

University of Michigan Journal of Law Reform

Volume 45

2012

Increasing Youth Participation: The Case for a National Voter Pre-Registration Law

Ceridwen Cherry
University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mjlr>



Part of the [Election Law Commons](#), and the [Law and Politics Commons](#)

Recommended Citation

Ceridwen Cherry, *Increasing Youth Participation: The Case for a National Voter Pre-Registration Law*, 45 U. MICH. J. L. REFORM 481 (2012).

Available at: <https://repository.law.umich.edu/mjlr/vol45/iss2/6>

This Note is brought to you for free and open access by the University of Michigan Journal of Law Reform at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in University of Michigan Journal of Law Reform by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

INCREASING YOUTH PARTICIPATION: THE CASE FOR A NATIONAL VOTER PRE-REGISTRATION LAW

Ceridwen Cherry*

Lagging youth participation rates threaten participatory democracy and undermine the representation of young people's interests in elected government. However, the percentage of registered youth who actually cast ballots is very high. The correlation between registration and actual voter participation suggests that when given assistance and greater opportunities to register, young citizens will vote. This Note proposes a national pre-registration law that would allow voter registration to begin at age sixteen. Such a law would be feasible, constitutional, and politically viable and may increase not only the voter participation of young people, but also the socioeconomic diversity of the electorate.

INTRODUCTION

In the 2008 general election, had Americans under the age of thirty voted at the same rate as the general population, an additional seven million votes would have been cast.¹ With so many races determined by tiny margins,² the votes of these younger Americans could have changed the political landscape in many districts.

Youth voter participation lags behind all other age groups.³ However, the percentage of *registered* young people who actually

* J.D. Candidate, 2012, University of Michigan Law School. M.P.P. Candidate, 2012, Harvard Kennedy School of Government. B.A., 2006, Amherst College. Articles Editor, *University of Michigan Journal of Law Reform*, Volume 45. Thank you to all who read drafts, especially David Levine and Peter White, and to the members of JLR Volume 45 for all their hard work.

1. PROJECT VOTE, EXPANDING THE YOUTH ELECTORATE THROUGH PREREGISTRATION 2 (2010), *available at* <http://www.projectvote.org/images/publications/2010%20Issues%20in%20Election%20Administration/2010%20Legislative%20Brief%20-%20Preregistration.pdf>.

2. For example, Tom Perriello was elected to the U.S. House of Representatives from Virginia in 2008 by a mere 727 votes, only 0.23% of the total votes. *November 2008 Official Results*, VIRGINIA STATE BOARD OF ELECTIONS, https://www.voterinfo.sbe.virginia.gov/election/DATA/2008/07261AFC-9ED3-410F-B07D-84D014AB2C6B/Official/6_s.shtml (last visited Aug. 2, 2011). In the Minnesota Senate race, Al Franken defeated Norm Coleman by 312 votes, or 0.01% of the vote. In re Contest of Gen. Election Held on November 4, 2008, for Purpose of Electing a U.S. Senator from Minn., 767 N.W.2d 453, 457 (Minn. 2009).

3. THOM FILE & SARAH CRISSEY, U.S. CENSUS BUREAU, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2008 4 (2010), *available at* <http://www.census.gov/prod/2010pubs/p20-562.pdf>.

cast ballots is very high.⁴ The correlation between registration and actual voter participation suggests that when given assistance and greater opportunities to register, young citizens will vote. As a result, the biggest barrier to electoral participation is not difficulty in ensuring that registered voters actually cast ballots, but rather the current system of voter registration. Attempts to increase the percentage of younger Americans who vote should be targeted at improving the registration process for young people.

Pre-registration laws have particular promise as tools for increasing lagging electoral participation rates among young citizens by allowing sixteen- and seventeen-year-olds to register to vote. Pre-registration has already been proven to increase youth voter registration.⁵ Pre-registration may also encourage a lifelong habit of civic engagement and be particularly effective in increasing the registration rates of minorities and the economically disadvantaged, groups that are under-represented in the current electorate.⁶

Currently, eight states and the District of Columbia have adopted pre-registration laws.⁷ At least six more states have taken legislative steps towards adopting such laws.⁸ Additionally, members of Congress have made at least two attempts within the last several years to expand pre-registration nationally.⁹ Yet, despite the

4. In 2008, eighty-four percent of registered voters between the ages of eighteen and thirty cast a ballot. DOUGLAS R. HESS & JODY HERMAN, PROJECT VOTE, REPRESENTATIONAL BIAS IN THE 2008 ELECTORATE 19 (2009), available at <http://projectvote.org/images/publications/Reports%20on%20the%20Electorate/Representational%20Bias%20in%20the%202008%20Electorate/Representational%20Bias%20in%20the%202008%20Electorate.pdf>.

5. MICHAEL P. McDONALD, VOTER PREREGISTRATION PROGRAMS 24 (2009), available at http://elections.gmu.edu/Preregistration_Report.pdf.

6. See *infra* Part IV.

7. Those states are Florida, Hawaii, Maryland, North Carolina, Rhode Island, Delaware, California and Oregon. *Voter Pre-registration Bill Signed into Law*, STATE OF DELAWARE (Sept. 8, 2010), <http://governor.delaware.gov/news/2010/1009september/20100908-voter.shtml>. Pre-registration is also already the norm in numerous other countries. For example, in the United Kingdom, sixteen-year-olds are permitted to register even though they cannot vote until they are eighteen. *Registering to Vote*, DIRECTGOV, http://www.direct.gov.uk/en/Governmentcitizensandrights/UKgovernment/Politicalpartiesandelections/DG_073239 (last visited Jan. 15, 2011).

8. PROJECT VOTE, *supra* note 1, at 5–6. Pre-registration bills were introduced in the legislatures of Arizona, Kansas, Massachusetts, Michigan, New Hampshire, and Washington during the 2009–2010 session. *Id.*

9. In 2004, Rep. Edward Markey (D-MA) introduced the Gateway to Democracy Act of 2004, which sought to amend the National Voter Registration Act to allow sixteen-year-olds to register to vote when applying for a driver's license. Gateway to Democracy Act, H.R. 4972, 108th Cong. (2004). In 2008, Sen. Bill Nelson (D-FL) introduced the Voting Opportunities and Integrity in the Conduct of Elections Act, an expansive election reform bill, which included provisions and funding for states to adopt pre-registration. Voting Opportunities and Integrity in the Conduct of Elections Act, S. 3100, 110th Cong. (2008).

growing interest in and adoption of pre-registration laws, very little has been written on the costs and benefits of these laws.

This Note argues that in order to address low youth voter participation, Congress should adopt a national pre-registration law. The argument proceeds in four parts. Part I illustrates that young citizens are significantly less likely to register and vote in elections. Part I also considers how the lack of uniformity among current registration laws enhances this effect and threatens participatory democracy. Part II examines Congress's powers relating to voter registration and argues that Congress can and should pass a law requiring the states to adopt pre-registration. Part III examines how a federal pre-registration law would be implemented through state departments of motor vehicles, in schools, and at public assistance agencies. Finally, Part IV examines the benefits that would flow from a national pre-registration law, responds to counterarguments, and considers the political feasibility of such a law.

PART I: THE CURRENT STATE OF VOTER REGISTRATION

Low voter participation among young people is a serious problem that needs to be addressed. Low youth voter participation leads to a lack of elected representation for young people's interests and may have serious consequences for young people's long-term participation rates. This Part argues that the current system of registration, which is confusing and lacks uniformity, is largely to blame for low youth registration rates. A national pre-registration law would address these concerns and is thus a promising solution to lagging youth participation rates.

A. The Problem of Low Voter Registration Among Young People

The United States suffers from low voter registration and participation rates.¹⁰ The problem is most severe among young, eligible voters. Compared to Americans of all other age groups, eighteen- to twenty-four-year-olds are registered to vote at significantly lower rates. For example, during the 2008 election only 58.8% of eighteen- to twenty-four-year-old citizens were registered to vote compared to the national average for all ages of

10. G. Bingham Powell, Jr., *American Voter Turnout in Comparative Perspective*, 80 AM. POL. SCI. REV. 17, 23–24 (2006) (noting that turnout rates in the US regularly lag behind the average eighty percent of the eligible electorate who vote in other comparable democracies).

seventy-one percent.¹¹ Moreover, in 2008 every region of the United States experienced a lower registration rate for eligible voters aged eighteen- to twenty-four than every older age group.¹² The low registration rate among younger citizens in 2008 is especially striking given the significant focus during the election by the media and the Obama campaign on increasing youth registration. Despite such attention, youth voter registration continued to lag behind all other age groups and increased only slightly above 2004 rates.¹³

As a result, younger Americans voted at significantly lower levels. In the 2008 election they participated at a lower rate than all other groups. While sixty percent of twenty-five- to forty-four-year-olds, 69.2% of forty-four- to sixty-four-year-olds, 72.4% of sixty-five- to seventy-five-year-olds and 67.8% of those seventy-five or older voted, only 48.5% of eighteen- to twenty-four-year-olds participated.¹⁴

The disproportionately low voter registration rate among young Americans is especially alarming given that the vast majority of citizens actually participate in elections once they are registered. In 2008, over ninety percent of all registered voters cast ballots.¹⁵ In no state was the rate of participation by registered voters below eighty percent, and in more than half of all states greater than ninety percent of registered voters participated.¹⁶ Participation rates for registered voters were similarly high in 2000 and 2004 when eighty-six percent and eighty-nine percent of registered voters cast ballots.¹⁷

The high percentage of registered voters who actually cast ballots also exists for younger citizens. Although fewer than half of all eighteen- to twenty-four-year-olds vote in our elections, the percentage of *registered* young voters who participate is very high. The percentages of registered voters under thirty who cast ballots in 2000, 2004, and 2008 were seventy-four percent, eighty-two percent, and eighty-four percent respectively.¹⁸

11. FILE & CRISSEY, *supra* note 3, at 4.

12. Table 3. *Reported Voting and Registration, by Race, Hispanic Origin, and Age, for the United States, Regions, and Divisions: November 2008*, U.S. CENSUS BUREAU (July 2009), <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/Table%2003-1.xls>.

