

A BIPARTISAN POLICY FOR DEMOCRACY WHY AUTOMATIC VOTER REGISTRATION IS RIGHT FOR INDIANA

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INTRODUCTION

“When you’re automatically registered to vote, that makes your life easier.”¹ This remark came on the floor of the West Virginia Senate shortly before the Senate voted to pass an automatic voter registration bill.² The speaker? State Senator Craig Blair, the Republican Majority Whip.³ When the bill was signed into law in April 2016, West Virginia became the third state to enact automatic voter registration, following the lead of Oregon and California.⁴ West Virginia was also the first conservative-leaning state to pass an automatic voter registration law.⁵

Automatic voter registration is a new and fast-moving area of law, one which is attracting broad bipartisan support.⁶ The premise behind automatic voter registration is that rather than merely permitting citizens to register to vote on their own initiative, states will take various steps to automatically register citizens to vote.⁷ In the last three years, thirteen states adopted some form of an automatic voter registration law.⁸ Oregon became the first state to adopt an automatic voter registration law in March of 2015.⁹ When Governor Charlie Baker signed an automatic voter registration measure on August 9, 2018, Massachusetts became

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1. Samantha Lachman, *Republicans (Yes, Really!) Made Registering To Vote Easier In West Virginia*, HUFFINGTON POST (Apr. 13, 2016), https://www.huffingtonpost.com/entry/automatic-voter-registration_us_570ea3afe4b0ffa5937e0389 [<https://perma.cc/5U2B-SUUD>].

2. *Id.*

3. *Id.*

4. Sophie Schuit & Jonathan Brater, *West Virginia Third State to Pass Automatic Voter Registration*, BRENNAN CTR. FOR JUST. (Apr. 4, 2016), <https://www.brennancenter.org/blog/west-virginia-third-state-pass-automatic-voter-registration> [<https://perma.cc/JHN7-645A>].

5. Lachman, *supra* note 1.

6. *Automatic Voter Registration*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/analysis/automatic-voter-registration> [<https://perma.cc/CRA5-BSUC>].

7. *Id.*

8. *Id.*

9. *VRM in the States: Oregon*, BRENNAN CTR. FOR JUST. (Feb. 1, 2017), <http://www.brennancenter.org/analysis/vrm-states-oregon> [<https://perma.cc/UKX2-J2ZR>].

the most recent state to pass an automatic voter registration law.¹⁰ Nevada and Michigan may be next, as automatic voter registration measures are on the ballot for November 2018.¹¹

Automatic voter registration is partly motivated as a response to low voter turnout.¹² Although 245.5 million American citizens can vote, only 157.6 million Americans—less than 65%—report that they are registered.¹³ And in 2016, only 55.7% of the voting age population in the United States went to the voting booth and cast their votes.¹⁴ Although this is technically a majority, the United States' voter turnout stands in stark contrast to other democracies in developed nations.¹⁵ Of the voting age population in recent elections, 87.2% voted in Belgium, 82.6% voted in Sweden, and 80.3% voted in Denmark.¹⁶ In 2012, out of 172 countries, the United States ranked 138th for voter turnout.¹⁷

Though many factors affect turnout, such as the method of voting and voting dates and times, registration is one key issue, as it is a prerequisite to voting in the United States.¹⁸ And voter registration has been a hotly contested issue in recent memory.¹⁹ Much civil rights activism during the 1960s was concerned with registering black voters, who were threatened with eviction, termination from employment, and even death when they tried to register to vote in some states.²⁰ Happily, such violent intimidation is a thing of the past, and as of November 2016, 72% of white citizens, and 69% of black citizens, report that they are

10. Matt Stout, *Charlie Baker Signs Automatic Voter Registration Bill*, BOS. GLOBE (Aug. 9, 2018), <https://www.bostonglobe.com/metro/2018/08/09/charlie-baker-signs-automatic-voter-registration-bill-that-could-add-thousands-state-rolls/vi2lqqkXYtAJdWjzySoLTN/story.html> [https://perma.cc/2QY7-G4S6].

11. Steve Benen, *Automatic Voter Registration Keeps Expanding, Reaches 10th State*, MSNBC (Aug. 28, 2017), <http://www.msnbc.com/rachel-maddow-show/automatic-voter-registration-keeps-expanding-reaches-10th-state> [https://perma.cc/M689-NNHL]; Nina DeSarro, *Michigan Voter Rights: Breaking Down Proposal 3*, WZZM13 (Oct. 9, 2018), <https://www.wzzm13.com/article/news/politics/elections/michigan-voter-rights-breaking-down-proposal-3/69-602512385> [https://perma.cc/9WHG-FTVY].

12. *Automatic Voter Registration*, *supra* note 6.

13. Drew DeSilver, *U.S. Trails Most Developed Countries in Voter Turnout*, PEW RES. CTR. (May 15, 2017), <http://www.pewresearch.org/fact-tank/2017/05/15/u-s-voter-turnout-trails-most-developed-countries/> [https://perma.cc/DHQ4-QXYD].

14. *Id.*

15. *Id.*

16. *Id.*

17. Cristina Constantini, *3 Countries Where it's Easier to Vote than the United States*, ABC NEWS (Nov. 2, 2012), http://abcnews.go.com/ABC_Univision/countries-easier-vote-united-states/story?id=17625616 [https://perma.cc/XQ8X-FVZ7].

18. *Automatic Voter Registration*, *supra* note 6.

19. *See generally* Juan Williams, *Eyes on the Prize: America's Civil Rights Years 1954-1965* (1984).

20. *Id.* at 208-10.

registered to vote.²¹ However, while this gap has closed, Asian and Hispanic voter registration lags behind, at 56% and 57%, respectively.²² Additionally, while the gap may have closed between black and white voters, the fact remains that approximately 28% of eligible white voters, 30% of eligible black voters, 43% of Hispanic voters, and 44% of Asian voters are not registered.²³

Neither the Constitution nor the Bill of Rights refer to the voting rights of individuals.²⁴ The Fourteenth Amendment contains the first mention of any right to vote.²⁵ The Amendment, ratified in 1868, forbids states to abridge the right to vote.²⁶ But it does not define the parameters of voting rights, including voter registration.²⁷ The Voting Rights Act of 1965 established that

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color. . . .²⁸

The law's impact was immediate and profound, as in Mississippi alone, "the percentage of eligible black voters registered ballooned from 7% in 1964 to 67% just five years later."²⁹ Congress affirmed the importance of voter registration in the National Voter Registration Act of 1993, commonly known as the "Motor Voter Act"³⁰ due to its requirement that voters be offered registration forms when applying for a driver's license.³¹ Most voter registration policies and procedures are left to the states, as "[s]tates can within limits specify the qualifications of voters in both state and federal elections; the Constitution indeed makes voters' qualifications rest on state law even in federal elections."³² Indiana, like any other state, is thus free to adopt automatic voter registration should the state legislature

21. *Reported Voting and Registration Among Native and Naturalized Citizens, by Race, Hispanic Origin, and Region of Birth: November 2016*, U.S. Census Bureau (Jan. 29, 2018), <https://www2.census.gov/programs-surveys/cps/tables/p20/580/table11.xls> [https://perma.cc/GQB6-DT9S].

22. *Id.*

23. *Id.*

24. Garrett Epps, *What Does the Constitution Actually Say About Voting Rights?*, ATLANTIC (Aug. 19, 2013), <https://www.theatlantic.com/national/archive/2013/08/what-does-the-constitution-actually-say-about-voting-rights/278782/> [https://perma.cc/JW6E-QT5R].

25. *Id.*

26. U.S. CONST. amend. XIV, § 2.

27. *Id.*

28. 52 U.S.C. § 10301 (1965).

29. James C. Cobb, *The Voting Rights Act at 50: How it Changed the World*, TIME (Aug. 6, 2015), <http://time.com/3985479/voting-rights-act-1965-results/> [https://perma.cc/FXX7-SW6B].

30. *About the National Voter Registration Act*, U.S. DEP'T JUST. (Aug. 8, 2015), <https://www.justice.gov/crt/about-national-voter-registration-act> [https://perma.cc/68QQ-7ZZW].

31. 52 U.S.C. § 20504 (1993).

32. *Gray v. Sanders*, 372 U.S. 368, 379 (1963).

so choose.

This Note argues that automatic voter registration is an effective means of cutting costs, improving efficiency and accuracy of registration, increasing voter registration, and increasing voter turnout. This Note then argues that Indiana should adopt an automatic voter registration law and proposes a model automatic voter registration bill. Part I of this Note examines the history of voter registration in the United States and discusses the current state of voter registration and turnout. Part II then compares the various automatic voter registration laws that have been adopted and the results since their enactment. Part III examines prior attempts to pass automatic voter registration in Indiana and proposes a model automatic voter registration bill.

