

An Agenda for a Renewed Democracy in New Jersey

By Myrna Pérez and Ryan P. Haygood¹

Introduction

The Garden State has long been a leader in fighting for a fuller and more robust democracy. It was at the 1964 Democratic National Convention in Atlantic City that Fannie Lou Hamer famously delivered her powerful speech in support of Black voting rights on behalf of the Mississippi Freedom Democratic Party.

New Jersey's lawmakers have a unique opportunity to build on this history and have the state serve as an exemplar of an inclusive democracy that maximizes participation for all eligible residents. Last year, the Legislature did just that by approving reforms with bipartisan support — like automatic voter registration and expanded early voting. Unfortunately, the bills were vetoed and residents of the state never had a chance to benefit from the changes.

Lawmakers must remain undeterred. Reform is essential if we are to ensure that democracy fairly represents the needs of all residents, regardless of their background or circumstance. It must remain a priority for the remaining months of this session and into the next.

Toward that end, we urge the New Jersey Legislature to pass legislation providing: (1) automatic voter registration; (2) the restoration of voting rights to people with past criminal convictions living in the community; and (3) minimum early voting requirements.

Legislation: Pass Automatic Voter Registration

New Jersey is experiencing an avoidable problem of low voter participation. In 2016, Black voters, younger voters, and lower-income voters all saw a drop in their share of the electorate.² And in the 2014 election, New Jersey experienced low participation levels, with only 30.4 percent of eligible voters turning out, placing it among the 10 worst-performing states for voter participation that year.³

Passing automatic voter registration would powerfully grow the number of residents in New Jersey who make their voices heard in elections. As noted above, the legislature already understands the need for this reform: it has twice passed bills to automatically register residents at Motor Vehicle Commission (MVC) offices.⁴ Both bills won votes across the aisle, and had broad support from grassroots advocates, labor unions, and editorial boards.⁵ However, Governor Chris Christie twice vetoed the measure.

Automatic voter registration consists of two components: First, eligible people who interact with participating government agencies are automatically registered to vote unless they decline. In other words, it moves voter registration from an “opt in” system to an “opt out” one. Second, automatic registration eschews paper transfer of information, in favor of electronic transmission of voter records, from the registering agency to the election official.⁶

Of course, automatic voter registration would have the greatest impact if it could be implemented at as many agencies as possible. Broad implementation is the ultimate policy goal. In New Jersey, however, as in the states that have already made automatic registration law, starting at motor vehicle agencies is both technologically and politically expedient. New Jersey has taken the first step toward automatic registration, because MVC facilities already electronically transfer voter information to election officials, who then verify the voter registration application and add the voter to the state-wide database.⁷ This means a smaller implementation price tag, as the underlying technology has already been built.

The early evidence demonstrates that the reform works to grow voter rolls and boost turnout. In Oregon, the first state to implement automatic voter registration, the rate of new registrations at the Department of Motor Vehicles has quadrupled and the overall registration rate has jumped by nearly 10 percent, a huge increase from the growth seen in the last presidential election cycle.⁸ And, most importantly, these new registrants show up to vote: In the 2016 general election, nearly 100,000 Oregon votes were cast by voters who were signed up through automatic voter registration.⁹

In addition to increasing voter participation, automatic voter registration would bring other benefits to New Jersey. Many voters already believe their registration moves with them, or they simply forget to update it, so their information on the rolls is inaccurate. This is a problem for election officials, who need accurate rolls, and for voters, who far too often are disfranchised due to registration issues. Implementing automatic registration at the MVC would be a meaningful step in achieving portable voter registration, to the benefit of election officials and voters alike.

When Governor Christie vetoed the latest automatic registration bill in 2016, he called it a “cocktail of fraud.”¹⁰ This complaint is particularly off-base, considering that another benefit of automatic registration is that it would increase the accuracy and security of the voter rolls. Nationwide, one in eight registration records is out of date or inaccurate, according to the Pew Center on the States.¹¹ Errors often arise because voters move and forget to update their registration.¹² By updating voters’ registration information automatically, this major source of outdated information would be reduced. And, of course, part of the drafting and implementation of any automatic registration system would be working with the MVC (and, in the future, any other participating agencies) to ensure that only eligible voters are on the rolls.