13. HESS & HERMAN, *supra* note 4, at 19.

14. Table 2. *Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States: November 2008*, U.S. CENSUS BUREAU (July 2009), <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

15. HESS & HERMAN, *supra* note 4, at 6.

16. *Id.* at 18.

17. *Id.* at 10.

18. *Id.* at 19.

These high participation rates of young registered voters cast doubt on the assumption that younger voters simply do not want to participate in elections. In fact, voters under thirty was the only age group to show an increase in participation during the 2008 election.¹⁹ Additionally, youth voter turnout rates are positively correlated with youth registration rates.²⁰ Between 1972 and 2004, in every year except 1996, whenever the youth voter registration rate rose between election years the youth voter turnout in the presidential election also increased.²¹ The correlation between registration and actual voter participation strongly indicates that when given the opportunity to *register*, young citizens will vote. While causation cannot be proven, particularly in relation to electoral habits,²² this very strong association suggests that focusing on the registration process for young citizens will also increase their voter participation rates. Particularly in the electoral context, such a strong correlation cannot be ignored.

B. Reasons for Low Youth Registration Rates

In the United States, “burdensome registration requirements” are a “major institutional deterrent to voting.”²³ Young voters face particular disadvantages within the voluntary registration system. Many newly eligible voters are unfamiliar with the registration system, including how and where to register to vote. As a result of this confusion, many newly eligible voters inadvertently miss voter registration deadlines.²⁴

19. PROJECT VOTE, *supra* note 1, at 2.

20. Karlo Barrios Marcelo, *Voter Registration Among Young People*, THE CTR. FOR INFO. & RES. ON CIVIC LEARNING & ENGAGEMENT 2 (June 2008), http://www.civicyouth.org/PopUps/FactSheets/FS07_Registration.pdf (“Voter turnout rates are positively correlated with voter registration rates.”).

21. *Id.*

22. It is especially difficult to prove causation in the context of voter registration and participation. Because registration is a threshold requirement for voter participation, it is not possible to compare the likelihood that a potential voter will participate before and after they register, given that before registration they were legally barred from doing so. As a result, a very strong correlation is the best available evidence of a potentially successful electoral reform. Additionally, there are many factors that influence each individual’s decision to vote, and thus no single factor is the sole reason any individual voter ultimately casts a ballot.

23. Arendt Lijphart, *Unequal Participation: Democracy’s Unresolved Dilemma*, 91 AM. POL. SCI. REV. 7 (1997).

24. McDONALD, *supra* note 5, at 1–2.

Young adults are also politically inexperienced and thus often lack what John Strate termed “civic competence.”²⁵ Possessing civic competence means having the “knowledge and habits of knowledge acquisition relevant to politics.”²⁶ Through empirical study, Strate determined that the accumulation of political experience that comes with age “leads to increasing levels of civic competence and, in turn, to greater voting participation.”²⁷ Without this civic competence, many young citizens may need extra assistance in registering to vote for the first time.

In the United States, a significant portion of total voter registration is conducted by political campaigns or interest groups.²⁸ However, many campaigns, particularly at the state or local level, do not have the resources to conduct large-scale voter registration. Instead, candidates tend to focus their efforts on turning out already-registered voters, often ignoring unregistered youth.²⁹ Thus, young citizens may have few opportunities to receive assistance in registering, particularly when the first election in which they are eligible to participate is not highly competitive or is not the target of party-funded registration drives.

C. The Current State of the Law Regarding Registration Age

The confusing array of voter registration laws form an additional barrier to increasing youth registration rates. Every state except North Dakota requires that citizens register in order to vote.³⁰ Such registration requirements are constitutional³¹ and within the power of the state legislature to enact. In order to be valid under either the federal or state constitutions, registration laws need only be fair and reasonable.

The existing law pertaining to voter registration and participation is characterized by a lack of uniformity among jurisdictions. Currently, the age at which a citizen is first eligible to register to

25. JOHN M. STRATE ET AL., *Life Span Civic Development and Voting Participation*, 83 AM. POL. SCI. REV. 443, 450 (1989).

26. *Id.*

27. *Id.* at 451.

28. See HESS & HERMAN, *supra* note 4, at 3 (stating that in 2008, six percent of voters reported they had registered through a registration drive. This number rose to twelve percent for minority voters.).

29. McDONALD, *supra* note 5, at 2.

30. *Voter Registration in North Dakota*, NORTH DAKOTA SECRETARY OF STATE, <http://www.nd.gov/sos/electvote/voting/vote-history.html> (last visited Dec. 4, 2010).

31. *People v. Hoffman*, 5 N.E. 596, 608 (1886) (“By presenting certain qualifications for votes, the constitution necessarily intended that the legislature should provide some mode of ascertaining and determining the existence of these qualifications.”).

vote may vary by several years depending on both the state or county in which they live and the date of the next scheduled election.

The majority of states and the District of Columbia allow registration only by citizens who will reach eighteen years of age before the next election.³² Generally, this means a portion of seventeen-year-olds will be eligible to register to vote.³³ However, states differ widely in how they define "next election." Many states, such as Kansas, only allow this type of registration before a statewide general election.³⁴ Ohio specifies that registration before the age of eighteen is permissible only if the voter will turn eighteen before the next November election,³⁵ whereas Massachusetts allows registration for those who will be eighteen before the next preliminary, primary, special, or general election.³⁶

Setting the age of registration in relation to the date of the next election may on the surface seem like a logical way to determine registration eligibility. But in fact, doing so often leads to confusing outcomes. For example, in odd-numbered years the next general election will be only be a year away, in which case only some seventeen-year-olds will be eligible to register. However, immediately following the completion of a general election, the next general election will not be for two years. Thus, in addition to seventeen-year-olds, sixteen-year-olds who will turn eighteen by the time of the next general election will also be eligible to register.³⁷ In contrast, those sixteen-year-olds whose eighteenth birthday will fall after the general election will not be able to register. As a result, some citizens will be eligible to register to vote at least a full year earlier than their peers who are younger by only a matter of days.

Further confusing this issue is the fact that although voting age is set by each state, in many states local jurisdictions operate their

32. *Minimum Voter Registration & Primary Voting Age Spreadsheet*, FAIRVOTE, <http://www.fairvote.org/youth-preregistration-fact-sheet> (last visited Sept. 23, 2011) [hereinafter FAIRVOTE].

33. For example, Delaware allows registration by residents "who will be 18 years old on or before the day of the general election next succeeding the applicant's registration." DEL. CODE ANN. tit. 15, § 1701 (2010).

34. KAN. STAT. ANN. §§ 25-2306, 25-2311 (2000).

35. OHIO REV. CODE ANN. §§ 3503.01, 3503.07 (LexisNexis 2010).

36. MASS. GEN. LAWS ch. 51, §§ 26, 47A (2008).

37. Except in West Virginia or Louisiana, where residents must be a minimum age of seventeen in order to be able to register so long as they will be eighteen at the time of the next election. LA. REV. STAT. ANN. §§ 18:101(A)(2), 18:135(A)(1) (2011); W. VA. CODE ANN. §§ 3-2-2(a), 3-2-6 (Westlaw 2011).

own election schedules.³⁸ In any given year, one county may have elections for county government or a special election to fill a vacant seat between statewide general elections, while the neighboring county may not have any elections during the two years between general elections. Thus, in a state which allows registration by those who will be eighteen at or before the time of the next non-general election, a sixteen-year-old in one county may be able to register, while a sixteen-year-old in a neighboring county must wait almost two years to be eligible to do so.

Even among those states that base eligibility for registration solely on the citizen's age—rather than a combination of their age and the date of the next election—there is still a significant lack of uniformity. While Georgia, Iowa, and Missouri allow seventeen-year-olds to register six months before their eighteenth birthday, Alaska allows registration only ninety days and Texas only two months before a citizen turns eighteen.³⁹

Further, the few states that have already enacted pre-registration laws have not done so in a uniform way. While Florida, Hawaii, and North Carolina all allow registration on or after the sixteenth birthday, California and Oregon do not allow pre-registration until age seventeen.⁴⁰ Continuing to allow states to pass pre-registration laws without federal coordination will further contribute to the lack of uniformity between states. The next Section considers the problems created by this lack of uniformity.

D. Problems Caused by the Lack of a Nationally Uniform Voter Registration Age

Confusion regarding registration age is problematic if it causes young people to miss important registration deadlines. Much of this confusion likely arises out of the fact that many young people today rely on the internet or television for information. These sources provide information that is generally not specific to the local jurisdiction in which a young person resides. As a result, young people may easily be confused by information gained from these sources regarding registration that is not specific to their

38. See, e.g., *Election Results*, MIDLAND COUNTY, MICHIGAN, <http://www.co.midland.mi.us/election/> (last visited July 12, 2011); *Elections*, BAY COUNTY, MICHIGAN, <http://www.baycounty-mi.gov/Clerk/Elections.aspx> (last visited July 12, 2011).

39. GA. CODE ANN. § 21-2-216-8(c) (2011); IOWA CODE § 48A.5(c) (2011); MO. REV. CODE ANN. § 115.133 (2011); but see ALASKA STAT. ANN. § 15.07.060 (2011); TEX. ELEC. CODE ANN. § 13.001(b) (2011).

40. *Id.* Given that many states allow some seventeen-year-olds to register before an election, arguably these states should not be considered to even have pre-registration laws.

state or county. The lack of uniformity with regard to registration age creates confusion for young citizens and election officials about when young citizens are first eligible to register to vote and hinders efforts to increase youth voter registration.⁴¹

The lack of a uniform registration age also impairs the effectiveness of voter registration and education programs.⁴² Under these conditions, it is impossible for any organization, be it a nationwide political campaign or an organization such as *Rock the Vote* or *Project Vote*,⁴³ to conduct a national registration campaign. Instead, these organizations must spend additional resources to create state or county-specific campaigns, registration guides, and advertisements. Every time the registration age within any state or county is changed, registration organizations must invest resources in updating their materials. Additionally, where registration ages are dependent on the election schedule, organizations must adapt their materials on youth registration to the changing election calendar. Such costs may increase the overall price of national campaigns. Setting a uniform national registration age would eliminate many of the inefficiencies created by the complicated state-based system and make it easier for young people to figure out when they are first eligible to register.

