

Joint Testimony of the New York Democratic Lawyers Council (NYDLC) and Cardozo Law Democrats (CLD)

**Hearing on Election Administration and Voting in New
York and Comments on the 2015–2016 Voter Assistance
Annual Report**

**Presented to the New York City Campaign Finance Board (CFB)
and the Voter Assistance Advisory Committee (VAAC)**

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Thank you to the New York City Campaign Finance board and the Voter Assistance Advisory Committee for holding this important hearing so that we can discuss structural deficiencies in New York's election registration and administration system, many of which were illustrated by the challenges voters faced during the April 19th, 2016 election. We will also take the opportunity to comment on the 2015–2016 Voter Assistance Annual Report and Case Study.

My name is Jarret Berg, Executive Director of the New York Democratic Lawyers Council. For over 10 years, NYDLC has protected the rights of voters by deploying trained attorneys and advocates as election monitors in poll sites on Election Day. NYDLC uses this “front line” experience to advocate for pro-voter legislative reforms that would modernize our election registration and administration systems, and alleviate common problems that arise each cycle.

My name is Elizabeth Robins, President of the Cardozo Law Democrats. As I will discuss in my testimony, in addition to organizing several non-partisan voter registration drives with NYC Votes over the past two years, I also worked at the Board of Elections through college, and have been a poll watcher and voting rights advocate for many election cycles. Today, we will share our observations and offer solutions to problems that arise before, on, and after Election Day.

Lack of Accountability for Voter Registration Irregularities

Earlier this year I held non-partisan voter registration drives at Cardozo Law School on March 16th and March 23rd. On March 16 I went to the Campaign Finance Board office and picked up voter registration forms and other materials for the drives. I was notified that if I dropped off completed forms for both drives on March 23rd, NYC Votes would make sure all forms would be submitted to the Board of Elections by the registration deadline (March 25th), so that is what I did. I also organized a registration drive at Cardozo in 2015 through NYC Votes. I really enjoyed working with the NYC Votes team and they were always very helpful.

However, a week before the April 19, 2016 Primary, I started to receive frantic e-mails from students that had registered at my drive. They had not received any confirmation from the Board of Elections about their registration, and when they called their borough office, they were informed that they had not been registered and that there was nothing they could do about it as the deadline had passed. To date, I am aware that at least one third of people who completed registration forms at my drive were never registered—to this day they remain unregistered. I am aware of one person from my drive who registered successfully after mailing in the form to BOE on their own.

I am deeply disappointed because I am passionate about getting more of my peers to be civically engaged—that's why I held the drive in the first place. People thanked me for making it more convenient to register so I was really crushed when my peers told me they were never registered.

Proposed Solution: Registration Tracking

Regardless of why specific timely registrations were processed when others were not, it is clear that our voter registration system lacks the meaningful accountability of a basic tracking system.

To the extent that government requires people to register before voting, in light of the foundational rights at stake, the responsibility should lie with government to make sure that registration systems are straightforward, convenient, and reliable.

At present, there is no way to track the status of a pending voter registration that originates from a voter registration drive. Once a form is mailed or submitted, how do we know if it is actually received by BOE? How do we know if forms are actually processed or whether a given form is accepted or rejected? If FedEx and USPS can track packages around the globe, and if seamless can track my dinner delivery in real-time, shouldn't people have a way to track their registration?

As part of election modernization, New York needs an online registration system for all voters, not just those who interact with the DMV. Such a system should allow for registration drives to be conducted using an iPad or tablet. This can drastically improve our registration system. First, it would eliminate mountains of paper that must be processed by the BOE in the days before an election. Second, it would reduce the countless transcription errors that arise when staff is required to manually enter data from handwritten forms. Third, such a system would provide accountability that would better protect people's civil rights. Each person who submits a form could receive a confirmation number so they can track their registration as it is verified and processed.

There is probably a way to do this for paper forms too, and as we encourage expanding agency-assisted registration, these forms should be deemed received when government takes custody.

One of the biggest complaints I received from students is that they were stuck waiting for a confirmation until it was too late. Given the current voter registration deadline more than three weeks before the date of an election, by the time we realized they were never registered, there was no recourse—no way to re-register and no way to prove that they had met the deadline so the omission could be cured. In this day and age, it is unacceptable to have a paper-based system with zero accountability. We need a modern registration system that is voting-rights focused, so no student who registers on time is disenfranchised.

Proposed Solutions: Automatic Registration, Electronic Transmission, Online Registration

A modern registration system would include automatic registration so that all those who are eligible and consent are registered to vote or have their registrations updated when they interact with government, including at housing authorities, and SUNY or CUNY. We should also be pre-registering young people before they graduate high school, so they can be automatically registered when they become eligible. Safeguards would be included for these reforms to protect privacy and verify eligibility. Potential voters could always “opt out” of registration. The Voter Empowerment Act would have these entities to transmit registration information electronically.

A modern registration system would also enable online voter registration directly through the Board of Elections website. Smartphones and online options exist for almost all routine transactions, yet most New York voters still register with a pen and paper. The Attorney General

A Voting Rights Project of the New York State Democratic Committee and the DNC

recently issued an opinion that New York law does not require a “wet signature”,¹ clearing the way for the legislature to empower agencies and the BOE to accept most electronic signatures.

