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Barriers to the Ballot:

Voting Reform in New York City



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I. EXECUTIVE SUMMARY

On May 17, 1957, three years to the day after the Supreme Court’s historic decision in *Brown v. Board of Education*, a 28-year-old minister from Atlanta—the Reverend Dr. Martin Luther King Jr.—stood before the Lincoln Memorial to demand that every American be able to access the ballot.

“So long as I do not firmly and irrevocably possess the right to vote I do not possess myself. I cannot make up my mind—it is made up for me. I cannot live as a democratic citizen, observing the laws I have helped to enact—I can only submit to the edict of others.”¹

Eight years later, President Lyndon Johnson signed the Voting Rights Act into law, with Dr. King at his side.

Despite all the progress of the past half-century, millions of Americans—including many right here in the Empire State—continue to face a complicated maze of obstacles simply to cast a ballot. In fact, voter turnout in New York State—and New York City in particular—is among the worst in the nation, whether for presidential, midterm, or mayoral races.

Only 58 percent of registered voters in the City cast ballots in the 2012 presidential general election—the lowest rate since 1996 (57 percent) and the second lowest since 1972.²

Turnout in the 2013 mayoral election was even worse. Only 1.1 million of the 4.2 million registered voters in New York City voted in the November 2013 general election—a rate of just 26 percent.

And in the November 2014 general election, only 31 percent of the registered voters cast ballots in the Empire State—one of the lowest rates in the nation, despite three statewide races (including for governor) and 27 U.S. House of Representatives races. In New York City, only 25 percent of registered voters turned out—the lowest rate on record and a continuation of a decades-long slide.

While there are many possible explanations for poor turnout, many of New York’s voting rules do more to prevent people from getting to the polls than they do to encourage New Yorkers to exercise their franchise.

In fact, the Empire State is one of only a handful of states to lack alternative poll access (early voting/no-excuse absentee voting/voting by mail), expedited registration (same-day or electronic registration), and increased primary access (open primaries, extended deadlines for party registration).

The state of voting laws in New York is particularly concerning at a moment when states across the country have created additional hurdles to voter participation, including voter ID laws, more restrictive registration practices, the elimination of early voting, and the expansion of bans on the franchise for people with criminal records.

If New York wants to reaffirm democratic values in the 21st century, we need voting laws that recognize our historic commitment to suffrage.

This report, by New York City Comptroller Scott M. Stringer, lays out a 16-point plan for doing just that. The plan proposes amendments to the State Constitution, changes to State law, and reforms to City electoral processes. The recommendations cover four main categories: voter registration, access to the polls, Election Day operations, and election administration.

Voter Registration

1. Allowing Pre-Registration of 16/17 Year-Olds
2. Enacting Same-Day Registration
3. Expanding Automatic Voter Registration Using New York State Databases

Access to the Polls

4. Providing No-Excuse Absentee Voting
5. Ensuring Absentee Ballot Access for All
6. Creating Early In-Person Voting
7. Exploring Vote-by-Mail
8. Ensuring Voting Rights for Formerly Incarcerated Individuals

Election Day Operations

9. Boosting Voter Engagement
10. Enhancing Poll Worker Recruitment and Training
11. Ensuring Accessible Poll Sites
12. Making Ballot Design More Efficient

Election Administration

13. Expanding Language Access
14. Embracing Instant Runoff Voting
15. Consolidating State and Federal Primaries
16. Enacting Measures Against Deceptive Practices

III. DEFINING THE PROBLEM: LOW VOTER TURNOUT IN NYC

New York State has a long and storied history of fighting to expand the right to vote.

In 1848, a convention was called to order in Seneca Falls, New York to “discuss the social, civil, and religious condition and rights of woman.”³ At the heart of the convention was Elizabeth Cady Stanton’s “Declaration of Sentiments,” which declared that women have an inalienable right to the vote.⁴

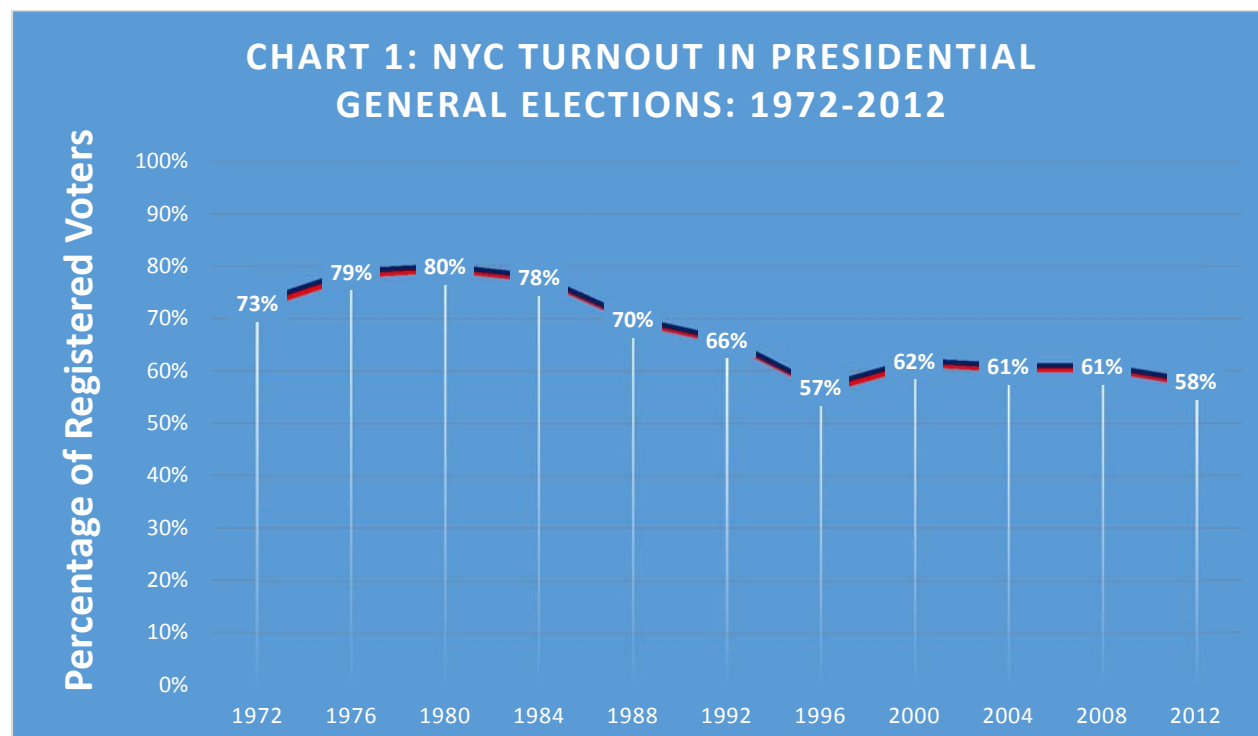
In 1872, twelve women, including Susan B. Anthony, were arrested in Rochester for voting in the presidential election, leading to a trial the following year that once again placed the issue of women’s suffrage squarely in the public consciousness.⁵

Nearly a century later, in 1969, the New York City School Decentralization Bill was signed into law, granting voting rights in the election of Community School Boards to non-citizens with children attending public schools.⁶

Despite this legacy, New York State—and New York City in particular—has witnessed steep declines in voter turnout in recent decades. Today, turnout in New York State writ large and New York City in particular is among the worst in the nation.

