience of using No-Excuse Absentee Ballots than the number of those votes that would be fraudulent, there is nevertheless reason to be concerned that instances of fraud could have a significant impact in close elections and could fuel the widespread belief that the voting process is often subject to fraud.

While actual measurable voting fraud does not appear to be significant as it relates to elections overall, a very substantial number of voters believe that fraud is a serious problem and further fueling their doubts does not appear to be worth the added convenience of voters casting their ballots by mail. Better to have early votes cast in person, with the greater security that attends that way of voting.

IMPROVED BALLOT DESIGN

Commencing in 2010, New York voters began casting their ballots on optical scan voting machines using paper ballots. The design of the ballots used in that and in subsequent elections and primaries has engendered criticism.[96] The result of poor ballot design makes the ballot difficult to read and can lead to voter error and loss of the franchise.[97] Those concerns appear to have registered and prompted efforts to improve ballot design. We strongly recommend that such efforts be continued.

Ballot design in New York is mandated by Article 7 of the Election Law.[98] The principal source of the ballot design problems is that the ballot design requirements, principally in Article 7, were originally drafted for the mechanical lever machines that were used in New York for decades. Those requirements resulted in a scanable paper ballot that is not as clear and readable as a ballot should be.

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[96] *See, e.g.*, *Voters Annoyed by Hard-to-Read Ballots*, N.Y. TIMES, Sept. 17, 2012, *available at* http://www.nytimes.com/2012/09/18/nyregion/new-york-city-voters-annoyed-by-hard-to-read-ballots.html.

[97] LAWRENCE NORDEN AND SUNDEEP IYER, BRENNAN CENTER FOR JUSTICE, DESIGN DEFICIENCIES AND LOST VOTES (2011), *available at* http://brennan.3cdn.net/6fbbc223d181f475a4_fkm6ixf0v.pdf.

[98] N.Y. ELECT. LAW art. 7, § 7-100 et al.

Among the specific design mandates of the current Election Law are the following:

(a) A uniform size type must be used for all candidates' names.[99]

(b) The names of candidates must be printed in all capital letters.[100]

(c) The space for the name of the candidate shall be 1/4 inch in depth.[101]

In addition, there are design mandates for ballots on the lever voting machines that are not included in the requirements for scanable paper ballots but are uniformly followed in preparing paper ballots, including the following:

(a) The party name and a designating letter and number must be included in the box with the candidate's name.[102]

(b) At the head of each column or row containing the names of each party's candidates must be printed the image of a closed fist with a pointing index finger. In the same space the name of the party, the emblem of the party and a designating letter of the row or column must be included.[103]

The Election Law also mandates the specific language for instructions which must be printed on the ballot in eight separate numbered paragraphs. The law permits the instructions to be printed on the front or back of the ballot or on a separate sheet or card.[104]

Perhaps most important the Election Law does not mandate a minimum font size for any information on the ballot including the office for which a vote is cast, the candidates' names or the instructions.

In addition, reflecting limitations of the old mechanical lever machines, the Election Law mandates that "Each office shall occupy as many columns or rows on the machine as the number of candidates to be elected to that office."[105] If more than eight positions are needed for an office, a second column or row is to be used. The use of eight

[99] N.Y. ELEC. LAW § 7-106(2).

[100] *Id.*

[101] *Id.* § 7-106(8).

[102] *Id.* § 7-104(3)(a).

[103] *Id.* § 7-104(7).

[104] *Id.* § 7-106(6).

[105] *Id.* § 7-104(3)(c).

positions for each column or row has been carried over to the paper ballots currently used resulting, in some cases, in the use of a second row or column for some offices. As a result, on paper ballots it is possible for a person to mistakenly vote for the same candidate twice because she appears on more than one line. The result of such overvoting can be the loss of a person's vote. Mechanical lever machines were designed to prevent overvoting, i.e., voting for more candidates than permitted. Such protection is not provided with paper ballots and, while the ballots contain instructions to avoid overvoting, those instructions are often missed by voters.[106]

The result of the statutory mandates is a paper ballot that can be cluttered, confusing, difficult to read and can lead to the loss of one's vote. A confusing ballot and hard-to-understand or difficult-to-locate instructions can result in mismarked ballots and uncounted votes.[107] The failure to mandate a minimum font size challenges the voter's ability to even read the ballot.[108] To the extent that the ballot continues to be off-putting, it will discourage voting.

A change in the law to require application of modern usability principles would produce a more user-friendly ballot and minimize confusion and mistakes reducing the number of lost votes. We recommend that the ballot design mandates of the Election Law be amended to, at a minimum, provide the following:

1. Require a minimum font size—12 point—for all information on the ballot including the title of the office, the candidate's name and the instructions.

2. Eliminate the requirement that the party name and a designating letter and number be included in the box with the candidate's name.

3. Require a more readable format including sans serif type and initial capitalization only of candidates' names and parties.

4. Provide flexibility in the size of the box in which the candidate's name appears, not limiting it to 1/4 inch, provided that the size is uniform on the ballot.

5. Eliminate the requirement that the closed fist symbol be used at the head of each column or row.

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[106] *See, e.g.*, LAWRENCE NORDEN AND SUNDEEP IYER, BRENNAN CENTER FOR JUSTICE, DESIGN DEFICIENCIES AND LOST VOTES (2011), *available at* http://brennan.3cdn.net/6fbbc223d181f475a4_fkm6ixf0v.pdf (describing confusion instructions and insufficient overvote notifications in multiple states).

[107] LAWRENCE NORDEN, ET AL, BRENNAN CENTER FOR JUSTICE, BETTER BALLOTS (2008), *available at* http://brennan.3cdn.net/d6bd3c56be0d0cc861_hlm6i92vl.pdf.

[108] *See Voters Annoyed by Hard-to-Read Ballots*, N.Y. TIMES, Sept. 17, 2012, *available at* http://www.nytimes.com/2012/09/18/nyregion/new-york-city-voters-annoyed-by-hard-to-read-ballots.html.

6. Simplify the instructions using plain English and mandate that the instructions be at the top of the ballot (and, if the back of the ballot is used for ballot proposals, immediately adjacent to the proposals) and include an illustration of how to properly mark the ballot.

7. Require to the maximum extent possible that all candidates for an office be in a single column or row.

8. Permit the use of shading, coloring and borders to distinguish the parts of a ballot to make it clearer and more understandable.

Ballot design mockups by Drew Davies, Oxide Design Co. / AIGA Design for Democracy for the Brennan Center (set out in the Appendix as Sample Ballot Concept at pp. 50-52) demonstrate that incorporating these recommendations would result in a ballot that is clearer, more readable and easier to use.

Beyond these changes we recommend also a change in the way different languages are treated on the ballot.

