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Courting Prom Night Voters

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COURTING PROM NIGHT VOTERS

by: Spencer R. Lockwood*

ABSTRACT

A creature of state law, voter registration is a point of national contention and a subject that frequents partisan debate. Federal legislation—meant to unsew a patchwork quilt of discriminatory practices against voters—complicated the voter registration process. States have changed their voter registration laws in the wake of Supreme Court opinions and prolonged litigation. But an opportunity endures for states to take further accountability for their younger voting-age populations without more federal intervention. By amending their election codes to require that high school graduates choose whether to register to vote, states can act as legislative laboratories and court their prom night voters to guarantee the fundamental right to vote.

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I. INTRODUCTION

“But the Hebrew word, the word timshel—‘Thou mayest’—that gives a choice. It might be the most important word in the world. That

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says the way is open. That throws it right back on a man. For if 'Thou mayest'—it is also true that 'Thou mayest not.'"¹

Over the last 60 years, the federal government has attempted to reform the policies and procedures surrounding the fundamental right to vote. Through the Voting Rights Act (“VRA”) of 1965,² the National Voter Registration Act (“Motor Voter Law”) of 1993,³ and the Help America Vote Act (“HAVA”) of 2002,⁴ Americans saw increased federal oversight and regulation of the democratic process. These efforts led to voluminous and contentious voting rights litigation.⁵ But over time, youth-voter registration has remained depressed⁶ as officials have used federal legislation as weapons of mass voter disenfranchisement.⁷ And if we are to preserve the vigor of our participatory democracy without increased federal intrusion, states must take up the banner of increasing youth turnout. Specifically, states

1. JOHN STEINBECK, *EAST OF EDEN* 303 (1992).

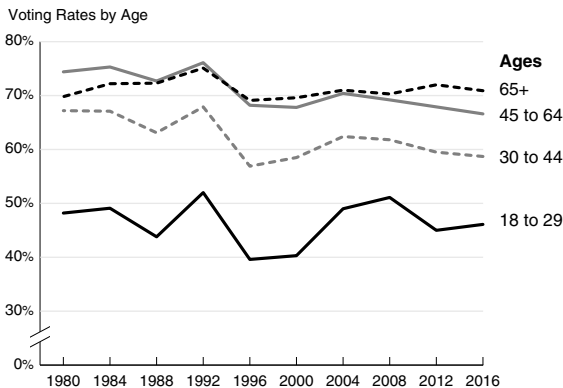
2. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (prior to any amendment).

3. National Voter Registration Act of 1993, Pub. L. No. 103-31, 107 Stat. 77.

4. Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666.

5. See, e.g., *Thornburg v. Gingles*, 478 U.S. 30 (1986).

6. The following graph shows voting trends by age group from 1980 to 2016:



More Millennials Vote: Only Group to See Voter Turnout Increase Since 2012, U.S. CENSUS BUREAU (May 10, 2017), <https://www.census.gov/library/visualizations/2017/comm/voting-rates-age.html> [<https://perma.cc/7NE6-FMWQ>] [hereinafter *More Millennials Vote*]. For the 2020 election cycle, commentators largely agree that youth-voter participation increased. See, e.g., Tucker C. Toole, *With Their Future at a Crossroads, Young Americans Are Shattering Voting Records*, NAT'L GEOGRAPHIC (Oct. 30, 2020), <https://www.nationalgeographic.com/history/2020/10/with-future-at-crossroads-young-americans-voting-record-numbers/#close> [<https://perma.cc/U7MP-XP6>]; Rick Jervis, *Despite Obstacles, Young Voters Are 'Raising Hell' with Historic Early Voting Turnout*, USA TODAY, <https://www.usatoday.com/story/news/politics/elections/2020/10/31/young-voters-suppression-tactics-early-voting-election-record-numbers/6071293002/> (Nov. 1, 2020, 10:36 PM) [<https://perma.cc/5FSX-U4FH>].

7. See, e.g., CAROL ANDERSON, *ONE PERSON, NO VOTE: HOW VOTER SUPPRESSION IS DESTROYING OUR DEMOCRACY* 51–52 (2018).

must lead the charge to increase registration among newly minted “prom night voters,” otherwise known as high school seniors. This Comment proposes a widespread high school graduate voter registration plan. Part II briefly discusses the various federal attempts at voter registration reform and the legal aftermath following each law’s passage. Then, Part III demonstrates why the youth vote is important in our constitutional republic and why youth-voter registration is best placed in high schools’ hands. Finally, Part IV outlines how states can amend their election codes to require high school students to opt in to or opt out of registering to vote if they wish to graduate. This federalist and legislative antidote ensures that states’ youth are heard and fulfills the constitutional promise of the right to vote.

II. FEDERAL LEGISLATION AND VOTER REGISTRATION

“[A]n exclusive power of regulating elections for the national government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy.”

—Alexander Hamilton⁸

Through the VRA, Motor Voter Law, and HAVA, the federal government increased its oversight and regulation of the democratic process and altered states’ voter registration laws.⁹ While “voter registration today is mostly a creature of state law,”¹⁰ the VRA, Motor Voter Law, and HAVA serve as federal bumpers for a kind of election-administration-related game of bowling. These laws often highlight how pieces of federal voting rights legislation have fought against the morally backward backdrop of discriminatory voter registration systems. Officials across the country have undoubtedly used voter registration systems “to keep eligible citizens from voting.”¹¹ But that is not to say that registration laws—both federal and state—fail to continue to serve useful purposes such as the ever-important job of ensuring that only eligible people vote.¹² This Part briefly discusses the substance of each federal law, the litigation and court decisions that shaped the voter registration bumpers as we know them

8. THE FEDERALIST NO. 59, at 397–98 (Alexander Hamilton) (The George Macy Cos. 1945).

9. I note here that the Twenty-Sixth Amendment’s effects are not lost on me. See U.S. CONST. amend. XXVI, § 1 (“The right of citizens of the United States, who are [18] years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.”). Coincidentally even, its enactment falls well within the 60-year period I’ve begun to discuss. And this Comment is likely possible because of its constitutional guarantee—but for purposes of this Comment, any discussion will be in appreciation of its promise and allowance of *who* can register.

10. Daniel P. Tokaji, *Voter Registration and Election Reform*, 17 WM. & MARY BILL RTS. J. 453, 461 (2008).

11. *Id.*

12. *Id.* at 456.

today, and each law's long-term effects on voter registration and youth turnout.

A. *A Brief History of the Voting Rights Act of 1965*

The VRA attempted to dismantle systems of Black voter disenfranchisement; the law “addressed the system of discretionary and unequal voter registration practices that had kept [Black voters] off the rolls throughout the South.”¹³ The effort to pass the VRA began on March 7, 1964—what would later be termed “Bloody Sunday”—when 25-year-old John Lewis¹⁴ led a 600-person march over the Alabama River on Selma's Edmund Pettus Bridge; this march would galvanize the country for voting rights reform.¹⁵ Just a few months prior, Congress passed the landmark Civil Rights Act of 1964, but the Act's immediate effects proved disappointing for civil rights activists across the South.¹⁶ President Lyndon Baines Johnson, facing politically worrisome criticism for his failure to send federal marshals to protect marchers, reacted by telling religious and civil rights leaders that any federal law enforcement action in Selma would have destroyed his administration's chances of passing a voting rights bill.¹⁷ He then asked his Attorney General, Nicholas Katzenbach, to write the “god-damnedest toughest voting bill he could.”¹⁸ Shortly thereafter, President Johnson, who saw his office as a “great moral instrument,” stood before a joint session of Congress in the Capitol Chamber and announced his intention to sign a piece of landmark legislation: the VRA.¹⁹

The law was unlike its predecessors, which were thought to have only minimal effects on the number of people registered to vote.²⁰

13. *Id.* at 462.

14. For readers' awareness and out of respect for the late Congressman's memory, I should say the Honorable—always youthful and passionate—John Lewis.

15. ARI BERMAN, *GIVE US THE BALLOT: THE MODERN STRUGGLE FOR VOTING RIGHTS IN AMERICA* 4–5, 21–22 (2015). “We're marching today to dramatize to the nation and to the world,” said the then-chairman of the Student Nonviolent Coordinating Committee John Lewis, “that hundreds and thousands of Negro citizens of Alabama, particularly here in the Black Belt area, are denied the right to vote.” *Id.* at 5.

16. *See id.* at 18 (noting, among other events, the systemic refusal in the South to register prospective Black voters); *see also id.* (Exacted Dr. Martin Luther King, Jr.: “Give us the ballot.”).

17. *Id.* at 26.

18. Tokaji, *supra* note 10, at 463.

19. BERMAN, *supra* note 15, at 27.

20. *Id.* at 33 (“The previous civil rights acts of 1957, 1960, and 1964 . . . rel[ie]d on obstructionist southern courts [for] adjudicat[ion of] voting rights cases on a lengthy case-by-case basis. . . . From 1958 to 1964 the number of African-Americans registered rose by only [2%] in Mississippi and [5%] in Alabama.”). President Johnson played no small role in pushing civil rights leaders to take full advantage of the VRA. *See id.* at 37. He told John Lewis: “Now John, you've got to go back and get all those folks registered[.] . . . You've got to go back and get those boys by the balls. Just like a

Substantively, it prohibited disenfranchisers like literacy tests.²¹ It authorized the use of federal examiners who would travel to areas known for voter discrimination so that they could monitor elections and register voters.²² The examiners saw incredible success.²³ Under section 5, moreover, the law compelled jurisdictions to clear (or “preclear,” as it would later become known) changes to their voting laws with a judicial panel or the U.S. attorney general.²⁴ This provision was crucial to stopping states from violating members of minority groups’ rights to the ballot box.²⁵ Initially, the law was a rousing success, as it helped the Black population throughout the South register to vote.²⁶ Within two years, “Black registration in covered southern states increased from 29.3% to 52.1%.”²⁷ Ultimately, and despite its initial achievements, the VRA’s vitality withered with age.

While congressional reauthorizations and amendments shaped the VRA with time, perhaps the most consequential changes occurred not through legislative action but through litigation. Congress reauthorized the law in 1970, 1975, 1982, and 2006.²⁸ The most notable amendments were the language assistance provisions Congress passed in 1975.²⁹ But no number of congressional amendments matched the impact of the Supreme Court’s holdings.³⁰ For example, in its 2013 *Shelby County v. Holder* decision, the Court struck down section 5 of the VRA,³¹ holding that the “extensive pattern of discrimination that led the Court to previously uphold”³² it no longer existed—there were

bull gets on top of a cow. You’ve got to get ‘em by the balls and you’ve got to squeeze, squeeze till they hurt.” *Id.*

21. *Id.* at 32.

22. *Id.* at 33.

23. *Id.* at 34.