Finally, automatic voter registration is already law in six states and the District of Columbia,¹³ and multiple legislatures around the country have plans to bring the reform to their state this upcoming session. New Jersey should join these states.

Legislation: Restore Voting Rights to People with Past Criminal Convictions

Nationwide, 6.1 million Americans cannot vote because of a past criminal conviction.¹⁴ Out of that total, 4.7 million are no longer in prison and are now living and working in our communities.¹⁵ And in New Jersey, over 70,000 people in the community are unable to vote because of a past conviction.¹⁶ These are people who have served their prison time, and are now raising families, and paying taxes.

New Jersey's law requires that all terms of the criminal sentence be complete before an individual can get her or his right to vote back, making New Jersey's disfranchisement law similar to Texas' disfranchisement law.¹⁷

To be clear, New Jersey disfranchises more people in the community than any other state in the Northeast.

In fact, the number of New Jersey residents living in the community that are banned from voting is greater than the number of disfranchised community members living in New York, Connecticut, and Delaware combined.¹⁸ The rest of New England — and Maryland and Pennsylvania — all restore voting rights to people once they are released into the community.¹⁹

The Garden State should adopt legislation that would restore voting rights to residents with past convictions who are now living in the community. Doing so will strengthen New Jersey's democracy while serving the re-entry process.

Voting rights restoration promotes community engagement and civic participation, which lower recidivism. A study in Florida, for example, found that persons released from prisons whose rights were restored were three times less likely to return to prison or supervision than released individuals overall.²⁰ That is why national law enforcement groups like the American Probation and Parole Association support rights restoration.²¹

Criminal disfranchisement laws not only take away individuals' voices — they also silence the communities to which they return, disproportionately communities of color. Nearly half of those who have lost their right to vote under New Jersey's disfranchisement law are Black.²² Restoring voting rights to these residents means that communities of color will be more fairly represented in the democracy.

Over the past 20 years, 20 states have taken action to make it easier for people with past criminal convictions to vote. Three states have reversed their lifetime disfranchisement laws.²³ In 2016 alone, Maryland's legislature enfranchised more than 40,000 people²⁴ and Virginia's governor restored voting rights to tens of thousands of people while vowing to continue doing so for thousands more.²⁵

Restoring voting rights would also build on commonsense, bipartisan reforms in New Jersey. Bipartisan reforms like "Ban the Box"²⁶ and the recent bail reform legislation²⁷ demonstrate that both parties can come together to legislate in a manner that strengthens New Jersey. Like these reforms, New Jersey should pass a law restoring voting rights to people with criminal convictions who are living in the community.

Legislation: Set Minimum Early Voting Requirements

New Jersey's current in-person absentee balloting law does not provide voters with sufficient early voting opportunities.²⁸ To do so, the state must adopt a robust system, with more locations per county and mandatory weekend and evening hours.

This goal is within reach: the legislature has twice approved bills²⁹ that would allow voting in-person at designated polling sites starting two weeks before Election Day, although both were vetoed by Governor Christie.³⁰

Research shows that early voting has a host of benefits. For voters, it means greater access to voting, an increase in satisfaction with the voting process, and shorter lines on Election Day.³¹ For election officials, early voting helps improve poll worker performance, allows for early diagnosis and correction of any errors with registration rolls, ballots, or machinery, and reduces the stress on voting systems on Election Day.³²

Under current New Jersey law, voters are permitted to cast ballots before Election Day by mail or in-person by applying for and completing an absentee ballot at their County Clerk's office. But there is only one of these offices per county; and while some counties have helpfully provided an additional location and evening or weekend hours right before an election, there is no requirement on counties to do so.³³

The limited geographic availability and largely inconvenient hours under the current system impacts utilization — in 2016, only 1 out of every 15 ballots in the Garden State was cast before Election Day;³⁴ in 2014, that number was even lower at 1 out of 20.³⁵ Compare these numbers to the country at large, where one out of every three votes is cast early.³⁶

To realize the full positive potential of early voting, New Jersey should establish in-person polling sites opening at least a full two weeks before Election Day. There should be multiple locations per county, as research shows that when early voting is widely accessible it can increase turnout.³⁷ All counties should be required to offer some early voting hours on evenings and weekends, including the weekend immediately before Election Day. And, as early voting is only effective if voters are aware of it and understand the opportunities, legislation should include a public education requirement.