I. HOW VOTER REGISTRATION CAME TO BE

The U.S. Constitution is silent on the issue of voter registration, automatic or otherwise.³³ In fact, the right to vote is not mentioned at all until the Fourteenth Amendment.³⁴ The Fifteenth Amendment, passed in 1868, states that “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.”³⁵ It does not otherwise define the parameters of voting rights.³⁶

A. *The Evolution of Voter Registration*

When the states adopted the Constitution, voter registration did not exist.³⁷ The first presidential election in 1788-1789 did not require any voter registration.³⁸ The original New York Constitution established voting requirements, such as six months of residency and a minimum level of wealth, but did not require any registration.³⁹ Vermont’s original Constitution merely required that a voter be a freeman “having a sufficient evident common interest with, and attachment to the community.”⁴⁰ In Connecticut and several other states, there was no Presidential election, *per se*.⁴¹ Instead, the state legislature chose electors that were pledged to certain Presidential candidates.⁴² Some states,

33. Epps, *supra* note 24.

34. *Id.*

35. U.S. CONST. amend. XV, § 1.

36. *See id.*

37. *See generally* U.S. CONST.

38. *See* Lily Rothman, *For National Voter Registration Day, Here's How Registering to Vote Became a Thing*, TIME (Sept. 26, 2016), <http://time.com/4502154/voter-registration-history/> [<https://perma.cc/Y979-BX78>].

39. N.Y. CONST. art. V, VII (1777).

40. VT. CONST. art. IX (1786).

41. *Electoral College*, TUFTS U. DIGITAL ARCHIVES & COLLECTIONS, https://elections.lib.tufts.edu/catalog?commit=search&f%5Boffice_id_ssim%5D%5B%5D=ON056&q=1789&search_field=all_fields&utf8=%E2%9C%93 [<https://perma.cc/BZ8C-CDYQ>].

42. *Id.*

such as Virginia, chose electors by popular vote, but even then, most of Virginia's 747,610 residents—including 292,627 slaves and 215,046 free white females, or 68% of the total population—were categorically barred from voting, as only male freeholders could vote.⁴³

It was not until 1800 that Massachusetts adopted the first voter registration law in the United States.⁴⁴ Few other states would adopt voter registration requirements until after 1860.⁴⁵ Early voter registration did not resemble voter registration today.⁴⁶ In Massachusetts, local assessors conducted the first voter registration by creating lists of eligible voters from personal knowledge, submitting the lists to the selectmen, and then posting the lists before the election.⁴⁷ In New York City, early voter registration did not require an application or any action by the voter.⁴⁸ Precinct officers created the lists by using the poll list of the previous election to determine who was qualified to vote.⁴⁹ Early voter registration in both Massachusetts and New York City required government officials to register voters, placing the duty on the government, not the voter.

Indiana did not enact a successful voter registration law until 1911; its first voter registration law was enacted in 1867, but held unconstitutional in 1869.⁵⁰ That law mandated that “no person shall be deemed to have acquired a residence in any township, city, or ward, so as to entitle him to vote therein, until he shall have been a bona fide inhabitant of such township, city or ward, at least twenty days before the day of election.”⁵¹ But the Indiana Supreme Court held that

[t]he constitution requires only that the person shall be a resident of the township or precinct, in order to entitle him to vote, if he possesses the other qualifications, and the legislature cannot say that this residence shall be, or shall have been, for any specific length of time.⁵²

After this ruling, Indiana's voter registration methodology changed rapidly. In 1917, county officers conducted central registration, and voters had to answer

43. ALBERT EDWARD MCKINLEY, *THE SUFFRAGE FRANCHISE IN THE THIRTEEN ENGLISH COLONIES IN AMERICA*, 34 (1905); Mary Dessypris & Virginia S. Dunn, *Virginia Election Records*, LIBR. VIRGINIA (May 2013), http://www.lva.virginia.gov/public/guides/rn21_election.pdf [https://perma.cc/HQU7-DFEA]; *Heads of Families at the First Census 1790*, U.S. CENSUS BUREAU, <https://www2.census.gov/prod2/decennial/documents/1790m-02.pdf> [https://perma.cc/7YE7-MPLH]. Finally, $292,627 + 215,046 = 507,673$. $507,673 \div 747,610 = 0.679$, rounded to 68%.

44. Rothman, *supra* note 38.

45. JOSEPH P. HARRIS, *REGISTRATION OF VOTERS IN THE UNITED STATES* 65 (1929).

46. *See id.* at 65-92.

47. *Id.* at 67.

48. *Id.* at 69.

49. *Id.* at 70.

50. *Id.* at 85-86.

51. *Quinn v. State*, 35 Ind. 485, 489 (1871).

52. *Id.* at 489-90.

questions such as “[o]f what material is the house built in which you live?”⁵³ The General Assembly abolished this requirement in the next session, and precinct registration returned.⁵⁴ In 1925, the legislature established the first county election boards.⁵⁵ The legislature required the boards to hold “registration sessions” to transfer names from old polling lists and to accept applications by new voters.⁵⁶ However, due to serious abuses by local party politicians, the legislature repealed the law in 1927; Indiana’s current voter registration process dates back to 1995, with revisions since then.⁵⁷

B. Current Voter Registration and Turnout

1. *Voter Registration Nationally.*—Many eligible voters do not register,⁵⁸ and voter registration varies by state.⁵⁹ Many states, including Arkansas, Idaho, and Maine, do not permit online registration.⁶⁰ Voters must apply by mail or in person at a government office.⁶¹ Indiana is one of many states that permit voter registration either in-person or online.⁶² Meanwhile, North Dakota does not require voter registration.⁶³ Instead, eligible voters are required to bring documents showing proof of birth and residency to the polls on election day and be entered into the state’s central voter file.⁶⁴

2. *Voter Registration and Turnout in Indiana.*—In the past, Hoosiers voted in large numbers. In 1964, 92% of Indiana’s voting age population registered to

53. HARRIS, *supra* note 45 at 87.

54. *Id.*

55. *Id.* at 88.

56. *Id.*

57. IND. CODE § 3-7-31-1 (2018); HARRIS, *supra* note 45, at 89.

58. DeSilver, *supra* note 13.

59. Eli Watkins, *How to Register to Vote in Every US State and Territory*, CNN (Oct. 12, 2016), <https://www.cnn.com/2016/08/14/politics/how-to-register-to-vote-in-every-us-state-and-territory/index.html> [<https://perma.cc/M2MX-HAEM>].

60. *Id.*

61. *Id.*

62. *Voter Registration*, IND. ELECTION DIVISION (2017), <http://www.in.gov/sos/elections/2403.htm> [<https://perma.cc/TH7L-DZMN>].

63. Watkins, *supra* note 59.

64. *Id.* It should also be noted that North Dakota recently passed a law which requires North Dakotans to provide identification with a residential street address. Natasha Bach, *The Supreme Court Just Made It Harder for Native Americans to Vote in North Dakota*, FORTUNE (Oct. 10, 2018), <http://fortune.com/2018/10/10/supreme-court-north-dakota-voter-id-laws/> [<https://perma.cc/BL8W-CKQ6>]. Thousands of Native American voters use PO Boxes, as their homes do not have street addresses. *Id.* The Supreme Court of the United States refused to hear the case before the November 2018 midterms, allowing the law to go into effect. *Id.* Justice Ginsburg’s dissent, which Justice Kagan joined, notes that 70,000 North Dakotans lack a valid ID under the new law. *Id.*

vote, and 80% of registered voters went to the polls.⁶⁵ By 1984, only 76% of Indiana's voting age population registered to vote, and only 74% of those registered voted.⁶⁶ In 1996, registration increased to 84% of the voting age population, but turnout sharply dropped, with only 63% of registered voters going to the polls.⁶⁷ Of all those eligible to vote, only 53% cast a ballot.⁶⁸ In other words, even though registration increased, 47% of eligible voters didn't vote in 1996.⁶⁹ Low turnout could be due to many factors.⁷⁰

Analyzing low voter turnout is a complex endeavor, as there are many variables involved.⁷¹ Competitive races often help drive turnout, but races have become increasingly uncompetitive in the last twenty years.⁷² According to a Brookings Institute editorial in 2006, "[i]n 1994, Congressional Quarterly called 98 House elections as competitive. Today, they list 51. To put it another way, we are already fairly confident of the winner in nearly 90 percent of House races."⁷³ In 2016, the House elections were even less competitive, as USA Today noted that only "40 of the 435 seats in the House are competitive this year."⁷⁴ That's just 9% of races.⁷⁵ And voters not dissuaded by uncompetitive races may stay away for other reasons. Even experts in electoral research are unable to identify the key to voter turnout.⁷⁶

David Becker, who led Pew's election work before launching the Center for Election Innovation & Research (CEIR), an organization whose goal is to increase voter turnout, said none of those potential causes are wholly responsible for the dismal turnout statistics.

"The short answer you'll probably hear is nobody really knows," Becker said. "There has been a lot of money and a lot of efforts to increase

65. *History of Voter Participation in Indiana*, IND. ELECTION DIVISION (Aug. 29, 2001), <https://www.in.gov/sos/elections/files/particip.pdf> [<https://perma.cc/LKQ2-EER8>]. Methodology for these statistics is not available, which puts their accuracy into question.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. Michael D. Regan, *Why is Voter Turnout So Low in the U.S.?*, PBS (Nov. 6, 2016), <https://www.pbs.org/newshour/politics/voter-turnout-united-states> [<https://perma.cc/MJW7-6W3P>].