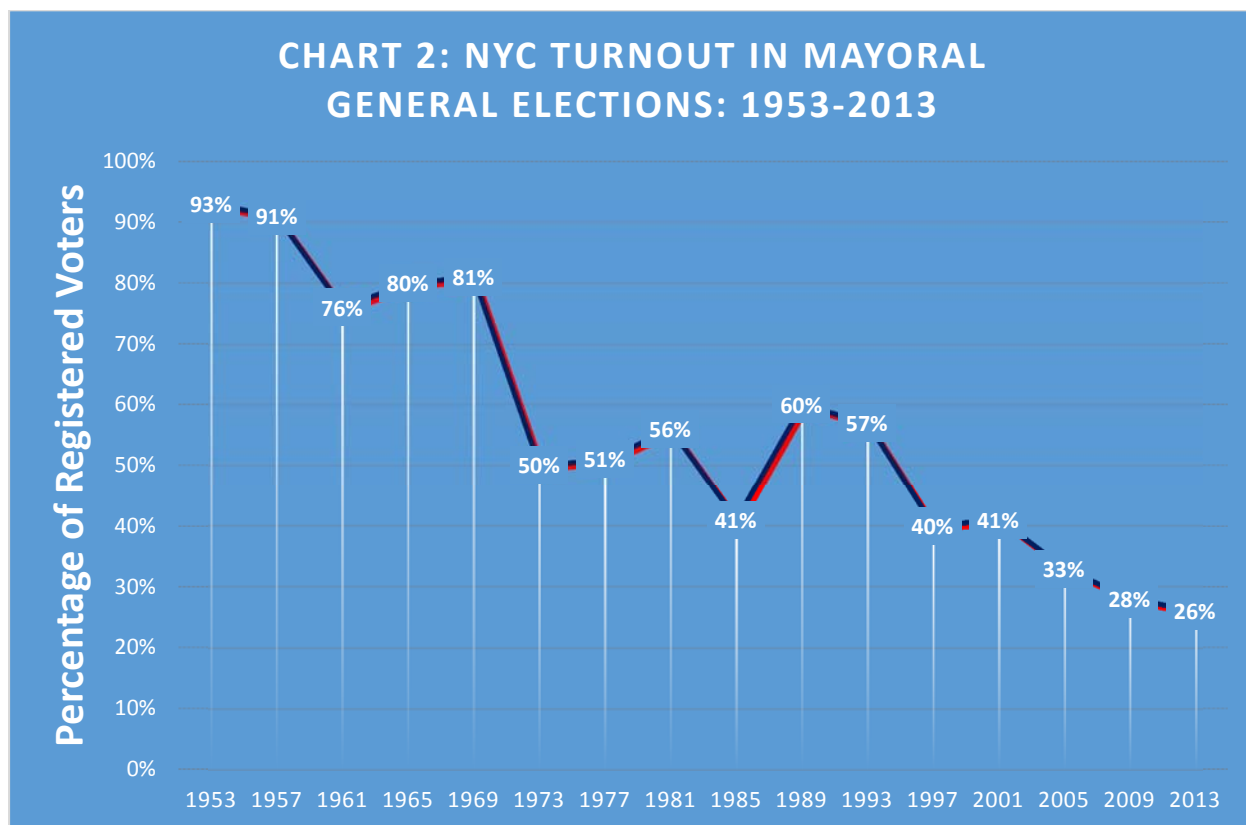
A June 2012 study from the NYC Campaign Finance Board (CFB) found that New York City had lower voter turnout in the Presidential Election of 2008 than any other major U.S. city.⁷

Turnout remained low in the subsequent 2012 presidential election, with only 58 percent of registered voters casting ballots in the general election—the lowest rate since 1996 (57 percent) and the second lowest on record, as shown in Chart 1.⁸



Turnout in mayoral elections has been even worse than presidential elections. In the 2013 mayoral election only 1.1 million of the 4.2 million registered voters in New York City voted in the November general election—a rate of just 26 percent.⁹

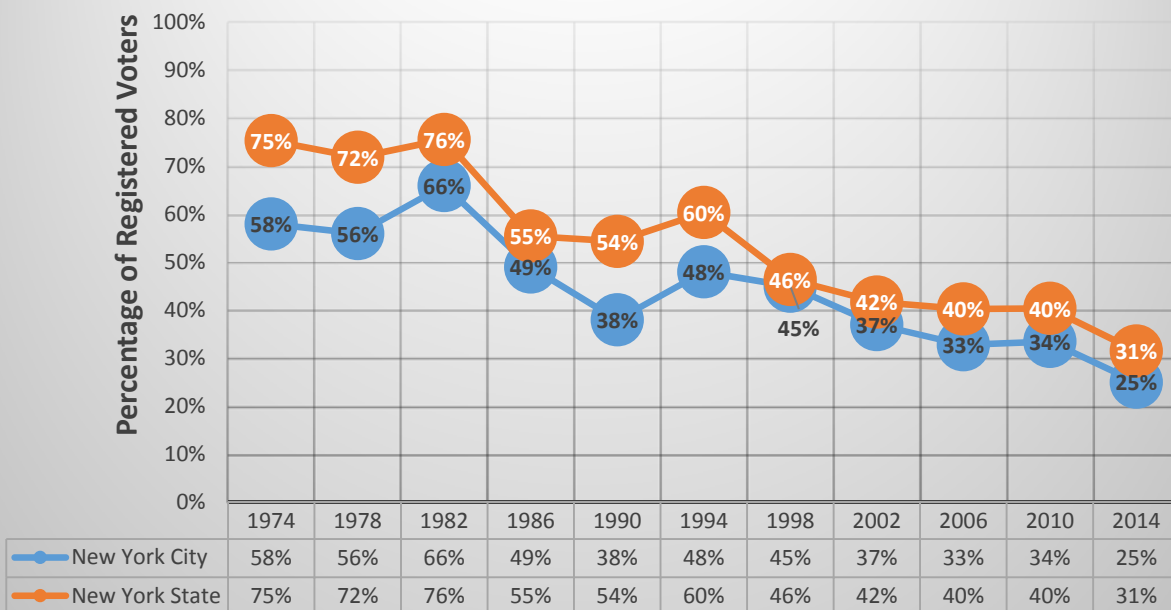
By comparison, as shown in Chart 2, 93 percent of registered voters turned out in 1953, and as recently as 1993, over half of registered New Yorkers (57 percent) voted in the general election for mayor.¹⁰



In the November 2014 midterm elections, New York State’s voter turnout remained pitiful. Only 31 percent of registered voters cast ballots, one of the lowest rates in the nation, despite three statewide races (including the governor) and 27 U.S. House of Representatives races.¹¹

In New York City, only 25 percent of registered voters in New York City turned out—the lowest rate on record and a continuation of a decades-long slide.¹² Between 1974-2014, turnout in the City has consistently lagged the State as a whole, as shown in Chart 3.