The Voting Rights Act of 1965, as amended,[109] requires New York to provide ballots and other voting materials in multiple languages to facilitate the participation of those for whom English is not their first language. Based on census data ballots are to be available in languages other than English spoken by a significant percentage of voters in an area. In complying with that requirement the current practice in many districts is to provide ballots with several languages, not just English and another single language spoken in an area. For Queens, for example, every ballot is printed in five languages, while in Brooklyn and Manhattan three languages are currently on the ballot. Because a ballot with so many languages can be difficult to read and confusing, we recommend that all ballots be printed in English and, at most, one other language. Voters should be provided with the appropriate ballot based on their indication of language preference at the time they register or at the time they vote. Ballots with the languages shown by census data to be spoken by significant numbers of voters in the area should be made available in sufficient quantities in each district. While such a practice will further burden election inspectors, who will have to keep track of multiple ballots and inquire of each voter which ballot they would prefer, it should result in a clearer, simpler ballot, fewer voter mistakes and fewer lost votes.

In addition, we urge the State Board of Elections to provide to each of the Boards of Elections in each county and New York City appropriate samples of usable ballots for the information and guidance of the voters in their areas. In turn the Boards of Elections should make sample ballots more widely available to voters prior to an election through

[109] Voting Rights Act of 1965 § 203, 42 U.S.C. § 1973aa-1a; Voting Rights Act Amendments of 2006, Determinations Under Section 203, 76 Fed. Reg. 63,605 (Oct. 13, 2011), *available at* http://www.justice.gov/crt/about/vot/sec_203/2011_notice.pdf.

newspaper circulations and mailings, as they are currently made available online. Doing so will give voters the opportunity to familiarize themselves with the ballot, including its instructions, and, perhaps, eliminate some of the errors voters may make when faced with a complex ballot at the polling place. The Election Law already permits Boards of Elections to mail sample ballots to voters OR to publish a sample ballot in a newspaper at least once, and we strongly recommend that that be done as a regular practice. In addition the law requires a sample ballot to be sent to each high school for posting at each school.[110]

POLL WORKER RECRUITMENT AND TRAINING

The quality of a voter's experience can be heavily dependent on the ability of poll workers to manage polling places effectively. While many New York voters' experience at the polls is seamless due to helpful and capable poll workers, other voters report that on Election Day poll workers are too often unable to assist them. It also appears that they not infrequently make mistakes. Common problems include poll workers who are unaware of the procedure to follow when the voter's name does not appear in the registration book, using affidavit ballots when there is a machine malfunction rather than emergency ballots, and not opening polling places on time. Also, there are poll workers who become frustrated by the challenges presented, especially over an extraordinarily long working day, and do not then work well with voters. As a result, voters may decide to leave the poll site and not vote or may be discouraged from voting in subsequent elections.

POLL WORKERS IN NEW YORK

For each election, every county Board of Elections may appoint, and remove, clerks, voting machine technicians, custodians, and other employees, fix their number, prescribe their duties, fix their titles and ranks, and establish their salaries within the amounts appropriated by the local legislative body.[111]

There are four election inspectors in each Election District of the state.[112] At every general election in each Election District where two voting machines are used, there are to be two clerks in addition to the four inspectors of election.[113] In an Election District located in a town where one voting machine is used, the town board may direct

[110] N.Y. ELEC. LAW. § 7-118.

[111] *Id.* § 3-300.

[112] *Id.* § 3-400(1).

[113] *Id.*§ 3-400(2).

the Board of Elections to appoint not more than two clerks in such district if in the discretion of the board, the service of a clerk or clerks is reasonably necessary for the proper conduct of the election.[114] In each Election District where paper ballots and more than one voting machine are used, there must be two clerks in addition to the four inspectors of election.[115]

The appointment of election coordinators, poll clerks and election inspectors must be equally divided between the two major political parties.[116] Where two additional poll clerks are appointed in an Election District because of the number of absentee and military ballots mailed out, the statute states that the clerks shall be divided between the major political parties.[117]

DUTIES AND COMPENSATION OF POLL WORKERS

The Board of Elections of each county and the Board of Elections of the City of New York, may, in their discretion, appoint election coordinators to perform Election Day duties, including directing voters to their proper polling places, assisting election inspectors and poll clerks in the performance of their duties, and such other duties as may be assigned to them by the Board of Elections.[118] Election inspectors may be employed to work half-day shifts with adjusted compensation, provided at least one inspector from each of the two major political parties is present at the poll site for the entire time that the polls are open.[119] Typically poll workers are expected to work full days, with the working day running from well before 6:00 am on Election Day to well after 9:00 p.m.

Election inspectors, poll clerks, and qualified voters appointed to act in place of an absent inspector or clerk are to be paid for their services on the days of registration and election, by the county where the Election District is located, in an amount fixed by the county legislative body, subject to such limitations as may be prescribed or authorized by statute.[120] In New York City the amount of compensation is fixed by the mayor at a daily rate which is not less than $130, and in the case of election coordinators not less than $200.[121] Such election inspectors, poll clerks, and qualified voters at a general or

[114] *Id.*

[115] *Id.*

[116] *Id.* §§ 3-400(3); 3-401(2).

[117] *Id.* § 3-408.

[118] *Id.* § 3-401(1).

[119] *Id.* § 3-400(7).

[120] *Id.* § 3-420(1).

[121] *Id.* § 3-420(1).

special village election conducted by the Board of Elections must be paid by such village in an amount fixed by the village Board of Trustees.[122]

QUALIFICATIONS OF POLL WORKERS

No person may be certified or act as an election coordinator who is not a registered voter and a resident of the county in which he serves, or within New York City, of such city, who holds any elective public office, or who is a candidate for any public office to be voted for by the voters of the district in which he or she is to serve, or who is not able to speak and read the English language and write it legibly.[123] Each time she serves, an election commissioner must complete a course of instruction and pass an examination, before being certified.[124]

To be certified or to act as an election inspector or poll clerk, an individual either must be (1) a registered voter and a resident of the county in which she serves, or, within New York City, a resident of that city, or (2) a student of a school in that county or city, who is 17 years of age and has permission from the school district and the consent of his or her parent, guardian or other person in parental relation to serve.[125] (N.Y. Elec. Law § 3-400(6) makes clear that none of the requirements for being an election inspector includes being enrolled as a member of a political party.) Additional requirements for certification are that an election inspector or poll clerk may not hold elective public office or be a candidate for any elective public office in the district in which he or she is to serve and may not be a spouse, parent, or child of any such candidate.[126]

TRAINING OF POLL WORKERS

Each Board of Elections shall, at least once every year, conduct a mandatory school for the instruction of election inspectors, poll clerks and election coordinators.[127] Instruction of all poll workers as to the rights of voters, proper identification requirements and like matters is also required.[128] Each Board of Elections must augment the core curriculum with local procedures, not inconsistent with the core curriculum adopted by the State Board of Elections. These may include procedures relating to proper operation of, and remedying problems with, voting machines or systems in use in that

[122] *Id.*

[123] *Id.* § 3-401(5).

[124] *Id.* § 3-412(3).

[125] *Id.* § 3-400(6), 3-400(8); *White v. Ortiz*, 141 A.D.2d 455, 529 N.Y.S.2d 788 (1st Dep't 1988).

[126] N.Y. ELEC. LAW § 3-400(6).

[127] *Id.* § 3-412(1).

