



# AUTOMATIC VOTER REGISTRATION

TWO NVRA-COMPLIANT  
MODELS

NIYATI SHAH  
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## FOREWORD

Dear Colleagues:

I am very pleased to introduce Project Vote's second paper discussing Automatic Voter Registration (AVR).

Since our last paper, several states have adopted AVR reforms, and legislation has been introduced in more than 25 states overall. My colleagues and I are excited to see so many states undertake voter modernization. We believe that, if implemented properly, AVR will significantly increase voter registration, and contribute to closing the gap in voter registration rates among minority and low-income communities.

Our first report, which we released in August 2015, focused on how AVR policies can comply with the National Voter Registration Act (NVRA). Since that time, Project Vote has worked with dozens of local organizations, collaborated intensively with many of our national partners, and had discussions with election administrators and legislators to craft state-specific AVR policies.

We realize there is not a single AVR policy that fits every state. AVR policies implicate a variety of different—and occasionally competing—interests, as well as a host of state-specific concerns. In recognition of this context, Project Vote proposes two broad approaches to implementing an AVR regime in a state:

- **Integrated Voter Registration Model:** In this option, elements of automatic voter registration are integrated into existing procedures required by the NVRA at driver's license offices and public assistance agencies.
- **Pending Voter Registration Model:** In this option, data from state government agencies are used to register potentially eligible voters on a pending basis, until they can attest to their eligibility at the polls.

Both models present different considerations, and each must allow for state-specific modifications. Policymakers must decide whether one or the other—or a combination of the two—will work best in their state.

Automatic Voter Registration raises many different considerations that advocates and policymakers must address. The need to modernize voter registration, however, is without question. We must take advantage of 21st Century technology to make registration and voting easier, more reliable, and less costly. Most of all, we must ensure that equality prevails at the ballot box. This has always been and continues to be Project Vote's mission.

Sincerely,



Michael Slater

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**Automatic voter registration is generating considerable enthusiasm on the part of voting rights advocates and policymakers.<sup>1</sup> This process has the potential to significantly increase voter registration rates in America, which is nearly unique among Western democracies in putting the onus of registration on the individual.<sup>2</sup> Project Vote is very excited about the promise of automatic voter registration and the concurrent willingness of state legislatures to take up this issue.**

The momentum to develop automatic voter registration comes more than 20 years after the passage of the National Voter Registration Act of 1993 (NVRA),<sup>3</sup> a previous initiative to reduce the barriers to registration.<sup>4</sup> The NVRA governs elements of voter registration in the U.S., and requires, among other provisions, that certain government agencies—including motor vehicle agencies, public assistance agencies, and disability services offices—provide voter registration services. Because the NVRA is federal law, state-based automatic voter registration programs may co-exist alongside existing NVRA procedures but cannot replace them.<sup>5</sup>

This paper discusses, *first*, the basics of state-based automatic voter registration and the NVRA. *Second*, this paper sets forth two detailed

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1 Although there is no agreed-upon definition of the concept, Project Vote understands it to mean a statutory system whereby state election officials use information about individuals' voter eligibility existing within government databases to register qualified individuals to vote, unless they decline, with little or no action on the part of the individuals. This is distinguishable from "automated" voter registration, which simply involves following pre-existing NVRA-required procedures, but then electronically transferring voter registration applications from the government agency to election officials, rather than transferring paper applications.

2 In fact, voter registration rates in the United States remain particularly dismal for young, minority, and low-income voters. See, e.g., Vanessa Perez, *Representational Bias in the 2012 Election* (2015), <http://www.projectvote.org/images/publications/Representational-Bias-2012/Representational-Bias-in-the-2012-Electorate.pdf>; *accord Youth Engagement Falls; Registration Also Declines*, Pew Research Center (Sept. 28, 2012), <http://www.people-press.org/2012/09/28/youth-engagement-falls-registration-also-declines/>; Daniel Weeks, "Why Are the Poor and Minorities Less Likely to Vote?," *The Atlantic* (Jan. 10, 2014), <http://www.theatlantic.com/politics/archive/2014/01/why-are-the-poor-and-minorities-less-likely-to-vote/282896/>.

3 52 U.S.C. § 20501 et seq.

4 Congress' first purpose in passing the NVRA was "to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office." 52 U.S.C. § 20501(b)(1).

5 This paper is limited to automatic voter registration pursuant to state laws. It does not discuss federal legislation, amendments, or proposals. Federal automatic voter registration legislation would, of course, be welcome and is highly recommended.

proposals for implementing state-based automatic voter registration programs that are compliant with the NVRA or do not interfere with NVRA compliance.

Our first model, the **Integrated Voter Registration Model**, streamlines the required NVRA procedures and creates a default of registration by automating and integrating voter registration into the agency transactions, with an opportunity for clients to decline registration during the agency transaction.

Our second model, the **Pending Voter Registration Model**, provides an example whereby existing NVRA voter registration agency procedures remain unchanged, but data from these and other "source agencies" are used to conduct voter registration as a separate procedure. Under this model, registrations remain pending until the prospective registrant attests to their eligibility; thereby resulting in a system akin to same-day voter registration with certain added benefits.

*Third*, this paper reviews, generally, important policy considerations for any state-based automatic voter registration system.

## INTRODUCTION

## A. STATE-BASED AUTOMATIC VOTER REGISTRATION

State-based automatic voter registration refers to the process by which state governments register citizens to vote using relevant eligibility information already maintained by government agencies, without requiring individuals to take additional affirmative steps beyond those that are already a part of their underlying transaction with state agencies. By reducing the steps and actions required on the voter's part to register, automatic voter registration results in fewer barriers to voting, and allows citizens to better participate in the democratic process.

Many current proposals for state-based automatic voter registration involve using information obtained by state motor vehicle agencies to automatically register to vote eligible citizens who hold a state driver's license or identification card. The core element of these automatic voter registration proposals requires motor vehicle agencies to electronically provide election officials with relevant voter registration information, including, for example, the name, age, residence, electronic signature and citizenship status of persons who are likely eligible to register to vote. Once the relevant voter registration information is received, election officials determine voter eligibility and register those persons deemed eligible to vote. Election officials then notify registered individuals of the process to decline to register or select a political party, usually through a mailing from the election official sent after the individual's transaction with the motor vehicle agency. If the individual does not decline registration in response to the notice, the individual remains registered to vote.<sup>6</sup>

## B. THE ROLE OF THE NVRA IN STATE-BASED AUTOMATIC VOTER REGISTRATION

The NVRA requires state motor vehicle agencies (Section 5) and public assistance agencies (Section 7) to affirmatively offer voter registration services. There is some suggestion that state-based automatic voter registration proposals can *replace* the voter registration requirements of the NVRA. This is simply incorrect: the NVRA is a federal election law that preempts any conflicting state law or process. States cannot modify or ignore requirements of the NVRA, regardless of what state voter registration system is established. This is true even

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<sup>6</sup> See, e.g., H.B. 2177, 2015 Reg. Sess. (Or. 2015); A.B. 1461, 2015-2016 Sess. (Cal. 2015); A. 4613, 2014-2015 Sess. (N.J. 2015).

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if the proposed state system may result in more voter registrations.<sup>7</sup>

Indeed, the Supreme Court has made it clear that the NVRA pre-empts state law where state law conflicts with the NVRA. “Over the past two decades, Congress has erected a complex superstructure of federal regulation atop state voter-registration systems. . . . The [NVRA] requires each State to permit prospective voters to register to vote in elections for Federal office by any of three methods, [including] simultaneously with a driver’s license application.”<sup>8</sup> Because the NVRA was enacted pursuant to the Elections Clause of the Constitution,<sup>9</sup> it cannot be replaced or preempted by a state’s automatic voter registration law to the extent it conflicts with the NVRA.<sup>10</sup> This does not, however, mean that automatic voter registration cannot coexist with or complement the NVRA.

