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Voting Reform Prominent in Two Executive Addresses



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The early days of 2016 ushered in addresses on the State of the Union and State of the State where our respective chief executives called for election law reforms. As each underscored the importance of expanding the franchise, President Barack Obama and Governor Andrew Cuomo referred to markedly different legislative environments. The president lamented the efforts across the country to roll back voting rights, as well as partisan rancor and division stymieing congressional action.¹ Gov. Cuomo, on the other hand, lauded the state Legislature for its leadership and ability to come together.²

¹ Text of President Obama's State of the Union address, CHICAGO TRIBUNE (2016), <http://www.chicagotribune.com/news/nationworld/politics/sns-state-of-the-union-text-story.html>.

² Transcript of Cuomo's 2016 State of the State Address, N.Y. TIMES (Jan. 13, 2016), <http://www.nytimes.com/2016/01/14/nyregion/transcript-of-cuomos-2016-state-of-the-state-address.html>.

Interestingly, the agendas were not dramatically different notwithstanding the supposed difference between Congress and Albany. Although he avoided specific proposals, Obama called for reducing the amount of money in politics and making it easier to vote by modernizing election administration. Cuomo called for public financing, automatic registration and early voting³—essentially, more specific versions of the ideas espoused by the president. Obama included a call for redistricting reform, specifically the idea of having independent line drawers.⁴ New York recently tackled this issue, amending its constitution in 2014 to alter its redistricting process.⁵

The president's reference to redistricting reform was only the latest in a variety of high-profile pronouncements about the subject. The Supreme Court recently issued one opinion on redistricting, in a partisan gerrymandering case called *Shapiro v. McManus*,⁶ and is currently deciding two more.⁷ Redistricting plans are before courts in a number of states, including Florida, Virginia and Wisconsin.⁸ Moreover, there is a great deal of reform activity in the states. In South Dakota, an amendment that would create an independent redistricting commission has already been certified for placement on the ballot in November,⁹ and there is an active signature campaign underway to do the same in Illinois.¹⁰ Policy makers in Colorado, Florida, Georgia, Maryland, New Hampshire, Ohio, Utah and Virginia, are also calling for reform of the redistricting process, several urging independent redistricting commissions.

³ 2016-17 NEW YORK STATE EXECUTIVE BUDGET—GOOD GOVERNMENT AND ETHICS REFORM ARTICLE VII LEGISLATION 111, 117 (2016), available at <http://www.budget.ny.gov/pubs/executive/eBudget1617/fy1617artVIIbills/GGER.pdf>.

⁴ Supra note 1.

⁵ Jessica Bakeman, Voters approve all three ballot propositions, POLITICO NEW YORK (Nov. 5, 2014), <http://www.capitalnewyork.com/article/albany/2014/11/8556069/voters-approve-all-three-ballot-propositions>.

⁶ *Shapiro v. McManus*, 136 S. Ct. 450 (2015).

⁷ *Evenwel v. Perry*, No. A-14-CV-335-LY-CH, 2014 WL 5780507 (W.D. Tex. Nov. 5, 2014), appeal docketed, No. 14-940 (U.S. May 26, 2015); *Harris v. Arizona Indep. Redistricting Comm'n*, 993 F.Supp.2d 1042 (D. Ariz. 2014), appeal docketed, No. 14-232 (U.S. Aug. 28, 2014).

⁸ Mary Ellen Klas, "Judge orders Florida Senate redistricting trial to move forward," TAMPA BAY TIMES (Nov. 13, 2015, 5:01 PM), <http://www.tampabay.com/news/politics/stateroundup/judge-rejects-florida-senates-call-to-hire-an-expert-to-draw-redistricting/2253905>; Greg Stohr, "Republicans Get U.S. Supreme Court Hearing on Virginia Voting Map," BLOOMBERG POLITICS (Nov. 13, 2015, 2:25 PM), <http://www.bloomberg.com/politics/articles/2015-11-13/republicans-get-u-s-high-court-hearing-on-virginia-voting-map>; Jack Fitzpatrick, "Just How Much Gerrymandering Is Unconstitutional? Wisconsin Plaintiffs Want the Supreme Court to Rule," NATIONAL JOURNAL (Nov. 4, 2015), <http://www.nationaljournal.com/s/92066/just-how-much-gerrymandering-is-unconstitutional-wisconsin-plaintiffs-want-supreme-court-rule>.

