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## How to Unlock the Voting Block: Oregon's Sweeping Solution to Poor Voter Turnout: Automatic Registration

Gavin Rynard

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HOW TO UNLOCK THE VOTING BLOCK: OREGON'S SWEEPING  
SOLUTION TO POOR VOTER TURNOUT: AUTOMATIC  
REGISTRATION

*Gavin Rynard*

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## I. INTRODUCTION

A harsh, contentious election cycle is bound to create apathy in a vast swath of the United States population. For many Americans, apathy ends with the convenient excuse heard around water coolers the day after election day: “I forgot to register.” On March 15, 2015, Oregon became the first state in the country to take that excuse away from its residents with its new Motor Voter Act.<sup>1</sup>

Oregon’s Motor Voter Act automatically registers Oregonians as voters whenever they visit the Department of Motor Vehicles (“DMV”) to apply for, renew, or replace an Oregon drivers’ license, ID card, or permit.<sup>2</sup> Oregon’s goal was to increase voter turnout. Voter registration has a high correlation with voter turnout in the United States. While only 53.6% of the voting age population voted in the 2012 presidential election, 84.3% of registered voters voted in that

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<sup>1</sup> *Oregon Motor Voter Act FAQ*, Oregon Secretary of State Dennis Richardson (<http://sos.oregon.gov/voting/Pages/motor-voter-faq.aspx>), <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=628>.

<sup>2</sup> Or. Rev. Stat. § 247.017 (2015).

same election.<sup>3</sup> Furthermore, approximately one quarter of eligible American voters—51 million Americans—are not registered to vote.<sup>4</sup> Therefore, Oregon saw an opportunity and sought out a plan to increase voter turnout, and its plan was simple: eliminate barriers to increase turnout.

This article will discuss the details and merits of Oregon's automatic voter registration program. Essentially, this article poses and answers one basic question: How far should a government go to encourage its citizens to vote? It will also prescribe a solution to improve voter turnout on a state-by-state level and on a federal level by encouraging Americans to lobby and write to their state and federal legislatures and to push for ballot initiatives on a state level.

## II. BACKGROUND: WHY DON'T PEOPLE REGISTER TO VOTE THEMSELVES?

The United States has one of the lowest voter turnouts of non-compulsory, developed democracies with only 53.6% of the American voting age population voting in the 2012 presidential election.<sup>5</sup> Conversely, the voting age population

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<sup>3</sup> Drew Desilver, *U.S. Voter Turnout Trails Most Developed Countries*, PEW RESEARCH CENTER (August 2, 2016), <http://www.pewresearch.org/fact-tank/2016/08/02/u-s-voter-turnout-trails-most-developed-countries/>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

in other developed democracies like Sweden, South Korea, Denmark, and Iceland voted in numbers upwards of 80% in their most recent major elections.<sup>6</sup> American democracy is only speaking with half of its voice. Meanwhile, other developed democracies speak with a much louder voice. Given the high correlation between voter registration and voter turnout in the United States, Oregon's theory is that automatic registration will increase voter turnout because registration is one of the largest barriers to voting and because other deterrents can be chipped away by eliminating the registration barrier.

#### A. PROCEDURAL ERROR

According to 2008 Census data, the top two reasons Americans do not register to vote are "not interested in the election or not involved in politics" (46.0%) and "did not meet registration deadlines" (14.7%).<sup>7</sup> The other reasons Americans point to for their failure to register—all within single digit percentages—include "not eligible to vote" (8.6%), "permanent illness or disability" (6.0%), "don't know or refused" (5.7%), "didn't know where or how to register" (4.2%), "vote would not make a difference" (4.0%), "did not meet residency requirements" (3.5%), "difficulty with

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<sup>6</sup> *Id.*

<sup>7</sup> United States Census Bureau, *Voting and Registration in the Election of November 2008: Population Characteristics* (2012), <https://www.census.gov/prod/2010pubs/p20-562.pdf>.

English" (1.4%), and "other" (6.1%).<sup>8</sup> When compiling the reasons that a willing and able voter could not vote because of a procedural error—"did not meet registration deadlines," "didn't know where or how to register," and "difficulty with English"—the Census data shows that approximately one in five non-registered voters would have registered had they not made a procedural error during the registration process.<sup>9</sup>

On average, approximately one in five non-registered voters is willing and able to vote, but gets turned away because of a procedural error.<sup>10</sup> The other four in five non-registered voters either made a conscious decision or were ineligible.<sup>11</sup> Some voters actually go to the polls on election day thinking they can vote, but get turned away because they are not registered. Ignorance of our voting process and procedural errors are blocking Americans from the polls. Apathy or disinterest in our election system is stifling other Americans.

#### B. DISCONNECTED: INSIGNIFICANT AND RIGGED

Nearly four in five non-registered voters feel disconnected from the voting process.<sup>12</sup> Americans

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

commonly hear genuine pleas to get out the vote under the presumption that more voters equal better results. Conversely, leading up to every election, voters often hear that one vote will make statistically no difference in the outcome of an election.

There is a simultaneous push to get out the vote and a push to stifle the vote. One mantra is “every vote counts”; the other mantra is “one vote doesn’t matter.” Statistically the latter mantra prevails. In the 2008 presidential election, the average voter had just a one in 60 million chance of deciding the race.<sup>13</sup> Americans do not want to waste their time just to feel insignificant.

An even deeper concern is that the will of most voters will have little to no impact on public policy decisions by our elected officials. Disaffected Americans sense that the rich and powerful determine government actions, and a recent study of nearly 1,800 controversial policy issues in the United States supports that conclusion.<sup>14</sup> The raw data demonstrates that when 90% or more of average citizens prefer a policy proposal, the predicted probability of adoption is as low as approximately 30%; however, when 90% or more of economic elites prefer a policy proposal, the

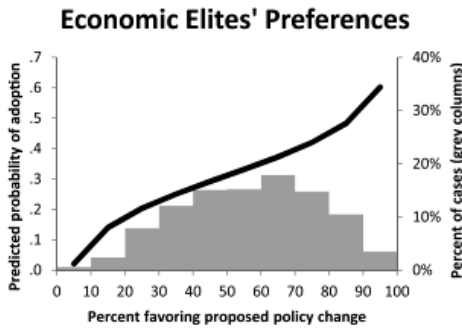
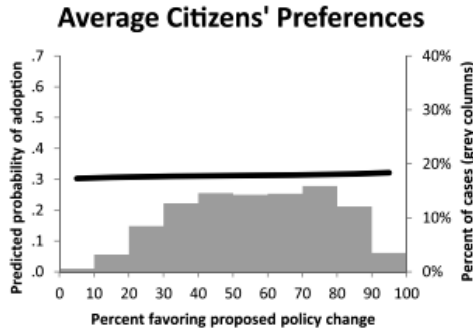
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<sup>13</sup> Andrew Gelman et al., *What is the Probability Your Vote Will Make a Difference*, 20 *ECONOMIC INQUIRY* 321, 324 (2012).