24. *Id.* at 33; Tokaji, *supra* note 10, at 463.

25. Tokaji, *supra* note 10, at 464.

26. *Id.* (In Mississippi and Alabama “more than half the majority-[B]lack counties . . . had achieved majority-[B]lack electorates.” (quoting James E. Alt, *The Impact of the Voting Rights Act on Black and White Voter Registration in the South*, in QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT, 1965–1990, at 351, 354 (Chandler Davidson & Bernard Grofman eds., 1994))).

27. *Id.* at 464–65 (“More than a half-million [B]lacks were added to the rolls in covered states by the end of 1967.”).

28. Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314; Voting Rights Act Amendment of 1975, Pub. L. No. 94-73, 89 Stat. 400; Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 131; Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577.

29. Tokaji, *supra* note 10, at 465 (These provisions helped so-called language minorities that were “effectively excluded from participation in the electoral process.” (quoting 42 U.S.C. § 1973aa-1a(a))).

30. *E.g.*, *City of Mobile v. Bolden*, 446 U.S. 55 (1980); *Karcher v. Daggett*, 462 U.S. 725 (1983); *Shaw v. Reno*, 509 U.S. 630 (1993).

31. *Shelby County v. Holder*, 570 U.S. 529, 557 (2013).

32. *Id.* at 559 (Thomas, J., concurring) (quoting *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 226 (2009) (Thomas, J., concurring in part and dissenting in part)).

no “exceptional or unique”³³ or “pervasive, flagrant, widespread, and rampant”³⁴ circumstances that justified the section’s continued vigor.³⁵ Thus, the VRA’s teeth were shaved down, dulled by a 5-4 Court.³⁶

Undoubtedly, states have adversely reacted to the Court’s decision.³⁷ But *Shelby*’s relative silver lining is that states are mostly unencumbered by federal interference to pave their own paths toward voter reengagement. The *Shelby* Court may have noted that Congress can redraft another section 5-type coverage formula that “speaks to current conditions,”³⁸ but nothing is stopping states from doing their level best to increase access to the ballot box. Plus, it is no secret that passing a bipartisan federal voting rights bill is unrealistic. Illustratively, in March 2021, the Democratic majority in the House of Representatives passed a new voting rights bill, which would, as one Republican lawmaker argued, “put a thumb on the scale of every election in America.”³⁹

President Joe Biden’s administration has made some executive efforts to expand access to voting, but those efforts are mired in political controversy.⁴⁰ This Comment sidesteps that debate—it outlines a federalist proposal that puts the prerogative, the privilege, in the hands of both red and blue states.

B. *A Brief History of the Motor Voter Law*

“[T]he right of citizens of the United States to vote is a fundamental right,” begins the Motor Voter Law, and “it is the duty of the Federal, State, and local governments to promote the exercise of that right.”⁴¹ The law’s first and foremost purpose is “to establish procedures that will increase the number of eligible citizens who register to vote in elections for [f]ederal office.”⁴² In contrast to the VRA’s focus on in-

33. *Id.* at 559 (quoting *id.* at 555 (majority opinion) (internal quotations omitted)).

34. *Id.* at 558 (quoting *id.* at 554 (majority opinion) (internal quotations omitted)).

35. *Id.* at 558.

36. *Id.* at 590 (Ginsburg, J., dissenting) (“Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”).

37. See N.C. State Conf. of NAACP v. McCrory, 831 F.3d 204, 214 (4th Cir. 2016).

38. *Shelby*, 570 U.S. at 557.

39. Peter W. Stevenson, *Here’s What H.R. 1, the House-Passed Voting Rights Bill, Would Do*, WASH. POST, <https://www.washingtonpost.com/politics/2021/03/05/hr1-bill-what-is-it/> (June 2, 2021, 12:44 PM) [<https://perma.cc/S7X7-KA2Q>].

40. See Jennifer Rubin, *Opinion: Biden Shows How Serious He Is About Voting Rights*, WASH. POST, (Mar. 8, 2021, 10:30 AM), https://www.washingtonpost.com/opinions/2021/03/08/biden-shows-how-serious-he-is-about-voting-rights/?utm_campaign=WP_post_most&utm_medium=email&utm_source=newsletter&wpisrc=neoll_most&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-tr%2F306db24%2F604657609d2fda4c8801a534%2F602033199bbc0f73f64560a9%2F50%2F68%2F604657609d2fda4c8801a534 [<https://perma.cc/2Z5L-C27F>].

41. 52 U.S.C. § 20501(a)(1)–(2).

42. *Id.* § 20501(b)(1).

creasing registrants within racial and language minorities, the Motor Voter Law painted the registration landscape with a broader brush; “it was the most extensive federal intervention in state and local registration systems in history.”⁴³ A fresh-faced President Bill Clinton⁴⁴ and a newly elected Congress enacted the bill in 1993 to combat evidence of declining voter turnout.⁴⁵ With its high-minded goals, the Motor Voter Law as signed required (1) location-specific opportunities for state residents to register to vote, (2) some standardization of registering by mail, and (3) “regulation of the process by which state and local entities maintain their voting lists.”⁴⁶ Its most noticeable effect gave the Motor Voter Law its semi-alliterative nickname,⁴⁷ as state governments now must provide eligible voters the chance to register or update their registration information at departments of motor vehicles (“DMVs”).⁴⁸

Though the law’s short-term and long-term impacts on people’s ability to register are variable, its use as a method of disenfranchisement is constant. To begin, numbers of registered voters increased by over 3.3 million during the first few years,⁴⁹ amounting to a mere 3.72% national jump.⁵⁰ Note, however, that more than 211 million electors registered to vote for the 2018 election cycle, “an increase of [11%] over the 2014 elections.”⁵¹ Consequently, DMVs were the “most utilized method for registration”⁵²—a testament to the Motor Voter Law’s long-term impact on the accessibility of voter registration. But the more eye-opening, long-term impacts are the consequences the law has on voter rolls. A key provision of the law—which

43. Tokaji, *supra* note 10, at 467. This isn’t to say the law wasn’t intended to pay “particular attention to ‘discriminatory and unfair registration laws and procedures’ that ‘disproportionately harm voter participation by various groups, including racial minorities.’” ANDERSON, *supra* note 7, at 73 (citing National Voter Registration Act of 1993, Pub. L. No. 103-31, § 2(a)(3), 107 Stat. 77 (current version at 52 U.S.C. § 20501(a)(3))).

44. clintonlibrary42, *President Clinton & the Motor Voter Bill Signing*, YOUTUBE (Nov. 1, 2012), https://www.youtube.com/watch?v=VEIH5AIX0Ns&ab_channel=Clintonlibrary42 [<https://perma.cc/MTB4-5Y69>].

45. Tokaji, *supra* note 10, at 467.

46. *Id.* at 468.

47. I crave a “Motor Voter” world.

48. *See id.* (noting that “[t]his requirement, however, is just one of several designed to make it easier to register to vote. The NVRA also requires that registration opportunities be made available at public assistance offices and at offices providing state-funded services to people with disabilities.”).

49. ANDERSON, *supra* note 7, at 73.

50. Tokaji, *supra* note 10, at 469.

51. U.S. ELECTION ASSISTANCE COMM’N, ELECTION ADMINISTRATION AND VOTING SURVEY: 2018 COMPREHENSIVE REPORT: A REPORT TO THE 116TH CONGRESS ii (2019), https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf [<https://perma.cc/66TY-ZEEU>].

52. *Id.*

was once thought to be rather impotent⁵³—requires each state to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters.”⁵⁴ Names of voter registrants are removed for various reasons, most notably a change of address and electors’ failure to respond to confirm their address changes.⁵⁵ The result of this provision became popularly known as “voter purges.”⁵⁶ From 2011 to 2016, Ohio Secretary of State Jon Husted purged two million people from the rolls.⁵⁷ In Georgia, Secretary of State Brian Kemp purged 732,800 voters between 2012 and 2014.⁵⁸ Perhaps strong-armed enforcement of the law ran afoul of its purpose.⁵⁹

To date, the law has generated notable litigation.⁶⁰ Initially, litigation focused on those states that refused to implement the Motor Voter Law’s mandates.⁶¹ But emblematic of the Motor Voter Law’s effect on state governments is the Supreme Court’s decision in *Arizona v. Inter Tribal Council of Arizona, Inc.*⁶² At issue in the case was an Arizona law requiring voter registrants to provide “concrete evidence of citizenship.”⁶³ Because the Motor Voter Law “require[d] States to ‘accept and use’ a uniform federal form to register voters for federal elections,” the law “preclude[d] Arizona from requiring a Federal Form applicant to submit information beyond that required by the form itself.”⁶⁴ Yet again, the impact of federal intervention in election law limited states’ abilities to change their laws as they might see fit.

53. ANDERSON, *supra* note 7, at 73–74 (noting that the law’s requirement of “routine maintenance . . . of the voter rolls . . . sounded so reasonable and so mundane” — but it wasn’t).

54. 52 U.S.C. § 20507(a)(4).

55. *Id.* § 20507(a)–(d).

56. *Voter Purges*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/issues/ensure-every-american-can-vote/vote-suppression/voter-purges> [<https://perma.cc/6VUW-5XBF>]; *cf.* THE PURGE (Blumhouse Productions 2013).

57. ANDERSON, *supra* note 7, at 75 (“Most important, 1.2 million of those [purged were] eliminated solely because they voted infrequently.”).

58. *Id.* at 77–78.

59. Tokaji, *supra* note 10, at 480 (“Although the [Department of Justice] has been aggressive in forcing states to adopt practices that will remove duplicates and voters believed to be ineligible, it has been much less active in protecting eligible voters from wrongful purges.”).

60. For a list that hopefully updates as U.S.-initiated litigation proliferates, see *Cases Raising Claims Under the National Voter Registration Act*, U.S. DEP’T JUST., <https://www.justice.gov/crt/cases-raising-claims-under-national-voter-registration-act> [<https://perma.cc/CFG2-7J8K>].

61. Robert A. Kengle, *To Accept or to Reject: Arizona v. Inter Tribal Council of Arizona, the Elections Clause, and the National Voter Registration Act of 1993*, 57 How. L.J. 759, 774 (2014).

62. 570 U.S. 1 (2013).

63. *Id.* at 5.

64. *Id.* at 4, 20.

Though the Motor Voter Law preempted states from enacting certain voter qualifications, the *Inter Tribal Council* case is federalism in action.⁶⁵ And while Congress retains significant sovereignty over the administration of federal elections, there remains a need for the states to innovate. Arizona's controversial "concrete evidence of citizenship" requirement may not be the best example of such innovation,⁶⁶ but it is demonstrative of the impact regulations can have on voters.⁶⁷ A far more inclusive, and much less controversial, innovation is the compulsory choice youth-voter registration plan.