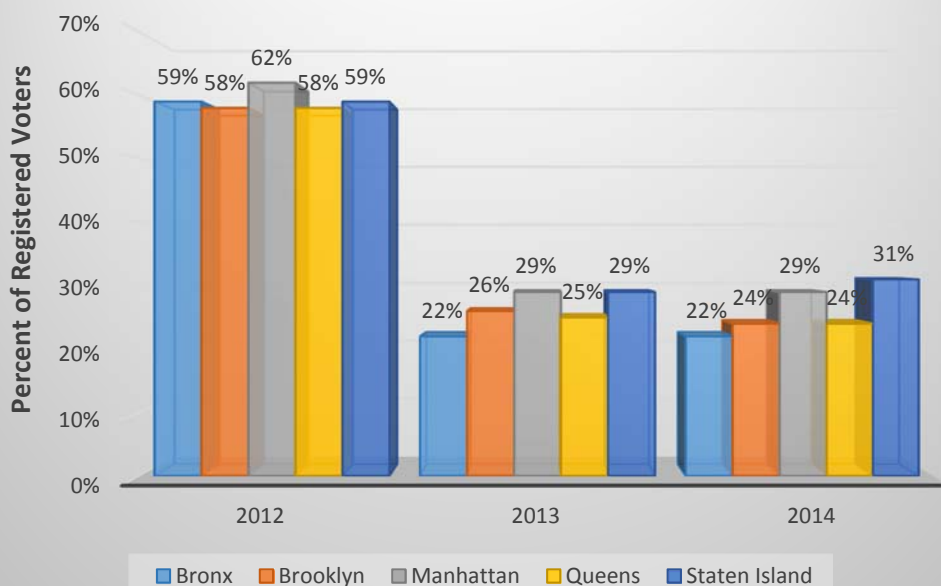
CHART 3: NYC vs. NYS Turnout in Gubernatorial General Elections: 1974-2014



Turnout in the primary election for State officeholders in September 2014 was even lower—a mere 11 percent of registered voters, with turnout for the federal primary the preceding June the lowest of all in 2014—at 8 percent of registered voters.

As shown in Chart 4, turnout has been low throughout the five boroughs.

CHART 4: Turnout Rates by Borough General Elections: 2012-2014



While there are many possible explanations for New York’s poor turnout at the polls, our analysis shows that the Empire State’s voting rules tend to impose barriers to exercising the franchise.¹³ In fact, New York is one of only a handful of states to lack alternative poll access (early voting/no-excuse absentee voting/voting by mail), expedited registration (same-day or electronic registration), and increased primary access (open primaries, extended deadlines for party registration).¹⁴

In signing the Voting Rights Act of 1965, President Lyndon Johnson declared, “This right to vote is the basic right without which all others are meaningless. It gives people...control over their own destinies.”¹⁵ That right—and the possibility it provides—continues to be thwarted by laws that erect barriers to the ballot box.

V. THE SOLUTION: COMPTROLLER STRINGER’S 16-POINT PLAN

This report, by New York City Comptroller Scott M. Stringer, lays out a series of recommendations that New York can take to improve turnout, including changes to state law, amendments to the State Constitution, and improvements to election procedures in the City.

The Comptroller’s 16-point plan covers four major areas—voter registration, access to the polls, Election Day operations, and election administration—and is designed to increase voter turnout, while modernizing and improving the efficiency of the election process.

The Comptroller’s plan is informed by the longstanding efforts of elected officials and advocates at the City, State, and Federal level.

Where applicable, the Comptroller’s plan calls for amendments to the State Constitution, which must be passed by both the Assembly and Senate in two consecutive legislative sessions, followed by approval by the voters via a referendum. Additional implementing legislation may also be required depending on the specifics of the amendment.

Where the Comptroller is calling for passage of specific bills at the State and/or City level, the bill numbers from the 2015–2016 session are referenced in the subheadings.

Voter Registration¹⁶

1. Pre-registration of 16/17 year-olds (A2529/S857¹⁷):

Registration rates are consistently low among New York’s eligible voters under the age of 24.¹⁸ According to the U.S. Census Bureau, in 2010 only 46.6 percent of eligible New York voters between the ages of 18 and 24 were even registered to vote.

Allowing for pre-registration of 16- and 17-year olds will increase the number of young people heading to the polls. The pre-registration information would be kept on file and activated when the registrant reaches legal voting age. The current bills pending in the State Legislature, sponsored by Assemblymember Brian Kavanaugh and Senator David Carlucci,

would also require local boards of education to adopt policies to promote student voter registration and pre-registration.

Pairing pre-registration with robust and interactive civics education in New York's public schools will also help to develop a culture of voting that can boost voter participation over the long-term.¹⁹

2. Same Day Registration (A5891/S2391, A5957/S2483A, A5870, A5972/S2538B):

Under New York State law, residents must register to vote 25 days before a given election.

In contrast, 11 states and the District of Columbia allow same day registration (SDR), also known as Election Day registration, which allows eligible voters to register and vote on Election Day at their poll site.²⁰ Three additional states have passed SDR laws that have not yet gone into effect, while Utah has passed a law authorizing a pilot program of SDR.²¹

SDR has been implemented with minimal cost to local and state governments,²² and has been correlated with increased turnout.²³ States that permit Election Day registration have a significantly higher voter turnout rate than New York.²⁴

New York should enact same day registration (SDR), which would allow previously unregistered voters to register at the polls on Election Day.²⁵

Enacting SDR will require a change to the New York State Constitution (A5891/S2391²⁶), as well as corresponding implementing legislation (A5957/S2483A), both of which have been introduced by Assemblymember Kavanagh and Senator Michael Gianaris.²⁷

In the interim, the State Legislature should pass legislation to allow voters to register up to 10 days prior to an election, as permitted under the Constitution, by passing legislation (A5870) sponsored by Assemblymember Kavanagh.²⁸ This change is also included as part of the "Voter Empowerment Act of New York," sponsored by Assemblymember Kavanagh and Senator Gianaris (A5972/S2538B).²⁹

3. Online Registration/Automatic Voter Registration in New York State Using Agency Databases (A5972/S2538B³⁰):

In August 2012, Governor Cuomo announced a partnership between the Department of Motor Vehicles (DMV) and boards of elections to allow New Yorkers who have a valid DMV issued identification to register to vote and to change their voter registration information online.³¹

In December 2014, Mayor de Blasio signed two bills into law expanding the number of agencies required to distribute voter registration forms and requiring agencies to report the efficacy of the program.³²

In early 2016, Governor Cuomo announced a proposal to make New York State the third State to adopt automatic voter registration through the DMV. Drivers who did not wish to register to vote would simply check an "opt out" box on their application.

Since New York City residents are less likely to interact with the DMV than individuals in the rest of the State, the State Board of Elections should work with a variety of agencies, including social service and health-related agencies, to fully leverage the potential of automatic voter registration.³³

The Voter Empowerment Act would add the State University of New York, City University of New York, public housing authorities throughout the State, the Department of Corrections and Community Supervision and the Division of Military and Naval Affairs as agencies for the purposes of streamlining voter registration.³⁴

The legislature and the State and local boards of elections should also work to create a way for voters to register and update their registration securely online, without interacting with a government agency.