<sup>14</sup> Martin Gilens & Benjamin L. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 *PERSPECTIVE ON POLITICS* 564 (2014).



predicted probability of adoption is as great as 60%.<sup>15</sup> In fact, the study points out that the predicted probability of policy adoption is effectively the same, hovering around 30%, whether a small minority (10%) or a robust majority (90%) of average citizens favor a proposed initiative.<sup>16</sup>



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<sup>15</sup> *Id.* at 573.

<sup>16</sup> *Id.* at 572.

<sup>17</sup> *Id.* at 573 fig. 1.

Political Scientists Martin Gilens and Benjamin Page explained: “[T]he majority does *not* rule—at least not in the causal sense of actually determining policy outcomes. When a majority of citizens disagrees with economic elites and/or with organized interests, they generally lose.”<sup>18</sup> They also note that “[e]ven when fairly large majorities of Americans favor policy change, they generally do not get it.”<sup>19</sup> Therefore, it should come as no surprise that Americans do not want to play in an electoral game that they think is rigged.

### C. OREGON’S FIX: REGISTER AND THEY WILL VOTE

Oregon, however, hopes that automatic registration will chip away at unregistered residents’ mistakes and disinterest. Data shows that countries that employ automatic voter registration laws exhibit substantially higher voter turnout than the United States.<sup>20</sup> Sweden, for example, touts a major election voter turnout of 82.6% of its voting age population and 85.6% of its registered voters.<sup>21</sup> In Sweden, registration is highly correlated with voter turnout.

In the United States, the correlation is the same. Only a measly 53.6% of the United States voting age population

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<sup>18</sup> *Id.* at 576.

<sup>19</sup> *Id.*

<sup>20</sup> Desilver, *supra* note 3.

<sup>21</sup> *Id.*

voted in 2012; however, 84.3% of registered voters voted in the same year.<sup>22</sup> Like in Sweden, in the United States, if an American is registered to vote she is much more likely to vote. In fact, the voter turnout among registered American voters is almost identical to the voter turnout among registered Swedish voters: 84.3% and 85.6%, respectively.<sup>23</sup> Therefore, in an attempt to increase voter turnout to Swedish levels, Oregon's plan targets unregistered residents that wanted to vote but made a procedural error, apathetic unregistered residents, and frustrated unregistered residents by following the Swedish model that simply automatically registers all eligible, unregistered residents.

### III. OREGON'S MOTOR VOTER LAW

Oregon's Motor Voter Law aims to change what can be an intimidating voter registration process into an automatic process. In general terms, Oregon's new law shifts the voter registration process from an opt-in process to an opt-out process.<sup>24</sup> Instead of the burden of registration resting on Oregon's citizens, it rests on Oregon's government.

#### A. MECHANICS OF THE LAW

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Or. Rev. Stat. § 247.017 (2015).

Starting January 1, 2016, Oregon initiated the first phase of that process by ensuring that whenever an eligible unregistered resident makes a qualifying interaction with the State, that resident is automatically registered to vote.<sup>25</sup> An eligible unregistered resident is defined as an individual that is not registered to vote, over 17 years old, an Oregon resident, and a United States citizen.<sup>26</sup> A qualifying interaction with the state is when an eligible unregistered resident visits the DMV to apply for, renew, or replace an Oregon drivers' license, ID card, or permit.<sup>27</sup>

## B. IMPLEMENTATION

Additionally, starting June 10, 2016, Oregon implemented the second of two phases of its motor voter law where the State will grant approximately 145,000 eligible unregistered residents who had qualifying interactions at a DMV in 2014 or 2015 automatic voter registration.<sup>28</sup> Therefore, by the 2016 presidential election any eligible unregistered residents in Oregon that made a qualifying interaction with the State in 2014, 2015, or the before the presidential election in 2016, was registered to vote.

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<sup>25</sup> *Id.* at § 247.017(2).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Oregon Secretary of State, *Oregon Motor Voter Act FAQ* (2015), <http://sos.oregon.gov/voting/Pages/motor-voter-faq.aspx>.

### C. OPT-OUT PROCESS

Oregonians, however, are not required to register to the vote. In Oregon, automatic registration does not equal compulsory registration. After making a qualifying interaction with the DMV, the Oregon Motor Voter (“OMV”) program will send its eligible unregistered residents a OMV card in the mail.<sup>29</sup> Its voters will then have the option to do nothing, choose a political party (in order to vote in the primary elections), or opt out.<sup>30</sup> In order to choose a political party or opt out, Oregonians have 21 days from the date the OMV card is sent to respond.<sup>31</sup> If the State does not receive a response within 21 days, then the Oregonian will be automatically registered to vote with no party affiliation.<sup>32</sup> If an Oregonian does not return the OMV card within the allotted 21 days, then she can notify her local county clerk’s office in writing or in person at any time to opt out of the registration or change party affiliation.<sup>33</sup> Once an Oregonian opts out, the State will not automatically register that individual again; thereafter, if the Oregonian changes her mind and wishes to register she must proactively register to vote either online or by filling out a paper registration form.

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<sup>29</sup> Or. Rev. Stat. § 247.017(3) (2015).

<sup>30</sup> *Id.* at § 247.017(2).

<sup>31</sup> *Id.* at § 247.017(3).

<sup>32</sup> *Id.*

<sup>33</sup> Oregon Secretary of State, *supra* note 28.

<sup>34</sup> Outside of requiring Oregonians to put pen to paper on their actual ballot, Oregon granted Oregonians a near barrier-free opportunity to vote.

#### D. AUTOMATIC VOTER REGISTRATION STATES

Although Oregon is the first state to pass automatic voter registration legislation, Oregon is not the only state with automatic registration. As of May 2016, five states have passed automatic voter registration legislation through their state legislatures and agencies: Oregon, California, Connecticut, Vermont, and West Virginia.<sup>35</sup> And as of the 2016 presidential election, Alaska became the sixth and latest state to approve automatic voter registration with a publically voted-on ballot measure.<sup>36</sup> Additionally,

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<sup>34</sup> *Id.*

<sup>35</sup> Ari Berman, *Automatic Voter Registration in Oregon is Revolutionizing American Democracy*, THE NATION (May 16, 2016), <https://www.thenation.com/article/automatic-voter-registration-in-oregon-is-revolutionizing-american-democracy/>.

<sup>36</sup> *Alaska Voter Registration via the Permanent Fund Dividend Application Ballot Measure 1 (2016)*, Ballotpedia, [https://ballotpedia.org/Alaska\\_Voter\\_Registration\\_via\\_the\\_Permanent](https://ballotpedia.org/Alaska_Voter_Registration_via_the_Permanent)

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Fund\_Dividend\_Application,\_Ballot\_Measure\_1\_(2016) (last visited Nov. 30, 2016).

throughout 2015 and 2016, 24 other states plus the District of Columbia have considered or are still considering automatic voter registration.<sup>37</sup> The voting initiative has gained momentum among many states.