C. *A Brief History of the Help America Vote Act of 2002*

After the electoral fiasco of the 2000 election cycle,⁶⁸ the American public's confidence in the nation's voting systems was at an all-time low.⁶⁹ HAVA was designed to avoid another of what many thought was an electoral crisis.⁷⁰ Legislators were influenced by a report that found "voter registration mix-ups were probably the biggest source of lost votes in 2000."⁷¹ As such, the law allotted \$3.9 billion for states to overhaul and reform their election systems,⁷² and it established the Election Assistance Commission to help states determine how to allocate the funds.⁷³ Despite the new money, voters still faced the same challenges.⁷⁴

Registration-wise, HAVA constructed an obstacle for voters in every state⁷⁵: Even though "as many as 19 million potential voters na-

65. For an in-depth discussion on the federalist effects of *Inter Tribal Council*, see generally Franita Tolson, *The Spectrum of Congressional Authority over Elections*, 99 B.U. L. REV. 317 (2019).

66. *Inter Tribal Council of Ariz.*, 570 U.S. at 6 (noting that the Arizona legislature designed the law "in part 'to combat voter fraud by requiring voters to present . . . identification when they vote on election day'" (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 2 (2006) (per curiam)); see also *id.* at 26 ("Congressional legislation of voter qualifications was not part of the Framers' design.") (Thomas, J., dissenting).

67. See, e.g., Scott Lemieux, *Arizona Versus the Right to Vote*, AM. PROSPECT (Mar. 19, 2013), <https://prospect.org/power/arizona-versus-right-vote/> [<https://perma.cc/3E4K-6KBK>] (noting how one Jesus Gonzalez had difficulty registering to vote after "Arizona couldn't verify his naturalization number and erroneously identified his driver's license as belonging to a non-citizen").

68. See *Bush v. Gore*, 531 U.S. 98 (2000).

69. See ANDERSON, *supra* note 7, at 51 ("The nation's concern about the racism and inadequacies that were on full display on November 7, 2000, was real.").

70. See BERMAN, *supra* note 15, at 218. Representative Steny Hoyer said the law would make it "easier to vote" and "harder to cheat." Tokaji, *supra* note 10, at 470.

71. Tokaji, *supra* note 10, at 470–71.

72. BERMAN, *supra* note 15, at 220.

73. *Help America Vote Act*, U.S. ELECTION ASSISTANCE COMM'N, https://www.eac.gov/about_the_eac/help_america_vote_act.aspx [<https://perma.cc/L9PH-BAZV>].

74. See, e.g., BERMAN, *supra* note 15, at 220 (describing, among other qualms, the failure of certain municipalities to purchase an adequate amount of voting machines and avoid long lines at the polls).

75. See ANDERSON, *supra* note 7, at 67.

tionwide did not possess either a driver's license or a state[-]issued photo ID," HAVA required that to-be voters produce some form of ID to vote.⁷⁶ Moreover, it required that a would-be elector list her driver's license number or, in the alternative, the last four digits of her social security number on her voter registration application.⁷⁷

Following the federal intervention, the "floodgates for voter ID laws opened" at the state level.⁷⁸ Even commentators on the right side of the aisle agree that these laws are designed to make voting more difficult⁷⁹—perhaps unnecessarily so.⁸⁰ In 2020, 35 states had laws that requested or required voters "show some form of identification at the polls."⁸¹ Georgia,⁸² Indiana,⁸³ Kansas,⁸⁴ Mississippi,⁸⁵ Tennessee,⁸⁶

76. *Id.* at 52 (quoting ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* 284 (2000)). "HAVA does not require *all* voters to provide documentary identification[.]" Tokaji, *supra* note 10, at 473 (emphasis added). Identification is required only for "those who registered by mail and have not previously voted in a federal election in that state." *Id.*

77. 52 U.S.C. § 21083(a)(5)(A)(i).

78. ANDERSON, *supra* note 7, at 63.

79. *See id.* (quoting Ann Coulter, who said "I just think it should be a little more difficult to vote"). For a relatively brief discussion and left-leaning argument on these laws, see Brynna Quillin, *Why Current Voter ID Laws Are Harmful to American Democracy*, KENNEDY SCH. REV. (May 28, 2017), <https://ksr.hkspublications.org/2017/05/28/why-current-voter-id-laws-are-harmful-to-american-democracy/> [<https://perma.cc/EV8L-PHPN>].

80. *See* Justin Levitt, *A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents out of One Billion Ballots Cast*, WASH. POST (Aug. 6, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/> [<https://perma.cc/7TU7-4UZV>]. For purposes of this Comment, the question of whether voter ID laws are beneficial to our electoral system is immaterial. The overarching purpose of this Comment's proposition is to increase voter participation through localized education according to whatever laws a state has enacted. If a state's legislators have enacted some voter ID law, I leave that to the better-recognized legal scholars to criticize or praise—though I do have over 3,500 Facebook friends.

81. *Voter Identification Requirements — Voter ID Laws*, NAT'L CONF. ST. LEGISLATURES (Aug. 9, 2021), <https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> [<https://perma.cc/PJM7-CX3A>] [hereinafter *Voter Identification Requirements*].

82. GA. CODE ANN. § 21-2-417 (2019).

83. IND. CODE ANN. § 3-5-2-40.5 (West, Westlaw through all legis. of 2021 1st Reg. Sess. of 122nd Gen. Assem.); *id.* §§ 3-10-1-7.1, 3-11-8-25.1 (West 2019).

84. KAN. STAT. ANN. §§ 25-2908, 25-3002(b)(8), 8-1324(g)(2) (2017); *id.* § 25-1122 (West, Westlaw through laws enacted during 2021 Reg. Sess. of the Kan. Leg.).

85. MISS. CODE ANN. § 23-15-563 (West, Westlaw through laws from 2021 Reg. Sess.).

86. TENN. CODE ANN. § 2-7-112(c) (2019).

Wisconsin,⁸⁷ Arizona,⁸⁸ North Dakota,⁸⁹ Wyoming,⁹⁰ and Ohio⁹¹ have the strictest voter identification laws of that happy bunch.⁹²

Any litigation that involves states' maintenance of their voter registration lists necessarily implicates both HAVA and the Motor Voter Law.⁹³ After HAVA's passage, the U.S. Department of Justice "has concentrated enforcement on making sure that states have registration systems in place that allow voters' registration information to be matched against driver's license and social security records and that allow the removal of ineligible voters from the rolls."⁹⁴ Again, the federal government exerts tremendous influence on the administration of federal elections within the states, but it ignores efforts to "make sure that eligible voters are included in the voting rolls."⁹⁵

As demonstrated, federal intervention in election law has received the best and worst criticism. But the continued apathy of election reformists toward youth-voter engagement deserves attention. Thus, that high schools require their graduating classes to opt in to or opt out of registering to vote is purposefully outside the reach of federal intervention. This state-specific proposal encourages experimentation.

III. THE IMPORTANCE OF THE YOUTH VOTE

"[T]he right of suffrage is very justly regarded as a fundamental article of republican government."

— James Madison⁹⁶

This Part explains why targeting prom night voters is important. These voters are the bedrock of our constitutional republic. But they are confused. Many commentators point to current laws as sources of young voters' confusion despite their desire for more political engagement. Since political experience at an early age fosters lifelong civic competence, states should be motivated to drive these voters to the polls. And states should do so without relying on social media companies and other third parties to educate high school seniors about their voting rights. That reliance can lead to voter manipulation and even more confusion. Thus, registration is best placed in high schools' hands through a compulsory choice youth voter registration plan. Inci-

87. WIS. STAT. ANN. § 6.79(2) (West 2018).

88. ARIZ. REV. STAT. ANN. § 16-579 (2021).

89. N.D. CENT. CODE ANN. § 16.1-05-07 (2019).

90. WYO. STAT. ANN. §§ 22-1-102(a)(xxxix), 22-2-119 (West, Westlaw through 2021 Gen. Sess. Wyo. Leg.).

91. OHIO REV. CODE ANN. §§ 3503.16(B)(1)(a), 3505.18(A)(1) (2020).

92. *Voter Identification Requirements*, *supra* note 81.

93. Tokaji, *supra* note 10, at 478.

94. *Id.* at 478–79.

95. *Id.* at 479.

96. THE FEDERALIST No. 52, at 352 (James Madison) (The George Macy Cos. 1945).

dentally, high schools provide intimate settings for youth-voter education; they have the tools needed to get the job done right.

A. *The Youth Vote as the Bedrock of Our Constitutional Republic*

It is no secret that youth voters are not engaged in the democratic process relative to other voting age groups.⁹⁷ In 2016, 57% of eligible youth voters abstained from voting compared to 39% of the total population.⁹⁸ Most studies define the youth vote as those who are 18-to-29 or 18-to-34 years of age.⁹⁹ Because newly minted voters—typically voters 18 years of age—make up a fluctuating population,¹⁰⁰ it is difficult, if not impossible, to determine what percentage of these 18-year-old voters abstained from voting. But because the tendency to vote increases with age,¹⁰¹ there is reason to believe that a high percentage of these voters indeed abstain.

Though no definitive reason exists for the absence of youth voters in election cycles, studies point to “[l]egal obstacles, voter confusion, and lack of engagement.”¹⁰² Moreover, 43% of youth voters are “unaware of early voting laws,” and 42% are uncertain about ID requirements.¹⁰³ In effect, youth voters—and the broad spectrum of demographic groups represented in that term of art—remain meaningfully underrepresented in and underserved by our democracy.¹⁰⁴ By imposing a compulsory choice graduation requirement, this Comment is a first step toward reversing those effects¹⁰⁵ and finds a medium ground between the stringent registration laws and preregistration policies mired in controversy.¹⁰⁶ And though statistical

97. See *More Millennials Vote*, *supra* note 6.

98. Emma Greenman et al., *Expanding Voter Registration in High Schools: A Toolkit for Local Leaders*, CTR. FOR POPULAR DEMOCRACY 1 (2019), <https://populardemocracy.org/sites/default/files/High%20School%20Registration%20Toolkit%20Final%20-%20Web.pdf> [<https://perma.cc/523Y-DKL2>].

99. *Growing Voters: A Profile of the Youngest Eligible Voters in 2020*, TUFTS: CIRCLE (July 13, 2020), <https://circle.tufts.edu/latest-research/growing-voters-profile-youngest-eligible-voters-2020> [<https://perma.cc/5UEP-YRGG>] [hereinafter *Growing Voters*].

100. CRISTOBAL DE BREY ET AL., DEP’T OF EDUC., STATUS AND TRENDS IN THE EDUCATION OF RACIAL AND ETHNIC GROUPS 2018 26 (2019), <https://nces.ed.gov/pubs2019/2019038.pdf> [<https://perma.cc/N6EW-WPDY>].

101. *More Millennials Vote*, *supra* note 6.