### C. BACKGROUND: REQUIREMENTS OF AGENCY VOTER REGISTRATION UNDER THE NVRA

The NVRA requires states to offer, affirmatively, voter registration services through motor vehicle offices (DMVs) and public assistance offices. Section 5 of the NVRA regulates voter registration services through motor vehicle offices.<sup>11</sup> Section 7 of the NVRA regulates voter registration services through public assistance agencies.<sup>12</sup>

#### 1. Requirements of Section 5 of the NVRA for Driver’s License Transactions:

Section 5 of the NVRA requires that an initial (or new) and a renewal application for a driver’s license (or state ID card) must:

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7 The NVRA is law in 44 states. When enacted, the NVRA offered a time-limited exemption for certain states. See 52 U.S.C. § 20503. The only states that have this exemption are Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming. It is no longer possible for additional states to obtain a similar exemption for any reason.

8 *Arizona v. Inter Tribal Council of Arizona*, 133 S. Ct. 2247, 2251 (2013) (internal citations omitted).

9 The Elections Clause of the Constitution, art. I, § 4, cl. 1, provides: “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 places of [choosing] [sic] Senators.”

10 See *Arizona v. Inter Tribal Council of Arizona*, 133 S. Ct. 2247, 2257 (2013) (holding that the presumption against preemption of state law by federal law doesn’t apply in the NVRA context “because the power the Elections Clause confers is none other than the power to pre-empt, the reasonable assumption is that the statutory text accurately communicates the scope of Congress’s pre-emptive intent.”). See also, *Ex parte Siebold*, 100 U.S. 371, 392 (1880) (“The power of Congress . . . is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith.”)

11 52 U.S.C. § 20504 et seq.

12 See 52 U.S.C. § 20506 et seq.

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- (1) serve, simultaneously, as an application for voter registration;<sup>13</sup>
- (2) not request duplicative information for voter registration purposes, other than a signature;<sup>14</sup>
- (3) request additional information necessary only to:
  - (i) prevent duplicate voter registrations and enable State officials to assess the eligibility of the applicant, and
  - (ii) to administer the election process (this includes, for example, information such as party affiliation);<sup>15</sup>
- (4) state each eligibility requirement for voter registration (including citizenship);<sup>16</sup>
- (5) require an attestation that the applicant meets each such requirement under penalty of perjury;<sup>17</sup>
- (6) state the specific penalties for submission of a false voter registration application;<sup>18</sup> and
- (7) state that a declination to register to vote will be confidential.<sup>19</sup>

All changes of address are required to serve, simultaneously, as a notification of change of address for voter registration, unless the client states affirmatively on the form that the change of address is not for voter registration purposes.<sup>20</sup> This is often accomplished through an opt-out check box on the change of address form.

It is important to note that Section 5 of the NVRA neither specifies nor details a particular method whereby an individual may decline to register to vote during the driver's license application or renewal transaction. However, Section 5 of the NVRA

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13 See 52 U.S.C. § 20504(a)(1).

14 See 52 U.S.C. § 20504(c)(2)(A).

15 See 52 U.S.C. § 20504(c)(2)(B).

16 See 52 U.S.C. § 20504(c)(2)(C)(i).

17 See 52 U.S.C. § 20504(c)(2)(C)(ii) & (iii).

18 See 52 U.S.C. § 20504(c)(2)(D)(i).

19 See 52 U.S.C. § 20504(c)(2)(D)(ii).

20 See 52 U.S.C. § 20504(c)(2)(C).

does require that the voter registration portion of the driver's license application include the voter eligibility requirements and have the applicant attest under penalty of perjury that they meet these requirements.<sup>21</sup> This necessarily means that an individual who does not meet the voter eligibility requirements of a particular state must have a mechanism to decline the voter registration proffer when it is made.

When offering voter registration as part of the motor vehicle office transactions, many states satisfy the requirement to obtain an attestation under penalty of perjury that an individual meets the voter registration requirements by obtaining a second signature solely for voter registration purposes. Thus, an individual can decline to register to vote by merely failing to execute the second signature related to voter registration. Alternatively, some states provide a specific question asking individuals whether they wish to register to vote with "yes" or "no" check boxes.

Under either method—although the individual completes the driver's license transaction—they remain unregistered unless they take specific action to register. The proposals below help to alleviate this situation by requiring that individuals opt out of registering to vote, as opposed to opting-in.

## 2. **Requirements of Section 7 for Public Assistance Agencies Covered under the NVRA**

In addition to Section 5 of the NVRA, there is an equally important but less well-known provision of the NVRA requiring states to affirmatively offer voter registration opportunities to clients of public assistance programs. Section 7 of the NVRA governs voter registration by public assistance offices.<sup>22</sup> Programs covered by the NVRA include, but are not limited to, Food Stamps (now known as the Supplemental Nutrition Assistance Program or SNAP), Temporary Assistance for Needy Families (TANF), Medicaid, and the Children's Health Insurance Program (CHIP).<sup>23</sup>

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<sup>21</sup> See 52 U.S.C. § 20504(c)(2)(C).

<sup>22</sup> 52 U.S.C. § 20506. For additional information on complying with Section 7 of the NVRA, please see Project Vote's "Section 7 of the National Voter Registration Act: A Toolkit for Public Agencies," which is available at <http://www.projectvote.org/images/publications/Public%20Agency%20Registration/SECTION%207%20TOOLKIT%20September%202014.pdf>.

<sup>23</sup> *The National Voter Registration Act of 1993 (NVRA): Questions and Answers*, Civil Rights Division of the U.S. Department of Justice, Q&A 13 (June 2010), [http://www.justice.gov/crt/voting/nvra/nvra\\_faq.php](http://www.justice.gov/crt/voting/nvra/nvra_faq.php).

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Section 7 requires public assistance agencies to offer voter registration services each time a client applies for benefits, renews/recertifies benefits, or submits a change of address (often referred to as, “covered transactions”)<sup>24</sup> by:

(1) distributing a voter registration application to individuals who do not decline voter registration in writing;<sup>25</sup>

(2) distributing a voter information form with appropriate disclosures, and providing a question: “If you are not registered to vote where you live now, would you like to apply to register to vote here today?” (This is often called the “voter preference question.”)<sup>26</sup>

(3) providing the same degree of assistance in completing voter registration applications as is provided in completing the agency’s own forms;<sup>27</sup> and

(4) accepting completed voter registration applications for timely transmittal to the appropriate state election officials.<sup>28</sup>

Voter registration services must be provided whether covered transactions occur in-person at the public assistance office or remotely (via mail, telephone, or the internet).<sup>29</sup>

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24 52 U.S.C. § 20506(a)(6)(A).

25 *Id.* See also, *Valdez v. Squier*, 676 F.3d 935 (10th Cir. 2012).

26 52 U.S.C. § 20506(a)(6)(B). The following disclosures must be provided:

(1) “Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.”

(2) “If you would like help 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.”

(3) “If you believe that someone has interfered with your right to register or to 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 [name, address, and telephone number of appropriate official to whom a complaint should be addressed].”

*See id.*

27 52 U.S.C. § 20506(a)(6)(C).

28 52 U.S.C. § 20506(a)(4)(A)(iii).

29 *See Ga. State Conf. of the NAACP v. Kemp*, 841 F. Supp. 2d 1320 (N.D. Ga. 2012) (holding that voter registrations must be provided during remote transactions); *see also The National Voter Registration Act of 1993 (NVRA): Questions and Answers*, Civil Rights Division of the U.S. Department of Justice, Q&A 24 (June 2010), [http://www.justice.gov/crt/voting/nvra/nvra\\_faq.php](http://www.justice.gov/crt/voting/nvra/nvra_faq.php) (“Many Section 7 designated agencies/offices routinely provide services/assistance such as application for, or renewal of, services or change-of-address notification through the internet, by telephone, or by mail. States should ensure the availability of voter-registration opportunities to individuals using such remote service/assistance opportunities from designated agencies.”).

