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I. Introduction

Since the Florida election debacle in 2000 laid bare the problems with the way Americans cast and count votes, lawmakers and officials at federal, state, and local levels have made fitful progress toward building a modern and democratically inclusive election system. Too often, when it comes to voting rights, policymaking devolves into partisan hand-to-hand combat. The sweeping aspiration of a renewed democracy can be easily subsumed in arcane and technical arguments over election administration.

Today we have the opportunity for a major breakthrough for effective democracy. New technology and the implementation of new federal laws make it possible to vault over existing voter registration problems. The United States can move to a system of universal voter registration – a system where every eligible citizen is able to vote because the government has taken the steps to make it possible for them to be on the voter rolls, permanently. Citizens must take responsibility to vote – but government should do its part by clearing away obstacles to their full participation. Today’s voter registration system is one such obstacle.

In 2001, a commission chaired by Jimmy Carter and Gerald Ford concluded, “The registration laws in force throughout the United States are among the world’s most demanding ... [and are] one reason why voter turnout in the United States is near the bottom of the developed world.”¹ Currently, in nearly every state, eligible voters are not placed on electoral rolls unless they first take the initiative to register and otherwise satisfy state-imposed requirements for voter registration.² Even after they have registered, voters must start the process all over again virtually every time they move. Most Americans take this system for granted, but it was not always this way, and it does not have to be this way forever. The result is a system where many eligible citizens are unable to vote. They fall off the rolls; they never sign up in the first place; they drift ever further away from electoral participation. Some fifty million eligible American citizens are not registered to vote.

In this year, when surging citizen participation underscores the deep desire for a change in national direction, we see with renewed urgency the value in building a modern and fully participatory electoral system. In fact, the United States is one of the few

¹ Carter and Ford: National Election Commission, *Report of the Task Force on the Federal Election System*, chapter 2 “Voter Registration,” August 2001, available at http://www.tcf.org/Publications/ElectionReform/99_full_report.pdf.

² North Dakota does not require registration.

industrialized democracies that places the onus for registration on the voter. In other democracies, the government facilitates voting instead of making it harder, by taking upon itself the responsibility to register eligible voters. Even in the United States, voter-initiated registration did not exist until the late nineteenth century. It was instituted then with the intention of suppressing unpopular voters, especially former slaves and new European immigrants, and it continues to disenfranchise many Americans to this day.

Fortunately, in part because of new federal laws, states have made it easier to register over the last several decades. The Voting Rights Act of 1965 struck down barriers to voter registration based on race, but did not itself require government to take more affirmative steps to encourage registration. Then, in 1993, President Clinton signed into law the National Voter Registration Act (NVRA), popularly known as “motor voter.” The law required government agencies such as departments of motor vehicles and public assistance offices to register voters. After the 2000 election, Congress passed the Help America Vote Act (HAVA). HAVA mandated that states maintain computerized voter databases at the state level, rather than county by county. But those reforms have come with an administrative cost. As long as the government continues to insist that citizens register themselves, opening up access means ceding more control to voters to determine when and how they register. Elections officials may be overwhelmed by the dual demands of processing registrations that come in at the last minute and planning for elections. If the system cannot keep up, votes inevitably will be lost.

A universal voter registration system creates voter rolls that are as comprehensive as possible well in advance of Election Day and provides a fail-safe mechanism if an eligible voter shows up at the polls but cannot be found on the list. Such systems are routine in other countries. They use different techniques for building their lists, all of which have one thing in common: the government bears the burden of registering every eligible voter.

Universal voter registration is by its nature not a short-term goal that can be achieved by the next election. But federal action can begin to move the country toward this goal in short order. A system of universal registration would build on existing policies and innovations undertaken by state and local officials.. The next Congress can substantially speed up the process by:

- Establishing a national mandate for universal voter registration;
- Providing federal funds for states taking steps toward universal voter registration;
- Requiring “permanent voter registration” systems, so voters can register once and stay on the rolls when they move; and
- Requiring Election Day registration, so eligible voters whose names do not appear on the voter rolls can register and vote on the same day.

II. The Problems with the Current System

Voter registration is a problem in the United States. It's actually two problems: it impedes voting by eligible citizens, and it creates administrative headaches for elections officials need to spend time ensuring that Election Day runs smoothly and that all votes cast are counted accurately. These problems arise because registration in the United States has to be initiated by the voter. When states cannot timely manage the volume of new registrations, the voter also bears the brunt of any breakdown in the system.

