

Originally published in

New York Law Journal

Government and Election Law

May 9, 2019

Albany's Still-To-Do Election Reforms



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In their Government and Election Law column, Jerry H. Goldfeder and Myrna Pérez note that Albany has taken some “exciting steps at reforming New York’s election laws,” however two critical reforms remain to be passed: Automatic Voter Registration (AVR), and rights restoration for all citizens living in the community with convictions in their past.

In our [previous column](#) we noted that Albany has taken some exciting steps at reforming New York’s election laws, but its work is not done. Two critical reforms remain to be passed: Automatic Voter Registration (AVR), and rights restoration for all citizens living in the community with convictions in their past. For the first time in many years, there appears to be sufficient political will to make New York a leader on election reform. Yet, further efforts seem to be stalled. Given the notoriously low turnout in New York’s elections, it would be a shame to not move ahead on reforms as simple and significant as AVR and rights restoration.

To recap where we are: early voting, pre-registration, online registration, polling hour expansion, and registration portability have been passed. The first step of the process has been taken to amend the state constitution to enact same-day registration and no-excuse absentee voting. Legislation has also been enacted that promises campaign finance reform. That said, restoring rights for persons with past criminal convictions living in the community and AVR remain on the table.

AVR

Automatic voter registration can have a transformative impact in New York. In the last four years, 15 states plus the District of Columbia have adopted AVR. Lawmakers in 22 more states across the country have introduced AVR legislation this session.

Automatic voter registration reverses the traditional way of registering voters in two simple ways. The first is that AVR switches the voter registration opportunity from one that is “opt-in” (where applicants have to affirmatively request to register to vote) to “opt-out” (where eligible citizens are registered to vote unless they affirmatively decline to register). No one is registered against their will. Everyone is given a clear opportunity to opt-out. An opt-out approach capitalizes on how our brains work—behavioral scientists have shown that our brains are hard-wired to choose the default option presented to us.

The second is that it transfers voter registration information from government agencies to election officials electronically, instead of through mailing of paper registration forms.

The good news is that AVR works. The Brennan Center, in a first-of-its-kind study, evaluated the impact of AVR in seven states and Washington, D.C. that have been operating the program long enough for meaningful results to be available. (Co-author Myrna Perez is deputy director of the Brennan’s Democracy Program.) The upshot is clear: automatic voter registration substantially increases registration, no matter the size of state, its political leanings, or the procedure by which one can opt-out. Among the jurisdictions studied, AVR resulted in increases in the number of registrations ranging from nine to 94 percent.

Because we can be confident that AVR will boost registration, we can design a specific AVR policy for the unique needs of New York. We would do so in several ways:

Reaching Beyond the DMV. Almost all of the states with AVR have enacted it at the state’s Department of Motor Vehicles (Alaska is the one exception). Some intend to go beyond the DMV, but have not done so yet. But New Yorkers as a whole interact with the DMV less than citizens in other states. In fact, nearly one out of five driving-age New York City residents has no

form of DMV-issued identification at all. It is probably not a surprise to learn that New Yorkers who do not interact with the DMV are concentrated in New York City.

So it makes sense to implement AVR in other agencies as well. We can start with agencies like the Department of Health and expand to others when they are ready.

Including Protections for Vulnerable Communities. Because AVR is so effective at getting people registered, it is imperative that we design AVR so that voters who wish to opt out can easily do so. Who might those people be?

People with confidentiality concerns, for example, may wish to opt out. Domestic violence survivors come to mind. Voter rolls are public records, which means they can be accessed by other people. New York law allows domestic violence survivors to obtain a court order allowing them to shield their address from public disclosure. But they have to go through a process to do so. Until they obtain that court order, they will need to opt out of AVR.

There are also people who are ineligible to vote. For example, there are two million or so non-citizens in New York. Non-citizens who are here legally can get a New York drivers' license. But, they cannot vote and therefore also need to understand clearly when they should opt out with ease.

There are two ways to design the opt-out system. Most states provide the opt-out opportunity at the agency. By contrast, a few states, most notably Oregon, provide the opt-out opportunity through a mailer sent home a few days after the agency opt-in. People who want to opt out have to mail the opt-out form back in before a certain deadline. We can make the opt-out requirement clearest and easiest for them by giving the opt-out opportunity at the agency, when they are doing the transaction. Giving the opt-out opportunity at the agency also allows for the system to provide multiple prompts to each applicant to ensure that they understand their choices.

Accounting for New York's Closed Primary System. New York law currently provides that a voter who is changing parties (or enrolling in a party after being unaffiliated) can only cast a vote in her new party's primary election if the new enrollment is effected 25 days prior to the preceding general election. This means, for example, that a Democrat who switches enrollment to the Republican party may only vote in the June 2019 primary if that switch in enrollment occurred on or before Oct. 12, 2018. Accordingly, we need to ensure that voters have the opportunity to enroll in a party when they get registered. This means presenting the enrollment opportunity up front, while the voter is at the agency.

In sum, AVR can increase the number of people registered, which we expect would increase turn out.

Rights Restoration

Rights restoration reform has also been on the table in many states for years, with some recent successes. Just last year, Louisiana restored voting rights to thousands of people on probation and parole, and Florida overwhelmingly passed a referendum ending a policy of lifetime disenfranchisement for all felonies—the greatest single expansion of the right to vote seen in decades (though the Florida Legislature is currently attempting to circumvent the referendum’s effect). Just within the last few weeks, Colorado’s Legislature passed a bill restoring voting rights to state residents upon their release from prison; it awaits the governor’s signature.

In New York, Governor Andrew Cuomo used his pardon power to restore voting rights to New Yorkers on parole. But legislative action would codify the governor’s pardons and render reversal of his policy far more difficult.

Albany has thus far accomplished important election reform this session. It should take these next steps.

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