

New York City Campaign Finance Board

A Voting Reform Agenda for New York

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EXECUTIVE SUMMARY

Election administration in New York trails behind the rest of the country, ranking 42nd for overall election performance according to the MIT Election Data and Science Lab. Our state has failed to enact key voting reforms that would make it easier for New Yorkers to make their voices heard during our elections. These reforms should be enacted during the next legislative session so they can be utilized for the 2020 presidential election. We have identified voting reform priorities for the 2019 – 2020 legislative session, which can be broken down into three categories.

The first section includes reforms that would make an immediate impact on the voter registration and election administration processes, and once election law is changed, these reforms could be implemented right away. The second section includes short-term reforms that need to pass in the next session to be implemented before the 2020 presidential election. Finally, the third section contains two reforms that would need to be enacted through a constitutional amendment, and these reforms would take a minimum of three years to pass into law.

Reforms with immediate impact

- ◆ Restore voting rights to parolees
- ◆ Preregistration for 16- and 17-year-olds
- ◆ Electronic signatures
- ◆ Electronic poll books
- ◆ Voter Friendly Ballot Act
- ◆ Split shifts for poll workers

Short-term reforms

- ◆ Early voting
- ◆ Automatic voter registration
- ◆ Portable voter registration
- ◆ Changing the party enrollment deadline
- ◆ Combined primaries
- ◆ Translation services beyond the Voting Rights Act

Long term reforms

- ◆ No-excuse absentee voting
- ◆ Same-day registration

INTRODUCTION

On November 6, 2018, many New York City voters encountered long lines and broken scanners at their poll sites. NBC New York reported that some voters waited over two hours to cast a ballot due to overcrowding and broken scanners.¹ The New York Attorney General's office received hundreds of calls and emails from concerned voters, and the most common reported issue was broken scanners. At the 2018 Voter Assistance Advisory Committee (VAAC) Annual Public Hearing, during which members of the public had the opportunity to share their voting experience from this year's election. Voters from all around the city expressed anger and disappointment over how the 2018 general election was run and complained about long lines and jammed scanners leading to the use of emergency scanners. Additionally, poll workers at the hearing explained that they did not have sufficient materials to distribute to voters, which forced voters to fill out ballots in windowsills or use wet privacy sleeves. Many voters also said that they were not in the poll books and did not know if their affidavit ballots would be counted.

These problems are not unique to the 2018 general election. Voters encounter similar difficulties at the polls during every election cycle. For example, during the 2018 primary election, many New Yorkers were surprised to learn that they were not registered to a political party and, therefore, could not be found in the poll books.² During the 2016 presidential primary, the nonpartisan Election Protection voter hotline received more calls from New Yorkers than from states with notoriously restrictive systems like Texas and Georgia because of delayed poll site openings, equipment malfunctions, and party-registration errors.³

New York is consistently ranked as one of the lowest turnout states in the country. According to the Election Performance Index, which ranks all 50 states and DC by how well their elections are being administered, New York ranked 42nd in overall election performance and 41st in voter turnout in 2016.⁴ Additionally, Rock the Vote categorizes each state as a “leader,” a “lagger” or a “blocker” with respect to voting rights. New York is rated as a “blocker,” meaning the majority of state policies “restrict the right to vote.”⁵ New York should be a leader in voting reform, and state election law should protect the right to vote for all eligible citizens.

Turnout in the 2018 general election increased by more than 21 points— from 24.8 percent in 2014 to 46.3 percent in 2018. That means over two million people cast a ballot in a single 15-hour voting period. In a city of 4.5 million voters, voting laws must be updated to service an

¹ Edwards, Jessy. “Overcrowding at the Polls as Scanners Break Down Across Tri-State.” *NBC New York*. November 6, 2018.

² Raymond, Adam K. “Voting in New York is a Predictable Mess.” *Intelligencer*. September 13, 2018.

³ Morales-Doyle, Sean & Lee, Chisun. “New York’s Worst-in-the-Country Voting System.” *The Atlantic*. September 13, 2018.

⁴ “EPI Rank.” MIT Election Data & Science Lab. 2018.

⁵ “Voting Rights in New York.” *Rock the Vote*. 2018.

increasingly engaged electorate. Statewide election reforms are necessary to ensure every New Yorker can participate in our democracy with ease. A single 15-hour voting period is not sufficient for the city's large and diverse population, and the state's paper-based voting system creates problems at poll sites every cycle. Reforms in New York State can be broken down into three categories.

- ◆ First, there are reforms that, if passed, will be simple to implement and will result in immediate improvements to the voting experience statewide.
- ◆ Second, there are reforms that should be passed in the legislature next session so that they can be implemented by the 2020 presidential election. Presidential elections consistently have the highest turnout in New York City, and high turnout puts a strain on our voting system. There are a variety of reforms that would bolster high turnout and make election administration easier.
- ◆ Finally, there are long-term reforms, which require constitutional amendments that could be enacted in 2021 at the earliest.

SECTION I: REFORMS WITH IMMEDIATE IMPACT

Restore Voting Rights to Parolees

Currently, New York State election law states that people with felony convictions cannot register to vote while on parole. However, county election officials often fail to distinguish between those on probation and those on parole, which can lead to illegal disenfranchisement. In fact, according to a 2006 report from the Brennan Center, “over a third of New York’s local Boards of Election incorrectly responded that New Yorkers on probation are not eligible to vote, or did not know whether they were eligible.”⁶ In April 2018, Governor Cuomo signed an Executive Order to restore voting rights to individuals on parole. Prior to the Executive Order, parolees in New York were required to wait until they had been discharged from parole or reached the maximum expiration date of their sentence to have their voting rights restored. Cuomo’s announcement meant that 35,000 parolees in New York were eligible to have their voting rights restored. Pardons through the Executive Order are conditional depending on two factors; if a person returns to incarceration either on a finding that parole has been violated or following conviction for a new felony, their voting rights will be revoked.⁷

In May 2018, Governor Cuomo issued over 24,000 conditional pardons, restoring voting rights to nearly two-thirds of New Yorkers currently on parole.⁸ It is unclear if all 35,000 parolees have now been pardoned because there is little information about who the administration has pardoned and why those individuals were selected for a pardon while others were not. Parolees are encouraged to use the parolee look-up tool through the State Department of Corrections website to see whether or not they have received a conditional pardon through the Executive Order. However, according to testimony from the Department of Corrections, “there can be confusion as to what exactly that website is telling people,” and information on the website can be misleading, especially for those who are no longer on parole.⁹ Additionally, for those who receive a pardon, there is confusion regarding the term “automatic restoration.” “Automatic restoration” of voting rights does not mean a person’s voter registration is automatically restored, but rather that prison officials automatically notify election officials that an individual’s rights have been restored.¹⁰ It is then up to the individual to re-register using the normal process.

⁶ Akosah, Kwame. “New Promise for Restoring Voting Rights in New York.” *Brennan Center for Justice*. June 20, 2016.

⁷ “Governor Cuomo Signs Executive Order to Restore Voting Rights to New Yorkers on Parole.” *Governor.ny.gov*. April 18, 2018.

⁸ “Governor Cuomo Issues First Group of Conditional Pardons Restoring the Right to Vote to New Yorkers on Parole.” *Governor.ny.gov*. May 22, 2018.

⁹ “Transcript of the Minutes of the Committee on Governmental Operations Jointly with Committee on Criminal Justice.” *The New York City Council*. October 3, 2018.

¹⁰ “Felon Voting Rights.” *NCSL*. November 20, 2018.

While Governor Cuomo's Executive Order restores voting rights to individuals with felony convictions, restoration of rights is not election law, nor is it reflected in materials provided by Boards of Election. The New York State voter registration form maintains that to register, one must "not be in prison or on parole for a felony conviction." Further, more than 50 New York county level Boards of Election websites state explicitly that parolees do not have the right to vote.¹¹

From a policy perspective, restoring the voting rights of parolees through election law is more likely to ensure the protection of these rights than an Executive Order. While Governor Cuomo is taking an expansive approach to voting rights, future administrations may not be as proactive about restoring voting rights if it is not a policy priority. For example, in 2006, then-Florida Governor Charlie Crist created automatic rights restoration for people completing sentences for non-violent felony convictions. When Rick Scott was elected Governor in 2011, he eliminated these reforms and "created additional barriers for people seeking to have their voting rights restored."¹² This past election, Florida voters approved a ballot measure to enshrine the restoration of voting rights in the State Constitution, which would automatically restore voting rights to 1.4 million Floridians and end the potential for administrative reversals.¹³ New York State must pass legislation to ensure that parolee voting rights are protected in subsequent administrations and join the fourteen other states and the District of Columbia in restoring voting rights to people with felony convictions upon their release from prison.¹⁴

Preregistration for Young Voters

Generally, new registrants skew younger than the electorate as a whole. In both 2016 and 2017, over half of new registrants in New York City were under 30, and 18-year-olds accounted for the largest segment of new voters. For example, in 2017, over 14 percent of all new registrations came from 18-year-olds, with 19,438 new registrants. For every other age, the number of new registrants was about 5,000 or fewer. Given this annual influx of young voters who register as soon as they turn 18, the State Legislature should enact pre-registration for 16- and 17-year-olds, which will allow young voters to register throughout the election cycle. This will help to reduce the number of voters who register just before the registration deadline. Currently, New Yorkers can register to vote at age 17 as long as they are turning 18 in the year that they register to vote, and their registration then becomes active on their 18th birthday. This demonstrates that the state

¹¹ "Transcript of the Minutes of the Committee on Governmental Operations Jointly with Committee on Criminal Justice." *The New York City Council*. October 3, 2018.