#### IV. SHOULD EVERY ELIGIBLE VOTER VOTE?

At the closing of every election cycle, Americans inevitably hear genuine pleas to get out the vote under the presumption that more voters equal better results. Americans rarely question whether everyone who can vote ought to vote. The tension lies in whether prospective voters are informed.

##### A. VOTER KNOWLEDGE

Pew Research Center conducted a poll of registered voters in August of 2012 to assess their knowledge of the candidates and the issues.<sup>38</sup> The results were striking. Of registered voters, 85% knew that the then-sitting Vice President was Joe Biden, 68% knew that then-President Barack Obama supported increasing taxes for Americans earning an income greater than \$250,000, and only 60%

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<sup>37</sup> *Automatic Voter Registration*, Brennan Center for Justice (Sept. 22, 2016), <https://www.brennancenter.org/analysis/automatic-voter-registration>.

<sup>38</sup> *What Voters Know About Campaign 2012: Pew Research News IQ Quiz*, Pew Research Center (August 10, 2012), <http://www.people-press.org/2012/08/10/what-voters-know-about-campaign-2012/>.

knew that Republican Presidential Nominee Mitt Romney opposed marriage equality.<sup>39</sup> This lack of knowledge was pervasive among registered voters; and there is a concern that expanding the registration pool will, in turn, give the politically ignorant an even bigger voice.

#### B. DUTY TO ABSTAIN

In fact, some Americans go as far to say that uninformed voters have a duty not to vote. Although the suggestion that some eligible voters have a duty not to vote may sound elitist because it implies only a small minority of citizens are capable of making informed votes, the suggestion goes beyond voter stupidity or bias: voters may simply not have the time and resources to develop an informed position.

#### V. DO ELIGIBLE, UNKNOWLEDGEABLE VOTERS HAVE THE RIGHT TO VOTE?

Although the United States Constitution is not explicit on the right to vote, some constitutional scholars argue that the right to vote is implicit in constitutional Amendments.<sup>40</sup> For example, Amendments that prohibit

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<sup>39</sup> *Id.*

<sup>40</sup> Tom Kertscher, *U.S. Constitution is Not Explicit on the Right to Vote*, *Wisconsin Rep. Mark Pocan Says*, Politifact (May 30, 2013),



governments from denying the right to vote based on race and gender imply that the right is constitutionally protected.<sup>41</sup> Even Hans von Spakovsky of the conservative Heritage Foundation explains that “[i]t is correct that there is not an explicit provision in the Constitution guaranteeing the right to vote, but several amendments guarantee the right to vote at age 18, free of racial discrimination, and protected by the Equal Protection doctrine.”<sup>42</sup>

#### A. FUNDAMENTAL RIGHT

In *Dunn v. Blumstein*, the Supreme Court found that the right to vote is fundamental: “denying some citizens the right to vote, such laws deprive them of ‘a fundamental political right, . . . preservative of all rights.’”<sup>43</sup> The latest standard of review from the decision in *Crawford v. Marion County Election Board* delineates that in order to uphold voter restriction laws by finding that it is not sufficient to show that the laws further a relevant and legitimate state interests; the state interest must also be “sufficiently weighty” to

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<http://www.politifact.com/wisconsin/statements/2013/may/30/mark-pocan/us-constitution-not-explicit-right-vote-wisconsin/>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (quoting *Reynolds v. Sims*, 337 U.S. 533, 562 (1964)).

justify the voter restriction.<sup>44</sup> Even then, the restrictive statute must evenhandedly apply across the board to all citizens.<sup>45</sup> Additionally, if available, a state must choose the “less dramatic means” of tailoring a statute to serve the state interest.<sup>46</sup>

The Court in *Dunn v. Blumenstein* did not explicitly decide whether promoting a knowledgeable electorate is a sufficiently weighty, legitimate state interest. However, restricting access to voting based on an arbitrary measure of what *may* make a knowledgeable voter would not likely apply evenhandedly across the board to all citizens, again, assuming promoting a knowledgeable electorate is a sufficiently weighty state interest.<sup>47</sup>

#### B. TAILORING KNOWLEDGE

Tailoring knowledge is a grave concern because it is not evenhanded. Knowledge is subjective. For example, if a state were to engineer a quiz in order to test an eligible voter’s knowledge of the issues before allowing her to vote, then the state can finagle with the quiz questions in order to suppress voters with specific ideologies. Incumbent parties and economic elites will inevitably skew mandatory

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<sup>44</sup> *Crawford v. Marion County Election Bd.*, 533 U.S. 181, 190 (2008).

<sup>45</sup> *Id.* at 189-90.

<sup>46</sup> *Dunn*, 405 U.S. at 343.

<sup>47</sup> *See id.*; *See Crawford*, 533 U.S. at 189-90.

knowledge tests to favor test-takers that support their agenda. And the test would actually deny the fundamental right to vote to those that fail.

Voters also care about an endless range of issues. Restricting the vote by targeting a voter's knowledge on specific issues will suppress voters with specific ideologies and concerns. Therefore, although knowledge may or may not be a sufficiently weighty legitimate government interest, it is unforeseen whether promoting that interest can be applied evenhandedly with legislation (like voter registration requirements) that will pass constitutional muster.<sup>48</sup> Until then, states are weighing whether promoting voter participation or whether tailoring voter participation to "knowledgeable" voters is more in line with constitutional values.

## V. MERITS AND OPPOSITION

Proponents of Oregon's Motor Voter Law argue that automatically registering voters will lead to greater voter turnout. Proponents point to data that demonstrates that, like in Sweden, Americans that are registered to vote are much more likely to vote.<sup>49</sup> Sweden automatically registers its voters, and its voter turnout among its voting age

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<sup>48</sup> See *Crawford*, 533 U.S. at 189-90.

<sup>49</sup> Desilver, *supra* note 3.

population is above 80% for its major elections.<sup>50</sup> Americans that are registered to vote turnout in almost identical numbers in the United States' presidential elections—above 80%.<sup>51</sup> Therefore, automatic registration should lead to greater turnout. And, as proponents argue, the greater the turnout the more representative the government.

#### A. VOTER TURNOUT

Proponents are right on turnout. Although overall nationwide voter turnout was down in the 2016 presidential election,<sup>52</sup> voter turnout in states with automatic voter registration was up.<sup>53</sup> In fact, automatic voter registration states substantially bucked the trend.

It comes as no surprise that automatic voter registration greatly increased the number of registered voters in the five states that implemented the law. Prior to

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Gregory Wallace, *Voter Turnout at a 20-Year Low in 2016*, CNN POLITICS (Nov. 30, 2016), <http://www.cnn.com/2016/11/11/politics/popular-vote-turnout-2016/>.

<sup>53</sup> *Voter Turnout*, UNITED STATES ELECTIONS PROJECT, <http://www.electproject.org/home/voter-turnout/voter-turnout-data> (last visited Dec. 13, 2016).