E. The Democracy Costs of Low Youth Voter Participation

Low electoral participation is not a problem in and of itself. If the entire electorate shared the same views regarding which candidates to elect or the policies to enact, the number of citizens who participate would not matter. In a very heterogeneous society such as the United States, however, poor or uneven voter turnout undermines democracy as “who votes, and who doesn’t, has important consequences for who gets elected and for the content of public policies.”⁴⁴

Congress acknowledged in passing the National Voter Registration Act that low voter turnout in federal elections poses “potential[ly] serious problems in our democratic society.”⁴⁵ Motivated by re-election concerns, elected representatives will seek to

41. McDONALD, *supra* note 5, at 1–2.

42. *See id.*

43. PROJECT VOTE, <http://www.projectvote.org/> (last visited Jan. 15, 2011); ROCK THE VOTE, <http://www.rockthevote.com/> (last visited Jan. 15, 2011).

44. Lijphart, *supra* note 23, at 4.

45. H.R. REP. NO. 103–9, at 4 (1993), *reprinted in* 1993 U.S.C.C.A.N. 107.

represent the views of those who actually vote.⁴⁶ Under-participation by any particular group in society will lead to under-representation of their interests by elected representatives. Therefore, under-representation of a particular segment of society “potentially skews our national agenda and excludes from major public policy decisions the voices of our least powerful and most vulnerable citizens.”⁴⁷

Young people’s potential exclusion from major public policy decisions makes low voter participation among this group of particular concern. Citizens under thirty constitute twenty-one percent of the population but only seventeen percent of voters.⁴⁸ As a result of the systematic under-representation of younger citizens in the electoral system, the views and concerns of this age group are consistently under-represented by elected representatives.⁴⁹ Issues that particularly affect younger citizens such as education funding, military policies, and long-term social security reform may not receive adequate attention from politicians because of a belief that young people do not form a significant or active part of their constituency. At a time when the population of the United States is aging,⁵⁰ the concerns of younger citizens are especially likely to be ignored in favor of those of older citizens who participate in elections at higher rates, and thus command more attention from their elected representatives.⁵¹

The opportunity to vote is particularly important for younger citizens, as they often do not have access to other channels through which to influence policy and politics. For example, young people frequently have less disposable income to spend on political contributions and are thus less likely to gain the attention of political campaigns or interest groups.⁵² Young adults are especially likely to have time-consuming obligations such as education, employment, or caring for young children.⁵³ As a result, young citi-

46. See generally DAVID R. MAYHEW, CONGRESS: THE ELECTORAL CONNECTION 39–47 (1974).

47. HESS & HERMAN, *supra* note 4, at 2.

48. In comparison, citizens over age thirty make up seventy-nine percent of the population but eighty-three percent of voters. *Id.* at v.

49. *Id.* at 17.

50. The percentage of Americans age sixty-five and older is predicted to almost double by 2050. LAURA SHRESTHA, CONG. RESEARCH SERV., RL32701, THE CHANGING DEMOGRAPHIC PROFILE OF THE UNITED STATES 14 (2011).

51. Seventy percent of citizens over age sixty-five voted in 2008, compared to forty percent of citizens age thirty and under. HESS & HERMAN, *supra* note 4, at 19.

52. Eric Plutzer, *Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood*, 96 AM. POL. SCI. REV. 41, 42 (2002).

53. Citizens aged twenty-five to thirty-four spend the greatest amount of time “[c]aring for and helping household members.” Those aged twenty to twenty-four spend the third

zens also have less free time to volunteer or become involved in civic life.⁵⁴ In comparison, older citizens who generally benefit from greater financial security or fewer work and family responsibilities are able to donate more time and money to political candidates or interest groups and thus enjoy greater political influence.⁵⁵

F. Pre-Registration as a Solution to Low Youth Participation

Because of the costs of low youth voter participation and the potential lifelong benefits of encouraging youth civic participation, there are substantial gains that could be achieved through an increase in youth voter registration. A national pre-registration law is an innovative and effective way to address lagging youth voter participation.

Pre-registration laws aim to increase youth registration rates by allowing sixteen- and seventeen-year-olds to register to vote. Pre-registration allows young people to register at a required age, rather than tying eligibility to reaching voting age before the next election. All pre-registrants are required to satisfy every voter qualification set by the state that eligible voters over eighteen have to meet.⁵⁶ Once accepted, pre-registrations are then entered into the state's voter database as a "pending" registration. On the day that a pre-registrant turns eighteen or otherwise becomes eligible to vote (for example, in a primary if the voter will be eighteen at the time of the general election) the entry for that pre-registrant is automatically moved from the "pending" to the "active" category in the voter database and the pre-registrant becomes a legally registered and eligible voter.

highest amount on these activities. Twenty- to twenty-four-year-olds spend more than three times as much time on educational activities as any older age group. U.S. BUREAU OF LABOR STATISTICS, AMERICAN TIME USE SURVEY—2010 RESULTS tbl.3 (2011), available at <http://www.bls.gov/news.release/pdf/atus.pdf> [hereinafter SURVEY]; see also Strate, *supra* note 25, at 443 (noting that low voter participation among young people may be "due to the primacy of such non-political concerns as obtaining an education, finding a mate, and establishing a career").

54. Young people aged twenty to thirty-four spend less time in organizational, civic, or religious activities than older age groups. SURVEY, *supra* note 53, at tbl.3.

55. Citizens aged thirty-five to forty-five spend more than twice as much time, and those seventy-five and older spend more than three times as much time, on "[o]rganizational, civic or religious activities" than citizens aged twenty- to twenty-four. *Id.* Additionally the elderly have powerful political groups that represent their interests, including, for example, the AARP.

56. These qualifications would include satisfying voter identification requirements, and, in states where ex-felons are barred from voting, passing a criminal background check.

The strongest argument for a national pre-registration law is that pre-registration has already been proven to work. Analysis of existing state pre-registration laws shows that these laws have increased youth voter turnout.⁵⁷ For example, in Florida, analysis of state voter files indicates that in 2008 pre-registrants were 4.7% more likely to vote than those who registered after they turned eighteen.⁵⁸ This positive effect was not an anomaly but part of a larger pattern. In 2004, Florida pre-registrants were two percent more likely to have voted than those who registered after the age of eighteen and in 2000 pre-registrants were 3.6% more likely to vote than those who registered after they turned eighteen.⁵⁹ Additionally, young people who preregister have consistently higher turnout rates over the course of several elections. Overall, “preregistration appears to have a lasting positive impact on lifetime voting.”⁶⁰

Pre-registration has an especially beneficial effect on those who turn eighteen in presidential election years.⁶¹ In the last three presidential elections, pre-registrants in Florida who pre-registered in an election year and then became eligible to vote in that same year were more likely to vote than those who turned eighteen in the same year but who chose to register through the normal process after their eighteenth birthday.⁶² The effect was particularly strong in the 2000 election, when pre-registrants who turned eighteen in 2000 were 10.1% more likely to vote than those who registered after they turned eighteen.⁶³

Pre-registration also has a particularly positive effect for minority voters. African-Americans who preregistered in Florida were 5.2% more likely to vote in the 2008 election than those who registered after they turned eighteen. In comparison, pre-registrants of all races were only 4.7% more likely to vote.⁶⁴ In general, pre-registration had a positive effect for both African-American and Hispanic pre-registrants.⁶⁵ Expanding the benefits of pre-registration in Florida nationally would go a long way toward increasing youth voter participation.

Admittedly, registration and participation are self-selecting. As a result, pre-registration will never be the complete solution to low

57. McDONALD, *supra* note 5, at 24.

58. *Id.*

59. *Id.*

60. Michael P. McDonald & Matthew Thornburg, *Registering the Youth Through Voter Pre-registration*, 13 N.Y.U. J. LEGIS. & PUB. POL’Y 551, 568 (2010).

61. McDONALD, *supra* note 5, at 24.

62. *Id.*

63. *Id.* at 25.

64. *Id.* at 26.

65. McDonald & Thornburg, *supra* note 60, at 568.

youth voter participation. No matter how much effort is spent on increasing registration rates, some individuals will still choose not to participate out of apathy. Additionally, some young people will still register and participate regardless of the presence of pre-registration laws.

At a minimum, pre-registration will assist those voters who do wish to participate but might otherwise take several years to first register and vote, or those who do not independently have the motivation to register but might do so when the process is made more convenient. Even targeting these individuals so that the youth registration rate approaches that of the general population will lead to a large increase in the total number of young people who participate in elections. As noted in the introduction, had Americans under thirty participated at the same rate as the rest of the population, an additional seven million people would have cast ballots in 2008.⁶⁶ Even a small percentage increase in the youth participation rate promises to have a large impact on the American electorate.

PART II: CONGRESSIONAL AUTHORITY OVER VOTER REGISTRATION

The current confusing array of state laws relating to voter registration is not a sign of Congressional inability to act in this realm. Instead, as this Part argues, Congress has wide latitude to regulate federal election procedures, including voter registration. As a result, Congress has the power to pass a national pre-registration law.

A. Congress's Power to Enact Laws Regulating Registration

Under Article 1, Section 4 of the US Constitution, "The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."⁶⁷ In *Smiley v. Holm*, the Supreme Court interpreted this clause broadly, writing that: "these comprehensive words embrace authority to provide a complete code for congressional elections"⁶⁸ The Court specifically read the clause as granting authority

66. PROJECT VOTE, *supra* note 1, at 2.

67. U.S. CONST. art. 1, § 4, cl. 1.

68. *Smiley v. Holm*, 285 U.S. 355, 366 (1932).

to Congress to regulate voter registration procedures.⁶⁹ The Court reasoned that Congress' power to control the "times, places, and manner" of elections necessarily included the power to determine registration procedures.⁷⁰

In 1993, in response to dwindling electoral participation and dissatisfaction with existing state-based registration procedures, Congress passed the National Voter Registration Act (NVRA).⁷¹ NVRA mandates that states enact a broad range of reforms relating to their voter registration procedures in order to "increase the number of eligible citizens who register to vote in elections for Federal office."⁷² Because NVRA ushered in an era of federal control over voter registration procedures, it is a good case study to determine whether a national pre-registration law would be constitutional.

