

WRITTEN TESTIMONY OF JERRY H. GOLDFEDER

**ASSEMBLY STANDING COMMITTEE ON ELECTION LAW AND
SUBCOMMITTEE ON ELECTION DAY OPERATIONS
AND VOTER DISENFRANCHISEMENT**

HEARING ON IMPROVING OPPORTUNITIES TO VOTE IN NEW YORK STATE

November 15, 2018

My name is Jerry Goldfeder and I appreciate the opportunity to testify before you today on behalf of the New York City Bar Association. I have had the privilege of serving as Chair of its New York City Affairs Committee for the last three years and previously as the Chair of the Election Law Committee. I am pleased to have the opportunity to talk with you about your historic opportunity to improve and enhance voting opportunities in New York elections.

New York has failed to enact meaningful voting reform for many years. We have a woefully restrictive set of election laws. Thirty seven states have early voting;¹ New York does not. Fifteen states and the District of Columbia have enacted automatic registration;² New York should at least provide the opportunity to register on the eve of elections. Twenty seven states and Washington D.C. allow no-excuse absentee voting;³ we should permit it. There are many states that allow open primaries;⁴ New York voters should not have to wait almost a year to change political party affiliation. And Instant Run-off Voting, used in fifteen cities and the State of Maine, would eliminate an extra trip to the polls and save taxpayer dollars; this was used in New York City School Board elections.⁵

The urgent need for voting reforms was on full display across New York City on Election Day as we saw voters struggling with long lines, broken scanners and general confusion. Voter participation in New York has declined dramatically over the past half century and now stands near the bottom as compared to other states. And when New Yorkers do try to access the polls as they did last week, they all too often face obstacles to actually voting. New York must take

¹ <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

² <https://www.brennancenter.org/analysis/automatic-voter-registration>.

³ http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx#no_excuse.

⁴ <https://www.openprimaries.org/>.

⁵ See Press Release, Fairvote, May 1, 2018.

action to ease access and ensure its citizens have the opportunity to fully participate in the democratic process.

The following reforms should be enacted to improve voter participation:

Permit “no excuse” absentee voting.⁶ The enactment of a no-excuse absentee voting system in New York would remove from the Election Law any requirement that voters provide an excuse before being issued an absentee ballot. In New York, voters requesting an absentee ballot are required to provide an excuse for their inability to vote on Election Day at their designated polling place. Acceptable excuses include unavoidable 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 current Election Law are not entitled to an absentee ballot. 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. A no-excuse absentee voting system is likely to reduce both polling site lines and the administrative burden on election officials, thereby decreasing the total cost of administering elections. A “no-excuse” system also removes the principal basis for challenging absentee ballots, thereby reducing the number of challenged and litigated ballots.

Provide for early voting.⁷ New York’s current voting system, which limits regular voting to a single 15-hour window in the middle of the work week, results in many voters being unable to vote. Long lines, work responsibilities, extensive commutes to and from work, broken machines, impaired poll site access, child/elder care duties, and bad weather all can deter voters on Election Day. Single-day elections are no longer the norm and it is time that New York joined the 37 other states that have already enacted early voting. This will enable more citizens to exercise this most important right, and will ease the systemic pressure placed on election administrators during a high volume Election Day. Early voting can spread voter traffic across a number of days, which will ease long lines, give poll workers more time to do their jobs well, and give busy New Yorkers more opportunity to cast their ballots.

The City Bar supports an early voting system that provides New Yorkers with at least 7 days of early voting. During that period, polling places should be required to be open to voters for at least eight hours per week day, for evening hours at least two days during the week and for at least five hours per day minimum on weekends and legal holidays. To implement early voting responsibly, we believe the state should include adequate funding in the budget to reduce the financial strain on the local boards of elections, which will need to develop new policies and procedures as well as undertake necessary staff training and public education.

Provide Election Day registration and allow party enrollment up to 30 days before a primary election. Currently, state law provides that a new voter must register twenty-five days

⁶ Report in support of A.7623 (M.A. Vanel) / S.840 (Sen. Comrie), May 2018, <https://s3.amazonaws.com/documents.nycbar.org/files/2017377-NoExcuseAbsenteeVoting.pdf>.

⁷ Report in support of S.7400-A (Sen. Kavanagh) and A.9608-B (M.A. Lavine), May 2018, <https://s3.amazonaws.com/documents.nycbar.org/files/2017375-EarlyVoting.pdf>.

in advance of the election (even though the state constitution permits registration up until the tenth day prior to an election). If a voter wants to change his or her party enrollment to vote in a primary election, the deadline is twenty five days prior to the general election next preceding the primary – often a full eleven months prior to the primary. These deadlines are restrictive and dissuade potential voters from exercising their right to vote if they fail to act consistently with these arbitrary and extensive periods of time. Expanded voter registration and enrollment procedures would allow greater participation, and have the potential to improve turnout.