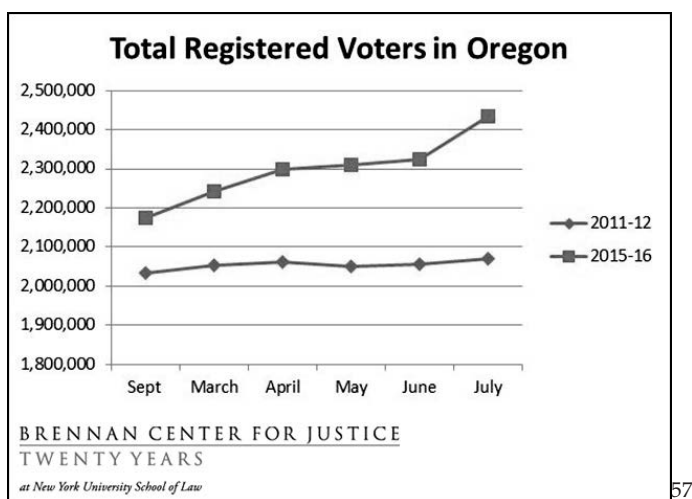
the 2016 election, Oregon, for example, saw monthly DMV registrations averaging over 15,000 registrations per month over the course of the first eight months of 2016, which was in stark contrast with the State's measly 4,163 monthly DMV registrations over the 2012 election cycle.<sup>54</sup> Oregon managed to register approximately 11,000 more residents per month because of its automatic registration program.<sup>55</sup> By the end of October 2016—around a week before the election—Oregon had registered 269,630 new voters thanks to its automatic voter registration program, amounting to a total of 2,482,014 registered voters in the State.<sup>56</sup>

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<sup>54</sup> Jonathan Brater, *Update: Oregon Keeps Adding New Voters at Torrid Pace*, BRENNAN CENTER FOR JUSTICE (Aug. 19, 2016), <https://www.brennancenter.org/analysis/update-oregon-keeps-adding-new-voters-torrid-pace>.

<sup>55</sup> *See id.*

<sup>56</sup> Election Division Oregon Secretary of State, *Oregon Motor Voter Cumulative Program Statistics Through October 31, 2016* (2016), [http://sos.oregon.gov/elections/Documents/OMV/OMV\\_MonthlyReport\\_All\\_October2016.pdf](http://sos.oregon.gov/elections/Documents/OMV/OMV_MonthlyReport_All_October2016.pdf).



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According to Census 2010-2014 data, Oregon's citizen voting age population is 2,830,525.<sup>58</sup> Therefore, by election day, Oregon's estimated registration rate was around 87.7%, which is a substantial hike from its pre-automatic voter registration level of 76.8%.<sup>59</sup> With similar programs, California, Connecticut, Vermont, and West Virginia inevitably saw similar increases in their voter registration rates.

Increased voter registration led to increased voting in the states. Data shows that nationwide voter turnout in 2016

<sup>57</sup> Brater, *supra* note 54.

<sup>58</sup> U.S. Census Bureau, Voting Age Population by Citizenship and Race (CVAP) (2014).

<sup>59</sup> Brater, *supra* note 54.

was the lowest it has been in the last four presidential elections.<sup>60</sup> Only a measly 59.5% of eligible voters cast ballots in the 2016 presidential election.<sup>61</sup> Not since 2000, when 56.6% of eligible voters cast their ballots, has voter turnout been so low.<sup>62</sup> More than half of the states saw a change of less than half a percent or a decrease in its voter turnout when compared to the 2012 presidential election.<sup>63</sup> However, all five automatic voter registration states (California, Connecticut, Oregon, Vermont, and West Virginia) saw an increase in voter turnout—and some increases were substantial.<sup>64</sup> With the final vote count tabulated, California, Connecticut, Oregon, Vermont, and West Virginia saw immense voter turnout increases with increases amounting to 2.1, 3.9, 2.7, 3.4, and 4.7 percentage points, respectively.<sup>65</sup>

Increases in the low single digits may not sound substantial, but it is more than substantial—it is an anomaly. <sup>66</sup> Connecticut, Oregon, Vermont, and West

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<sup>60</sup> Wallace, *supra* note 52.

<sup>61</sup> *Voter Turnout*, United States Elections Project, <http://www.electproject.org/home/voter-turnout/voter-turnout-data> (last visited Dec. 13, 2016).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Voter Turnout*, *supra* note 61.

Virginia were only four of seven states that saw voter turnout increases above 2.5 percentage points in the 2016 election cycle that saw a vast nationwide decrease in voter turnout.<sup>67</sup> In fact, Connecticut, Oregon, and Vermont all touted voter turnouts higher than the national voter turnout average (59.5% of the eligible voting population), amounting to 65.2%, 66.9%, and 64.6%, respectively.<sup>68</sup>

Like in natural sciences, however, correlation does not equal causation in political science. Because of the novelty of the automatic voter registration laws, political scientists lack the data to *prove* that increases in registration *caused* increases in voter turnout. However, automatic voter registrations states not only bucked the national voter turnout trend, they also pulled off a voter-turnout anomaly.

Four of the five states that implemented an automatic voter registration program saw massive increases in voter turnout at a rate that only seven states saw—increases higher than 2.5 percentage points.<sup>69</sup> Additionally, three out of the five states touted voter turnout rates higher than the national voter turnout average.<sup>70</sup> And finally, all five states substantially increased their voter rolls by automatically registering its residents. The correlation here is strong. It

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*



strongly suggests that Sweden's model works; registering more voters increases voter turnout.

#### B. DEMOGRAPHIC CHANGES

One of states' legislature's concerns regarding automatic voter registration laws is that a higher voter turnout will affect the ideological demographics of the government elect. Data shows that Americans that are not registered to vote tend to be younger, less white, poorer, and, most importantly, more likely to support Democrats and liberal economic policies when compared to registered voters.<sup>71</sup> For example, a poll conducted approximately a week before the 2012 presidential election found that 59% of nonvoters would "back" Obama's presidency, while only 24% of nonvoters would "back" Romney's presidency.<sup>72</sup> More specifically on economic policy issues, approximately 65% of Americans that are not registered to vote support a minimum wage increase to \$10 compared to only approximately a 40% support among registered voters.<sup>73</sup> The discrepancy in economic liberal ideology between Americans not registered to vote and registered voters is

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<sup>71</sup> Pew Research Center, *Nonvoters: Who They Are, What They Think* (Nov. 1, 2012), <http://www.people-press.org/2012/11/01/nonvoters-who-they-are-what-they-think/>.

<sup>72</sup> *Id.*

<sup>73</sup> Sean McElwee, *Why Non-Voters Matter*, THE ATLANTIC (Sept. 15, 2015), <http://www.theatlantic.com/politics/archive/2015/09/why-non-voters-matter/405250/>.

consistent along a multitude of economic issues, including government funded free community college, paid sick leave, and aid for the poor.<sup>74</sup> Americans not registered to vote are consistently more likely to favor liberal economic policies when compared to registered voters.<sup>75</sup>

This data leads conservative legislatures to conclude that more voters will equal more support for the Democrats and more liberal economic policies. Therefore, conservative state legislatures and members of Congress are likely concerned that expanding voting access to Americans that are not registered to vote will put their careers and political ideologies at risk.