⁹ Dana Ferguson, "Redistricting petition has 40,400 signatures," ARGUS LEADER (Nov. 4, 2015, 2:11 PM), <http://www.argusleader.com/story/blogs/danaferguson/2015/11/04/redistricting-petition-has-40400-signatures/75166076/>.

¹⁰ "IL Redistricting Super PAC Has Enough Signatures for 2016 Ballot," ILLINOIS OBSERVER (Sept. 21, 2015), <http://www.illinoisobserver.net/2015/09/21/il-redistricting-super-pac-enough-signatures-2016-ballot/>.

The president and governor each commented on problems in the existing system for financing campaigns, but the governor specifically endorsed voluntary public financing as a solution. This comes on the heels of voters in Maine and Seattle approving referenda late last year that would change how elections are financed. Maine’s ballot initiative increased public financing funds, enhanced disclosure requirements, and increased penalties for violations.¹¹

Seattle’s ballot initiative created the nation’s first voucher system to finance candidates. Under its plan, voters get four \$25 vouchers they could assign to candidates for mayor, city council, or city attorney. Candidates seeking funds from the voucher program have to agree to lower campaign contribution and spending limits.¹² Gov. Cuomo’s proposal differs from these two, but there is little dispute that it is an issue that is rising to the center of public attention, especially as the country barrels toward the November 2016 presidential elections.

President Obama called for making voting easier, and for modernizing the voting process. Early voting, specifically urged by Gov. Cuomo in the budget proposal accompanying his address, is one way of doing that. This subject has also been part of a national conversation. In the lead-up to the 2012 election, a number of states across the country reduced or eliminated early voting opportunities, including in North Carolina, Wisconsin and Ohio.¹³ Governor Chris Christie of New Jersey vetoed legislation that would have created early in-person voting.¹⁴ And Senator Chuck Schumer, D-N.Y., recently introduced legislation that would require early voting (or no-excuse absentee voting) for all federal elections.¹⁵

Hillary Clinton, in connection with her presidential campaign has also called for early voting.¹⁶ Her critics noted that her state does not have early voting—but that would be corrected under

¹¹ Kevin Miller, “Mainers approve clean election expansion and \$100 million in bond issues,” PORTLAND PRESS HERALD (Nov. 4, 2015), <http://www.pressherald.com/2015/11/03/mainers-approve-clean-elections-measure-and-two-bond-issues/>.

¹² Daniel Beekman, “Seattle initiative puts spotlight on campaign financing,” THE SEATTLE TIMES (Oct. 27, 2015, 9:58 AM), <http://www.seattletimes.com/seattle-news/politics/seattle-initiative-puts-spotlight-on-campaign-financing/>.

¹³ Voting Laws Roundup 2013, BRENNAN CTR. FOR JUSTICE (Dec. 19, 2013) <https://www.brennancenter.org/analysis/election-2013-voting-laws-roundup>.

¹⁴ Terrence Dopp, “Christie Vetoes Measure to Expand Early Voting in New Jersey,” BLOOMBERG BUSINESS (Nov. 9, 2015, 1:43 PM), <http://www.bloomberg.com/news/articles/2015-11-09/christie-vetoes-measure-to-expand-early-voting-in-new-jersey>.

¹⁵ Press Release, On eve of 50th anniversary of voting rights act, Schumer introduces new bills to dramatically expand access to voting—legislation makes it easier to register online, expands early voting, and more (Aug. 5, 2015), available at <https://www.schumer.senate.gov/newsroom/press-releases/on-eve-of-50th-anniversary-of-voting-rights-act-schumer-introduces-new-bills-to-dramatically-expand-access-to-voting-legislation-makes-it-easier-to-register-online-expands-early-voting-and-more>.

¹⁶ Philip Bump, “Hillary Clinton wants 20 days of early voting. Here’s how that could help her,” WASH. POST (June 4, 2015), <https://www.washingtonpost.com/news/the-fix/wp/2015/06/04/hillary-clinton-wants-20-days-of-early-voting-heres-how-that-could-help-her/>.

