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Brennan Center for Justice
at New York University School of Law

120 Broadway
Suite 1750
New York, New York 10271
646.292.8310 Fax 212.463.7308
www.brennancenter.org

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TO: Little Hoover Commission
FROM: Adam Gitlin, Brennan Center for Justice at NYU School of Law
RE: Written Comment for May 25, 2017, Hearing on Increasing Voter Participation in California Elections

Thank you for the opportunity to submit this comment in support of the effective implementation of the California New Motor Voter Act pursuant to AB 1461, which holds the promise of significantly increasing voter participation in California elections.

The Brennan Center for Justice at NYU School of Lawⁱ is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. We work on a range of issues pertaining to voting rights and elections, including work to improve registration and the design of election materials, remove unnecessary barriers to participation, and make voting machines more secure and accessible. We have worked on voting reforms in California for several years. With respect to voter registration, in particular, we have published numerous studies and reports,ⁱⁱ and have successfully campaigned across the country for modernizing reforms to increase registration rates while saving states money and time.

The New Motor Voter Act offers a critical opportunity to increase voter participation in California through automatic registration of eligible voters. As explained in detail below, there are three key points we would like to make before the Little Hoover Commission:

- The New Motor Voter Act, if properly implemented, has the potential to increase voter registration while increasing administrative efficiency and making the voter rolls safer and more accurate. This is consistent with growing national support for the reform.
- Proper implementation of the Act requires that the forms used to register eligible voters under the Act be subjected to usability testing. That will go a long way toward ensuring that individuals understand the new program, and toward maximizing the likelihood that those eligible—and only those eligible—will register to vote.

- The Act should be implemented without delay, even if that means that not all DMV processes are brought in compliance with the Act at the same time. Usability testing of license-renewal forms submitted by mail, for example, can already begin informing overall implementation of the Act's requirements.

The following paragraphs provide background on automatic registration and the New Motor Voter Act, and then go into the reasons for our recommendations.

I. Automatic Voter Registration and the California New Motor Voter Act

Automatic voter registration makes two transformative, yet simple, changes to voter registration: Eligible citizens who interact with government agencies are registered to vote unless they decline, and agencies transfer voter registration information electronically to election officials. These two changes create a seamless process that is more convenient and less error-prone for both voters and government officials. This policy boosts registration rates, cleans up the rolls, makes voting more convenient, and reduces the potential for voter fraud, all while lowering costs.

Automatic registration is gaining momentum across the country, increasingly with strong bipartisan support. Eight states and the District of Columbia have already approved the policy. So far in 2017, 32 states have introduced bills to implement or expand automatic registration.

In California, pursuant to the New Motor Voter Act, automatic registration will occur through DMV interactions completed by eligible individuals. Anyone who submits an application for a driver's license or identification card pursuant to Section 12800, 12815, or 13000 of the Vehicle Code, or who notifies the department of a change of address pursuant to Section 14600 of the Vehicle Code, will have their information transferred electronically to election officials if they are eligible, unless they decline.

II. The Potential Benefits of Automatic Registration in California

The New Motor Voter Act, if implemented correctly, is likely to increase the voter registration rate, improve the accuracy of the voter rolls, and save money, based on evidence from other states' experiences.

Automatic registration will use an opt-out setup to increase the likelihood that eligible Californians interacting with the DMV become registered.ⁱⁱⁱ Today, the default for eligible Californians DMV customers is to remain unregistered unless they take active steps to become registered. Under the New Motor Voter Act, the default will be for them to become registered if eligible, unless they decline by checking a box on the DMV form to opt out. Opt-out structures have a proven history of increasing participation rates across a wide array of human endeavor.^{iv}

This upgrade not only will increase the number of registered voters, but also will improve the accuracy of California’s voter rolls: Paper forms require reading often illegible handwriting and performing tedious data entry, both of which introduce errors to the rolls. Electronic transfer of information eliminates that problem. Election officials have consistently reported to us that electronically transfer leads to cleaner and more accurate rolls than a paper-based system.^v

Electronic transfer will also save the state money. All the printing, deciphering, mailing, and data entry of paper forms cost time and money—costs that can be virtually eliminated for registrations coming through electronic transfer. For example, officials in four Washington counties reported saving \$.50 to \$2.00 per registration when the information was electronically transferred. Delaware has saved \$200,000 annually from electronic transfer at the DMV.^{vi} Unsurprisingly, in states like Utah, election officials have been strong proponents of automatic registration as a way to maximize the number of accurate voter registrations collected through cost-effective, accurate means.

III. The Need for Usability Testing for Successful Implementation

Usability testing is paramount for achieving the full benefits of automatic registration in California.

Reaping the gains discussed above depends on proper implementation of the Act, the crux of which is usable forms. Usable forms can maximize the likelihood that a person will become registered, while ensuring that those who should not be registered, or do not want to be registered, understand what they must do to decline registration. The DMV and Secretary of State’s office should coordinate to have expert-run usability testing, ideally in DMV offices, with consultation from stakeholder groups. Testing with live subjects would allow modifications to DMV forms in response to their reactions. This testing should also be done in languages other than English and in formats accessible to those with disabilities, to ensure the program works well for all eligible California voters, and complies with federal and state law. This testing can be done expeditiously; forms can be tested and adjusted accordingly in a matter of weeks.