In practice, however, the 2016 presidential election data suggests a different outcome. If there is any effect, automatic voter registration is more likely to affirm existing state ideologies, or even increase support for third-party candidates, than it is to sway political ideologies in a state.

The best way to analyze automatic voter registration's effect on ideological shifts in the states with the registration program is to compare each state's ideological shift over the last four years to the national average shift over the same four years. It is not a foolproof method. Only five of fifty states have enacted the program before the 2016 presidential election and politics is regional so the data is limited and there are other variables that can affect a specific state's

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<sup>74</sup> *Id.*

<sup>75</sup> Pew Research Center, *supra* note 71.

ideological shift.<sup>76</sup> However, the state-by-state ideological shift method is the best route political analysts have with the limited data available.

Voter turnout was down in 2016, especially democratic turnout.<sup>77</sup> Totals for the national popular vote share for the Democratic Presidential Nominee Hillary Clinton in 2016 was 48.07%, down from Democratic President Barack Obama's share of the national popular vote in 2012, which was 51.01%.<sup>78</sup> Voting totals show an approximate three percentage-point decrease in the Democratic Presidential Nominees' share of the national vote between 2012 and 2016.<sup>79</sup> In contrast, voting totals show that Republican Presidential Nominee Donald Trump also saw a decrease in the share of the national popular vote, when compared to Republican Presidential Nominee Mitt Romney, by approximately one percentage point.<sup>80</sup> Third-

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<sup>76</sup> Berman, *supra* note 35.

<sup>77</sup> David Leip, *United States Presidential Election Results*, Atlas of U.S. Presidential Elections, <http://uselectionatlas.org/> (last visited Dec. 13, 2016).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

party candidates took a larger chunk of the national popular vote when compared to 2012.<sup>81</sup>

When comparing the national average share of the vote to a state-by-state share, political analysts should quantify the ideological shift of each state's vote between 2012 and 2016. Analysts should then add approximately three percentage points to the democratic shift and approximately one percentage point to the republican shift in each automatic voter registration state to study how each state diverges from the national average shift.

All five states that enacted automatic voter registration before the 2016 presidential election voted for a presidential candidate from the same party it voted for in 2012.<sup>82</sup> States that voted for the democratic presidential candidates both years—California, Connecticut, Oregon, and Vermont—saw minor to substantial shifts in their share of democratic candidate votes: +1.3, -3.5, -4.8, and -9.9 percentage points, respectively.<sup>83</sup> When adjusting for the national three percentage point shift to the right, the adjusted ideological share of votes for the democratic candidate actually amounts to +4.3, -0.5, -1.8, and -6.9 adjusted percentage points, respectively.<sup>84</sup> West Virginia

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *See id.*

saw an increased shift in their ideological share of republican candidate votes amounting to +5.7 percentage points, and when adjusting for the national one percentage point shift for the republican candidate to the left, the adjusted ideological share of votes for the republican candidate is actually +6.7 adjusted percentage points.<sup>85</sup>

The ideological-change data is conflicting. It shows two States—California and West Virginia—that saw ideological shifts in the direction of the States' prior ideological leaning; two States—Connecticut and Oregon—that saw a minor, almost negligible, shift away from its prior ideological leaning; and one State—Vermont—that saw a substantial shift away from its prior ideological leaning.<sup>86</sup>

Shifts in ideology are regional. Political analysts do not expect a state-by-state shift of three percentage points away from a democratic presidential candidate because the national average shifted by three percentage points. Citizens from every state have their own specific concerns about presidential candidates. Larger shifts in California, Vermont, and West Virginia can be explained by the republican presidential candidate's harsh rhetoric toward immigrants, the public's suspicion of the democratic presidential candidate's moves to unfairly undermine her primary opponent who happened to be a Vermont Senator, and the incumbent party's reputation for placing tough regulations

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<sup>85</sup> *Id.*

<sup>86</sup> *See id.*

on coal mining, respectively. Without extensive data, there is no way to explain the shifts in the states. For now, with the exception of Vermont, four of the five automatic voter registration states either saw little to no ideological shift toward one of the two major parties or saw a shift that merely affirmed the existing ideologically leaning of the state.<sup>87</sup>

One interesting shift, however, was an ideological shift toward third parties. Using the same analysis, the third-party vote increased in 2016, comprising 5.9% of the vote, up from 1.9% in 2012, which is a four percentage point increase for third-party candidates' share of the vote.<sup>88</sup> Some states with automatic voter registration saw an even greater shift toward third-party candidates.<sup>89</sup>

California, Connecticut, and West Virginia saw a shift in line with the national shift of approximately four percentage points toward third-party candidates.<sup>90</sup> However, Oregon and Vermont saw massive shifts amounting to 8.4 and 10.6 percentage points, respectively, toward third-party candidates.<sup>91</sup>

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<sup>87</sup> *See id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

Although interesting, it is not surprising that residents that are automatically registered to vote would be more likely to vote third party. Many Americans do not vote because they do not align ideologically with the major political parties. As of 2012, a large plurality, 44% of nonvoters categorize themselves as independent, while only 27% of likely voters categorize themselves as independent.<sup>92</sup> Thus, data indicates that automatically registering residents that vote will likely have little to no effect on the ideological shift in some states, may have an affirmative ideological shift toward the existing majority party in some states, and may have an ideological shift toward third-party candidates in some states.<sup>93</sup>

### C. KNOWLEDGEABLE ELECTORATE

Opponents of Oregon's Motor Voter Law will probably cite Pew Research Center's August 2012 study to demonstrate that people who are not registered to vote, on average, are less knowledgeable than registered voters.<sup>94</sup> The study shows that, on average, American who are not registered to vote answer only 4.9 out of 12 campaign and political knowledge questions correctly compared to registered voters who answer 7.2 out of 12 campaign and

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<sup>92</sup> *Nonvoters: Who They Are, What They Think*, *supra* note 71.

<sup>93</sup> *See* Leip, *supra* note 77.

<sup>94</sup> *What Voters Know About Campaign 2012: Pew Research News IQ Quiz*, *supra* note 38.

political knowledge questions correctly.<sup>95</sup> For example, only 31% of Americans who were not registered to vote knew that Republican Presidential Nominee Mitt Romney was pro-life compared to 54% of registered voters that knew the Romney was pro-life—a 23 percentage-point difference.<sup>96</sup> Another example shows that only 47% of Americans who were not registered to vote knew that President Obama supported increasing taxes for Americans earning an income greater than \$250,000 compared to 68% of registered voters that knew that President Obama supported the tax increase—a 21 percentage-point difference.<sup>97</sup>

The data suggests that registration acts as a barrier between uninformed Americans and the ballot box. It is not unreasonable to argue that it takes interest and commitment to voluntarily register, and automatically registering almost all American citizens will lead to a less knowledgeable electorate. More registration will equal more voters, which are currently less knowledgeable on the issues, which could cause the states to open the floodgates to ignorant voters.

