



Testimony of

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Hearing on Protecting the Right to Vote: Best and Worst Practices

The Committee on Oversight and Reform, U.S. House of Representatives

Subcommittee on Civil Rights and Civil Liberties

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Chairman Raskin, Ranking Member Roy, and members of the Committee:

Thank you for the opportunity to submit this testimony. The Brennan Center for Justice strongly supports this Committee's examination of voter suppression in the states and encourages efforts to protect every eligible American's right to vote.¹

State voter suppression is a real, persistent, and urgent threat to our democracy. Since 2010, at least half of the states in our nation have passed new policies that make it harder for people to register and vote. These practices include cutbacks to early voting, new obstacles to voter registration, and onerous voter identification requirements, among others.

Over the same period, we have seen some states implement new, innovative policies to expand access to the ballot. For example, in the past four years, 15 states and the District of Columbia have adopted automatic voter registration. Already this year, New York has passed reforms including early in-person voting, pre-registration for 16- and 17-year olds, and portability of voter registration records, New Mexico has passed same-day voter registration, Virginia has passed early in-person voting, and numerous other states are moving pro-voter reforms through their legislatures. In addition, earlier this year, the House passed the For the People Act (H.R. 1), which contains solutions to many of the ways in which voters are disenfranchised these days.

¹ This written testimony references, and incorporates: Testimony of Wendy Weiser before the House Committee on Administration, Feb. 14, 2019, https://cha.house.gov/sites/democrats.cha.house.gov/files/documents/committee_docs/Weiser_testimony_for_House_Administration_hearing_on_HR1_0.pdf; Supplemental Written Testimony of the Brennan Center for Justice submitted to the Committee on House Administration, Mar. 5, 2019, https://www.brennancenter.org/sites/default/files/legal-work/2019.3.5_Supplemental%20Written%20Testimony%20DRA.pdf; Testimony of Rudy A. Mehrbani before the House Committee on Oversight and Reform, Feb. 6, 2019, <https://www.brennancenter.org/analysis/testimony-support-people-act>. Those documents are attached as Appendices A–C.

In short, voter suppression in the states continue, but there are bright spots upon which much can be built. My testimony focuses on two perennial problems that voters face—outdated voter registration systems and voter roll purges—along with some of the efforts to restrict voting rights that state legislatures have advanced so far this year. I also briefly lay out some of the successes of automatic voter registration. I additionally submit some relevant testimonies, reports, and analyses performed by the Brennan Center to assist the Committee in its next steps.

Outdated Voter Registration Systems and Automatic Voter Registration

Outdated voter registration systems may not garner much public attention, but they present one of the most consequential obstacles to free and fair elections in our nation today. One in four eligible Americans is not registered to vote.² Millions of Americans who *are* registered have trouble voting on Election Day because of registration flaws.³ In too much of the country, voter registration still largely relies on error-prone pen and paper—in 2012, the Pew Center on the States estimated that roughly one in eight registrations in America is invalid or significantly inaccurate.⁴ These problems contribute to low voter turnout.⁵

Automatic voter registration (“AVR”)—a policy first proposed by the Brennan Center more than a decade ago—addresses much of these problems, offering a streamlined, cost-effective, and more accurate approach to voter registration. In an AVR system, every eligible citizen who interacts with designated government agencies is automatically registered to vote, unless they decline registration.

AVR has two key components. First, voter information is transferred to election officials electronically, instead of using paper forms and snail mail. Second, AVR switches from “opt-in” registration, where applicants have to affirmatively request to register to vote, to “opt-out” registration, where eligible citizens who apply for services at designated government agencies are registered to vote, unless they decline registration. Everyone is offered a clear opportunity to decline, and no one is registered against their will.

² Pew Center on the States, *Inaccurate, Costly and Inefficient: Evidence that America’s Voter Registration System Needs an Upgrade*, 2012, 1, https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2012/pewupgradingvoterregistrationpdf.pdf; see also U.S. Census Bureau, *Voting and Registration in the Election of 2016, 2017*, Tbl. 1, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html>.

³ A Caltech/MIT study found that in 2008, approximately 3 million people tried to vote but could not because of registration problems, and millions more were thwarted by other issues. See R. Michael Alvarez et al., *2008 Survey of the Performance of American Elections*, (2009), 59, https://elections.delaware.gov/pdfs/SPAE_2008.pdf; see also Stephen Ansolabehere, Testimony Before the U.S. Senate Rules Committee 19 (Mar. 11, 2009); Data from 2012 similarly demonstrates that millions of voters experienced registration problems at the polls. Charles Stewart III, *2012 Survey of the Performance of American Elections: Final Report*, 2013, 70, <http://dvn.iq.harvard.edu/dvn/dv/measuringelections>.