Usability testing for the implementation of the New Motor Voter Act would also be consistent with the history of employing usability testing for voting-related issues in California to ensure comprehension. For example, in 2015, voter advocates and usability experts developed best practices for voter information guides in California.^{vii} These best practices are now widely used. Similarly, in 2007, the Secretary of State’s Office’s review of voting accessibility had experts evaluate the usability of voting equipment.^{viii} With automatic registration, as with other voting-related procedures when first introduced, usability testing is especially important.^{ix}

IV. Implementing the New Motor Voter Act without Delay

Finally, the New Motor Voter Act should be implemented as soon as practicable, using the testing of reworked forms for driver's license renewals by mail to inform the design of other new forms adopted under the Act.

We understand that DMV may be asking for additional funds to further modernize systems at DMV offices in ways that may affect the timeliness with which it would comply with all of the Act's requirements. An effort to upgrade DMV's technology to the benefit of customers and technicians alike is laudable, but implementation should proceed in all possible respects to accelerate bringing more voters into the political process.

Notably, the form for license renewals by mail can already be updated to conform to the Act's requirements. This update must be based on a usability-tested form, and could offer a useful pilot program for testing different formulations of opt-out language. Developing best practices on a smaller scale will help ensure a smoother rollout of full implementation at DMV offices. This would be consistent with the piloting of other voting reforms in California, such as the vote-by-mail pilot program in San Mateo and Yolo Counties.^x

ⁱ This comment has been prepared by a Center affiliated with New York University School of Law, but does not purport to present the school's institutional views, if any.

ⁱⁱ HOLLY MALUK, MYRNA PEREZ, & LUCY ZHOU, BRENNAN CTR. FOR JUSTICE, VOTER REGISTRATION IN A DIGITAL AGE: 2015 UPDATE (2015), *available at* https://www.brennancenter.org/sites/default/files/publications/Voter_Registration_Digital_Age_2015.pdf; BRENNAN CTR. FOR JUSTICE, THE CASE FOR VOTER REGISTRATION MODERNIZATION (2013), *available at* <http://www.brennancenter.org/sites/default/files/publications/Case%20Voter%20Registration%20Modernization.pdf>; DIANA KASDAN, BRENNAN CTR. FOR JUSTICE, STATE RESTRICTIONS ON VOTER REGISTRATION DRIVES (2012), *available at* <https://www.brennancenter.org/sites/default/files/legacy/publications/State%20Restrictions%20on%20Voter%20Registration%20Drives.pdf>; CHRISTOPHER PONOROFF, BRENNAN CTR. FOR JUSTICE, VOTER REGISTRATION IN A DIGITAL AGE 14 (Wendy Weiser ed., 2010), *available at*

https://www.brennancenter.org/sites/default/files/legacy/Democracy/Paperless_Registration_FINAL.pdf.

ⁱⁱⁱ See Sam Wang, *How behavioral science could get more Americans to vote*, WASH. POST, June 15, 2016, <https://www.washingtonpost.com/posteverything/wp/2016/06/15/how-behavioral-science-could-get-more-americans-to-vote/> (last visited May 22, 2017).

^{iv} See, e.g., Alberto Abadie & Sebastian Gay, *The impact of presumed consent legislation on cadaveric organ donation: a cross-country study*, 25 J. HEALTH ECON. 599–620 (2006) (25-30% higher participation in organ-donation programs), *available at* <http://www.sciencedirect.com/science/article/pii/S016762960600004X>; J. Choi et al., *Defined Contribution Pensions: Plan Rules, Participant Decisions, and the Path of Least Resistance*, 16 TAX POLICY AND THE ECONOMY 67-114 (2002) (401(k) participation over 30 percentage points higher with automatic enrollment), *available at* <http://www.nber.org/papers/w8655.pdf>.

^v PONOROFF, *supra* note ii, at 13; MALUK ET AL., *supra* note ii, at 8.

^{vi} PONOROFF, *supra* note ii, at 12.

^{vii} See LEAGUE OF WOMEN VOTERS OF CALIFORNIA EDUCATION FUND, HOW VOTERS GET INFORMATION: BEST PRACTICES MANUAL FOR OFFICIAL VOTER INFORMATION GUIDES (2015), *available at* https://cavotes.org/sites/default/files/cavotes/private/LWVCEF_Best_Practices_Manual_for_Official_Voter_Information_Guides.pdf.

^{viii} NOEL RUNYAN & JIM TOBIAS, CALIFORNIA SECRETARY OF STATE, ACCESSIBILITY REVIEW REPORT FOR CALIFORNIA TOP-TO-BOTTOM VOTING SYSTEMS REVIEW (2007), *available at*

<http://www.sos.ca.gov/elections/voting-systems/oversight/top-bottom-review/accessibility-review-report-california-top-bottom-voting-systems-review/>.

^{ix} See, e.g., LAWRENCE NORDEN ET AL., BRENNAN CTR. FOR JUSTICE, BETTER BALLOTS, *available at*

<http://www.brennancenter.org/sites/default/files/legacy/Democracy/Better%20Ballots.pdf>.

^x See also CALIFORNIA SECRETARY OF STATE, POST-ELECTION RISK-LIMITING AUDIT PILOT PROGRAM 2011-2013—FINAL REPORT TO THE UNITED STATES ELECTION ASSISTANCE COMMISSION, *available at*

<https://www.eac.gov/assets/1/28/AUDIT%20PILOT%20FINAL%20REPORT%20TO%20EAC%20FINAL.pdf>.