



1-866-OUR-VOTE

The Nation's Largest Nonpartisan Voter Protection Coalition

**Statement of Daniel F. Kolb of Election Protection
Before The Governmental Operations Committee
Election Reform and Modernization: Considering Early Voting,
Same-Day Voter Registration and Electronic Voter Registration
November 25, 2008**

Chairman Felder, members of the Governmental Operations Committee, thank you for inviting me to join you today for this important discussion about the modernization of our electoral system. As I am sure you will understand, I am speaking today on behalf of the Lawyers' Committee for Civil Rights Under Law, Election Protection and myself, not my law firm or its partners.

The right to vote is a cornerstone of our democratic system of government. Unfortunately, as those of us with Election Protection have seen firsthand, there are significant deficiencies in our electoral system that continue to make it difficult and often impossible for citizens to cast their ballots or have their votes counted. This Committee is certainly to be commended for stepping up and addressing those deficiencies so promptly after this year's election.

Election Protection – a coalition of legal professionals and civic engagement organizations – was started after the 2000 election, and is led by the Lawyers' Committee for Civil Rights Under Law. Our objective is to provide non-partisan assistance to ensure that all voters are able to cast a meaningful ballot and, as we do here today, to utilize our experience with the problems voters encounter in advocating for changes that we believe would be beneficial. Election Protection is now the nation's largest non-partisan voter assistance organization.

On November 4th, Election Protection had more than 10,000 *pro bono* legal volunteers working on a strictly non-partisan basis in over 40 jurisdictions across the country. This comprehensive program included 32 voter assistance call centers as well as mobile legal teams, poll monitors and dispatch attorneys in various cities and counties across the United States. The Election Protection 866-OUR-VOTE hotline and website were widely disseminated on television networks and radio stations and in the print media. As a result, we received over 200,000 calls and 300,000 website hits nationally from voters seeking assistance from September 17th through election day. Our New York City hotline logged approximately 8,000 calls, most from New York residents. In addition, on election day, we received reports from the 350 legal volunteers we had monitoring polling sites in each of the five boroughs.

In some respects the 2008 election was a success in New York City. A record number of city voters turned out at the polls, and we believe that the vast majority were able to vote without incident.

There were, however, many problems. After analyzing the data reflecting those problems that we collected on election day and before, we believe that there is a significant need to change the design of our electoral system. Among other changes, we believe that there is need for significant reform of our system for registering voters and our practice of limiting voting to a single day.

On election day and before, literally thousands of frustrated New York City voters called Election Protection to report problems voting, including uncertainty as to where to vote, voting equipment breakdowns, affidavit ballots being used when emergency paper ballots should have been used, absentee ballots requested but not received by voters, and confusion over voter identification requirements.

By far the most serious and significant problems reported to 866-OUR-VOTE were from voters who believed they were registered but did not find their names on the official registration list. Election Protection received more than 1,100 such calls. This number is itself concerning, but is even more troubling when one considers that it reflects only those voters who knew of and took the time to contact our hotline. Doubtless, there were many more we did not hear from who, for one reason or another, were left off of the rolls.

We know too from our contact with the Rock the Vote organization that there were hundreds of additional voters in New York City who learned, after the deadline for registering had passed, that their attempts at registering had not been effective.

We believe there were several reasons why so many were left off of or had their names removed from the registration rolls. Those reasons include the purging of voters in an excessive effort to comply with the Help America Vote Act requirements, confusion when there were duplicate registrations, the use of an inactive voter list, the manner in which forms sent to state offices were processed, and failure of the DMV to forward registration information. To the extent that we could be helpful, we would be happy to discuss our experiences relating to each of those issues with you in greater detail.

While any number of factors may have been to blame for these unfortunate omissions from the registration rolls, the result for each omitted voter was the same: either outright loss of the right to have their vote counted or, at minimum, the need to take additional steps to secure their right to vote. Not infrequently, those steps included going to election judges to get orders allowing them to vote.

Election Protection is pleased that Resolutions 1251 and 1252 offered by members of this committee recognize that the current registration process is seriously flawed and has become a hindrance to the democratic process in our state. We support efforts such as those that would ease the registration burden. We view each of those resolutions as significant steps in that direction.

Although we would welcome adoption of the measures called for in these resolutions, we also urge the committee to consider calling for the adoption of a universal registration system. Under a universal registration system, the state would use existing government lists to automatically register citizens to vote when they become eligible, either by age or naturalization. Of course, all voters would be afforded the opportunity to "opt out" if they choose not to be registered. The government would automatically update registration rolls to account for such things as name changes, changes of address filed with government entities, and death. Should the government fail to properly register or update voters' information, election day registration also would be permitted, subject to appropriate precautions as to the identity of the voter. Such a system would eliminate many of the large scale registration issues that plague the current system.

I have focused to this point on voter registration because it was, by a clear margin, the problem most often cited in calls to our hotline. I want to take a moment, however, to also express Election Protection's support for early and no-excuse absentee voting, and Resolution 1698 offered by Chairman Felder and Council Member Garodnick.

Confining our elections to a single day unnecessarily limits the ability of all who may want to vote to do so. The work and family demands of modern society do not always allow voters the time required to vote on a single election day. Requiring nearly all voters to vote on election day places a great strain on the system and leads to long lines at polling places. Likewise, election day problems become magnified.

We want to note that Marcus Cederqvist and the staff of the New York City Board of Elections provided Election Protection with an open line of communication on election day, and they were able to resolve many of the problems we brought to their attention. We found Mr. Cederqvist and his staff very helpful. Nonetheless, many problems could not be solved quickly enough to allow all who wanted to vote to do so in the single fifteen-hour window afforded by state law.

Early and no-excuse absentee voting would reduce the strain on the election process and would allow still more people to participate. Some form of early or no-excuse absentee voting has been adopted and has proven to be a success in several states. In North Carolina, a new early voting process led to the state's highest voter turnout in 24 years. Nearly half of the ballots cast for president were cast prior to November 4th. In Georgia, one-third of voters took advantage of early voting. In Florida, four million people voted early. We would like to see New York follow the lead of these other states, and we appreciate that Resolution 1698 expresses that same interest.