¹² "Voting Rights Restoration Efforts in Florida." *Brennan Center for Justice*. November 7, 2018.

¹³ "Voting Rights Restoration Efforts in Florida." *Brennan Center for Justice*. November 7, 2018.

¹⁴ These states include DC, HI, IL, IN, MA, MI, MT, NH, ND, OH, OR, PA, RI, UT. In Maine and Vermont, felons never lose the right to vote.

already has the technology in place to allow voters to register even further in advance of their 18th birthday, perhaps as young as 16. As of March 2018, 13 states plus the District of Columbia permit preregistration starting at age 16, and four additional states permit preregistration beginning at age 17.¹⁵

Studies show that voting is a habit-forming activity, and it is important to expose prospective voters to the process at a young age to encourage a lifelong habit of voting and civic engagement.¹⁶ Though pre-registrants cannot vote until they turn 18, 16- and 17-year-olds likely live at home and attend high school, which gives parents, teachers, and administrators additional opportunities to encourage civic behavior among young people even before they can legally vote. Regardless of the influx of registrations when voters turn 18, young voters are still historically underrepresented in the electorate. Preregistration creates an institutional way to support opportunities for registration and civic engagement among young people. According to a 2009 study, “preregistration seems to have a measurable impact on voter registration when certain actions are taken to reach out to young people.”¹⁷ For example, “in Florida, Supervisor of Elections staff came to schools for one day and conducted registration drives through individual classroom visits or school-wide assemblies. In Hawaii, election officials have mailed registration forms to every eligible student, coordinated with volunteers to organize registration drives, and worked with larger efforts similar to Rock the Vote to conduct assemblies.”¹⁸ Given these examples, it makes intuitive sense that preregistration is most successful when it is coupled with high school registration drives, a strong civics curriculum, and other in-school activities.¹⁹ Here in New York City, Student Voter Registration Day (SVRD), which is a collaboration between NYC Votes, community-based organizations, the New York City Council, and the Mayor’s office, has held registration drives in every high school in the city over the last three years. In 2018, over 10,000 high school students were registered through SVRD. Had pre-registration been adopted in New York, the number of newly registered youth could have been even higher.

According to FairVote, “evidence collected from states suggests this change will have limited or no fiscal impact, but will have a direct impact on voter registration rates and participation when implemented effectively.”²⁰ A study published by the *American Journal of Political Science* found promising evidence that preregistration can improve turnout. The study compares changes in youth turnout rates in states that have implemented preregistration to changes in turnout in

¹⁵ “How Preregistration Works.” NCSL. March 28, 2018.

¹⁶ “Voter Pre-Registration.” FairVote. 2018.

¹⁷ “Voter Pre-Registration.” FairVote. 2018.

¹⁸ “Voter Pre-Registration.” FairVote. 2018.

¹⁹ Holbein, John & Hillygus, Sunshine. “How preregistration can help increase youth voter turnout.” LSE US Centre. April 27th, 2015.

²⁰ “Voter Pre-Registration.” FairVote. 2018.

states without preregistration, and it indicates that “the increase in response to preregistration could be as large as 13 percentage points.”²¹ Allowing 16- and 17 year-olds to preregister is a simple way to ensure that more individuals can make it onto the voter rolls once they become eligible. By extending preregistration, we can do far more to encourage civic participation among young voters, and allowing high school students to register in advance provides more opportunities to introduce them to the democratic process while they are still in school.

Electronic Signatures

In New York State, online voter registration is only paperless through the Department of Motor Vehicles (DMV), which means voters who do not have a driver’s license or non-driver ID card face a more tedious registration process. As of October 10, 2018, 37 states and the District of Columbia offer some form of online voter registration, and the majority of these states have integrated their online voter registration platforms with the DMV.²² In most states, including New York, once an applicant submits their online registration form with a state driver’s license or identification card number, the state’s DMV will retrieve a copy of the applicant’s DMV signature. If an applicant does not have a driver’s license or state identification card, the registration process cannot be completed electronically. In these cases, applicants are required to print, sign, and mail their registration form to their local Board of Elections (BOE).²³ To register online, applicants can find a link to the online voter registration portal through the state election administrator’s website.²⁴ In most states, if an applicant is not a DMV customer, they can print out the form using the same website that DMV customers use. In New York, online voter registration through the DMV is not connected to the State Board of Elections.²⁵ Non-DMV customers who cannot register through the DMV website must locate the registration portal through the Board of Elections website.²⁶ This represents an additional step to the registration process for those who do not interact with the DMV.

Outside of New York City, 88.8 percent of the general population have driver’s licenses; however, online voter registration provided solely through the DMV presents challenges for

²¹ Holbein, John & Hillygus, Sunshine. “How preregistration can help increase youth voter turnout.” *LSE US Centre*. April 27th, 2015.

²² “Online Registration Overview.” *NCSL*. October 2, 2017

²³ “Register to Vote Online.” *Dmv.ny.gov*.

²⁴ 24 states have an elected secretary of state as the chief election official. New York is one of nine states that has a board or a commission that oversees elections.

²⁵ The New York State Board of Elections maintains a voter file for all registered voters in New York State. The New York City Board of Elections maintains a voter file for registered voters in the five boroughs, and county Boards of Election maintain a voter file for that county.

²⁶ Voters can find a registration form on the State Board of Elections website or through their county’s Board of Elections website.

residents of New York City, where just 55.4 percent of the general population have driver's licenses. The 33.4 percentage point disparity illustrates the additional barriers to registration that New York City residents face.²⁷ Because New York City is more diverse than the rest of the state, lack of access to online registration arguably disproportionately affects minority voters. This also disproportionately impacts already underrepresented populations like lower-income communities and people of color, who are less likely to have drivers' licenses, permits, or DMV identification cards for non-drivers. According to 2016 ACS data, just 43.1 percent of New York City residents are white, while over 80 percent of residents outside of the five boroughs are white.²⁸ Creation of an online registration tool would ensure that all voters have equal access to registration opportunities. However, these communities are less likely to have frequent internet access. For example, 46.8 percent of households that earn less than \$10,000 a year do not have an internet subscription, while just 7.8 percent of households that earn \$75,000 or more do not have an internet subscription.²⁹ Opportunities to register online should be made available at city agencies covered by Local Law 29³⁰ to ensure underrepresented communities do not face additional barriers to online registration.

At this time, the New York State Board of Elections only accepts "wet" ink signatures for the purposes of voter registration, with the exception of signatures provided electronically by the DMV.³¹ By contrast, some states are beginning to move beyond traditional methods of collecting applicant signatures for voter registration. In three states and the District of Columbia, voters can apply an electronic signature to a voter registration form without a state-issued ID. There are a few different methods for doing so in these jurisdictions. For example, in Delaware³² and Missouri³³, a person can register to vote online and electronically provide a signature through a compatible device, including mobile devices, tablets, or touchscreen computers. Voters in Pennsylvania³⁴ can upload an image of their signature using a desktop or laptop computer, and voters in Delaware may click and drag the mouse to apply an electronic signature.³⁵ In

²⁷ Calculation is equal to the general population age 15 and older divided by the number of NYS driver licenses in force at the end of 2017.

²⁸ *U.S. Census Bureau*, 2012-2016 American Community Survey 5-Year Estimates.

²⁹ *U.S. Census Bureau*, 2013-2017 American Community Survey 5-Year Estimates.

³⁰ Local Law 29 (LL29) of 2000 and Local Law 63 (LL63) of 2014 require public-facing city agencies to provide nonpartisan voter registration opportunities for New York City residents. There are currently 27 agencies covered under these laws.

³¹ Valentine, Todd. "Email Response to the New York City Board of Elections." December 11, 2017.

³² "Delaware Online Portal Makes Voting Easier." *Delawareonline.com*. April 16, 2014.

³³ "How to Vote." Missouri Secretary of State.

³⁴ "Online Voter Registration FAQ's." *votespa.com*.

³⁵ "Delaware Online Portal Makes Voting Easier." *Delawareonline.com*. April 16, 2014.

Washington DC, voters may register with an electronic signature with a mobile application (VOTE4DC), using a stylus or finger to provide an electronic signature.³⁶

In April 2016, Suffolk County sought an opinion from the state Attorney General as to whether “state law governing voter registration requires that the signature of a registrant be handwritten.”³⁷ According to an informal opinion issued by the State Attorney General’s office, “state law governing voter registration does not require a wet signature and...a signature can be affixed electronically.”³⁸ However, the informal opinion determined that the signature must be the “quality and likeness” of an ink signature. The opinion also states that an individual may register “by mail or by appearance at an applicant’s local Board of Elections. No other provision of the Election Law authorizes an applicant to directly transmit an application form to the local Board of Elections.”³⁹ The opinion concludes that “a registration application completed online would have to either (a) be printed and mailed to the local Board of Elections by the applicant or the third party assisting the applicant or (b) be completed by appearing at the local Board of Elections.”