71. *Id.*

72. Michael P. McDonald, *The Competitive Problem of Voter Turnout*, BROOKINGS INST. (Oct. 31, 2006), <https://www.brookings.edu/opinions/the-competitive-problem-of-voter-turnout/> [<https://perma.cc/AVX3-XH3X>].

73. *Id.*

74. Michael Collins, *Fewer and Fewer U.S. House Seats Have Any Competition*, USA TODAY (Nov. 4, 2016), <https://www.usatoday.com/story/news/politics/elections/2016/11/04/fewer-and-fewer-us-house-seats-have-any-competition/93295358/> [<https://perma.cc/784Z-5EK7>].

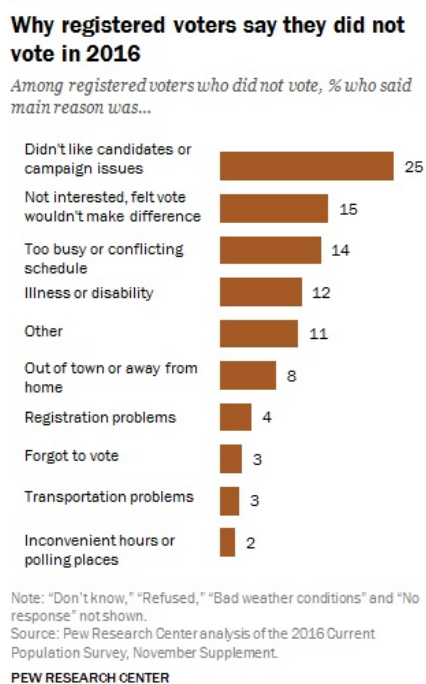
75. *Id.* $40 \div 435 = 0.09195402$, or 9.2%.

76. Regan, *supra* note 70.

turnout. There is no one answer to why, all we can say is here is the effect.”⁷⁷

A Pew Research poll asking why Americans didn’t vote in the 2016 Presidential election also attempted to identify the factors responsible for low turnout.⁷⁸ Voters listed reasons such as dislike of candidates, apathy, and busy schedules.⁷⁹ Only 4% of respondents stated that registration issues were to blame.⁸⁰ The article’s headline claims that “Dislike of candidates or campaign issues was [the] most common reason for not voting in 2016.”⁸¹ Yet this headline obscures an important caveat—the Pew Research study came from analyzing Census data about *registered* voters.⁸²

Chart 1⁸³



77. *Id.*

78. Gustavo López & Antonio Flores, *Dislike of candidates or campaign issues was most common reason for not voting in 2016*, PEW RES. CTR. (June 1, 2017), <http://www.pewresearch.org/fact-tank/2017/06/01/dislike-of-candidates-or-campaign-issues-was-most-common-reason-for-not-voting-in-2016/> [<https://perma.cc/VK2M-YE9T>].

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

Registered voters and unregistered voters are not the same thing, and generalizations cannot adequately explain the motivations of both groups. Fortunately, Pew surveyed unregistered voters in the spring before the 2016 Presidential election.⁸⁴ The results were dramatically different from those reported by registered voters. While 25% of registered voters refused to vote because of the candidates, 44% of unregistered voters stated that they didn't register because they didn't want to vote.⁸⁵ This would seem to contradict the idea of automatic voter registration. If almost half of unregistered voters don't want to vote, what's the problem?

The problem is that many of the other reasons individuals don't register are directly related to the registration process.⁸⁶ The second most common response on the survey, from 27% of individuals, was "I intend to register, but haven't gotten around to it."⁸⁷ Another 9% said that "[i]t's not convenient" to register, and 6% reported "I don't know how to register."⁸⁸ Those individuals would all be helped by automatic voter registration.

Chart 2⁸⁹

Figure 2

Lack of Interest Is the Most Common Reason That Eligible Citizens Are Unregistered

Percentage of respondents selecting each reason

Response	Percent
I don't want to vote, so I don't need to register	44
I intend to register, but haven't gotten around to it	27
There has not been a candidate or issue that has inspired me to register	25
I don't want to register for privacy or security reasons	11
It's not convenient	9
I don't know how to register	6
I am not eligible due to a felony conviction	5
Registration opportunities are not available in my preferred language or in a format that is accessible to me	1

Notes: Respondents could select more than one answer. See Appendix B for more details about the survey questions.

Source: Pew Voting Frequency Survey

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84. *Why Are Millions of Citizens Not Registered to Vote?*, PEW CHARITABLE TR. (June 21, 2017), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/06/why-are-millions-of-citizens-not-registered-to-vote> [https://perma.cc/Z744-PLY3].

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

3. *Problems with Registration Statistics.*—But there is another problem with determining the factors behind low turnout and low voter registration, and that is the available data.⁹⁰ In Indiana's 2016 general election, 58% of registered voters went to the polls.⁹¹ This statistic is full of important caveats, which may not be initially apparent. First, the voter turnout statistic is based off *registered* voters, not *eligible* voters.⁹² True voter turnout could be much higher or much lower, depending upon how many of those voter registrations are accurate, and how many people are eligible to vote. Second, the data available from the Indiana Election Division omits the voting age population, or the percentage of the voting age population that registered to vote.⁹³ The chart merely states that 4,829,243 Hoosiers registered to vote.⁹⁴ According to the Census, Indiana's voting age population is 5,014,928.⁹⁵ If both sources are accurate, that would indicate that 96.3% of Hoosiers are registered to vote.⁹⁶ Given that only 2,807,676 Hoosiers voted, this is suspect.⁹⁷ For example, according to the Census Bureau, only 57.3% of citizens age 18-24 in the Midwest are registered to vote, even though they are a significant percentage of the electorate.⁹⁸ As Indiana is a part of the Midwest, it seems likely that many Hoosiers between the ages of 18-24 are not registered to vote, making the 96.3% number even more questionable.⁹⁹

Additionally, voter registration data is notoriously inaccurate.¹⁰⁰ In 2012, the Pew Research Center estimated that twenty-four million voter registrations are significantly inaccurate or invalid.¹⁰¹ Of those twenty-four million, twelve million have out-of-date addresses, while nearly two million belong to individuals now deceased.¹⁰² With that number of inaccurate voter registrations, it is difficult to

90. *Inaccurate, Costly, and Inefficient: Evidence That America's Voter Registration System Needs an Upgrade*, PEW CTR. ON STATES (Feb. 2012), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2012/pewupgradingvoterregistrationpdf.pdf [<https://perma.cc/8KAP-8XCP>] [hereinafter *Inaccurate, Costly, and Inefficient*].

91. *General Election Turnout and Registration*, IND. ELECTION DIVISION (2016), https://www.in.gov/sos/elections/files/2016_General_Election_Turnout.pdf [<https://perma.cc/GT7F-C68D>].

92. *Id.*

93. *Id.*

94. *Id.*

95. *Voting-Age Population: Indiana*, U.S. CENSUS BUREAU (Apr. 26, 2016), https://www.census.gov/library/visualizations/2016/comm/voting_age_population/cb16-tps55_voting_indiana-social.html [<https://perma.cc/DZL2-8ZCT>].

96. $4,829,243 \div 5,014,928 = 0.96297355$, or 96.3%.

97. *General Election Turnout and Registration*, *supra* note 91.

98. *Reported Voting and Registration, by Age, for the United States, Regions, and Divisions: November 2016*, U.S. CENSUS BUREAU (May 2017), <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html> [<https://perma.cc/P8GE-YMCX>].

99. *Id.*; see *Voting-Age Population: Indiana*, *supra* note 95.

100. See *Inaccurate, Costly, and Inefficient*, *supra* note 90.

101. *Id.* at 1.

102. *Id.* at 3.

determine whether voter registration percentages truly reflect the percent of the population who possess an active voter registration.¹⁰³

This author's experience registering voters in the spring of 2016 also calls these statistics into question. Between February and April of 2016, I assisted approximately fifty to sixty people with updating their voter registration. I asked each individual if he or she was registered to vote. Regardless of their answers, I then asked each person to check their registrations on the Indiana Voters website, either on a phone or on a laptop. Almost every individual agreed. And almost everyone confidently stated that their registration was up to date; only three individuals admitted that they had never voted and were not registered.¹⁰⁴ Yet when the individuals checked the Indiana Voter website, around fifteen to twenty people discovered that they were not registered. Several more individuals found that their address was out of date. This anecdotal evidence is not conclusive, given the small sample size, geographic limitations, and other factors. All registrations were in person, at various public locations in the Broad Ripple neighborhood of Indianapolis. However, my experience suggests that it is inaccurate to claim that 96.3% of Hoosiers are currently registered to vote.¹⁰⁵

II. WHERE IS VOTER REGISTRATION GOING?

A. Three Years, Thirteen States, and Eighty-One Million Voters

Since March 2015, fifteen states have implemented automatic voter registration laws.¹⁰⁶ State legislatures passed ten laws, two laws resulted from administrative action, and three laws passed through a voter referendum.¹⁰⁷ The ramifications of these laws are enormous, as 32.6% of American voters now live in an automatic voter registration state.¹⁰⁸ Eight of these AVR laws should be in effect before the 2018 Midterm Elections, and all thirteen laws should be in effect prior to the 2020 Presidential Election.¹⁰⁹

103. *See id.*

104. One of these individuals stated that she had turned 18 the previous month and had not yet registered to vote; the other two were a middle-aged couple who stated that they weren't usually interested in politics. All three individuals registered, as they wished to vote in the May 2016 Democratic Presidential Primary.