Let me again thank you for holding this hearing today and affording Election Protection the opportunity to share the experiences it has had with the election process and our thoughts on how it can be improved. We believe that our election system is in need of modernization, and appreciate that this committee is intent on seeing that it happens. And that it happens promptly.

Howard Stanislevic
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Testimony before the Governmental Operations Committee
of the New York City Council, November 25, 2008

Convenience Voting: Unsafe for Democracy

If we are concerned with the integrity of our elections, we should be equally concerned about any voting methods that obscure the chain of custody of our ballots. Early voting and vote-by-mail are two such methods. They are also two of the most difficult forms of electronic vote counting to audit effectively and verify.

To audit an election, ballots must either be sorted by precinct, or divided into batches before they are counted. Electronic tallies of randomly selected precincts or batches are then compared against hand-count tallies of the same ballots. Discrepancies result in an expansion of the sample until the results attain high confidence, or a full recount ensues.

Early voting and vote-by-mail tabulation sites (which can number as few as one per county) incorporate hundreds of different ballot styles and thousands of ballots, possibly counted by a single computer. This makes it very difficult to sort the ballots by precinct for auditing.

Further, at early voting sites, there is no way to divide ballots into batches before they are counted, since the computer counts each ballot when each voter casts it.

That is why early voting and vote-by-mail are problematic, requiring more complex and onerous election auditing laws and regulations that can reduce both compliance and enforcement.

That is also why early voting and vote-by-mail are inadvisable, especially in New York where our election law requires our poll inspectors to remain at the polling place until the counting of our votes has been completed. We should not weaken well-crafted election laws designed to protect our vote, merely for the sake of convenience.

To make voting more convenient and increase turnout, better solutions would be: an election-day holiday; more polling places and poll books; and better poll worker training. Only in this way can we genuinely increase the likelihood that every vote will be cast and counted.

Thank you.

I am the Founder of the E-Voter Education Project, NY, NY, <http://e-voter.blogspot.com>
and a co-author of the most rigorous election auditing law in the country: New Jersey's C.19:61-9 "Audits of election results", http://www.njleg.state.nj.us/2006/Bills/PL07/349_.PDF

I have co-authored several peer-reviewed papers on election auditing, as well as legislation and draft regulations for several other states including Florida, Massachusetts, New York and Ohio, which can be provided upon request.

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Committee on Governmental Operations, New York City Council
November 25, 2008

Thank you for the opportunity to comment on these three resolutions. I oppose all three because they introduce new, difficult-to-secure opportunities for fraud, as well as unnecessary complexity in the conduct of elections. I urge you to reject these three resolutions. Please do NOT recommend them for passage by the City Council.

Low voter participation in our nation will not be addressed by making voting more "convenient." Many people have gone to jail or died in the struggle to obtain or exercise their right to vote. When something is valuable, people will act to secure it for themselves.

Democracy requires an engaged, informed citizenry. Our citizens are neither engaged in civic life nor well informed. Our elections are overly influenced by money, party-control of candidates, gerrymandering, and a corrupt media that is controlled by a small number of owners. Efforts to get citizens to vote by making it "more convenient" rather than by seeking ways to inform and engage citizens, only cheapens our democracy even further.

Res. 1251 advocates electronic registration

1. Wrong-doers could go online and register real or non-existing people.
2. There would be no original signature on the electronic transmission to safeguard existing registrations from false changes by others
3. There would be no original signature on file to be used to verify the voter's identity on election day.

In Washington state, for example, part of the process consists of entering your driver's license number or a Washington "state ID number," and then authorizing the state to use your signature on your license or ID for your voter registration. This means that a wrong-doer could go online and enter someone's driver's license number, and change their address or party affiliation. It also means that if a wrong-doer comes into possession of someone's drivers license and learns to sign their signature, the wrong-doer can vote as that person.

4. In NY State voters prove their identity on election day in the poll site by signing the printed poll book under their printed signature that was obtained from their paper registration form. (I believe the terminology is "NY is an affidavit state" because by signing the poll book the voter legally affirms that he/she is that person.) If the signature is to be eliminated, are we to become an ID state where every voter needs a photo ID to prove their identity? This would tend to disenfranchise poor, elderly, and city voters who do not have a driver's license or other photo ID.

Res 1252 advocates same-day registration.

1. Same-day registration opens the door to the use of electronic poll books which are networked to the state voter registration list, to ensure that the same person does not go to multiple poll sites, and register and vote multiple times. This introduces vast possibilities for errors and fraud.
 - a. Such a network would create new opportunities for hackers or many local insiders to add false new registrations and thereby enable persons to vote multiple times by using multiple identities, or to change or delete existing registrations and thereby disenfranchise many voters.
 - b. Electronic poll books would require additional poll workers who are computer literate to handle registrations, or else the lines of registered voters would be greatly slowed down each time a new registrant was served
2. At this time of budget deficits and cutbacks of essential services, if there is extra money in the budget it should be spent on essential services, not the cost of extra poll workers to enable persons to vote on the spur of the moment on election day, or electronic poll books.
3. Our county boards of elections should be encouraged to place registration tables in heavy-traffic locations on special registration days, rather than in low-traffic locations. This would not create additional costs and would give people a chance to register in advance of election day.
4. Most of the places with same-day registration are smaller, less-populated states. The feasibility of same-day registration there does not mean it would be feasible in NY.
5. Same-day registration introduces the opportunity for members of one party to change their registration on election day in order to vote in primaries of another party.
6. Civic participation should be encouraged at all times, not just on one day (election day). We offer high school graduates voter registration forms, and register voters at the Department of Motor Vehicles and other public agencies.

Res. 1698 advocates early voting and no-excuse absentee voting

The draft resolution says that these practices relieve election administrators of some burdens, but I don't believe that this is true. The main effect is to complicate election administration, and create many batches of ballots and tallies which need to be separately managed if security it to be maintained.

Right now we still have our mechanical lever machines, for which record-keeping is simple to manage. Once we convert to the more-difficult-to-manage electronic machines, meaning optical scanners, we would need separate envelopes for each day's ballots, along with the tally printouts for each day's voting. The state requirement of auditing 3% of the machines will become more complex, while at the same time the possibilities for fraud become greater.