Following the issuance of this advisory opinion, the New York City Council enacted Local Law 238 in 2017, which amended the City Charter to require the creation of an online voter registration portal that accepts electronic signatures. The law requires the New York City Campaign Finance Board to develop a secure website and mobile application that allows any qualified voter to register online. To complete their registration, a voter must supply either a DMV number or the last four digits of their Social Security number for the BOE to identify them, or they must indicate that they do not have a driver’s license or Social Security number.

Following the passage of Local Law 238, the New York City BOE sought guidance on electronic signatures from the State BOE, and the co-executive directors provided conflicting opinions. While the Democratic Co-Executive Director, Robert Brehm, agreed that the bill is consistent with state law, the Republican Co-Executive Director, Todd Valentine, “argued against acceptance of electronic signatures, insisting that they do not meet the standards for an affidavit under the Electronic Signatures and Records Act.”⁴⁰ Local Law 238 requires that the online voter registration platform will debut in June 2019. The platform will go live whether the commissioners reach a consensus or not, and passing legislation to allow electronic signatures statewide would

³⁶ “Voter Registration.” *DC Board of Elections*.

³⁷ Sheingold, Kathryn. Informal Opinion No. 2016-1. April 25, 2016.

³⁸ Sheingold, Kathryn. Informal Opinion No. 2016-1. April 25, 2016.

³⁹ New York State Election Law 5-210.

⁴⁰ Khurshid, Samar. “Online Voter Registration Debate Continues with Court Challenge Possible.” *Gotham Gazette*. December 15, 2017.

resolve conflicting opinions presented by the State BOE and provide consistency between city and state policies.

As more states have adopted online registration, it has become an increasingly common way for new voters to register. For example, in the first five days after launching online voter registration, Pennsylvania received 4,100 voter registration applications, an average of one submission every two minutes.⁴¹ Arizona launched online voter registration in 2005, and between 2010 and 2012, over 45 percent of registration applications were received online.⁴² Online voter registration is particularly popular among young voters. A case study of Arizona and Washington's online voter registration systems showed that 61 percent of the individuals sampled who used online voter registration were between the ages of 18 and 34.⁴³ Allowing electronic signatures and subsequently an electronic transfer of registration data to local Boards of Election, rather than requiring voters to print, sign, and submit their forms by mail, would provide voters with a more efficient and accessible way to complete and sign their registration forms. This would help to facilitate a seamless registration process for the voter and minimize the burden to register to vote. Registration is the first step in becoming involved with the voting process, and allowing electronic signatures is an essential step in removing barriers to registration for New Yorkers who do not interact with the DMV.

Electronic Poll Books

In New York State, poll workers use paper poll books to sign voters in on Election Day. Poll workers search for voters by last name according to election district, and voters sign the poll book to affirm their identity. However, oftentimes, voters go to the wrong check-in table (or sometimes the wrong poll site) by mistake, and they cannot find their names in the poll books. Paper poll books are also responsible for a number of administrative challenges leading up to Election Day. According to a 2014 report from the Presidential Commission on Election Administration, "in the national survey of election officials, e-poll books was one of the most frequently identified innovations that respondents desired."⁴⁴ Electronic poll books are simply electronic versions of the voter rolls that are used to check voters in at the polls, and they have already replaced paper poll books in many jurisdictions.⁴⁵ As of March 2017, eight states have

⁴¹ Maluk, Holly, Perez, Myrna, Zhou, Lucy. "Voter Registration in the Digital Age: 2015 Update." *Brennan Center for Justice*. 2015.

⁴² Maluk, Holly, Perez, Myrna, Zhou, Lucy. "Voter Registration in the Digital Age: 2015 Update." *Brennan Center for Justice*. 2015.

⁴³ "Online Voter Registration Systems in Arizona and Washington." *Washington Institute of the Study of Ethnicity and Race*. April 1, 2010

⁴⁴ "NCSL's The Canvass." *NCLS*. February 2014.

⁴⁵ "VRM in the States: Electronic Poll-Books." *Improving Judicial Diversity* | *Brennan Center for Justice*. February 6, 2017.

certified the use of electronic poll books,⁴⁶ and another eleven states⁴⁷ have statutes that explicitly authorize their use.⁴⁸

Under federal law, New York State is obligated to maintain an electronic database of registered voters. However, New York State election officials have opted not to transmit this information to poll workers in the form of electronic poll books. Until 2016, the New York Election Commissioners Association (NYSECA) did not include electronic poll books in their yearly legislative proposals. Today, NYSECA supports enacting “legislation to allow individual Boards of Elections to be able to utilize electronic poll books on Election Day.”⁴⁹ In 2011, the Orange County Board of Elections introduced a pilot program for electronic poll books, and, the county Board of Elections reported “much faster check-in and reduction of calls by election inspectors to the BOE.”⁵⁰ The success of this pilot program provides further evidence that e-poll books should be implemented statewide.

The implementation of electronic poll books would not only expedite the voter check-in process, but also, depending on the type of electronic poll book that a jurisdiction uses, provide a variety of additional functions. For example, with electronic poll books, poll workers could easily redirect voters who have come to the wrong polling location to their correct poll site. Additionally, during the 2018 primary election, many voters complained that they could not be found in the poll books, even though they believed that they had registered with a political party. Using electronic poll books, poll workers could verify a person’s party registration and provide voters with answers.⁵¹ E-poll books can also notify poll workers if a voter has already voted absentee or, in applicable jurisdictions, if the voter has cast a ballot during the early voting period. Some versions of electronic poll books even allow voters to sign in using an electronic signature pad, similar to those used in credit card transactions.⁵² Because a signature is already used to confirm a voter’s identity in New York, legislation on electronic poll books should allow voters to sign on an electronic signature pad.

Furthermore, inactive voters (i.e. those who have failed to respond to a residence confirmation notice) do not appear in paper poll books.⁵³ Electronic poll books can keep track of voters of

⁴⁶ These states are AL, CA, CT, ID, IN, OH, PA, VA

⁴⁷ These states are AX, AK, FL, IA, MN, MO, NC, SD, TN, TX, WY

⁴⁸ “Electronic Poll Books.” *NCLS*. March 22, 2017.

⁴⁹ “2018 NYSECA Legislative Committee Agenda.” Election Commissioners Association of the State of New York. 2018.

⁵⁰ “Testimony to the Joint Fiscal Committees of the New York State Senate and the New York State Assembly.” *The League of Women Voters*. February 4, 2016.

⁵¹ Raymond, Adam. “Voting in New York is a Predictable Mess.” *Intelligencer*. September 13, 2018.

⁵² “Electronic Poll Books.” *NCLS*. March 22, 2017.

⁵³ As defined in Section 5–712 of State Election Law.

inactive status, which would help to cut down on the number of provisional ballots cast in an election.⁵⁴ Over 3 million voters were eligible to cast a ballot in New York City for the 2018 Democratic gubernatorial primary. 9,359 of the 914,046 New Yorkers who voted in the state primary (about 1 percent) did so by affidavit ballot. With electronic poll books, at least some of these voters could have cast a regular ballot instead.

While the New York State Constitution allows voters to return a registration form ten days prior to an election, the State Board of Elections currently requires forms to be returned 25 days before an election because paper poll books need to be processed and printed in advance. In 2018, the deadline to register for the general election was October 12th and the change of address deadline was October 17th. According to New York City BOE Executive Director Michael Ryan, poll books were required to be sent to the printer on October 19th, thus creating an administrative burden to process any forms that were received near the deadline.⁵⁵ Thus, any attempt to extend the registration deadline to the ten days allowed under the Constitution would be administratively impossible to implement without electronic poll books.

Many counties in New York State already have the appropriate technology to implement electronic poll books.⁵⁶ In fact, many computer-generated voting lists can be integrated with tablets, which some jurisdictions in New York State currently use to direct voters to their appropriate check-in table.⁵⁷ In New York City, poll workers also receive tablets “for the purpose of looking up ED/AD and poll site information for voters.”⁵⁸ Electronic poll books would create administrative flexibility to extend the registration deadline and pave the way for a variety of election reforms including same-day registration, in-person early voting, and vote center models.

Voter Friendly Ballot Act⁵⁹

New York State adopted the use of optical scanners in 2010, but election law still contains ballot requirements that are designed for lever machines. The state adopted optical scanners to comply with the Help America Vote Act (HAVA), which was passed in 2002 and addressed improvements to the nation’s voting systems and voter access.⁶⁰ HAVA set minimum standards to make election administration easier nationwide, but New York State election law has not been

⁵⁴ Lorshbough, Erika. “New York is Way Behind on Voting Rights.” *NYCLU*. April 26, 2018.

⁵⁵ Ryan, Michael. New York City Board of Elections Commissioner’s Meeting. October 16, 2018.

⁵⁶ New York State Assembly Bill Number A05547. February 10, 2017.

⁵⁷ “ExpressPoll Electronic Poll Book.” *ESSVote*. 2018.

⁵⁸ “Basic Poll Worker Manual 2018/2019 Certification Period.” *New York City Board of Elections*.

⁵⁹ The Voter Friendly Ballot Act was first introduced in the Assembly during the 2011-2012 legislative session. It passed in the Assembly in 2012, and it has passed in the Assembly in every succeeding legislative session.