105. *See Voting-Age Population: Indiana*, *supra* note 95.

106. *Automatic Voter Registration*, *supra* note 6.

107. *History of AVR & Implementation Dates*, BRENNAN CTR. FOR JUST. (July 24, 2018), <https://www.brennancenter.org/analysis/history-avr-implementation-dates> [<https://perma.cc/7WJV-LJMK>].

108. *See* Estimates of the Voting Age Population for 2016, 80 Fed. Reg. 8720 (Jan. 30, 2017) (current U.S. voting age population is 249,485,228); *see Automatic Voter Registration*, *supra* note 6 (total number of voters in AVR states by November 2020 will be 81,419,649) ($81,419,649 \div 249,485,228 = 0.32635058$, or 32.6%).

109. *History of AVR & Implementation Dates*, *supra* note 107.

Chart 3

Automatic Voter Registration States as of September 5, 2018¹¹⁰	Implementation Date¹¹¹ *statutory deadline	Population Age 18 and Over as of July 21, 2016¹¹²
Alaska	March 2017	554,567
California	April 2018	30,157,154
Colorado	February 2017	4,279,173
Georgia	September 2016	7,798,827
Illinois	July 2018	9,875,430
Maryland	July 2019*	4,667,719
Massachusetts	January 2020*	5,433,677
New Jersey	November 2018*	6,959,717
Oregon	January 2016	3,224,738
Rhode Island	June 2018	848,045
Vermont	January 2017	506,066
Washington	July 2019*	5,658,502
West Virginia	July 2019*	1,456,034
Total number of voters in AVR states by November 2020		81,419,649

1. *The Early Adopters: Oregon and California.*—Oregon passed the first modern automatic voter registration law in March of 2015.¹¹³ The law requires the Department of Transportation to regularly send the information of eligible voters (obtained through Department of Motor Vehicle interactions) to the Secretary of State.¹¹⁴ The Secretary of State then sends each individual a card in the mail.¹¹⁵ Upon receiving the card, the individual may either opt-out of registration, choose to affiliate with a party, or do nothing.¹¹⁶ Unless the individual opts-out within

110. *Automatic Voter Registration*, *supra* note 6.

111. *See History of AVR & Implementation Dates*, *supra* note 107.

112. *See* Estimates of the Voting Age Population for 2016, 80 Fed. Reg. at 8720.

113. *See* OR. REV. STAT. § 247.017 (2015).

114. *See id.*

115. *See id.*

116. *See id.*

twenty-one days, the Secretary of State adds them to the voter rolls.¹¹⁷

California's legislature passed the New Motor Voter Act in 2015.¹¹⁸ The New Motor Voter Act requires the Department of Motor Vehicles to electronically provide records to the Secretary of State for all California residents who submit either an application for a driver's license, a request for an identification card, or a change of address form.¹¹⁹ Upon receiving those records, the Secretary of State must determine whether each person is eligible to vote.¹²⁰ Upon confirming eligibility to vote, the Secretary of State registers each individual.¹²¹ As of 2015, more than 6.6 million eligible Californians were not registered to vote.¹²² Automatic voter registration is expected to go into effect in April 2018.¹²³ California passed another automatic voter registration law in February 2018 which amends the 2015 bill.¹²⁴ Sixteen and seventeen-year-olds could already pre-register to vote online, with their voter registrations ready to be activated after their eighteenth birthday.¹²⁵ The new amendment requires the Department of Motor Vehicles to pre-register all eligible sixteen and seventeen-year-olds, dramatically expanding youth registration.¹²⁶

2. *Bipartisan Expansion: West Virginia, Vermont, Rhode Island, Illinois, Washington, Maryland and Massachusetts.*—As discussed in the Introduction, West Virginia adopted a similar automatic voter registration bill in April 2016, the first conservative-leaning state to do so.¹²⁷ The bill goes into effect in January 2019.¹²⁸ Vermont also passed an automatic voter registration bill in April 2016 which went into effect after the November 2016 election.¹²⁹ Officials estimate that

117. *Id.*

118. Alex Padilla, *California New Motor Voter Act Passed by Legislature*, CAL. SECRETARY STATE (Sept. 11, 2015), <http://admin.cdn.sos.ca.gov/press-releases/2015/pdf/ap15-061.pdf> [<https://perma.cc/B3PH-FDQW>].

119. CAL. ELEC. CODE § 2263 (2015).

120. *Id.*

121. *Id.*

122. Padilla, *supra* note 118.

123. Bob Egelko, *California's New Motor Voter Law Coming in April, State Lawyer Says*, S.F. CHRON. (Aug. 17, 2017), <http://www.sfgate.com/news/article/California-s-new-voter-motor-law-coming-in-11882513.php> [<https://perma.cc/B3TZ-TWST>].

124. Assemb. B. 1407, 2017-2018 Leg. (Ca. 2018).

125. *Pre-register at 16. Vote at 18.*, CAL. SECRETARY STATE (2016), <http://www.sos.ca.gov/elections/pre-register-16-vote-18/> [<https://perma.cc/QEL4-BT46>].

126. Assemb. B. 1407, 2017-2018 Leg. (Ca. 2018).

127. See Ashton Marra, *Tomblin Signs Voter ID, Automatic Voter Registration Bill*, W. VA. PUB. BROADCASTING (Apr. 1, 2016), <http://wvpublic.org/post/tomblin-signs-voter-id-automatic-voter-registration-bill#stream/0> [<https://perma.cc/ML6R-SZXR>].

128. W. VA. CODE § 3-2-11 (2016).

129. Matt Ford, *Automatic Voter Registration Comes to Vermont*, ATLANTIC (Apr. 28, 2016), <https://www.theatlantic.com/politics/archive/2016/04/vermont-automatic-voter-registration/480423/> [<https://perma.cc/4Q3L-7RPN>].

the bill could add 30,000 to 50,000 voters to Vermont's electorate.¹³⁰ The Vermont automatic voter registration law follows the pattern of previous automatic voter registration laws, with the process going through the Department of Motor Vehicles, the Secretary of State, and local clerks.¹³¹

Rhode Island's legislature enacted an automatic voter registration law in August 2017.¹³² Every person who applies to obtain or renew a driver's license or identification card and is eligible to vote must be registered to vote, unless they opt out.¹³³ Rhode Island is also offering voter registration to all persons filling out forms at other state agencies, such as public assistance and disability benefit offices.¹³⁴ State employees must provide the same level of assistance to persons filling out voter registration applications as they would provide to persons filling out that agency's forms.¹³⁵

Illinois' then-Governor Bruce Rauner signed a broad automatic voter registration law in August 2017.¹³⁶ Governor Rauner, a Republican, praised the bill, stating that "[t]his is good bipartisan legislation and it addresses the fundamental fact that the right to vote is foundational for the rights of Americans in our democracy."¹³⁷ The law will require the Secretary of State's office to automatically register eligible individuals when they visit the Department of Motor Vehicles.¹³⁸ The law also provides for voter registration through other state agencies, such as the Family and Community Services division of the Department of Human Services.¹³⁹ Illinois has 2.2 million unregistered eligible voters.¹⁴⁰ One advocacy group, Demos, claims that the new bill could register 1 million of those voters.¹⁴¹

Washington's automatic voter registration law is part of a voting rights package which includes three other laws¹⁴² and which passed with bipartisan

130. *Id.*

131. VT. STAT. ANN. tit. 17, § 2145a (2017).

132. Jacqueline Tempera, *Raimondo Signs Automatic Voter Registration Bill into Law*, PROVIDENCE J. (Aug. 1, 2017), <http://www.providencejournal.com/news/20170801/raimondo-signs-automatic-voter-registration-bill-into-law> [<https://perma.cc/UJ6Y-BTPU>].

133. R.I. GEN. LAWS § 17-9.1-7 (2017).

134. *See generally id.*

135. *Id.*

136. *See* Sophia Tareen, *Illinois Governor Signs Automatic Voter Registration Law*, BLOOMBERG (Aug. 28, 2017), <https://www.bloomberg.com/news/articles/2017-08-28/illinois-governor-signs-automatic-voter-registration-law> [<https://perma.cc/YU7N-SJ7D>].

137. *Id.*

138. *See* 10 ILL. COMP. STAT. 5/1A-16.1 (2017).