102. Emma Greenman et al., *supra* note 98, at 1.

103. *Id.*

104. *Id.*

105. *Id.* at 2 (“Comprehensive high school voter registration programs should include clear guidelines for program structure, thorough and supportive training programs for students and administrators, and outreach efforts that promote schools as places to register to vote.”).

106. See Nathaniel Rakich, *What Happened When 2.2 Million People Were Automatically Registered to Vote*, FIVETHIRTYEIGHT (Oct. 10, 2019), <https://fivethirtyeight.com/features/what-happened-when-2-2-million-people-were-automatically-registered-to-vote/> [<https://perma.cc/5ANW-AP7V>].

support suggests initiatives like preregistration laws have short- and long-term positive effects on youth civic engagement,¹⁰⁷ this Comment attempts to sidestep the now-commonplace-preregistration-related partisan debates. It highlights the unique position schools are in to educate a state's youth on its voter laws, which in turn benefits and preserves our constitutional republic.

Low youth participation in the electoral process “leads to a lack of elected representation for young people’s interests.”¹⁰⁸ The natural first step to representation, then, is registration. A strong correlation exists between registration and participation: “In 2008, over [90%] of all registered voters cast ballots. In no state was the rate of participation by registered voters below [80%], and in more than half of all states[,] greater than [90%] of registered voters participated.”¹⁰⁹ But youths’ lack of resources makes their registration and participation especially difficult.¹¹⁰ These voters “frequently have less disposable income” and are “especially likely to have time-consuming obligations” relative to older voters.¹¹¹ Older-voter influence is thus conspicuously juxtaposed against younger voters’ interests with each vote counting just as much.¹¹² If an elected official can rely on depressed youth turnout, her loyalties may disproportionately lie with the older voter.

As voters age, they tend to become more involved in the electoral process¹¹³ though American voter participation lags behind other democratic countries.¹¹⁴ A youth-voter registration plan is therefore an investment in the future. The future is bright: A 2020 study of 18–21-year-old eligible voters found that the age group is “interested and politically active”; a filibuster-proof majority believes “in the power of the youth to create social change.”¹¹⁵ But these men and

107. MICHAEL P. McDONALD, *VOTER PREREGISTRATION PROGRAMS* i, https://cses.org/wp-content/uploads/2019/04/CSES_2009Toronto_McDonald.pdf [<https://perma.cc/N6KZ-LQES>].

108. Ceridwen Cherry, Note, *Increasing Youth Participation: The Case for a National Voter Pre-Registration Law*, 45 U. MICH. J.L. REFORM 481, 483 (2012) (arguing that “the current system of registration, which is confusing and lacks uniformity, is largely to blame for low youth registration rates”).

109. *Id.* at 484 (footnotes omitted).

110. *Id.* at 490.

111. *Id.* at 490–91.

112. See Dan Glickman & Alan Solomont, *Young Voters Are Going to Be Key to Winning 2020*, CNN, <https://www.cnn.com/2020/01/02/opinions/young-voters-midterm-elections-solomont-glickman/index.html> (Jan. 2, 2020, 4:51 PM) [<https://perma.cc/93FH-Z8Z5>].

113. *More Millennials Vote*, *supra* note 6.

114. Drew Desilver, *In Past Elections, U.S. Trailed Most Developed Countries in Voter Turnout*, PEW RSCH. CTR. (Nov. 3, 2020), <https://www.pewresearch.org/fact-tank/2020/11/03/in-past-elections-u-s-trailed-most-developed-countries-in-voter-turnout/> [<https://perma.cc/PLK8-HQ3H>].

115. *Growing Voters*, *supra* note 99.

women of the future believe that political systems are failing to reach them with much-needed voting information.¹¹⁶

Because “political experience that comes with age leads to increasing levels of civic competence and, in turn, to greater voting participation,”¹¹⁷ a compulsory choice youth voter registration plan provides prom night voters with the necessary voting information, reinforces the bedrock of our constitutional republic, and revitalizes Madison’s hallowed words.

B. *Why Youth-Voter Registration Is Best Placed in High Schools’ Hands*

Given the circumstances—ubiquitous media presence, misinformation, and voter isolation—youth-voter registration is best placed in high schools’ hands. High schools are already tasked with preparing their students for the future and have responsibilities that go beyond the classroom, including the task of registering men for the Selective Service.¹¹⁸ Put simply, high schools are well-positioned for taking on this compulsory choice youth voter registration plan.

When the increasingly technological age is combined with the “significant portion of total voter registration [that] is conducted by political campaigns or interest groups,”¹¹⁹ the risk for total youth-voter exploitation and control reaches a breaking point. The number of teenage social media users is at an all-time high, so America’s youth is ever subject to media manipulation.¹²⁰ Some portion of this group believes that “social media distorts reality”;¹²¹ those teens are correct.¹²²

116. *Id.*

117. Cherry, *supra* note 108, at 486 (quotation omitted).

118. *E.g.*, *Selective Service*, HENRIETTA HIGH SCH., https://hs.henrietta-isd.net/campusdirectory/counselor/selective_service [<https://perma.cc/3SFH-LG89>] (“In general, young men can register [with the Selective Service System] . . . at high school.”).

119. Cherry, *supra* note 108, at 486.

120. *Social Media and Teens*, AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY, https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/Social-Media-and-Teens-100.aspx#:~:text=social%20media%20plays%20a%20big,media%20site%20at%20least%20daily (Mar. 2020) [<https://perma.cc/42RD-XLZY>] (“Surveys show that [90%] of teens ages 13 [to] 17 have used social media. Seventy[-]five percent report having at least one active social media profile, and 51% report visiting a social media site at least daily.”); *see also* Monica Anderson & Jingjing Jiang, *Teens, Social Media and Technology 2018*, PEW RSCH. CTR. (May 31, 2018), <https://www.pewresearch.org/internet/2018/05/31/teens-social-media-technology-2018/> [<https://perma.cc/K2DV-8T94>] (“[Forty-five percent] of teens now say they are online on a near-constant basis.”).

121. Anderson & Jiang, *supra* note 120.

122. Sara Brown, *MIT Sloan Research About Social Media, Misinformation, and Elections*, MIT SLOAN SCH. MGMT. (Oct. 5, 2020), <https://mitsloan.mit.edu/ideas-made-to-matter/mit-sloan-research-about-social-media-misinformation-and-elections> [<https://perma.cc/4LAA-HV89>].

And especially in election years, “[f]alse information has become a feature of social media.”¹²³

The combination of the uptick in youth voters’ social media use and the proliferation of misinformation presents a significant reason to transition youth-voter education to the classroom. “False information,” “fake news,” and “misinformation” are identically defined as “entirely fabricated and often partisan content presented as factual.”¹²⁴ With the public increasingly confused by what news is real and what news is fake, politicians and celebrities alike have called on big tech companies like Facebook and Twitter to police information.¹²⁵ Facebook has outright said it will “continue to allow political campaigns to use [its] site to target advertisements to particular slices of the electorate and that it would not police the truthfulness of the messages sent out.”¹²⁶ In response, some companies have gone so far as to develop guides for identifying fake news.¹²⁷ And as social media conglomerates begin to police information,¹²⁸ that great power comes with great responsibility; and with that great responsibility, comes unending opportunity.¹²⁹ All the while, these sites continue to send notifications to their users, alerting them on how to vote, why they should vote, and who they might vote for.¹³⁰ Ultimately, the question comes

123. *Id.*

124. *Id.*

125. See Paige Leskin, *Here Are All the Celebrities Who Have Said They’re Quitting Facebook After Its Very Scandalous Year*, BUS. INSIDER (Dec. 26, 2018, 2:47 PM), <https://www.businessinsider.com/facebook-celebrities-deleting-accounts-2018-12> [<https://perma.cc/4DJG-SRJD>]; Jessica Guynn, *Ted Cruz Threatens to Regulate Facebook, Google and Twitter over Charges of Anti-Conservative Bias*, USA TODAY, <https://www.usatoday.com/story/news/2019/04/10/ted-cruz-threatens-regulate-facebook-twitter-over-alleged-bias/3423095002/> (Apr. 10, 2019, 4:50 PM) [<https://perma.cc/68UK-MYJJ>].

126. Mike Isaac & Cecilia Kang, *Facebook Says It Won’t Back Down from Allowing Lies in Political Ads*, N.Y. TIMES, <https://www.nytimes.com/2020/01/09/technology/facebook-political-ads-lies.html> (Sept. 4, 2020) [<https://perma.cc/5GN5-ULZF>]. For an even scarier development, see Trinity Gomez, *TikTok: The Rise of PoliTikToks’ Appeal to Young Voters*, DAILY TROJAN (Feb. 2, 2021), <https://dailytrojan.com/2021/02/02/tiktok-the-rise-of-politiktoks-appeal-to-young-voters/> [<https://perma.cc/XR94-GF2X>].

127. See, e.g., *A Guide to Misinformation: How to Spot and Combat Fake News*, VERIZON, <https://www.verizon.com/info/technology/fake-news-on-social-media/> [<https://perma.cc/MS4U-HC37>].

128. Ian Carlos Campbell, *YouTube, Twitter, and Facebook Continue Bans over Trump Election Claims*, THE VERGE (Jan. 27, 2021, 1:27 PM), <https://www.theverge.com/2021/1/27/22251338/twitter-facebook-youtube-election-misinformation-ban-trump> [<https://perma.cc/V3C7-JKFS>].

129. See Kalev Leetaru, *Social Media Platforms Will Increasingly Define ‘Truth’*, FORBES (Aug. 24, 2019, 6:32 PM), <https://www.forbes.com/sites/kalevleetaru/2019/08/24/social-media-platforms-will-increasingly-define-truth/?sh=110ea1616427> [<https://perma.cc/A3J3-FVLF>].

130. See, e.g., *Why Am I Seeing Reminders About Voting and Elections on Facebook?*, FACEBOOK, <https://www.facebook.com/help/1519550028302405> [<https://perma.cc/ND93-MHBP>]; Jessica Guynn, *Twitter’s Get-Out-the-Vote Campaign Push Will Be in Your Face Tuesday*, USA TODAY, <https://www.usatoday.com/story/tech/20>

down to whether we are comfortable with America's youth hearing vote-related information from unelected and faceless corporations with international interests that "distort[] reality."¹³¹ The question should be answered with a resounding "no."