⁶⁰ “Help America Vote Act.” *US Election Assistance Commission*. 2018.

updated to reflect these improvements. Though county administrators have exercised some flexibility under the law, confusing layouts and readability challenges persist.

Problems with ballot design were particularly evident in the 2018 general election, where the two-page ballot design “created havoc for scanning machines at polling places across New York City, as scores of broken scanners brought voting to a standstill at many locations on an Election Day marked by heavy turnout.”⁶¹ According to New York City BOE Executive Director Michael Ryan, “no other jurisdiction in the United States utilizes a 2-page perforated ballot.”⁶² Ryan also said that the center perforation was the “major culprit” of scanner jams on Election Day. He cited state election law, which requires the ballot to be on a single sheet of paper, and he noted that in jurisdictions without this law, multiple page ballots exist without a perforated edge.⁶³ The Voter Friendly Ballot would require improvements to the ballot that would render multi-page perforated ballots unnecessary. State election law should be changed to enable ballot design that is tailored to the capabilities of the optical scanners. The Voter Friendly Ballot Act would modify ballot layout to ensure the text is clear and easy to read.

According to a report published by the Brennan Center, “Poor design increases the risk for lost or misrecorded votes among all voters, but the risk is even greater for particular groups. Several studies have shown higher rates of lost or misrecorded votes in low-income and minority communities as well as for the elderly and disabled.”⁶⁴ For example, during the 2018 state primary, there were over 12,000 unrecorded votes for governor (about 1.4 percent of applicable ballots). Unrecorded votes may be due to mismarking, over-marking, or choosing not to fill out a ballot. With an improved ballot design that allows voters to more easily and clearly express their intent, some of these votes would have been properly recorded, and more votes would have been counted towards the intended candidate.

The bill also contains a number of provisions that will ensure ballots are straightforward and readable. For example, in counties where ballots are required to be provided in a language other than English, the Board of Elections should print ballots in English and in each of the additional required languages so that each version of the ballot contains English and no more than two other languages.⁶⁵ This will cut down on unnecessarily complex and wordy ballots and allow for

⁶¹ Neuman, Andy et al. “Jammed Scanners Frustrated Voters in New York City.” *The New York Times*. November 6, 2018.

⁶² “Transcript of the Minutes of the Committee on Governmental Operations Jointly with Committee on Oversight and Investigations.” *The New York City Council*. November 20, 2018.

⁶³ “Transcript of the Minutes of the Committee on Governmental Operations Jointly with Committee on Oversight and Investigations.” *The New York City Council*. November 20, 2018.

⁶⁴ Norden, Lawrence. “Better Design, Better Elections.” *Brennan Center for Justice*. 2012.

⁶⁵ This will simplify the ballot layout in parts of Queens, where three to four languages covered by the Voting Rights Act appear on the ballot.

increased font size. In fact, this legislation would require that the name of each candidate on the ballot be capitalized and printed in a font size of no less than 9 points.⁶⁶ During the 2018 election cycle, the Reform Party petitioned Richmond County Supreme Court to order the New York City BOE to revise and reprint New York City's general election ballot because the Reform Party, a recognized political party, was listed below two independent bodies.⁶⁷ The Voter Friendly Ballot Act would require the offices appearing on all ballots to appear in customary order and ensure that the names of candidates would not be separated by a perforation.⁶⁸

The Voter Friendly Ballot Act also lays out specifications for ballot marking instructions, stating that text on the ballot should make the ballot marking instructions clearer and, in "the largest type size practicable" either on the front or back of the ballot.⁶⁹ Additionally, the State Board of Elections would be required to provide illustrations to supplement written ballot marking instructions. For example, in elections that include ballot proposals, the ballot would signal to a voter that they should flip their ballot to vote for questions on the back.⁷⁰

In addition, the Voter Friendly Ballot Act suggests measures that would prevent any scanner issues from obstructing the voting process as they did during our most recent election. If any voting machine breaks down during an election, the Act stipulates that, if possible, it must be repaired or replaced as quickly as possible. Ultimately, provisions of the Voter Friendly Ballot Act would provide counties the flexibility to design ballots that are compatible with optical scanners rather than old lever machines.

Allow Poll Workers to Serve Split Shifts

On Election Day, poll workers are required to work 15-hour shifts while the polls are open, and there must be at least one poll worker from each political party present at all poll sites at all times.⁷¹ Additionally, poll workers are required to arrive before the polls open to set up and to stay after the polls close to shut down polling places. These long shifts contribute to poll worker fatigue, and according to the Democratic Lawyer's Council, "working so many hours leads to

⁶⁶ New York State Assembly Bill Number A09607. February 10, 2017.

⁶⁷ Michel, Clifford. "Reform Party petitions Staten Island court to get November ballots revised, reprinted." *SI Live*. October 27, 2018.

⁶⁸ New York State Assembly Bill Number A09607. February 10, 2017.

⁶⁹ New York State Assembly Bill Number A09607. February 10, 2017.

⁷⁰ New York State Assembly Bill Number A09607 February 10, 2017.

⁷¹ New York State Assembly Bill Number A06907. February 10, 2017.

reduced attention to detail, patience, and overall quality, which is why they are prohibited in public health and safety occupations.”⁷²

Due to demanding hours and low pay, Boards of Election around the state have had an increasingly difficult time recruiting workers that are willing to work the full 15-hour day. In New York City alone, there are about 34,000 poll worker positions that need to be filled for each election. However, just one week before the 2018 state primary, the New York City BOE reported 6,400 vacancies.⁷³ For the 2017 general election, the Board of Elections reported about 4,700 poll worker vacancies on Election Day across the five boroughs, about 18 percent of the total number of positions that needed to be filled that cycle.⁷⁴ According to the US Election Assistance Commission, providing poll workers the option to serve split shifts allows workers to remain alert throughout their shift and also serves as an important recruitment tool for people interested in becoming poll workers but unable to commit to the long hours.⁷⁵ Poll workers should be allowed to serve split shifts on Election Day.

⁷² “Voter Assistance Advisory Committee Testimony.” *New York Democratic Lawyers Council*. December 13, 2017.

⁷³ Mestel, Spencer.” The Path to Becoming an Underpaid, Underappreciated and Absolutely Necessary Election Poll Worker.” *The New York Times*. September 6, 2018.

⁷⁴ “Annual Report 2017.” New York City Board of Elections.

⁷⁵ “Offering a Split Shift Option” US EAC Guidebook on Successful Practices for Poll Worker Recruitment, Training, and Retention. *U.S. Election Assistance Commission*.

SECTION II: SHORT-TERM REFORMS

Early Voting

New York is the fourth most populous state in the country, yet our election system does not cater to a large and increasingly diverse population. As of November 2018, there were about 12.7 million registered voters in New York State, all of whom have only one day to cast a ballot in a given election. Providing a single 15-hour period to cast a ballot already disenfranchises millions of voters, but challenges at the polls in the most recent election— including long lines and broken scanners— further illustrates the need for a more convenient and flexible way for voters to cast a ballot. Currently, 38 states⁷⁶ and the District of Columbia allow any qualified voter to cast a ballot during a designated period prior to Election Day,⁷⁷ meaning New York is one of a handful of states that have failed to pass this important reform.⁷⁸

In the 2016 presidential election, over one-third of voters cast their ballots before Election Day, demonstrating the nationwide popularity of early voting.⁷⁹ Giving voters more options for when to go vote provides voters, many of whom juggle work and family obligations, with much-needed convenience and flexibility. It also helps businesses, allowing workers to make it to the polls without missing work. Early voting is popular nationwide, and according to a November 2018 poll, “71% of Americans said that any voter should have the option to vote early or absentee without having to document a reason, including 60% of those living in states that do not have early voting, no-excuse absentee voting or voting by mail.”⁸⁰

There are a variety of administrative advantages to early voting. According to “Early Voting, What Works,” a 2015 report from the Brennan Center, “early voting eases Election Day congestion, leading to shorter lines and improved poll-worker performance. It allows election officials to correct registration errors and fix voting system glitches earlier.”⁸¹ The same report included interviews with election administrators, who frequently cited reduced wait times as a key benefit of early voting. According to a poll conducted among voters who participated in 2016, “good poll workers boost voters’ confidence in elections,”⁸² and an early voting period allows poll workers to “gain valuable experience, which makes them more efficient at handling the higher volume on

⁷⁶ In three states, WA, OR, and CO, voting is conducted completely by mail.

⁷⁷ States that do not offer any form of early voting are MO, MS, AL, KY, SC, VA, PA, NY, DE, RI, CT, NH.

⁷⁸ “Absentee and Early Voting.” *NCSL*. December 3, 2018.

⁷⁹ McDonald, Michael. “2016 November General Election Early Voting.” *United States Election Project*. 2016.

⁸⁰ Bialik, Kristen. “How Americans view some of the voting policies approved at the ballot box.” *Pew Research Center*. November 15, 2018.

⁸¹ Kasdan, Diana. “Early Voting: What Works.” *Brennan Center for Justice*. 2015.

⁸² Vasilogambros, Matt. “Few People want to be Poll Workers, and that’s a Problem.” *Pew*. October 22, 2018.