Access to the Polls

4. No-Excuse Absentee Voting (A2644, A3874B³⁵):

The New York Constitution (Art. II, § 2) limits the scenarios by which New Yorkers can secure an absentee ballot.³⁶ Under current New York State law,³⁷ voters requesting an absentee ballot must provide one of the following reasons:

- Unavoidable absence from the county of residence (or from all of New York City for City voters) due to duties, occupation, business, or studies, or accompanying a spouse, parent, or child for that person's unavoidable absence;
- Absence due to vacation;
- Inability to vote due to illness or physical disability;
- Status as an inmate or patient at a veteran's administration hospital; and
- Status as an inmate prior to conviction or post-conviction for a crime other than a felony.

New York should amend the Constitution to allow for absentee voting without citing a specific reason. As of 2014, 27 states and the District of Columbia already offered no-excuse absentee, while six of those states (plus D.C.) permit *permanent* absentee voting, which essentially amounts to vote-by-mail.³⁸

In lieu of no-excuse absentee voting, the State must take steps to ensure that affidavit balloting can be used in the event of a declared emergency. Following Hurricane Sandy, Governor Cuomo issued an executive order that allowed displaced voters to cast ballots by affidavit at any polling site in the State.³⁹ While this action did not solve every logistical challenge—for instance, due to differences in ballots across the state, voters were *not* able to cast votes for state legislative candidates unless the polling place was within the proper legislative district—it was a necessary stop-gap measure.

Instead of relying on executive orders to ensure ballot access, the State Legislature should consider legislation that would automatically trigger affidavit ballot access in areas of the State that are under declared emergencies.

5. Ensuring Absentee Ballot Access for All (A2104A/S5085⁴⁰):

In addition to enacting no-excuse absentee balloting, New York should take steps to make absentee ballots accessible to all, including people with disabilities. To that end, the State should pass legislation making absentee ballots available in Braille and large print, as proposed by Assemblymember David Weprin and Senator Joseph Griffo. The legislation passed the Assembly in 2015, but has not passed the Senate.

6. Early In-Person Voting/Weekend Voting (A8582A/S3813B⁴¹):

In 2012, approximately 31 percent of all votes nationwide were cast prior to Election Day in November.⁴² Allowing voters to go to the polls before Election Day improves election administration, shortens lines, and enhances access for voters.

There are numerous bills pending in Albany that would enact early voting, including a bill sponsored by Assemblymember Kavanagh and Senator Stewart-Cousins that would establish a 12-day early voting period running until the Sunday before Election Day.

At a minimum, the State Legislature should pass a bill this year that provides:

- Seven days of early voting prior to an election, including at least one Saturday and one Sunday; and
- Early voting sites that provide access before and after “traditional” 9–5 work hours.

In lieu of early voting, State Senator Tony Avella has proposed a bill that would move elections from their traditional Tuesday dates to weekends.⁴³ As the bill memo notes, Tuesday was originally selected as the day for federal elections by an act of Congress in 1845. At the time, it was believed that this date would maximize turnout because Tuesday was a designated “court day” and, as a result, land-owners would typically be in town to conduct business.

A lot has changed in the 171 years since, and it is time that our election calendar catches up with the realities of the modern world, either by allowing New Yorkers to vote in advance of the traditional Tuesday Election Day, or by moving Election Day itself to the weekend when more people can participate.

7. Vote by Mail (S2739⁴⁴):

Three states—Oregon, Washington and Colorado—conduct all elections by mail and 19 other states allow certain elections to be held by mail.⁴⁵ A vote-by-mail system would eliminate the need for absentee ballots since ballots would be mailed to all voters.

One of the clearest benefits of mail voting is its universality. Oregon and Washington saw significant and immediate increases in turnout after transitioning to all-mail elections—from 59 percent in 1998 to 69 percent in 2002 for Oregon and from 64.5 percent in 2006 to 71.2 percent in 2010 for Washington.⁴⁶

The State Board of Elections should explore the practicality of voting-by-mail in the Empire State and, where possible, establish pilot programs to determine the

efficacy/efficiency of a vote-by-mail system. These programs should carefully examine efforts made in other jurisdictions to ensure the security of the ballot and the most efficient way to provide voters with postage to eliminate any obstacle to exercising the franchise.

State Senator Liz Krueger has introduced a bill that would instruct the State BOE to perform such a study. That bill is currently pending before the Senate Elections Committee.

8. Voting by Formerly Incarcerated Individuals (A6491 & A7634/S2023A⁴⁷):

In New York, formerly incarcerated individuals are eligible to vote regardless of conviction, however they are required to re-register upon release. Moreover, unlike many other states, New York bars individuals convicted of a felony from voting while they are on parole.

As a result, the State Legislature should pass A6491, sponsored by Assemblymember N. Nick Perry, which would require the State Department of Corrections and Community Supervision (DOCCS) to notify formerly incarcerated individuals about their voting rights and the need to re-register within 30 days of release.

In addition, New York should join the 14 states and the District of Columbia that restore voting rights for parolees by passing A7634/S2023A, sponsored by Assemblymember Daniel O'Donnell and Senator Ruth Hassell-Thompson.⁴⁸

Improving Election Day Operations

9. Voter Engagement:

Another way to address low voter turnout is to increase communication between the New York City Board of Elections and voters. Under State law, boards of elections are only required to send out notifications of elections once a year in the dog-days of August, by snail mail. This is inefficient and ineffective, especially when federal primary elections are held in June.⁴⁹

The City should require BOE to provide more frequent notification to voters about election dates and location of poll sites and to adopt more modern forms of communication, such as push-notification on mobile applications, email, and SMS/text communication. These steps could enhance voter awareness and decrease the cost of postage to BOE, which constituted two percent of its FY 2014 operating budget.⁵⁰

Councilmember James Vacca has introduced a bill (Int. 463-2014) that would require the BOE to notify voters who provide their email address or mobile phone number about local, state and federal elections by email and text message.⁵¹ While the BOE recently testified that the bill is preempted by state law, the BOE should work with the Council and the State Legislature to effectuate the goals of Councilmember Vacca's legislation while protecting the privacy of sensitive voter information.

10. Poll Worker Recruitment and Training:

NYC BOE has noted the challenge of recruiting over 30,000 poll workers to cover all of the poll sites on Election Day.⁵² Recent research suggests that poorly trained poll workers can “have a detrimental effect on voter confidence,” and that complicated voting laws can lead to errors in election administration that can impose additional burdens on voters.⁵³

While State law requires every board of elections to conduct training for election inspectors, poll clerks and election coordinators on an annual basis,⁵⁴ high turnover means that during any given election, a significant share of poll workers are on duty for the first time.⁵⁵

According to a 2013 report by the New York State Bar Association, common problems with poll workers include a lack of awareness of certain procedures—including what to do when a voter’s name does not appear in the registration book or which ballots to use when a machine malfunctions—and a failure to open polling places on time.⁵⁶ NYC BOE should take several steps to improve and expand recruitment and training, including:

- Implementing half-day shifts rather than only recruiting people who can work a 16 hour day;
- Raising the wage from \$200 (the equivalent of \$12.50 an hour) to at least \$240, or \$15 an hour); and
- Expanding training for poll workers, including specialized disability awareness training and a focus on language access plans.⁵⁷

In addition, the State legislature should eliminate the requirement that poll workers be registered members of either the Democratic or Republican parties.⁵⁸ Of the nearly 11 million active, registered voters in the Empire State in 2012, nearly 2.9 million (26 percent) are either unaffiliated or are registered members of a smaller political party.⁵⁹

11. Accessible Poll Sites:

The City is currently under a court order to comply with a Department of Justice remedial plan to provide meaningful access to the polls in accordance with the Americans with Disabilities Act.⁶⁰ Nevertheless, as the Public Advocate has found, significant impediments remain for people with disabilities.⁶¹

As a result, the BOE should work more closely with the New York City Department of Education to ensure that schools being used as poll sites are fully accessible; enhance oversight by expanding poll inspections; and improve accountability through voter surveys.