Many states resisted implementing NVRA and filed lawsuits arguing that the Act exceeded Congress' power. Despite the protests of these states, federal courts repeatedly upheld the constitutionality of NVRA and emphasized the authority of Congress to regulate voter registration procedures. In *Association of Community Organizations for Reform Now (ACORN) v. Ridge*, the District Court for the Eastern District of Pennsylvania relied on *Smiley* to reach the "inescapable [conclusion] that the NVRA is constitutional."⁷³ The court determined that the registration system mandated in NVRA "sets forth the mode or method, *i.e.*, the manner by which a voter will be registered to vote in a federal election" and as such clearly falls within Congress's articulated Article 1 powers.⁷⁴ Similarly, in *Condon v. Reno*, a South Carolina District Court found that Congress acted within its authority under Article 1, Section 4 in regulating registration procedures.⁷⁵ The court noted that the legislative record indicated Congress was motivated by the concern that low turnout in federal elections created serious democratic problems. As a result, the court held that in passing NVRA the means chosen

69. *Id.*

70. *Id.*

71. 42 U.S.C. § 1973gg (2006).

72. *Id.* § 1973gg(b)(1). Under NVRA, states are required to provide the opportunity to register to vote simultaneously with an application for a driver's license or public assistance, by mail, or at a federal, state, or nongovernmental office designated as a registration location. NVRA also regulates how states operate their voter registration lists for federal elections by mandating that all applications received thirty days before the election be processed, ensuring that all applicants be notified of the status of their application, and requiring states to keep accurate and updated voter registration lists.

73. *Ass'n of Cmty. Orgs. for Reform Now (ACORN) v. Ridge*, No. CIV. A. 94-7671, 1995 WL 136913, at *6 (E.D. Pa. Mar. 30, 1995).

74. *Id.*

75. *Condon v. Reno*, 913 F. Supp. 946, 967 (D.S.C. 1995).

by Congress were appropriate and the ends legitimate.⁷⁶ Further, in *Virginia v. United States* the District Court for the Eastern District of Virginia granted partial summary judgment to the United States on the basis that NVRA was a constitutional exercise of Congressional power under Article 1, Section 4.⁷⁷

Despite noting that voter registration was not a qualification for participation at the time the Constitution was drafted, the Seventh and Ninth Circuit Courts of Appeals also upheld the constitutionality of NVRA.⁷⁸ Both courts relied on the fact that in setting the qualifications of voters for Representatives and Senators, Article I, Section 2 and the Seventeenth Amendment “do not explicitly remove the registration of voters by the states from the reach of the power of Congress, provided by Article I, section 4.”⁷⁹ As a result, these courts indicated that Congress has the power to set national registration requirements and that NVRA was a constitutional method of doing so.

In addition to Congress’s Article I, Section 4 powers, courts also upheld NVRA as a valid means of furthering the protections provided by the Fourteenth and Fifteenth Amendments. In upholding the Act on this basis, the district court in *Condon v. Reno* relied heavily on the legislative history and the actual text of the Act, which recognizes that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.”⁸⁰ Noting the clear desire to rectify discrimination in voting, the court held that Congress intended to further the protections of the Fourteenth and Fifteenth Amendments and that NVRA was an appropriate means of addressing these harms.⁸¹ Similarly, in *ACORN v. Edgar*, the Seventh Circuit upheld the Northern District of Illinois’ finding that NVRA was a constitutionally valid way of addressing disproportionately low minority voter turnout.⁸²

NVRA also survived numerous Tenth Amendment challenges. Courts repeatedly held that because the requirements within NVRA are limited only to federal elections, “by its own terms the

76. *Id.* at 949.

77. *Virginia v. United States*, No. CIV.A. 3:95CV357 RLW, 1995 WL 928433 (E.D. Va. Oct. 18, 1995).

78. *Ass’n of Cmty Orgs. for Reform Now (ACORN) v. Edgar*, 56 F.3d 791, 793 (7th Cir. 1995); *Voting Rights Coal. v. Wilson*, 60 F.3d 1411, 1413 (9th Cir. 1995).

79. *Voting Rights Coal.*, 60 F.3d at 1413.

80. 42 U.S.C. § 1973gg(a)(3) (2006).

81. *Condon*, 913 F. Supp. at 962.

82. *Ass’n of Cmty. Orgs. for Reform Now (ACORN) v. Edgar*, 880 F. Supp. 1215 (N.D. Ill. 1995), *aff’d as modified on other grounds*, 56 F.3d 791 (7th Cir. 1995).

Tenth Amendment is inapplicable[,]”⁸³ as the amendment does not apply to powers specifically vested in the Congress by the Constitution.⁸⁴ Courts also rejected states’ claims that NVRA is unconstitutional because it does not provide the states with funding for implementation.⁸⁵

In 2002, building on the groundwork for federal control of election registration procedures set by NVRA, Congress enacted the Help America Vote Act (HAVA).⁸⁶ Congress passed this law in response to the 2000 election, which revealed widespread problems in election administration.⁸⁷ Section 15483(a) of HAVA requires each state to implement a “uniform, regularly updated computerized statewide voter registration list.”⁸⁸ HAVA also sets standards for when states may remove ineligible or inactive voters from the computerized registration list.⁸⁹ Unlike NVRA, HAVA has not been subject to constitutional challenges. This is perhaps because the question of Congress’ authority to regulate voter registration has already been resolved in NVRA cases, or (more likely) because HAVA included funding for the states to implement its requirements.⁹⁰

The approval of NVRA by the courts and the lack of constitutional challenges to HAVA demonstrate that Congress has wide latitude to regulate elections and to set registration procedures. As a result of this power, it would be constitutional for Congress to build upon the existing federal control of registration procedures created by NVRA and HAVA and to pass a national pre-registration law.

PART III: IMPLEMENTING A NATIONAL PRE-REGISTRATION LAW

Congress should expand existing successful pre-registration laws, and draw upon its power to control federal registration laws,

83. *Condon*, 913 F. Supp. at 963.

84. *Edgar*, 880 F. Supp. at 1219, *aff’d as modified on other grounds*, 56 F.3d 791 (7th Cir. 1995), *opinion supplemented*, No. 95 C 174, 1996 WL 406652 (N.D. Ill. July 17, 1996); *see also* Ass’n of Cmty. Orgs. for Reform Now (ACORN) v. Miller, 129 F.3d 833 (6th Cir. 1997); Ass’n of Cmty. Org. for Reform Now (ACORN) v. Ridge, No. CIV. A. 94-7671, 1995 WL 136913 (E.D. Pa. Mar. 30, 1995).

85. *See infra* Part IV.E.

86. Help America Vote Act of 2002, 42 U.S.C. § 15301 (2006).

87. *See* Leonard Shambon & Keith Abouchar, *Trapped by Precincts? The Help America Vote Act’s Provisional Ballots and the Problem of Precincts*, 10 N.Y.U. J. LEGIS. & PUB. POL’Y 133, 134 (2007).

88. *Wash. Ass’n of Churches v. Reed*, 492 F. Supp. 2d 1264, 1268 (W.D. Wash. 2006).

89. 42 U.S.C. § 15483 (2006).

90. *Id.* § 15301 (authorizing payments to states).

to enact a national pre-registration law. This Part argues that pre-registration could be implemented by amending existing federal laws to allow young people to register to vote at state departments of motor vehicles (DMV), in school, or through public assistance agencies.

A. Pre-Registration at the DMV

As part of a national pre-registration law, Congress should amend NVRA to allow registration at the DMV beginning at age sixteen. In a majority of states teenagers are first eligible for a driver's license at age sixteen,⁹¹ thus the pre-registration age would coincide with the age at which they will first visit one of the main voter registration agencies.

NVRA currently requires that citizens must be offered the opportunity to register to vote whenever they apply for a driver's license.⁹² As a result, NVRA is frequently referred to as the "Motor Voter" law.⁹³ The motor voter provisions of NVRA have increased voter registration.⁹⁴ Unfortunately, these provisions are not as effective as they could be because millions of Americans who visit the DMV or equivalent state motor vehicle agency each year to get their first license cannot take advantage of them because they are not yet old enough to be eligible to register to vote.⁹⁵ As a result, once they are of eligible age those wishing to register must make the additional effort to travel to the DMV or other registration agency to register. Many eligible citizens simply do not make this additional effort until they next return to the DMV to renew their license, often missing election cycles in the meantime and decreasing the likelihood that they will become habitual voters.⁹⁶ A national pre-registration law that amends NVRA to allow sixteen-year-olds to register at the DMV would decrease the number of contacts an individual needs to make with the government,

91. See *Young Driver Licensing Systems in the U.S.*, INS. INST. FOR HIGHWAY SAFETY, http://www.iihs.org/laws/gdl_intermediate.aspx (last visited Jan. 15, 2010).

92. 42 U.S.C. § 1973gg-3 (2006).

93. See, e.g., Editorial, *Reviving the Motor Voter Law*, N.Y. TIMES, Apr. 11, 2009, at A16, available at <http://www.nytimes.com/2009/04/11/opinion/11sat4.html>.

94. Joseph Lawler, *Motor Voter and Turnout 15 Years after the NVRA 3* (unpublished paper), available at http://economics.nd.edu/assets/24018/lawler_j.pdf.

95. Some states do have graduated licensing systems. However, in many of these states drivers receive their full license after only a year and thus may be eligible for their full license at seventeen. These drivers are still not eligible to register to vote through the DMV. *Young Driver Licensing Systems in the U.S.*, *supra* note 91.

96. For a discussion of the habit-forming nature of voting, see *infra* Part IV.A.

thereby removing one of the barriers to registration and increasing efficiency.

