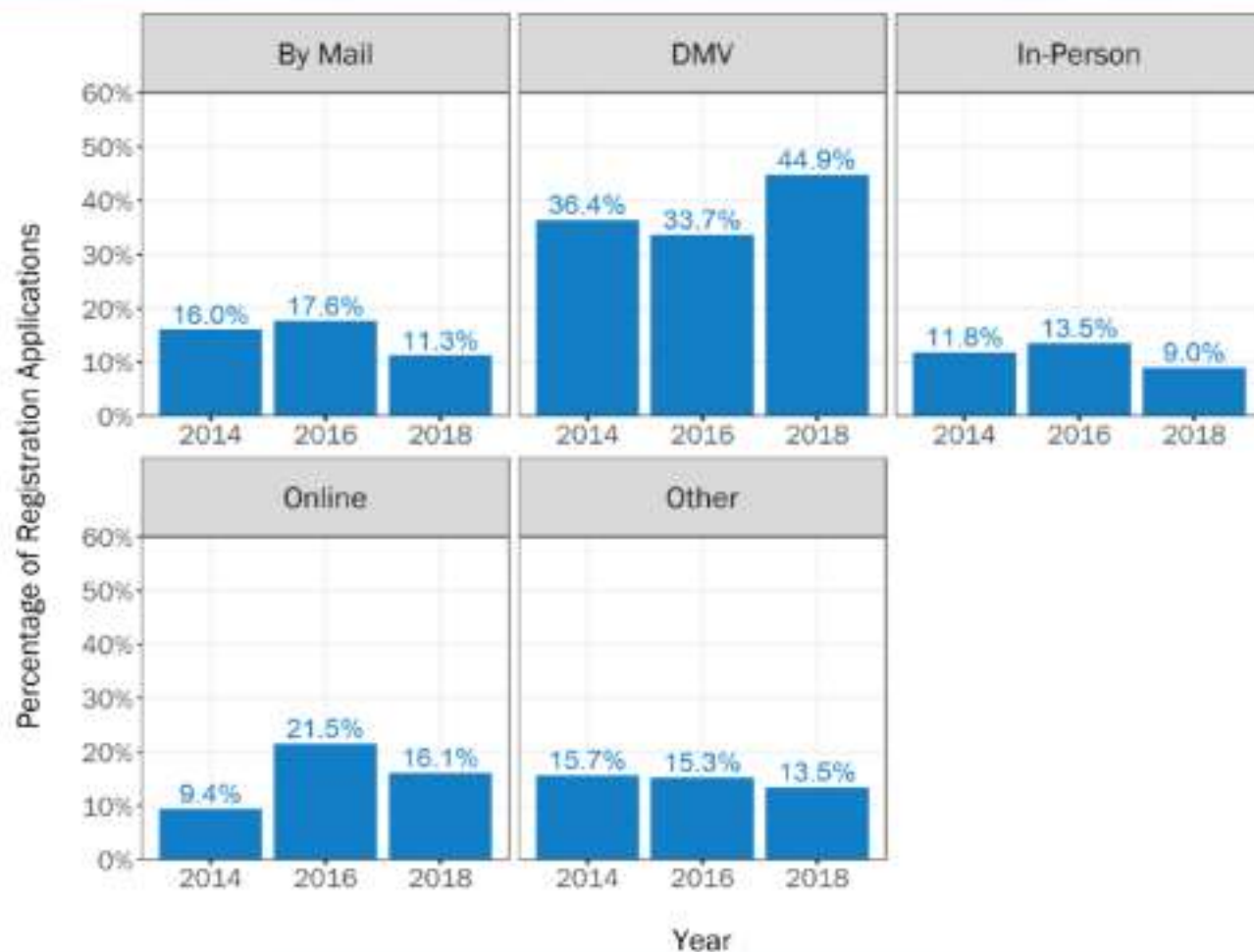# Motor Voter Registration

MODERNIZATION AND CHALLENGES

NVRA or "Motor Voter" Law

- Enacted in 1993

- Required most states to provide residents an opportunity to register to vote at state agencies and primarily the state's motor vehicle department

- The voter would have to authorize the registration :

  - Sec. 1973gg-3 Simultaneous application for voter registration and application for motor vehicle driver's license

  - Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office **unless the applicant fails to sign the voter registration application.**

  - Requires a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes

Sources of Voter Registration 2014-2018 (EAC EAVS)

Automatic Voter Registration vs. Automated Motor Voter Registration

- Automatic Voter Registration:
  - By default, registers anyone who interacts with the agency
  - Requires opt-out either by checking/unchecking a box or responding to a subsequent confirmation mailing
- Automated Motor Voter Registration
  - Allows the voter to make the choice
  - Requires an affirmative indication by the voter either by checking a box or responding to a question
- In either case, the DMV may electronically send information of eligible voters to elections office

Is Automatic Voter Registration Mandatory Speech?