Election Day.”⁸³ Implementing early voting would also reduce the number of voters at the polls on Election Day, thereby relieving the strain on voting machines, poll workers, and election administrators that was seen during the 2018 elections. As ABC News New York reported: “hundreds to thousands of voters experienced frustration and trouble voting during the Midterm Elections due to long lines often caused by broken ballot scanning devices.”⁸⁴

Early voting legislation in New York should require at least one weekend to be included in the early voting period. Providing early voting on weekends would allow individuals who cannot take time off of work to vote during the week to participate in our elections. In its 2015 report, the Brennan Center noted that “according to interviews with election officials, weekends were commonly peak [early voting] periods, particularly in large counties that are major population centers—and in those counties, the last Saturday of [early voting] often constituted the highest turnout day.”⁸⁵ Among states that allow early voting, 22 states and the District of Columbia allow some weekend early voting. Allowing early voting on weekends is crucial for ensuring that more New Yorkers have the opportunity to cast a ballot.

New York City is one of the most diverse cities in the country, and over 50 percent of its residents are non-white.⁸⁶ Research shows that early voting can significantly reduce barriers to participation in minority communities. According to *The Washington Post*, “early voting is intimately bound up in race, not simply because minorities are more likely to take advantage of it, but because the policy itself addresses systemic barriers they face... These costs associated with voting—in lost pay, in childcare, in transit fares—are higher for minorities and the poor.”⁸⁷ Minorities are much more likely to work in non-salaried jobs and therefore are less likely to receive paid time off to vote on Election Day. In fact, in advance of the 2012 election, Florida drastically reduced the early voting period, and post-election research found that minority voters “shouldered an unequal share of the reduced [early voting] opportunities.”⁸⁸

Furthermore, early voting can benefit young voters ages 18-29, a demographic with historically low turnout. For example, in 2016, 55.4 percent of eligible New York City voters ages 18-29 cast a ballot, about 3 points lower than the next lowest turnout group. In local elections, the gap in youth voter participation widens significantly. For example, in the 2017 New York City mayoral election, just 13.5 percent of voters ages 18-29 turned out, a 6 point difference from the next

⁸³ Kasdan, Diana. “Early Voting: What Works.” *Brennan Center for Justice*. 2015.

⁸⁴ Leigh, Danielle. “7 On Your Side Investigates: Broken scanners, long lines on Election Day.” *ABC7 NY*. November 7, 2018.

⁸⁵ Kasdan, Diana. “Early Voting: What Works.” *Brennan Center for Justice*. 2015.

⁸⁶ *U.S. Census Bureau*, 2012-2016 American Community Survey 5-Year Estimates.

⁸⁷ Badger, Emily. “Why early voting is about so much more than convenience.” *The Washington Post*. September 30, 2014.

⁸⁸ Kasdan, Diana. “Early Voting: What Works.” *Brennan Center for Justice*. 2015.

lowest turnout group.⁸⁹ However, recent elections have shown that early voting encourages turnout among young voters. As *The Atlantic* reports, “[w]hile early voting across every age group increased compared with the 2014 midterms, the surge is most pronounced among voters ages 18 to 29.” Over 3 million young voters cast a ballot early during the 2018 midterms, a 188 percent increase from 2014.⁹⁰ An early voting period would encourage participation among some of the most underrepresented parts of the electorate, including youth, minorities, and low income communities.

In the previous legislative session, S7400/ A09608B⁹¹ set minimum early voting requirements for the number of polling locations and hours that account for differences in county population size and local needs. This legislation would require counties to establish one polling location per 50,000 registered voters. Counties with fewer than 50,000 registered voters would need to establish at least one location. When choosing early voting polling locations, election administrators would be required to take into account population density, transportation routes, and the distribution of sites in order to ensure maximum accessibility for voters.

A common concern about early voting is the cost of operating poll sites prior to Election Day. To offset potential cost increases, the bill introduced in the State Senate offered a funding mechanism outlined as the “New York State Early Voting Fund.” The fund would consist of “all revenues received from the abandoned property fund. It would be used to make payments to a county’s Board of Elections to reimburse costs incurred by the Board to provide polling places for early voting.”⁹² When the Governor’s office released the 2018-2019 state budget, it did not include funding to launch early voting, but according to *The Daily Gazette*, “an estimated \$6.4 million in costs are to be paid collectively by county Boards of Elections” to implement early voting. The total 2018-2019 budget is estimated at about \$171 billion, which puts into perspective the relatively small cost of implementing this important reform.⁹³

Automatic Voter Registration

As of November 1, 2018, there were about 12.7 million registered voters in New York State, where the citizen voting age population is about 13.5 million.⁹⁴ This means there were about 800,000 people eligible to vote who are not registered. Registration practices in New York State are outdated, and registration is often a major barrier to electoral participation, especially with the absence of tools like online voter registration. Automatic voter registration would help remove

⁸⁹ “2017-2018 Voter Assistance Annual Report.” *New York City Campaign Finance Board*. April, 2018.

⁹⁰ Beck, Julie & Kitchener, Caroline. “Early Signs of a Youth Wave.” *The Atlantic*. November 6, 2018.

⁹¹ A09608B passed the Assembly during the 2017-2018 legislative session and was referred to the Elections Committee in the Senate.

⁹² New York State Senate Bill Number S7400. January 12, 2018.

⁹³ Williams, Stephen. “No state money for early voting in budget.” *The Daily Gazette*. January 18, 2018.

⁹⁴ *U.S. Census Bureau*, 2012-2016 American Community Survey 5-Year Estimates.

this barrier to participation by shifting the responsibility to register eligible citizens from the voters themselves to the state. Currently, New York residents can register to vote in a few ways. They can register at a government agency, either a state agency covered by the National Voter Registration Act, or, in New York City, a city agency required to provide voter registration opportunities under Local Law 29. Residents can also register online through the DMV, provided they have a signature on file with the agency. Those who do not interact with the DMV in person and those who do not have a signature on file with the DMV must print, sign, and mail a registration form to their county Board of Elections. In New York, voter registration is run on an opt-in basis, in which a voter must choose to fill out and submit a voter registration form to be approved by the Board of Elections.

In 1993, the National Voter Registration Act (NVRA) “pioneered a new way of registering to vote in America by requiring most states to provide citizens with an opportunity to register to vote when applying for or renewing a driver’s license.”⁹⁵ While it was a step forward for government agencies to have to offer registration opportunities, what this often means in practice is that they simply need to make registration forms available in their offices. New York should take these measures further by integrating registration with other transactions. Automatic voter registration (AVR) is often referred to as a new or updated version of the NVRA. AVR is an “opt-out” policy by which an eligible voter is placed on the voter rolls at the time they interact with a motor vehicle agency, unless they decline to register. Some states automatically register individuals when they interact with other government agencies as well.⁹⁶ For example, Alaskans are automatically registered when they interact with the Permanent Dividend Fund, which is part of the state’s Department of Revenue. In Maryland and Washington, residents may be automatically registered when they interact with their state’s health benefits exchange.⁹⁷

As of October 2018, 15 states and the District of Columbia have authorized automatic voter registration.⁹⁸ Since Oregon became the first state in the nation to implement AVR in 2016, it has seen registration rates quadruple at DMV offices.⁹⁹ Under the Oregon AVR program, eligible but unregistered voters in the state’s DMV databases are notified by mail that they will be added to the voter rolls, unless they decline registration within 21 days by returning a postcard to the state’s election authorities.¹⁰⁰ In New York, however, individuals would be able to opt out of voter

⁹⁵ “Automatic Voter Registration.” *NCSL*. December 3, 2018.

⁹⁶ States that offer automatic voter registration at government agencies outside of the DMV are AK, IL, MD, MA, NJ, RI, WA.

⁹⁷ “Automatic Voter Registration.” *NCSL*. December 3, 2018.

⁹⁸ “Automatic Voter Registration” *Brennan Center for Justice*. November 7, 2018.

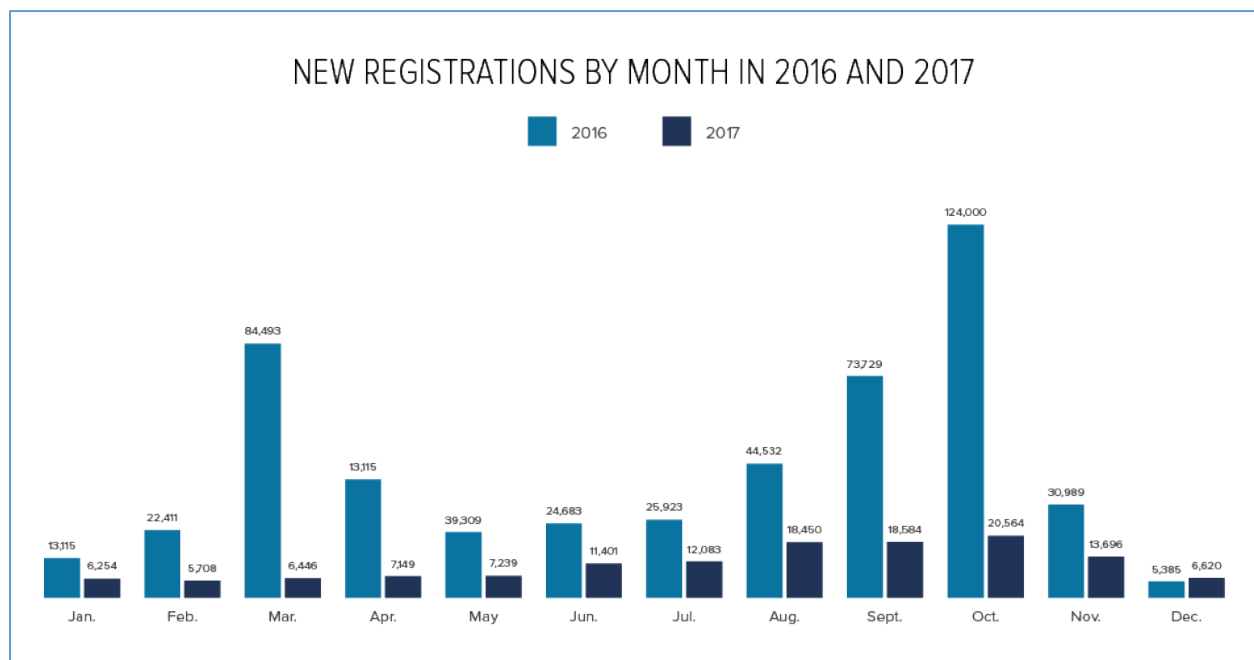
⁹⁹ Morales-Doyle, Sean & Lee, Chisun. “New York’s Worst-in-the-Country Voting System.” *The Atlantic*. September 13, 2018.