Allowing sixteen- and seventeen-year-olds to register to vote at the DMV will improve youth registration rates. However, solely amending the motor voter provisions of NVRA will not reach all potential pre-registrants. For example, many young people do not have access to a motor vehicle. Thus, these young citizens will not need to acquire a driver's license or register a vehicle at the DMV.⁹⁷ Additionally, low-income and minority citizens are less likely to register to vote through the DMV.⁹⁸ As a result, a national law that only provides for pre-registration through the DMV may not be adequate to significantly increase registration rates among these populations.⁹⁹ To address the registration needs of all young people—and not just those who can access the DMV—a federal pre-registration law must be comprehensive and provide for pre-registration opportunities in other locations, such as schools and public assistance agencies, as well as at the DMV.

B. Pre-Registration in Schools

In order to reach the greatest number of potential pre-registrants, a successful national pre-registration law must also require schools to play a larger role in encouraging and assisting students to register. Permitting students to register before they turn eighteen would allow schools to assist students in registering before they graduate or drop out. Many students graduate from high school at age seventeen and cannot take advantage of existing school-based registration drives that only cater to eighteen-year-

97. Although many states also offer other forms of official government identification through the DMV such as proof of age cards, many citizens cannot afford the cost of this identification. See, e.g., Matt A. Baretto et al., *The Disproportionate Impact of Indiana Voter ID Requirements on the Electorate* 21 fig.3 (Wash. Inst. for the Study of Ethnicity and Race, Working Paper, 2007), available at http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf. Others do not have access to transportation to reach the DMV, which is often located in a place designed to be convenient for those with vehicles but with limited accessibility by public transport. See *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 213–15 (2008) (Souter, J., dissenting).

98. Andrew M. Fleischmann, *Protecting Poor People's Right to Vote: Fully Implementing Public Assistance Provisions of the National Voter Registration Act*, 93 NAT'L CIVIC REV., 66, 66 (2004), available at <http://www.ncl.org/publications/ncr/93-3/Fleischmann.pdf> (noting that Congress included the public assistance agency provisions of NVRA because the poor are less able to register at the DMV).

99. For example, the Gateway to Democracy Act that was introduced in Congress in 2004 (but was never passed) sought only to allow sixteen-year-olds to register at the DMV but did not include other pre-registration options. Gateway to Democracy Act of 2004, H.R. 4972, 108th Cong. (2004).

olds.¹⁰⁰ Lowering the registration age to sixteen would, however, significantly increase the total number of eligible registrants who could be reached through school registration drives.

Americans who leave high school without receiving a diploma have one of the lowest voter participation rates.¹⁰¹ Citizens with less than a high school education make up eleven percent of the adult citizen population but only seven percent of all voters.¹⁰² Further, 48.9% of those without a high school diploma are unregistered,¹⁰³ while only 35.9% of those with a high school diploma but no higher education are unregistered.¹⁰⁴ A special focus is needed to improve the registration rate of this population. Targeting registration opportunities for these students before they drop out is one such method of expanding the electorate. In most states, school attendance is mandatory until age sixteen.¹⁰⁵ Therefore, if voter registration were permitted beginning at age sixteen it would improve the chance of providing registration opportunities to those students who will drop out.

Additionally, minority students are up to twice as likely to drop out of high school as white students.¹⁰⁶ Given that minority students are significantly more likely to leave high school without graduating, focusing on registering students at an earlier age, before they are likely to drop out, will also serve to increase the registration numbers of minority voters.¹⁰⁷ These efforts are likely to be successful, as minorities are roughly fifty percent more likely than white voters to have registered to vote at school or on-campus.¹⁰⁸ Allowing registration drives beginning at age sixteen may increase these numbers even further therefore increasing the diversity of the electorate.

100. In fact, because under the current system only a small percentage of the student body is eligible to register, election officials, private organizations or school administrators may consider it inefficient to focus registration efforts on schools.

101. *Table 5. Reported Voting and Registration, by Age, Sex, and Educational Attainment: November 2008*, U.S. CENSUS BUREAU (July 2009), <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/Table%2005-1.xls>.

102. HESS & HERMAN, *supra* note 4, at 27.

103. U.S. CENSUS BUREAU, *supra* note 101.

104. *Id.*

105. *Digest of Education Statistics, Table 166: Age Range for Compulsory School Attendance and Special Education Services, and Policies on Year-Round Schools and Kindergarten Programs, by State: Selected Years, 1997 through 2008*, NAT'L CTR. FOR EDUC. STAT., http://nces.ed.gov/programs/digest/d09/tables/dt09_166.asp (last visited Dec. 4, 2010).

106. *Education: Elementary and Secondary Education: Completions and Dropouts, Statistical Abstracts of the United States*, U.S. CENSUS BUREAU, <http://www.census.gov/compendia/statab/2012/tables/12s0271.pdf> (last visited Jan. 15, 2010).

107. *Id.*

108. HESS & HERMAN, *supra* note 4, at 2–3.

A further benefit of providing pre-registration in schools is that students in states requiring voter identification to register may be able to use school-issued identification if they register through a school program. Currently, young voters are especially burdened by identification requirements when registering. Under HAVA, all first time voters must prove their identity either at the time of registration or at the polling place if they registered by mail.¹⁰⁹ At least twenty-six states have broader voter identification requirements for registration than mandated in HAVA.¹¹⁰ Young people are less likely to own government issued identification. For example, in Indiana where a voter ID law was passed—and upheld by the United States Supreme Court¹¹¹—a study found that younger citizens were 9.3% less likely to have valid photo identification than those aged thirty-five- to fifty-four.¹¹² Acquiring identification can be especially difficult for young people who may not have access to disposable income to pay for government issued identification or transportation to access government offices.¹¹³ Without the required identification, many young citizens simply cannot register or vote. Allowing students who register at school to use their school-issued identification would make it easier for students to bypass burdensome identification requirements when registering for the first time. This student ID would obviously have to meet the requirements of both HAVA and any state ID requirement. Alternatively, Congress could include as a provision of a national pre-registration law an amendment to HAVA to allow school-issued ID to meet the requirements of HAVA for registration purposes. In addition to being easier for students, registrations completed through schools are also more likely to be successful because election administrators can work with school officials to contact a student who fills out the application incorrectly or incompletely rather than simply rejecting it.¹¹⁴

In order to ensure the success of a national pre-registration law, Congress could use funding as an inducement to require high schools to provide students with the opportunity to register to vote on campus. There is already a mandate—although it is little known and poorly enforced—in the Higher Education Act which requires that colleges and universities that receive federal funding either

109. 42 U.S.C. § 15483 (2006).

110. Numerous states also require photo ID in order to vote. *Voter Identification Requirements*, NAT'L CONF. OF STATE LEGISLATURES, <http://www.ncsl.org/default.aspx?tabid=16602> (last visited Aug 8, 2011).

111. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008).

112. Baretto, *supra* note 97, at 21 fig.2.

113. *See Crawford*, 553 U.S. at 213–16 (Souter, J., dissenting).

114. McDonald & Thornburg, *supra* note 60, at 560.

send out voter registration forms to all students or risk losing their federal funding.¹¹⁵ Similarly, Congress could create a mandate within a federal pre-registration law to require that all high schools receiving federal funding provide voter registration on campus or face a financial penalty. Unfortunately, such a mandate would not have a broad impact. Currently, only schools that serve a high percentage of low-income students are eligible for direct federal funding through Title I of the Elementary and Secondary Education Act.¹¹⁶ Further, only twenty-nine percent of secondary schools receive Title I funding.¹¹⁷ Thus, less than a third of all sixteen- and seventeen-year-old students would be reached through such a mandate.

Another potential avenue to ensure that voter registration is offered in high schools would be for Congress to amend the definition of designated voter registration agencies in NVRA. Currently, under Section 1973gg-5 each state must designate all “offices in the State that provide public assistance” and “all offices in the State that provide . . . services to persons with disabilities” as voter registration agencies.¹¹⁸ States must also designate other government offices within the state as voter registration agencies, although it is left to the state to determine which state or local offices to select from a list, which includes public schools.¹¹⁹ Given that Congress has the authority to designate some state or local offices as mandatory voter registration agencies, it is conceivable that it could use this same authority to extend the mandatory category to include public schools.¹²⁰ As a result, all public high schools within every state would be required to provide voter registration opportunities. If this were combined with a uniform national voter

115. Higher Education Act of 1965, 20 U.S.C. § 1094(a)(23)(A) (2006). See also Douglas R. Hess and Steven Rosenfeld, *Universities Have an Obligation to Help Students Register to Vote*, DESMOINESREGISTER.COM (Sept. 16, 2010), <http://www.desmoinesregister.com/apps/pbcs.dll/article?AID=2010916033>; *Little Known Law Could Boost Youth Voter Registration Before Election, If Action Taken Now*, PROJECT VOTE (Oct. 1, 2010), <http://www.projectvote.org/blog/?p=925>.

116. *Improving Basic Programs Operated by Local Educational Agencies*, U.S. DEP'T OF EDUC., <http://www2.ed.gov/programs/titleiparta/index.html> (last visited Oct. 13, 2011).

117. *NCLB Action Briefs: Title I Overview*, NAT'L COAL. FOR PARENT INVOLVEMENT IN EDUC., <http://www.ncpie.org/nclbaction/titleI.pdf> (last visited Apr. 15, 2011). Additionally, only ten percent of all Title I funding is given to secondary schools. Jason Amos, *If Only Federal Government's Approach to High Schools Mirrored Media Coverage*, ALLIANCE FOR EXCELLENT EDUC. (Sept. 23, 2010, 12:42 PM), http://www.all4ed.org/blog/if_only_federal_governments_approach_high_schools_mirrored_media_coverage.

118. 42 U.S.C. § 1973gg-5(a)(2)(A), (B) (2006).

119. *Id.* § 1973gg-5(a)(3)(B)(i).

120. Ideally juvenile detention facilities would also be included as designated voter registration agencies, in order to provide opportunities to those students not enrolled in traditional public schools.

registration age of sixteen, significant headway could be made towards increasing the number of young citizens who are registered to vote.