Proposed Solution: Registration Portability

Another convenient and sensible registration reform would allow registered voters to stay registered when they move around the state. This is especially important in places like New York that have high mobility. We can do this by allowing the BOE to use information from the Post Office’s Change of Address System to update registration records. This will not only clean up the voter rolls, it will help real people avoid being disenfranchised when they move. The key is creating efficiency for New Yorkers by empowering government entities to work better together.

Proposed Solution: The Election Period - A Reasonable Opportunity to Cast a Ballot

A big part of the problem is that the way our antiquated election law narrowly construes the foundational right to vote offends modern notions of due process, procedural or otherwise. When we direct millions of people to take concerted action on a single day and require them to appear in person, it would be surprising if the system was not consistently overwhelmed. If eligible voter turnout improves, which is a major goal of many of these reforms, pressure on the single-day election system will only increase. New Yorkers deserves better and providing a meaningful opportunity to exercise the right to vote requires us to do more.

Early Voting.² For years NYDLC has supported Early Voting and advocated for revisions to the old early vote legislation that closely align with the present legislative proposals. More broadly, NYDLC supports moving to a reasonable Election Period, where Election Day is recast as the final opportunity to vote but is no longer relied upon as simultaneously the first, only, and last day to cast a ballot. An early voting system that includes weekends and vote centers would allow voters to participate at times and locations that better fit their schedule and provide more time to identify, escalate, and resolve registration or administration problems. It would also distribute the systemic stress that currently burdens our election system over a wider period of time, reducing the impact of election disruptions like broken machines, missing inspectors, or severe weather. Putting aside foul play, when Election Day is one day, minor problems can have outsized impact.

Golden Week. A reasonable Election Period would include a registration grace period during early voting (to the extent that same day registration is not available). In Ohio, this was known as “Golden Week”, and its recent repeal, whatever the official pretext, is a loss for the 90,000 people who voted during Golden Week in 2012. By ensuring that the Early Vote window overlaps with the registration period, people who turn out to vote early and encounter problems with their registration can cure these issues then and there and cast a ballot that counts. Whether we pursue this or Same-Day Registration, our current system departs from modern commercial expectations people have about being able to tune in, sign up, and participate in events.

¹ Matthew Hamilton, *AG opinion: Moving ahead with online voter registration is A-OK*, The Times Union, <http://bit.ly/1YWn8Mu>

² The *New York Voters Coalition* of non-partisan experts and good-government groups suggested earlier this year that the State should allocate \$5.5 million statewide for Early Voting, or about 50% of the counties’ first-cycle expenses. This is based on estimates by Common Cause/NY and members of the Assembly Election Law Committee. <http://goo.gl/loKMe0>.

No-fault Absentee Voting. The Election Period would also include no-fault absentee voting (or universal vote-by-mail), which can greatly reduce the volume of labor-intensive in-person activity on Election Day. This means shorter lines at poll sites and a convenient option for all voters. Perhaps most importantly, it can spare the majority of our most vulnerable special-needs voters from having to grapple with the Election Day process. This would reduce some of the greatest pressure placed on poll-site staff during a busy Election Day.

2015-2016 Voter Assistance Annual Report

We would also like to briefly address the 2015-2016 Annual Report. In recent years, NYC Votes has organized impressive programming to engage New York City voters, particularly youth and new voters. NYC Votes has worked with partners to register over 10,000 high school students on Student Voter Registration Day in the past two years. *The effective use of social media campaigns to amplify the impact of Student or National Voter Registration Day should be embraced by all participating agency-assisted registration entities.*

In New York City, the expanded (LL29 and LL63) agency-assisted registration framework has permitted NYC Votes to identify creative ways to engage agencies that already serve New Yorkers, in order to increase voting and civic engagement. Successful pro-voter collaboration with diverse entities like NYC Health and Hospitals, the Department of Homeland Security, the City Council, and local high schools illustrate that all kinds of opportunities exist to improve voting conditions. In almost every interaction between residents and government, there is a voter engagement opportunity. *When creative agency heads come together to help voters, state and local resources should become available to foster these efforts and maximize the return.*

Case Study Regarding NYC BOE's Feb. 2016 "Confirmation Notices" to Inactive Voters

NYDLC agrees with NYC Votes that the BOE should redesign pre-purge mailings to provide clear, plain-language guidance to voters. It is misleading to call a notice that can trigger severe consequences, like the termination of a registrant's ability to participate in elections without affidavit scrutiny, a "confirmation notice".

Although NYDLC refuses to accept the premise that it makes sense in the digital age for the BOE to clean up the voter rolls using snail-mail bounce-backs, we agree with the NYC Votes' recommendation that any such letters should be redesigned so they stand out to voters and make clear at a glance that action is required. There must be an easy-to-follow guide for voters to rectify and confirm their registration with the BOE. *But really, administrators need to internalize the ethos that voting is a core civil right. Due process is a safeguard, not an inconvenience.*

Conclusion

We want to thank the New York City Campaign Finance board and the Voter Assistance Advisory Committee for taking a proactive approach toward improving voter registration and election administration in our city. NYDLC and Cardozo Law Democrats offer our expertise to NYC Votes and all like-minded partners in advancing these solutions.