[128] *Id.* § 3-412(1-a).

jurisdiction.[129] The State Board of Elections must supply each Board of Elections with instructional material to be used in the preparation for such examinations and must give each Board of Election uniform directions for the conduct of the examinations, which the Board must follow.[130] Every Board of Elections may utilize additional materials selected by it in the course of instruction.[131]

Prior to certification and at least once every year, election inspectors and poll clerks must complete training and pass an examination established by the State Board of Elections.[132] A written notice stating the time and place at which such training is to be held will be provided by the Board of Elections.[133] The core curriculum for such training must include instruction on the election law, the process for registration, the use of voting machines, disability etiquette and their general duties under the law.[134] In addition, election inspectors and poll clerks must receive instruction on the following:

(1) the rights of voters at the polls;

(2) the obligation of election workers to protect those rights while maintaining the integrity of the franchise, including assisting voters with disabilities or with limited or no proficiency in the English language;

(3) handling, processing and entitlement to ballots, including affidavit and emergency ballots;

(4) proper identification requirements;

(5) procedures to be followed with respect to voters whose names are not on the list of registered voters or whose identities have not been verified;

(6) electioneering and other violations of the elective franchise;

(7) solicitation by individuals and groups at the polling place; and

(8) procedures to be followed after the polls close.[135]

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[129] *Id.*

[130] *Id.* § 3-412(3).

[131] *Id.*

[132] *Id.* § 3-412(1).

[133] *Id.*

[134] *Id.* § 3-412(2).

[135] *Id.* § 3-412(1-a).

Although that is the requirement, it has been reported frequently that poll workers do not attend training and nevertheless still serve at the polls.

RECOMMENDATIONS

The Committee recommends that funding for recruitment and compensation of poll workers be increased, that training be standardized, and extended training be provided, all to alleviate the difficulties voters too often face at their polling places due to poll worker problems.

Specifically, we believe first, that providing more funding to provide for the training of poll workers and the professionalization of the training process could materially improve poll worker performance. As a corollary to that, we would urge that consolidated training on a statewide basis be considered as a way to improve and regularize the training process. Existing technology makes that possible and it would likely improve the curriculum and reduce the need for trainers. It is especially important that steps be taken to assure that poll workers attend training and that they not be assigned as poll workers if they have not.[136] To provide an incentive for attendance at training, providing direct compensation for the training should be considered where such compensation is not already in place.[137]

Second, we would urge that efforts be made at the state and local level to provide appropriate incentives and to assure flexibility that would permit state, county and city workers to participate as poll workers. Their likely reliability and understanding of government could prove to be very helpful. There are various practical ways to get that done and to thereby increase the pool of potential poll workers.

Third, we would also join those who have suggested that a more concerted effort be made to recruit students to serve as poll workers.[138] Involving a younger cadre of workers would not only increase the potential pool of candidates but also work as good training in civic responsibility.

Fourth, we would urge that significant efforts be made to take advantage of the option to assign poll workers for one-half day shifts, rather than the current full day running from before 6:00 a.m. to well past 9:00 p.m. The exceptional length of the day

[136] *See Improving the Laws and Regulations Governing Casting a Ballot and Conditions at the Polls: Hearing Before the New York State Senate Comm. on Elections* 6 (May 11, 2009) (statement of Russ Haven, New York Public Interest Research Group) ("Currently, thousands of poll workers fail to attend training[.]").

[137] *See* New York City Board of Elections, Meeting of the Commissioners of Elections, Minutes 3-7 (July 20, 2011), *available at* http://www.vote.nyc.ny.us/downloads/pdf/documents/boe/minutes/2011/072011meet.pdf (training stipend of $100 for a six-hour session).

[138] *See* AIMEE ALLAUD ET AL., LEAGUE OF WOMEN VOTERS OF NEW YORK STATE, 2010 ELECTION SURVEY REPORT 9 (Dec. 13, 2010), *available at* http://lwvny.org/advocacy/ElectionSurveyReport_121310.pdf.

for which poll workers currently serve has an immediate limiting effect on the number of those who can serve. Someone with even one other limited commitment during the day cannot participate, even though he or she might be willing to serve for a one-half day shift and be effective. Also, the fatigue that can set in for even the best poll workers over the current very long working day obviously can lead to both errors and an increased likelihood of their becoming personally less effective in dealing with voters.

We appreciate that there are risks in committing to the active use of split shifts, especially as to the possibility that the afternoon shift workers will not appear, but we believe that the overall performance of the workers and the ability to recruit workers is worth the risk. A practical solution might be to take on some split shift workers in the next election to see how the management of those who agree to split shifts may best be handled, with broader adoption of the practice in subsequent elections once there is more experience with it.

DECEPTIVE PRACTICES

In addition to recommending the changes outlined above, the Committee believes that it is time for New York law to be strengthened to provide more severe and comprehensive penalties for deceptive practices that are used election after election to suppress votes. It is evident that those who engage in such practices believe that they can do so without suffering any consequences, either because the law does not apply to their conduct or because the penalties are insufficient to deter them. There is also the unfortunate practical reality that prosecutors are often not as intent as they might be on the need to prosecute in such cases.

As an example, among the deceptive practices that have been reported to the Lawyers Committee for Civil Rights Under Law's Election Protection hotline[139] are a report that, in November 2008, voters in Shirley, New York received automated phone calls advising that due to the anticipated high voter turnout on Election Day, Democratic and Liberal voters should cast their ballots on Wednesday, November 5, the day following Election Day. On these calls, it was possible to press "0" to speak to a live person who reiterated the same false statements. Similar deceptive information was printed on flyers and distributed in lower income areas near Riverhead, New York. In Manhattan, it was reported that a sign was posted near a legitimate polling place that

[139] COMMON CAUSE & LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, DECEPTIVE ELECTION PRACTICES AND VOTER INTIMIDATION: THE NEED FOR VOTER PROTECTION (June 2012), *available at* http://www.commoncause.org/atf/cf/%7Bfb3c17e2-cdd1-4df6-92be-bd4429893665%7D/DECEPTIVEPRACTICESREPORTJULY2012FINALPDF.PDF.

misdirected voters to a fictional polling place allegedly because the legitimate polling place was overcrowded. In 2006, voters in New York reported receiving harassing phone calls, or "robo calls," sometimes in the middle of the night, claiming to be from one candidate, when in fact the calls were traced to the candidate's opponent. In 2004, a caller to the Election Protection hotline reported that Spanish-speaking residents of Port Chester, New York were being told that they could not vote unless they owned property.