139. *See id.*

140. Ari Berman, *New Illinois Law Could Automatically Register 1 Million Voters*, MOTHER JONES (Aug. 28, 2017), <http://www.motherjones.com/politics/2017/08/new-illinois-law-could-automatically-register-1-million-voters/> [<https://perma.cc/VK83-THA2>].

141. *See id.*

142. Ari Berman, *All of a Sudden, Voting Rights Are Expanding Across the Country*, MOTHER JONES (Mar. 19, 2018), <https://www.motherjones.com/politics/2018/03/all-of-a-sudden-voting->

support in February 2018.¹⁴³ Along with offering automatic voter registration, Washington will now offer pre-registration for sixteen and seventeen-year-olds at schools, offer Election Day registration, and adopt a state version of the Voting Rights Act.¹⁴⁴ The Washington version of automatic voter registration is similar to Rhode Island's, with Washington offering registration through multiple state agencies as well as the Department of Licensing.¹⁴⁵

Although it was primarily passed by Democrats, the Maryland automatic voter registration law did garner minor bipartisan support, as several Republicans crossed party lines to support the bill in the House.¹⁴⁶ Republican Governor Larry Hogan permitted the bill to become law without his signature and did not attempt to veto the bill, although he vetoed two others before being overruled by the legislature.¹⁴⁷ The Maryland automatic voter registration bill, like those of Rhode Island and Illinois, expands automatic voter registration beyond driver's licenses, and will register voters when they interact with the state Health Benefit Exchange or social service agencies.¹⁴⁸ The bill is currently set to go into effect in July 2019.¹⁴⁹

Massachusetts' new automatic voter registration law was a more bipartisan effort, passing in the Massachusetts House 130-20 and passing in the Massachusetts Senate with unanimous support.¹⁵⁰ Governor Charlie Baker, a Republican, signed the bill into law on August 9, 2018.¹⁵¹ Similar to the Rhode Island and Illinois AVR laws, the measure requires the Registry of Motor Vehicles and MassHealth (the state health insurance agency) to register eligible voters beginning in January 2020.¹⁵² Pam Wilmot, executive director of Common

rights-are-expanding-across-the-country/ [https://perma.cc/WP42-METK].

143. Washington State Senate Democrats, *Senate passes automatic voter registration*, WASH. ST. WIRE (Feb. 12, 2018), <https://washingtonstatewire.com/senate-passes-automatic-voter-registration/> [https://perma.cc/BUH5-G2A3].

144. Berman, *supra* note 142.

145. AUTOMATIC VOTER REGISTRATION ACT OF 2018, E2SHB 2595.PL, 65th Leg. Reg. Sess. (Wash. 2018).

146. *See SB 1048 - Authorizes Automatic Voter Registration - Voting Record*, VOTESMART (Mar. 28, 2018), <https://votesmart.org/bill/votes/62600?s=party#.W5ATYehKg2w> [https://perma.cc/7ZNV-5FRD].

147. Ovetta Wiggins, *Maryland Bill that Allows Automatic Voter Registration Becomes Law Without Gov. Hogan's Signature*, WASH. POST (Apr. 6, 2018), https://www.washingtonpost.com/local/md-politics/maryland-bill-that-allows-automatic-voter-registration-becomes-law-without-gov-hogans-signature/2018/04/06/fb506504-3995-11e8-9c0a-85d477d9a226_story.html?utm_term=.acac46e6dd38 [https://perma.cc/5CK9-8SBB].

148. *Id.*

149. *Id.*

150. Andy Metzger & Michael P. Norton, *Automatic Voter Registration Bill Unanimously Passes Mass. Senate*, WBUR (July 12, 2018), <http://www.wbur.org/news/2018/07/12/automatic-voter-registration-senate> [https://perma.cc/45J7-88YF].

151. Stout, *supra* note 10.

152. *Id.*

Cause Massachusetts, estimates that the law will add up to 500,000 voters to the Massachusetts voter rolls in the next five years.¹⁵³

3. *A One-Sided Exception: New Jersey.*—New Jersey passed an automatic voter registration law on its third attempt in April 2018.¹⁵⁴ Although the Democratic-majority New Jersey legislature passed automatic voter registration bills in 2015 and 2016, Republican Governor Chris Christie vetoed both bills.¹⁵⁵ New Jersey's new governor, Democrat Phil Murphy, signed the 2017 version of the bill, which passed on a party-line vote, stating that "[r]egistering to vote should be simple and seamless."¹⁵⁶ Although the New Jersey bill is unique in that it is the only bill which passed without any Republican support, the bill itself is not. Like the bills passed by Rhode Island, Illinois, Maryland, and Massachusetts, the New Jersey bill is not limited solely to driver's licenses.¹⁵⁷ However, the New Jersey bill is possibly one of the most expansive automatic voter registration bills, as at least a dozen state agencies which collect the appropriate data may participate, most notably the Parole Board.¹⁵⁸

4. *Administrative Action: Georgia and Colorado.*—Georgia and Colorado adopted automatic voter registration through administrative action. Georgia implemented automatic voter registration in the fall of 2016, switching from an opt-in to an opt-out system at the Department of Motor Vehicles.¹⁵⁹ Between January 1 and May 1, 2017, there were 559,179 voter registration applications through the Department of Driver Services, compared to 95,102 registration applications in the same period in 2015.¹⁶⁰ Colorado also began implementing automatic voter registration at Department of Motor Vehicle offices this year.¹⁶¹

5. *A Bipartisan Referendum: Alaska.*—Alaska joined West Virginia as the second conservative-leaning state to adopt automatic voter registration by passing a referendum in November 2016.¹⁶² More than 63% of Alaskans supported the referendum, as did advocacy groups and politicians from across the political spectrum.¹⁶³ Alaska's automatic voter registration law is unique, as it is unrelated

153. *Id.*

154. Elise Young, *New Jersey Adopts Automatic Voter Registration*, BLOOMBERG (Apr. 17, 2018), <https://www.bloomberg.com/news/articles/2018-04-17/new-jersey-adopts-automatic-voter-registration-democrats-cause> [https://perma.cc/2H7K-68BZ].

155. *Id.*

156. *Id.*

157. *See Id.*

158. *Id.*

159. Stanley Dunlap, *Georgia Elections Offices Swamped with Voter Registrations*, TELEGRAPH (May 1, 2017), <https://web.archive.org/web/20170523173945/http://www.macon.com/news/local/article147934484.html> [https://perma.cc/2FZP-R2ZG].

160. *Id.*

161. *See Automatic Voter Registration*, *supra* note 6.

162. Josh Eidelson, *Alaska's Oil Cash Now Comes with Automatic Voter Registration*, BLOOMBERG BUSINESSWEEK (Nov. 10, 2016), <https://www.bloomberg.com/news/articles/2016-11-10/alaska-s-oil-cash-now-comes-with-automatic-voter-registration> [https://perma.cc/KD7C-SRVT].

163. *Id.*

to the Department of Motor Vehicles.¹⁶⁴ Instead, all eligible Alaskans who apply for their yearly Personal Fund Dividend will also be registered to vote, unless they opt-out.¹⁶⁵ Almost all Alaskan residents apply for the Personal Fund Dividend, which is an annual dividend funded by oil-wealth.¹⁶⁶ As such, automatic voter registration should reach the vast majority of Alaskans, regardless of whether or not they happen to interact with the Department of Motor Vehicles.

6. *Comparing the Automatic Voter Registration Laws.*—The automatic voter registration laws have a few variations and one major flaw: most automatic voter registration laws run through the Department of Motor Vehicles, the only exception being Alaska.¹⁶⁷ Of the states that use the Department of Motor Vehicles, Rhode Island and Illinois are the only states to also expand automatic voter registration to other state agencies.¹⁶⁸ Offering automatic voter registration solely through the Department of Motor Vehicles may leave out some potential voters. Young people are less likely to have driver's licenses. Approximately 30% of nineteen-year-olds didn't have a driver's license in 2014.¹⁶⁹ Among persons age 70 and older, only 20% still have a driver's license.¹⁷⁰

B. Automatic Voter Registration Laws and the 2016 General Election

Only Oregon implemented an automatic voter registration law before the November 2016 general election.¹⁷¹ By July 1, 2016, Oregon registered 206,554 new voters by forwarding their information to the Secretary of State.¹⁷² The registration rate for voters of color jumped twenty-six points.¹⁷³ Of all those automatically registered, 44% cast their vote in the November 2016 election.¹⁷⁴ Although 77% of eligible voters were registered in 2008, 88% were registered in

164. *Id.*

165. ALASKA STAT. § 15.07.070 (2016).

166. Eidelson, *supra* note 162.

167. ALASKA STAT. § 15.07.070.

168. See R.I. GEN. LAWS § 17-9.1-8 (2017); 10 ILL. COMP. STAT. 5/1A-16.2 (2017).

169. Julie Beck, *The Decline of the Driver's License*, ATLANTIC (Jan. 22, 2016), <https://www.theatlantic.com/technology/archive/2016/01/the-decline-of-the-drivers-license/425169/> [<https://perma.cc/9RHU-FP7E>].