### 3. Processing Agency Voter Registrations Under the NVRA

Regardless of the type of driver's license transaction or public assistance agency transaction, completed voter registration applications collected by or submitted to the government agency must be submitted by the agency to state election officials within ten (10) days of acceptance, or within five (5) days if accepted within five (5) days prior to the voter registration deadline.<sup>30</sup>

Once the voter registration application or the portion of the driver's license application and renewals containing relevant voter registration information is transferred to election officials by a public assistance agency or the DMV, election officials must process the voter registration information, including determining if the voter registration applicant is eligible to register to vote in that state. Each state determines eligibility requirements for voting in state and federal elections. While all states have residency, citizenship and age requirements, many states also have requirements pertaining to an individual's felony status or mental capacity. In order to register to vote, an individual must meet the eligibility requirements of the person's state. Providing false information as part of a voter registration application or registering to vote when ineligible carries stiff penalties.<sup>31</sup> If an individual is eligible to register to vote, the person must be added to the state's voter rolls. Election officials must notify each applicant of the disposition of the voter registration application, i.e., whether the application has been accepted, deemed incomplete, or rejected.<sup>32</sup>

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<sup>30</sup> See 52 U.S.C. § 20504(e).

<sup>31</sup> See, e.g., 52 U.S.C. § 20511 (making it a federal crime to knowingly procure or submit false, fictitious, or fraudulent voter registration applications, punishable by fine or imprisonment up to five years, or both); see also 18 U.S.C. § 1015(f); 25 Pa. Cons. Stat. § 1703 (2002) (making it a misdemeanor for an ineligible individual to apply for registration, punishable by a fine of up to \$10,000 or imprisonment up to 5 years, or both, and a loss of suffrage); N.J. Stat. Ann. § 19:34-1 (West 2005) (making it a crime of the third degree for an ineligible person to register to vote, or to violate any other election law provisions); ALA. CODE § 17-17-46 (making it a Class A misdemeanor to provide false information to register to vote).

<sup>32</sup> See 52 U.S.C. § 20507(a)(2) ("... each State shall [ ] require the appropriate State election official to send notice to each applicant of the disposition of the [registration] application.")

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# 2

NVRA-COMPLIANT,  
STATE-BASED  
AUTOMATIC  
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REGISTRATION

States adopting automatic voter registration system have two options:

- (1) create a framework whereby automatic voter registration is integrated with NVRA requirements; or
- (2) keep intact current NVRA-compliant procedures for offering voter registration services through government agencies and, as part of an unrelated process, use data from government agencies (such as motor vehicle departments) to separately and automatically register voters.

As long as all the requirements of the NVRA are followed by the relevant state agencies, the NVRA does not prohibit or preempt a state from registering voters through an automatic transfer of the relevant data from these agencies. In this paper, Project Vote sets forth details for two state-based automatic voter registration options that are compliant with the NVRA, as well as a discussion of best practices.

Importantly, although most current proposals for state-based automatic voter registration are limited to motor vehicles agencies, modernized voter registration opportunities should also be incorporated by other government agencies, especially public assistance agencies. Therefore, this paper also addresses how to implement the proposals for automatic voter registration in agencies beyond just departments of motor vehicles<sup>33</sup>

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33 This paper does not discuss the possibility of using pre-existing data from motor vehicle departments or public assistance agencies for automatic voter registration purposes (also referred to as a "look back" or "retroactive automatic voter registration"). At this time, Project Vote does not recommend a look back or retroactive automatic voter registration as it raises issues of inaccurate or outdated data, particularly if the retroactive voter registration is dependent on data matching. For example, an individual who was not incarcerated at the time they obtained a driver license may now be incarcerated and thus potentially ineligible to register. As such, in order to update or verify the old data from motor vehicle departments, a look back or retroactive automatic voter registration may implicate matching old data from motor vehicle departments with databases. Such matching is often inaccurate and error prone; and it results in disenfranchisement. See, e.g., Michael P. McDonald and Justin Levitt, Seeing Double Voting: An Extension of the Birthday Problem, 7 Election L. J. 111 (2008); see also Myrna Perez, Brennan Center for Justice, *Voter Purges 3* (2008), [http://www.brennancenter.org/sites/default/files/legacy/publications/Voter\\_Purges.f.pdf](http://www.brennancenter.org/sites/default/files/legacy/publications/Voter_Purges.f.pdf); Amy Sherman, "Homeland Security warned that the SAVE database is not foolproof way to verify the voter rolls, LWV says," *Politifact Florida* (Oct. 30, 2013, 1:36 PM), <http://www.politifact.com/florida/statements/2013/oct/30/league-women-voters-florida/league-women-voters-says-homeland-security-warned-/>.

Additionally, a look back or retroactive automatic voter registration process does not provide an individual with the ability to attest to meeting the eligibility requirements of that state. For this reason, if a look back process is in use, ineligible persons who are added to rolls under such a system ought not be subject to prosecution. See *infra* p. 30–33 for examples of steps that states can take to protect from prosecution people who did not intend to illegally register to vote.

The two NVRA compliant proposals discussed herein are:

- **Integrated Voter Registration Model:** In this option, elements of automatic voter registration are integrated into existing NVRA procedures implemented through driver's license offices and public assistance agencies.
- **Pending Voter Registration Model:** In this option, data from a host of state government agencies are used to register potentially eligible voters on a pending basis until they can attest to their eligibility at the polls.

Each model is explained in further detail in the following sections.

# 2

## NVRA-COMPLIANT, STATE-BASED AUTOMATIC VOTER REGISTRATION

In this section, Project Vote sets forth a detailed schematic for the Integrated Voter Registration Model by combining the best practices for implementing Section 5 and Section 7 of the NVRA, respectively, and adding in automatic voter registration elements so that:

- (1) there is a default presumption in favor of voter registration;
- (2) the government agency (motor vehicle or public assistance) transaction is streamlined; and
- (3) voter registration data is transferred electronically and automatically.

These proposals incorporate all the required elements of the NVRA, but recommend significant upgrades to procedures currently in place in most states.

The benefit of this model is that it streamlines and modernizes procedures by motor vehicle and public assistance agencies. While the Integrated Voter Registration Model contains an option at the front-end to decline voter registration (“opt out”), giving ineligible voters a mechanism to decline voter registration, one potential concern is that ineligible individuals may not heed this provision. This becomes more of a concern if the information relevant for voter registration eligibility is not collected as part of the normal course of business by the agency implementing this model. Careful consideration should be given to whether information relevant to voter registration is or is not already available to the government agency implementing this model. While automatic voter registration is an important step toward improving and modernizing voter registration, nothing herein should be interpreted to encourage the collection of additional data or documents by government agencies. The best practices set forth in this paper, especially the post-transaction notice letter, aim to minimize these concerns.

Below is, *first*, a discussion of the streamlined elements of voter registration thru driver’s license offices; *second*, a discussion of the streamlined elements of voter registration thru public assistance agency; and finally, *third*, a discussion of inserting automatic voter registration elements into both.

# 3

INTEGRATED  
VOTER  
REGISTRATION  
MODEL

## A. AUTOMATIC VOTER REGISTRATION THROUGH THE DEPARTMENT OF MOTOR VEHICLES

### 1. Driver's License Initial Applications and Renewals

Listed below are recommended elements combining the requirements of the NVRA into a streamlined process for offering voter registration during initial driver's license and renewal applications.