Reflecting the spread and seriousness of such practices, the Justice Department Manual defines "voter suppression" as:

> . . . schemes [ ] designed to ensure the election of a favored candidate by blocking or impeding voters believed to oppose that candidate from getting to the polls to cast their ballots.
>
> Examples include providing false information to the public – or a particular segment of the public – regarding the qualifications to vote, the consequences of voting in connection with citizenship status, the dates or qualifications for absentee voting, the date of an election, the hours for voting, or the correct voting precinct.[140]

Consistent with the Manual, federal law has been used to prosecute certain of these activities.[141]

The extent of the problem was addressed in a 2008 Report published by the Century Foundation, Common Cause and the Lawyers Committee for Civil Rights Under Law:

> In the last several election cycles, "deceptive practices" have been perpetrated in order to suppress voting and skew election results. Usually targeted at minorities and in minority neighborhoods, ***deceptive practices are the intentional dissemination of false or misleading information about the voting process with the intent to prevent an eligible voter from casting a ballot.*** It is an insidious form of vote suppression that often goes unaddressed by authorities and the perpetrators are virtually never caught. Historically, deceptive practices have taken the form of flyers distributed in a particular neighborhood; more recently, with the advent of new technology "robocalls" have been employed to spread misinformation.

[140] CRAIG C. DONSANTO AND NANCY L. SIMMONS, U.S. DEPARTMENT OF JUSTICE, FEDERAL PROSECUTION OF ELECTION OFFENSES 61 (May 2007), *available at* http://www.justice.gov/criminal/pin/docs/electbook-0507.pdf.

[141] *Id.*

> Now, the fear is deceptive practices 2.0: false information disseminated via the internet, email and other new media.[142]

Article 17 of the New York Election Law includes various provisions that address aspects of the voter suppression concerns outlined in the reports. These include:

- Section 17-102 which makes it a misdemeanor to "fraudulently or wrongfully" do "any act tending to affect the result of any primary election, caucus or convention" or "do or offer to do, anything to hinder or delay any elector from taking part in or voting at a primary election or caucus";

- Section 17-130 which makes it a misdemeanor to willfully and unlawfully obstruct, hinder or delay, or aid or assist in obstructing or delaying any elector on his way to a polling place;

- Section 17-150 which makes it a misdemeanor for any person or corporation to directly or indirectly use or threaten to use any force, violence or restraint, in order to induce or compel any person to refrain from voting;

- Section 17-152 which makes it a misdemeanor for any two or more persons to conspire to promote or prevent the election of any person to public office by unlawful means.

New York law does not, however, make it a crime to intentionally disseminate false or misleading information about the voting process with the intent to prevent an eligible voter from casting a ballot. Although the language of Section 17-102 of the Election Law may be broad enough to cover this type of activity, the section only applies to a primary election, caucus or convention and does not apply to a general election.

We strongly recommend that the law be changed to provide for criminal penalties applicable to deceptive practices that suppress votes in elections, not just primaries (an obvious gap in the law), and to assure that such conduct will be subject to penalties at least as serious as those currently applicable to conduct that includes fraud in the registration process.[143] That would mean making such an offense a class E felony, which would bring a penalty of up to 4 years of imprisonment.[144]

We would recommend further that the New York Attorney General be given concurrent jurisdiction with local district attorneys to enforce the law and be encouraged

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[142] CENTURY FOUNDATION, ET AL., DECEPTIVE PRACTICES 2.0: LEGAL AND POLICY RESPONSES 1 (2008), *available at* http://www.commoncause.org/atf/cf/%7Bfb3c17e2-cdd1-4df6-92be-bd4429893665%7D/DECEPTIVEPRACTICESREPORTJULY2012FINALPDF.PDF (emphasis added).

[143] N.Y. ELECT. LAW § 17-104 (registration fraud); *see* N.Y. PENAL LAW § 55.10(1)(b) (Class E felony).

[144] N.Y. PENAL LAW § 70.00(2)(e).

to engage in an active enforcement program that will deter those who may now think they can act with impunity.

SAMPLE BALLOT CONCEPT

On the following two pages are the front and back of a model sample ballot designed by Drew Davies, Oxide Design Co. / AIGA Design for Democracy, and provided to the Committee by the Brennan Center for Justice.

Instructions

Mark the oval to the left of the name of your choice.

To vote for a candidate whose name is not printed on the ballot, print the name clearly under the words 'Write-in', staying within the box.

The number of choices is listed for each contest. Do not mark the ballot for more choices than allowed. You do not have to vote in every contest.

If you make a mistake, or want to change your vote, ask a poll worker for a new ballot.

Official Ballot for the General Election
12th Assembly District, County of Broome
City of Binghamton, Election District 26

November 2nd, 2011 State of New York Ballot ID: 1026

	Governor and Lieutenant Governor Vote once	Comptroller Vote for 1	Attorney General Vote for 1	U.S. Senator (6-year term) Vote for 1	U.S. Senator (2-year unexpired term) Vote for 1	Representative in Congress 22nd District Vote for 1	State Senator 52nd District Vote for 1	Member of Assembly Vote for 1	Surrogate Court Judge Vote for 1	County Judge Vote for 1	Sheriff Vote for 1	County Legislator 1st District Vote for 1
Democratic	○ Andrew M Cuomo and Robert J Duffy Democratic	○ Thomas P DiNapoli Democratic	○ Eric T Schneiderman Democratic	○ Charles E Schumer Democratic	○ Kirsten E Gillibrand Democratic	○ Maurice D Hinchey Democratic	○ John P Dzeal Democratic	○ Donna A Lupardo Democratic			○ Gary F O'Neill Democratic	○ Mark Whalen Democratic
Republican	○ Carl P Paladino and Gregory J Edwards Republican	○ Harry Wilson Republican	○ Dan Donovan Republican	○ Jay Townsend Republican	○ Joseph J DioGuardi Republican	○ George K Phillips Republican	○ Thomas W Libous Republican	○ Arthur Garrison Republican	○ David H Guy Republican	○ Martin E Smith Republican	○ David E Harder Republican	
Independence	○ Andrew M Cuomo and Robert J Duffy Independence	○ Harry Wilson Independence	○ Eric T Schneiderman Independence	○ Charles E Schumer Independence	○ Kirsten E Gillibrand Independence	○ Maurice D Hinchey Independence	○ Thomas W Libous Independence	○ Arthur Garrison Independence			○ David E Harder Independence	
Conservative	○ Carl P Paladino and Gregory J Edwards Conservative	○ Harry Wilson Conservative	○ Dan Donovan Conservative	○ Jay Townsend Conservative	○ Joseph J DioGuardi Conservative	○ George K Phillips Conservative	○ Thomas W Libous Conservative	○ Arthur Garrison Conservative			○ David E Harder Conservative	
Working Families	○ Andrew M Cuomo and Robert J Duffy Working Families	○ Thomas P DiNapoli Working Families	○ Eric T Schneiderman Working Families	○ Charles E Schumer Working Families	○ Kirsten E Gillibrand Working Families	○ Maurice D Hinchey Working Families		○ Donna A Lupardo Working Families		○ Martin E Smith Working Families	○ TR Roberts Working Families	
Green	○ Howie Hawkins and Brian Mastera Green	○ Julia A Willebrand Green		○ Colia Clark Green	○ Cecile A Lawrence Green			○ Jason T Sharkus Our Founding Fathers				
Rent Is 2 Damn High	○ Jimmy McMillan Rent Is 2 Damn High				○ Joseph Heath Rent Is 2 Damn High							
Libertarian Freedom	○ Warren Redlich and Allen Link Libertarian	○ Charles Barron and Eva M Doyle Freedom	○ John Gaetani Libertarian	○ Carl E Person Libertarian	○ Randy A Credico Libertarian Antiprohibition	○ John Clifton Libertarian						
Taxpayers Antiprohibition	○ Carl P Paladino and Gregory J Edwards Taxpayers	○ Kristin M Davis and Tanya Gandelman Antiprohibition		○ Reason J Jimenez Freedom		○ Vivia Morgenta Antiprohibition						
Write-in	Write-in:		Write-in:	Write-in:	Write-in:	Write-in:	Write-in:	Write-in:	Write-in:	Write-in:	Write-in:	Write-in:

Turn ballot over

Instructions for Voting for Questions and Proposals
Instrucciones para Votar en Preguntas y Propuestas

To vote on a question or proposal, mark the oval to the left of your choice.