A. Registration Is a Bureaucratic Obstacle to Voting

Today, the voter registration system is a significant barrier to voting in the United States. In the November 2004 presidential election, fully 28% of eligible Americans simply were not registered to vote. That's over 50 million citizens who were not on the electoral rolls and could not vote on Election Day.

Registration requirements are a barrier to voting for a number of reasons. The current system simply is not designed for a mobile society. In a country where one in six Americans moves in a year, government does not routinely keep such people registered to vote, even if they stay in their own state. Harvard political scientist Thomas Patterson notes that two-thirds of nonvoters in 2000 were ineligible to vote because they hadn't registered. "Of these, one in three was a former registered voter who had moved and hadn't re-registered."³

The current system is also prone to error, which can lead to disenfranchisement. For example, some states adopted policies that required a perfect match between information on voter registration forms and information in other government databases, such as those maintained by the Department of Motor Vehicles ("DMV") or the Social Security Administration. If a state official made a data entry error, the voter could be disenfranchised by a typo. Studies showed that failures to match information were likely to bar up to 20% of eligible new registrants from the polls. Errors in registration processes won't be solved by a universal registration system, but that system ensures that the burden of those errors don't fall on voters. In a universal registration system, with failsafe Election Day registration, if the government makes a mistake, it doesn't become the voter's problem. States must ensure they don't knock eligible voters off the list, or they'll see increased use of Election Day registration, which will require greater resources than just getting it right in the first place.

Placing the burden on the voter also leaves registration systems open to manipulation. Several states have enacted cumbersome restrictions on voter registration drives, such as short deadlines for turning in forms even when the drive takes place long

³ Thomas Patterson, *The Vanishing Voter: Public Involvement in an Age of Uncertainty* (Knopf, 2002), 178.

before the election. In Florida, the risk of huge fines for failure to meet such deadlines shut down registration efforts by the state League of Women Voters for the first time in nearly 70 years. In Ohio, volunteers hoping to help their fellow citizens exercise their fundamental right to vote faced criminal penalties if they gave completed registration forms to a supervisor for submission instead of personally delivering the forms to election offices all over the state. Other states have proposed documentation requirements that many otherwise qualified registrants are unable to meet. Even when citizens succeed in getting on the rolls, they may be purged before Election Day. Many of these barriers to registration can also emerge as misguided attempts to respond to surges in registration and bloated voter rolls. With universal registration, officials can respond to these issues without disenfranchising voters.

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

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

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

B. Voter-Initiated Registration Impedes Election Administration

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

Leaving registration up to individual voters also makes it harder to keep the lists current. Voters rarely cancel their registration when they move. The names of voters who are no longer qualified to vote in a particular location remain on the list, along with those of voters who have died. Although federal law recognizes the need to clean registration rolls, officials first must complete procedures designed to protect voting rights. In the meantime, bloated rolls fuel fear-mongering about the potential for fraud, which in turn serves as an excuse for voter suppressive legislation or unlawful purges.

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

III. Solving the Problem: Universal Registration

The problems with voter-initiated registration are many, but they are not hard to solve. We have new technologies, new understanding of election administration and how it can be manipulated to the voter's detriment, and a surge in levels of political interest that makes it urgent that the system work to promote participation—all of which create an opportunity for reform the likes of which we have not seen for a long time.

A. The Opportunity Is Great

A move to significant national voter registration legislation makes sense now, for several reasons. Most importantly, the remedy is available, and the potential for political will is strong. Thanks to the Help America Vote Act, states are now required to maintain computerized statewide voter registration lists. The new databases make it far easier to

manage information about registrants, including name or address changes that do not affect eligibility. When a person moves within a state, for example, officials can transfer the voter's registration to the appropriate new location with a flick of the switch. There is no excuse for burdening the voter with responsibility for re-registration, as most states now do.

We have seen, in this polarized age of razor-thin electoral margins, increased efforts both salutary—to register new voters and bring new people into the system—and malevolent—to prevent voters from registering or to knock them off the rolls once they've registered. Placing the onus on the government to guarantee that no citizen is unable to vote for failure to have registered takes the latter off the table as a partisan tool, and ensures that effort that goes into the former can be redirected into mobilizing and educating voters.

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

B. Models for State Reform

How would the government fulfill its obligation to register voters? There are two principal new mechanisms that municipalities, states, or even the federal government could use to manage this task.