170. David Schaper, *Like Millennials, More Older Americans Steering Away from Driving*, NAT'L PUB. RADIO (Feb. 11, 2016), <http://www.npr.org/2016/02/11/466178523/like-millennials-more-older-americans-steering-away-from-driving> [<https://perma.cc/KYV2-UMMA>].

171. See *Oregon Motor Voter Cumulative Program Statistics Through July 1, 2016*, OR. SECRETARY OF STATE (July 1, 2016), <http://sos.oregon.gov/elections/Documents/statistics/omv-cumulative-stats-july-2016.pdf> [<https://perma.cc/2ZUM-UQZW>].

172. *Id.*

173. Berman, *supra* note 142.

174. Betsy Hammond, *Oregon Voters Shattered Previous Participation Rates in November 2016*, OREGONIAN (Dec. 12, 2016), http://www.oregonlive.com/politics/index.ssf/2016/12/oregon_voters_shattered_previo.html [<https://perma.cc/4EBN-C424>].

2016.¹⁷⁵ Overall, 70.4% of Oregon's voting-age population cast a ballot in the 2016 general election.¹⁷⁶ Oregon's increase in turnout was higher than any other state in the 2016 Presidential election.¹⁷⁷ But Oregon's impressive voter turnout comes with a slight asterisk. Oregon has permitted mail-in voting since 1998.¹⁷⁸ Voters receive their ballots two or three weeks prior to the election.¹⁷⁹ Voters may research issues and candidates at their leisure before mailing in their ballot or dropping it off at an official drop box.¹⁸⁰ As such, voters can vote at their convenience and research unfamiliar candidates before choosing which candidates to vote for. It is possible that Oregon's high turnout results from these factors, not just from higher voter registration.

III. WHY INDIANA SHOULD ADOPT AUTOMATIC VOTER REGISTRATION

A. *The Indiana Constitution and Voter Registration*

Article 2, Section 14 of the Indiana Constitution states that "[t]he General Assembly shall provide for the registration of all persons entitled to vote."¹⁸¹ Tellingly, it does not state that General Assembly shall *permit* persons to vote; it states that the Assembly shall *provide for the registration* of all persons entitled to vote. The Indiana Supreme Court affirmed this duty in 2010, stating that "the General Assembly has the power to enact a law providing for a uniform system of registration of all voters' and 'the duty . . . to enact a law providing a reasonable, uniform and impartial system for the registration of *all* voters.'"¹⁸² The burden of voter registration thus falls upon the General Assembly, which has the discretion to pass the appropriate legislation. The General Assembly should take this responsibility seriously. The earliest voter registration in the United States required the government to register voters.¹⁸³ The Indiana Constitution and the Indiana Supreme Court's holding in 2010 affirm this grave responsibility. Automatic voter registration is a reasonable system to provide for the registration of all voters, and it's the right choice for Indiana. But not everyone believes that automatic voter registration is good policy.¹⁸⁴

175. *Id.*

176. *Id.*

177. See Berman, *supra* note 142.

178. *Voting in Oregon*, OR. SECRETARY STATE, <http://sos.oregon.gov/voting/Pages/voteinor.aspx> [<https://perma.cc/S2AH-TED7>].

179. *Id.*

180. *Id.*

181. IND. CONST. art. II, § 14.

182. *League of Women Voters of Indiana, Inc. v. Rokita*, 929 N.E.2d 758, 766 (Ind. 2010) (emphasis added) (internal citation omitted).

183. HARRIS, *supra* note 45 at 67.

184. Hans V. Spakovsky, *Mandatory Voter Registration: How Universal Registration Threatens Electoral Integrity*, HERITAGE FOUND. (Mar. 27, 2013), <http://www.heritage.org/report/mandatory-voter-registration-how-universal-registration-threatens-electoral-integrity>

*B. Caution and Concern: The Arguments Against Automatic
Voter Registration*

1. *What if Non-Citizens Are Registered?*—Some opponents of automatic voter registration are concerned that noncitizens will be registered to vote.¹⁸⁵ Vermont encountered this hindrance with its initial implementation of automatic voter registration: a technical glitch accidentally registered a green-card holder to vote.¹⁸⁶ It is unclear how the problem occurred, but Vermont responded quickly.¹⁸⁷ Although the system only inadvertently registered four people, Vermont shut the entire system down and fixed the issue before conducting any further registration.¹⁸⁸ Vermont's response was just as it should have been. Although the margin of error was tiny, Vermont completely halted registration until the error had been fixed.¹⁸⁹

2. *What About the Expense?*—Opponents are also concerned about the potential expense.¹⁹⁰ Factors such as updating computer systems can either substantially minimize or dramatically increase costs. And estimating the cost of implementation can be difficult:

In 2015, the [Alaskan] Lt. Governor's office estimated that if the ballot initiative passed, it could cost about \$930,000 to implement and \$300,000 every year after that.

Proponents of the cause say those numbers are outdated because they don't reflect Division of Elections computer upgrades that have already happened or how much time and money can be saved by sharing data.¹⁹¹

Although fiscal responsibility should certainly be considered, automatic voter registration can save on future costs by keeping the voter rolls up to date. Washington state spent \$280,000 implementing automatic voter registration and online voter registration.¹⁹² However, the state saved almost \$200,000 in the first

[<https://perma.cc/A5HL-2NBE>].

185. *Id.*

186. Dan D'Ambrosio, *VT Pauses Automatic Voter Registration After Problems*, BURLINGTON FREE PRESS (Feb. 3, 2017), <http://www.burlingtonfreepress.com/story/news/2017/02/03/vt-pauses-automatic-voter-registration-after-problems/97454818/> [<https://perma.cc/97JU-P9K3>].

187. *Id.*

188. *Id.*

189. *Id.*

190. Spakovsky, *supra* note 184.

191. Anne Hillman, *PFID Automatic Voter Registration Could Increase Turnout but Cost is Unknown*, ALASKA PUB. MEDIA (Oct. 31, 2016), <https://www.alaskapublic.org/2016/10/31/pfd-automatic-voter-registration-could-increase-turnout-but-cost-is-unknown/> [<https://perma.cc/7K2Y-GWWN>].

192. Jason Kander, *Guest Column: The Land of Lincoln Can Become a Leader in Democracy*, ST. J. REG. (Aug. 15, 2017), <http://www.sj-r.com/opinion/20170815/guest-column-land-of-lincoln>

two years alone, and counties may have saved even more.¹⁹³ Further, automatic voter registration can decrease administrative costs associated with paper applications and partisan campaigning.¹⁹⁴

Third-party groups compound the heavy costs associated with this paper-driven process. Because we place the burden on individuals to register themselves, third parties inevitably step in to help. The trouble is that not all of them are helpful. . . . even when third parties are on their best behavior, they do most of their work immediately before the election, which means that under-resourced and understaffed election administrators struggle to deal with the onslaught of paper applications filed during the weeks leading up to the election.¹⁹⁵

Partisanship's role in voter registration is unfortunate and endemic. Last minute flurries of voter registrations assisted by partisan groups overwhelm state workers and drive up state costs.¹⁹⁶ And third-party groups may inadvertently submit inaccurate registrations.¹⁹⁷ This hurts voters, who may believe themselves registered when they are not, and it hurts the integrity of the entire political process. When eligible voters show up to the polls and are turned away based on a flawed registration, this decreases both participation and trust in the political system.

3. *What About Privacy Concerns?*—Although automatic voter registration laws have yet to be challenged in court, they raise questions regarding privacy concerns. The Heritage Foundation, for instance, argues that individuals have the right to determine whether to register to vote, and that forcing eligible voters to opt-out during government interactions interferes with that right.¹⁹⁸ “Automatically registering individuals to vote without their permission would also violate their basic right to choose whether they wish to participate in the U.S. political process. Indeed, this new scheme threatens one of American’s most cherished liberties: the freedom to be left alone by the government.”¹⁹⁹ This claim has some merit. One of the purposes of the Bill of Rights was to protect individuals from government overreach and oppression. From the First Amendment’s protection of political expression, to the Fourth Amendment’s prohibition of unreasonable searches and seizures, guarding the individual from the state has been a cornerstone of American democracy.

The American Civil Liberties Union has also expressed concern about the

can-become-leader-in-democracy [<https://perma.cc/Y82G-RA7L>].

193. *Id.*

194. Heather K. Gerken, *Make It Easy: The Case for Automatic Registration*, DEMOCRACY J. (Spring 2013), <https://democracyjournal.org/magazine/28/make-it-easy-the-case-for-automatic-registration/> [<https://perma.cc/B8ZR-5HTJ>].

195. *Id.*

196. *Id.*

197. *Id.*

198. Spakovsky, *supra* note 184.

199. *Id.*

erosion of barriers between privacy and the state.²⁰⁰ “Given the seductive possibilities now embedded in our world, only strong legal protections would prevent the government from feeling increasingly free to intrude on our lives.”²⁰¹ Automatic voter registration does represent additional government interest in the voting process. Maintaining voter rolls by automatically registering all citizens who interact with state agencies creates a presumption of engagement which some citizens may oppose. Among unregistered voters, 11% cited privacy or security concerns as one reason why they had not registered.²⁰² However, these concerns are unwarranted.