Para votar en una pregunta o propuesta, marque el óvalo a la izquierda de su preferencia.

If you make a mistake, or want to change your vote, ask a poll worker for a new ballot.

Si comete un error o desea cambiar su voto, pida una papeleta nueva a un trabajador electoral.

Official Ballot for the General Election

64th Assembly District, County of New York
City of New York, Election Districts 1 & 7

November 2nd, 2011 State of New York Ballot ID: 0001

Proposal Number One: Question - Term Limits
Propuesta Numero Uno: Pregunta - Límites del Periodo

The proposal would amend the City Charter to:

- **Reduce from three to two the maximum number of consecutive full terms that can be served by elected city officials; and**
- **Make this change in term limits applicable only to those city officials who were first elected at or after the 2010 general election; and**
- **Prohibit the City Council from altering the term limits of elected city officials then serving in office.**

Shall this proposal be adopted?

- ◯ **Yes / Sí**
- ◯ **No / No**

La propuesta modificaría la Estatutos de la Ciudad para:

- Reducir el número máximo de periodos consecutivos que funcionarios electos de la ciudad puedan desempeñar, de tres a dos;
- Hacer este cambio de límites del periodo solo a esos funcionarios electos de la cuidad que son elegidos por primera vez en o después de la elección general de 2010 y;
- Prohibir al Consejo de la ciudad de alterar los límites del periodo de los funcionarios electos desempeñando en el cargo.

¿Debe aprobarse la modificación propuesta?

Proposal Number Two: Question - Elections and Government Administrtion
Propuesta Numero Uno: Pregunta - Elecciones y del gobierno

The proposal would amend the City Charter to:

- **Disclosure of Independent Campaign Spending: Require public disclosure of expenditures made by entities and individuals independent from candidates to influence the outcome of a city election or referendum;**
- **Ballot Access: Generally reduce the number of petition signatures needed by candidates for city elective office to appear on a ballot;**
- **Voter Assistance and Campaign Finance Board: Merge voter assistance functions, including a reconstituted Voter Assistance Advisory Committee, into the Campaign Finance Board, and change when Campaign Finance Board member terms begin;**
- **Conflicts of Interest Law: Require all public servants to receive conflicts of interest training, raise the maximum fine for a public servant who violates the City's conflicts of interest law, and allow the City to recover any benefits obtained from such violations;**
- **City Administrative Tribunals: Authorize the Mayor to direct the merger of administrative tribunals and adjudications into the Office of Administrative Trials and Hearings and permit the Department of Consumer Affairs to adjudicate all violations issued by that department;**
- **City Reporting Requirements and Advisory Bodies: Create a commission to review requirements for reports and advisory bodies and waive the requirements, subject to City Council review, where the commission finds they are not of continuing value; and**
- **Map for Facility Siting: Include in the City's facilities siting map those transportation and waste management facilities operated by or for governmental entities, or by private entities that provide comparable services.**

Shall this proposal be adopted?

- ◯ **Yes / Sí**
- ◯ **No / No**

La propuesta modificaría la Estatutos de la Ciudad para:

- Divulgación de los Gastos de Campaña Independiente: Exigir divulgación publica de los gastos realizados por entidades y individuos, independiente de los candidatos, para influir en los resultados de una elección o referéndum de la ciudad;
- Acceso a la Papeleta: Generalmente reducir el número de firmas en las peticiones necesitadas por los candidatos, para cargos de elección democrática de la ciudad, para aparecer en la papeleta;
- Asistencia a los Votantes y la Junta de Financiación de Campañas: Combinar las funciones de asistencia a los votantes, incluyendo un Comité Consultivo de Asistencia a los Votantes reconstituido, con la Junta de Financiación de Campañas y cambiar cuando comienzan los periodos de los miembros de Junta de Financiación de Campañas;
- Ley de Conflictos de Intereses: Exigir a todos los funcionarios públicos recibir entrenamiento en conflictos de intereses, aumentar la multa máxima para un funcionario público que infringe la ley de conflicto de intereses de la Ciudad y permitir a la Ciudad recupere cualquier beneficio obtenido de tal infracción;
- Tribunales Administrativos de la Ciudad: Autorizar al Alcalde a dirigir la combinación de tribunales administrativos y adjudicaciones con la Oficina de Juicios y Audiencias Administrativos, y permitir al Departamento de Asuntos del Consumidor a adjudicar todas las infracciones promulgadas por el departamento;
- Requisitos de Presentación de Informes y Organismos Asesores de la Ciudad y Grupos Creativos: crear una comisión para revisar los requisitos para los informes y las juntas consultivas y renunciar a los requisitos, sujeto a revisión por el Consejo de la Ciudad, que la comisión comprueba que no son de valor constante; y
- Mapa de Ubicación de las Facilidades: Incluir en el mapa de ubicación de la Ciudad esas facilidades de transportación y manejo de residuos operadas por o para entidades gubernamentales, o por entidades privadas que proporcionan servicios comparables.

¿Debe aprobarse la modificación propuesta?