Transitioning youth-voter education to high schools is a natural response to the dangers of social media manipulation and social media platforms' increased use of voter-education initiatives. Second only to the home, high schools provide intimate settings for a youth to learn who she is and how she wishes to contribute to her country. But today, "[y]oung adults are also politically inexperienced" and consequently lack "civic competence," defined as the "knowledge and habits of knowledge acquisition relevant to politics."¹³² Moreover, young voters perceive—rightly or wrongly—"that the registration process is difficult," suggesting "certain voters are not only encountering barriers to registering to vote[] but are also sensitive to the implicit message that these barriers send."¹³³ The requirement that high school seniors wishing to graduate must first opt in to or opt out of registering to vote means that teachers do what teachers do best: Teach! Students can receive a real-world civics lesson that goes beyond learning U.S. or state history¹³⁴ and helps tear down barriers to youth political involvement. And as mentioned, with political experience at a young age, youth politicians are more likely to stay involved in the democratic process.

Reminiscent of the VRA, high school principals and other secondary education officials who are deputy voter registrars would act like the examiners who assisted with registration in the South.¹³⁵ Just as the examiners saw incredible success,¹³⁶ so too can high school administrators take up the banner of youth-voter engagement and successfully register large swaths of an electoral population that is up-to-now unengaged with the democratic process. Take Kaitlin Labus's experience:

"I often compare my students to myself. I wonder, 'Did I really know what was going on when I was their age?' But they know what's going on—I hear them discuss it. They're so smart. This policy might

20/09/22/twitter-national-voter-registration-day-campaign-push/5829564002/ (Sept. 22, 2020, 8:48 AM) [<https://perma.cc/9RY9-J65Z>].

131. Anderson & Jiang, *supra* note 120.

132. Cherry, *supra* note 108, at 486 (quoting John M. Strate et al., *Life Span Civic Development and Voting Participation*, 83 AM. POL. SCI. REV. 443, 450 (1989)).

133. R. Michael Alvarez et al., *How Hard Can It Be: Do Citizens Think It Is Difficult to Register to Vote?*, 18 STAN. L. & POL'Y REV. 382, 406 (2007).

134. Cf. *Vanishing Voters: What Works to Increase Voter Turnout Among Young People?*, CHILD TRENDS (Oct. 29, 2002), <https://www.childtrends.org/news-release/vanishing-voters-what-works-to-increase-voter-turnout-among-young-people> [<https://perma.cc/9M5P-6PNV>] ("Civics education in school may also increase voting among young people.").

135. BERMAN, *supra* note 15, at 33.

136. Tokaji, *supra* note 10, at 464.

help them understand how to get involved.” — Kaitlin Labus, math teacher¹³⁷

Ms. Labus’s statement highlights what we feel in our gut: Students want to get engaged in the political conversation.¹³⁸ Here, the American promise of education meets the American promise of democracy. Young people are increasingly paying attention to election cycles.¹³⁹ Significant portions have participated in political demonstrations.¹⁴⁰ Accordingly, high schools can take advantage of the political moment, and teachers can “provide students with the resources necessary to make their own educated decision on the matter.”¹⁴¹

Most high schools are acquainted with implementing large-scale registrations of male students according to the Selective Service System.¹⁴² The Selective Service requires men who are 18-to-25 years of age to enroll in the draft of the U.S. armed forces.¹⁴³ Many high schools have teachers or staff members designated as registrars who help students sign up for the System.¹⁴⁴ The prom night voter registration initiative is a state-by-state equivalent where students can utilize designated high school voter registrars. If high schools can be entrusted with the mass registration of young men who might be responsible for the security of our country, high schools can certainly be entrusted with the voter registration of its graduating seniors.

Thus, high school administrators are in the best position to implement this Comment’s proposal. They are intimately involved in the upbringing of America’s youth. Under the plan, they will be knowledgeable of the state’s specific voter registration laws and will be familiar sources of support for students. Prom night voters want to get involved in the political process, and we should give them the tools to do so.

IV. THE STATE-BY-STATE APPROACH

“High schools . . . are the ideal environments in which to introduce young Americans to voting and to impress upon them the importance of active participation in our democratic system.”

137. Telephone Interview with Kaitlin Labus, Math Teacher (Feb. 7, 2021).

138. See The Learning Network, *What Students Are Saying About Politics in School, Who They Turn to in a Crisis, and Stress*, N.Y. TIMES (Oct. 31, 2019), <https://www.nytimes.com/2019/10/31/learning/what-students-are-saying-about-politics-in-school-who-they-turn-to-in-a-crisis-and-stress.html> [<https://perma.cc/3TZ2-PSC2>].

139. *Poll: Young People Believe They Can Lead Change in Unprecedented Election Cycle*, TUFTS: CIRCLE (June 30, 2020), <https://circle.tufts.edu/latest-research/poll-young-people-believe-they-can-lead-change-unprecedented-election-cycle> [<https://perma.cc/25L8-RFGJ>].

140. *Growing Voters*, *supra* note 99.

141. The Learning Network, *supra* note 138.

142. See, e.g., *Selective Service*, *supra* note 118.

143. *Selective Service*, USA.GOV, <https://usa.gov/selective-service> (Nov. 17, 2021) [<https://perma.cc/AZX5-RCU4>].

144. See, e.g., *Selective Service*, *supra* note 118.

—John B. Anderson & Ray Martinez III¹⁴⁵

In 2006, a *New York Times* opinion piece, quirkily entitled *Voters' Ed*, advocated for states to adopt policies that would register all graduating high school seniors to vote.¹⁴⁶ The authors' goal was to protect "the long-term vitality of our participatory democracy."¹⁴⁷ Legal scholars have joined their call.¹⁴⁸ Today, in furtherance of that noble mission, places like New York City give voter registration forms to high school graduates with their diplomas.¹⁴⁹ But following the Supreme Court's holding in *Shelby County v. Holder*,¹⁵⁰ it is no secret that certain state legislatures have moved to eliminate programs like preregistration of younger voters to decrease access to the ballot box.¹⁵¹ As a result, today's policies do not go far enough to (1) increase registration for newly minted prom night voters or (2) promote the long-term participatory vitality essential to our democracy.

The model statute and many of the amendments in the Appendix are inspired by a recent Hawaiian state house bill.¹⁵² Though that house bill failed, states can use it as a template and outshine other states' voting rights laws. As election codes are currently written, states fail to promote the sort of vote-confident patriotism essential to young voters' interest in our democracy. States should amend their election codes to mandate that high school principals and other school administrators supply all graduating high school seniors with a voter registration form. The state should require high school seniors to opt in to or opt out of registering to vote if they wish to graduate. The administration of this form will, among other things, inform to-be high school graduates of their fundamental right to vote. The school's principal would then electronically transmit or mail those registration forms within whatever period state law requires. Thus, the amended

145. John B. Anderson & Ray Martinez III, *Voters' Ed*, N.Y. TIMES (Apr. 6, 2006), <https://www.nytimes.com/2006/04/06/opinion/voters-ed.html> [https://perma.cc/932N-7S9B].

146. *Id.*

147. *Id.*

148. *See, e.g.*, Tokaji, *supra* note 10, at 499 ("Another possibility is to register high school students automatically at the time of their graduation, provided that they meet eligibility requirements. This reform would target a group that is underrepresented in the electorate and has the potential to increase participation among this group.")

149. *See* N.Y.C. DEP'T OF EDUC., *ACHIEVE NYC: A COMPLETE GUIDE TO NEW YORK CITY PUBLIC SCHOOLS 37* (2018–2019), https://infohub.nyced.org/docs/default-source/default-document-library/achieve_2018-19__english.pdf [https://perma.cc/3TG8-HVED].

150. 570 U.S. 529 (2013).

151. *See* N.C. State Conf. of NAACP v. McCrory, 831 F.3d 204, 217–18 (4th Cir. 2016) (noting that "African Americans . . . disproportionately used preregistration" and that, "[a]lthough preregistration increased turnout among young adult voters," the state eliminated preregistration after *Shelby*); *see also* BERMAN, *supra* note 15, at 298–99 (criticizing North Carolina's decision to eliminate preregistration for high school students after *Shelby*).

152. H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

statute guarantees that every student who plans to graduate has at least the opportunity to voluntarily opt in to or opt out of his, her, or their civic duty.

A. *The Model Statute*

Below is a model statute for states that do not have systems in place for widespread high school voter registration to use and propose during their legislative sessions.

THE PROM NIGHT VOTER ACT

BE IT ENACTED BY THE LEGISLATURE OF _____.

Section 1. For purposes of this act, the following terms shall have the following meanings:

(a) **HIGH SCHOOL REGISTRAR.** A high school registrar is any school official, including the high school principal or his/her deputies, who is trained to accept and administer voter registration applications according to the applicable state statutes.

(b) **VOTER REGISTRATION APPLICATION.** A voter registration application is a state-issued form that abides by applicable state and federal law.

(c) **HIGH SCHOOL SENIOR.** A high school senior is a student who is in his/her/their final year of high school and who expects to receive his/her/their diploma upon completion of that year's courses.

Section 2. Notwithstanding any provision of law to the contrary, each state accredited high school shall have at least one high school registrar.

Section 3. Except as otherwise provided by general and local law, the Secretary of State shall send enough voter registration applications for each high school senior at least once a school year to each state accredited high school.

Section 4. Any high school senior who wishes to graduate from a state accredited high school must opt in to or opt out of registering to vote. A high school senior's failure to opt in to or opt out of registering to vote shall result in a hold on that student's ability to graduate.

Section 5. Upon receipt of a voter registration application, the high school registrar will transmit the application within the timeframe applicable by law.

B. *States That Have a Framework*

Seventeen states have statutes in effect that allow for an easier implementation of this Comment's proposal.¹⁵³ In alphabetical order, these are Colorado, Georgia, Illinois, Iowa, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Rhode Island, South Carolina, Texas, Virginia, Washington, and West Virginia.¹⁵⁴ The Appendix demonstrates how each statutory scheme can be amended to require that high school seniors opt in to or opt out of registering to vote if they wish to graduate. The state-by-state approach highlights that each state's promotion of youth-voter registration is subtly distinct and that the suggested language can differ according to each state legislature's preferences.¹⁵⁵

Preregistration states that have the framework include Colorado, Massachusetts, New York, North Carolina, and Washington.¹⁵⁶ These states might arguably be more conducive to this Comment's proposal given their tendencies to widen access to registration. But that should not shut out those states that have not enacted preregistration policies; they still have the chance to revitalize their youth-voter participation rates. As shown in the table below,¹⁵⁷ all the framework states have large portions of youth voting-age populations.

153. These states have some framework in place that connects youth voters to voting information. The recommended statutory amendments take advantage of the states' current statutory schemes.

154. See Appendix.

155. The state-by-state approach does not address the carrot-and-stick problem that schools in these states might face. Some legislatures might wish to tie administration of this program to funding or impose criminal penalties. The merits of such actions are ripe for additional scholarly review.

156. See Appendix.

157. This table consists of information from the Census Bureau. *Citizen Voting-Age Population*, U.S. Census Bureau, (Nov. 15, 2016), https://www.census.gov/library/visualizations/2016/comm/citizen_voting_age_population.html [https://perma.cc/Q5BJ-EE9S].