Disadvantages of early voting

1. In some races the candidates are not finally known until resolution of litigation which occurs as late as the day before the election.
2. There would be increased cost of poll workers, staff, and voting locations for additional days.
3. There would be difficulty securing the voting materials over several days or weeks in a public location.
4. There would be difficulty for candidates to provide poll site observers for several days or weeks in the last days of their campaigns, when all their volunteers are campaigning.
5. In other jurisdictions early voting seems to work as follows:
 - a. The jurisdiction acquires electronic voting equipment and later discovers that it costs more to maintain and use than the budget allows, and that voters require more time than estimated so that there are long lines of voters waiting.
 - b. The jurisdiction establishes early voting to reduce the number of voters who need to use the equipment on election day. But this means that different new procedures, differently-trained poll workers, and different new equipment is needed, because early voters can go to a limited number of early voting sites in their county and get the correct ballot for wherever they live in the county.
 - c. The security of equipment and election materials is poor to non-existent during early voting.

- d. Insiders can use early voting tallies to determine how many votes need to be switched or blanked out to enhance the final tallies for their candidates.
- e. in some jurisdictions that use touchscreen "DRE" electronic voting systems instead of paper ballots and optical scanners, early voters do not have a secret ballot, because to ensure that voters don't vote multiple times their ballot is electronically tagged with their identity.

Disadvantages of no-excuse absentee voting

The greatest resources for security, observation, and use of proper protocols for securing the vote and preventing fraud occurs on election day, and that is when people should vote.

1. coercion and vote-selling are facilitated by absentee voting.
2. There are many opportunities for absentee ballots to "get lost" or be replaced or altered on their way to the Board of Elections.

Conclusion

In conclusion, I urge you to evaluate all aspects of election administration by using the criteria of simplicity, understandability, ability of observers to witness and evaluate the honesty of all procedures, and lowest possible use of technology.

Thank you for the opportunity to list these problems. Please do NOT recommend these resolutions for passage by the City Council.

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LEAD INTO RECORD

Demos
A Network for Ideas & Action

**New York City Council
Governmental Operations Committee
Public Hearing
November 25, 2008**

**Testimony of Regina M. Eaton
Deputy Director Democracy Program**

Oversight-Election Reform and Modernization:

**Considering Early Voting, Same-day Voter Registration and Electronic Voter
Registration**

Thank you Chairperson Felder and members of the Government, Operations Committee for allowing Demos to testify today in support of Council Resolution 1252, urging the New York State Legislature to pass Assembly Bill 4258 / Senate Bill 5013.

My name is Regina Eaton, and I am the Deputy Director of the Democracy Program at Demos, a nonprofit and non-partisan research and advocacy organization established in 1999. Among its various issue areas, Dēmos is particularly concerned about expanding participation in American elections, by lowering barriers to that participation. In this work, we have provided research and advocacy in Election Day Registration efforts in many states, including Iowa and North Carolina two states that adopted same day legislation in 2007.

As a native New Yorker it is a personal honor for me to testify at the New York City Council; and I want commend the Chair and members of the Committee for looking at the electoral process in New York and considering Election Day Registration (EDR).

Before I begin I want to note that Demos does not have a project on early voting or electronic registration, however, we like many Americans were inspired as we watched in awe as people utilized early voting processes all over the country. So we are happy to see that the council is considering a number of proposals designed to lower barriers and increase participation n the electoral process.

We did pay particular attention to North Carolina's early voting process, because this was the first presidential election where people in NC were able to register and vote at the early voting sites.

Currently, ten states allow their citizens to register and vote on the same day.¹ Since the elections of 2000, at least 26 of the remaining 40 states have considered a proposal for “Same Day” or “Election Day” Registration. The states that have considered proposals within the last five years are: Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont and Washington.

We expect interest to increase during the 2009 legislative sessions because EDR played a major role in both the primary and general elections in 2008.

Preliminary results from the 2008 election cycle

There is much to say in favor of Election Day Registration. It has proven to be a boon to voting. We are still in the process of compiling data to assess the total number of the people that used Same Day Registration during the general election; though, the data we have compiled, to date, is already impressive. In January 2009, we will issue a report detailing the results from 2008. But to give you an understanding of the influence of EDR on the process we will share a few highlights from 2008.

The 2008 Primaries

The numbers from the presidential primary were also remarkable:

- ◆ 210,039 - Wisconsin,
- ◆ 61,712 - New Hampshire.
- ◆ 22,293 - North Carolina 54,000 if you include registration updates
- ◆ 8,189 – Montana
- ◆ 302233 - Total

The General Election

North Carolina had over 180,000 people use same day registration:

- ◆ 91,736 - new registrants and
- ◆ 95,904 - updated existing registrations
- ◆ 187,640 - Total

¹ The states are Minnesota, Wisconsin, New Hampshire, Maine, Idaho, Wyoming, Montana, Iowa, North Dakota and North Carolina. North Carolina has same day registration during the early voting period and North Dakota has no statewide voter registration requirement.

Montana, more than doubled the number of same day registration voters from 2006

- ◆ 10,938 - early voter who used same day registration
- ◆ 7,419 - election day registrations
- ◆ 18,357 - Total

We are still waiting for the final numbers from Iowa, and the rest of the EDR states; however the big story in Iowa is the impact EDR had on the need for provisional ballots.

Many people are frustrated by provisional ballot process. Voters leave the polling place unsure if their ballots will be counted. And election officials have to do a considerable amount of work on and after Election Day to process and verify these ballots. The tragedy here is two-fold. Provisional ballots cause an unnecessary delay in finalizing the results, and do a disservice to eligible voters because all too often these ballots are left uncounted

Iowa Highlight – reduction in Provisional Ballots:

During the 2004 presidential election Iowa issued about 15,000 provisional ballots; in the 2008 presidential election Iowa used about 1,500 provisional and had about 15,000 EDR voters. Thus, EDR virtually eliminated the need to issue provision ballots.