Turn ballot over

ORGANIZATIONS INVITED TO COMMENT BY THE COMMITTEE

Advancement Project

Albany County Bar Association

Albany County Board of Elections Democratic Commissioner

Albany County Board of Elections Republican Commissioner

Allegany County Bar Association

Allegany County Board of Elections Democratic Commissioner

Allegany County Board of Elections Republican Commissioner

American Association of Jews from the Former USSR

American Bar Association - Standing Committee on Election Law

Asian American Legal Defense and Education Fund

Bar Association of Erie County

Bar Association of the City of Middletown

Bar Association of the Tonawandas

Bay Ridge Lawyers Association

Brennan Center for Justice at NYU School of Law

Bronx County Bar Association

Bronx County Board of Elections Democratic Commissioner

Bronx County Board of Elections Republican Commissioner

Bronx Independent Living Services

Brooklyn Bar Association

Broome County Bar Association

Broome County Board of Elections Democratic Commissioner

Broome County Board of Elections Republican Commissioner

Cattaraugus County Bar Association

Cattaraugus County Board of Elections Democratic Commissioner

Cattaraugus County Board of Elections Republican Commissioner

Cayuga County Board of Elections Democratic Commissioner

Cayuga County Board of Elections Republican Commissioner

Chautauqua County Board of Elections Democratic Commissioner

Chautauqua County Board of Elections Republican Commissioner

Chemung County Bar Association

Chemung County Board of Elections Democratic Commissioner

Chemung County Board of Elections Republican Commissioner

Chenango County Bar Association

Chenango County Board of Elections Democratic Commissioner

Chenango County Board of Elections Republican Commissioner

Citizens Union of the City of New York

Clinton County Bar Association

Clinton County Board of Elections Democratic Commissioner

Clinton County Board of Elections Republican Commissioner

Columbia County Bar Association

Columbia County Board of Elections Democratic Commissioner

Columbia County Board of Elections Republican Commissioner

Common Cause New York

Corning City Bar Association

Cortland County Bar Association

Cortland County Board of Elections Democratic Commissioner

Cortland County Board of Elections Republican Commissioner

Delaware County Bar Association

Delaware County Board of Elections Democratic Commissioner

Delaware County Board of Elections Republican Commissioner

DEMOS

Disabilities Network of New York City

District Attorneys Association of the State of New York

Dutchess County Bar Association

Dutchess County Board of Elections Democratic Commissioner

Dutchess County Board of Elections Republican Commissioner

Empire Justice Center

Erie County Board of Elections Democratic Commissioner

Erie County Board of Elections Republican Commissioner

Essex County Bar Association

Essex County Board of Elections Democratic Commissioner

Essex County Board of Elections Republican Commissioner

Franklin County Bar Association

Franklin County Board of Elections Democratic Commissioner

Franklin County Board of Elections Republican Commissioner

Fulton County Bar Association

Fulton County Board of Elections Democratic Commissioner

Fulton County Board of Elections Republican Commissioner

Genesee County Bar Association

Genesee County Board of Elections Democratic Commissioner

Genesee County Board of Elections Republican Commissioner

Great Neck Lawyers Association

Greene County Bar Association

Greene County Board of Elections Democratic Commissioner

Greene County Board of Elections Republican Commissioner

Hamilton County Board of Elections Democratic Commissioner

Hamilton County Board of Elections Republican Commissioner

The Heritage Foundation

Herkimer County Bar Association

Herkimer County Board of Elections Democratic Commissioner

Herkimer County Board of Elections Republican Commissioner

Jamestown Bar Association

Jefferson County Bar Association

Jefferson County Board of Elections Democratic Commissioner

Jefferson County Board of Elections Republican Commissioner

Kings County Board of Elections Democratic Commissioner

Kings County Board of Elections Republican Commissioner

Latino Justice

Lawyers' Committee for Civil Rights Under Law

League of Women Voters of New York State

Lewis County Bar Association

Lewis County Board of Elections Democratic Commissioner

Lewis County Board of Elections Republican Commissioner

Livingston County Bar Association

Livingston County Board of Elections Democratic Commissioner

Livingston County Board of Elections Republican Commissioner

Long Beach Lawyers Association

Madison County Bar Association

Madison County Board of Elections Democratic Commissioner

Madison County Board of Elections Republican Commissioner

Mamaroneck-Harrison-Larchmont Bar Association

Metropolitan Black Bar Association

Monroe County Bar Association

Monroe County Board of Elections Democratic Commissioner

Monroe County Board of Elections Republican Commissioner

Montgomery County Bar Association

Montgomery County Board of Elections Democratic Commissioner

Montgomery County Board of Elections Republican Commissioner

Mount Vernon Bar Association

NAACP Legal Defense and Educational Fund

Nassau County Bar Association

Nassau County Board of Elections Democratic Commissioner

Nassau County Board of Elections Republican Commissioner

Nassau Lawyers' Association of Long Island

National Nonpartisan Voter Education Campaign

National Voting Rights Institute

New Immigrant Community Empowerment

New York City Bar Association

New York City Campaign Finance Board

New York City Mayor’s Office

New York Civil Liberties Union

New York County Board of Elections Democratic Commissioner

New York County Board of Elections Republican Commissioner

New York County Lawyers’ Association

New York County Lawyers’ Association Foundation

New York Democratic Lawyers Council

New York Immigration Coalition

New York Lawyers for the Public Interest

NAACP New York

New York Public Interest Research Group

New York State Bar Association - Vice Presidents 1st District

New York State Bar Association - Vice President 2nd District

New York State Bar Association - Vice President 3rd District

New York State Bar Association - Vice President 4th District

New York State Bar Association - Vice President 5th District

New York State Bar Association - Vice President 6th District

New York State Bar Association - Vice President 7th District

New York State Bar Association - Vice President 8th District

New York State Bar Association - Vice President 9th District

New York State Bar Association - Vice President 10th District

New York State Bar Association - Vice President 11th District

New York State Bar Association - Vice President 12th District

New York State Bar Association - Vice President 13th District

New York State Board of Elections

New York Statewide Senior Action Council

New Yorkers for Verified Voting

Niagara County Board of Elections Democratic Commissioner

Niagara County Board of Elections Republican Commissioner

Northern Chautauqua County Bar Association

Oneida County Bar Association

Oneida County Board of Elections Democratic Commissioner

Oneida County Board of Elections Republican Commissioner

Onondaga County Bar Association

Onondaga County Board of Elections Democratic Commissioner

Onondaga County Board of Elections Republican Commissioner

Ontario County Bar Association

Ontario County Board of Elections Democratic Commissioner

Ontario County Board of Elections Republican Commissioner

Orange County Bar Association

Orange County Board of Elections Democratic Commissioner

Orange County Board of Elections Republican Commissioner

Orleans County Bar Association

Orleans County Board of Elections Democratic Commissioner

Orleans County Board of Elections Republican Commissioner

Ossining Bar Association

Oswego County Bar Association

Oswego County Board of Elections Democratic Commissioner

Oswego County Board of Elections Republican Commissioner

Otsego County Board of Elections Democratic Commissioner

Otsego County Board of Elections Republican Commissioner

Peekskill/Cortland Bar Association

People for the American Way

Port Chester-Rye Bar Association

Putnam County Bar Association

Putnam County Board of Elections Democratic Commissioner

Putnam County Board of Elections Republican Commissioner

Queens County Bar Association

Queens District Attorney's Office

Rensselaer County Bar Association

Rensselaer County Board of Elections Democratic Commissioner

Rensselaer County Board of Elections Republican Commissioner

Richmond County Bar Association

Richmond County Board of Elections Democratic Commissioner

Richmond County Board of Elections Republican Commissioner

Rock the Vote

Rockland County Bar Association

Rockland County Board of Elections Democratic Commissioner

Rockland County Board of Elections Republican Commissioner