Opponents will argue that voting is more than just a personal choice; it is an opportunity for citizens to exercise immense power over others; and at the very least, Americans should exercise that power in a responsible and informed way. And opponents will likely argue that one of

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<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*



the best ways of acquiring an informed electorate is to require Americans to register to vote as a barrier to demonstrate motivation and knowledge.

However, as mentioned before, correlation does not equal causation in political science. The novelty of automatic voter registration limits data on the level of political acumen of the residents recently added to the voter rolls in the five states that have enacted an automatic registration program. However, a combination of data and logic shows that just because a resident that has never been interested in the political process can now vote, does not mean that she will vote, nor does it mean that she will be ignorant on political, economic, and social issues when she decides to vote.

Not every voter added to the voter rolls voted in the 2016 presidential election—not even close. Oregon, for example, increased its estimated registration rate by 10.9 percentage points in the months leading up to the 2016 presidential election;<sup>98</sup> however, the State only increased its voter turnout by 2.7 percentage points in the same election.<sup>99</sup> The increase in the number of registered voters is strongly, but not identically, correlated to the number of recently registered voters that actually voted. Like with any new program, it takes the public time to adjust.

In fact, although there is no data on the new voters that did not vote four years ago, data on reasons Americans

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<sup>98</sup> Brater, *supra* note 54.

<sup>99</sup> *Voter Turnout*, *supra* note 53.

do not register to vote can point to the reasons the new voters voted in 2016. As mentioned before, studies show that approximately one in five residents that are not registered to vote failed to register because of a procedural error—“did not meet registration deadlines,” “didn’t know where or how to register,” and “difficulty with English.”<sup>100</sup> Comparing the increases in voter turnout to the rise in voter registration shows that approximately a little more than one in five (2.7 in 10.9) newly registered voters actually voted in Oregon after the State enacted the program.<sup>101</sup> Therefore, it is likely that most, if not all, politically interested unregistered residents—residents that would have otherwise voted had they not made a procedural error in the registration process—voted in 2016 because they were automatically registered by the State. The combination of politically interested, plus a marginal number of politically uninterested residents, was what likely comprised the slightly more than one in five additional residents that voted in the 2016 presidential election in Oregon.

Disinterested Americans that become automatically registered to vote may also voluntarily become informed as a result of registration. Newly registered voters know they have the power to alter the direction of the government, and they know with that power comes responsibility.

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<sup>100</sup> United States Census Bureau, *supra* note 7.

<sup>101</sup> Brater, *supra* note 54; *Voter Turnout*, *supra* note 53.

It is true that registered voters have been polled to know more about the political issues than Americans that are not registered to vote; however, the causation could be flipped.<sup>102</sup> Voter registration is the classic chicken or the egg conundrum. Does registration compel residents' need to gather information in order to adequately participate or does gathering information compel residents to register in order to participate? Assuming it is the former, automatic voter registration can act strongly in line with public policy. Registered voters may know more about political issues because they are registered and they now feel an obligation to become more informed to participate in the political process. It is in the public's best interest to have an informed populace and a representative elected body; automatic voter registration could promote those interests.

The Constitution also promotes the preservation of voting rights. The Court in *Dunn* established that voting is a fundamental right.<sup>103</sup> And the Court's decision to strike down a residency requirement intended to promote knowledgeable voters demonstrates the Court's protection and promotion of voter participation over voter limitations related to a voter's lack of knowledge.<sup>104</sup> Treating registration as a barrier to keep the knowledgeable voter in

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<sup>102</sup> *What Voters Know About Campaign 2012: Pew Research News IQ Quiz*, *supra* note 38.

<sup>103</sup> *Dunn v. Blumstein*, 405 U.S. 330, 336-43 (1972).

<sup>104</sup> *See id.*

and the ignorant voter out is not in line with the Court's decision in *Dunn*.<sup>105</sup> Voting is a fundamental right,<sup>106</sup> and promoting a more representative elected body and a more informed populace is strongly in line with that right and the public's interest.

#### D. REPRESENTATIVE ELECTORATE

The key selling point of automatic voter registration is that it makes the elected officials in the United States more representative of the American people. Automatic voting increases voter turnout by Americans that were formerly not registered to vote.<sup>107</sup> And the average nonvoter is less affluent and more likely to be an ethnic minority than an average voter.<sup>108</sup> Therefore, nonvoters that are now more likely to turnout to vote on election day are more ethnically and economically diverse than they were before automatic voter registration programs were enacted, making the voting block more representative of the automatic-voter-registration states' population as a whole.

Nonvoter policy preferences do not match voter policy preferences. And as expected, public policy proposals by political candidates are geared to court voters, which are

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<sup>105</sup> *See id.*

<sup>106</sup> *Id.* at 336.

<sup>107</sup> *See Voter Turnout, supra* note 53.

<sup>108</sup> *See Nonvoters: Who They Are, What They Think, supra* note 73.

more affluent and more white than the average American.<sup>109</sup> To the voter goes the spoils. If the affluent vote in large numbers, then political candidates will gear their policies to court those voters. If voters represent the United States demographic more evenly, then political candidates will gear their policies to court other demographics as well. President Obama has argued that “[i]t would be transformative if everybody voted. That would counteract money [influencing politics] more than anything.”<sup>110</sup> Data supports his argument.

Studies show that spending on government aid and efforts to reduce income inequalities notably increase if more of a region’s population votes. For example, research on the elimination of poll taxes in the United States unveiled that a higher turnout among low-income Americans drove more

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<sup>109</sup> See David Callahan and J. Mijin Cha, *Stacked Deck: How the Dominance of Politics by the Affluent & Business Undermines Economic Mobility in America*, DEMOS (Feb. 2013), <http://www.demos.org/stacked-deck-how-dominance-politics-affluent-business-undermines-economic-mobility-america>; Adam Lioz, *Stacked Deck: How the Bias in our Big Money Political System Undermines Racial Equity*, DEMOS (Dec. 2014), <http://www.demos.org/publication/stacked-deck-how-bias-our-big-money-political-system-undermines-racial-equity>.

<sup>110</sup> David Knowles, *Obama Says Mandatory Voting Would ‘Completely Change’ U.S. Political Map*, BLOOMBERG POLITICS (March 18, 2015), <http://www.bloomberg.com/politics/articles/2015-03-18/obama-says-mandatory-voting-would-completely-change-u-s-political-map>.

government spending on welfare programs.<sup>111</sup> Another study found that higher voter turnout among the poor in states increased spending on healthcare for children, higher minimum wages, and more regulation of predatory lending.<sup>112</sup> Overall, research shows that states with higher voter turnout equality tout higher income equality.<sup>113</sup> Increasing turnout among lower income and middle class Americans in order to match the level of turnout among affluent Americans will likely result in not only a more representative government, but also a more equitable government.