C. Public Assistance Agencies and Pre-Registration

Another avenue for reaching young adults who are less likely to be registered is by mandating that pre-registration is provided at public assistance agencies. Currently, NVRA Section 7 requires that each state must designate all “offices in the State that provide public assistance” as voter registration agencies.¹²¹ These public assistance agencies must provide the opportunity to register to vote every time an application for “such service or assistance” is made or with a “recertification, renewal, or change of address . . . relating to such service or assistance.”¹²² In addition, the agency must provide the “same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms”¹²³

Unfortunately, for the first decade and a half following enactment, the public assistance provision of NVRA was largely ignored.¹²⁴ In fact, registrations from public assistance agencies actually declined seventy-nine percent in the first ten years following the implementation of the law.¹²⁵ Recently, however, a series of enforcement lawsuits were filed against state social service agencies for failure to comply with this provision. These lawsuits have led to a large increase in the number of people registering through public assistance agencies. For example, following a lawsuit, the number of registration applications received through Missouri public assistance agencies increased two thousand percent during the first six months.¹²⁶ After Iowa began enforcing this provision, registration at public assistance agencies increased three thousand percent and one in five clients who were offered the opportunity to register by Iowa’s Department of Human Services took advantage of this service.¹²⁷ These numbers indicate that even in

121. 42 U.S.C. § 1973gg-5(a)(2)(A) (2006).

122. *Id.* § 1973gg-5(a)(6)(A).

123. *Id.* § 1973gg-5(a)(6)(C).

124. DOUGLAS R. HESS & SCOTT NOVAKOWSKI, UNEQUAL ACCESS: NEGLECTING THE NATIONAL VOTER REGISTRATION ACT 1995–2007, DEMOS, 1, [http://www.demos.org/sites/default/files/publications/UnequalAccessReport-web\(2\).pdf](http://www.demos.org/sites/default/files/publications/UnequalAccessReport-web(2).pdf) (last visited Dec. 4, 2010).

125. *Id.*

126. *Acorn v. Scott*, THE LAW. COMM. FOR CIV. RIGHTS UNDER LAW, http://www.lawyerscommittee.org/projects/voting_rights/page?id=0017 (last visited Dec. 4, 2010).

127. HESS & NOVAKOWSKI, *supra* note 124, at 8.

Iowa, which already has one of the highest voter registration rates in the nation,¹²⁸ public assistance agencies offer significant potential as tools to increase registration rates.

Pre-registration at public assistance agencies would increase the likelihood that those young citizens who would not otherwise be reached through the DMV or school based registration drives would receive the opportunity to register to vote and receive assistance with the process. Increased registration opportunities at public assistance agencies are likely to benefit minority citizens. This is particularly true for minority youth given that 35.4% of black children and 33.1% of Hispanic children under eighteen live in poverty.¹²⁹ Public assistance agencies are already a significant source of voter registration applications from minority citizens. It is estimated that three times as many minority citizens as white citizens register to vote through public assistance agencies.¹³⁰ As compliance with the public assistance agency requirements of NVRA increases, this percentage may grow even higher.

Certainly, the number of people aged sixteen to eighteen receiving public assistance is far less than the number attending high school or visiting the DMV. However, providing voter registration at public assistance agencies may still reach some of those young people who would not otherwise be given assistance in registering. Even if those under eighteen are considered dependents of their parents for purposes of public assistance, these agencies could still provide them the opportunity to register.

As this Part has discussed, there is already an existing structure—including the DMV, schools, and public assistance agencies—that can provide pre-registration opportunities. As a result, a federal pre-registration law would not require the construction of new agencies or other radical changes. Instead, successful implementation of a federal pre-registration law would simply require Congress to amend existing federal laws to allow sixteen- and seventeen-year-olds to take advantage of current opportunities to register to vote.

128. HESS & HERMAN, *supra* note 4, at 32.

129. The Univ. of Mich. Gerald R. Ford Sch. Of Pub. Policy, *Poverty in the United States: Frequently Asked Questions*, NAT'L POVERTY CENTER, <http://www.npc.umich.edu/poverty/> (last visited Apr. 15, 2011).

130. HESS & HERMAN, *supra* note 4, at 3.

PART IV: THE BENEFITS OF PRE-REGISTRATION

This Part considers the benefits that would flow from a national pre-registration law in addition to increased youth registration and participation rates. These benefits include an expansion of youth civic engagement as well as the opportunity to increase the number of minorities and the poor who participate in elections. This Part also rejects criticisms of pre-registration, including cost and inefficiency because of perceived youth mobility. Finally, it argues that passing a national youth pre-registration law is politically feasible.

A. The Positive Impact of Pre-Registration on Civic Engagement

In addition to increasing voter participation by young people, one potential benefit of a national pre-registration law is increased interest in other civic activities on the part of young citizens. Currently, the United States faces a severe shortage of qualified poll workers. For example, for the 2004 election, the country needed two million poll workers nationwide, but fell short by five hundred thousand.¹³¹ The shortage is so severe that the Ohio Secretary of State has even proposed “drafting” poll workers for a form of mandatory civic service, similar to jury duty.¹³² In addition to the shortage, the age of poll workers is rising rapidly. The average age is currently seventy-two.¹³³ The United States Election Assistance Commission has called the rising age the “biggest threat” to election administration because of the increased likelihood of confusion and costly mistakes by elderly poll workers.¹³⁴

One of the Commission’s recommendations to address these problems was for election officials to recruit new poll workers from high schools.¹³⁵ Such a program could easily be tied to a pre-registration law. Allowing sixteen- and seventeen-year-olds to pre-register to vote would serve as an initial contact with election officials and provide a database of potential young people for election administration offices to contact as future poll workers. For

131. BUILDING CONFIDENCE IN U.S. ELECTIONS, REPORT OF THE COMM’N ON FED. ELECTION REFORM, CARTER BAKER COMM’N ON FED. ELECTION REFORM 54 (Sept. 2005), www.american.edu—full_report.pdf.

132. Bob Driehaus, *Official Proposes ‘Drafting’ Poll Workers to Ease Problems*, N.Y. TIMES, Jan. 27, 2007, at A11.

133. Jim Drinkard, *Panel Cites Poll Workers’ Age as Problem*, USATODAY.COM (Aug. 8, 2004), http://www.usatoday.com/news/politicselections/nation/2004-08-08-voting-workers_x.htm.

134. *Id.*

135. *Id.*

example, Broward County, Florida recruited over eight hundred students to work as poll workers, in large part through outreach to schools as a part of pre-registration programs.¹³⁶ Furthermore, in many states it is a legal requirement that all poll workers be registered to vote, meaning that if pre-registration is not legal, election officials are unable to recruit sixteen or seventeen-year-old poll workers.¹³⁷ As a result, a national pre-registration law may increase the number of student poll workers and help address the nationwide poll worker shortage.

Additionally, facilitating the registration and participation of younger voters may increase lifelong civic participation. Voting is habit forming.¹³⁸ Studies have found that young people who vote once are significantly more likely to vote again, whereas those who fail to vote are less likely to vote in future elections.¹³⁹ Voting in a given election may increase the likelihood of participation in the next election by up to fifty percent.¹⁴⁰ In one study of citizens who voted in two consecutive presidential elections, only three percent did not vote in both the next midterm and presidential election. In contrast, of those voters who missed two consecutive presidential elections, more than two-thirds also did not vote in the next election.¹⁴¹ These data suggest that given the strong correlation between registration and actual voter participation, assisting young people in registering and participating as soon as they are eligible may increase the likelihood that they will develop a lifelong habit of voting. Doing so on a large scale may increase overall electoral participation in the United States. However, if efforts are not made now to stem the low participation rates by younger voters, these individuals may become habitual non-voters.

136. McDONALD, *supra* note 5, at 13.

137. See, e.g., *id.* at 37–38 (Hawaii); *Election Voters*, ALAMEDA COUNTY, <http://www.acgov.org/rov/workers.htm> (California) (last visited Oct. 13, 2011).

138. Richard A. Brody & Paul M. Sniderman, *From Life Space to Polling Place: The Relevance of Personal Concerns for Voting Behavior*, 7 BRIT. J. POL. SCI. 337, 349 (1977).

139. See, e.g., Alan Gerber et al., *Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment*, 47 AM. J. POL. SCI. 540 (2003); Plutzer, *supra* note 52, at 43.

140. Gerber et al., *supra* note 139, at 541.

141. Plutzer, *supra* note 52, at 43.

*B. Pre-Registration as a Tool to Increase Registration Rates of
Racial Minorities and the Poor*

A desire to address noticeable racial disparities in the electorate was one of the factors that motivated Congress to pass NVRA.¹⁴² Congress should continue this commitment to ensuring a diverse, representative democracy by passing a national pre-registration law. Low youth voter registration rates are closely connected with low participation rates among minorities and the economically disadvantaged. As a result, a national pre-registration law aimed at improving youth registration will likely also simultaneously create an electorate that is both more racially and socio-economically representative of the country as a whole.

In addition to skewing older, the population of registered voters is disproportionately white when compared to the American population as a whole. Non-whites make up twenty-seven percent of the adult citizen population but only twenty-four percent of voters.¹⁴³ Given that members of racial minorities register and participate at lower levels,¹⁴⁴ young people from majority-minority communities are often surrounded by fewer neighbors who are registered, which may in turn decrease the likelihood they will themselves register to vote. Lagging participation rates confirm this concern. Statistically, Americans aged eighteen- to twenty-four who self-identify as members of racial minorities are less likely to be registered to vote than white citizens of the same age.¹⁴⁵ In 2008, registration rates for young white citizens outpaced those for minority youth by as many as twenty-three percentage points: while seventy-five percent of white Americans aged eighteen- to twenty-nine were registered, only sixty-four percent of African Americans, fifty-two percent of Asians and fifty-three percent of Latinos of the same age group were registered.¹⁴⁶

Similar to the need to guarantee adequate democratic representation for the interests of young people,¹⁴⁷ ensuring that members of racial minority groups are able to participate at rates equivalent to their percentage of the population is important to ensuring a

142. As discussed in Part II, NVRA was upheld by the courts as a constitutional way of achieving this goal. See, e.g., *Condon v. Reno*, 913 F. Supp. 946, 962 (D.S.C. 1995); *Ass'n of Cmty. Org. for Reform Now (ACORN) v. Edgar*, 880 F. Supp. 1215 (N.D. Ill. 1995), *aff'd as modified on other grounds*, 56 F.3d 791 (7th Cir. 1995).

