

New York Passes Automatic Voter Registration: The Dawn of a New Era of Voting Rights

By passing Automatic Voter Registration, the Legislature has made voting easier for New Yorkers.

BY JASON P.W. HALPERIN

In early 1999, as a third-year law student, I had a conversation one day with a friend about an idea that seemed like a great concept on paper but that could never actually happen in the real world—automatic voter registration. That spring, I published my Note on the issue. Jason P.W. Halperin, Note, *A Winner at The Polls: A Proposal for Mandatory Voter Registration*, 3 NYU J. Legis. Pub. Policy 69-123 (1999).

Twenty-one years later, that friend of mine—Michael Gianaris—has risen to the position of Deputy Majority Leader of the New York State Senate, the number-two ranking Democrat in the Legislature’s upper body. And when automatic voter registration (AVR) was passed by the Legislature in late July, Senator Gianaris justifiably deserved to take a big bow.

AVR has had a startling—and very quick—turn of fortune. As recently as five years ago, not one state had it on the books. New York is now the 20th state in the nation to adopt AVR.

When I last wrote about voter registration reform for the NYLJ in December 2018, New York had just found itself in the bottom three states for

voter turnout nationwide (ranking 48th out of 50 in the November 2018 midterm elections, with just 42.1 percent of eligible voters participating). Jason P.W. Halperin, *Reforming New York Government: It’s Time for Automatic Voter Registration*, N.Y.L.J. (Dec. 24, 2018). Compared to the national average of about 50 percent, *id.*, the low ranking was a stark referendum on New York’s outdated and overly burdensome voter registration laws.

Thankfully, it was one that the state legislature swiftly rectified, passing a sweeping voting reform package in January 2019. But while that reform package included a number of crucial measures—allowing for same-day voter registration, voting by mail, and early voting, for example—one of the key items I urged lawmakers to adopt in my article remained missing: automatic voter registration.

To its great credit, New York’s Legislature did not rest on its laurels. Rather, it pushed forward and took the long-awaited step of passing a bill that allows for automatic voter registration, making New York the 20th state (plus Washington, D.C.) to do so. Ryan Tarinelli, *New York Legislature OKs Automatic Voter Registration*, N.Y.L.J. (July 23, 2020). The bill’s



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passage is the result of years of effort by certain lawmakers, led by Senator Gianaris, who introduced a Voter Empowerment Act in 2012 and has helped put automatic voter registration before the legislature every year since 2015. Automatic Voter Registration in New York, Brennan Ctr. for Just. (Jan. 9, 2020). Governor Cuomo is expected to sign the bill into law by year’s end.

I interviewed Senator Gianaris last Friday and asked him why he thought it was important to keep pushing for AVR even after the Legislature had passed its other sweeping election reforms in early 2019.

“There’s somewhere between 1 and 2 million New Yorkers who were eligible to vote in the last election but who were not registered. That’s a huge slice of the electorate that we’re excluding and that we shouldn’t be.” Gianaris said. Explaining the symbolic importance of New York’s having AVR, he said, “We are telling the public that we want to make it easier to vote, not harder, especially in this election season where people are trying to tamp down participation. We want to do the opposite.”

Once the New York bill is signed into law and goes into effect (at the beginning of 2023), it will remove much of the onus on individuals to “opt-in” to vote, which has historically presented a significant barrier to registration. Instead, eligible citizens will automatically be registered when they have certain interactions with state and local agencies.

For instance, paperwork at the Department of Motor Vehicles will now include a section for voter registration information. If an eligible voter visits the DMV and fills out that paperwork, unless that person affirmatively opts out on the form, the DMV will share his or her voter information with the New York State Board of Elections. Assuming he or she is indeed eligible, that individual will then be automatically registered—with no more action required.

The same will be true at a number of state and local agencies, such as the Department of Health, the Office of Temporary and Disability Assistance, the Department of Labor, the Office of Vocational and Educational Service, the New York City Housing Authority, and local social services departments—with more likely to be added in the future. *Assembly Passes Legislation Creating Automatic Voter*

Registration, N.Y.S. Assembly Press Release (July 24, 2020).

This represents a remarkable improvement over the system New York had just two years ago, under which residents had to affirmatively register at least 25 days prior to an election—meaning that to exercise their basic right to vote, New Yorkers needed to be aware of the deadline, seek out voter registration materials, and complete the process, all before a deadline that fell at a time when many people have not yet given an election much thought (especially in non-presidential election years). Halperin, *Reforming New York Government* at 1-2. As a result, a large number of residents—as many as 2 million eligible New Yorkers, by some estimates—never ended up on the voter rolls. Samar Khurshid, *Deadline Looms for Unregistered, Unaffiliated Voters*, Gotham Gazette (Oct. 13, 2016).

In passing the bill, the Legislature took a critical step toward reducing obstacles to voting. And there is good reason to believe the change will work: If New York follows the same trend that has been seen elsewhere in the country, enacting automatic voter registration should have a profound impact on voter registration numbers and thus voter turnout rates. A comprehensive study by New York University School of Law’s Brennan Center for Justice, published in April 2019, assessed for the first time AVR’s effect on voter registration and found that enacting AVR raised states’ registration rates by anywhere from 9 percent (in Washington, D.C.) to 90 percent (in Georgia). AVR Impact on State Voter Registration, Brennan Ctr. for Just. (Apr. 11, 2019).