First, all information required for voter registration is information which the state government typically already has.²⁰³ Registering a citizen to vote does not give the government additional information, nor obligate the citizen to take any further action. That said, voter rolls are public data.²⁰⁴ And public data does create some more pressing privacy concerns.

Reports of discovery of a database, accessible on the internet, containing voter records of 191 million Americans, has alarmed many privacy advocates and concerned citizens. Yet the most remarkable thing about this database is simply that it’s in a convenient form, or at least convenient for those with just the right technical skills to find and use it.

....

Other voter data is largely a matter of public record. It’s collected for public purposes, not private ones, and there’s no opt-out on sharing this information. Voter records may contain facts about individuals, including. . .

- Name
- Street address
- Party affiliation
- Elections in which you did (or did not) vote
- Phone number
- Email address

And how can the data be used? While each state sets its own rules, voter

200. Chris Calabrese & Matthew Harwood, *Destroying the Right to Be Left Alone*, ACLU (Sept. 23, 2013), <https://www.aclu.org/blog/national-security/destroying-right-be-left-alone> [<https://perma.cc/R2TD-ABVJ>].

201. *Id.*

202. *Why Are Millions of Citizens Not Registered to Vote?*, *supra* note 84.

203. Meta S. Brown, *Voter Data: What's Public, What's Private*, FORBES (Dec. 28, 2015), <https://www.forbes.com/sites/metabrown/2015/12/28/voter-data-whats-public-whats-private/#b0c73311591> [<https://perma.cc/T3WK-JDBM>].

204. *Id.*

data from every state is available for some uses.²⁰⁵

A person might not want their voter records online for many reasons. Some individuals simply appreciate their privacy.²⁰⁶ Some may wish to avoid the regular onslaught of political fundraising and campaigning, whether it be a deluge of mailers, a college student knocking on their door, or a retiree calling during the middle of the day. Others may wish to keep their contact information private to avoid harm, such as victims of domestic abuse, controversial political figures, and prominent celebrities. These privacy concerns are valid. However, voter records are typically difficult to access.²⁰⁷ Databases are created and maintained by several companies, and accessing the databases is difficult and expensive.²⁰⁸ Some local candidates may not even use the databases, as access to the records for even a small statehouse district may cost thousands of dollars. If a person wishes to abstain from voting to preserve their privacy, they can easily opt-out from automatic voter registration.

4. *What About Incorrect Registrations?*—Another concern raised by The Heritage Foundation is the issue of illegitimate or duplicate registrations.²⁰⁹ “[V]oter registration modernization could result in the registration of large numbers of ineligible voters as well as multiple or duplicate registrations of the same individuals.”²¹⁰ It is highly unlikely that automatic voter registration would result in the registration of ineligible voters. States with automatic voter registration have procedures to prevent this problem, such as requiring the Secretary of State to check citizenship before registering a voter.²¹¹

Duplicate registration is a more pressing issue. Voter rolls are often out of date, as many states lack the procedures and technology to efficiently remove voters from the rolls when they move or die.²¹²

One in eight registrations in the United States is either invalid or contains significant inaccuracies. Nearly two million dead people are on the rolls, 2.75 million people are registered in more than one state, and 12 million voter records contain incorrect addresses.

All of these problems generate headaches on Election Day. An MIT study estimated that 2.2 million voters weren’t able to cast a ballot that counted in 2008 due to registration problems. In addition, 5.7 million voters had a registration problem that had to be resolved before they could cast a ballot.²¹³

205. *Id.*

206. See *Why Are Millions of Citizens Not Registered to Vote?*, *supra* note 84.

207. Brown, *supra* note 203.

208. *Id.*

209. Spakovsky, *supra* note 184.

210. *Id.*

211. OR. REV. STAT. § 247.017 (2015).

212. Gerken, *supra* note 194.

213. *Id.*

Swollen voter rolls can lead to inefficiency, inaccurate turnout statistics, and possibly even voter fraud.²¹⁴ This problem can be addressed by providing for deletion of old records. When an individual is automatically registered to vote, their prior registration should be deleted. This would ensure that voters are only removed from the rolls after their new registration is valid.

5. *Shouldn't Voters Be Invested?*—Finally, some opponents of automatic voter registration believe that it cheapens the right to vote.²¹⁵ The Alabama Secretary of State, John Merrill, stated:

If you're too sorry or lazy to get up off of your rear and to go register to vote, or to register electronically, and then to go vote, then you don't deserve that privilege. As long as I'm Secretary of State of Alabama, you're going to have to show some initiative to become a registered voter in this state.²¹⁶

There is some merit to valuing voter initiative. According to Pew, only 26% of unregistered voters are interested in politics and government, only 18% feel passionately about political or community issues, and only 18% often discuss current news and events.²¹⁷ Apathetic voters may still stay home, even if they are automatically registered.²¹⁸ There's no reason to believe that all 44% of unregistered voters who stated they did not wish to vote²¹⁹ would suddenly flock to the voting booth upon being automatically registered. As noted in Section I, 25% of registered voters failed to vote because they disliked the candidates, and another 15% weren't interested or didn't believe their vote would make a difference.²²⁰ Even if an individual is a registered voter, that does not mean an individual will show the initiative to vote. However, Secretary Merrill's opinion is beside the point. In America, voting is a right, not a privilege.²²¹ All voters should be able to exercise that right, should they so choose, not just the voters who remember to fill out paperwork before an arbitrary deadline that is different in every state and may fall months before the election.

6. *Does Automatic Voter Registration Go Far Enough?*—Voting rights advocates have different concerns about automatic voter registration. While Arizona is not an automatic voter registration state, voter registration forms are supposed to be offered during interactions with the Arizona Motor Vehicle

214. *Id.*

215. Mark Joseph Stern, *Alabama Secretary of State: Helping More People Vote Would "Cheapen the Work" of Civil Rights Heroes*, SLATE (Nov. 2, 2016), http://www.slate.com/blogs/the_slatest/2016/11/02/alabama_secretary_of_state_says_more_voting_would_cheapen_the_work_of_civil.html [<https://perma.cc/RNC8-7BLZ>].

216. *Id.*

217. *Why Are Millions of Citizens Not Registered to Vote?*, *supra* note 84.

218. *Id.*

219. *Id.*

220. *Id.*

221. U.S. CONST. amend. XIV.

Department and other public agencies.²²² However, an investigation by several advocacy groups, including the League of Women Voters of Arizona, Mi Familia Vota, the ACLU of Arizona, and others, discovered that many eligible voters were not being given the opportunity to register.²²³

We found violations at many MVD locations and public assistance agencies. There were systemic failures to provide voter registration forms and language assistance, and to help clients provide documentary proof of citizenship, which, unfortunately, is required to vote in Arizona's state elections.

These particulars may help explain the strange findings of the U.S. Election Assistance Commission, which reported the number of voter registration applications coming from Arizona public assistance offices decreased nearly 60 percent over the past decade and a half, even though requests for public assistance in Arizona have almost doubled in roughly the past 10 years.²²⁴

This is a legitimate and pressing concern. The purpose of automatic voter registration is to increase the number of registered voters, not replicate existing disparities in registration. Any automatic voter registration law should take these concerns into account by mandating that voter registration be a standard procedure on all forms, not a separate form which a clerk may forget or choose not to offer.

Other advocates believe that automatic voter registration does not go far enough.²²⁵ FairVote, a nonpartisan voting rights group, advocates for universal voter registration.²²⁶ Universal voter registration is essentially automatic voter registration taken to its furthest extreme.

Voter registration should be the mutual responsibility of citizens and their government. The government should not only facilitate registration; it should actively register adults who are eligible to vote as part of its responsibility to have accurate rolls. 100% voter registration should be the goal. Moreover, universal voter registration has the potential to bring together conservatives who are concerned about fraudulent voter registrations and liberals who are concerned about anemic political participation.

222. Alice Stambaugh et al., *Our Turn: Arizona Routinely Breaks the Law, Denies Your Right to Vote*, AZ CENT. (Nov. 14, 2017), <https://www.azcentral.com/story/opinion/op-ed/2017/11/14/arizona-breaking-motor-voter-law/859318001/> [<https://perma.cc/C4PG-G2SG>].

223. *Id.*

224. *Id.*

225. *Universal Voter Registration*, FAIRVOTE, http://www.fairvote.org/universal_voter_registration#why_universal_voter_registration [<https://perma.cc/R68W-EKRU>].

226. *Id.*

The most comprehensive way to move toward universal voter registration is to establish federal standards that states must follow to ensure all eligible voters are on their states' voter roll. These standards must also be twinned with a failsafe to ensure citizens that are not on the rolls can register and vote on Election Day. The federal standards should also set a national uniform voter registration age of 16-years-old, where youth are systematically registered to vote and automatically added to the voter rolls upon reaching voting age.²²⁷

Fair Vote's proposal is less revolutionary than it may seem. France and Sweden are just two of the countries which already register all voters automatically.²²⁸ France registers every citizen when he or she turns 18.²²⁹ Sweden, meanwhile, creates voter registrations by pulling from tax registration rolls.²³⁰ While universal voter registration may have its merits, it has no current precedent in either state or federal law in the United States. Automatic voter registration, meanwhile, has already been implemented by several states, with no judicial challenges.