143. See HESS & HERMAN, *supra* note 4, at 12 tbl.5.

144. Compare U.S. CENSUS BUREAU, *supra* note 14, tbl.2-1, with U.S. CENSUS BUREAU, *supra* note 14, tbls. 2-2, 2-3, 2-4, & 2-5.

145. *Id.*

146. PROJECT VOTE, *supra* note 1, at 2.

147. See discussion *supra* Part I.E.

representative electorate. The population of the United States is becoming more racially and ethnically diverse.¹⁴⁸ Given the current changing demographics of the country, particular attention must be paid to efforts to increase registration and participation among minority citizens. If population increases among minority groups continue to outpace their registration and voting rates, our democracy will become even less representative of the actual racial and ethnic make-up of the country. In the United States today, there are nearly 8.9 million sixteen- and seventeen-year citizens of whom more than 3.8 million are non-white.¹⁴⁹ Thus, working to increase registration rates among young people may also serve to increase the registration rates of previously under-represented minority groups and lead to a more representative electorate.

An additional way to improve voter registration rates of racial minorities is to focus on increasing voter registration opportunities for young people from the lowest socioeconomic groups. Race and socio-economic status are highly correlated in the United States; members of racial minorities are significantly more likely to come from lower socioeconomic backgrounds. According to US Census Bureau data, 11.8% of Asian-Americans, 23.2% of Hispanics, and 24.7% of African-Americans live below the poverty line as compared to only 8.6% of Whites.¹⁵⁰ As a result, young eligible minority voters are more likely to be of low socioeconomic status and thus also face many of the barriers that make poor Americans less likely to register to vote.

Poverty is highly correlated with low voter participation. In 2006, forty percent of all citizens from households earning less than twenty-five thousand dollars a year were unregistered.¹⁵¹ In comparison, only twenty percent of those from households making over one hundred thousand dollars or more were unregistered.¹⁵² Economic hardship may cause an eligible voter to miss a registration deadline, face additional difficulty accessing a polling place on Election Day, or change a person's priorities so that voting is not

148. For example, "the population of Hispanic or Latino origin is projected to steadily increase as a percentage of the total U.S. population through 2050, rising from 12.6% in 2000 . . . to 30.2% in 2050." SHRESTHA, *supra* note 50, at 22.

149. PROJECT VOTE, *supra* note 1, at 2.

150. U.S. CENSUS BUREAU, PEOPLE AND FAMILIES IN POVERTY BY SELECTED CHARACTERISTICS: 2008 AND 2009, <http://www.census.gov/hhes/www/poverty/data/incpovhlth/2009/table4.pdf>.

151. HESS & NOVAKOWSKI, *supra* note 124, at 1.

152. *Id.* at 3.

a primary concern.¹⁵³ As a result of the particular hardships associated with poverty, “neighborhoods characterized by high levels of poverty are unlikely to provide positive stimuli that might spur participation” among young people.¹⁵⁴ Young people from the lowest socioeconomic strata are the least likely to participate in elections.¹⁵⁵ Poverty may also compound other negative effects on voter participation. For example, “the impact of having a nonvoting parent may be much greater when living in a very disadvantaged community than in an affluent suburb.”¹⁵⁶ Reforms such as pre-registration that focus on improving the registration process are especially likely to lead to a reduction in income-based political inequality and are thus a good tool to increase the participation rate of the poorest Americans.¹⁵⁷

C. *The Limited Financial Impact of Pre-Registration*

Another benefit of a national pre-registration law is that it would be inexpensive to implement. The most significant cost for a state opting to lower the registration age is to ensure that the computer technology controlling the statewide voter registration list is up to date and will allow for “pending” registration files. Many states, particularly those that allow citizens who will be eighteen at the time of the next election to register in advance already have this technological capability.¹⁵⁸ For these states pre-registration will add no additional costs.

Additionally, in some states the voter registration form includes an oath that requires the signer to attest that they are eighteen years of age and eligible to vote.¹⁵⁹ In these states, redesigning and reprinting the voter registration form so that the language allows for sixteen- and seventeen-year-olds to attest that they are of legal age to register would create a small cost. Currently, states must periodically reprint their voter registration form, and many now

153. Julianna Sandell Pacheco & Eric Plutzer, *Political Participation and Cumulative Disadvantage: The Impact of Economic and Social Hardship on Young Citizens*, 64 J. Soc. Issues, 571, 576 (2008).

154. *Id.*

155. Strate, *supra* note 25, at 450.

156. Pacheco & Plutzer, *supra* note 153, at 578.

157. Elizabeth Rigby & Melanie J. Springer, *Does Electoral Reform Increase (or Decrease) Political Equality?*, 64 POL. RES. Q. 420 (2011).

158. See, e.g., *Edelman v. State*, 160 Wash. App. 294 (2011); FAIRVOTE, *supra* note 32.

159. *North Carolina Absentee Voter Guide*, LONG DISTANCE VOTER (Oct. 25, 2011), http://www.longdistancevoter.org/files/voter_forms/NorthCarolina_voterreg_english.pdf; *Oklahoma Absentee Voter Guide*, LONG DISTANCE VOTER (Oct. 25, 2011), http://www.longdistancevoter.org/files/voter_forms/Oklahoma_voterreg_english.pdf.

make their form available online for the registrant to print, so updating this form would not be a significant cost for states to bear. The Maryland legislature, for example, estimated that implementing pre-registration would cost the state less than ten thousand dollars, the entirety of which would be spent on reprinting new voter registration forms.¹⁶⁰

While pre-registration may require some small up-front costs for states, allowing sixteen- and seventeen-year-olds to register may actually reduce the overall costs of election administration. Typically, the largest increases in registration occur before major elections, particularly Presidential elections. Under the current registration system, election officials receive a large number of registration applications right before the registration deadline. Many of these new registrants are citizens who have recently turned eighteen or will be eighteen by the time of the election. In order to combat the “the chaos of private, partisan voter registration, which can swamp boards of canvassers in the run-up to the voter registration deadline,”¹⁶¹ election offices are frequently forced to pay overtime wages or hire additional staff. For example, Franklin County, Georgia, spent over one million dollars in a single election on seasonal and overtime workers to handle the “last-minute deluge of registration applications.”¹⁶² A pre-registration law, in contrast, would allow first time voters to register as soon as they become eligible, evening out the number of applications received throughout the year and lowering the cost of processing them before a registration deadline.¹⁶³

Pre-registration may also reduce the number of voters who rely on election-day registration. In election-day registration states, voters who were not registered by the registration deadline may register and vote on the same day. This process often increases lines at the polling place and forces election officials to process

160. DEP'T OF LEGISLATIVE SERV., SENATE BILL 292 FISCAL AND POLICY NOTE (2010), http://mlis.state.md.us/2010rs/fnotes/bil_0002/sb0292.pdf.

161. PROJECT VOTE, *supra* note 1, at 4 (quoting Senate testimony of director of FairVote Rhode Island, Ari Savitzky, on behalf of S2081); *see also* Kate Zernike & Ford Fessenden, *As Deadlines Hit, Rolls of Voters Show Big Surge*, N.Y. TIMES, (Oct. 4, 2004), *available at* http://www.nytimes.com/2004/10/04/politics/campaign/04vote.html?_r=1 (In Cleveland, the Cuyahoga County Board of Elections has spent \$200,000 on temporary workers this year to deal with a wave of 230,000 new registrations.).

162. *The System Wastes Resources*, COMMITTEE TO MODERNIZE VOTER REGISTRATION, <http://www.modernizeregistration.org/the-case/the-system-wastes-resources/> (last visited Jan. 15, 2011); *see also* David Becker & John Lindback, *Voter Registration Modernization*, THE PEW CENTER ON THE STATES, *available at* <http://www.ncsl.org/Portals/1/Documents/legismgt/becker.pdf>.

163. Additionally, local election officials could coordinate with school districts to ensure that high school registration drives within a particular electorate are conducted on a staggered basis, so as to provide an even number of applications throughout the year and avoid a rush before the registration deadline.

numerous registrations on or after Election Day. Many first time voters rely on election-day registration having missed the registration deadline because of their unfamiliarity with the electoral process.¹⁶⁴ However, allowing sixteen- and seventeen-year-olds to register to vote throughout the year will provide first-time voters with more time and assistance with registering and will likely also decrease the number of potential voters who are forced to rely on election-day registration.

Pre-registration will also decrease the need for additional, often costly, registration drives run by private organizations and political campaigns.¹⁶⁵ Pre-registration provides an efficient way to take advantage of the increased publicity and private resources dedicated to registration that accompany elections. Particularly during presidential election years, sixteen- and seventeen-year-olds who are not yet eligible to vote may still be motivated to register. For example, Florida saw a significant increase in the number of sixteen- and seventeen-year-olds pre-registering during 2008 because of general interest surrounding the presidential election. In fact, in Florida “a presidential election is the primary motivator for youth preregistrations” and numbers of pre-registrants peak significantly both before and in the aftermath of a presidential election.¹⁶⁶ There is no additional cost if sixteen- and seventeen-year-olds are allowed to register, as they can simply participate in the existing registration drives that are conducted during major elections. Young people who register during a presidential election will already be registered and eligible to vote in the mid-term elections, a time when less attention and fewer resources are usually dedicated to youth registration.