⁴ Pew Center on the States, *Inaccurate, Costly and Inefficient*, 2012.

⁵ According to a 2001 commission chaired by former Presidents Ford and Carter, “[t]he registration laws in the United States are among the most demanding in the democratic world ... [and are] one reason why voter turnout in the United States is near the bottom of the developed world.” See Carter and Ford: National Commission on Election Reform, Reports of the Task Force on the Federal Election System, 2001, 1–3. In too many parts of America this is still true.

AVR works. The Brennan Center, in a first-of-its-kind study, evaluated the impact of AVR on seven states (and Washington, D.C.) that have been operating the program long enough for meaningful results to be available.⁶ The results are clear: AVR substantially increases registration rates, no matter the size of the state, its political leanings, or the details of the policy's implementation. Among the states studied, AVR caused increases in the number of registrations ranging from nine to 94 percent.⁷ If adopted fully nationwide, AVR could add millions of new eligible voters to the rolls.⁸

Lawmakers and voters are increasingly recognizing that AVR is a best practice in election administration. In just the last four years, 15 states and the District of Columbia have enacted AVR—many with strong bipartisan support. The House passed AVR as part of the H.R. 1 in March 2019.

Outdated registration systems represent a critical, but too often overlooked, obstacle to voting. We encourage this Committee to examine the status of state voter registration systems to facilitate achievable improvements for American voters. And we encourage the Committee to take all steps necessary to accomplish adoption of AVR nationwide.

Improper Voter Purges

Under federal law, every state is responsible for maintaining accurate statewide voter registration lists. This maintenance includes voter roll purges—the sometimes-flawed process by which election officials attempt to remove from voter registration lists the names of those ineligible to vote. When done correctly, purges ensure the voter rolls are accurate and up-to-date. When done incorrectly, purges disenfranchise legitimate voters—often when it is too close to an election to rectify the mistake—and cause confusion and delay at the polls.

Purges tend to be problematic for a few reasons. As an initial matter, they happen behind closed doors. As a result, voters often do not know they have been purged until they show up to cast a ballot on Election Day. Additionally, states often rely on faulty data and poor processes when determining who should be purged from the rolls.

Voter purges are on the rise. Between 2014 and 2016, states removed almost 16 million voters from the rolls—almost 4 million more than between 2006 and 2008.⁹ This growth in the number of removed voters represented an increase of 33 percent—far outstripping growth in both total registered voters (18 percent) and total population (six percent). Brennan Center research suggests that the Supreme Court's 2013 decision in *Shelby County v. Holder* has had a

⁶ Kevin Morris & Peter Dunphy, *AVR Impact on State Voter Registration*, Brennan Center for Justice, 2019, https://www.brennancenter.org/sites/default/files/publications/2019_04_AVR_Report_Final_0.pdf; *Voting Laws Roundup 2019*, Brennan Center for Justice, Apr. 26, 2019. This testimony incorporates by reference this report, attached as Appendix D, and its additional findings.

⁷ *Id.* at 1.

⁸ Brennan Center for Justice, *The Case for Automatic Voter Registration*, 2016, https://www.brennancenter.org/sites/default/files/publications/Case_for_Automatic_Voter_Registration.pdf.

⁹ Jonathan Brater et al., *Purges: A Growing Threat to the Right to Vote*, Brennan Center for Justice 2018, https://www.brennancenter.org/sites/default/files/publications/Purges_Growing_Threat_2018.pdf. This testimony incorporates by reference this report, attached as Appendix E, and its additional findings.

profound and negative impact: for the two election cycles between 2012 and 2016, jurisdictions no longer subject to federal preclearance had purge rates significantly higher than jurisdictions that were not subject to pre-clearance in 2013.¹⁰ The Brennan Center calculated that 2 million fewer voters would have been purged over those four years if jurisdictions previously subject to federal preclearance had purged at the same rate as those jurisdictions not subject to that provision in 2013.¹¹

Improper purges are regrettably common. Earlier this year, for example, a federal court halted Texas's recent attempt to purge approximately 95,000 alleged noncitizens from the rolls.¹² Texas's plan relied on stale data, weak comparisons between databases, and unfounded claims of voter fraud.¹³ In 2016, New York election officials erroneously deleted more than 200,000 names from the voter rolls, with no public warning and little notice to those who had been purged.¹⁴ The same year, the Arkansas Secretary of State sent the state's 75 county clerks more than 7,700 names to be removed because of supposed felony convictions. Yet the roster was highly inaccurate: it included people who had never been convicted of a felony as well as persons with past convictions whose voting rights had been restored.¹⁵ In Virginia in 2013, nearly 39,000 voters were removed from the rolls when the state relied on a faulty database—the Interstate Voter Registration Crosscheck Program—to delete voters who allegedly moved out of the commonwealth. Error rates in some counties ran as high as 17 percent.¹⁶

These kinds of improper purges, while common, are not inevitable. List maintenance is an important part of election administration, but it must be done in a way that protects eligible voters. The Brennan Center encourages the Committee to study state and local purge practices, in order to identify and rectify the worst voter purge practices. And we applaud the House for passing H.R. 1, which would put some additional protective guardrails on purging.