Clearly, in Iowa EDR was a “win win” for voters and election officials. EDR reduced the administrative burden, cost and uncertainty of provisional ballots and replaced them with the certainty and finality of the Election Day Registration process.

EDR and its potential impact on Election Turnout

We know that EDR is a reform that can have a meaningful impact on turnout in elections in New York State. A few years ago we released a report that predicted the impact EDR would have on voter turnout. (Attached)

- 12.3 percentage point increase in turnout by 18-to-25-year-olds
- 9.8 percentage point increase in turnout by those with a grade school education or less.
- 11 point increase in turnout by Latinos
- 8.7 percentage point increase in turnout by African Americans.
- 10.1 percentage point increase in turnout by those who have lived at their current address for less than six months.
- 12.2 percentage point increase in turnout by naturalized citizens.

EDR is a proven reform

EDR is not a new idea. It has a proven track record. Some states have successfully allowed Election Day registration for over thirty years, including Minnesota and Wisconsin both with large diverse populations and significant urban areas. Maine, the first state to adopt EDR, started the practice in 1974 before the generalized use of computers and without a statewide database of voters.

In the 2006 election alone, EDR enfranchised over 700,000 individuals who registered and voted on Election Day. These votes comprised almost 13 percent of the ballots reported in EDR states. Without Election Day Registration, hundreds of thousands of Americans might have been excluded from that momentous national election.

Moreover, EDR has a particularly powerful impact on young people, who are the population most positively affected by EDR. In every state with EDR, young people are heavy users of it.

EDR has not contributed to voter fraud

Some have expressed concern that EDR makes it more likely that prospective voters will engage in vote fraud. The evidence is quite the contrary. Indeed, there is little to no evidence that EDR has any connection to voter fraud. None of the current EDR states has seen significant voter fraud related to EDR, and most have seen none. In testimony before the Connecticut and Massachusetts legislatures, Maine representative Anne Haskell reported that the state of Maine has found zero instances of voter fraud related to EDR since that state adopted EDR in 1973.

In 2005 and 2006, after the 2004 election the New Hampshire Attorneys General undertook an extensive investigation of fraud allegations that arose during the election. Concerned citizens had reported individuals either voting in New Hampshire who were actually domiciled in other states, or voting more than one time. In testimony presented to the Senate Internal Affairs Committee and the House Elections Law Committees in April of 2006, the state Attorney General's Office confirmed that the state's existing safeguards effectively prevent voter fraud in that EDR state. As reported by the Attorney General's Office,

The results of our investigations reflect that there are very few instances of wrongful voting in New Hampshire, the overwhelming majority of which involve people who had a right to vote somewhere in New Hampshire. New Hampshire's local election officials are the front line of our defense against voting fraud and our investigations support the conclusion that most local officials do an excellent job.

Other research and important issues

There are many important questions to ask before you decide to support EDR. At Dēmos, we try to prepare useful research to help address the questions that come up and to assist you with your assessment. All of our reports are posted on the Dēmos' website (www.demos.org). Here are a few of our reports:

Election Day Registration: A Ground Level View - What Local Election Officials Have Learned About Letting Americans Register and Vote on the Same Day: This report recounts surveys of four dozen election officials in long-time EDR states about the impact of EDR on their work – logistics, fraud, cost, simplicity.

Voters Win with Election Day Registration: Election Day Registration Was Successful in Several States during the 2006 Mid-term Elections: This report discusses the impact of EDR on the 2006 mid-term elections, and highlights key challenges and issues of EDR. This report will be updated in January, reflecting 2008 results.

Election Day Registration: A Study of Voter Fraud Allegations and Findings on Voter Roll Security: Vote fraud is frequently raised as a reason not to pass EDR. This report details the almost complete lack of fraud tied to EDR.

Conclusion

We support resolution 1252 and join you in urging the New York State Legislature to pass Assembly Bill 4258/ Senate Bill.5013 to allow for Same Day Registration. This is a reform that can increase participation; reduce problems at the polls in New York, and the experience in other states shows that it can be successfully administered without fraud or excessive administrative burdens.

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07/24/2008

Same Day Registration Delivers Over 300,000 Primary Votes

By Mike Schwartz and Stuart Comstock-Gay

At least 300,000 Americans were able to vote during the 2008 presidential primaries this year because of Same Day Registration in the four SDR states that held elections (NH, NC, WI and MT). The five other SDR states hosted party caucuses.

Primary-day registrants numbered 210,039 in Wisconsin and 61,712 in New Hampshire. These figures accounted for 13.8 percent and 7 percent, respectively, of total votes cast there. Montana allows Election Day Registration at the county seat, rather than polling places. Nevertheless, 8,189 voters took advantage of EDR on June 3, despite the limitation. Montana's last-in-the-nation primary, typically coming long after presidential candidates have clinched party nominations, was critical this year in determining the Democratic nominee.

Same Day Registration made its debut in the North Carolina presidential primary on May 8; 22,293 Tar Heel residents took advantage, registering and voting at the state's 'one-stop' early voting sites. The early voting sites were opened for a 16-day period, closing on the Saturday before Election Day.

The evidence from Wisconsin suggests that EDR is particularly beneficial for young people - a highly mobile voting bloc. Voters under 25 years old made up 74,846 of Wisconsin's primary day registrants, accounting for over 35 percent of the total. Age-specific voting data is not available for the other EDR states.

The high rate of SDR usage in the primaries, and heightened public interest in this year's presidential election, suggest an important role for Same Day Registration in the November balloting. States offering EDR historically boast a 10-12 point higher turnout rate than non-EDR states. Watch for voter turnout increases in Iowa and North Carolina, the two newest EDR/SDR states

Making Voting Easier

Election Day
Registration in New York

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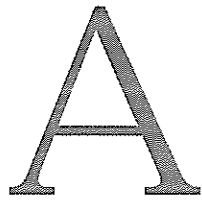
April 2004



A NETWORK FOR IDEAS & ACTION

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Executive Summary



As policymakers, election officials, and the public consider whether New York should change the way in which voters are allowed to register to participate in elections, and bring New York State election law into compliance with the Help America Vote Act, we provide an analysis of the potential impact of election day registration (EDR) in New York. The current system of registration is one in which citizens must register 25 days before election day in order to be eligible to vote.¹ Under EDR this advance registration barrier would be eliminated as citizens could register on election day.