D. Pre-Registration and Youth Mobility

One frequent criticism of proposed pre-registration laws is that young people will move frequently between the time that they pre-register and the time that they turn eighteen. If this were the case, a pre-registration law would be highly inefficient as young voters would need to register again at their new address after previously pre-registering.¹⁶⁷ However, data indicate that young people do not

164. McDonald & Thornburg, *supra* note 60, at 558.

165. See *supra* Part I.D.

166. McDONALD, *supra* note 5, at 22.

167. Election officials in Hawaii have incorrectly relied on this reasoning to explain why they have not actively encouraged young people to take advantage of the state's pre-registration law. *Id.* at 42.

move as frequently as opponents might imagine,¹⁶⁸ and these concerns have not come to fruition in the states that have adopted pre-registration. Instead, a “substantial number of persons who preregister remain on the voter registration rolls for a substantial period of time after they become of voting age and are not simply purged after one or two elections.”¹⁶⁹ In Hawaii, only twelve percent of all pre-registrants were purged from the voter rolls because of incorrect addresses within five years, and in Florida only ten percent were purged within four years.¹⁷⁰ In fact, in Florida, state election officials reported that pre-registrants were purged from the voter rolls for changed addresses at rates only slightly higher than those who registered after the age of eighteen.¹⁷¹

Certainly, some voters who pre-register will change addresses, particularly those who move to attend college or join the military.¹⁷² However, some of these pre-registrants may wish to maintain ties to their community and continue to vote in their original place of residency. It has been estimated that as many as eighty percent of students who leave their home state for college and vote do so by absentee ballot by remaining registered in their home state.¹⁷³ The onerous HAVA requirement that all citizens must vote in person for the first time if they registered by mail is particularly problematic for young people.¹⁷⁴ Thus, those who turn eighteen

168. For example, a California Department of Education study on student mobility determined that only nine percent of all elementary and high school students moved during the 2004–2005 school year. *Empowering California's Youth: A Proposal Allowing Voters to Pre-Register at Age 16*, NEW AM. FOUND., www.newamerica.net/files/Pre-Registration%20at%20Age%2016.pdf.

169. McDONALD, *supra* note 5, at 24.

170. *Id.* at 23, 42.

171. McDonald & Thornburg, *supra* note 60, at 567. (“Young people who preregister thus appear to remain on the voter registration rolls at rates comparable to other registrants, and are not simply transients who will disappear once they graduate from high school.”).

172. One way to address concerns that pre-registration will be inefficient because of pre-registrants moving between the time of their initial registration and the time they become legally eligible to vote, is for all election offices to send a notice to pre-registrants on their eighteenth birthday indicating that they are now a registered voter. Such follow up once a pre-registrant turns eighteen would both help to remind registered voters of their civic obligation and assist election officials in identifying any pre-registrants who have changed address since their initial registration so that the elections officials may update the voter registration rolls and remain HAVA compliant.

173. FAIRVOTE RHODE ISLAND, 10 GREAT REASONS TO SUPPORT YOUTH PRE-REGISTRATION IN RHODE ISLAND (Oct. 11, 2007), <http://www.fairvote.org/tracker/?page=2159>. This is especially true of students who come from swing states. Kim Castle, Janice Levy & Michael Peshkin, *Local and Absentee Voter Registration Drives on a College Campus*, (The Ctr. for Info. & Research on Civic Learning & Engagement, Paper No. 66, 2009), available at http://www.civicyouth.org/PopUps/FactSheets/66_Castle_Levy_Peshkin.pdf.

174. 42 U.S.C. § 15483(b) (2006).

while away from their place of residence must either return home to register or vote in person. If these individuals were able to pre-register in person before leaving home, they would be automatically registered at age eighteen and able to request an absentee ballot. Additionally, even for those young people who do change addresses, the opportunity to pre-register will have increased their familiarity with the registration process and may make them more likely to successfully re-register in their new location.

E. Political Feasibility

Pre-registration—particularly compared to other proposed election reforms such as national registration—has the advantage of being politically feasible. However, there are still some obstacles that must be overcome before a national pre-registration law can become a reality.

First, if the federal pre-registration law does not provide funding for states to cover the costs of adoption it is likely to face significant political opposition—particularly during the current period of economic hardship. Even if passed by Congress, an unfunded pre-registration law may face legal challenges by the states, similar to NVRA cases discussed in Part II. In contrast, Congress provided the states with financial assistance to meet the requirements of the HAVA, particularly to purchase new electronic voting machines and to comply with disability access requirements.¹⁷⁵ As a result, HAVA was not the subject of legal challenges.

Legal challenges to pre-registration by the states are unlikely to be successful, for the reasons discussed in Part II. Additionally, Congress is not required to provide funding to the states if it mandates pre-registration.¹⁷⁶ Under no doctrine is an act of Congress unconstitutional simply because it contains “unfunded mandates.”¹⁷⁷ In *Condon v. Reno*, the court noted that Congress provides the state agencies that are required by NVRA to offer voter registration with “hundreds of millions of dollars” and thus it was well within Congress’ power to direct that some of that money be spent on voter registration.¹⁷⁸ An unfunded national pre-registration law would likely be upheld on a similar basis. Given the failure of legal

175. 42 U.S.C. § 15301 (2006).

176. See Patricia T. Northrop, *The Constitutional Insignificance of Funding for Federal Mandates*, 46 DUKE L.J. 903 (1997).

177. *Id.*

178. *Condon v. Reno*, 913 F. Supp. 946, 966 (D.S.C. 1995).

challenges to NVRA by states on the basis of the lack of funding,¹⁷⁹ it is unlikely that similar suits challenging Congress' power to enact pre-registration laws without funding would be successful. However, because pre-registration is so inexpensive to implement, and may actually help to reduce costs in the long-term, if Congress enacts pre-registration to avoid both political opposition and legal challenges it may simply opt to provide funding to the states.

A further potential barrier to the adoption of a federal pre-registration law is the perception that a pre-registration law will favor one party over the other and thus make it less likely that a national pre-registration law could achieve bipartisan support in Congress. In recent decades, a majority of young voters voted for Democrats.¹⁸⁰ If pre-registration continues to be successful in the states in which it has been adopted and increases the ranks of young voters, the Democratic Party may receive a majority of these votes. However, not all young voters will vote for Democrats and in some districts a majority will favor Republicans. Whether pre-registration favors one party over the other will be highly dependent on the political make-up of the specific jurisdiction. Further, there is evidence to suggest that young people's affiliation with the Democratic Party is decreasing. Since 2008, the number of young voters who identify as Democrats has fallen.¹⁸¹ If this trend continues, potential political opposition to pre-registration by Republicans based on fears of assisting Democrats may decrease.

Certainly, most of the states that have already adopted pre-registration are safely Democratic: for example, Hawaii, Maryland, Rhode Island, and California. However, despite the possibility that increasing youth participation will improve the electoral chances of one party over the other, this political concern has not proven a barrier to adoption in several states in which neither party has political dominance. For example, Florida is a closely contested state and yet the divided legislature has repeatedly expanded pre-registration.¹⁸² Even though large numbers of young Floridians

179. *E.g.*, *Ass'n of Cmty. Orgs. for Reform Now v. Miller*, 129 F.3d 833 (6th Cir. 1997) (Michigan governor issued executive order halting implementation of state law to comply with NVRA until federal funds were made available).

180. *See, e.g.*, Scott Keeter et al., *Young Voters in the 2008 Election*, PEW RES. CENTER (Nov. 12, 2008), <http://pewresearch.org/pubs/1031/young-voters-in-the-2008-election> (noting that sixty-six percent of eighteen- to twenty-nine-year-olds voted for a Democrat for president in 2008); *Youth Voting Stats*, YOUNG DEMOCRATS OF AMERICA, <http://www.yda.org/tools/19/youth-statistics> (last visited Feb. 3, 2011) ("[Y]oung people supported Democrats by a 2 to 1 margin [in 2008]. [O]f the 2.2 million new young voters [in 2008], two million voted for a Democrat for president.").

181. Kirk Johnson, *Fewer Young Voters See Themselves as Democrats*, N.Y. TIMES, Sept. 2, 2010, at A1, available at <http://www.nytimes.com/2010/09/03/us/politics/03students.html>.

182. McDONALD, *supra* note 5, at 8.

have registered through the program—particularly during the 2008 election—likely helping Democratic candidates, no attempt has been made by the legislature to repeal the law. Similarly, in North Carolina, a state that was closely contested in the 2008 Presidential election, a pre-registration law receiving bi-partisan support was passed in August 2009 and went into effect before the 2010 mid-term election.¹⁸³ These experiences indicate that pre-registration laws are politically feasible even in divided legislatures.

In recent years Congress has been largely uninterested in wide-scale election reform. This is especially true during the 112th Congress because of divided government and Congress' current focus on the economy.¹⁸⁴ However, the fact that pre-registration has already proven to be politically feasible in politically contested states makes it a strong candidate to be the first in a series of national reforms. Although pre-registration is a smaller reform targeted at a specific population, it is currently more politically feasible than larger nationwide electoral reforms such as uniform national registration laws. Further, the success of pre-registration laws may encourage the passage of other electoral reforms. Thus pre-registration may have an important role to play as part of an incremental strategy towards improving the overall registration scheme.

CONCLUSION

Lagging youth participation rates threaten participatory democracy and undermine the representation of young people's interests in elected government. A national pre-registration law has significant potential to address these concerns. Existing pre-registration laws are correlated with increased youth voter participation and, as a result, a national law could expand these benefits nationwide. Further, given that voting is habit forming, increasing youth voter turnout now has the potential to increase overall turnout over time.

A national pre-registration law is a realistic option because it is both constitutional and politically viable. Furthermore, a national pre-registration law is highly feasible and has the significant benefit of being able to be largely implemented

183. Caitlin Johnson, *N.C. Initiative Allows Voter Pre-Registration*, THE CHRONICLE, Oct. 5, 2010, available at <http://dukechronicle.com/article/nc-initiative-allows-voter-pre-registration>.

184. In the 112th Congress, Democrats control the Senate, and Republicans control the House of Representatives.

through the already-existing NVRA apparatus. Pre-registration also promises to address lagging participation rates among poor and minority citizens. As a result, pre-registration is a useful tool to increase the racial and socioeconomic diversity of the registered electorate.

Certainly, pre-registration will not solve all of the registration and participation woes of the United States. However, even a small percentage increase in the number of registered young adults would translate to millions more registered voters. Thus, Congress should work to enhance participatory democracy and pass a national youth pre-registration law.