- a) Incorporate voter registration into a single continuous driver's license application or renewal transaction:
  - Streamline the driver's license application and renewal form by eliminating the separate voter registration question and/or the voter registration section requiring a second signature.<sup>34</sup>
  - Require only a single signature, regardless of whether the transaction involves paper and data entry by workers or is paperless, with the client directly using electronic technology such as a keypad and stylus or any other electronic means.
- b) Include a statement in both the driver's license application and renewal form that informs individuals that information provided during their transaction may be used for voter registration purposes.
- c) Modify the signature block of the driver's license application and renewal form to include:
  - i. the voter eligibility requirements;
  - ii. penalties for perjury and for submitting a false voter registration application;
  - iii. a statement that a declination to register to vote will remain confidential; and
  - iv. attestation of meeting those eligibility requirements with a prominent and conspicuous opt-out option, such as a checkbox, to decline voter registration.
- d) Provide an opportunity to pick a political party, particularly if party membership is required to vote in any primary elec-

<sup>34</sup> A second signature for voter registration purposes is an option, not a requirement. See 52 U.S.C. § 20504(c)(2)(A). For example, Arizona's driver license application only requires one signature. *Driver License / Identification Card Application*, ADOT Motor Vehicle Division, <http://azdot.gov/docs/default-source/mvd-forms-pubs/40-5122.pdf?sfvrsn=11>.

# 3

## INTEGRATED VOTER REGISTRATION MODEL

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MODEL

tions of that state.

Attached as **Appendix A** is an illustration of modifications to the current District of Columbia driver's license process, showing how to integrate the NVRA requirements into a one-signature process.<sup>35</sup> The illustration has been edited for user-ease by the Center for Civic Design.

## 2. Driver's License Change of Address Processes

Section 5 of the NVRA already requires that address updates for driver licenses be treated automatically as updates for voter registration purposes, unless an individual opts-out in writing. Therefore, many states should not need to change their change of address processes when implementing state-based automatic voter registration. However, Project Vote recommends the following practices:

- a) Include a statement that informs individuals that information provided during the transaction may be used for voter registration purposes.
- b) For voters currently registered in the state, provide an opportunity to opt out of updating the address for voter registration purposes. This can be accomplished with instructions to the individual to check a box if they wish to indicate their change of address is not for voter registration purposes.
- c) For voters who are not registered in the state, provide an opportunity to register to vote. The opportunity to register to vote should include language identical to the signature block of the initial application or renewal, including the attestation and other requirements outlined above.

The requirements stated above are illustrated in **Appendix B**, using as an example Washington's change of address application.<sup>36</sup> The illustration has been edited for user-ease by the Center for Civic Design.

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<sup>35</sup> The original driver's license application is available at: *DC Driver License or Identification Card Application*, Government of the District of Columbia: Motor Vehicles Division, <http://dmv.dc.gov/sites/default/files/dc/sites/dmv/publication/attachments/New%20DLVR%20Application%20Sept%202014.pdf>. Please note that the eligibility requirements are those in place in the District of Columbia; they may not be applicable in other states.

<sup>36</sup> The original change of address form is available at: *Driver License Change of Address*, Washington State Department of Licensing, <http://www.dol.wa.gov/forms/500039.pdf>. Note that because Washington has open primaries, party preference is not included.

## B. AUTOMATIC VOTER REGISTRATION THROUGH PUBLIC ASSISTANCE AGENCIES

The NVRA-mandated voter registration services provided thru public assistance agencies are not as streamlined as the NVRA processes set forth for Departments of Motor Vehicles. In addition to the agencies' own forms (whether on paper or online), many states provide a separate voter information form, or what is sometimes called a "voter preference form," to comply with the NVRA Section 7 requirements. And almost all states provide a separate voter registration application form to individuals who do not decline to register to vote in writing. Thus, individuals must go through several different documents or different online webpages or portals in order to register to vote. Consequently, because of the additional steps required, many public assistance clients never complete and submit a voter registration application. As described below, state-based automatic voter registration by public assistance agencies addresses this by shifting the burden of registering voters to the government in a manner that is efficient for both the public assistance agency and the individual, while remaining compliant with the NVRA.

In the next sections, Project Vote sets forth a detailed schematic, combining the best practices for implementing Section 7 of the NVRA with elements of automatic voter registration so that:

- (1) there is a default presumption in favor of voter registration;
- (2) the covered transaction is streamlined, efficient, and non-duplicative;
- (3) extraneous paperwork is eliminated; and
- (4) voter registration data is transferred electronically and automatically.

Like the proposals for motor vehicle offices, these proposals incorporate all the required elements of the NVRA, but recommend significant changes to public assistance agency procedures currently in place in most states.

# 3

## INTEGRATED VOTER REGISTRATION MODEL

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INTEGRATED  
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MODEL

## 1. Streamlined NVRA Elements for Covered Transactions:

- a) Eliminate a separate voter information form, and instead incorporate voter registration questions and disclosures into the initial paperwork or online system for all covered transactions such that it is one document or online transaction.<sup>37</sup>
- b) Require individuals to answer the voter preference question as part of their covered transaction. For example, this can be accomplished during an online process by making the voter preference question a “hard stop,” which requires a response prior to continuing. During paper transactions, individuals could be required to answer the voter preference question just like they must provide other required information, i.e., income information.
- c) Eliminate a separate voter registration application (which requires duplicative information), and instead incorporate the voter registration application into the initial paperwork along with the voter eligibility requirements and the voter information form disclosures. Unless an individual specifically declines voter registration by opting out, the person’s signature on their benefits application will suffice to automatically submit a voter registration application for an eligibility assessment by election officials.
- d) Provide a clear and prominent notice informing individuals that the information provided on the form will be used for voter registration purposes unless they decline voter registration.
- e) Provide a clear statement that the signature (electronic or on paper) required as part of the transaction will be an attestation under penalty of perjury that they meet the voter eligibility requirements unless they decline to register to vote.
- f) Incorporate the attestation into the check boxes that are already part of the voter preference question or incorporate the voter registration attestation into the signature block at the end of the form.

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<sup>37</sup> Automatic voter registration cannot be incorporated during covered transactions by public assistance agencies that take place entirely on the telephone as there is no opportunity to provide an attestation. See *infra* p. 30 discussion on the importance of attestation. Rather, during telephone covered transactions, as a best practice, all individuals should be mailed a voter registration application.

- g) Provide individuals an opportunity to select a party preference; in states with closed primaries, include a notice that party selection is required to vote in primary elections.
- h) Public assistance agencies often provide benefits to entire households through a single covered transaction. As such, as a best practice, make available blank voter registration applications for additional individuals in the household who are eligible to vote and for individuals who prefer to register to vote later and/or in private.

The requirements stated above are illustrated in **Appendix C**, using as an example the public assistance benefits application in Virginia.<sup>38</sup> The illustration has been edited for user-ease by the Center for Civic Design.

### C. AUTOMATIC VOTER REGISTRATION ELEMENTS

After implementing the processes as described above for Department of Motor Vehicles and public assistance agencies, an automatic, electronic transfer of data from these government agencies to election officials for eligibility determinations should be implemented.<sup>39</sup> The automatic, electronic data transfer will eliminate paper and reduce data entry errors.

Project Vote recommends the following practices:

- a) Electronically transfer to election officials relevant voter registration data—including name, address, age, citizenship status,<sup>40</sup> party preference, and attestation—of those individuals who do not affirmatively opt out of voter regis-

<sup>38</sup> The original application for benefits is available at: *Application for Benefits*, Commonwealth of Virginia Department of Social Services, [http://www.dss.virginia.gov/files/division/bp/fs/intro\\_page/forms/032-03-0824-30-eng.pdf](http://www.dss.virginia.gov/files/division/bp/fs/intro_page/forms/032-03-0824-30-eng.pdf).

<sup>39</sup> This paper does not discuss the possibility of using existing data from motor vehicle departments for automatic voter registration purposes (also referred to as a “look back” or “retroactive automatic voter registration”). See *supra* fn.33 for further discussion.