STATE	YOUTH VOTING-AGE POPULATION
Colorado	22.5%
Georgia	22.4%
Illinois	21.4%
Iowa	21.0%
Kentucky	20.6%
Maryland	20.9%
Massachusetts	21.4%
New Jersey	19.5%
New York	22.0%
North Carolina	21.1%
Ohio	20.4%
Rhode Island	21.9%
South Carolina	21.2%
Texas	23.8%
Virginia	21.7%
Washington	21.2%
West Virginia	18.6%

And with the national average at 21.6%,¹⁵⁸ the youth voting-age population in each state is definitively high enough to deserve special attention.

C. *Some Concerns*

Some may argue that this approach is too incremental and that the federal government should act in line with this Comment's proposal by enacting some sort of federal legislation. Some may say that this program would disproportionately benefit Democrats over Republicans. And even others may say that giving youth voters a choice to opt in to or opt out of registering to vote disincentivizes them to actually benefit themselves under nudge theory. This Comment addresses each argument in turn.

Many scholars have advocated for another onslaught of federal intervention in state registration laws.¹⁵⁹ But those scholars fail to look behind the veil of the federal laws already in place¹⁶⁰—the Ark is missing. While the VRA, Motor Voter Law, and HAVA saw relative

158. *Id.*

159. *See, e.g., Tokaji supra* note 10, at 498–99.

160. *See supra* Part II.

success,¹⁶¹ any additional federal legislation might be premature. It should be the states that workshop and experiment with registration laws that may fulfill the promise of our constitutional right to vote. Many states have experimented with expanding access to registration: Oregon automatically enrolls its citizens;¹⁶² North Dakota has no registration system at all.¹⁶³ Through the work of these states, we are reminded that “[i]t is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”¹⁶⁴

Some scholars have noted that increased youth access to registration might disproportionately benefit Democrats over Republicans.¹⁶⁵ But Democrats who wish to take advantage of this notion might be romanticizing their chances for success. In 2020, a record number of voters on both sides of the aisle turned out for their respective candidates.¹⁶⁶ President Trump received the most votes ever cast for a sitting president.¹⁶⁷ Incident to this record turnout is that youth affiliation with the Democratic Party can always decrease.¹⁶⁸ Four in 10 people ages 18 to 29 voted for President Trump.¹⁶⁹ When these high school students would be registered is increasingly a politically neutral battleground—the newly registered voters might not swing the pendulum in either direction.

Plus, registration is no longer a Democrat’s talisman. In 2020, Republicans in Florida,¹⁷⁰ North Carolina,¹⁷¹ and Pennsylvania¹⁷² reg-

161. See *supra* Part II.

162. *VRM in the States: Oregon*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/research-reports/vrm-states-oregon> (Feb. 9, 2021) [<https://perma.cc/8HYS-HU6A>].

163. *Q: When Do Eligible Voters Register for an Election?*, SEC’y ST. N.D., <https://vip.sos.nd.gov/PortalListDetails.aspx?ptlhPKID=79&ptlPKID=7> [<https://perma.cc/X6PY-XD2S>] (“North Dakota does not require voter registration.”).

164. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932).

165. Cherry, *supra* note 108, at 513.

166. Domenico Montanaro, *President-Elect Joe Biden Hits 80 Million Votes in Year of Record Turnout*, NPR (Nov. 25, 2020, 9:06 AM), npr.org/2020/11/25/937248659/president-elect-biden-hits-80-million-votes-in-year-of-record-turnout [<https://perma.cc/PVF4-QDCJ>] (“President Trump holds the distinction . . . of earning the second-most votes [of] all time. About 74 million Americans voted for him.”).

167. See *id.*

168. *Cf. Wide Gender Gap, Growing Educational Divide in Voters’ Party Identification*, PEW RSCH. CTR. (Mar. 20, 2018) <https://www.pewresearch.org/politics/wp-content/uploads/sites/4/2018/03/03-20-18-Party-Identification-CORRECTED.pdf> [<https://perma.cc/ABT8-ZJV9>] (showing that party affiliation among younger voters fluctuates year by year).

169. *Young Republicans, Young Trump Voters, and the Future of the GOP*, CIRCLE: TUFTS (July 15, 2021), <https://circle.tufts.edu/latest-research/young-republicans-young-trump-voters-and-future-gop> [<https://perma.cc/U8GV-CQ4B>].

170. *Voter Registration – By Party Affiliation*, FLA. DEP’T ST., <https://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/voter-registration-reports/voter-registration-by-party-affiliation/> (Aug. 31, 2021) [<https://perma.cc/CQ6S-VE8S>]; *By Party Affiliation Archive*, FLA. DEP’T ST., <https://>

istered a record number of voters and significantly shrunk their voter registration deficits.¹⁷³ And suppression is not a party issue: Both Democrats and Republicans engage in their own forms of voter suppression.¹⁷⁴ The issue is simply one of democracy versus non-democracy—a democracy would want the highest number of people voting. And the proposal accounts for concerns of illegality at the ballot box: High schools are best situated to inform their students about the relevant state-specific registration laws.

In 2017, economist Richard Thaler won the Nobel Prize in economics for his concept of “nudge theory.”¹⁷⁵ In its most elementary form, nudge theory operates by “nudging” people to act in ways that “are in their long-term self-interest.”¹⁷⁶ Illustrative of the theory is pension policies.¹⁷⁷ In 2012, the United Kingdom mandated that employees automatically enroll in pension plans instead of opting in.¹⁷⁸ The policy effected the theory that “many people actually wanted to put more money aside for retirement but they were put off from doing so by the need to make what they feared would be complicated decisions.”¹⁷⁹

dos.myflorida.com/elections/data-statistics/voter-registration-statistics/voter-registration-reports/voter-registration-by-party-affiliation/by-party-affiliation-archive/ [https://perma.cc/3VSZ-3NJK].

171. For annual reports on voter registration in North Carolina elections, see *Voter Registration Statistics*, N.C. ST. BD. ELECTIONS, <https://vt.ncsbe.gov/RegStat/> [https://perma.cc/64Y4-QD8W].

172. For annual reports on voter registration in Pennsylvania elections, see *Annual Reports on Voter Registration*, PA. DEPT. ST., <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Pages/Annual-Reports-on-Voter-Registration.aspx> [https://perma.cc/VLQ9-YY9G].

173. Philip Elliott, *Republicans Have Been Registering More New Voters. Here's What That Could Mean in a Few Key Swing States*, TIME (Oct. 20, 2020, 1:47 PM), <https://time.com/5901862/republicans-voter-registration-swing-states/> [https://perma.cc/P6MN-P9FG].

174. See, e.g., Eitan Hersh, *How Democrats Suppress the Vote*, FIVETHIRTYEIGHT (Nov. 3, 2015, 6:30 AM), <https://fivethirtyeight.com/features/how-democrats-suppress-the-vote/> [https://perma.cc/N9FU-L2LQ]; Edward Lempinen, *Stacking the Deck: How the GOP Works to Suppress Minority Voting*, U.C. BERKELEY (Sept. 29, 2020), <https://news.berkeley.edu/2020/09/29/stacking-the-deck-how-the-gop-works-to-suppress-minority-voting/> [https://perma.cc/3BDB-JYVM].

175. Henry Farrell, *This Year's Economics Nobel Winner Invented a Tool That's Both Brilliant and Undemocratic*, VOX (Oct. 16, 2017, 10:30 AM), <https://www.vox.com/the-big-idea/2017/10/16/16481836/nudges-thaler-nobel-economics-prize-undemocratic-tool> [https://perma.cc/47D9-NSD3].

176. Ben Chu, *Father of 'Nudge Theory' Richard Thaler Wins 2017 Nobel Prize in Economics*, INDEPENDENT (Oct. 9, 2017, 10:49 AM), <https://www.independent.co.uk/news/business/news/richard-thaler-nobel-prize-economics-winner-2017-behavioural-economics-nudge-theory-a7990291.html> [https://perma.cc/TQ6J-C2J3].

177. Ben Chu, *What Is 'Nudge Theory' and Why Should We Care? Explaining Richard Thaler's Nobel Economics Prize-Winning Concept*, INDEPENDENT (Jan. 13, 2018, 9:19 PM), <https://www.independent.co.uk/news/business/analysis-and-features/nudge-theory-richard-thaler-meaning-explanation-what-it-nobel-economics-prize-winner-2017-a7990461.html> [https://perma.cc/X3MV-NHZL].

178. *Id.*

179. *Id.*

The auto-enrollment mandate was a resounding success.¹⁸⁰ Similarly, in Spain, people are automatically enrolled as organ donors, making the country “a world leader in organ donation.”¹⁸¹ A Spaniard will need to opt out of donating her organs.¹⁸² This Comment proposes no such policy.

The compulsory choice youth voter registration plan is just that: a choice. It does not automatically register a graduating high school senior. That student must make an educated decision after her high school administrator gives her the tools to make that decision. The government, the high school administrator, her parents, and her friends do not push that big red button for her. Such a policy would be, at best, paternalistic.¹⁸³ And while this choice might not make the United States the world leader in high school graduate voter registration, it does that at the cost of affording deference to the power of the decisionmakers.

V. CONCLUSION

States would likely balk at more federal intervention in their voter registration systems. Even so, federal legislation has done relatively little to promote civic engagement among America’s youngest voters. Prom night voters—high school seniors—need our help. Our state governments should not continue to rely on third parties like social media companies to court voting interest among these would-be voters. As such, this Comment proposes imposing a compulsory choice on students who wish to graduate from high school: Opt in to or opt out of voting. The purpose of such a proposal is to increase registration among youth voters and educate them regarding their respective states’ laws. High school students must pass through a series of hoops and ladders to receive their diplomas. Many of the subjects they learn in high school they may never touch again. Unlike those subjects, voter registration is a real-world civics lesson. High school principals and administrators can act like and see the same success as the federal examiners of the 1960s. And completing a voter registration form at a young age fosters a sense of citizenship, responsibility, and patriotism

180. *Id.*

181. *Id.*

182. *Id.*

183. A dear friend reminded me that there is yet another counterargument to be made here: Unlike preregistration or automatic enrollment, where a voter will have the continuing choice to cast her ballot (or not), this proposal might cause some difficulties for that student who chooses to opt out but later wants to register. The argument, then, is it is OK to be paternalistic so long as we don’t mandate that people actually cast their ballots, as “arbitrary” (to quote that dear friend) state registration deadlines may impede a regretful would-be high school voter from voting. But the Author is OK with that deadweight loss—the student in this situation would have at least learned the relevant voting laws of her state so that she may have the opportunity and tools to register in the future.

in our democratic process—increased political experience at a young age correlates with prolonged civic engagement. As shown, our federalist system allows states to experiment and see the actual effect of this policy on youth engagement. A model statute has been tracked and explained for future legislators' convenience. In the Appendix, state election codes have been amended to accommodate for this proposal. The right to vote is a constitutional promise. When it comes to prom night voters, states must innovate and invest to make that promise a reality.