## VII. RECOMMENDATIONS: BEST ROUTE TO AUTOMATIC VOTER REGISTRATION

The United States should enact automatic voter registration in the most expansive way possible. Attaining a representative electorate overrides concerns that ideological demographics will change, state parties in power will be affirmed, or that the electorate will be less “knowledgeable”

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<sup>111</sup> Thomas Husted & Lawrence Kenny, *The Effect of the Expansion of the Voting Franchise on the Size of Government*, 105 J. POL. ECON. 54 (1997).

<sup>112</sup> William Franko, *Political Inequality and State Policy Adoption: Predatory Lending, Children’s Health Care, and Minimum Wage*, 5 POVERTY & PUB. POL’Y 88 (2013).

<sup>113</sup> James M. Avery, *Does Who Votes Matter? Income Bias in Voter Turnout and Economic Inequality in the American States from 1980 to 2010*, 37 POL. BEHAV. 955 (2015).

on the issues. That is democracy: a “government by the people; especially: rule of the majority.”<sup>114</sup> If the people change ideological demographics, if parties are affirmed, or even if the electorate is a little less “knowledgeable,” so be it. That would make the United States government more representative of the people it is serving—liberal or conservative, democrat or republican or independent, intelligent or ignorant. Expansive representation—rule of the majority—should be democracy’s ultimate goal. And one of the best ways to promote that goal is enacting automatic voter registration.

Automatic voter registration has gained national momentum throughout 2015 and 2016. High-profile endorsements have brought the issue to the forefront. In June 2015, Secretary Hillary Rodham Clinton embraced automatic, universal voter registration for eligible voting-age citizens.<sup>115</sup> Two months later, Senator Bernie Sanders introduced an automatic registration bill in Congress.<sup>116</sup> Finally, in February 2016, President Obama encouraged legislatures to “make[e] automatic voter registration the new

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<sup>114</sup> *Democracy*, THE MERRIAM-WEBSTER DICTIONARY (2016).

<sup>115</sup> Michael Waldman, *Hillary’s Game-Changing Voting Reform*, POLITICO MAG., June 10, 2015, <http://www.politico.com/magazine/story/2015/06/hillary-clinton-2016-voting-reform-118761#.VXhoBUFF-Dt>.

<sup>116</sup> S. 1970, 114th Cong. (2015).

norm across America.”<sup>117</sup> However, the early momentum in the automatic voter registration effort has dwindled post-2016 election due to both a lack of urgency and a shift in the political landscape.

As of now, Americans have four routes to achieve automatic voter registration: state legislation, a state department or an administrative decision, a state ballot initiative, or a federal bill. Four States with automatic voter registration (California, Oregon, West Virginia, and Vermont) passed the initiative through state legislation; one State (Connecticut) passed the initiative administratively; and one State (Alaska) passed the initiative through a ballot initiative.<sup>118</sup> Additionally, in 2015 and 2016, 24 other states plus the District of Columbia have considered or are still considering automatic voter registration through state legislative registration bills.<sup>119</sup> And lastly, an automatic voter registration bill introduced by Senator Sanders, along with two other automatic voter registration bills introduced by two other members of Congress, are pending in the highest legislative body.<sup>120</sup>

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<sup>117</sup> President Barack Obama, Address to the Illinois General Assembly (February 10, 2016).

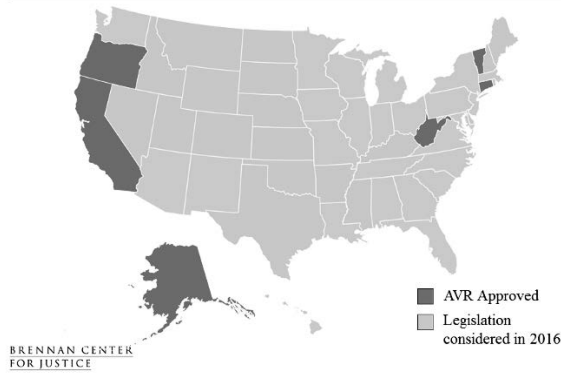
<sup>118</sup> *Automatic Voter Registration*, *supra* note 37.

<sup>119</sup> *Id.*

<sup>120</sup> S. 1970, 114th Cong. (2015); H.R. 5779, 114th Cong. (2016); S. 3252, 114th Cong. (2016).



### States Considering Automatic Voter Registration in 2016



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The state legislative process can be long and arduous. In Oregon, for example, the process can consist of as many as 19 steps, which requires any proposal to be voted on by the State's House of Representatives, Senate, and finally signed by the State's Governor before the proposal is enacted into law.<sup>122</sup> The process takes agreement and cooperation by elected officials that represent residents from far corners of their states.

The state administrative process is disconnected from the public and requires cooperation of multiple state departments. In Connecticut, for example, two unelected

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<sup>121</sup> *Automatic Voter Registration*, *supra* note 37.

<sup>122</sup> Oregon State Legislature, *How Ideas Become Law* (2016), [https://www.oregonlegislature.gov/citizen\\_engagement/Pages/How-an-Idea-Becomes-Law.aspx](https://www.oregonlegislature.gov/citizen_engagement/Pages/How-an-Idea-Becomes-Law.aspx).

Heads of State Departments—Connecticut DMV Commissioner and Connecticut Secretary of State—made an administrative decision that required an agreement by both departments in order to circumvent a bill that failed in the State Legislature.<sup>123</sup> The process is disconnected from the public because unelected officials that must cooperate with one another are less accountable to the public because they are not concerned about reelection, but instead are concerned about inter-department politics.

State ballot initiatives promoting automatic voter registration are most directly connected to state residents. In Alaska, the process involves a petition application signed by 100 qualified voters,<sup>124</sup> approval by the Alaskan Lieutenant Governor,<sup>125</sup> a collection of signatures from eligible voters equal to 10% of the total number of votes cast in the prior general election,<sup>126</sup> a collection of signatures throughout a three-fourths of the State's House districts,<sup>127</sup> and finally, a

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<sup>123</sup> Jon Lender, *DMV, Merrill Announce Streamlined "Automatic" Motor Voter Registration*, HARTFORD COURANT (May 17, 2016), <http://www.courant.com/politics/hc-motor-voter-0518-20160517-story.html>.

<sup>124</sup> Alaska Stat. §§ 15.45.020-030 (2011).

<sup>125</sup> *Id.* at §§ 15.45.070-080 (2011).

<sup>126</sup> *Id.* at § 15.45.140 (2011).

<sup>127</sup> *Id.*

majority vote by registered voters in Alaska.<sup>128</sup> Requirements to pass a ballot initiative vastly vary state by state and require a large amount of cooperation by state voters, especially the collection of signatures requirements, the distribution of signatures requirements, and the supermajority of voters requirements.<sup>129</sup> Nevertheless, the process is the most connected to a state's residents because, regardless of the state, it is a process that involves a grass-root movement. Voters propose the initiative, they collect signatures from the far reaches of their state to get the initiative on their election ballot, and they directly vote on the initiative.<sup>130</sup>

Although it may be the most expansive and expedient route, federal automatic voter registration initiatives pending in Congress currently receive some of the least attention by legislatures. Three measures are currently pending in Congress: one would require state agencies to electronically transfer to state or local election officials source information that will automatically register its residents,<sup>131</sup> and two other initiatives (one proposed by a Senator and the other proposed by a House Representative)

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<sup>128</sup> *Id.* at § 15.45.180 (2011).