It is important to note that our analysis of the effects of EDR on turnout is based on the experiences of other EDR states, which allow same day registration at the polling place. A legislative proposal currently under consideration in New York (A.5762) would require voters to register on election day at a location other than the polling place. Hence, the actual impact on turnout of EDR in New York is likely be less than the estimates we report here. This is because EDR in New York would entail two steps: registration at a local board of elections, and then casting a ballot at the appropriate local polling place. A second bill, A.5800, would rescind the current state constitutional requirement that voter registration take place at least 10 days before elections.

Our findings may be broadly categorized in three ways. First, EDR should help increase voter registration and turnout in New York. In particular, our analysis finds that adjusting for the effects of age, mobility, and many other factors, New York could see its long-run turnout rate increase by as much as 8.6 percentage points in presiden-

tial elections. This means that turnout in the 2000 presidential election in New York could have been as high as 59 percent if EDR had been in place.

Second, EDR is likely to make voting easier for citizens who have the most difficulty maintaining an up-to-date voter registration record in New York. Our analysis predicts as much as:

- A 12.3 percentage point increase in turnout by 18-to-25-year-olds.
- A 9.8 percentage point increase in turnout by those with a grade school education or less.
- An 11 point increase in turnout by Latinos and an 8.7 percentage point increase in turnout by African Americans.
- A 10.1 percentage point increase in turnout by those who have lived at their current address for less than six months.
- A 12.2 percentage point increase in turnout by naturalized citizens.

Third, New York could mitigate or avoid the problems commonly advanced by EDR opponents: added burdens on election administration, cost, and potential voter fraud. We address these concerns below. We show that states like Minnesota and Wisconsin that currently use EDR have developed effective laws and procedures that serve to minimize or eliminate these problems. We argue that should New York move to EDR, it too could mitigate or eliminate these problems through effective laws and procedures. And there is no reason to believe that implementation, as described in A.5762, would lead to increased voter fraud.

New York State Registration Form

Yes, I need an application for an Absentee Ballot **Please print or type in blue or black ink** Yes, I would like to be an Election Day Worker

1	Are you a U.S. citizen? Yes <input type="checkbox"/> No <input type="checkbox"/> <small>If you answered NO, do not complete this form.</small>	2	I will be 18 years old on or before election day: Yes <input type="checkbox"/> No <input type="checkbox"/> <small>If you answered NO, do not complete this form, unless you will be 18 by the end of the year.</small>	For Board use only!		
3	Last Name <input style="width: 100%;" type="text"/> First Name <input style="width: 100%;" type="text"/> Middle Initial <input style="width: 100%;" type="text"/> Suffix <input style="width: 100%;" type="text"/>					
4	Address Where You Live (do not give P.O. address) <input style="width: 100%;" type="text"/>		Apt. No. <input style="width: 100%;" type="text"/>	City/Town/Village <input style="width: 100%;" type="text"/>	Zip Code <input style="width: 100%;" type="text"/> County <input style="width: 100%;" type="text"/>	
5	Address Where You Get Your Mail (if different from above) <input style="width: 100%;" type="text"/>		P.O. box, star etc., etc. <input style="width: 100%;" type="text"/>	Post Office <input style="width: 100%;" type="text"/>	Zip Code <input style="width: 100%;" type="text"/>	
6	Date of Birth <input style="width: 100%;" type="text"/>	7	Sex (circle) M <input type="checkbox"/> F <input type="checkbox"/>	8	Home Tel. Number (optional) <input style="width: 100%;" type="text"/>	
9	ID Number - Check the applicable box and provide your number					
			<input type="checkbox"/> New York Driver's License Number <input type="checkbox"/> Last four digits of your Social Security number <input type="checkbox"/> I do not have a New York driver's license number or a Social Security number.			
10	The last year you voted <input style="width: 100%;" type="text"/>	Your Address was (give house number, street, and city) <input style="width: 100%;" type="text"/>				
		In county/state <input style="width: 100%;" type="text"/>				
		Under the name (if different from your name now) <input style="width: 100%;" type="text"/>				
11	Choose a Party — Check one box only <input type="checkbox"/> REPUBLICAN PARTY <input type="checkbox"/> DEMOCRATIC PARTY <input type="checkbox"/> INDEPENDENCE PARTY <input type="checkbox"/> CONSERVATIVE PARTY <input type="checkbox"/> WORKING FAMILIES PARTY <input type="checkbox"/> OTHER (write in) _____ <input type="checkbox"/> I DO NOT WISH TO ENROLL IN A PARTY			12	AFFIDAVIT: I swear or affirm that • I am a citizen of the United States. • I will have lived in the county, city, or village for at least 30 days before the election. • I meet all requirements to register to vote in New York State. • This is my signature or mark on the line below. • The above information is true. I understand that if it is not true I can be convicted and fined up to \$5,000 and/or jailed for up to four years. ↓ Signature or mark ↓ X _____ Date _____	

Please do not write in this space

Formulario De Inscripción Del Votante Del Estado De Nueva York

Sí, necesito una solicitud para una Boleta de Ausente **Sírvase completar con letras de imprenta en tinta azul o negra** Sí, me gustaría ser un Trabajador para el Día de las Elecciones