VI. APPENDIX

STATE	BACKGROUND	PROPOSED AMENDMENT
<i>Colorado</i>	<p>Colorado has extensive youth-voter registration options and even allows preregistration.¹⁸⁴ Colorado's general assembly has declared that it should "promote and encourage voter registration of all eligible electors in the state" and that "registration should be made as convenient as possible."¹⁸⁵ To that end, then, the state should be exceptionally receptive to a youth-voter registration system that practically guarantees a convenient way for to-be high school graduates to get involved in the democratic system. Under Colorado law, "[e]ach principal of a public high school, or the principal's designee . . ., may serve as a deputy registrar," and the county must maintain a public file of each on-duty deputy registrar available.¹⁸⁶</p>	<p>(2) The high school deputy registrar <u>[must] register [any student who wishes to graduate that school year] or preregister any student . . . or any other person who is eligible to register or preregister to vote. . . . The high school deputy registrar shall take registrations or preregistrations only on school district premises. [A student shall not graduate from a public high school unless the student completes and returns the registration form, either registering to vote or willfully and voluntarily opting out of registering].</u>¹⁸⁷</p>

184. See generally COLO. REV. STAT. § 1-2-101 (2019) (permitting preregistration for would-be voters as young as 16 years of age).

185. *Id.* § 1-2-401 (wishing "to encourage voter registration by providing convenient registration procedures for qualified high school students, employees, and other persons by using high school deputy registrars").

186. *Id.* § 1-2-402.

187. Compare *id.* § 1-2-402(2), with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

STATE	BACKGROUND	PROPOSED AMENDMENT
<p><i>Georgia</i></p>	<p>Georgia has limited and more complicated registration options for its youth voters.¹⁸⁸ However, it does have some infrastructure in place that allows it to implement a compulsory choice voter registration program for its youth voters. Under Georgia’s section 21-2-215(g), “[e]ach principal or assistant principal of every public or private high school . . . shall be a deputy registrar.”¹⁸⁹ Because those principals and assistant principals must “inform their students . . . of the availability of such voter registration” opportunities,¹⁹⁰ it should not be overwhelmingly burdensome to designate specific days of the year for the registrars to register those high school seniors who wish to graduate.</p>	<p>(g) Each principal or assistant principal of every public or private high school [who is] a deputy registrar . . . shall [require high school students to opt in to or opt out of registering to vote. A student who fails to opt in or opt out shall not be eligible for graduation.] . . . [The designated high school deputy registrar] shall provide reasonable and convenient procedures to enable such persons who [wish to graduate] to register.¹⁹¹</p>
<p><i>Illinois</i></p>	<p>Illinois has relatively straightforward voter registration laws and provides a large opportunity for engagement with youth voters.¹⁹² While it lacks a mandate require-</p>	<p>The county clerk shall appoint [the principal, or a qualified person designated by the principal, of any high school] as [a] deputy registrar[.]. [The high</p>

188. See generally GA. CODE ANN. § 21-2-216 (West 2019) (“No person shall vote . . . unless such person [is] . . . [a]t least 18 years of age on or before the date of the primary or election in which such person seeks to vote[.] . . . Any person who possesses the qualifications of an elector except that concerning age shall be permitted to register to register to vote if such person will acquire such qualification within six months after the day of registration[.]”).

189. *Id.* § 21-2-215(g).

190. *Id.*

191. Compare *id.*, with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

192. See generally 10 ILL. COMP. STAT. ANN. 5 / 3-6 (West, Westlaw through P.A. 102-178 of 2021 Reg. Sess.) (“[A]n individual who is 17 years of age and who will be 18 years of age on the date of the general or consolidated election shall be deemed competent to execute and attest to any voter registration forms.”).

STATE	BACKGROUND	PROPOSED AMENDMENT
	<p>ing that each high school principal or some school administrator be a deputy voter registrar, mechanisms do exist for some high school official to serve in that capacity.¹⁹³ The law currently states that such “principal” or “qualified person designated by the principal” must provide a written request to the county clerk before receiving authorization as a registrar.¹⁹⁴</p>	<p>school registrar shall require high school students to opt in to or opt out of registering to vote. A student who fails to opt in or opt out shall not be eligible for graduation.]¹⁹⁵</p>
<p>Iowa</p>	<p>Like Illinois, Iowa has fairly straightforward voter registration laws.¹⁹⁶ As for age requirements, “[c]ompleted registration forms shall be accepted from registrants who are at least 17 and one-half years of age.”¹⁹⁷ Moreover, the State mandates that all 17-and-one-half-year-old students have the chance to register within their school districts at least twice during the school year.¹⁹⁸</p>	<p>1. At least twice during each school year, the board of directors of each school district operating a high school and the authorities in charge of each accredited nonpublic school shall offer the opportunity to register to vote to each student who is at least 17 and one-half years of age. [Each student who wishes to graduate that school year must either opt in to or opt out of registering to vote. A student who fails to opt in or opt out will not be eligible for graduation.]¹⁹⁹</p>

193. *Id.* § 5 / 4-6.2.

194. *Id.*

195. *Compare id.* § 5 / 4-6.2(a), with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

196. *See generally* IOWA CODE ANN. § 48A.5 (West 2012) (clearly listing age and residency requirements for registration).

197. *Id.* § 48A.5(2)(c)(1).

198. *Id.* § 48A.23(1).

199. *Compare id.*, with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

STATE	BACKGROUND	PROPOSED AMENDMENT
<i>Kentucky</i>	When compared with the other states surveyed for this Comment, Kentucky’s election laws are fairly strict. ²⁰⁰ But it does have a law in effect that allows for the widespread registration of to-be high school graduates. ²⁰¹ Moreover, as it relates to election education, the Kentucky Board of Education must show an “audio-visual presentation for high school juniors and seniors” about, among other things, voting procedures. ²⁰²	(1) The county clerk shall provide voter registration forms annually to each principal or assistant principal of every public high school . . . , and each school shall have a designated person who shall be responsible for <u>registering each student who wishes to graduate that school year</u> and assist them in properly registering. <u>[A student who fails to opt in to or opt out of registering to vote shall not be eligible for graduation.]</u> ²⁰³
<i>Massachusetts</i>	Massachusetts offers extensive opportunities for young people to vote. ²⁰⁴ Its preregistration system permits individuals as young as 16 years old to register. ²⁰⁵ Moreover, the State provides “voter education and voluntary registration sessions . . . as part of an educational assembly for all seniors” one time a year in each public high school where a voter registrar resides. ²⁰⁶	The registrars or election commissioners <u>[must]</u> hold registration sessions in any regional high school . . . where there are persons <u>[who expect to graduate that school year. A student who fails to opt in to or opt out of registering to vote shall not be eligible for graduation.]</u> ²⁰⁷

200. See generally KY. CONST. § 145. While we’re on the subject, and as an aside, we’re left to wonder exactly who the “idiots” are that “shall not have the right to vote.” *Id.* (“[T]he following persons are excepted [from the right to vote] and shall not have the right to vote[:] . . . Idiots and insane persons.” (emphasis added)).

201. See KY. REV. STAT. ANN. § 116.046 (West, Westlaw through end of 2021 Reg. and Spec. Sess. and Nov. 3, 2020 Election).
202. *Id.* § 116.046(3).

203. Compare *id.* § 116.046(1), with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

204. See generally MASS. GEN. LAWS ANN. ch. 51, § 42–42H (West 2019) (outlining procedures for registration sessions in high schools, vocational schools, colleges, and universities).

205. See *id.* § 42 (West Supp. 2019).

206. *Id.* § 42C (West 2019).

207. Compare *id.* § 42D, with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

STATE	BACKGROUND	PROPOSED AMENDMENT
<p><i>New Jersey</i></p>	<p>New Jersey permits 17-year-olds who will be 18 by the next election to register to vote.²⁰⁸ Notably, New Jersey feels that the civic education of its high school students is especially important and has passed laws to that effect.²⁰⁹ As a result, section 18A:36-27 imposes a duty on public high school officials to educate students on “the role of a citizen and the importance of voting.”²¹⁰ The statute also requires school officials “provide a voter registration form” and “a summary of voter registration eligibility requirements.”²¹¹</p>	<p>The board of education of each school district and the appropriate school officials in each nonpublic school shall provide a voter registration form [<u>to each student who wishes to graduate that school year.</u>] . . . [<u>A student who fails to opt in to or opt out of registering to vote</u>] prior to the graduation date for the school year [<u>shall not be eligible for graduation</u>].²¹²</p>
<p><i>New York</i></p>	<p>New York also has a preregistration program for persons “at least [16] years of age.”²¹³ It also encourages youth-voter registration by requiring local boards of education “to adopt policies to promote student voter registration.”²¹⁴ Though its election code states that “submission of voter registration . . . forms shall not be</p>	<p>§ 5-507. Voter pre-registration[.] education on voter pre-registration[.] [<u>and high school voter registration graduation requirement.</u>] . . . 2. Encouragement of student voter registration[.] . . . Local boards of education are required to adopt policies [<u>that will ensure each high school student who plans to graduate during</u></p>

208. N.J. STAT. ANN. § 19:31-5 (West Supp. 2019) (“Each 17-year-old registrant shall be designated in the Statewide voter registration system as temporarily ineligible to vote until the registrant’s 18th birthday.”).

209. See *In re State Bd. of Educ.’s Denial of Petition to Adopt Reguls.* Implementing the N.J. High Sch. Voter Registration L., 29 A.3d 1079, 1087 (N.J. Super. Ct. App. Dev. 2011) (noting that the law in question was “designed to assure that students turning the age of [18] are made aware of their right to vote and the importance of that right in our democracy”).

210. N.J. STAT. ANN. § 18A:36-27 (West 2013).

211. *Id.*

212. Compare *id.*, with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

213. N.Y. ELEC. LAW § 5-507(1) (Consol. Supp. 2020).

214. *Id.* § 5-507(2).