- The U.S. Supreme Court reviewed mandatory speech in another context
- Janus v. AFSCME, 138 S. Ct. 2448 (2018) decided last year, was a public union dues case
  - Required public sector employees to pay union dues
  - Janus did not want to join the union because he opposed many of its positions
  - Forcing free and independent individuals to endorse ideas they find objectionable raises serious First Amendment concerns - it is coerced political speech
  - Freedom of speech "includes both the right to speak freely and the right to refrain from speaking at all."
  - "Whenever the Federal Government or a State prevents individuals from saying what they think on important matters or compels them to voice ideas with which they disagree, it undermines [free speech] ends. "
  - "When speech is compelled, however, additional damage is done. In that situation, individuals are coerced into betraying their convictions. Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning . . ."
  - Court said employees must choose to support the union before anything is taken from them
  - The employee has to affirmatively consent to pay

Registering to Vote Is Political Speech

- Registering to vote is a speech issue
  - VR is the embodiment of political speech protected by the 1st amendment
  - NOT registering to vote is a choice – we should respect our citizens' choices
  - A voter should affirmatively choose to register before they are registered than be registered without consent and later be required to opt-out

- Is subsequent opt-out adequate in the voter registration context?
  - Opt-out in first amendment contexts has been found inadequate by the Supreme Court - see e.g., Knox v. SEIU, 132 S.Ct. 2277 (2012)

Subsequent Opt-Out

- In Oregon, those registered through the automatic voter registration process are notified by mail and given three weeks to take themselves off the voting rolls. If they do not opt out, the secretary of state's office will mail them a ballot automatically 20 days before any election.

