



REPORT ON THE 2021 STATEWIDE BALLOT PROPOSALS

New Yorkers across the state will have the opportunity to vote on five ballot proposals in the November 2nd election.¹ Below are the City Bar’s positions on those proposals.

PROPOSAL 1: AMENDING THE APPORTIONMENT AND REDISTRICTING PROCESS

This proposed constitutional amendment would freeze the number of state senators at 63, amend the process for the counting of the state’s population, delete certain provisions that violate the United States Constitution, repeal and amend certain requirements for the appointment of the co-executive directors of the redistricting commission and amend the manner of drawing district lines for congressional and state legislative offices. Shall the proposed amendment be approved?

This amendment is necessary to address delays in the census created by the pandemic and to accommodate New York State’s change from a September primary to an earlier June primary for both federal and state elections. Without this change, it is possible that new districts will not be ready in time for the political process to proceed in a timely manner for a June 2022 primary.

The amendment also sets the number of senators at 63, preventing partisan abuse of the current provision for varying the number of districts.

Prison populations would also be re-enumerated to the incarcerated individuals’ prior home addresses to the extent possible and adds congressional redistricting to the current statutory requirement that re-enumerations be made for state legislative districts.

Total population has been used for legislative redistricting since 1972 after a 1969 constitutional amendment eliminated citizen-only based redistricting. The amendment clarifies the 1969 amendment and deletes the language (“excluding aliens”) that had been repealed over 50 years ago.

¹ The language of the ballot proposals is available on the New York State Board of Elections website at: <https://www.elections.ny.gov/2021BallotProposals.html>. (all sites last visited Oct, 21, 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.

The amendment eliminates the current rules for legislative plan approval, which now depends on which political party controls the Senate and Assembly. The amendment would require approval of the Redistricting Commission's plans by a simple majority vote in each chamber instead of making passage requirements dependent on party control. A 60% vote in each chamber would be required for plan approval if the Redistricting Commission fails to recommend plans to the Legislature.

Other amendment provisions meriting support include eliminating partisan Redistricting Commission co-directors; removing the 'block-on-border' rule that protects towns, but not cities, from being divided by senate district boundaries; modernizing some of the out-of-date provisions from the 1894 Constitution and permitting the Legislature to enact redistricting legislation if the Redistricting Commission fails to complete action and develop plans.

PROPOSAL 2: RIGHT TO CLEAN AIR, CLEAN WATER, AND A HEALTHFUL ENVIRONMENT

The proposed amendment to Article I of the New York Constitution would establish the right of each person to clean air and water and a healthful environment. Shall the proposed amendment be approved?

The City Bar supports the amendment because it would enshrine a baseline level of environmental protection in our state that can endure over time regardless of changes in political leadership. The amendment sends a clear signal about our values as a society. We also believe that placing the amendment in the New York Constitution's Bill of Rights communicates the importance of environmental rights, placing them on the same footing as other fundamental rights.

The amendment would provide incentives for lawmakers and government officials to consider the environment in all policy decisions, and to focus on avoiding environmental harms before they occur. The amendment also may support more protective rulemaking and enforcement by the Department of Environmental Conservation and other State regulators. For example, the amendment may help regulators defend their decisions in court, and it could be a factor weighing in favor of environmental protection in cost-benefit analyses.

The amendment also could be a tool for communities to secure healthy environments when existing laws fail them, including by providing a remedy when communities are deprived of access to clean air and water or are facing impending environmental dangers. This is particularly important in underserved communities that experience disproportionate impacts from polluting activities under our existing regulatory systems. The amendment may serve to fill in gaps in environmental laws.

Opponents to the amendment have cited potential disruption of the balance of power between the political and judicial branches as well as the potential flooding of courts with litigation. However, we are of the view that, despite the benefits the amendment would have, it is unlikely to result in the sea change feared by opponents. For example, with respect to policymaking, New York courts historically have been deferential in their review of legislation. And with respect to concerns about the volume of litigation, it is worth noting that other states

with environmental rights amendments such as Pennsylvania have not experienced a flood of litigation.

PROPOSAL 3: ELIMINATING TEN-DAY-ADVANCE VOTER REGISTRATION REQUIREMENT

The proposed amendment would delete the current requirement in Article II, § 5 that a citizen be registered to vote at least ten days before an election and would allow the Legislature to enact laws permitting a citizen to register to vote less than ten days before the election. Shall the proposed amendment be approved?

The City Bar supports eliminating barriers to voting, including the requirement under the state constitution that citizens register to vote at least ten days before an election. In fact, the City Bar supports permitting voter registration up to and including on Election Day.²

It is also worth noting that state law currently requires new voters to register 25 days in advance of an election (despite the fact that the constitution permits registration up until the tenth day before an election). And if a voter wants to change his or her party enrollment to vote in a primary election, the deadline is February 14th, which means registering months before the June 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.³

Expanded voter registration and enrollment procedures would allow greater participation, and have the potential to improve voter turnout. The City Bar believes that restrictive deadlines for voter registration should be eliminated.