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

Using existing lists. The second option draws on other governmental lists to build an electoral roll. Although the United States does not have a residence registry or a national health care system that would provide a universal list, states have a variety of databases that compile information about their citizens—databases maintained by the DMV, income tax authorities, or social service agencies, for example. States could use these lists, where they provide the necessary eligibility information, to build an electoral register. Already, many of these agencies are required under the National Voter Registration Act to provide voter registration services, a duty that largely has been ignored in the last decade. Building a list with existing data would help ensure every eligible citizen gets added to the rolls. States could also fully implement the NVRA to help reach the goal of universal registration.

Once an electoral register has been built, newly eligible voters must be added to the list and already registered voters must be tracked as they move from place to place. To capture newly eligible voters, registration should be made an automatic part of becoming a citizen, graduating from high school (or entering college), or being discharged from prison, probation, and parole. States can update their data by running annual or biannual censuses, or tracking changes to the databases they used to build the list. Of course, an “opt-out” from registration must be available for any U.S. citizen who prefers to remain unregistered for whatever reason.⁴

C. A Federal Universal Voter Registration Act

To move the nation toward universal voter registration, it is highly likely that federal legislation will be necessary. Such a system, to achieve genuine universality, will need to have numerous elements. It would have as its core a national standard for universal registration, with the states given flexibility for how to get there, and the federal financial support necessary to enable states to innovate to achieve the goal. But there will be manifest complexities. To cite a single example, states will need to find a way to ensure that they’re able to share data so that eligible citizens who move, say, from Connecticut to New Jersey do not automatically drop off the rolls, as today.

The new Congress should be prepared to enact a federal bill with three main components: (1) a mandate for states to enact systems of universal voter registration; (2) funding for states to support their adoption of one of the universal voter registration models or their experimentation with new systems to register voters; (3) a requirement that registration be treated as permanent as long as a voter remains resident within the same state; and (4) mandatory Election Day registration, as a fail-safe mechanism for eligible voters missing from voter lists for any reason.

⁴ Some Americans refrain from registering to vote because they want to avoid being put on the list for jury duty, which many states build using electoral registers. Any system of universal registration would have the added benefit of creating more complete jury lists, and opting out of voter registration should have no effect on the obligation to perform jury duty.

1. Federal Universal Registration Mandate

Federal law should require states to enact systems that would phase in universal voter registration. While states should be encouraged to experiment with new ways of registering voters and administering elections, benchmarks can be set so that states take responsibility to guarantee that every one of their eligible citizens is able to vote. This mandate could take the form of a target percentage of registered eligible citizens; it could require states to meet certain policy benchmarks; or it could be determined by a federal agency. There are multiple ways states could use to register all their citizens, including enumeration, combining existing lists of eligible citizens, running affirmative voter registration drives, fully implementing the National Voter Registration Act, or some combination of any or all of these.

2. Federal Funding for Voter Registration

Such a bold national goal must be accompanied by ample national resources to help states complete the transition. Congress provided funds to help states make the technology improvements required under HAVA, and a generous federal investment also is essential to the success of voter registration reform. Federal financial support for state universal registration systems could also include postage rebates to encourage electoral enumeration and free access to the National Change of Address database for use in updating registration records.

States should have latitude, however, to use federal funds for a variety of innovative programs that improve voter registration systems. What might work in an area with a predominantly urban population might be unworkable in rural areas and vice versa. Congress must appropriate sufficient funding to enable states to devise creative solutions to the problems of their current registration systems, while requiring that any funded programs demonstrably expand the voter rolls, especially in areas with historically low registration rates. And states should also receive funding to implement permanent registration and Election Day registration, which will require resources in the short term.

3. Permanent Registration

The second component of a federal voter registration reform bill would be a requirement that states institute statewide permanent registration as soon as possible. Under such a system, registered voters who move within the state are still able to vote without re-registering. If the state has not tracked the address change in the statewide voter registration database before Election Day, the voters need only update their registration when they go to the polls. One in six Americans moves every year, most within the state, and now that voter registration databases are maintained at the state level, there is no reason to require voters to reregister every time they cross county lines.

4. Election Day Registration

Even under the most aggressive list-building system administered with the best of intentions, some voters are bound to fall through the cracks. To ensure that eligible voters are not deprived of the franchise simply because they are not on polling place lists, any system of universal registration must include Election Day registration, which like permanent registration, states should be required to implement while moving towards universal registration. Allowing registration and voting on the same day, as eight states already do, has boosted turnout without imposing significant additional administrative burdens. Federal funds could be used to support any additional staffing needs on Election Day.

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