- Don't have numbers on states using "opt-out" post cards

- In general post-cards are not very effective

- States reported that only 19.6 percent of confirmation notices were returned

- Multiple mailings are required

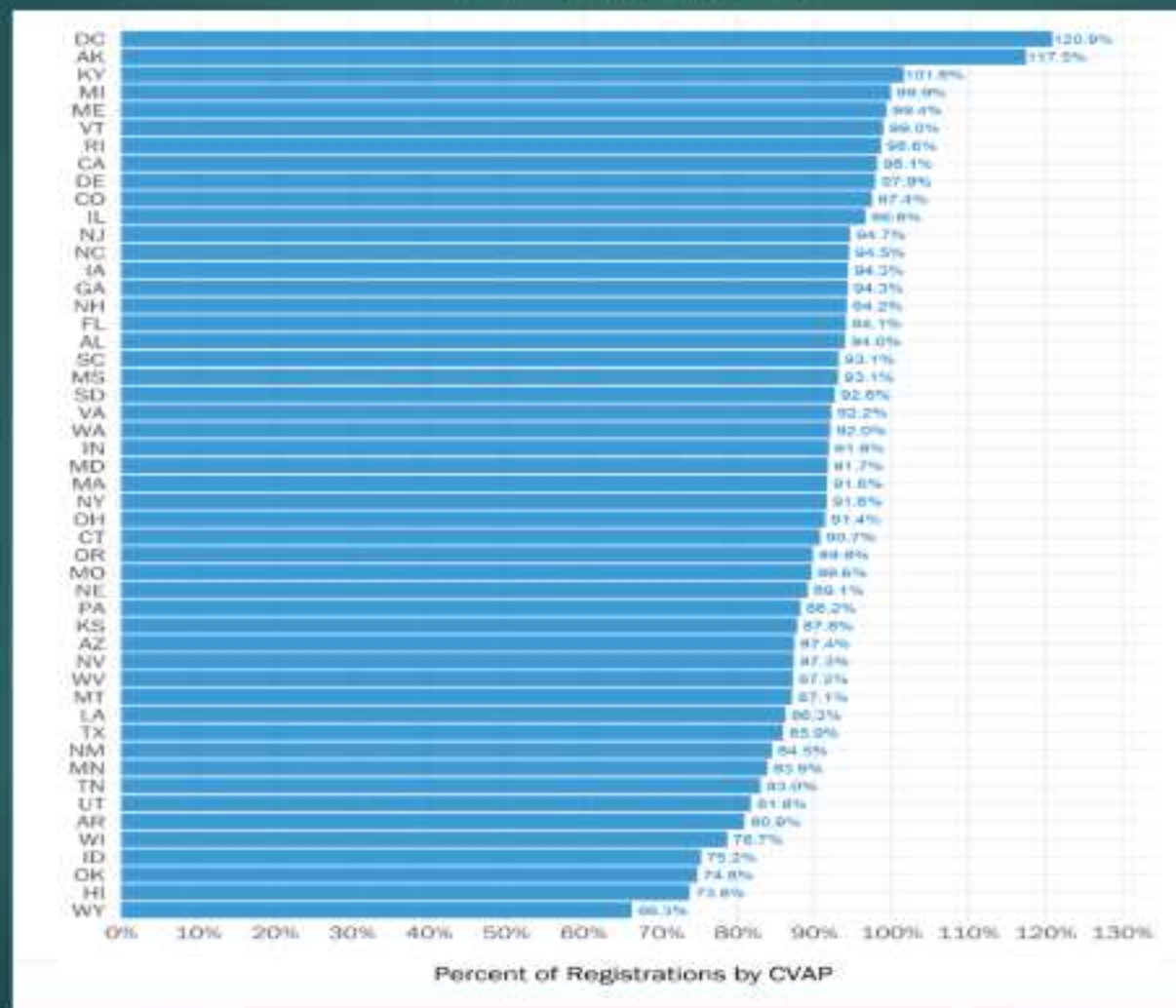# Risks in Automatic Voter Registration

- Risk of failing to affiliate with a party – not only may impinge the right of association, but especially important in closed primary states, where you need to be affiliated to vote in a primary election – people miss seeing that follow up mailing or throw it away unknowing, and then show up to vote, don't have affiliation, and are disenfranchised - in Oregon, less than 25% of voters under AVR designated a party

- Risk for military members who want to keep their registration, residency and domicile in another state for tax purposes – military members get to choose where they want their permanent residency for these purposes

- Not everyone interacts with the DMV or other designated government agencies

Who doesn't want to register?

- Vast majority of those not registered simply do not want to vote

- Reasons for not registering:

  - Religious affiliation

  - Other groups that simply object to it – the Sovereign Nation people (and they will let you know)

  - No candidate or issue that inspires them enough to register and vote

  - Don't want to register because they don't want to be called for jury duty

  - Want to register in another state

AVR doesn't significantly increase the VR rate

Percent of Registrations by CVAP

Turnout doesn't necessarily increase

Voter Turnout History for General Elections

Year	Total Registered Voters	Total Votes Cast	% of Turnout
2018	2,763,105	1,873,891	67.80%
2016	2,553,808	2,051,452	80.33%
2014	2,174,763	1,541,782	70.90%
2012	2,199,360	1,820,507	82.80%
2010	2,068,798	1,487,210	71.89%
2008	2,153,914	1,845,251	85.67%
2006	1,976,669	1,399,650	70.81%
2004	2,141,249	1,851,671	86.48%
2002	1,872,615	1,293,756	69.09%
2000	1,954,006	1,559,215	79.80%

Security Implications

- At a time when voter registration databases are under attack, do we want to provide information for everyone in the state?

- Voter Registration Data is generally public and can be purchased by campaigns and others.

- A voter's information belongs to the voter and only to the voter, and he or she – we – should decide how we want our private information to be shared. Americans now need to understand that voter registration databases are a national security target

81.5M Voter Records For Sale On Dark Web Ahead Of Midterm Elections

List maintenance

- One benefit that proponents of AVR tout is that it will keep the rolls clean. It may be able to update your registration when you turn 18, but it does not take into consideration life events and decisions that may affect the registration. Registration is not a one-time and done process:

  - Unless you never move - we have an incredibly mobile society – and we don't yet have a truly adequate way to track this issue. There are some things that can be done, for example, being in the ERIC program, or using NCOA, but that is not the complete solution

  - Where do students want to vote? From their parents' home? As an overseas absentee voter if they are on a semester abroad? From their dorm or college apartment or home?

  - Unless you never change your name – see this often – marriage, divorce, or merely changing your legal name for whatever reason – Lynda vs. Linda, Robin vs. Robyn

  - You never change your party – people switch from Rep to Dem, Dem to Rep, or out of either of those major parties, but there are dozens of official parties across the country in different states – for example the Libertarian Party which is recognized in 39 states, the Green Party in 27 states, the Constitution Party in 15 states, and many others, including various parties calling themselves Independent or Independence party

- Voters need to stay engaged in keeping their registrations up-to-date!