12. Ballot Design (A3389⁶²):

The ballot design section of New York’s election law was drafted for now-retired lever machines, rather than the electronic machines now in use.

In addition, New York City ballots are barely legible due to the full-face requirement—which has been interpreted by the State Board of Elections to require ballots to show all

candidates for all offices and ballot questions on a single face or display at one time.⁶³ This leaves a clutter of antiquated party symbols, tiny font, and multiple languages on each ballot.

The State Legislature should pass the Voter Friendly Ballot Act, sponsored by Assemblymember Kavanagh, which would change the language in State law addressing ballot design and allow the NYC BOE to have greater flexibility in designing ballots.

Election Administration

13. Language Access:

In 2013, the Supreme Court of the United States struck down a key section of the Voting Rights Act of 1965 (VRA).⁶⁴ As a result, New York City is no longer required to “pre-clear” changes to voting procedures with the U.S. Department of Justice.

Many provisions of the VRA remain in effect, however, including the Language Access Provision (also known as Section 203).⁶⁵ Language translation requirements under Section 203 are triggered in two ways:⁶⁶

- When more than five percent of the citizens of voting age of the State or political subdivision are members of a single language minority and are limited-English proficient (an English literacy rate below the national average); or
- When more than 10,000 of the citizens of voting age of the political subdivision are members of a single language minority and are Limited English Proficient (LEP), whichever is lower.

Pursuant to these rules, in 2013, the New York City Board of Elections (NYC BOE) was directed to provide written language assistance at Queens polls in Bengali, Punjabi and Hindi in order to comply with the VRA.⁶⁷

The NYC BOE is currently required to have voter information in five different languages (English, Spanish, Chinese, Korean, Bengali) and provide translators at the poll sites for these languages only, despite the fact that Russian is now the third most commonly spoken language for LEP New Yorkers.⁶⁸ To its credit, the BOE recently launched a Russian website with translated documents.⁶⁹

Other advocates have pressed for broader and more stringent requirements than those currently outlined in the VRA.

- Assemblymember William Colton and Senator Martin Golden have sponsored a bill (A4759/S1703) to require the BOE to provide Russian translators at polling locations in election districts having a population comprised of five percent or more people whose first language is Russian.⁷⁰
- Councilmember Mathieu Eugene has introduced legislation (Int. 0255-2014) that would require the BOE to publish the annual Voter Guide in each of the top seven spoken languages, rather than simply in English and Spanish.⁷¹

- The New York Immigration Coalition has urged the BOE and the Campaign Finance Board to follow the lead of the City Department of Education and publish voter education materials in the nine most common languages spoken by LEP New Yorkers.⁷²
- Demos has called for language assistance and translation to be triggered when either 7,500 people or three percent of the population of voting-age citizens, whichever is smaller, speaks a common language other than English.⁷³

NYC BOE should also look to improve and expand language access at the polls so that all New Yorkers, regardless of their English proficiency, are able to cast a ballot without confusion or delay. This includes integrating telephonic “Language Line” service at poll sites—as Philadelphia has done⁷⁴—and carefully reviewing demographic data to ensure that voting assistance reflects changes in the City’s LEP population.

14. Instant Runoff Voting (A5571/S4586⁷⁵):

Current election procedure in New York City requires administering a runoff election two weeks after the primary election if no candidate for citywide office receives forty percent of the vote. This process reduces turnout and costs taxpayers millions.

In 2013, a runoff election for Public Advocate had only seven percent turnout, less than a third of the regular primary election held three weeks earlier.⁷⁶ The runoff cost City taxpayers approximately \$13 million.⁷⁷

Additionally, the limited time to certify the results from the Primary Election and then print and deliver runoff ballots can prevent military and absentee voters from being able to cast their ballots by runoff Election Day.

Instant Runoff Voting (IRV) allows voters to rank candidates in order of preference at the polls. If no candidate receives a majority of the votes, the two candidates with the most votes proceed to the next round of counting, with other candidates being taken out of consideration. Votes cast for the eliminated candidates are then recounted as votes for whichever of the two advancing candidates is ranked higher by each voter. Any ballot that does not rank either of the two advancing candidates is not counted during the second round. This takes place for up to two rounds until a candidate receives a majority of votes.

Instant Runoff Voting is already in place in cities throughout the country, including Oakland and Minneapolis.

Cities that have adopted IRV have typically engaged in a multi-pronged, multi-language voter education effort designed to ensure that all voters have a clear understanding of the system well in advance of the time they step foot in a voting booth.

For example, prior to introducing IRV in 2004, San Francisco used direct mail; advertising on public transportation, community and ethnic media, radio, and the web; and partnerships with community groups to spread the word about IRV.⁷⁸ The net effect was that only three percent of voters reported that they did not understand IRV during the first election in

which it was in place, with widespread awareness of IRV cutting across ethnic, age, and socio-economic lines.⁷⁹

Implementing IRV for the three citywide offices in New York City—Mayor, Comptroller and Public Advocate—would save the City millions of dollars per election cycle, while increasing voter turnout.

Assemblymember Kavanagh and Senator Andrew Lanza have introduced legislation that would enable IRV in New York City.

In lieu of passing this bill, the State could pass a bill sponsored by State Senator Krueger that would create pilot programs of IRV across the state.⁸⁰

15. Consolidate New York Primaries:

Every two years (in even years), New York State voters are asked to vote in two completely separate primary elections. The first—in June—for federal officeholders, including Congress, and the second—in September—for state and local elections.

In Presidential election years, there are *three* separate primaries—one for President (April 19, 2016), one for other federal officeholders (June 28, 2016), and one for state/local elections (September 13, 2016).

This process not only wastes public funds—NYC BOE spent nearly \$4 million to conduct the 2014 federal primary election⁸¹ and the total cost to state and local governments is projected to be \$50 million⁸²—but also reduces voter turnout and makes petitioning, registration, and other election administration extremely complicated, since deadlines are based on the number of days prior to a particular election.⁸³

Moreover, the Military Overseas Voter Empowerment (MOVE) Act of 2009 requires states to transmit validly requested absentee ballots to overseas voters no later than 45 days before a federal election. New York’s current September primary date for state/local elections is held too late for MOVE compliance. As a result, the State is unable to send a single, consolidated state/federal ballot to citizens living abroad.

New York should consolidate federal and state primary elections, as previously proposed by State Senator Stewart-Cousins.⁸⁴ In addition to reducing the burden on voters and saving taxpayer dollars, this change would also enhance access to the franchise for our women and men fighting overseas.

Such a move is far from unprecedented. In fact, New York State had consolidated primaries prior to 1974.