Beyond its overall benefits to voters, poll workers, and the election system itself, early voting has proven to be particularly helpful to voters of color. Data from multiple states confirms that Black voters are more likely to take advantage of the flexibility early voting provides.³⁸ Robust early voting is an essential step toward making New Jersey's elections equally accessible to all people.

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The authors would like to thank Jennifer L. Clark, Kwame Akosah, Andrea McChristian, Michael Li, Dana Brandes-Simon, and Scott Novakowski for their thorough research and review, and Erik Opsal, Theresa Raffaele Jefferson, Elizabeth Weill-Greenberg, and Rebecca Autrey for their invaluable editorial and production assistance.

² *2016 Exit Polls – New Jersey: President*, CNN (Nov. 15, 2016), <http://www.cnn.com/election/results/exit-polls/new-jersey/president>; *2012 Exit Polls – New Jersey: President*, CNN (Dec. 10, 2012), <http://www.cnn.com/election/2012/results/state/NJ/president/>.

³ Domenico Montanaro, Rachel Wellford & Simone Pathe, *2014 Midterm Election Turnout Lowest in 70 Years*, PBS NEWS HOUR (Nov. 10, 2014), <http://www.pbs.org/newshour/updates/2014-midterm-election-turnout-lowest-in-70-years/>.

⁴ Assemb. B. 4613, 2015 Leg., 216th Sess. (N.J. 2015), available at <https://legiscan.com/NJ/text/A4613/2014>; Assemb. B. 1944, 2016 Leg., 217th Sess. (N.J. 2016), available at <https://legiscan.com/NJ/text/A1944/2016>.

⁵ *NJ Legislators: Put the Democracy Act on the 2016 Ballot!*, NJ WORKING FAMILIES PARTY (Dec. 14, 2015), <http://workingfamilies.org/2015/12/5413/>; Editorial, *Governor Should Sign N.J. Democracy Act*, NJ.COM (Oct. 16, 2015), http://www.nj.com/opinion/index.ssf/2015/10/governor_should_sign_nj_democracy_act_editorial.html; Editorial, *Take Voting Laws Out of Christie's Hands*, STAR-LEDGER (Nov. 11, 2015), http://www.nj.com/opinion/index.ssf/2015/11/take_voting_laws_out_of_christies_hands_editorial.html.

⁶ BRENNAN CTR. FOR JUSTICE, AUTOMATIC AND PERMANENT VOTER REGISTRATION: HOW IT WORKS 3 (2015), available at https://www.brennancenter.org/sites/default/files/publications/Automatic_Permanent_Voter_Registration_How_It_Works.pdf.

⁷ HOLLY MALUK, MYRNA PÉREZ, LUCY ZHOU, VOTER REGISTRATION IN A DIGITAL AGE: 2015 UPDATE 5, BRENNAN CTR. FOR JUSTICE (2015), available at https://www.brennancenter.org/sites/default/files/publications/Voter_Registration_Digital_Age_2015.pdf.

⁸ Jonathan Brater, *Update: Oregon Keeps Adding New Voters at Torrid Pace*, BRENNAN CTR. FOR JUSTICE (Aug. 19, 2016), <https://www.brennancenter.org/analysis/update-oregon-keeps-adding-new-voters-torrid-pace>.

⁹ Saerom England, *Nearly 100,000 Oregon Motor Voter Registrants Participate in Nov. 8 Election*, OR. SEC'Y OF STATE (Nov. 14, 2016), <http://oregonsosblog.us/2016/11/nearly-100000-oregon-motor-voter-registrants-participate-nov-8-election/>.