DMV Challenges

Voter registration is not their main mission

- Should not be making eligibility judgments

- DMV clerks are not generally trained on eligibility for voting or on voting law

- DMV information for voter registration purposes may be incomplete and DMV clerks may not understand what is needed

DMV Challenges

> *"Historically, we've always had problems with voter registrations at the DMV,"* she said.
> *"They send them back to the counties, and the people don't always have everything filled*
> *out as they should. In perfect world, it shouldn't be a bad thing if the software works. But*
> *to date, the software hasn't worked."*

NVRA has been law since 1993, and DMVs are still not dong it well or accurately.

● Many DMV systems are antiquated and are running on old systems – just last week heard of a DMV that is running a system using COBALT, California uses a system called "Assembler" which was created in the 1950s. California's DMV administrator has called her system, "a 40-year-old dinosaur."

● DMVs notoriously have long lines, employee allocation issues, resource allocation issues

● Not funded for processing voter registration – not even enough funding for processing driver licenses and registrations

● Having issues implementing Real ID

Challenge: Duplicate Registrations

- States reported to the EAC that 10.3% of the registrations they received between the close of registration for the 2016 general elections and the close of registration for the 2018 general elections were duplicates

- That totals 7,490,751 duplicate applications

- Based on data received from 40 of the states, most duplicate registrations were received at the DMV

- Although the DMV is the most common mode of registration, it accounts for a larger percentage of duplicate registrations (63.1 percent) than total received registrations (44.9 percent)

- Election officials have to spend time and money reviewing these registrations to determine whether they are indeed duplicates

  - One county Supervisor of Elections in Georgia, which requires checking an opt-out box in its DMV process, reported recently in the press that in April and May, 51% of the registrations they had to process were duplicates, indicating that DMV customers are either not seeing the box or ignoring it

Challenge: Implementation

- A number of states are having issues implementing AVR at the DMVs

  - New York State passed the state's automatic voter registration will with a "typo" that would force non-citizens to register. It specifically directed non-citizens not to check the opt-out box. This happened just 3 days after the Governor of New York signed a bill granting DLs to non-citizens – DLs being the sole requirement to register to vote, according to a news report. The typo will be fixed "later" through amendment.

  - Guam passed an AVR law in 2015, but it has taken 4 years to implement. And even now, the registrations cannot be forwarded from the DMV to the election office electronically; election workers still need to go to the DMV periodically to gather the information that the DMV has collected.

  - West Virginia, which enacted AVR in 2016 has discovered that it's software doesn't work , the DMV's computer system is antiquated, and it increases the work load for county election offices. It is delaying its implementation, because "Officials say they do not want to become 'another California.'"

Challenge: Could illegal registration lead to arrests?

- Issue has arisen in Nevada

- During a Latino Legislative panel the question was asked: "What about people who do not have citizenship status? Are there safeguards in place so they don't accidentally vote?"

- "A working group made up of representatives of the Secretary of State's office, Department of Motor Vehicles and county registrars is working to establish standards to implement automatic voter registration and has actively sought input from advocacy groups such as the ACLU and Mi Familia Vota to ensure that the law does not lead to ineligible voters unintentionally registering and being charged with election fraud."

- "Part of that process will include a requirement to provide multiple forms of documentation at the DMV when transferring or applying for a driver's license in order to determine eligibility. County officials are the ones who determine whether an applicant is qualified and complete the actual registration."

- According to the law, if a voting application is submitted through the DMV and a county clerk determines the applicant is not eligible to vote, the applicants "voter registration information shall be deemed not to be a complete application to register to vote and that person shall be deemed not to have applied to register to vote."

- A spokesman from the Secretary of State's office said this section of the law would shield an applicant from any penalties, criminal or civil by effectively erasing the application to register to vote. At the same time, the broad language could also protect willful violators of the state's voter registration requirements.

- The Secretary of State's office was not allocated separate funding by the legislature for an outreach or educational campaign and will have to figure out internally what the office can do to inform the public about the new law with available resources.

Vermont DMV Glitch Registers Green Card Holders to Vote

5,000 R.I. voter records caught in computer glitch

Can DMV be trusted to register voters after 23,000 botched registrations?

