

TESTIMONY

From Henry T. Berger, Election Law Attorney

Before the Joint Legislative Public Hearing 2019-2020 Executive Budget Proposal: Local Government Officials/General Government

RE: Back-End Automatic Voter Registration Legislation is the Most Effective, Efficient and Best Solution for Significant Voting Reform for New York State

I want to thank you for your leadership and commitment to prioritizing electoral reform this legislative session and thank you for the opportunity to submit testimony regarding enacting Automatic Voter Registration this legislative session. My name is Henry T. Berger, and I am an election law attorney and former City Hall Special Counsel. In my testimony, I will affirm that Automatic Voter Registration is a needed reform in New York State and that specifically, back-end legislation will yield us the best results.

Over the past several years, the pro-voter sector, including labor unions, progressive organizations, and good government group, has been successful in advancing Automatic Voter Registration (AVR) in a diverse mix of states around the country. This year, New York State has the opportunity to join the ranks and adopt this important reform legislatively. Doing so will help accomplish at least two crucial goals:

- Register a significantly higher percentage of eligible voters that are presently registered, from a more representative cross-section of citizens;
- Ensure New York's voter rolls are up-to-date, accurate, and secure.

Historically, New York has low registration and turnout rates, with just 66 percent of citizens registered to vote and only 57 percent turning out to vote in the 2016 election. Compared to the rest of the country New York ranked 46th out of the 50 states for registration and 43rd for turnout. Implementing AVR would be an important and necessary step towards improving these rates and bringing more New Yorkers into the democratic process.

There are two general approaches to AVR. "Back-end" AVR – similar to legislation introduced by Deputy Majority Leader Gianaris – automatically adds an eligible voter to the rolls with a single interaction at a government agency, such as the Department of Motor Vehicles or Department of Health, without requiring any action on the part of the individual and provides the chance to opt out via mail afterward. On the other hand, "front-end" – such as the proposal included in Governor Cuomo's budget proposal – puts the onus on an eligible voter to make a decision related to registration while at the government agency.

Back-End AVR Legislation Creates a Fairer, More Accurate and More Secure Election System, Reduces Bureaucratic Obstacles, and Helps People Exercise Their Fundamental American Right to Vote

As a practitioner of election law in New York State for much of my career, and as someone who has worked closely with the New York State Board of Elections, I strongly recommend New York pass and implement a back-end automatic voter registration system.

I make this recommendation for several reasons:

First and foremost, experience demonstrates that a back-end system goes much further than a front-end system in registering more eligible voters, and in so doing helps to ensure the voting population is more reflective of the citizenry.

According to the Oregon Secretary of State, since the state implemented a back-end AVR system in 2016, just 6 percent of unregistered eligible voters who interacted with the Department of Motor Vehicles declined to register to vote. By contrast, according to the California Secretary of State, after the first five months of the state's front-end AVR system, a full 58 percent of unregistered eligible voters who interacted with the Department of Motor Vehicles declined to register.

Based on the history advocates have had with the National Voter Registration Act's requirements for agencies to assist with voter registration, we know agency clerks are generally not incentivized to do this work and, in many cases, lack the training to deal with election-related issues. As a result, relying on agency personnel to be the intermediary for voter registration presents significant risks.

While a front-end system is prone to human error, a back-end system protects ineligible voters from being automatically registered and ensures accurate voter rolls. A back-end system would automatically register eligible voters by using data that individuals already provide when interacting with different source agencies – such as the DMV or Department of Health. Relying on automation and existing documentation reduces the risk of human error present in a front-end system, where individuals are registered manually based on their responses to questions.

We also know that by moving from paper to electronic methods, AVR eliminates the costs of provisional ballots, costly paper transactions, and manual data entry. While there is a small initial startup cost for AVR, long-term savings will be achieved after implementation. One study in Arizona showed it costs \$0.83 of staff time to enter a paper voting application into the system, [compared to just \\$0.04 with an electronic system](#). Across the country, localities have saved an average of about \$3.54 in labor costs per registration by moving from a [paper to an electronic method](#).

Though many automatic voter registration systems use the Department of Motor Vehicles as the main source agency, it's my belief New York utilize resources beyond the DMV in order to reach communities who have historically been less likely to be registered to vote. The New York Department of Health operates the second largest Medicaid program in the country, with 6.5 million people enrolled as of July 2018; this program presumably serves a portion of New Yorkers who would be less likely to interact with the Department of Motor Vehicles. Using a

back-end method with both the Department of Motor Vehicles and Medicaid enrollment would create a robust automatic voter registration system with reach into low-income communities and communities of color. Senator Gianaris' bill not only proposes utilizing the DMV and Department of Health, but several other government agencies who will have the capability to undertake this endeavor.

Finally, I support an automatic voter registration policy that maximizes measures to ensure non-citizens are not inadvertently registered, and that any who are unintentionally registered are not held responsible. This should include clear warnings in multiple languages on mailers, complete data privacy, and safe harbor provisions for any inadvertent registrations of non-citizens.

New York's automatic voter registration policy should also include a provision ensuring that those who do not wish to be registered, such as individuals employed by law enforcement and victims of domestic violence, are not included. We must expand access to the polls and modernize our election laws without putting any individual at risk.

Conclusion

Now is the time for a groundbreaking transformation of New York's antiquated election laws. Not only would automatic voter registration increase access to the polls, but the policy would save New York state both time and money. The shift from handling voter data manually to electronically would enhance security and ensure accuracy. Furthermore, maintaining accurate and up-to-date voter rolls would enable election officials to focus their energy, resources, and time on other critical election security measures.

As someone who has practiced election law in New York for decades, I know well the challenges we have in New York to get our voter registration system right. We have a powerful opportunity to register – and update the registration – of nearly everyone who comes into contact with key government agencies while fully protecting immigrants and victims of domestic violence. I hope you will take this significant step toward strengthening democracy in New York by including a back-end automatic voter registration policy in the final state budget.

Thank you for the opportunity to submit my testimony.