¹⁰ Matt Arco, *Christie Rejects Bill to Automatically Register N.J. Residents to Vote*, NJ.COM (Aug. 19, 2016), http://www.nj.com/politics/index.ssf/2016/08/christie_rejects_bill_that_would_automatically_reg.html.

¹¹ PEW CENTER ON THE STATES, INACCURATE, COSTLY AND INEFFICIENT: EVIDENCE THAT AMERICA'S VOTER REGISTRATION SYSTEM NEEDS AN UPGRADE 1-3 (2012), available at <http://www.pewtrusts.org/en/research-and-analysis/reports/2012/02/14/inaccurate-costly-and-inefficient-evidence-that-americas-voter-registration-system-needs-an-upgrade>.

¹² *Id.*

¹³ *Automatic Voter Registration*, BRENNAN CTR. FOR JUSTICE (Nov. 9, 2016), <https://www.brennancenter.org/analysis/automatic-voter-registration>.

¹⁴ CHRISTOPHER UGGEN, RYAN LARSON & SARAH SHANNON, 6 MILLION LOST VOTERS: STATE-LEVEL ESTIMATES OF FELONY DISENFRANCHISEMENT 3 (2016), available at <http://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>.

¹⁵ *Id.* at 14.

¹⁶ *Id.* at 15.

¹⁷ 1997 Tex. Sess. Law Serv. Ch. 850, available at http://www.lrl.state.tx.us/LASDOCS/75R/HB1001/HB1001_75R.pdf. Previously, Texas law imposed a two-year waiting period following the completion of sentence, including probation and parole.

¹⁸ *Supra* note 14 at 15. Each state has its own rules for which community members with past convictions are disfranchised. In New Jersey, persons must be done with all the terms of their sentence (in other words, complete probation and parole) before they get rights restored; in New York and Connecticut persons serving a term of parole for a felony conviction lose voting rights; in Delaware persons serving a term of felony probation or parole lose voting rights and some convictions can result in permanent disfranchisement. Based on these different rules each state has disfranchised the following number of persons in the community: NY: 44,590, CT: 2,419, DE: 8,857, for a total of approximately 55,866 citizens in the community disfranchised, compared to 72,954 citizens in New Jersey).

¹⁹ *Criminal Disenfranchisement Laws Across the United States*, BRENNAN CTR. FOR JUSTICE (Oct. 6, 2016), <https://www.brennancenter.org/criminal-disenfranchisement-laws-across-united-states>.

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- ²² CHRISTOPHER UGGEN, RYAN LARSON & SARAH SHANNON, *supra* note 14 at 16 (Out of the 72,954 individuals living in New Jersey communities who are disfranchised by a prior criminal conviction, 34,709 are African Americans).
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- ²⁴ S.B. 340/H.B. 980 (Md. 2015) (restoring the right to vote for citizens on probation and parole). See *Voting Rights Restoration Efforts in Maryland*, BRENNAN CTR. FOR JUSTICE, (Mar. 10, 2016), <http://www.brennancenter.org/analysis/voting-rights-restoration-efforts-maryland>.
- ²⁵ In April 2016, Virginia governor Terry McAuliffe issued an executive order restoring voting rights to 200,000 citizens. After a July 2016 state Supreme Court ruling invalidated that order, McAuliffe committed to individually restoring the right to vote for people covered in his prior order. See *Voting Rights Restoration Efforts in Virginia*, BRENNAN CTR. FOR JUSTICE, (Oct. 14, 2016), <http://www.brennancenter.org/analysis/voting-rights-restoration-efforts-virginia>. In late September 2016, McAuliffe stated that he had restored voting rights to over 60,000 citizens. Camila DeChalus, *In Virginia, Ex-Felons Find Empowerment in the Voting Booth*, CNN (Nov. 5, 2016), <http://www.cnn.com/2016/11/05/politics/virginia-felons-voting-rights/>.
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