STATE	BACKGROUND	PROPOSED AMENDMENT
<p>North Carolina</p>	<p>a course requirement or graded assignment for students,²¹⁵ this Comment proposes that the State should at least require the <i>choice</i> of opting in to or opting out of registering to vote. And that proposal would not be beyond the vision of the Legislature in enacting section 5-507: “Getting young people involved in the election process allows them to form the habit of voting and contribute to civic life early on.”²¹⁶</p> <p>North Carolina has a similar statutory scheme as New York.²¹⁸ Like New York, because North Carolina has a robust preregistration program, implementation of a compulsory choice youth voter registration program is relatively easy to administer.²¹⁹ Moreover, public high schools in North Carolina are required under section 163-82.23 to “keep a sufficient supply of the forms so that they are always available.”²²⁰</p>	<p>that school year has the chance to complete an application to register to vote.] . . . [A student must opt in to or opt out of registering to vote. Opting in to or out of registering to vote] shall . . . be a [graduation] requirement[.]²¹⁷</p> <p>Every public high school shall make available to its students and others who are eligible to register to vote [voter] application forms described [under statute] and shall keep a sufficient supply of the forms so that they are always available. A local board of education [must] designate high school employees to assist [high school students who wish to graduate] in completing the forms. [A student must opt in to or opt out of reg-</p>

215. *Id.*

216. N.Y. STATE ASSEMB., MEMORANDUM IN SUPPORT OF LEGISLATION, Assem. B. A00774, 2019-2020 Legis., Reg. Sess. (2019), https://nyassembly.gov/leg/?default_fid=&leg_video=&bn=A00774&term=2019&Memo=Y [<https://perma.cc/X22H-4LTT>].

217. Compare N.Y. ELEC. LAW § 5-507, with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

218. Compare N.Y. ELEC. LAW § 5-507 (permitting preregistration of 16-year-olds who are also “otherwise qualified to register” with the caveat that registration or preregistration “not be a course requirement or graded assignment”), with N.C. GEN. STAT. § 115C-47(59) (2019) (“Completion and submission of voter registration forms shall not be a course requirement or graded assignment for students.”).

219. Compare N.Y. ELEC. LAW § 5-507, with N.C. GEN. STAT. § 115C-47(59) (2019).

220. N.C. GEN. STAT. § 163-82.23 (2019).

STATE	BACKGROUND	PROPOSED AMENDMENT
		<p>istering to vote if he/she/they wish to graduate.]²²¹ (59) . . . Completion and submission of voter registration forms [or a student's voluntary decision to opt out of registering] shall . . . be a . . . requirement [for graduation].²²²</p>
<i>Ohio</i>	<p>Under Ohio law, an elector must be "[18] years or more" to register to vote.²²³ Throughout the state, qualified electors can register at any public high school.²²⁴ Because each public high school <i>must</i> provide "voter registration applications and assistance in the registration of persons qualified to register to vote,"²²⁵ the tools exist for implementing a compulsory youth-voter registration program.</p>	<p>[When] the voter registration activity is part of an in-class voter registration program in a public high school[,] . . . the board of education shall do all of the following: . . . (4) Distribute [registration materials with] the statement, "applying to register or declining to register to vote [is a] condition of your receiving [your high school diploma.]"²²⁶</p>
<i>Rhode Island</i>	<p>If an elector will be 18 years old by the next election, that elector is eligible to vote in the State of Rhode Island.²²⁷ Individuals that are 16 years old can also pre-register to vote.²²⁸ Any implementation of a compulsory choice youth voter registration plan should be made</p>	<p>It shall be the duty of local [school] boards to annually conduct a voter registration drive at each high school[,] . . . Each principal of every public . . . high school and director of each vocational school in this state [must] be a registration agent whose authority</p>

221. *Compare id.*, with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

222. *Compare* N.C. GEN. STAT. § 115C-47(59), with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

223. OHIO REV. CODE ANN. § 3503.07 (LexisNexis 2013).

224. *Id.* § 3503.19.

225. *Id.* § 3503.10(B) (LexisNexis 2020) (emphasis added).

226. *Compare id.* § 3503.10(G), (G)(1)-(4), with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

227. 17 R.I. GEN. LAWS § 17-9.1-33(a) (2013).

228. *Id.* § 17-9.1-33(b).

STATE	BACKGROUND	PROPOSED AMENDMENT
<p style="text-align: center;"><i>South Carolina</i></p>	<p>“in accordance with rules and regulations established by the local board of the city or town in which the school is located.”²²⁹ Despite this, Rhode Island is nonetheless a state with the infrastructure needed for relatively easy implementation of this Comment’s proposal.</p> <p>South Carolina joins Kentucky in being one of the few states that has its voting age requirements enacted within its state constitution.²³¹ Its qualifications to register are not easily explained. Generally, to register to vote, an elector must be at least 18 years of age.²³² But if the elector will become 18 between when the registration books close and the election, that person is allowed to register if he otherwise qualifies.²³³ South Carolina students should have the chance to learn about their state’s election laws; by amending the statutes that make voter registration application forms available to high school students,²³⁴ the State can give its students that chance.</p>	<p>shall be limited to <u>[(1)]</u> receiving and accepting registrations as electors from those qualified applicants who are enrolled as students within the school or are employed within the school, <u>and (2) denying students who fail to opt in to or opt out of registering to vote a high school diploma.</u>²³⁰</p> <p>Each high school in this State shall make available to its students voter registration application forms. . . . [T]he forms must be provided to high school administrators[.] <u>[H]igh school administrators must designate times to offer voter registration applications to all high school students who wish to graduate that school year. A student who fails to register or voluntarily opt out of registering shall not be able to graduate.</u>²³⁵</p>

229. *Id.* § 17-9,1-4.1.

230. *Compare id.*, with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

231. *Compare Ky. CONST.* § 145, with S.C. CONST. art. II, § 4.

232. S.C. CODE ANN. § 7-5-120 (2007).

233. *Id.* § 7-5-150.

234. *Id.* §§ 59-39-200, 7-5-175.

235. *Compare id.* § 59-39-200, with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019). For section 7-5-175, I suggest deleting “upon the administrator’s request.”

STATE	BACKGROUND	PROPOSED AMENDMENT
<i>Texas</i>	Texas is among those states that provide fairly limited registration options to their would-be voters. ²³⁶ By law, Texas permits those who are 17 years and ten months of age to register to vote. ²³⁷ Currently, under Texas Election Code section 13.046, high school principals are required, “[a]t least twice a school year,” to distribute a registration application form <i>only</i> to those students “who [are] or will be 18 years of age or older during that year.” ²³⁸ But this is arguably inadequate. The mandate is toothless because it imposes no real opportunity. ²³⁹ As such, the youth-turnout problem requires a specific, near-surgical legislative antidote.	(d) At least twice each school year, a high school [principal or other school administrator] shall distribute an officially prescribed registration application form to each student who [plans to graduate] that year [A student shall not graduate from a public high school unless the student completes and returns the registration form, either registering to vote or willfully and voluntarily opting out of registering.] ²⁴⁰
<i>Virginia</i>	Virginia law states that qualified electors who will be 18 years old by the next general election can register. ²⁴¹ Virginia goes remarkably further for youth voters who wish to register than other states. By law, a public high	Each public high school shall provide to any enrolled student who is of voting age or is eligible to register to vote . . . mail voter registration applications and voter registration information Each student who is eli-

236. See *Preregistration for Young Voters*, NAT'L CONF. STATE LEGISLATURES (June 28, 2021), <https://www.ncsl.org/research/elections-and-campaigns/preregistration-for-young-voters.aspx> [https://perma.cc/2Z5B-NDB7].

237. TEX. ELEC. CODE ANN. § 13.001(b) (West 2020).

238. *Id.* § 13.046(d).

239. Jim Malewitz & Alexa Ura, *Principals Aren't Registering High Schoolers to Vote, Texas Is Turning to Superintendents*, TEX. TRIBUNE (Sept. 15, 2017, 12:00 AM), <https://texastribune.org/2017/09/15/principals-arent-registering-high-schoolers-to-vote/> [https://perma.cc/E8QD-PU42].

240. Compare TEX. ELEC. CODE ANN. § 13.046(d), with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

241. VA. CODE ANN. § 24.2-403 (2016).

STATE	BACKGROUND	PROPOSED AMENDMENT
<p>Washington</p>	<p>school must provide all eligible students “the opportunity to complete an application form during the normal course of the school day.”²⁴²</p> <p>Like Kentucky and South Carolina, the State of Washington sets its voting age requirement in its state constitution.²⁴⁴ It also has a “future voter program” that permits those individuals who are 16–17 years of age “to sign[] up to register to vote.”²⁴⁵ Because the legislature “recognize[d] the importance of fostering lifelong civic participation,” it crafted this legislative solution.²⁴⁶ But this Comment proposes an even more powerful antidote—one that will help heal the “representational disparities in registration rates and voting rates within the youth electorate” and “engage all young citizens.”²⁴⁷ Each year, Washington law requires its public schools to observe what it calls “Temperance and Good Citizenship Day.”²⁴⁸ It is on that day that</p>	<p>gible to register to vote shall be provided the opportunity to [register and must do so or decline to do so to be eligible for graduation.]²⁴³</p> <p>On each temperance and good citizenship day all students who will [expect to graduate that school year shall] be given the opportunity to register to vote [A graduation-eligible student must opt in to or opt out of registering to vote if he, she, or they expects to graduate.]²⁴⁹</p>

242. *Id.* § 22.1-203.4 (West, Westlaw through end of 2021 Reg. Sess. and 2021 Spec. Sess. I and includes 2021 Spec. Sess. II, c. 1).

243. *Compare id.*, with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

244. *Compare* WASH. CONST. art. VI, § 1, with KY. CONST. § 145 and S.C. CONST. art. II, § 4.

245. WASH. REV. CODE ANN. § 29A.08.170 (West 2014).

246. *Id.*

247. *Id.*

248. *Id.* § 28A.230.150(2).

249. *Compare id.* § 28A.230.150(4), with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).

STATE	BACKGROUND	PROPOSED AMENDMENT
<i>West Virginia</i>	<p>high school seniors participate in a “voter registration event” during their social studies or history classes.²⁵⁰ As such, Washington can amend its election law to meet its “goal of achieving at least [50] thousand new voter registrations . . . annually.”²⁵¹</p> <p>West Virginia permits only those who are 18 years old and those who will be 18 years old by the next general election to register to vote.²⁵² For its youth voters, West Virginia mandates that its county clerks establish a voter registration service at each high school “no later than [45] days before a statewide primary election held during a school year.”²⁵³ In an effort to promote more civic engagement among its youth, West Virginia requires that each high school student be afforded an “opportunity to register to vote.”²⁵⁴</p>	<p>To further such study, every high school student eligible by age for voter registration shall be afforded the opportunity to register to vote . . . [E]very high school student must opt in to or opt out of registering to vote to graduate.]²⁵⁵</p>

250. WASH. REV. CODE ANN. § 28A.230.150(2).

251. *Id.* § 28A.230.150(6).

252. W. VA. CODE ANN. § 3-2-2(a) (LexisNexis 2018).

253. *Id.* § 3-2-8(a)(2).

254. *Id.* § 18-2-9(a).

255. *Compare id.* § 28A.230.150(4), with H.B. 1545, 30th Leg., Reg. Sess. (Haw. 2019).