<sup>40</sup> It is important to note that not all government agency transactions request citizenship information. Requiring the attestation to the voter registration eligibility requirements will allow individuals to establish their citizenship even when citizenship information is not specifically collected by the state government agencies. But given the nature of the integrated voter registration model, it may work best with government agencies where citizenship information is already collected during the regular course of business. This will provide a secondary check in the cases of an accidental failure to opt-out. Note however, an affirmative question about citizenship may not be necessary because even in states that do not affirmatively request citizenship status per se, the state government agencies may already collect documentation to establish identity and residency which also establish citizenship. For example, Departments of Motor Vehicles may collect documentary evidence such as a U.S. birth certificate or passport to establish identity. In these circumstances, that information should be transferred to election officials. However, please note, automatic voter registration should not be used as an excuse to encourage the collection of additional data or documents by government agencies.

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tration during their driver's license application, renewal, or change of address transaction by checking the "No" box in response to the voter preference question during their public assistance covered transaction.

The data must be transferred to election officials within the timeframes established by the NVRA—within ten (10) days of acceptance or within five (5) days if accepted within five (5) days prior to the voter registration deadline.<sup>41</sup>

- b) Upon receipt of voter registration data, election officials should determine whether an individual is eligible to vote in the state and add all eligible individuals to the voter rolls.<sup>42</sup>
- c) Pursuant to Section 8 of NVRA, state election officials must provide a notice to individuals about the disposition of their voter registration application, i.e., whether it is accepted, incomplete, or rejected.<sup>43</sup> This notice must be provided to each individual whose voter registration is processed through the Integrated Voter Registration model. Among other things, the purpose of this notice is to provide individuals whose voter registration application is incomplete an opportunity to finalize or if needed, resubmit their voter registration application.<sup>44</sup>
- d) As part of a state-based automatic voter registration program, this notice should also include additional information to inform and protect individuals who are unaware that they have been registered to vote. Therefore, the notice should include, as a best practice, the following:
  - eligibility requirements and information to decline voter registration (and thereby be removed from the voter rolls);

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<sup>41</sup> See 52 U.S.C. § 20504(e).

<sup>42</sup> On receipt of change-of-address data from Departments of Motor Vehicles, for any voter who is already registered and did not opt out of updating their voter registration, election officials shall update the person's change of address. No additional eligibility determination, which was already made at the time the person registered, should be necessary at this time.

<sup>43</sup> See *supra* fn. 32.

<sup>44</sup> Sending this Section 8 disposition notice is particularly important in an Integrated Automatic Voter Registration system because there is potential for election officials to receive conflicting information. For example, when citizenship data is collected, the data transferred might contain information that an individual is not a citizen *and* an attestation that they are eligible to register to vote. When provided with such conflicting information, state election officials should treat this voter registration application as incomplete. The notice sent pursuant to Section 8 (52 U.S.C. § 20507(a)(2)) will allow any individual whose voter registration is deemed incomplete in this (or any other) circumstance to provide the correct information, or if needed, resubmit the application if eligible.

- an opportunity to select political party (optional); and
- contact information (telephone and website) to keep voter records confidential for those individuals who are entitled to that protection, such as survivors of domestic violence.

Although the notice required by Section 8 of the NVRA may include the additional information listed in this paragraph, state election officials may, alternatively, choose to send a separate mailing with the additional information described here. Regardless of how it is accomplished, some kind of written notice related to the automatic voter registration is a necessary step. Adopting the Integrated Voter Registration Model described here without a follow-up mailing is not recommended.

- e) Eligible individuals must be added to the state's voter rolls in a timely fashion from the date of the agency transaction triggering the voter registration; at a minimum, these voters must be on the rolls before any federal election if the transaction occurred 30 days or more in advance of that election, unless state law provides for a shorter timeframe.<sup>45</sup> As long as these individuals are on the voter rolls in a timely fashion, election officials should provide some time to allow individuals to receive and, if necessary, respond to the notice described here.
- f) Public assistance agencies often conduct a single covered transaction for an entire household. As such, for automatic voter registration purposes, only the voter registration information of the attesting individual (and not of all potential beneficiaries) should be electronically transferred to election officials.

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<sup>45</sup> See 52 U.S.C. § 20507(a)(1).

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## INTEGRATED VOTER REGISTRATION MODEL

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## PENDING VOTER REGISTRATION MODEL

Another option for NVRA-compliant state-based automatic voter registration is to keep intact the existing NVRA procedures by government agencies such as driver's license offices and public assistance agencies. Then, as a separate and additional step, information pertinent to voter registration can be used to register eligible voters. As such, this practice doesn't interfere with or omit in any way a government agency's front-end NVRA obligations. This method doesn't implicate Section 5 or Section 7 of the NVRA in any manner; in fact, it has the potential to use data from various other governmental offices beyond the traditional NVRA-covered agencies.

One way to achieve this form of automatic voter registration without implicating Section 5 or Section 7 of the NVRA is the Pending Voter Registration Model described below. The Pending Voter Registration Model has many benefits, including the opportunity to register voters from many different government sources.<sup>46</sup> Another important benefit of this model is that it provides additional protection to ineligible voters from unlawfully or inadvertently registering to vote. However, the Pending Voter Registration Model does not offer the benefit of streamlining existing voter registration procedures available through driver's license offices or public assistance agencies. Rather, it requires them to continue with current NVRA-compliant practices and also turn over data to election officials for further assessment. Moreover, the Pending Voter Registration Model may not be an optimal option in a state unless and until certain systems or infrastructures are in place.<sup>47</sup>

Under this model, potentially eligible voters will be added to the voter registration rolls, but their registration will remain pending until further action is taken by the voter. Voters will have an opportunity to complete their voter registration at the polls prior to voting on Election Day, or as part of the absentee ballot process. This process is similar to other circumstances in which individuals have different statuses of

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<sup>46</sup> One such benefit includes the expansion of online voter registration. States choosing to implement the Pending Voter Registration Model can use it to expand the reach of their online voter registration capabilities. Generally, citizens can only avail themselves of the convenience of online voter registration if they have a driver's license or a state identification card, because a completed voter registration application requires the applicant's signature. When the applicant has a driver's license or a state identification card, the motor vehicle agency has their signature on file and can thus electronically transfer it to election officials to use with the voter registration record. Under the Pending Voter Registration Model, eligible individuals who do not have a driver's license or state identification card can also register to vote online; these individuals will be registered on a pending basis and may complete their voter registration at their polling place on election day.

<sup>47</sup> For example, electronic poll books would make flagging pending registrants for poll workers even easier. Project Vote has discussed the Pending Voter Registration Model with several election administrators, including the county clerk from Champaign County, Illinois and the Election Information Systems Supervisor at the Office of the Secretary of State of Washington. These election administrators noted natural variations between state practices, but believe that implementation of Pending Voter Registration Model is generally feasible. While in some states, the Pending Voter Registration Model can be simple to implement, others may need system or infrastructure upgrades prior to implementation.

voter registration. For example, some first-time voters who register to vote through the mail cannot vote until they provide the identification required under the Help America Vote Act (HAVA) at the polling station.<sup>48</sup> The Pending Voter Registration Model is also similar to same-day registration,<sup>49</sup> but—rather than completing voter registration at the polling station—information about potential voters will already be part of the poll books.

In addition to the strong protections that this model provides against inadvertent registration of ineligible individuals, this model has other benefits. Because of the inclusion of these individuals on the voter rolls, registrants will receive important election information, like their polling location, and information about ballot measures and candidates. In sum, the Pending Voter Registration Model provides important protections while engaging citizens in the democratic process resulting in increased voter participation.

## A. ELEMENTS OF THE PENDING VOTER REGISTRATION MODEL

### 1. Maintain Existing Voter Registration Opportunities

States should maintain existing avenues for voter registration. This means that voter registration services required pursuant to Section 5 and Section 7 of the NVRA remain intact. Moreover, any additional methods of voter registration such as online voter registration should also remain uninterrupted.