Even an increase at the lower end of that range should be welcome

news to anyone who has been watching voter turnout in recent years. Voter registration goes hand-in-hand with turnout: where barriers to registration are high, turnout has historically and consistently been low.

The opposite is true as well. In 1996, a year with the lowest turnout rate in a presidential election since the 1820s, only 49 percent of eligible voters voted. But even in that year of pitiful voter turnout, 82 percent of registered voters still voted. National General Election VEP Turnout Rates, 1789-Present, United States Election Project (Dec. 10, 2018); Halperin, *A Winner at the Polls* at 72 (citing Voting and Registration in the Election of November 1996 (Detailed tables), U.S. Census Bureau).

Indeed, from 1979 to 1999, even in a time of historically low voter turnout, 80 to 90 percent of registered voters still cast ballots. Halperin at 72 (citing Voting and Registration (Historical Time Series Tables)). And in the 2016 election, more than 87 percent of registered voters went to the polls. Voting and Registration in the Election of November 2016, U.S. Census Bureau.

Most people do not realize that for about the first 125 years of our democracy in America, states did not require voters to register to vote before they could actually exercise their franchise. Halperin at 76. In fact, before the implementation of voter registration laws in the late 1800s and early 1900s, national voter turnout in presidential election years occasionally topped 80 percent and rarely fell below 75 percent. *Id.*, Table 1.

But new voter registration laws aimed at suppressing the urban immigrant vote in the North and West, as well as poll taxes, literacy tests, and grandfather clauses designed

to quash the African-American vote in the South, led to enormous drops in turnout across the country. *Id.* at 81-82. In 1911 in New Jersey, for instance, adding a new voter's name to the rolls of a larger urban district required all of the following: (1) traveling in-person to the registrar on the second or fourth Tuesday in September or the Tuesday immediately preceding the election; (2) answering 12 questions about one's name, address, age, place of birth, and employment; and (3) signing a registry book. *Id.* at 78-79 (quoting Richard P. McCormick, *The History of Voting in New Jersey: A Study of the Development of Election Machinery 1664-1911*, at 210 (1953)). These new rules reflected a regional trend and coincided with a widespread decline in turnout. *Id.* at 79.

At the same time, white legislators in the post-Civil War South sought out ways to suppress newly enfranchised African-Americans without violating the Fifteenth Amendment or disenfranchising white voters. *Id.* at 80 (citing William Alexander Mabry, *Disfranchisement of the Negro in Mississippi*, 4 J. S. Hist. 318, 324 (1938)). In 1890, the Mississippi constitutional convention enacted a new constitution that established a \$2 poll tax and an "understanding clause" that required potential voters to demonstrate their understanding of any section of the state constitution read by or to them. *Id.* at 80 (citing Mabry, *Disfranchisement* at 326-333).

This "understanding" was evaluated by officials with "wide discretionary powers" to judge a potential voter's ability. *Id.* at 80 (quoting Mabry, *Disfranchisement* at 333).

Similarly, Louisiana implemented a poll tax and literacy test—and, to ensure that illiterate whites would maintain the vote, they added a grandfather clause. *Id.* at 81 (citing Mabry, *Louisiana Politics and the "Grandfather Clause,"* in *Studies in the Disfranchisement of the Negro in the South* 309 (1938)).

In the decades that followed, such stricter registration requirements—and numerous others like them—caused voter turnout to plummet. From 1888 to 1924, voting rates in the South fell by 45 percentage points, from 64 to 19 percent. *Id.* at 81-82 (citing Frances Fox Piven & Richard A. Cloward, *Why Americans Don't Vote* viii (1988)). Over that same period, turnout in the North and West plunged from 86 to 57 percent, and the national rate dropped to 49 percent from 79. *Id.* at 81-82 (citing Piven & Cloward at 30).

While the Voting Rights Act of 1965 would boost African-American registration in the South, the landmark civil rights legislation did not reverse the overall drop in turnout rates through the 20th century. In the years following enactment of the VRA, turnout in presidential elections fell from 62.5 percent in 1968 to 49.0 percent in 1996. *Id.* at Table 1. Even in the 2008 presidential election, which marked the highest voter turnout in four decades, the rate was still only 61.6 percent. National General Election VEP Turnout Rates, 1789-Present.

Fortunately, AVR shows great potential to help turn the tide. Oregon was the first state to enact it in 2015; since then, 19 states and the District of Columbia have followed suit.

Sara Swann, *New York Joins Growing Movement for Automatic Voter Registration*, *The Fulcrum* (July 24, 2020). The fact that AVR has gained such ground across the country in just five years signals that much of the United States is now moving closer to the vast majority of democracies throughout the world, where the government takes responsibility for registering voters rather than placing the burden on the individual to register, and which have accordingly had much higher voter turnout rates than those in the United States. Halperin at 123, Table 2.

The relative newness of the AVR laws means their effect on voter turnout is to some degree untested, but the 2018 midterm elections offered encouraging signs. Both Oregon and Colorado (another AVR state) broke 60 percent turnout that year, with 62.7 and 61.5 percent respectively—significantly higher than the national rate of 50 percent and a staggering 20 percentage points higher than New York. 2018 November General Election Turnout Rates.

If the trend holds, the 2020 election could well mark a banner year in voter turnout and a hopeful sign for a more robust, active participatory democracy in New York and across the nation.

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