Provide for felony re-enfranchisement. In April, Governor Cuomo restored voting rights to New Yorkers on parole.⁸ This effects approximately 35,000 New Yorkers, the majority of whom are people of color. While this Executive Order is a step in the right direction, the order is subject to rescission by future governors and therefore must be codified into law to adequately protect the voting rights of the previously incarcerated. Law enforcement officials and criminal justice experts across the country and in New York recognize that voting rights and rehabilitation are closely related.⁹ Voting promotes positive behavior and ensures that an individual is invested in the well-being of his or her community. It is important that the Legislature codify felony re-enfranchisement into law.

Establish a single primary day.¹⁰ Currently, New York holds its primaries for public office in state and local municipalities and for party positions (other than President and National Convention delegates and alternates) in September, while primaries for public offices at the federal level are held in June. This creates the possibility of as many as three primaries in a given calendar year. The current system – imposed by a federal court because the Legislature has not been able to restore federal and state primary elections to one day consistent with the prescriptions of the federal MOVE Act – causes voter confusion, expends additional taxpayer dollars for an extra election, and strains the administrative burdens on the various boards of elections. Thus, the Legislature should hold primaries for both federal offices and state and local offices on one day. Furthermore, the Legislature ought to schedule such primaries in June, as New York did for many years.¹¹

Permit instant run-off voting in municipal elections.¹² Currently, under state law, candidates for New York City city-wide office (mayor, public advocate, comptroller) must

⁸ Executive Order No. 181, https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_181.pdf.

⁹ See ERIKA WOOD, RESTORING THE RIGHT TO VOTE 10-12 (2009), available at <http://www.brennancenter.org/publication/restoring-right-vote>; Resolution Supporting Restoration of Voting Rights, American Probation and Parole Association, Enacted Sept. 2007, https://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IB_Resolution&wps_key=3c8f5612-9e1c-4f60-8e8b-1bf46c00138e; Resolution on Restoring Voting Rights, National Black Police Association, June 2008, <https://www.brennancenter.org/analysis/nbpa-resolution-restoring-voting-rights>; Resolution on Restoring Voting Rights, Association of Paroling Authorities International, April 30, 2008, <http://www.apaintl.org/about/resolutions.html>.

¹⁰ See https://www2.nycbar.org/pdf/report/uploads/9_20072588-NewYorkPrimaryDay.pdf.

¹¹ *Id.*

¹² Voting-Reform Related Proposals: NYC Charter Revision Commissions, July 10, 2018, https://s3.amazonaws.com/documents.nycbar.org/files/2018406-CharterRevision_ElectionReforms.pdf; Report in

receive 40% of the vote in a primary election to be nominated by a political party and advance to the general election. If no candidate for such office receives at least forty percent of the vote in the primary election, the two leading candidates will participate in a run-off election to determine their party's nominee for the general election.¹³ The run-off election must take place two weeks after the primary election,¹⁴ except there has been already been one instance when the run-off has been postponed because of insufficient time to administer such election.¹⁵

The City Bar supports implementing instant run-off voting for the primaries for citywide office in New York City. The system would allow voters to rank up to five candidates in order of preference on their ballot during the primary. If the candidate with the most votes garners less than 50% plus one vote of the votes, the two candidates with the most votes proceed to a second round of ballot-counting. In this second round, each ballot is counted as a vote for whichever of the two advancing candidates is ranked higher by that voter. The candidate with the most votes in the second round would be declared the winner of the run-off. This approach would save New York City considerable time, resources and money over conducting the run-off election now required by law if no candidate for citywide office receives 40% of the vote in the primary, while at the same time ensuring that the candidate ultimately elected in a primary has significant support from her/his party.

Make Election Day a work holiday. The aforementioned reforms would be strengthened and reinforced if New York made Election Day a work holiday. In addition to increasing access to the polls, establishing a holiday on Election Day sends an important message to New Yorkers about the roll voting should play in our democracy and our governments respect for that roll.

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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. We urge the Legislature to make meaningful and comprehensive voting and election law reform a priority in the coming legislative session.

Support of Instant Run-Off Voting in the Primaries for Citywide Office in New York City, Reissued August 2017, <https://s3.amazonaws.com/documents.nycbar.org/files/20072732-InstantRunoffElections.pdf>.

¹³ N.Y. Elec. Law §6-162.

¹⁴ N.Y. Elec. Law §8-100(1)(b).

¹⁵ Kate Taylor, *High-Cost Runoff for Public Advocate's Post Prompts Calls for Reform*, New York Times, (2013) <https://www.nytimes.com/2013/09/30/nyregion/high-cost-runoff-for-public-advocates-post-prompts-calls-for-reform.html>.