### 2. Designate Source Agencies

States should designate as source agencies those government institutions that obtain, during the course of regular business, information relevant to voter registration. Information relevant to voter registration includes, but is not limited to, name, address, date of birth, social security number, driver's license or state identification number, and citizenship status. Source agencies can include those NVRA agencies required to affirmatively provide voter registration services such as driver's license agencies, public assistance offices, and state disability offices. Source agencies can also include those institutions that may be designated by states as voluntary voter registration agencies under Section 7 of the NVRA, as well as any other institution that may have occasion to collect relevant voter registration information during

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<sup>48</sup> 52 U.S.C. § 20901 et seq. In those states that satisfy HAVA requirements by getting required identification at the polls, poll books routinely contain notations informing poll workers which voters need to provide additional identification to vote. The Pending Voter Registration Model would operate in much the same manner.

<sup>49</sup> See Project Vote, *Same Day Registration*, <http://www.projectvote.org/wp-content/uploads/Policy-Paper-Same-Day-Registration.pdf>.

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the normal course of business.<sup>50</sup>

### 3. Automatic Periodic Electronic Data Transfer

Source agencies should transfer, automatically and electronically, to election officials, information collected from individuals relevant to voter registration. Project Vote recommends this transfer occur, at minimum, on a monthly basis; closer to voter registration deadlines, these transfers should occur more often. The data transfer should be extracted from all transactions that took place in the previous period. For example, public assistance agencies or driver's license offices should transfer information each month from all initial application, renewal, or change of address transactions. Because the NVRA processes remain intact and this data transfer occurs after and outside any transaction to which the NVRA applies, transfer of data from source agencies does not implicate the NVRA.<sup>51</sup>

Although most government institutions retain relevant voter registration information electronically, modifications or upgrades to existing data management systems may be needed to automatically collate and transfer the data to election officials.

### 4. Eligibility Determinations

Upon receipt of relevant voter registration information, election officials shall review the data to determine those individuals who are (a) not currently registered to vote; and (b) potentially eligible to vote. These individuals shall be added to voter rolls as pending registrants.<sup>52</sup> Individuals who may be potentially eligible to vote include those who meet the state's eligibility requirements (i.e., will be 18 years of age by the next election, are United States citizens based on citizenship information currently on file, and, where relevant, are not

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<sup>50</sup> Government institutions that may be designated as voter registration agencies or that may collect relevant voter registration information include, but are not limited to: public schools and universities, offices of city and county clerks, government revenue offices, and unemployment compensation offices. See 52 U.S.C. § 20506(a)(3)(B).

<sup>51</sup> Source agencies covered by Section 7, however, are required by the NVRA to provide a yes/no question about voter registration. See § 20506(a)(6)(A)(ii). In such instances, it may be a best practice that data about individuals who say "no" they do not want voter registration is not transferred to election officials as part of the Pending Voter Registration Model data transfer. Similarly, if states have a yes or no question as part of DMV voter registration transactions, a best practice may be to exclude any individuals who affirmatively say "no" they do not want to register to vote. Because the NVRA is not implicated, this policy choice may be determined by state lawmakers and stakeholders.

<sup>52</sup> Front-end, NVRA-compliant voter registration services pursuant to NVRA Section 5 and 7 provided through driver's license offices, public assistance agencies, and disability offices remain unchanged; and eligible individuals who register to vote through these processes should not be added to voter rolls on a pending basis, but as properly registered voters. Thus individuals who register to vote during or as part of covered transactions through driver's license offices, public assistance agencies, and disability offices should be registered to vote in a timely fashion if otherwise deemed eligible by election officials.

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identified as ineligible felons or mentally incapacitated).<sup>53</sup> Citizenship information currently on file may include self-identification by individuals who state affirmatively on forms and applications regularly used by government institutions that they are citizens of the United States of America.

## 5. Written Notice

Once an individual has been determined as potentially eligible, election officials should send them a written notice.<sup>54</sup> The written notice should inform the individual of the following:

- Status as a pending registrant unless they decline in writing within the allotted time frame;
- Eligibility requirements to register to vote in the state;
- Instructions on declining voter registration;
- Contact information (telephone and website) for assistance with registering to vote but keeping the voter registration record confidential for individuals who might qualify for this protection, such as survivors of domestic violence;
- Instructions to select a political party, if applicable;
- Information about how to complete and finalize a voter registration in advance of Election Day; and
- Information about how to complete and finalize a pending voter registration on Election Day, for absentee voting, and/or early voting. This should include information about any state law identification requirements and any HAVA identification requirements that might apply in the state.

A sample letter containing the information stated above is provided in **Appendix D**. The illustration has been edited for user-ease by the Center for Civic Design.

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<sup>53</sup> Determination of felony status and mental incapacitation may require data matching. See footnote 33 *supra* about data matching concerns. Therefore, as a best practice, unless an individual, during the course of their normal interaction with a source agency, has self-identified as a felon and/or disclosed a mental incapacity, they should be added to the voter rolls as a pending registrant if they are otherwise deemed potentially eligible to vote.

<sup>54</sup> Eligible voters registered normally through NVRA-compliant Section 5 and 7 transactions at driver's license offices, public assistance agencies, and disability offices must receive a notice pursuant to Section 8 of the NVRA. See 52 U.S.C. § 20507(a)(2); see also, discussion of written disposition notices, *supra*, p. 20–21.

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## 6. Updating Voter Rolls

Election officials should update the state's voter rolls with pending registrants unless they have received a written declination. The update should take place on a monthly basis until a month prior to the state's voter registration deadline. Thereupon, the state's voter rolls should be updated every five days.

## 7. Attestation and Finalizing the Voter Registration

An individual who is on the state's voter rolls as a pending registrant can finalize their voter registration at the local election official's office, at their polling place or on their mail ballot. The individual shall be presented with a simple form or portion on the mail ballot that contains the voter eligibility requirements of the state, and an opportunity to (a) either attest under penalty of perjury and threat of imprisonment and/or deportation that they meet eligibility requirements; or (b) decline voter registration (and thereby be removed from the state's voter rolls entirely). Because this form will be provided at the local jurisdiction level, it must be translated into any Section 203 languages required.<sup>55</sup> Upon attesting, the individual should be added to the state's voter rolls and be able to cast a regular ballot.

## 8. Define "Pending."

Any state legislation implementing a Pending Voter Registration Model should include a clear definition of pending voter registration. Specifically, a "pending" voter registration status means that an individual is not registered to vote in the jurisdiction and has not yet taken the actions necessary to register to vote. This definition protects ineligible voters such as persons with felony convictions and mental disabilities, as well as non-citizens, from any adverse legal consequences by being registered to vote.

## 9. Prominent Disclosures on Voter Lists

State and local election officials who, pursuant to applicable law, provide copies or access to a list of voters who are deemed to have a status of pending registration must also disclose on each page or screen that these voters are not currently registered voters. For example, the disclosure can read as follows: "INDIVIDUALS HEREIN ARE NOT REGISTERED TO VOTE. INDIVIDUALS HEREIN HAVE NOT TAKEN REQUISITE STEPS TO COMPLETE VOTER REGISTRATION."

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<sup>55</sup> 52 U.S.C. § 10503.

## B. ELECTION COMMUNICATIONS AND NOTICES

Once individuals are added to the voter rolls as pending registrants, they will be entitled to receive election communications and notices. For example, pending registrants can receive information about the location of their polling place, ballot initiatives, and candidate information, as well as reminders about eligibility and the ways one can complete a pending registration before or on election day. Such notices can also inform pending registrants to bring, if necessary, identification required by law to the polling place in order to complete their voter registration to the extent they have not finalized their voter registration prior to casting the ballot.

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# 5

**POLICY  
CONSIDERATIONS**

There are numerous policy considerations for any state-based automatic voter registration proposal. This document does not address in detail all policy concerns that may be implicated by state-based automatic voter registration. The focus in this paper is on ensuring that state-based automatic voter registration programs comply with the NVRA. However, the most important potential policy concerns to consider beyond NVRA compliance are identified and explained below. Project Vote recommends that any state-based automatic voter registration proposal consider and address these issues. It is Project Vote's belief that, in many instances, NVRA compliance helps to mitigate some of these other policy concerns.