Bills Restricting Voting Access in 2019

Thus far in 2019, there has been an uptick in state activity around measures to restrict voting access. These measures represent the continuation of a decade-long effort in some states that make it more difficult to vote.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 4; see also Kevin Morris & Myrna Pérez, *Florida, Georgia, North Carolina Still Purging Voters at High Rates*, Brennan Center for Justice, Oct. 1, 2018, <https://www.brennancenter.org/blog/florida-georgia-north-carolina-still-purging-voters-high-rates>. This testimony incorporates by reference this article, attached as Appendix F, and its additional findings.

¹² Texas reached a settlement with civil rights organizations on April 26, 2019, agreeing to withdraw its flawed purge list and to instruct local officials to reinstate any voter registrations that were canceled as part of the process. See Sam Levine, *Texas To Halt Botched Effort To Find Noncitizens On Its Voter Rolls, Implement Fixes*, HuffPost (Apr. 26, 2019), https://www.huffpost.com/entry/texas-non-citizens-voter-rolls_n_5cc36062e4b08e4e3481ff72.

¹³ Sean Morales-Doyle & Rebecca Ayala, *There's Good Reason to Question Texas' Voter Fraud Claims*, Brennan Center for Justice, Jan. 29, 2019, <https://www.brennancenter.org/blog/theres-good-reason-question-texas-voter-fraud-claims>. This testimony incorporates by reference this article, attached as Appendix G, and its additional findings.

¹⁴ Brater et al., *supra* note 9, at 5–6.

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 8.

This year, in particular, state legislatures have introduced and advanced an unusual number of bills that would restrict efforts by civic groups to assist voters, in registering, applying to vote absentee, or casting a ballot—potentially as a backlash to high voter turnout in the 2018 midterms.¹⁷ The Tennessee legislature, for example, has passed wide-ranging new restrictions on assistance of voter registration, including new registration and training requirements on registration groups, and civil and criminal penalties for submitting too many “deficient” voter registration forms (HB 1079). Similarly, the Texas Senate has passed a bill that significantly increases penalties and risk of prosecution for election code violations by voters; permits poll watchers to inspect voter ID; and imposes new restrictions on people assisting voters with physical limitations or who cannot read the ballot, among other measures (SB 9).

In addition, Florida is poised to passed legislation (HB 7089 / SB 7086) that would cut back on the historic change that voters passed overwhelmingly in November to the state’s felony disenfranchisement law by ending permanent disenfranchisement.¹⁸ Both the Florida House and Senate bills would disenfranchise otherwise eligible voters by preventing an individual’s rights from being restored until they paid off certain financial obligations. The House bill is even more draconian and would likely result in substantially more people being disenfranchised.

These are just a few examples of attempts by state legislatures to limit access to the ballot so far this year, and they underscore the continuing need for study, investigation, and review from this Committee.

In conclusion, it is precisely within the Committee’s purview to study and identify state policies and practices that impermissibly infringe on citizens’ right to vote in federal elections. It is well-established that this Committee has broad investigatory authority.¹⁹ Additionally, Congress has robust authority to regulate the federal elections process pursuant to the Constitution’s Elections Clause.²⁰ We enthusiastically support this Committee examining state efforts to undermine voting rights, and the Brennan Center urges this Committee and the House to continue to exercise their powers to ensure that all Americans elections are free, fair, and accessible.

¹⁷ *Voting Laws Roundup 2019*, Brennan Center for Justice, Apr. 26, 2019, <https://www.brennancenter.org/analysis/voting-laws-roundup-2019>. This testimony incorporates by reference this analysis, attached as Appendix H, and its additional findings.

¹⁸ Makeda Yohannes, *Florida Lawmakers Attempt to Weaken Voter Rights Restoration*, Brennan Center for Justice, Mar. 20, 2019, <https://www.brennancenter.org/blog/florida-lawmakers-attempt-weaken-voter-rights-restoration>. This testimony incorporates by reference this analysis, attached as Appendix I, and its additional findings.

¹⁹ House Rule X, clauses 1, 4.

²⁰ U.S. Const. art. I, § 4, cl. 1; *see also* Testimony of Wendy Weiser before the House Committee on Administration, Feb. 14, 2019, 36-38.