C. Automatic Voter Registration Bills in the Indiana Statehouse

The Indiana legislature passed a voter registration bill in 2017.²³¹ House Bill 1178 does not implement any direct voter registration but merely requires license branch employees to ask whether individuals want to register to vote or update their voter registration.²³² If the individual says they would like to register to vote, the employee gives them a paper form, which the individual must then mail or hand-deliver to their county election office.²³³ Requiring individuals to fill out and mail a paper application creates additional steps, and likely decreases the number of persons who will successfully register to vote. Paper forms are easy to misplace. Persons with poor transportation or poor health may not be able to go to the post office or may not find the trip worth the effort.

Indiana also permits online voter registration.²³⁴ But many Hoosiers lack Internet access. In 2014, 29% of Hoosiers lacked access to broadband Internet, and 12% had no Internet access.²³⁵ Even those who have Internet access may not

227. *Id.*

228. Scott Keyes, *Seven Voting Reforms Other Countries Have Used to Boost Their Turnout Rate*, THINKPROGRESS (May 15, 2013), <https://thinkprogress.org/seven-voting-reforms-other-countries-have-used-to-boost-their-turnout-rate-87926709a576/> [<https://perma.cc/RM3N-RMDU>].

229. *Id.*

230. *Id.*

231. *Indiana House Bill 1178*, LEGISCAN (2017), <https://legiscan.com/IN/bill/HB1178/2017> [<https://perma.cc/8UA9-X4Q7>].

232. *Id.*

233. IND. CODE § 9-14.1-4-2 (2016).

234. *Voter Registration*, *supra* note 62.

235. Annie Ropeik, *Report: Internet Access Gap Widening Between Urban, Rural Hoosiers*, WBAA (Jul. 22, 2016), <http://wbaa.org/post/report-internet-access-gap-widening-between-urban-rural-hoosiers#stream/0> [<https://perma.cc/44XM-BKW5>].

be aware of online registration. Additionally, Indiana's voter registration deadlines are typically one month before the election.²³⁶ A voter may not realize that they need to register or update their registration before the deadline. Many voters are unaware that their registration is out of date, or that their registration may have been purged after a time of inactivity. But once the deadline passes, the voter is unable to participate in the imminent election. Both optional voter registration at the license branch and online registration place the onus on the voter, not the state. This may be sufficient to "provide for" the registration of eligible voters, but the Indiana General Assembly should go further to truly provide "for the registration of *all* persons entitled to vote."²³⁷

D. A Model Automatic Voter Registration Bill for Indiana

The Indiana legislature should enact a true automatic voter registration law. In August 2017, elected officials briefly discussed automatic voter registration at an interim meeting on elections.²³⁸ One committee member strongly opposed the suggestion, claiming that automatic voter registration would only decrease the turnout percentage.²³⁹ She also claimed that the additional costs would be unreasonable, especially when many of those registered would not cast a ballot.²⁴⁰ Although some administrative costs from implementing automatic voter registration may arise, the right to vote should weigh more heavily than short-term administrative costs.

My proposed bill draws from the Rhode Island and Illinois models.²⁴¹ It aims to reach more Hoosiers by offering automatic voter registration through both state agencies and the Department of Motor Vehicles. The bill addresses many of the concerns against automatic voter registration. The bill's applicability to both state agencies and the Department of Motor Vehicles ensures that it will reach a broad group of Hoosiers, not just those with cars. The requirement that the application be a part of the driver's license or personal identification forms should prevent selective distribution of voter registration forms. Permitting voters to give their registrations to a state employee will save the time and effort of mailing the form in later or hand-delivering it to a separate government office. Citizenship requirements are included, with stiff penalties for fraud. An opt-out is provided for citizens with privacy concerns. Requiring that voters update any prior registration will clean up the voting rolls and prevent duplicate entries for the same individuals.

236. *Voter Registration*, *supra* note 62.

237. IND. CONST. art. II, § 14.

238. Niki Kelly, *Panel Looks into Voting Policies*, J. GAZETTE (Aug. 31, 2017), <http://www.journalgazette.net/news/local/indiana/20170831/panel-looks-into-voting-policies> [<https://perma.cc/9T8D-JD7D>].

239. *Id.*

240. *Id.*

241. *See* Appendix for the full text of the bill.

CONCLUSION

The right to vote is one of the most dearly held rights of a democratic society.²⁴² But citizens may only vote if they are registered. Automatic voter registration has demonstrated great success in Oregon, where 44% of those newly registered through automatic voter registration cast their ballots.²⁴³ If Indiana adopts an automatic voter registration law, more young people, low-income people, and senior citizens will be registered to vote. While not all of them will actually vote, they should be given the opportunity come election day. It should be the goal of the state to register every Hoosier eligible to vote. Automatic voter registration laws have enjoyed both Republican and Democratic support in West Virginia, Alaska, and Illinois.²⁴⁴ This is not a partisan issue, but an American issue. West Virginia state Senator Charles Trump, a Republican, may have said it best:

It surprises me a little bit to hear you tell me that it was controversial or a partisan issue in other places, I don't see it as that — when people overthink, 'Does this give an advantage to one side or another,' they're wrong as often as they're correct, and that sort of thinking is not where we were and not where I was," he told HuffPost. "All I can say on that is that the Republican caucus . . . is interested in making sure that it is easy for people to vote. We don't have any agenda other than that."²⁴⁵

APPENDIX

The Hoosier Automatic Voter Registration Act

(a) Every person applying at the division of motor vehicles for a driver's license or a renewal of the license, or personal identification document issued by the division of motor vehicles, and who is or may be by the next general election qualified to vote, shall be registered to vote, or if previously registered, shall have their address updated for voting purposes.

(b) The application to register to vote must be offered simultaneously, on the same document as the application for the driver's license or renewal or personal identification. Division of motor vehicles and state agency employees must provide to applicants for driver's licenses, license renewal, or personal identification documents the same level of assistance and instruction with respect to the application to register to

242. See *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). "Undeniably the Constitution of the United States protects the right of all qualified citizens to vote."

243. Hammond, *supra* note 174.

244. See Lachman, *supra* note 1; Eidelson, *supra* note 162; and Tareen, *supra* note 136.

245. Lachman, *supra* note 1.

vote as is provided with respect to the application for driver's licenses, renewal of the license, or personal identification documents; provided, that one signature shall be sufficient on the application for driver's license, renewal of the license, or personal identification document and the application to register to vote.

(c) The applicant shall be afforded the opportunity to decline to register to vote by checking the opt-out box on the voter registration form. If previously registered, the applicant shall have his or her address updated for voting purposes. In order to protect the privacy of those who do not wish to register to vote for any reason, the failure of an applicant for a driver's license or renewal of it or a personal identification document to complete the voter registration form may not be used for any purposes other than to determine the person's voter registration status.

(d) The voter registration application shall contain the registrant's name, residence address, mailing address if different from residence address, date of birth, and registrant's signature and date of affixation of signature, and may include any other information, certifications, and declarations, including those made under the penalty of perjury, that may be required by the state board in order to administer a single and unified system of voter registration in accordance with applicable state and federal laws which that shall enable duly registered voters to vote in all elections in their respective voting districts including, elections for federal officers.

(e) The completed voter registration application shall be transmitted by the division of motor vehicles to the central voter registration system not later than the next business day after the date of acceptance by the division of motor vehicles. Transmission shall be made by electronic means as prescribed by the secretary of state, and shall be in an electronic form compatible with the voter registration system maintained by the secretary of state. For each registration electronically transmitted, a hard copy will be provided to the appropriate county clerk.

a. The secretary of state shall electronically transmit voter registrations to the appropriate county clerks within ten business days of receipt.

b. The county clerk shall add or update all voter registrations received from the secretary of state under this section within ten business days of receipt.

(f) Any person who has fully and correctly completed an application to register to vote at the division of motor vehicles is presumed to be registered as of the date of the acceptance of the registration by the division of motor vehicles.

(g) The division of motor vehicles shall not transmit the voter

registration of any applicant who fails to certify that they are a citizen of the United States.

(h) If a person who is ineligible to vote becomes registered to vote pursuant to this section, that person's registration shall be presumed to be deemed officially authorized and not be deemed attributable to or the fault of that person. Notwithstanding the foregoing, anyone who knowingly and willfully provides false information pursuant to this section shall be subject to prosecution.

(I) In accordance with § 7 of the National Voter Registration Act of 1993, other applicable state government agencies that the secretary verifies already collect documents that would provide proof of eligibility, including age, citizenship, and residence address, shall follow the procedures for automatic voter registration enumerated for the division of motor vehicles as described in subsections (b) through (h) of this section.

(j) Any additional agencies that are designated for automatic registration must follow the rules and protocols established in this section for the division of motor vehicles.