Layered on top of previous mistakes, California's DMV finds an additional 1,500 people wrongly registered to vote under new system

Maryland voter registration snafu affects 80,000, four times as many as initially announced

Case Study: Maryland

- Up to 80,000 voters had to cast provisional ballots in the 2018 primary because of a "computer glitch"

- DMV failed to forward voter information to the Maryland Board of Elections

- Affected voters who tried to change their registration address or party affiliation at the Motor Vehicle Department,

- Maryland's Motor Vehicle Administration originally announced 19,000 voters were affected, then had to revise the number claiming that the under-reporting was because officials were trying to tell people quickly about the problem

- The Governor called for an audit

- The problem was identified as "new software"

- Subsequently it was announced that the head of IT for the State's Motor Vehicle Administration was "out"

Case Study: Rhode Island

- As a result of an "IT" snafu in the Rhode Island Division of Motor Vehicles' automatic-voter-registration system, the new and newly-updated records of at least 5,000 potential primary day voters got stuck in limbo just before the state's September 12, 2018 primary

- Secretary of State Nellie Gorbea had to ask the state Board of Elections to take emergency steps to rectify the situation

- If all of this worked as it was supposed to work, a spokesman for the secretary of state's office, said the information would have been automatically conveyed from the "RI.gov" website, run by NIC Inc., to the state's central voter registration system. As to why that did not happen, the spokesman said it appeared that "a few of the fields" were missing from the computer program.

Case Study: Vermont

- In early 2017, some green card holders in Vermont received disconcerting mail from town clerks in Vermont. Specifically, they were sent notifications saying that they are registered to vote.

- "Why would that be cause for alarm for green card holders? For one thing, it's illegal for non-citizens to vote. And doing so could lead to deportation. "

- The Secretary of State's Office was aware of the issue and attributed it to a "data glitch" at the DMV related to the state's Automatic Voter Registration program, which was rolled out as a pilot program a few weeks earlier.

- The DMV's data transfer process for the AVR program was "over-inclusive" for a period of 18 days between January 3 and January 20. The technology sent more information than necessary to the Secretary of State's Office, including for individuals who are ineligible to vote.

- Since there was no election during the DMV snafu, no ineligible votes were cast. Eligible voters remained eligible and those added to the system in error were removed.

- The Secretary of State Jim Condos announced, "Those who were mistakenly registered through this coding error have not violated the law and will be purged from the system."

Case Study: Washington State

- Washington State: King and Thurston counties reported to the press a couple of weeks ago that they are having difficulty implementing Washington's new voter registration system. "To be really honest, it's not going well – I think we went live way too soon," said Thurston County Auditor Mary Hall from a hearing in Vancouver, Wash. July 9. "I'm not confident that we will be able to reconcile an election, I'm not confident voters will be credited correctly," said Hall. Secretary of State Kim Wyman said that the rest of the counties are doing fine, and that they will help King and Thurston counties implement the new system.

- A few days ago, 73 King County voters reported getting two ballots in the mail.

- King County Elections Director said when voters update their records after a change of address, the county may send a second ballot, but both are tracked as a single registration.

- The problem has been attributed to glitches in the Secretary of State's new VoteWA voter registration system.

- Part of the problem is attributed to the State's Department of Licensing's new format for ID numbers. The voter registration system counted them as new voters, but only 30 duplicate voter registrations have been identified statewide.

- Another problem was a function that was resending ballots flagged or challenged for reasons such as a non-matching signature.

- Staff is working to catch any duplicate ballots before they are cast.

Case Study: California

- 105,000 VR errors were made early on in the change over to the state's new Motor Vehicle registration system. Within the 1st 2 weeks, the Secretary of State found 77,000 registration errors and a few months later found 23,000 more errors. In October, before the midterms, another 5,000 transmittal errors caused hundreds more not to be registered in time to vote.

- People were registered incorrectly and some were assigned the wrong political party. DMV data showed that half of the 186,022 new voters, or 93, 011 new voters were registered without a party preference.

- Initially, the DMV requested a July 2, 2018 launch date. That date would have been after the June 2018 primary election, and Motor Voter would not have been available to increase registration. Secretary of State Alex Padilla wanted to move faster. He pushed for Motor Voter to be rolled out ahead of the June primaries to boost turnout for a high-interest midterm election.

- At his urging, the three agencies agreed in a private June 2017 meeting to launch Motor Voter on April 16, 2018, according to the documents and Padilla's staff. Between the fall of 2017 and spring of 2018, technology department employees rushed to give the DMV the technical ability to get the program up and running.

- Wesley Goo, who managed a team of DMV workers that designed the registration form and set up a process for technicians to handle the applications, said he wished the launch would have been postponed because the technology department didn't do enough testing. "Because this had so many technicals, it was risky," Goo said. "It was going to be tough."