16. Strengthen Laws Against Deceptive Practices (A5841/S2352⁸⁵):

Across the country, citizens continue to confront deceptive practices that further inhibit their ability to vote, including flyers and “robocalls” containing false information about the location of polling sites or specifying fictitious voting requirements.⁸⁶ These practices have been reported throughout the State of New York in recent years.⁸⁷

While New York State law prohibits, “Fraudulently or wrongfully [performing] any act tending to affect the result of any primary election, caucus or convention,” this law does *not* extend to general elections.⁸⁸

As a result, New York should pass the Deceptive Practices and Voter Suppression Act, sponsored by Assemblymember Kavanagh and Senator Andrea Stewart-Cousins, which will clearly and unequivocally prohibit the intentional dissemination of disseminate false or misleading information about the voting process with the intent to prevent an eligible voter from casting a ballot in *any* election, not just primaries.

The bill would also provide the New York Attorney General with concurrent jurisdiction to enforce these provisions. This is a critical component of reform, since deceptive practices—both by phone and otherwise—often cross county boundaries.

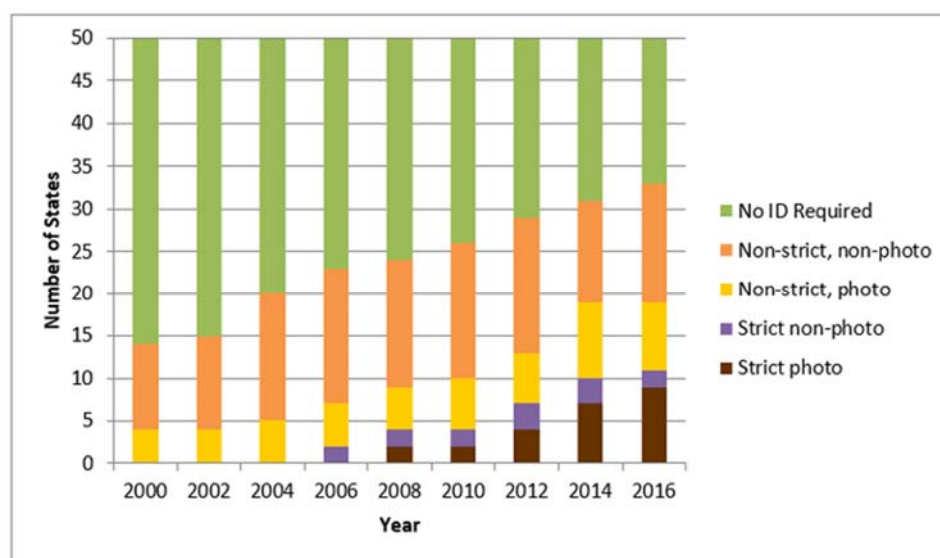
VII. CONCLUSION

In a famed Fireside Chat in 1944, President Franklin D. Roosevelt urged Americans to view voting not as an optional act of citizenship, but as a duty to democracy:

Every man and every woman in this Nation—regardless of party—who have the right to register and to vote, and the opportunity to register and to vote, have also the sacred obligation to register and to vote.⁸⁹

Roosevelt called out the voting public to do its part, but he also sharply criticized elected officials who erected barriers to voting in an effort at self-preservation. “The full and free exercise of our sacred right and duty to vote is more important in the long run than the personal hopes or ambitions of any candidate for any office in the land.”⁹⁰

In recent years, however, Roosevelt’s admonition has fallen on deaf ears, as states across the country have created hurdles to the ballot box. These efforts include expansive voter ID laws (see chart from the National Conference of State Legislatures⁹¹), restrictive registration practices, eliminating early voting, and bans on the franchise for people with criminal records.⁹²



These practices, combined with the Supreme Court’s 2013 decision striking down a key provision of the Voting Rights Act of 1965,⁹³ have a disproportionate impact on people of color and low-income Americans. Approximately 11 percent of Americans lack government-issued ID. As many as one-quarter of African American citizens of voting age lack such ID, compared to only 8 percent of voting age Whites.⁹⁴

While New York State does not have an ID requirement at the ballot box, for far too long, state and local policies in New York have ignored the Empire State’s proud history of suffrage by erecting hurdles to the franchise. Now is the time to bring New York’s election laws into the 21st century and enhance access to the ballot for every New Yorker—from Buffalo to Brooklyn.

V. ACKNOWLEDGMENTS

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VI. ENDNOTES

¹ <http://www.pbs.org/pov/pov2008/election/wvote/king.html>.

² Email from New York City Board of Elections (20 Nov. 2015); The New York City Board of Elections uses the term “eligible active” voter to refer to “registered voter[s] who [are] active to vote with no restrictions.”

³ Judith Wellman, *The Road to Seneca Falls: Elizabeth Cady Stanton and the First Women’s Rights Convention* (Champaign, IL: University of Illinois Press, 2004), 92.

⁴ <http://ecssba.rutgers.edu/docs/seneca.html>

⁵ Doug Linder, “The Trial of Susan B. Anthony for Illegal Voting,” (2001), available: <http://law2.umkc.edu/faculty/projects/ftrials/anthony/sbaaccount.html>.

⁶ Tara Kini, “Sharing the Vote: Non-Citizen Voting Rights in Local School Board Elections,” *California Law Review* 93.1 (Jan. 2005), 273 n 5, available: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1311&context=californialawreview>; Prior to the reorganization of the New York City school system under Mayor Bloomberg, New York Education Law, article 52A, § 2590-c granted the right to vote in New York City’s community school district elections to every parent of a child attending any public school in the district “who is a citizen of the state, a resident of the city of New York for

at least thirty days and at least eighteen years of age shall be eligible to vote,” provided they have not been convicted of a felony or engaged in voting.

⁷ New York City Campaign Finance Board, “Who Votes? Voter Turnout in New York City,” (11 Jun. 2012), available: http://www.nyccfb.info/pdf/issue_reports/whovotes.pdf.

⁸ Board of Elections, City of New York, “Annual Report 2012,” available: <http://vote.nyc.ny.us/downloads/pdf/documents/boe/AnnualReports/BOEAnnualReport12.pdf>.

⁹ Board of Elections, City of New York, “Annual Report 2013,” available: <http://vote.nyc.ny.us/downloads/pdf/documents/boe/AnnualReports/BOEAnnualReport13.pdf>; Turnout in the Democratic runoff election for Public Advocate was even more sparse—with only 7 percent of registered voters casting a ballot.

¹⁰ Sam Roberts, “Voter Turnout Appears to be Record Low,” *New York Times* (6 Nov. 2013), available: <http://www.nytimes.com/news/election-2013/2013/11/06/new-york-turnout-appears-headed-for-record-low/>.

¹¹ <http://www.gothamgazette.com/index.php/government/5432-forty-years-of-freefall-in-new-york-voter-turnout>; citing NYS Board of Elections data for State figures. According to Nonprofit Vote, New York State was 49th out of the 50 states + D.C. in turnout in 2014. See: <http://www.nonprofitvote.org/documents/2015/03/america-goes-polls-2014.pdf>.

¹² Board of Elections, City of New York, “Annual Report 2014,” available: <http://vote.nyc.ny.us/downloads/pdf/documents/boe/AnnualReports/BOEAnnualReport14.pdf>.