## **A. BENEFITS OF THE ATTESTATION AND MULTIPLE OPPORTUNITIES TO DECLINE REGISTRATION**

Both models proposed here require an attestation of eligibility, either during the agency transaction or to finalize a pending registration. Providing a statement of eligibility requirements, and requiring an attestation to meeting those eligibility requirements as described above, creates a meaningful line of protection for ineligible individuals, including persons with felony convictions and non-citizens, who potentially face stiff penalties for voting or registering to vote. In particular, non-citizens who vote or register to vote may violate federal law, and state laws cannot mitigate consequences of these violations. Under the NVRA-compliant processes set forth in this paper, if an individual does not meet the eligibility requirements, the person is able to decline voter registration without disclosing the reason. Moreover, offering multiple opportunities to decline registration (i.e., with instructions on the disposition notice) is beneficial, as some eligible voters have a steadfast desire, for a variety of reasons, to remain unregistered.

Some other proposals for state-based automatic voter registration, particularly through motor vehicle offices, instead provide ineligible voters an opportunity to decline voter registration exclusively through a subsequent mailing that they must sign and return. Direct mail campaigns, however, have a notoriously low rate of return, and as such, many ineligible voters who do not return this so-called "back-end" opt-out mailing will be added to the voter rolls, potentially facing the threat of stiff penalties simply because of their inadvertent inaction. Both the models here ensure that voters have a chance to confirm their eligibility before their registration is finalized.

Our models provide at least two opportunities to review eligibility and decline registration. The Integrated Voter Registration Model provides ineligible individuals an opportunity at the front end, without relying

solely on a mailing, to remove themselves from the automatic voter registration system and prevent becoming mistakenly registered to vote through no fault of their own, and provides a second notice and opportunity to decline by mail. The Pending Voter Registration Model provides notice and an opportunity to complete or decline registration by mail; and it allows an individual to decline voter registration immediately prior to voting if they are not eligible to vote.

## B. LEGAL INTENT FOR NON-CITIZENS

As explained, there are potentially serious consequences under federal immigration laws and regulations for non-citizens who inadvertently become registered to vote and then subsequently vote upon governmental notice that they are registered to vote. Moreover, these consequences may not be dependent on the non-citizen's intent to violate the law. Although state law cannot preempt or override federal immigration laws and regulations, non-citizens who are inadvertently registered to vote through automatic voter registration should at least be given protections by state law so that persons who inadvertently become registered cannot be deemed to have committed a state crime. Furthermore, state laws should be modified to provide that voter registration through automatic voter registration shall not be considered as evidence of criminal conduct or unfitness of character to the extent it occurs as a result of a mistake or inaction on the part of the individual.

A good example of legislative language is available in California Elections Code Sections 2268 and 2269, which state:

- "If a person who is ineligible to vote becomes registered to vote pursuant to [automatic voter registration laws in the absence of a willful and knowing violation by that person of the state's false registration law,] that person's registration shall be presumed to have been effected with official authorization and not the fault of that person."
- "If a person who is ineligible to vote becomes registered to vote pursuant to [automatic voter registration laws] and votes or attempts to vote in an election held after the effective date of the person's registration, that person shall be presumed to have acted with official authorization and shall not be guilty of fraudulently voting or attempting to vote pursuant to [the state's fraudulent voting law], unless that person willfully votes or attempts to vote knowing that he or she is not entitled to vote."

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## C. MINORITY LANGUAGES

Section 203 of the Voting Rights Act<sup>56</sup> requires localities with certain population levels of citizens belonging to a single language minority to provide voting materials, including ballots and voter registration applications, in that language.<sup>57</sup> At a minimum, all forms used for part of the registration process by driver's license offices, public assistance agencies, and any other source agencies, should be available in all languages mandated by Section 203 of the Voting Rights Act.<sup>58</sup> Furthermore, at a minimum, all notices sent to individuals about the status of their voter registration should also be provided in languages mandated by Section 203 of the Voting Rights Act. One benefit of the Pending Voter Registration Model is that the mandatory review of eligibility requirements and attestation offered before first-time voting must be translated in jurisdictions with a language minority population covered by the Voting Rights Act, even if the entire state is not covered. As a best practice, if a Section 203 language is required only for limited jurisdictions in the state, forms and notices should be provided in that Section 203 language statewide. Moreover, many states provide their residents forms in more languages than those mandated by Section 203 of the Voting Rights Act. As a best practice, all forms and notices should be provided in all such languages statewide as well.

## D. DATA COLLECTION

Automatic voter registration systems should consider what data is and is not currently collected by the government entity that is the information source for state-based automatic voter registration. For example, public assistance agencies administering SNAP benefits do not always obtain citizenship data from all of their clients: it is possible for children born in the United States to receive SNAP benefits even if their non-citizen parents (who are the persons applying for the benefits at the public assistance agency) are not eligible for such benefits. And therefore, it is possible for parents to apply for SNAP benefits for their children without providing any information about their own citizenship status. Automatic voter registration should not be used as a basis to seek additional information or documentation from benefits applicants. If the government entity does not collect relevant voter registration data during its normal course of business, there should not be any changes to the process merely to collect additional information or documentations about voter registration eligibility. In both

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<sup>56</sup> 52 U.S.C. § 10503.

<sup>57</sup> *Minority Language Citizens Section 203 of the Voting Rights Act*, Civil Rights Division of the U.S. Department of Justice, <https://www.justice.gov/crt/minority-language-citizens>.

<sup>58</sup> *Id.*

the models provided here, an attestation that an individual meets those requirements is obtained; and an attestation to meeting the eligibility requirements has, and will continue to, obviate the need to collect additional information or documentation.

### **E. DOMESTIC VIOLENCE SURVIVORS**

State-based automatic voter registration proposals should include protections for survivors of domestic violence or others who may need to protect the confidentiality of their identity and address. Procedures for registering and protecting this information are already in place in many state statutes or regulations. This is typically accomplished by providing individuals a chance to request that their voter registration is not made public and, in some cases, to vote by a confidential absentee ballot. Automatic voter registration procedures should provide sufficient notice so that those with safety concerns may decline registration that would lead to inclusion on the public rolls. Automatic voter registration communications should also provide basic information on voter registration procedures for those with safety concerns, including a phone number to call and a link to a website with information.

### **F. FELONY CONVICTIONS**

Many states have complicated eligibility requirements for persons with felony convictions, including parolees or other non-imprisoned persons. Even with an attestation, some individuals may not understand the nuances of their particular situation where the laws for rights restoration are complex. As such, any persons who are registered to vote through automatic voter registration should be protected by state law or policy from the consequences of voter registration when their felony status makes them ineligible to register and vote.

### **G. MENTAL INCAPACITY**

Similarly, there should be protection in any automatic voter registration legislation for persons who are ineligible under state law due to mental incapacity who are registered to vote through automatic voter registration.

### **H. TRAINING**

Legislation for either state-based automatic voter registration model should provide for robust training of all state workers responsible for implementing automatic voter registration, including those working with the general public. This includes training for government agen-

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cy workers (such as employees of driver's license offices and public assistance agencies) who either assist or interact with clients to complete agency paperwork and those who are responsible for data entry. Government agency workers should be trained to understand both the importance of voter eligibility requirements and that final eligibility determinations are the sole purview of election officials.

In addition to government agency workers, poll workers should also receive training in states choosing to implement the Pending Voter Registration Model. Poll workers need to be trained to understand what is required to complete and finalize voter registration. Poll workers should also be trained that pending registrants who complete and finalize their voter registration should cast a regular ballot.

The training issues discussed herein are not exhaustive, and include many other elements, including foreign language assistance. Legislation should provide for detailed and robust training.

## I. VOTER OUTREACH AND EDUCATION

Automatic voter registration proposals should include education and outreach efforts to the general public, other state government agencies, and federal agencies.