<sup>129</sup> *Law Governing the Initiative Process in Alaska*, Ballotpedia, [https://ballotpedia.org/Laws\\_governing\\_the\\_initiative\\_process\\_in\\_Alaska](https://ballotpedia.org/Laws_governing_the_initiative_process_in_Alaska) (last visited Dec. 7, 2016).

<sup>130</sup> *Id.*

<sup>131</sup> S. 1970, 114th Cong. (2015).

would require a chief state election official to establish and operate an automatic voter registration system with the help of state agencies.<sup>132</sup> It has been over a year since the introduction of the bills, and all three bills have only been read and referred to committees in Congress.<sup>133</sup> The stalemate does not come as a surprise, however, because like in the states, support for the initiative is divided along party lines; only Democrats in Congress have cosponsored the bills.<sup>134</sup> With a Republican majority in the House of Representatives and Senate,<sup>135</sup> constitutional concerns,<sup>136</sup> and little support from the Republican party on the federal

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<sup>132</sup> H.R. 5779, 114th Cong. (2016); S. 3252, 114th Cong. (2016).

<sup>133</sup> Library of Congress, Actions Overview S. 1970–114th Congress (2015-2016); Library of Congress, Actions Overview H.R. 5779–114th Congress (2016); Library of Congress, Actions Overview S. 3252–114th Congress (2016).

<sup>134</sup> Library of Congress, Cosponsors S. 1970–114th Congress (2015-2016); Library of Congress, Cosponsors H.R. 5779–114th Congress (2016); Library of Congress, Cosponsors S. 3252–114th Congress (2016).

<sup>135</sup> Library of Congress, Members of the U.S. Congress (2015-2016).

<sup>136</sup> The Supreme Court has limited Congress' ability to regulate who may vote in federal elections. "[T]he [Constitution's] Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them." *Arizona v. The Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247, 2257 (2013).

level,<sup>137</sup> it is unlikely that automatic voter registration initiatives will gain much traction in Congress.

The most realistic route to enacting automatic voter registration in today's political climate is surprisingly through a state ballot initiative. After the 2016 general election results, Republicans will control Congress, the Federal Executive Branch, the majority of state legislative bodies, and the majority of governors' offices.<sup>138</sup> With only West Virginia passing a bipartisan bill and with two Republican State Governors—Illinois Governor Bruce Rauner and New Jersey Governor Christie—vetoing automatic-registration legislation pushed by Democrats, it is not likely that many more states will enact automatic voter registration in the near future.<sup>139</sup> Nor is it likely that a Republican-controlled Congress will pass automatic voter registration on a federal level.<sup>140</sup> Nevertheless, Americans that support automatic registration have the right to lobby and write to their state legislatures, state agencies, state governors, federal legislatures, and their newly elected president in order to push for a state legislative, state

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<sup>137</sup> See *Automatic Voter Registration*, *supra* note 37.

<sup>138</sup> Julie Bosman & Monica Davey, *Republicans Expand Control in a Deeply Divided Nation*, THE N.Y. TIMES (Nov. 11, 2016), <http://www.nytimes.com/2016/11/12/us/republicans-expand-control-in-a-deeply-divided-nation.html>.

<sup>139</sup> *Automatic Voter Registration*, *supra* note 37.

<sup>140</sup> See Library of Congress, *supra* note 135.

administrative, or federal legislative route for automatic voter registration.

If that effort amounts to no avail, the next step for Americans in support of automatic registration is a move for a state ballot initiative. The process allows Americans to propel a grass-roots movement into law, while bypassing partisan politics and bureaucratic bungling. Every state has a slightly different, arduous process. However, across the board, it will generally take a petition application with a preliminary number of signatures, approval by a state's lieutenant governor, a collection of signatures from eligible voters equal to a percent of the total number of votes cast in the prior general election or a fraction of a state's number of registered voters, a collection of signatures throughout a vast portion of a state's House districts, and finally, a majority or supermajority vote by registered voters in that state.<sup>141</sup>

## VIII. CONCLUSION

Although only one in five Americans that are not registered to vote say that they wanted to vote, most of the other four in five arguably wanted to vote too, but they felt defeated.<sup>142</sup> Apathy builds because the political process is

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<sup>141</sup> *Law Governing the Initiative Process in Alaska*, *supra* note 129.

<sup>142</sup> United States Census Bureau, *supra* note 7.

demoralizing.<sup>143</sup> Minorities and low-income Americans feel demoralized, underrepresented, and hopeless; so, on election day, they stay home.<sup>144</sup> They are not necessarily wrong to feel demoralized. Studies show the United States government system effectively acts as an oligarchy, where policy decisions that are supported by economic elites are enacted twice as often as policy decisions supported by average citizens.<sup>145</sup> But it does not have to be that way.

Average citizens are legitimately demoralized, but their inclination to throw up their hands and stay home is not legitimate. Economic elites want them to stay home because studies show that higher turnout will naturally hold politicians more accountable to the average citizen; higher turnout will result in greater representation of the average citizen.<sup>146</sup> To turn a rigged system around, Americans have to unrig the system, not ignore it. The best way to unrig a system that favors economic elites is to increase voter turnout.<sup>147</sup> And one of the most direct ways of increasing

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<sup>143</sup> See Gilens & Page, *supra* note 14.

<sup>144</sup> See *id.*

<sup>145</sup> *Id.* at 572.

<sup>146</sup> See Avery, *supra* note 113.

<sup>147</sup> See *id.*

voter turnout is to automatically register Americans that are not registered to vote.<sup>148</sup>

Today's political climate yields a narrow path for automatic voter registration, which points mostly to state ballot initiatives. State residents will need a petition application, approval by their state lieutenant governors, a collection of signatures from numerous eligible voters from all corners of the state, and a majority or supermajority support from state voters in a general election.<sup>149</sup>

At least in the near future, it will take a strong voice from the people to strengthen the voice of the people. It will take a well-coordinated, multilevel, expansive, grass-roots movement by proponents of voter turnout to increase voter turnout. Evidently, the problem and solution are circular: nonvoters do not vote because they are not politically motivated, and a grass-roots movement to register everyone requires a lot of political motivation. If Americans want more control over the direction of their government, registered or not, they need to pull themselves up by their bootstraps to obtain full representation with automatic voter registration initiatives—ballot initiatives for now—legislative or administrative initiatives later.

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<sup>148</sup> See *Voter Turnout*, *supra* note 53.

<sup>149</sup> *Law Governing the Initiative Process in Alaska*, *supra* note 129.