¹⁰⁰ McElwee, Sean et al. “Oregon Automatic Voter Registration.” *Demos*. July 26, 2017.

registration the moment they interact with an agency, giving them the opportunity to decline immediately, rather than requiring them to send back a notice of declination.

In an extensive study of Oregon’s automatic registration program, the Center for American Progress found that AVR registrants were younger and more likely to live in low to middle income, low education, and racially diverse areas than the rest of the electorate. The report concludes that “AVR strengthens democracy by expanding and broadening the electorate. AVR’s streamlined systems can save states and localities significant costs, make the voter registration lists more accurate and up to date, and increase the security of the voting system.”¹⁰¹

Automatic voter registration also helps to reduce errors on the voter rolls. When voters update their information with a government agency, the information can be electronically transmitted to the Board of Elections, eliminating the need for voters to update information again with the Board of Elections. According to the Brennan Center, “the policy keeps voter rolls more accurate by creating a constant stream of updates between registration agencies and election officials and by reducing the odds of mistakes caused by processing paper registration forms by hand.”¹⁰² Up-to-date voter rolls help to ensure voters receive election-related information from the BOE and that they can be found in the poll books on Election Day, reducing the number of provisional ballots cast and improving voters’ experiences at the polls. In addition to expanding registration to more eligible New Yorkers, automatic registration would distribute the load of new registrations more



¹⁰¹ Griffin, Rob et al. “Who Votes With Automatic Voter Registration?” *Center for American Progress*. June 7, 2017.

¹⁰² “Automatic Voter Registration” *Brennan Center for Justice*. November 7, 2018.

evenly throughout the year and eliminate the overwhelming surge of registrants that county Boards of Election often struggle with near election time. For example, in October 2016 alone, 124,000 new registrations were processed in New York City, which is almost as many as the total number of registrations in 2017. In the single week of the October 14th registration deadline for the presidential election, over 70,000 voters registered which is more than half of the total registrations the city saw in 2017. While some election years see a higher volume of voter registrations than others, there are peaks and valleys every year. For example, August through November had the most registrations in both 2016 and 2017. Automatic voter registration would distribute registrations more evenly throughout the year and across election cycles, because voters would appear on the rolls when they interact with a government agency and not when they register in advance of an upcoming election.

The Voter Empowerment Act, which was introduced in the New York State Assembly and Senate, names several “source agencies” in addition to the DMV that would be required to automatically register individuals who interact with them: the State University of New York and the City University of New York, all public housing authorities listed in Article 13 of the public housing law, the Department of Corrections and Community Supervision, the Department of Labor, and the New York Division of Military and Naval Affairs.¹⁰³ Designating source agencies increases the likelihood that an individual will be automatically registered, particularly in a city like New York, where fewer people interact with the DMV. The proposed source agencies in the Voter Empowerment Act frequently interact with populations with historically low voter turnout. By making registration accessible and automatic to underrepresented communities, New York can eliminate the first barrier to electoral participation.

Portable Voter Registration

Under New York State election law, “the Board of Elections shall transfer the registration and enrollment of any voter for whom it receives a notice of change of address to another address in the same county or city, or for any voter who casts a ballot in an affidavit ballot envelope which sets forth such a new address.”¹⁰⁴ The Board of Elections receives change of address notices through the National Change of Address System (NCOA). However, even though New York City and county BOEs are required to update a voter’s address when they move within New York City or within their county, BOEs receive data from the NCOA in May. Therefore, if a voter moves within their county after May, their registration will not be updated until the following year, unless they update their address using a voter registration form.¹⁰⁵ Currently, voters who move in or out of New York City or from one county to another outside of New York City must update their

¹⁰³ New York State Assembly Bill Number A02278. November 7, 2017.

¹⁰⁴ New York State Election Law Section 5-208.

¹⁰⁵ Sandow, Dawn. New York City Board of Elections Commissioners Meeting. October 16, 2018.

address with the county or State Board of Elections, or they will be unable to vote on Election Day. If a voter needs to update their address prior to an election, they are required to use a voter registration form as a change of address form. The New York State Board of Elections is required by law to maintain a database of registered voters throughout the state, and portable registration would ensure that a voter who moves anywhere within the state would be able to vote in his or her new election district. As a result, “Boards of Elections would automatically transfer registrations for such a voter, as they currently do for voters who move within their county or within New York City. Affidavit ballots would be verified using the statewide voter file.”¹⁰⁶

Research by the Pew Center on the States concludes that “approximately 24 million—one of every eight—voter registrations in the United States are no longer valid or are significantly inaccurate.”¹⁰⁷ Inaccuracies in the voter rolls cause confusion at the poll sites and often force voters to cast an affidavit ballot. These inaccuracies can also further disenfranchise voters by placing them erroneously on an inactive voter list. Voters are placed on the inactive list when they fail to respond to a residence confirmation mailing, but if a voter has moved without updating their address, they may never receive the inactive notice, making it impossible to confirm their residency. More seriously, a “failure to maintain accurate voter registration information [can] undermine voter confidence in the electoral process.”¹⁰⁸ Portable voter registration would make it possible to track and update changes to a voter’s address when they move within the state, eliminating the need for a voter to submit a change of address form.

According to the *New York Times*, “the vast majority of housing stock [in New York City] is rental; there is a cadre of nomadic souls who move on an annual basis.”¹⁰⁹ While New York is famously a town of renters, the rest of the country skews much more heavily toward homeownership. In the United States, about 36 percent of housing units are renter-occupied. In New York City, the rental rate is more than 30 points higher than in the US as a whole. 68 percent of housing units are rented rather than owned in New York City.¹¹⁰ According to Census data, “24.5 percent of all people living in renter-occupied housing units lived elsewhere one-year prior.”¹¹¹ Moreover, Pew Research found that “certain demographic groups, such as young adults, nonwhites and the lesser educated, have historically been more likely to rent than others, and rental rates have

¹⁰⁶ New York State Assembly Bill Number A09826. February 14, 2018.

¹⁰⁷ “Inaccurate, Costly, and Inefficient Evidence That America’s Voter Registration System Needs an Upgrade.” *The Pew Center on the States*.

¹⁰⁸ “Inaccurate, Costly, and Inefficient Evidence That America’s Voter Registration System Needs an Upgrade.” *The Pew Center on the States*.

¹⁰⁹ Finn, Robin. “Serial Renters in New York City.” *The New York Times*. March 28, 2014.

¹¹⁰ *U.S. Census Bureau*, 2013 – 2017 American Community Survey 5-Year Estimates.

¹¹¹ “U.S. Mover Rate Remains Stable at About 12 Percent since 2008, Census Bureau Reports” *U.S. Census Bureau*. March 18, 2015.

increased among these groups over the past decade.”¹¹² Creating barriers to participation for demographic groups that are already underrepresented in the electorate has serious consequences for our democracy. Using the state voter file, New York could update voter information seamlessly, allowing more New Yorkers to cast a regular ballot on Election Day.

Change the Party Enrollment Deadline

Currently, New York is the only state that prohibits voters from changing their party enrollment in the year of an election. This extremely early deadline prevents many voters from participating in party primaries. According to New York State election law, if a voter wishes to change their party, “a change of enrollment received by the Board of Elections not later than the twenty-fifth day before the general election shall be deposited in a sealed enrollment box, which shall not be opened until the first Tuesday following such general election.”¹¹³ This means that a voter cannot participate in a party primary until the following election year. In 2016, the deadline to enroll in a party was October 9, 2015, which was 193 days before the presidential primary election. In 2016, many unaffiliated voters found that they had missed the party change deadline, which prevented them from participating in the primary election.

The State Legislature should move the party enrollment deadline much closer to the election so that more New Yorkers can participate in primary elections. In New York State, there are almost as many unaffiliated voters as there are Republicans, about 2.7 million. In New York City, unaffiliated voters are the second largest “party,” with over 400,000 more unaffiliated voters than registered Republicans.¹¹⁴ Because New York is one of nine remaining closed primary states, these unaffiliated voters cannot vote in the primary, and the early registration deadline compounds this problem. Moving the party enrollment deadline closer to the election would allow more New Yorkers to participate in primary elections, which are typically the most competitive races in New York City.