1	¿Es usted ciudadano norteamericano? Sí <input type="checkbox"/> No <input type="checkbox"/> <small>Si respondió NO, no complete este formulario</small>	2	Tendré 18 años el día de las elecciones o antes Sí <input type="checkbox"/> No <input type="checkbox"/> <small>Si respondió NO, no complete este formulario a menos que cumpla 18 años antes de fin de año</small>	¡Para uso exclusivo de la Junta!		
3	Apellido <input style="width: 100%;" type="text"/> Nombre <input style="width: 100%;" type="text"/> Inicial Segundo Nombre <input style="width: 100%;" type="text"/> Sufijo <input style="width: 100%;" type="text"/>					
4	Domicilio de su hogar (no escriba casilla de correo) <input style="width: 100%;" type="text"/>		Nº de apto <input style="width: 100%;" type="text"/>	Ciudad/Pueblo/Aldea <input style="width: 100%;" type="text"/>	Código Postal <input style="width: 100%;" type="text"/> Condado <input style="width: 100%;" type="text"/>	
5	Domicilio postal (si difiere del anterior) <input style="width: 100%;" type="text"/>		Casilla de Correo, Nº de ruta, etc. <input style="width: 100%;" type="text"/>	Oficina de Correos <input style="width: 100%;" type="text"/>	Código Postal <input style="width: 100%;" type="text"/>	
6	Fecha de Nacimiento <input style="width: 100%;" type="text"/>	7	Sexo (encierra en un círculo) M <input type="checkbox"/> F <input type="checkbox"/>	8	Nº de teléfono de su hogar (opcional) <input style="width: 100%;" type="text"/>	
9	Número de Identificación - Marque el recuadro que corresponde y escriba el número					
			<input type="checkbox"/> Nº de licencia de conducir de Nueva York <input type="checkbox"/> Últimos 4 dígitos de su Nº de Seguro Social <input type="checkbox"/> No poseo ninguno de dichos números			
10	Último año en que usted votó <input style="width: 100%;" type="text"/>		Su domicilio era (escriba calle, número y ciudad) <input style="width: 100%;" type="text"/>			
		En el condado/estado <input style="width: 100%;" type="text"/>				
		Con el nombre (si difiere del que utiliza actualmente) <input style="width: 100%;" type="text"/>				
11	Elja un partido — Marque sólo un recuadro <input type="checkbox"/> PARTIDO REPUBLICANO <input type="checkbox"/> PARTIDO DEMÓCRATA <input type="checkbox"/> PARTIDO DE LA INDEPENDENCIA <input type="checkbox"/> PARTIDO CONSERVADOR <input type="checkbox"/> PARTIDO DE LAS FAMILIAS TRABAJADORAS <input type="checkbox"/> OTRO (especifique) _____ <input type="checkbox"/> NO DESEO INSCRIBIRME EN UN PARTIDO			12	DECLARACIÓN JURADA: Juro o afirmo que • Soy ciudadano de los Estados Unidos. • Habré residido en el condado, ciudad o pueblo durante al menos 30 días con anterioridad a la elección. • Cumpló con todos los requisitos para inscribirme para votar en el Estado de Nueva York. • Mi firma o huella figura en la línea que está a continuación. • La información precedente es verdadera. Entiendo que si no fuera verdadera, puedo ser condenado y multado con hasta \$5,000 y/o encarcelado por un máximo de cuatro años. ↓ Firma o huella ↓ X _____ Fecha _____	

1. Introduction

Voter registration is intended to ensure that voters who are eligible to vote are able to do so, and that non-eligible individuals cannot cast ballots. A voter registration list enables election workers to authenticate eligible voters at the polls. Voter registration also serves to provide lists of persons (i.e., registered voters) who should receive notices informing them when elections are forthcoming, and where they should go to vote.

However, there are costs associated with any system of voter registration. Principally, voter registration adds another step to the voting process and thus creates a barrier to voting. In order to vote in New York people must know how to register, and must do so well in advance of any election. When people move, failure to update their registration can make them ineligible to vote. And people who show up at the polls may be disenfranchised if there are errors in the registration system.

Problems with voter registration have led to two major reforms in the last fifteen years. The National Voter Registration Act of 1993 (“NVRA,” commonly referred to as “motor voter”) requires states to provide voter registration material at sites where citizens register motor vehicles. It also requires states to provide agency-based registration, where state offices that provide public assistance, services to persons with disabilities, and other aid must offer registration opportunities to each “applicant for services.” And, it requires states to offer and accept mail-in forms for voter registration. The Help America Vote Act of 2002 (HAVA) requires states to create a statewide, central voter registration system. Both NVRA and HAVA provide challenges for the New York State voter registration system as they establish legal mandates for services the system must provide. Notably, these legal mandates cross jurisdictional lines of state and county.

Six states currently use EDR. Their collective experience can speak to the advantages of election day registration and to the challenges and consequences of its implementation. When studying the likely impact of EDR on California, Alvarez and Ansolabehere looked at the results from two metropolitan areas in states using EDR - Minneapolis-St. Paul, Minnesota and Milwaukee, Wisconsin - and found:²

- In the long run, states that have adopted EDR show an increase in participation rates of 3 to 6 percentage points of the voting-age population. In California, such an increase would translate into as many as 1.2 million new voters.
- Voting rates of young people and of people who have recently moved are especially likely to improve, but the partisan composition of the electorate may be little changed.
- Fraud is minimal, in part because of precautions taken by the states.
- Administration is in some ways more complicated but in other ways improved. The quality of service at the polling place is no worse, and may be better. With EDR almost all registrations are done under the auspices of the election office and after providing some form of identification. Fewer people will register by mail, through registration drives, or at other government offices. The main difficulty is making sure that new voters go to the right polling place.

They also identified three keys to proper implementation:

- Requirements for proper identification, including driver's licenses, utility bills, or affidavits signed by registered voters.
- Development and implementation of procedures that will get prospective voters to the right polling places.
- Changes in polling place organization and increased polling place staff.

Based on their earlier analysis, and our further study of EDR, we are confident that EDR can be established in New York in such a way as to minimize the potential problems with fraud and election administration. New York can join a growing number of states considering the use of election day registration to make voting easier for their citizens, in particular, Connecticut and Massachusetts.³ In A.5762, potential problems are minimized as there is no procedural change at the polling place.

2. EDR in New York

The current registration system in New York is conceptually straightforward: citizens must register to vote 25 days in advance of the election, thus placing themselves on a list of persons eligible to vote; on election day lists of eligible (i.e., registered) voters are available to the election workers to help insure that only eligible voters cast ballots. Registering on election day at polling places or election offices would be yet another way that citizens could add their names to the registration list.

