



NEW YORK
CITY BAR

**REPORT ON LEGISLATION BY
THE ELECTION LAW COMMITTEE AND
THE GOVERNMENT ETHICS AND STATE AFFAIRS COMMITTEE**

**A.4431
S.360**

**M. of A. Vanel
Sen. Comrie**

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY proposing an amendment to section 2 of article 2 of the constitution, in relation to authorizing ballot by mail by removing cause for absentee ballot voting

THIS BILL IS APPROVED

The Election Law Committee and the Government Ethics and State Affairs Committee of the New York City Bar Association¹ supports a constitutional amendment which would permit “no-excuse” absentee voting in New York.² The enactment of a no-excuse absentee voting system in New York would remove from the state Constitution any requirement that voters provide an excuse before being issued an absentee ballot.³ Currently, 34 states and the District of Columbia permit any qualified voter to vote absentee without offering an excuse.⁴

In New York, voters requesting an absentee ballot are required to provide an excuse for their inability to vote at their designated polling place. Acceptable excuses include unavoidable

¹ The Election Law Committee is comprised of City Bar members interested in, and often with decades of expertise concerning, New York State Election Law. The Committee has been active in commenting on proposed revisions of state election law and local election rules. It also regularly provides election law training for candidates and the public. The Government Ethics and State Affairs Committee seeks to shine a light broadly on issues of ethical conduct in public service at the city, state, and federal levels.

² The City Bar supported first passage of this constitutional amendment in 2019. A.778 passed the Assembly by a vote of 136-9 and S.1049 passed the Senate by of vote of 56-5 on Jan. 14, 2019. This report has been updated to reflect developments since it was first issued in January 2019. *See also* “Instituting No-Excuse Absentee Voting in New York,” Election Law Committee, May 2010, <http://www.nycbar.org/pdf/report/uploads/20071936-NoExcuseAbsenteeBallotReport.pdf>.

³ N.Y. Const. Art. II, § 2.

⁴ “Absentee and Early Voting,” National Conference of Legislatures, Sept. 24, 2020, <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (all websites last visited Jan. 8, 2021).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

absence from the county of residence due to duties, occupation, business, studies, or vacation and inability to vote due to illness or physical disability. Any voter with an excuse to vote absentee other than those listed in the state Constitution and further detailed in the Election Law are not entitled to an absentee ballot.

As a matter of policy, the City Bar believes that voting should be a convenient and common practice, and thus any reform to expand the franchise and make voting more convenient for those who otherwise have difficulty doing so is worthy of serious consideration.⁵ In evaluating whether New York's electoral process would benefit from implementing no excuse absentee voting, the City Bar has considered several policy factors:

- Necessity to modernize, ease voting experience and increase voter participation: Removing barriers to voting absentee would allow more people to vote in the manner most convenient for them. New York's current absentee voting laws also have the potential to disproportionately benefit those with high socioeconomic status. New York's voter turnout has historically ranked among the lowest in the nation. In 2016, with two New Yorkers at the top of the presidential ballot, our state still ranked 41st out of 50 in terms of turnout. Following a series of election law reforms enacted in 2019⁶ and a series of emergency Executive Orders to allow New Yorkers to safely vote (either in person or by mail) in light of the COVID-19 pandemic,⁷ the 2020 election saw significant improvements to voter participation.⁸ The COVID-19 pandemic has made it all the more clear how critical it is that New York take action to ensure easy access to no-excuse absentee voting.
- Impact on poll site lines and administrative burden: A no-excuse absentee voting system is likely to reduce both poll lines and the administrative burden on election officials, thereby decreasing the total cost of administering elections;
- Effects of no-excuse absentee voting on election litigation: Removal of the requirement that a voter provide an excuse for not voting at the polls removes the principal basis for challenging absentee ballots, therefore the number of challenged and litigated ballots will decrease.

⁵ See *i.e.* "2020 NYS Legislative Agenda: Build upon Reforms to Further Modernize New York's Voting System and Election Law," Jan. 7, 2020, <https://www.nycbar.org/media-listing/media/detail/nys-legislative-agenda-build-upon-reforms-to-further-modernize-new-yorks-voting-system-and-election-law>.

⁶ "Statement by New York City Bar Association President Roger Juan Maldonado on Passage of Voting Reforms," Jan. 14, 2019, <https://www.nycbar.org/media-listing/media/detail/statement-by-new-york-city-bar-association-president-roger-juan-maldonado-on-passage-of-voting-reforms>; see also "New York Election Law 2019 Year in Review: A Summary of Key Statutory Changes," The National Law Review, Jan. 2, 2020, <https://www.natlawreview.com/article/new-york-election-law-2019-year-review-summary-key-statutory-changes>.

⁷ NYSBOE Guidance on COVID-19, <https://www.elections.ny.gov/Covid19ExecOrders.html>.

⁸ Ethan Geringer-Sameth, "New York City Sees First-Ever Balance Among Early, Absentee & Election Day Voting," Gotham Gazette, Dec. 16, 2020, <https://www.gothamgazette.com/city/9997-new-york-city-2020-balance-early-absentee-election-day-voting-turnout>.

The City Bar believes that no-excuse absentee voting requires a constitutional amendment, as the state constitution currently precludes the Legislature from enacting no-excuse absentee voting by statute, and supports second passage of this legislation.

Election Law Committee
Katharine G. Loving, Chair

Government Ethics and State Affairs Committee
Edward L. Murray, Chair

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*Jeffrey M. Wice and John Wm. Zaccone of the Election Law Committee abstained from participation in this report. This report was first issued in May 2018 during the terms of the following committee chairs: Martin E. Connor, Election Law Committee; Jennifer Rodgers, Government Ethics & State Affairs Committee.