¹³ New York State Bar Association, “Special Committee on Voter Participation: Final Report,” (25 Jan. 2013), available: <http://www.nysba.org/FinalReportandRecommendationoftheSpecialCommitteeonVoterParticipation.aspx>; Voter turnout is a significant concern not only within the five boroughs, but throughout New York State. As noted in a recent report by the New York State Bar Association, as of 2010, New York had the sixteenth-worst registration rate (percentage of its eligible citizens who are registered to vote) of all states, with fewer than 64 percent of eligible New Yorkers registered to vote.

¹⁴ http://www.nyc.gov/html/om/pdf/2010/pr492-10_proposal.pdf.

¹⁵ <http://millercenter.org/president/speeches/speech-4034>.

¹⁶ It is important to note that voter registration is *not* required under the U.S. Constitution. With few exceptions, voting procedures are under the exclusive control of state and local government and in some states, voter registration was created as a way to erect barriers to the franchise for certain classes of voters. As noted by researchers at Caltech/MIT, “The imposition of voter registration requirements, and the other election reforms enacted at the beginning of the 20th Century, had dramatic effects on voter participation...turnout declined in the South from 64.2% in 1888 to 29.0% in 1904. Outside the South, turnout fell from 86.2% in 1888 to 67.7% in 1912. Clearly the imposition of voter registration requirements imposed an important new hurdle on voter participation in the United States.” (http://vote.caltech.edu/sites/default/files/vtp_wp5.pdf). Nevertheless, with the exception of North Dakota, every state in the nation requires voters to register. See: <https://vip.sos.nd.gov/pdfs/portals/votereg.pdf>.

¹⁷ <http://www.nysenate.gov/legislation/bills/2015/a2529>; <http://www.nysenate.gov/legislation/bills/2015/S857>.

¹⁸ <http://www.fairvote.org/reforms/universal-voter-registration/voter-preregistration-4/youth-preregistration-fact-sheet/>.

¹⁹ In 2014, Councilmember Mark Levine introduced a resolution calling on the New York State Department of Education to “implement a robust requirement for civics education at the elementary, middle and high school level for all public schools in New York.” See:

<http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1709708&GUID=1DC63FCE-0F4E-4BD1-BF5F-1F1F7FE4A97C>.

²⁰ <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>.

²¹ <http://le.utah.gov/~2014/bills/hbillenr/hb0156.pdf>.

²² <http://www.demos.org/sites/default/files/publications/SDR-CostStudy-Final.pdf>.

²³ <http://fairelectionsnetwork.com/wp-content/uploads/Election-Day-Registration-Brief.pdf>; In 2008, the top five voter turnout states were all SDR states. In 2012, four of the top five voter turnout states had SDR. And in the 2014 general election, 7 of the top 10 turnout states had SDR.

²⁴ <http://www.nysba.org/FinalReportandRecommendationoftheSpecialCommitteeonVoterParticipation.aspx>.

²⁵ http://www.huffingtonpost.com/scott-stringer/hurricane-sandy-election_b_2077145.html.

²⁶ <http://www.nysenate.gov/legislation/bills/2015/a5891>; <http://www.nysenate.gov/legislation/bills/2015/S2391>.

²⁷ N.Y. Const. Art. II, Sec. 5; <http://www.nysenate.gov/legislation/bills/2015/A5957>;

<http://www.nysenate.gov/legislation/bills/2015/S2483A>.

²⁸ <http://www.nysenate.gov/legislation/bills/2015/a5870>.

²⁹ <http://www.nysenate.gov/legislation/bills/2015/a5972>; <http://www.nysenate.gov/legislation/bills/2015/S2538A>.

³⁰ <http://www.nysenate.gov/legislation/bills/2015/a5972>; <http://www.nysenate.gov/legislation/bills/2015/S2538B>.

³¹ <http://www.governor.ny.gov/press/08162012-voter-registration-reform>.

- ³² <http://www1.nyc.gov/office-of-the-mayor/news/555-14/mayor-bill-de-blasio-signs-four-bills-law-introductions-361-a-493-a-356-a-216-b>.
- ³³ <http://www.nydailynews.com/news/politics/nyc-pols-oppose-cuomo-plan-boost-voter-registration-article-1.2531527>.
- ³⁴ While the Voter Empowerment Act would not create an automatic “opt-out” registration arrangement, it’s inclusion of additional agencies is critical to ensuring that registration is made available to as many New Yorkers as possible.
- ³⁵ <http://www.nysenate.gov/legislation/bills/2015/a2644>; <http://www.nysenate.gov/legislation/bills/2015/A3874B>.
- ³⁶ While the courts have not definitively ruled on whether the State Legislature could enact no-excuse absentee balloting by statute rather than amendment, the New York City Bar Association’s 2010 analysis concluded that the “New York State legislature may not, consistent with Article II, Section 2 of the New York Constitution, provide for no-excuse absentee voting...[because] [t]he language of this constitutional provision indicates that its framers specified the two categories of qualified absentee voters.” See: <http://www.nycbar.org/pdf/report/uploads/20071936-NoExcuseAbsenteeBallotReport.pdf>. Nevertheless, State Senator Tony Avella has introduced legislation that would enact no-excuse absentee balloting *without* a Constitutional amendment, as has State Senator Kevin Parker and Assemblymember Michael Blake. See: <http://www.nysenate.gov/legislation/bills/2015/S5442>; <http://www.nysenate.gov/legislation/bills/2015/S1770A>; <http://www.nysenate.gov/legislation/bills/2015/A6038A>.
- ³⁷ N.Y. Elec. Law § 8-400.
- ³⁸ http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx#no_excuse; The six states with permanent, no-excuse absentee voting are Arizona, California, Hawaii, Montana, New Jersey, and Utah.
- ³⁹ <https://www.governor.ny.gov/news/governor-cuomo-signs-executive-order-facilitate-voting-new-yorkers-who-were-affected-hurricane>.
- ⁴⁰ <http://www.nysenate.gov/legislation/bills/2015/a2104a>; <http://www.nysenate.gov/legislation/bills/2015/s5085>.
- ⁴¹ <http://www.nysenate.gov/legislation/bills/2015/A8582A>; <http://www.nysenate.gov/legislation/bills/2015/S3813B>.
- ⁴² <http://www.lwvny.org/advocacy/election-law/2015/Testimony-to-NYSA-Election-Law-Early-Voting-No-Excuse-Absentee-111815.pdf>.
- ⁴³ <http://www.nysenate.gov/legislation/bills/2015/S1044>.
- ⁴⁴ <http://www.nysenate.gov/legislation/bills/2015/S2739>.
- ⁴⁵ <http://www.ncsl.org/research/elections-and-campaigns/all-mail-elections.aspx>.
- ⁴⁶ <https://www.washingtonpost.com/blogs/govbeat/wp/2014/09/12/with-a-win-on-the-line-in-colorado-democrats-hope-to-mail-it-in/>.
- ⁴⁷ <http://www.nysenate.gov/legislation/bills/2015/a6491>; <http://www.nysenate.gov/legislation/bills/2015/A7634>; <http://www.nysenate.gov/legislation/bills/2015/S2023A>.
- ⁴⁸ http://www.nonprofitvote.org/voting-as-an-ex-offender/#New_York; Notably, Maine and Vermont do not strip individuals of the right to vote, even during incarceration for a felony.
- ⁴⁹ Annual Report 2012; Annual Report 2013; NYC BOE spent over \$2.8 million on postage alone to send paper notices to voters for the 2012 NYS Primary and General elections. It spent nearly \$1.6 million in preparation for the Citywide Primary election in 2013.
- ⁵⁰ Annual Report 2014; The postage cost does not include the cost of printing the notices or other “advertising” costs billed by the BOE.
- ⁵¹ <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1891009&GUID=D2E74CB2-75AC-4479-AC5B-0854708379E3&Options=&Search=>.
- ⁵² http://vote.nyc.ny.us/html/newway_en/info_pollworker.shtml; Poll worker recruitment and training is a common challenge across the country. See generally: <http://www.demos.org/publication/millions-polls-poll-worker-recruitment-training>.
- ⁵³ Thad E. Hall, J. Quin Monson and Kelly D. Patterson. “The Human Dimension of Elections: How Poll Workers Shape Public Confidence in Elections,” *Political Research Quarterly*, 62.3 (Sep., 2009), p 507; Lauren Watts, “Reexamining Crawford: Poll Worker Error as a Burden on Voters,” 89 Wash. L. Rev. 175, 180 (2014).
- ⁵⁴ N.Y. Elec. Law § 3-412(1).
- ⁵⁵ Annual Report 2013; In the 2012 Presidential election, over 13 percent of New York City’s poll workers were first-timers.
- ⁵⁶ <http://www.nysba.org/voterreport/>.
- ⁵⁷ <http://www.thenycic.org/sites/default/files/Engaging%20Immigrant%20NYC%20Policy%20Recommendations%20Final.pdf>; <http://www.cidny.org/resources/Non-Technical%20Guide%20Describing%20Standards%20for%20Poll%20Site%20Accessibility.pdf>.
- ⁵⁸ N.Y. Elec. Law § 3-400(3); N.Y. Elec. Law § 3-401(2).
- ⁵⁹ http://www.elections.ny.gov/NYSBOE/enrollment/congress_nov12.pdf.
- ⁶⁰ *Disabled in Action v. Bd. of Elections*, 752 F.3d 189 (2d Cir. 2014), available: <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/14/diaelectionsopinion.pdf>.
- ⁶¹ <http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/publicadvocate-annualreport-votingdisabilities.pdf>.