For example, states implementing automatic voter registration should work with civic engagement organizations to reach and educate voters. Civic engagement organizations can increase awareness among their constituencies about the availability of automatic voter registration. Moreover, these civic engagement organizations can also educate their constituencies about voter eligibility requirements and the necessity to respond to election notices. Similarly, education and outreach efforts to federal agencies that are either involved with or oversee portions of source agencies is key. Such federal agencies include the Department of Health and Human Services, which is involved with state Medicaid agencies, and the United States Department of Agriculture, which issues SNAP or food stamp regulations to states. Education and outreach efforts should also be targeted to federal agencies that interact with new citizens, such as the Department of Homeland Security's United States Citizenship and Immigration Services.

Through these types of education and outreach efforts, states can improve upon the efficacy of any automatic voter registration program. Further, these efforts will improve the integrity of the process in order to increase the accuracy of voters rolls while minimizing any collateral damage that may result from inadvertent automatic voter registrations.

**As discussed in this paper, there are numerous competing interests and a host of state-specific concerns that must be addressed prior to drafting and implementing automatic voter registration legislation.**

Nonetheless, Project Vote believes that automatic voter registration can be achieved simply and with great success. The two models set forth in this paper present different considerations and states must decide which option works best. Neither model is presented in a manner that should be considered as rigid nor immune to additional modifications as needed in individual states.

Project Vote is optimistic that this paper will assist states as they embark on implementing Automatic Voter Registration.

## CONCLUSION

**APPENDIX A:**  
DRIVER'S  
LICENSE  
APPLICATION  
(Based on  
Washington D.C.)

The information in this form will be used to register you to vote in the District of Columbia.

You are eligible to vote if you are:

- a U.S. Citizen
- at least 16 years old
- not in jail for a felony conviction
- not found by a court to be legally incompetent to vote

**Decline voter registration**

If you are not eligible to register to vote or do not want to register, check this box. Your decision not to register will be confidential.

I do not want to register to vote at this time.

- OR -

**Choose a political party (optional)**

To vote in a primary election in the District of Columbia, you must choose a party. You will be able to vote in any primary election that the party holds.

- Democratic
- Republican
- D.C. Statehood Green Party
- Libertarian
- No Party (Independent)
- Other \_\_\_\_\_

**I declare that the information on this application is true.** I understand that:

- Using a fictitious name or address, or any false statement violates D.C. Law and I can be fined up to \$1,000 or imprisoned for up to 180 days or both.
- If this form is used to provide false information for voter registration, I can be fined up to \$125,000 and/or jailed for up to 5 years.

**Sign here**

X

Date \_\_\_\_\_

If you are registered to vote, the information in this form will be used to update your voter registration in Washington, unless you check the box below.

Do not update my voter registration.

- OR -

**If you want to vote and meet the eligibility requirements, you can register to vote now. If you do not want to register, your decision will be confidential.**

To be eligible to vote, you must:

- be a U.S. Citizen
- have lived at this address in Washington for at least 30 days before the next election
- be at least 18 years old by the next election
- not be disqualified from voting due to a court order
- not be under Department of Corrections supervision for a Washington felony conviction

I do not want to register to vote at this time.

I declare that the information on this application is true.

- I meet the requirements to vote, under penalty of perjury.
- I understand that I can be convicted and fined up to \$10,000 and/or jailed for up to five years if I sign this statement even though I know it to be untrue.

**Sign here**

X

Date \_\_\_\_\_ Place \_\_\_\_\_

**APPENDIX B:**  
CHANGE OF  
ADDRESS FORM  
(Based on  
Washington State)

**APPENDIX C:**  
PUBLIC  
ASSISTANCE  
BENEFITS  
APPLICATION  
(BASED ON  
VIRGINIA)

The information in this form will be used to register you to vote unless you check the "No" box below.

To be eligible to vote in Virginia, you must:

- be a U.S. Citizen
- be a resident of Virginia
- be 18 years old by the next election
- have had your voting rights restored if you have ever been convicted of a felony
- have your capacity restored if you have ever been declared mentally incapacitated in a Circuit Court

If you are not registered to vote where you live now, and meet the eligibility requirements, would you like to apply to register to vote today?

**Yes, I would like to register to vote:**

Choose your party preference (optional)

Democratic  Republican  Independant

**No, I do not want to register to vote:**

**Registering to vote is your choice:**

- Your choice will not affect the assistance or services that you will be provided by this agency.
- If you decline to register to vote, this decision is confidential.
- If you do register to vote, the office where your application was submitted will be kept confidential, and will be used only for voter registration purposes.
- If you would like help 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 if you desire.
- If you wish to register to vote in private, a blank voter registration form will be provided to you.
- If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, you may file a complaint with: Secretary of the Virginia State Board of Elections, Washington Building, 1100 Bank Street, Richmond, VA 23219, Telephone (804) 864-8901

**I declare that the information on this application is true and that I am eligible to vote, under penalty of perjury.**

**Sign here**

X

Print your name \_\_\_\_\_ Date \_\_\_\_\_

[DATE]

[NAME OF PENDING REGISTRANT]

[ADDRESS]

[CITY, STATE, ZIP CODE]

Dear [Name of Pending Registrant],

Your recent visit to the [NAME OF AGENCY] means you have the opportunity to register to vote in [STATE]. Based on the information you provided, it appears you are eligible to register. We hope you will take advantage of your opportunity to exercise this fundamental right of citizenship by voting in local, state and federal elections in [STATE].

To be eligible to vote in [NAME OF STATE], you must be:

- A citizen of the United States of America
- 18 year of age by the next election, which is on [DATE OF NEXT ELECTION]
- A resident of [NAME OF STATE]
- **Not** have been convicted of a felony, unless your rights have been restored
- **Not** judged to be mentally incompetent by a circuit court, unless your rights have been restored

You have three options to complete your voter registration, or let us know that you do not wish to register and cancel your pending voter registration.

**Option 1. Complete your voter registration by mail.** Sign the attached form and mail it back to the [ELECTIONS OFFICE].

- **Include a copy of one of the following forms of identification:**
  - Current and valid photo identification
  - Current utility bill
  - Bank statement
  - Government check, paycheck or government document that shows your name and address
- **Select a political party on the form.** This is optional, but to vote in a party primary in this State, you must pick a political party.

**Option 2. Complete your voter registration on Election Day at your polling place.** If you choose this option, you will complete a form to confirm that you meet the eligibility requirements and will be asked to show one of the forms of identification listed above.

**Option 3. Cancel your voter registration.** If you do not want to register to vote for any reason, complete and mail in the attached cancellation form.

[STATE] has an Address Confidentiality Program for individuals who have demonstrated personal safety concerns. If you have concerns about your personal safety, you can use the enclosed card to decline registration. Then, you can register to vote without making your address public by applying for [STATE'S] Address Confidentiality program. For more information, visit [website] or call [number].

Thank you for your attention to this important information about voting in [STATE]. Please feel free to e-mail or call us if you have questions or concerns.

**APPENDIX D:  
POST-  
TRANSACTION  
LETTER  
(On letterhead,  
with contact  
information)**

*Project Vote sincerely thanks the following organizations and individuals for their generosity of time and knowledge:*

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## ABOUT THE AUTHOR

Niyati Shah works as Election Counsel to Project Vote. As Election Counsel, Ms. Shah litigates and advocates for compliance with the National Voter Registration Act of 1993 across the country. Ms. Shah is a graduate of Rutgers University School of Law – Camden, and licensed to practice law in New York and New Jersey.

## ABOUT PROJECT VOTE

Project Vote is a national nonpartisan, non-profit organization that promotes voting in historically underrepresented communities. Project Vote takes a leadership role in nationwide voting rights and election administration issues, working through research, litigation, and advocacy to ensure that our constituencies can register, vote, and cast ballots that count.

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