There are currently six states that have election day registration (Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming). One other state (North Dakota) simply does not require registration. Idaho, New Hampshire, and Wyoming implemented election day registration following the adoption of NVRA in 1993. In contrast, Maine, Minnesota, and Wisconsin have each had election day registration for over 25 years, and thus have considerable experience using it over many election cycles. While details differ across states, all states require some form of identification when registering at the polls on election day. Idaho requires photo identification and proof of residency; Minnesota and Wisconsin allow various combinations of identification and proof of residency.⁴

The states currently using election day registration equip each polling place with detailed maps and lists of addresses so that any person showing up at the wrong polling place can be redirected to the right location. New York could do likewise. EDR states also offer provisional ballots to individuals who wish to register on election day but cannot provide proper identification or seek to register at the wrong polling place. These voters fill out a separate ballot that is sealed and not counted until their eligibility is verified. Like most non-EDR states, New York also offers provisional ballots (“affidavit ballots”) in similar situations.⁵ In the 2000 presidential election, 221,876 affidavit ballots were processed statewide; only 127,482 were eventually credited.⁶ New York only counts provisional ballots if it can verify that the voter had previously registered to vote in the election. Under HAVA, all states must now offer provisional ballots.

In states such as Minnesota that allow registration at

the polling place, poll workers are trained on how to register people, while new registrants are directed to line up in a separate area of the polling place. Similar procedural changes will be required in local boards of elections to make election day registration work effectively in New York. But as proposed by A.5762 overcrowding and long lines at the polls would not be a problem as new registrants would be registering at a location different from the polling place, and only proceeding to the polling place after having registered.

The names of people who register on election day are simply added to the existing registration rolls. Once this happens, they continue to be registered and appear on the rolls for future elections. On any given election day, most voters in EDR states have previously registered. Thus for most voters in any given election, election day registration would be the exception, not the norm. As it is practiced in states that currently use EDR, election day registration can be thought of as a combination of two reforms: reducing the restriction on how many days in advance of an election registration is required, and adding a new registration site - the polling place. As proposed by A.5762, election day registration would consist of only one of those reforms: changing how far in advance of the election voters need to register.

Use of Election Day Registration

Most voters in EDR states choose to register on election day. Once convinced that the system really works, they opt for one-stop registering and voting at the polling place. Table 1 (see p. 4) compares first-time registrants in EDR and non-EDR states. In the states with election day registration, 55% of first-time registrants simply register when they go to the polls on election day. One important implication of this is that more voters are registering at sites under the control of election officials in EDR states than in non-EDR states. According to Alvarez and Ansolabehere, election officials “said they prefer for people to register at the election office. They are frustrated that the procedures required by the NVRA have put components of voter registration into offices, like departments of motor vehicles that do not wish to facili-

tate voter registration and are not equipped to answer people's questions.⁷ Table 2 shows that the overwhelming majority of New Yorkers register at the Department of Motor Vehicles. With election day registration, one would

TABLE 1
How People First Register in States without and with EDR

	States without EDR	States with EDR
Election Office	17.7	19.2
Registry of Motor Vehicles	41.5	17.3
WIC Office	1.9	0.6
At Polling Place	0	54.9
Mail-in Registration	13.0	1.8
Registration Drive	12.5	1.8
School or Hospital	6.7	2.9
Other	6.6	1.7

Source: Current Population Survey, US Bureau of the Census, 2000

expect that future registrants would elect to be registered by election officials on election day. These face-to-face registrations by trained elections staff are likely to be more secure than those accomplished through the mail.

TABLE 2
Sources of Voter Registration – 2002

Department of Motor Vehicle	371,205	78.5%
By Mail	2,462	0.5%
Public Assistance Agencies	76,130	16.1%
Disability Agencies	11,345	2.4%
State Designated Agencies /AF Recruiting	12.5	2.5%

Source: New York State Board of Elections Annual Report, 2002

3. EDR and Turnout

The primary argument in favor of EDR is that it should increase voter turnout. Figure 1 shows the registration and voter turnout rates in New York in presidential elections since 1960. Turnout has fallen from 66.5% to 50.4% of the voting age population — mirroring national trends. This decline in turnout was the primary motivation for passage of the National Voter Registration Act of 1993.

Academic studies have repeatedly demonstrated that the requirement for voters to register well in advance of elections is the largest institutional hurdle to voter participation in the United States. And studies of EDR have concluded that it has led to a 3 to 6 percent increase in turnout in states using it.⁸

Table 3 (see page 5) compares the registration and turnout rates for EDR and non-EDR states in the 2000 election. In states with election day registration, on average 88.8% of eligible voters were registered to vote. That

figure fell to 77.3% in states without election day registration. Voter turnout was also 15% higher in EDR states.⁹ Note that in New York, voter turnout was close to that generally seen in the non-EDR states, at 50.4% of the voting age population.

These results are consistent with the academic literature that demonstrates the powerful relationship between barriers to registration and turnout. Allowing voters to register on election day at the polling place completely eliminates the single largest barrier to voting. However, we caution that states currently using EDR allow registration at the polling place. Thus as written, A.5762, which requires registration at a location distinct from the polling place, is not likely to provide for increases as large as those seen in other states with EDR. Even so, EDR is a very meaningful reform: it is not merely a bureaucratic change with no impact.

FIGURE 1
Historical Registration and Turnout in New York

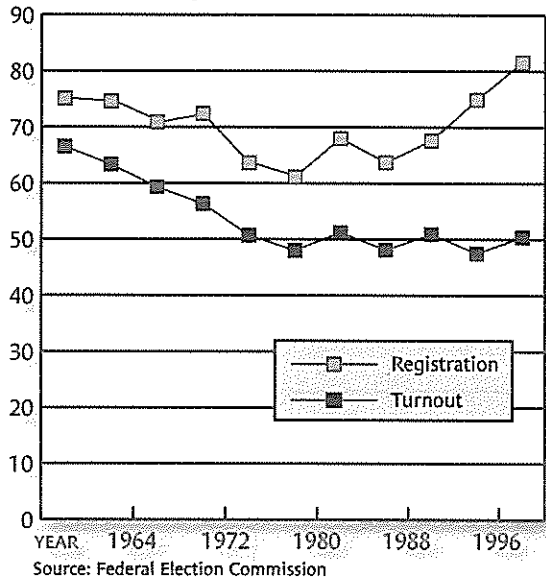


TABLE 3
Registration and Turnout as Percentages
in the 2000 General Election

	Registration	Turnout
EDR States	88.8%	65.6%
Non-EDR States	77.3%	50.5%
New York	81.6%	50.4%
Nationwide	77.7%	51.3%

Source: Federal Election Commission

4. New York Might See Bigger Increases in Turnout Than Other States

We think that the potential effect of EDR on voting may be even greater in New York than in most other states.¹⁰ The reason for this is related to the demographics of New York and the impact of election day registration. In states that have adopted EDR, the largest increases in participation rates have occurred for two groups: 18-to-25-year-olds and those who have moved in the six months before the election.