Rome Bar Association

Saratoga County Bar Association

Saratoga County Board of Elections Democratic Commissioner

Saratoga County Board of Elections Republican Commissioner

Schenectady County Bar Association

Schenectady County Board of Elections Democratic Commissioner

Schenectady County Board of Elections Republican Commissioner

Schoharie County Bar Association

Schoharie County Board of Elections Democratic Commissioner

Schoharie County Board of Elections Republican Commissioner

Schuyler County Bar Association

Schuyler County Board of Elections Democratic Commissioner

Schuyler County Board of Elections Republican Commissioner

Seneca County Bar Association

Seneca County Board of Elections Democratic Commissioner

Seneca County Board of Elections Republican Commissioner

St. Lawrence County Bar Association

St. Lawrence County Board of Elections Democratic Commissioner

St. Lawrence County Board of Elections Republican Commissioner

Steuben County Bar Association

Steuben County Board of Elections Democratic Commissioner

Steuben County Board of Elections Republican Commissioner

Suffolk County Bar Association

Suffolk County Board of Elections Democratic Commissioner

Suffolk County Board of Elections Republican Commissioner

Sullivan County Bar Association

Sullivan County Board of Elections Democratic Commissioner

Sullivan County Board of Elections Republican Commissioner

Tioga County Bar Association

Tioga County Board of Elections Democratic Commissioner

Tioga County Board of Elections Republican Commissioner

Tompkins County Bar Association

Tompkins County Board of Elections Democratic Commissioner

Tompkins County Board of Elections Republican Commissioner

True the Vote

Ulster County Bar Association

Ulster County Board of Elections Democratic Commissioner

Ulster County Board of Elections Republican Commissioner

The Voter Participation Center

Warren County Bar Association

Warren County Board of Elections Democratic Commissioner

Warren County Board of Elections Republican Commissioner

Washington County Bar Association

Washington County Board of Elections Democratic Commissioner

Washington County Board of Elections Republican Commissioner

Wayne County Board of Elections Democratic Commissioner

Wayne County Board of Elections Republican Commissioner

Westchester County Bar Association

Westchester County Board of Elections Democratic Commissioner

Westchester County Board of Elections Republican Commissioner

White Plains Bar Association

Women’s Bar Association of the State of New York

Women's City Club of New York

Wyoming County Bar Association

Wyoming County Board of Elections Democratic Commissioner

Wyoming County Board of Elections Republican Commissioner

Yates County Bar Association

Yates County Board of Elections Democratic Commissioner

Yates County Board of Elections Republican Commissioner

Yonkers Lawyers Association

The Special Committee also reached out to the more than 80 ethnic, specialty and special purpose bar associations known to NYSBA through each of the 13 Judicial Districts.

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RELEVANT STATUTES AND BILLS

FEDERAL

Voter Empowerment Act of 2012, S. 3608, H.R. 5799, 112th Cong. (2012).

Help America Vote Act of 2002, 42 U.S.C. § 15301 *et seq.* (2002).

National Voter Registration Act of 1993, 42 U.S.C. § 1973gg *et seq.* (1993).

NEW YORK

Voter Friendly Ballot Act of 2012, A. 7492 (2012) (passed Assembly).

Voter Empowerment Act of New York, S. 1974, A. 1712 (2011).

An act to amend the election law, in relation to recanvass of votes cast on voting machines, S. 1328 (2011).

An act to amend the election law, in relation to voter pre-registration, S. 5256, A. 7440 (2011).

An act to amend the election law, in relation to voter registration, S. 1561, A. 5900 (2011).

An act to amend the election law, in relation to voter registration and enrollment, S. 542, A. 1228 (2011).

An act to amend the election law, in relation to canvass procedures; and to repeal section 9-128 of the election law relating thereto, S. 7709, A. 10175 (2011).

An act to amend the election law, in relation to the typeface to be used on paper ballots, S. 609, A. 4696 (2011).

An act to amend the election law, in relation to allowing for polling place voter registration for any qualified person who is not registered to vote, A. 1684 (2011).

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Concurrent resolution of the Senate and Assembly proposing an amendment to section 5 of article 2 of the constitution, in relation to the ten day advance registration requirement, A. 1686 (2011).

An act to amend the election law, in relation to absentee voting qualifications, A. 4742 (2011).

An act to amend the election law, in relation to designating additional participating agencies for purposes of agency assisted voter registration, A. 1685 (2011).

An act to amend the election law, in relation to voter registration and enrollment, A. 8631 (2011).

An act to amend the election law, in relation to authorizing electronic voter registration, A. 8631 (2011).

An act to amend the election law, in relation to authorizing electronic voter registration, S. 5237, A. 1229 (2011).

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An act to amend the election law, in relation to voter registration of persons seventeen years of age or older, A. 7770 (2011).

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An act to amend the real property law, in relation to providing purchasers and sellers of residential real property and cooperative apartments with voter registration forms at closing, A. 5908 (2011).

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An act to amend the election law, in relation to a universal jurisdiction voting act, A. 8633 (2011).

An act to amend the election law, in relation to change of enrollment, A. 5928 (2011).

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An act to amend the election law, in relation to failure of new registrants to enroll, A. 5901 (2011).

An act to amend the election law, in relation to failure of new registrants to enroll, A. 6769 (2011).

An act to amend the election law, in relation to authorizing early voting at primary and general elections, A. 4120 (2011).

An act to amend the election law, in relation to providing for early voting, A. 4551 (2011).

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An act to amend the election law, in relation to providing for early voting, S. 1333 (2011).

An act to amend the election law, in relation to early voting; and to repeal sections 11-300, 11-302, and 11-306 of such law relating there to, A. 6399 (2011).

Concurrent resolution of the Senate and Assembly proposing an amendment to section 2 of article 2 of the constitution, in relation to absentee voting, A. 5911 (2011).

An act to amend the election law, in relation to removing certain requirements for absentee voting and to repeal certain provisions of such law relating thereto, A. 3553 (2011)).

An act to amend the election law, in relation to allowing application for absentee ballots by electronic means, A. 5385 (2011).

An act to amend the election law, in relation to absentee voting; and to repeal section 7-126 of the election law relating to the use of ballots, A. 8093 (2011) (passed Assembly).

An act to amend the election law, in relation to requiring county boards to create systems for processing electronic requests for absentee ballots, A. 5895 (2011).

An act to amend the election law and the education law, in relation to making absentee ballots available in Braille and large-print, A. 5337 (2011) (passed Assembly).

An act to amend the election law, in relation to an electronic absentee ballot, A. 8578 (2011).

An act to amend the election law, in relation to counting of affidavit ballots, S. 1325 (2011).

An act to amend the election law and the legislative law, in relation to use of a person's e-mail address, A. 1508 (2011).

An act to amend the election law, in relation to the notice of the days and hours for voting in primary and general elections, A. 3173 (2011).

An act to amend the election law, in relation to the hours for conducting voting in the city of New York, A. 5061 (2011).

An act to create a temporary state commission on the electoral process and to provide for the making of grants by the state Board of Elections to local boards of election for the improvement of the electoral process and making an appropriation therefor; and providing for the repeal of such provisions upon expiration thereof, A. 3401 (2011).

An act to amend the election law, in relation to imposing limitations on political contributions made by text message, A. 10157 (2011).

An act to amend the election law, in relation to absentee ballot applications, S. 2868, A. 5276 (2009) (signed into law).

Concurrent resolution of the Senate and Assembly proposing an amendment to section 2 of article 2 of the constitution, in relation to absentee voting, A. 8277 (2009).