Cuomo's proposal.¹⁷ Cuomo's proposal would require all counties to have at least one early voting polling location (one for every 50,000 residents), open at least eight hours during the week and five hours on weekends, for up to 12 days before Election Day.¹⁸

Automatic Registration

Of perhaps even greater significance than redistricting reform and early voting is automatic registration. We have described Oregon's initiative in this regard in an earlier column,¹⁹ and Gov. Cuomo has now proposed it for New York as well. Automatic registration changes our registration system in two small, but impactful ways. First, it switches our registration system to one that is opt-out, meaning that everyone will have the opportunity to decline registration, but those who do not (and are eligible) are registered. Second, it transfers voter registration to election officials electronically when eligible Americans are conducting business with government agencies.

There are numerous benefits to automatic registration. By shifting the presumption in favor of registration, automatic registration will increase the number of people registered, which is the required first step to voting in every state but one. Once registered, a person receives election information from election officials; moreover, candidates, parties, and get-out-the-vote organizations can target the person for turn-out activity and outreach.

Additionally, automatic registration can save election offices money. In too many places in this country, election administrators receive paper voter registration forms from government agencies providing registration services. A modern system would electronically send the voter information collected by the agency to the election office, eliminating the staff time needed to decipher and data-enter the handwritten responses to paper forms.

Finally, automatic registration can help clean up the voter rolls. Our voter registration rolls are plagued by out-of-date information and typos (resulting from mistakes made when trying to decipher handwritten responses to voter registration forms and having to enter a high volume of data). Electronically transferring the information reduces the amount of errors introduced into the rolls.

¹⁷ Ken Thomas, "Why Hillary Clinton is pushing early voting in 2016," CHRISTIAN SCI. MONITOR (JUNE 4, 2015), <http://www.csmonitor.com/USA/Politics/2015/0604/Why-Hillary-Clinton-is-pushing-early-voting-in-2016-video>.

¹⁸ Supra note 4, at 119-21.

¹⁹ See Jerry H. Goldfeder and Myrna Pérez, "Year-End Roundup: Significant State and Federal Developments," New York Law Journal, Dec. 17, 2015.

In addition to Oregon, California²⁰ passed automatic registration at state motor vehicle offices in 2015 (as did New Jersey, but it was vetoed by Governor Christie²¹). Fourteen other states and the District of Columbia also considered automatic registration legislation in the last legislative cycle.²² In these early days of the 2016 legislative cycle, there are almost two dozen states that have introduced automatic registration legislation. Gov. Cuomo's legislation only implements automatic registration at motor vehicle offices,²³ which will have a more limited effect on registration numbers than if more agencies were included. It is, nevertheless, a step in the direction of enfranchising more voters.

Conclusion

President Obama vowed that over the course of 2016, he would travel the country pushing for reforms to reduce the influence of money in politics and to modernize our elections. His words of encouragement would be welcome to New Yorkers who heard the governor's State of the State address. That said, it is, of course, too early in the year to know what, if any, election reforms will succeed, but both the president and the governor seem intent on making the effort.

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²⁰ Maria L. La Ganga, "Under new Oregon law, all eligible voters are registered unless they opt out," L.A. TIMES (Mar. 17, 2015, 8:28 PM), <http://www.latimes.com/nation/la-na-oregon-automatic-voter-registration-20150317-story.html>; Brakktton Booker, "California Becomes 2nd State To Automatically Register Voters," NPR (Oct. 13, 2015, 5:46 PM), <http://www.npr.org/2015/10/11/447796712/california-becomes-2nd-state-to-automatically-register-voters>.

²¹ Samantha Marcus, "Christie vetoes bill overhauling N.J. voting system," NJ.COM (Nov. 09, 2015, 3:43 PM), http://www.nj.com/politics/index.ssf/2015/11/christie_vetoes_bill_overhauling_nj_voting_system.html.

²² Voting Laws Roundup 2015, BRENNAN CTR. FOR JUSTICE (June 3, 2015), <https://www.brennancenter.org/analysis/voting-laws-roundup-2015>.

²³ Supra note 3, at 111.