PROPOSAL 4: AUTHORIZING NO-EXCUSE ABSENTEE BALLOT VOTING

The proposed amendment would delete from the current provision on absentee ballots the requirement that an absentee voter must be unable to appear at the polls by reason of absence from the county or illness or physical disability. Shall the proposed amendment be approved?

The City Bar has long supported no-excuse absentee voting in New York.⁴ The enactment of a no-excuse absentee voting system would remove from the state Constitution any requirement

² See “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” (Nov. 15, 2018), available at: <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/assembly-hearing-changes-to-voting-in-new-york>.

³ See *id.*

⁴ See *e.g.*, “Instituting No-Excuse Absentee Voting in New York,” Committee on Election Law (May 2010), available at: <https://www.nycbar.org/pdf/report/uploads/20071936-NoExcuseAbsenteeBallotReport.pdf>; Letter to New York City Charter Revision Commission, “Election-Reform Related Proposals for Consideration in the City Charter Revision Process” (July 10, 2018), available at: <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/voting-reform-related-proposals-nyc-charter-revision-commissions>; “Written Testimony of Jerry H. Goldfeder, Assembly Standing Committee on Election Law and

that voters provide an excuse before being issued an absentee ballot. Currently, 34 states and the District of Columbia permit any qualified voter to vote absentee without offering an excuse.⁵

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 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.⁶ 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 2019⁷ 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,⁸ the 2020 election

Subcommittee on Election Day Operations and Voter Disenfranchisement, Hearing On Improving Opportunities To Vote In New York State” (Nov. 15, 2018), *available at:* <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/assembly-hearing-changes-to-voting-in-new-york>; Report on Legislation by the Election Law Committee and Government Ethics & State Affairs Committee in support of A.4431/S.360 (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) (updated and reissued May 2021), *available at:* <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/no-excuse-absentee-voting-constitutional-amendment>.

⁵ See “Absentee and Early Voting,” National Conference of Legislatures (Sept. 24, 2020), *available at:* <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

⁶ These arguments in favor of a no-excuse absentee voting system are based on a report from the Election Law Committee and Government Ethics & State Affairs Committee issued in May 2021 (which also references earlier City Bar reports and statements urging voting reforms), *available at:* <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/no-excuse-absentee-voting-constitutional-amendment>.

⁷ “Statement by New York City Bar Association President Roger Juan Maldonado on Passage of Voting Reforms” (Jan. 14, 2019), *available at:* <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), *available at:* <https://www.natlawreview.com/article/new-york-election-law-2019-year-review-summary-key-statutory-changes>.

⁸ NYSBOE Guidance on COVID-19, *available at:* <https://www.elections.ny.gov/Covid19ExecOrders.html>.

saw significant improvements to voter participation.⁹ 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.

PROPOSAL 5: INCREASING THE JURISDICTION OF THE NEW YORK CITY CIVIL COURT

The proposed amendment would increase the New York City Civil Court’s jurisdiction by allowing it to hear and decide claims for up to \$50,000 instead of the current jurisdictional limit of \$25,000. Shall the proposed amendment be approved?

The City Bar supports the proposal to amend the New York State Constitution to raise the jurisdiction limit for the civil courts.

Currently, cases can only be brought in civil court for claims of \$25,000 or less. If a case claims an amount of money higher than \$25,000, the case must be brought in Supreme Court. The current proposal would raise the limit on cases that can be brought in civil court to \$50,000. If approved, it is very likely that many more cases would be filed in civil court, instead of Supreme Court.

Allowing more cases to be filed in civil court would generally benefit litigants. The cost to file cases in civil court is lower than in Supreme Court, allowing more people to pursue their rights without encountering financial barriers. Additionally, civil court has a more streamlined procedure, making cases easier to navigate, particularly for litigants who are representing themselves and do not have access to attorneys. Finally, many more resources, such as access to volunteer lawyer programs, are available in civil court.

However, adding additional cases to the civil court’s docket does raise some concerns, as there is a shortage of judges to hear cases. There currently are 120 judges elected to the court. Because of the structural problems with the New York court system only about 50 civil court judges actually sit in civil court. The rest are assigned to Criminal Court, Family Court or the Supreme Court to serve as Acting Supreme Court justices. If the jurisdictional limit is increased,

⁹ Ethan Geringer-Sameth, “New York City Sees First-Ever Balance Among Early, Absentee & Election Day Voting,” Gotham Gazette (Dec. 16, 2020), available at: <https://www.gothamgazette.com/city/9997-new-york-city-2020-balanceearly-absentee-election-day-voting-turnout>.

resulting in significantly increased filings, additional judges and support staff must be assigned to civil court to handle the increased number of cases.

Overall, the City Bar supports raising the jurisdictional cap, but urges the Office of Court Administration to provide the civil court with resources to ensure that all cases are heard swiftly.

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* This report was compiled with input from the City Bar’s Election Law Committee (Katharine Loving, Chair), Environmental Law Committee (L. Margaret Barry and Bethany Davis Noll, Co-Chairs), and Civil Court Committee (Sidney Cherubin, Chair).

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