- ⁶² <http://www.nysenate.gov/legislation/bills/2015/a3389>.
- ⁶³ N.Y. Elec. Law § 7-104; New York requires that all candidates for each office and all propositions appear on the face of a single ballot. As noted by the New York City Bar Association, most electronic voting systems do not use a full face system and those that do are both significantly more expensive and have been criticized by disability advocates for presenting difficulties for voters with cognitive disabilities. *See*: <http://www.nycbar.org/pdf/report/New%20Voting%20Technology%20Report.pdf>. The Brennan Center for Justice, which opposes the full-face requirement, has published a history of the rule here: <https://www.brennancenter.org/sites/default/files/legacy/MemoFullfaceBallotLaw.pdf>.
- ⁶⁴ *Shelby County v. Holder*, 570 U.S. ____; 133 S. Ct. 2612 (2013).
- ⁶⁵ <http://www.justice.gov/crt/about-language-minority-voting-rights>.
- ⁶⁶ <http://www.demos.org/publication/millions-polls-language-disability-access#fn5>.
- ⁶⁷ <http://www.wnyc.org/story/301391-explainer-supreme-court-voting-rights-and-new-york/>.
- ⁶⁸ <http://www.nyc.gov/html/imm/html/news/stats.shtml>.
- ⁶⁹ <http://vote.nyc.ny.us/html/voters/russian.shtml>.
- ⁷⁰ <http://www.nysenate.gov/legislation/bills/2015/A4749>; <http://www.nysenate.gov/legislation/bills/2015/S1703>.
- ⁷¹ <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1709701&GUID=F7391229-BEF4-4E2F-8DA0-79260D6DB684&Options=&Search=>
- ⁷² <http://www.thenycic.org/sites/default/files/Engaging%20Immigrant%20NYC%20Policy%20Recommendations%20Final.pdf>; The nine languages recommended by NYIC are: Arabic, Bengali, Chinese, French, Haitian Creole, Korean, Russian, Spanish and Urdu.
- ⁷³ <http://www.demos.org/publication/millions-polls-language-disability-access>.
- ⁷⁴ <https://www.seventy.org/uploads/files/726739577795012600-voter-education-handbook-english-2015-primary.pdf>.
- ⁷⁵ <http://www.nysenate.gov/legislation/bills/2015/A5571>; <http://www.nysenate.gov/legislation/bills/2015/s4586>.
- ⁷⁶ Annual Report 2013.
- ⁷⁷ <http://www.nytimes.com/2013/09/30/nyregion/high-cost-runoff-for-public-advocates-post-prompts-calls-for-reform.html>.
- ⁷⁸ https://static.newamerica.org/attachments/4117-voter-education-and-outreach-in-san-francisco-to-implement-irv/sf_irv_outreach_eval.bdba149bbfac4c5980fb9af2a003fe33.pdf.
- ⁷⁹ <http://archive.fairvote.org/sfrcv/sfeval.html>.
- ⁸⁰ <http://www.nysenate.gov/legislation/bills/2015/S2738A>.
- ⁸¹ Annual Report 2014; The BOE spent \$3,940,916 on the federal primary election that took place on June 24, 2014.
- ⁸² <http://www.scribd.com/doc/194602847/12-30-13-June-Primary-Day-Release>.
- ⁸³ <http://www.elections.ny.gov/NYSBOE/law/2016FEDERAL-STATEcombinedlegalCALrev2.pdf>.
- ⁸⁴ <http://www.nysenate.gov/legislation/bills/2013/S6204>; <http://www.nysenate.gov/legislation/bills/2013/A8198>.
- ⁸⁵ <http://www.nysenate.gov/legislation/bills/2015/a5841>; <http://www.nysenate.gov/legislation/bills/2015/S2352>.
- ⁸⁶ http://www.commoncause.org/research-reports/National_070612_Deceptive_Practices_and_Voter_Intimidation.pdf.
- ⁸⁷ <http://www.nysba.org/voterreport/>.
- ⁸⁸ N.Y. Elec. Law § 17-102(5).
- ⁸⁹ <http://www.presidency.ucsb.edu/ws/?pid=16574>.
- ⁹⁰ *Id.*
- ⁹¹ <http://www.ncsl.org/research/elections-and-campaigns/voter-id-history.aspx>; <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>; States with “strict” ID laws require voters without acceptable identification to vote on a provisional ballot and also take additional steps after Election Day for it to be counted. In states with “non-strict” ID laws, some voters without acceptable identification have an option to cast a ballot that will be counted without further action on the part of the voter. For instance, a voter may sign an affidavit of identity, or poll workers may be permitted to vouch for the voter.
- ⁹² <http://www.brennancenter.org/blog/new-barriers-today-ballot-box>.
- ⁹³ *Shelby County v. Holder*, 570 U.S. ____ (2013).
- ⁹⁴ <https://www.aclu.org/oppose-voter-id-legislation-fact-sheet>.





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