Combined Primaries

During the 2018 midterm election cycle, New York was the only state in the nation that held separate state and federal primaries. In 2012, the U.S. Department of Justice won a lawsuit in New York that required the state to move the federal primary to June from September to ensure that military and overseas voters would receive their absentee ballots in time for the general

¹¹² Cilluffo, Anthony et al. “More U.S. households are renting than at any point in 50 years.” *Pew Research Center*. July 19, 2017.

¹¹³ New York State Election Law Section 5-304.

¹¹⁴ Sago, Renata et al. “Sick of Political Parties, Unaffiliated Voters Are Changing Politics.” *NPR*. February 28, 2016.

election, in compliance with the Military and Overseas Voter Empowerment (MOVE) Act.¹¹⁵ Since then, lawmakers have failed to consolidate New York's state and federal primaries. While many legislators favor a consolidation of primaries on the June date, some have complained that "because the state legislative session runs through the end of June, they would have no time in their districts to campaign."¹¹⁶

Holding multiple primaries every year places an unnecessary burden on voters who want to make their voices heard. Studies show that Western countries with a high number of elections per year, such as the United States and Switzerland, have consistently low voter turnout, and many political scientists attribute this behavior directly to voter fatigue.¹¹⁷ Voter fatigue occurs when voters are required to vote too often, most notably when there are multiple elections in a single year. This is especially prominent in the United States, and particularly in jurisdictions without early voting, where voters are often required to take time out of the work day to vote.¹¹⁸

A 2016 Pew Research poll shows that among non-voters in the 2016 presidential election, 14 percent cited "too busy or conflicting schedule" as their main reason for not voting.¹¹⁹ New York is already among the lowest turnout states in the country,¹²⁰ and holding separate primaries makes it even more difficult for voters to get to the polls. Analysis from Fair Vote shows that about 40 percent of the voting eligible population votes during midterm election years.¹²¹ While turnout improved in New York City during the 2018 election cycle, just 11.0 percent and 29.7 percent of eligible voters turned out in the 2018 federal and state primaries respectively, well below the national average.

In addition to fueling voter fatigue, holding multiple primaries is costly. The New York State Senate estimated that "if the state and congressional primaries were on the same day, the state could save about \$25 million."¹²² Consolidating federal and state primaries in June would not only save the taxpayers millions, but would also greatly improve the voter experience by reducing fatigue and confusion.

¹¹⁵ Foderaro, Lisa. "Only in New York: Where Primary Day Comes Twice a Year." *The New York Times*. June 25, 2018.

¹¹⁶ Foderaro, Lisa. "Only in New York: Where Primary Day Comes Twice a Year." *The New York Times*. June 25, 2018.

¹¹⁷ Garmann, Sebastian. "Voter Fatigue and Turnout." *University of Dortmund*. October 10, 2015.

¹¹⁸ "Voter Fatigue." *POLYAS*. 2018.

¹¹⁹ Lopez, Gustavo & Flores, Antonio. Dislike of candidates or campaign issues was most common reason for not voting in 2016. *Pew Research Center*. June 1, 2017.

¹²⁰ "Elections Performance Index." *Pew Research Center*. August 9, 2016.

¹²¹ "Voter Turnout." *FairVote*. 2016.

¹²² Brown, Nicole. "Why does New York have multiple primary elections?" *AM New York*. September 12, 2018.

Make Translation Services Available in Languages beyond What Is Required by the Voting Rights Act

In New York City, the Limited English Proficiency (“LEP”) population is about 1.8 million, or 23 percent of New York City’s total population. Of these 1.8 million, about 305,000 (17 percent) speak a language that is not protected under the federal Voting Rights Act (VRA). The Voting Rights Act contains several provisions that protect voters who require language assistance at the polls. Section 203 of the Act requires New York State to provide information and assistance to voters in various languages depending on the county. According to a report published by the New York City Charter Revision Commission, “the New York City Board of Elections meets these obligations, in part, by translating ballots and written materials and employing poll workers to serve as interpreters at poll sites on Election Day. In the covered counties, the BOE provides these services at poll sites with large concentrations of LEP eligible voters who speak a particular covered language.”¹²³

In New York State, seven counties¹²⁴ are required to provide bilingual voting materials under Section 203.¹²⁵ Other large US cities go beyond what is required by the Voting Rights Act. For example, Los Angeles County is required to provide language assistance in eight languages.¹²⁶ The county supports four languages beyond what is required by Section 203, and voters can call a Bilingual Assistance Hotline, which provides poll site and voter information in a variety of languages.¹²⁷ In Chicago, the Clerk’s Office is required to provide language assistance in Spanish, Chinese, and Hindi. Voters or election judges can also call a language assistance hotline, which provides translators in the covered languages and Polish, which is widely spoken in Cook County.¹²⁸

LEP voters who cannot read election materials or ask poll workers for assistance face unique challenges. If these communities do not receive adequate guidance at the polls, it can prevent them from voting as they intended or from voting at all. In the United States, about 4.5 percent of households are classified as “limited English speaking.” In New York State, “limited English households” make up 8.1 percent of total households and in New York City, “limited English households” make up 14.8 percent of total households.¹²⁹ Limited English proficiency should not

¹²³ “Final Report of the 2018 New York City Charter Revision Commission.” *New York City Charter Revision Commission*. September 6, 2018.

¹²⁴ Bronx, Kings, Nassau, New York, Queens, Suffolk, and Westchester Counties.

¹²⁵ In New York City, Spanish is provided citywide, Chinese is provided in Manhattan, Brooklyn, and Queens borough wide, and Korean and Bengali are covered in parts of Queens.

¹²⁶ Armenian, Chinese, Cambodian/Khmer, Farsi, Korean, Spanish, Tagalog/Filipino and Vietnamese

¹²⁷ “Multilingual Services Program.” Los Angeles County Registrar-Recorder/County Clerk.

¹²⁸ “Language Assistance.” Cook County Clerk’s Office.

¹²⁹ *U.S. Census Bureau*, 2012-2016 American Community Survey 5-Year Estimates.

be a barrier to voting. In a state like New York where about one in eight people speak a language other than English, our legislature needs to recognize the importance of expanding language access beyond what is required by Section 203.

In 2017, the Mayor's Office of Immigrant Affairs launched a pilot project to provide interpreters to assist LEP voters in some of the Designated Citywide Languages¹³⁰ as defined in Administrative Code Section 23-1102, which was enacted by Local Law 30 of 2017. "Designated Citywide Languages" refers to "a ranking of the top ten most widely spoken languages in the City based on Census and Department of Education data."¹³¹ Of the pilot program, Council Member Mark Treyger of Brooklyn said, "[l]ow voter turnout is proof that we need more language access at poll sites, and this pilot program is hopefully just the beginning of more inclusive voting policies."¹³²

In 2018, New York City voters passed a ballot proposal to establish a Civic Engagement Commission. Among its responsibilities, the Commission must "establish a program for providing language interpreters at poll sites in New York City, to be implemented for the general election in 2020."¹³³ While Spanish, Chinese, Korean, and Bengali are already covered by Section 203, interpreter services in Russian, Haitian Creole, Arabic, Urdu, French, and Polish could be provided in areas with large concentrations of speakers around at least one poll site.¹³⁴ In its testimony to the Charter Revision Commission, the New York Civil Liberties Union encouraged the Commission to treat the Voting Rights Act's protections as a "floor [and] not a ceiling."¹³⁵

While the Civic Engagement Commission will increase the number of interpreters available on Election Day, the proposal did not revise other parts of the Charter that could improve language access. For example, the Civic Engagement Commission will not be required to translate the ballot or other voter education materials like the Voter Guide into languages beyond what is required by Section 203. While establishing a Civic Engagement Commission is a step in the right direction, legislation passed at the state level will create a mandate for the Board of Elections to further expand language access at the polls and in the form of written materials, thereby allowing more LEP voters to participate in our democracy.

¹³⁰ Interpreters were offered at a handful of sites in Russian and Haitian Creole. Interpreters were not provided in all Designated Citywide languages during the MOIA pilot program.

¹³¹ "Final Report of the 2018 New York City Charter Revision Commission." *New York City Charter Revision Commission*. September 6, 2018

¹³² Zagare, Liena. "There Will Be Russian and Haitian-Creole Poll Translators at 20 Polling Sites." *Bklyner*. November 6, 2018.

¹³³ "Final Report of the 2018 New York City Charter Revision Commission." *New York City Charter Revision Commission*. September 6, 2018.

¹³⁴ "Final Report of the 2018 New York City Charter Revision Commission." *New York City Charter Revision Commission*. September 6, 2018

¹³⁵ "Final Report of the 2018 New York City Charter Revision Commission." *New York City Charter Revision Commission*. September 6, 2018.

