

Advance Voter Registration: Is It Obsolete?

The New Jersey Constitution provides that every person over the age of 18 who has lived in the state and a county for 30 days, is not on parole or probation for a felony and has not been judged mentally incompetent has an absolute right to vote.

The Constitution says nothing about voter registration. That was added ages ago and sanctioned at the time by the courts so long as it was necessary to prevent ineligibles from voting.

A lawsuit pending in Middlesex County chancery court argues that with the advent of the computer age, advance registration is obsolete and an unnecessary obstacle to the exercise of the constitutional right to vote. The suit would require New Jersey to join nine other states and the District of Columbia in allowing eligible persons to register and vote on Election Day.

The suit, brought by voting-rights organizations and half a dozen voters disfranchised in recent elections, argues that the current 21-day advance registration requirement disenfranchises thousands of eligible voters each election cycle and that the state's newly instituted Statewide Voter Registration System, SVRS, makes preregistration unnecessary.

As the spokesperson for the Rutgers University Student Assembly, the prime plaintiff in this case, put it: "We have cell phones that pinpoint your location from thousands of miles away — I don't know why we can't have same-day voter registration." RUSA represents the students at the Rutgers New Brunswick/Piscataway campus, who are among the major victims of advance registration.

Despite the unequivocal guarantee of the right to vote, thousands of New Jersey citizens are unknowingly disenfranchised each election cycle. Those impacted include individuals who register to vote but for reasons unbeknownst to them are not on the voting lists come Election Day, those who move between counties and do not re-register to vote and those who become naturalized citizens or complete parole or probation after the 21-day registration deadline.

The populations most significantly aggrieved by the status quo are the highly mobile, especially college students and other young adults. This is no doubt a contributing factor to low youth turnout at the polls. In the 2008 presidential election, 21 percent of 18- to 29-year-olds who did not register to vote stated that they did not do so because they failed to meet registration deadlines. But even many of those who do register through campus registration drives (like the Rutgers students) or at motor vehicle agencies, find, through no fault of their own, that their names are not on the rolls when they go to the polls.

If individuals are not on the books due to administrative error, they may be offered a provisional ballot. But if their names are not in the system, a provisional ballot is a placebo. It will not be counted. The irony is that although these rejected provisional ballots will not be counted in the intended election, they will serve as a de facto voter registration for future elections. Thus,

information provided on the discarded provisional ballot is enough to establish voter eligibility. For example, in the 2008 general election, 16,308 New Jersey citizens cast rejected provisional ballots that effectively registered them to vote in future elections.

The policy of Election Day registration is surely an idea whose time has come for New Jersey.

Recent advances in computer technology and the establishment of the SVRS under the federal Help America Vote Act obviate the need for disenfranchising so much of the voting eligible population in New Jersey every Election Day. The experience in the Election Day registration states demonstrates how that system increases voter participation. The top five states in voter turnout all use Election Day registration. In Minnesota, for example, nearly 78 percent of eligible voters cast ballots in the 2008 election — the highest rate in the nation. Meanwhile, New Jersey came 19th that year. On average, Election Day registration states have a 7 percent higher voter turnout, according to the nonprofit advocacy group DEMOS, which monitors voter participation throughout the country.

New Jersey's technology already meets the needs of Election Day registration. Now New Jersey election law needs to catch up with the times by encouraging voter turnout and preventing the needless disenfranchisement of thousands of eligible voters.

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Bromberg is a Kinoy/Stavis Public Interest Fellow in the Constitutional Litigation Clinic and a 2011 J.D. candidate. The Constitutional Litigation Clinic is principal attorney for the plaintiffs in RUSA v. Middlesex County Board of Elections. The complaint is available at:
<http://j.mp/EDRComplaint>.