Case Study cont.: California

- Rayfield Scott, a top information security official involved in the project, warned of "unknown risks/impacts to the DMV's infrastructure" the month of the Motor Voter roll-out, according to an April 2018 email.

- As the deadline neared, Padilla moved to cancel two press conferences and bump the start date from April 16 to April 23. Despite some progress, Amy Tong, who oversees the technology department, said in an email, "we are stuck again on the internal connectivity challenge, topped off by an unexplained disruption of (an) already established connection."

- Padilla told county elections officials during a conference call last fall that the mistakes have damaged voter confidence, according to the documents.

- In hindsight, Padilla said he wished Motor Voter had been a smaller, standalone technology project that was more clearly defined. While he said he could have postponed the launch by one or two years, he encouraged the departments to move forward.

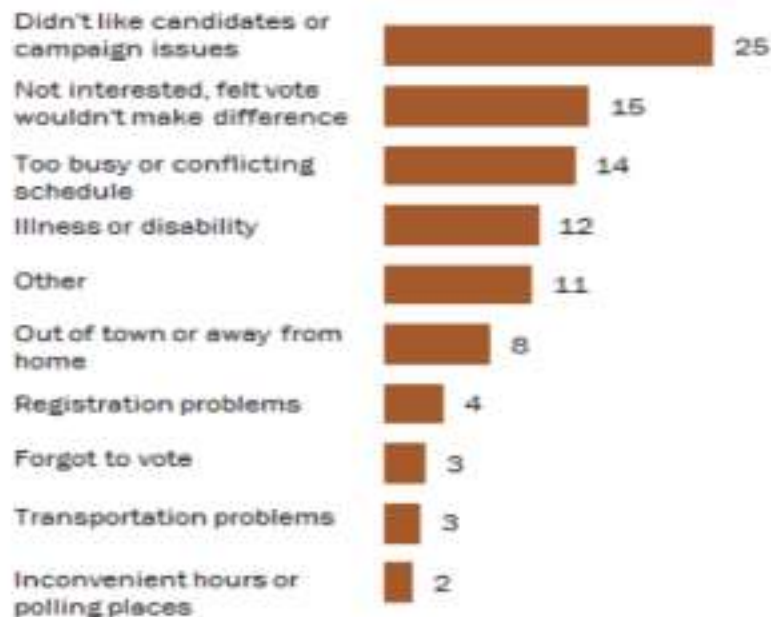- "To me, it wasn't worth the wait," he said.

What problem is AVR tackling?

- It is not to difficult to register.

- People who want to register can sign up in a myriad of ways and in a myriad of places – including online and in some places on their cellphone.

- AVR may have increased registration rates, but it hasn't seemed, so far, to increase turnout rates.

- The challenge may not be registration, but turnout.

Challenge: turnout

Why registered voters say they did not vote in 2016

Among registered voters who did not vote, % who said main reason was....

Reason	%
Didn't like candidates or campaign issues	25
Not interested, felt vote wouldn't make difference	15
Too busy or conflicting schedule	14
Illness or disability	12
Other	11
Out of town or away from home	8
Registration problems	4
Forgot to vote	3
Transportation problems	3
Inconvenient hours or polling places	2

Note: "Don't know," "Refused," "Bad weather conditions" and "No response" not shown.
Source: Pew Research Center analysis of the 2016 Current Population Survey, November Supplement.

PEW RESEARCH CENTER

- According to the PEW Research Center, quarter of registered voters who did not vote in 2016 said the main reason was dislike of candidates or issues.

- Nonvoter dissatisfaction with candidates or campaign issues was widespread across demographic groups.

- It seems that we have more of an issue – by far – with motivation and interest than with difficulty in registering.

The Choice Should Be Yours

- Not registering to vote is a choice and we should respect our fellow citizens' choice on whether or not they want to register to vote.

- Not wanting to register and vote is a legitimate decision. It should not be the government's choice.

- Do we want to register uninterested, unmotivated, or uninformed citizens?

- While we want everyone to be engaged, they are not and often don't want to be.

Gee, that ballot is all the way across the room. I wonder if I can get the dog to bring it to me – or better yet, fill it out for me.

" Even if we tailor our voter registration laws to political couch potatoes, there is no guarantee that voter turnout will increase. All this bill guarantees is that it will have a lot of people on the voter rolls." ~ Mitch McConnell

In the end, isn't it all about the sticker?

Questions/Comments?

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