SECTION III: LONG-TERM REFORMS

No-Excuse Absentee Voting

No-excuse absentee voting is an important supplement to in-person early voting because it would eliminate the requirement for voters to provide an excuse to receive an absentee ballot. New York law currently requires voters requesting an absentee ballot to provide an excuse for their inability to vote at their designated polling place. Article II, Section 2 of the New York State Constitution provides that the legislature may allow absentee voting when “qualified voters who, on the occurrence of any election, may be absent from the county of their residence or, if residents of the city of New York, from the city, and qualified voters who, on the occurrence of any election, may be unable to appear personally at the polling place because of illness or physical disability, may vote and for the return and canvass of their votes.”¹³⁶ According to the New York City Bar Association, because the Constitution includes specific reasons for absentee voting but does not specifically cover others, such as childcare, unavoidable duties within the county or New York City, or extreme inconvenience, these excuses cannot be legally valid for receiving an absentee ballot. This causes many busy New Yorkers to miss out on the opportunity to vote.¹³⁷ Given this interpretation, constitutional law prevents

PASSING A CONSTITUTIONAL AMENDMENT IN NEW YORK STATE

In order for a constitutional amendment to pass in New York State, sponsors in both the New York State Senate and Assembly must introduce the amendment. While the bill is in committee review, the amendment is also referred to the state Attorney General, who must provide an opinion in writing within 20 days to the Assembly and the Senate on how the amendment will affect the State Constitution. Once released from committees, the amendment moves to the floor of each house for a vote. If the amendment is passed in both the Assembly and the Senate, it is then referred to the next regular two-year legislative session, during which the bill must be passed a second time by the newly elected Legislature. Then, the bill is placed on the ballot for statewide referendum, and once a majority of voters approves the amendment, it is incorporated into the New York State Constitution. This multi-year process means that neither no-excuse absentee voting nor same-day registration will be available in the 2020 election. The earliest these reforms could pass in practical terms is 2021.

¹³⁶ New York State Constitution. Article II, Section II.

¹³⁷ “Instituting No-Excuse Absentee Voting in New York.” *New York City Bar*. May 2010.

the State Legislature from enacting no-excuse absentee voting through legislation alone. To enact no-excuse absentee voting in New York State, a constitutional amendment is required.

Enacting no-excuse absentee voting would provide a variety of benefits to busy New Yorkers who may be unsure of their schedule on Election Day. For example, convenience is a major benefit associated with absentee voting. The New York City Bar notes that “New York’s current absentee voting laws have the potential to disproportionately benefit those with higher socioeconomic status, who are more likely to have the means to vote at the polls because, for example, they are better able to afford child care, can afford to take time off from work, or less likely to work two jobs.”¹³⁸ Because work or childcare obligations are not considered valid excuses for absentee voting, individuals with those obligations are more likely to miss the opportunity to participate in elections. New York State election law also states that if a voter does not have sufficient time to vote outside of working hours, they may notify their employer between 2 and 10 days before an election, and they will be given two hours’ paid time off to vote.¹³⁹ However, two hours is often insufficient, especially in elections with high turnout. In 2018, for example, voters reported waiting up to two hours to cast their ballots, meaning they would not receive compensation for any travel time to and from their poll site.¹⁴⁰ No-excuse absentee voting would result in shorter lines at the polls on Election Day, as more voters would be able to cast their votes prior to Election Day and outside of their precinct.¹⁴¹

Additionally, a study by Project Vote shows that absentee voting is extremely beneficial for certain parts of the population, especially individuals with certain limitations who would prefer not to travel to their polling site.¹⁴² Absentee voting can also benefit New Yorkers living in rural communities upstate who may have to travel long distances to reach their voting location. In fact, Project Vote showed that vote by mail was most popular among rural populations, or those most impacted by distance. Allowing voters to mail in their ballots would eliminate the need to travel to the polls, thereby making voting more convenient for voters in less populous areas.¹⁴³

The option to vote from home also allows voters to research the candidates on their own time, rather than rush to make a decision at the polls. Absentee ballots enable voters to take the time to read up on the issues before they vote, and this is especially important for local elections and ballot measures that may not receive substantial media coverage.¹⁴⁴ No-excuse absentee voting

¹³⁸ “Instituting No-Excuse Absentee Voting in New York.” *New York City Bar*. May 2010.

¹³⁹ New York State Election Law Section 3-110.

¹⁴⁰ North, Anna. “Why long lines at polling places are a voting rights issue.” *Vox*. November 6, 2018.

¹⁴¹ “Instituting No-Excuse Absentee Voting in New York.” *New York City Bar*. May 2010.

¹⁴² “Your Ballot’s in the Mail Vote by Mail and Absentee Voting.” *Project Vote*. July 9, 2007.

¹⁴³ “Your Ballot’s in the Mail Vote by Mail and Absentee Voting.” *Project Vote*. July 9, 2007.

¹⁴⁴ “All Mail Elections.” *NCSL*. August 15, 2018.

would give voters the opportunity to fit voting into their schedules, rather than requiring voters to arrange their schedules around an upcoming election. This reform has proven successful in 28 states and the District of Columbia and would give New Yorkers the opportunity to vote comfortably in the privacy of their own homes.¹⁴⁵

Same-Day Registration

Same-day voter registration (SDR) would eliminate the barrier to voter registration for thousands of New Yorkers who miss the registration deadline each election cycle. SDR would allow any qualified resident of the state to register to vote and cast a ballot in one day, provided the voter can verify their eligibility. Because New York still uses paper poll books, which take time to be processed and printed, the deadline to register is 25 days before an election, one of the earliest deadlines in the nation. While transitioning to electronic poll books would allow New York State to shorten its registration deadline, the New York State Constitution requires that a registration “shall be completed at least ten days before each election.”¹⁴⁶ As a result, a constitutional amendment would need to pass in New York State to allow same-day registration.

It is also common for many voters to learn on Election Day that they are not in the poll books. This could be because the voter has moved, changed their name, or failed to register correctly in the political party of their choice. Bureaucratic errors resulting from changes such as these can lead to many eligible citizens being unable to cast a regular ballot on Election Day, when registration deadlines have already passed. Currently, 17 states and the District of Columbia offer same-day registration, and many of these states have reported increased turnout and improvements in election administration since implementing SDR.¹⁴⁷ For example, after SDR and was adopted in Iowa, “provisional ballots dropped from 15,000 in the 2004 presidential election to less than 5,000 in 2008—a 67 percent decline. North Carolina saw 23,000 fewer provisional ballots after it adopted SDR in 2008.”¹⁴⁸ According to Demos, with same-day registration, voters can, instead of casting provisional ballots, “simply update [their] registration records or register anew at the polling place and vote a ballot that will be counted.”¹⁴⁹ According to a report published by the New York City Comptroller’s office, “once SDR is fully in place, states are likely to see at least a four percentage point increase in average voter turnout, with the highest impact on turnout among younger voters age 18-35.”¹⁵⁰ In fact, Demos reports that “four of the top five

¹⁴⁵ “Absentee and Early Voting.” *NCSL*. December 3, 2018.

¹⁴⁶ New York State Constitution. Article II, Section 5.

¹⁴⁷ 15 states and DC make same day registration available on Election Day. Two states, Maryland and North Carolina, make same day registration possible for a portion of their early voting periods but not on Election Day.

¹⁴⁸ “What is Same Day Registration? Where is it Available?” *Demos*. 2012.

¹⁴⁹ “What is Same Day Registration? Where is it Available?” *Demos*. 2012.

¹⁵⁰ “Barriers to the Ballot: Voting Reform in NYC.” *Office of the New York City Comptroller*. April 2016.

states for voter turnout in the 2012 presidential election all offered Same-Day Registration. Average voter turnout was over 10 percentage points higher in SDR states than in other states.”¹⁵¹

States that have implemented same-day registration have employed various measures to ensure election security. Proof of residency is a key requirement in all states that offer same-day registration. A prospective voter must present proof of residency in the form of a driver’s license or ID. Some states allow prospective voters to provide other forms of documentation, such as paychecks or utility bills, to prove their residency.¹⁵² In other states, voters may cast a provisional ballot until proper identification is supplied or until the voter’s application is fully checked. Additionally, states require same-day registrants to register and vote in person, and many states restrict the number of polling places at which same-day registration is offered.¹⁵³

The cost of implementing same-day registration varies by state, with some states reporting little to no additional cost to implement same-day registration. In a Demos telephone survey conducted among local election officials in Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming, most reported that same-day registration costs were “minimal.”¹⁵⁴

¹⁵¹ “What is Same Day Registration? Where is it Available?” *Demos*. 2012.

¹⁵² “Same Day Voter Registration.” *NCSL*. December 3, 2018.

¹⁵³ “Same Day Voter Registration.” *NCSL*. December 3, 2018.

¹⁵⁴ “What is Same Day Registration? Where is it Available?” *Demos*. 2012.

CONCLUSION

Election administration in New York State is outdated and must be reformed before the 2020 presidential election, which is expected to have record turnout. In 2018, voters experienced a variety of challenges at the polls including long lines, broken scanners, and confusion about their party enrollment. The problems that voters encounter on Election Day prove that a single 15-hour voting period is not sufficient for our populous and diverse state, and the state's paper-based voting system creates problems at the poll sites each cycle. Feedback from the 2018 election cycle signals that the state must enact these proposed reforms immediately. Most of these reforms can pass the legislature during the 2019 – 2020 legislative session and would begin to ease the frustrations experienced by voters and election administrators alike. It is time for New York to become a national leader in voting reform and provide all eligible citizens with the opportunity to register and vote without barriers to participation. The legislature must pass these important reforms during the 2019 – 2020 legislative session to ensure all New Yorkers have an equal opportunity to participate in our democracy.