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VOTING RIGHTS IN AMERICA

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U.S. CONSTITUTION

The United States Constitution, as adopted in 1789, does not guarantee the right to vote. The Constitution, on the other hand, originally provided that the states had discretion to determine the qualification of the voters for Congressional elections and left administration of elections to the states as well, with slight restrictions.

Article I, Section 2 — Determination of Electors

"The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

U.S. CONSTITUTION

Article I, Section 4 — Elections Clause

"The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof but the Congress may at any time by law make or alter such regulations, except as to the place for choosing Senators."

Article II, Section 1, Clause 2 — Each State Appoints Electors

"Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector."

THE 15TH AMENDMENT

Fifteenth Amendment (1870) — Reconstruction Amendment

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." (Section I)

"The Congress shall have power to enforce this article by appropriate legislation."* (Section II)

*This provision is the legislative authority for Congress to later pass the Voting Rights Act

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THE 17TH AMENDMENT

Seventeenth Amendment (1913) — Direct Election of Senators

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

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THE 19TH AMENDMENT

Nineteenth Amendment (1920) — Women's Suffrage

Section 1— "The rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

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THE 24TH AMENDMENT

Twenty-Fourth Amendment (1964) — Prohibiting Poll Taxes

"The rights of citizens of the United States to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax."

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THE 26TH AMENDMENT

Twenty-Sixth Amendment (1971) — Lowering Voting Age to 18

"The rights of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any State on account of age."

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STATE CONSTITUTIONAL PROVISIONS GOVERNING ELECTIONS

NEW YORK CONSTITUTION —

ARTICLE II Suffrage

[Qualifications of voters]

Section 1. Every citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that such citizen is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election.

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STATE CONSTITUTIONAL PROVISIONS GOVERNING ELECTIONS

Pennsylvania Constitution § 5 — Elections

"Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

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FEDERAL LEGISLATION GOVERNING ELECTIONS

- **Voting Rights Act of 1965**
  - Section 2: “No voting qualification or prerequisite to voting, or standard practice , or procedure shall be imposed or applied by a State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.
  - Section 4: Criteria for “covered jurisdictions: States of Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi , South Carolina, Texas and Virginia completely covered. Parts of California, Florida, Michigan, New Hampshire, New York and South Dakota partially covered.
  - Section 5: “Covered jurisdictions”: required pre-clearance before changing election laws

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FEDERAL LEGISLATION GOVERNING ELECTIONS

- **Section 3**: Allows courts to bail in jurisdictions
- **Section 4**: Allows jurisdictions to seek bail out from courts; Ten year look back.

  VRA initially enacted for 5 years. Congress extended the law in 1970, 1975, 1982 and 2007.

- **2007 Reauthorization for 25 years**: Unanimous approval (96-0) in Senate and high approval in House. President Bush signed into law.

  House conducted 12 hearings; Senate conducted 9 hearings.

FEDERAL LEGISLATION GOVERNING ELECTIONS

- **National Voter Registration Act of 1993 ("The Motor Voter Act")**
  - Section 7 of the Act requires states to offer voter registration opportunities at all offices that provide public assistance and all offices that provide state-funded programs primarily engaged in providing services to persons with disabilities. Each applicant for any of these services, renewal of services, or address changes must be provided with a voter registration form of a declination form as well as assistance in completing the form and forwarding the completed application to the appropriate state or local election official.
  - In *Assoc. of Community Organizations for Reform Now v. Scott*, a federal judge for the Western District of Missouri held that registration materials must be provided in social services offices under the National Voter Registration Act. *See Assoc. of Community Organizations for Reform Now v. Scott*, No. 08-CV-4084 (W.D. Mo. July 15, 2008).

FEDERAL LEGISLATION GOVERNING ELECTIONS

- **Help America Vote Act of 2002**

  The Help America Vote Act (HAVA) was a response to the turbulent finish to the 2000 election and the Supreme Court's decision in *Bush v. Gore*. Therefore, Congress wanted to create new mandatory minimum standards for states to follow in several key areas of election administration. HAVA required that states implement the following:

  - Statewide Computerized Voter Registration List
  - Registration by Mail — ID needed for first time voters
  - Provisional Ballots for Voters Not on List
  - Accessibility of Voting Machines*

  * This is what caused lever machines to be retired in New York

CASES UPHOLDING THE CONSTITUTIONALITY OF THE VOTING RIGHTS ACT

- ***South Carolina v. Katzenbach*, 383 U.S. 301(1966)**

  Upheld pre-clearance provisions

- ***Katzenbach v. Morgan*, 384 U.S. 641 (1966)**

  Upheld Section 4(c) enacted to eliminate discrimination against Puerto Ricans who do not speak English

- ***Georgia v. United States*, 411 U.S. 526 (1973)**

  Challenge to Attorney General's objection to Georgia reapportionment plan rejected. Burden on Georgia to demonstrate lack of discriminatory purpose or effect

THE DEMISE OF VRA SECTION 5
SHELBY COUNTY V. HOLDER, 570 U.S. 2 (2013)

- ***Shelby County v. Holder*, 679 F.3d 848 (D.C. Cir. 2012)**
  - Shelby County, Alabama had sued the Attorney General in the District Court for the District of Columbia seeking a declaratory judgment that Sections 4(b) and 5 were facially unconstitutional and a permanent injunction against their enforcement.
  - The D.C. District Court had upheld that the evidence before Congress was sufficient to justify re-authorizing Sections 4(b) and 5 in 2006, and Shelby County appealed to the U.S. Court of Appeals for the D.C. Circuit.
  - The Court of Appeals upheld the decision of the D.C. District Court, and Shelby County filed a writ of certiorari with the Supreme Court of the United States.

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SHELBY COUNTY V. HOLDER, 570 U.S. 2 (2013)

- **<u>Supreme Court Decision (5-4)</u>:** The formula in Section 4(b) of the Voting Rights Act is unconstitutional, so Section 5 cannot be applied to invalidate the laws challenged in the above cases.
  - The central basis for the Majority's holding was that the coverage formula in Section 4(b) conflicts with the constitutional principles of federalism and "equal sovereignty of the states," because the disparate treatment of the states is "based on 40 year-old facts having no logical relationship to the present day."
  - Congress had failed to update the original coverage formula from Section 4(b).
  - Current burdens must be justified by current conditions.

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SHELBY COUNTY V. HOLDER, 570 U.S. 2 (2013)

- The dissent to the Court's decision argued that the legislative record established during Congress' 2006 reauthorization of the Voting Rights Act showed that the same jurisdictions, Shelby County in particular, were seeking to deny the right to vote. Additionally, the dissenters argued that Sections 4 and 5 had been responsible for preventing so many cases of discrimination, that it was irrational to render them unenforceable. Justice Ginsberg drew an analogy by saying, "throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet." *Shelby County v. Holder*, 570 U.S. 2 (2013).
- Within hours of the Supreme Court's decision, the Texas Attorney General stated it was implementing its Voter ID Law. Other states (North Carolina, for example) also passed new Voter ID laws.
- Texas Voter ID law was declared unconstitutional (again) after a trial under section 2 of the VRA.