Among 18-to-25-year-olds, voter turnout is 12 percentage points higher in states with EDR than it is in states without EDR. Voter turnout is 8 percentage points higher among older cohorts in EDR states. Hence, EDR could make a significant improvement in the civic participation of young people.

The relationship between EDR and mobility shows a similar effect. Among those who moved within the prior six months, voter turnout was 13 percentage points higher in states with EDR than it was in other states. Voter turnout was 7 percentage points higher in EDR states among those who had been in their current residence at least six months.

Adjusting for the effects of age, mobility, and many other factors, New York could see its long-run turnout rate increase by as much as 8.6 percentage points in presidential elections. This means that turnout in the 2000 presidential election in New York could have been as high as 59 percent had EDR been in place.¹¹

We view this as an upper bound for the potential increase in participation, as under the current legislative proposal, New York might implement election day registration differently from in other states. But the implication of this analysis is significant: based on the experiences of other states with EDR, as many as 1 million more New Yorkers might have voted in the 2000 election.

Groups with Low Current Turnout Will See the Highest Increase Under EDR

Furthermore, our statistical analysis shows that under EDR there could be sizable increases in participation by some of the groups that now have low rates of voter turnout in New York.¹² We find that the implementation of EDR in New York would lead to:

- A 12.3 percentage point increase in turnout by 18-to-25-year-olds.
- A 9.8 percentage point increase in turnout by those with a grade school education or less.
- An 11 point increase in turnout by Latinos and an 8.7 percentage point increase in turnout by African Americans.
- A 10.1 percentage point increase in turnout by those who have lived at their current address for less than six months.
- A 12.2 percentage point increase in turnout by naturalized citizens.

From these estimates, it is clear that EDR in New York would strongly affect groups who are currently considered to be low-propensity voters.

A separate question is whether the partisan composi-

tion of the voting public would change substantially if New York allows registration at the polls. The answer appears to be no. Professors Raymond Wolfinger of the University of California at Berkeley and Ben Highton of the University of California at Davis have studied this question extensively. Although nonvoters and voters differ politically, adoption of election day registration and changes in the closing date for pre-registration have produced only slight changes in the party division of the vote in states that have adopted those reforms.¹³

To some, this prediction is surprising. But it is simply a result of the arithmetic of partisanship in the United States: both major parties have significant shares of voters across all income and education groups. As a result, we expect little change in the partisan division of the electorate, but we expect that more people will vote in New York if the state adopts election day registration.

5. Implementation Issues: Fraud and Cost

No doubt, insuring the integrity and security of the electoral process is an essential goal of all those who care about making democracy work. No election reform, however trivial, should make election fraud easier, because the legitimacy of future elections could be at risk. But election reformers should focus on the real risks, based on careful consideration of how the results of similar election reforms work in other places.

Concerns about election day voter registration and the potential for fraud revolve around assertions that EDR could make it easier for ineligible individuals (for example, non-citizens) to cast an irretrievable ballot, or for individuals to cast multiple ballots in different locations.

But in practice it is impossible to find any evidence of EDR-related election fraud in the states that currently use this process for voter registration. As studied extensively in an earlier Demos report on EDR,¹⁴ there were some allegations of EDR-related election fraud following the

2000 election in Wisconsin. However, these allegations were subsequently proven under investigation by the Milwaukee County Attorney General's Office to (in one case) lack merit, and (in the other case) involve problems with absentee voting and not problems with voter registration.

Minnesota has also been closely examined. Again, little evidence of election fraud was uncovered. In fact, Joan Grove, who became Minnesota's Secretary of State in the same year in which EDR was adopted, has stated that in "over 24 years in office, I supervised a registration process that consistently gave our state the highest voter turnout in the nation, with no increase in election fraud."¹⁵

States with election day registration have managed to make the voter registration process easier (and thereby allow more people to vote) and to maintain the integrity of the electoral process through strict procedural controls. Both Minnesota and Wisconsin have adopted steep criminal penalties for fraud. Both states have required

election day registration, such as by making voter registration offenses subject to strong criminal penalties, and like Minnesota, making sure that all fraud allegations are immediately and thoroughly investigated.

Those who oppose election day registration also argue that it can make election administration more complicated. After all, they claim, polling place workers and election officials are already overworked and underpaid. By requiring them to register new voters, EDR would only increase their burden. They frequently assert that EDR will lead to longer lines in polling places, and produce backlogs.

But the evidence from current EDR states suggests otherwise. Existing data indicates that states with EDR have worked to resolve these problems effectively. Whereas 2.8 percent of non-voters in states that do not allow election day registration cited problems at polling places (including long lines, inconvenient hours or polling place locations) as the reason why they did not cast a ballot in the 2000 presidential election, only 1.8 percent of residents in EDR states cited that same reason.¹⁸

Again, the unique implementation of EDR proposed by A.5762 in New York would entirely pre-empt such problems, as voter registration itself would take place at a local board of elections.

To smoothly implement EDR in New York polling places, a number of other procedures from states now using EDR can be adopted:

1. Provide comprehensive training to polling place or election board workers about the procedures for election day registration.
2. Have additional workers on hand on election day to help register voters.
3. Give newly registered voters clear information about where they need to go to vote, perhaps including actual directions and maps to the right polling place,

should registrations occur at the offices of county boards of elections, as proposed in A.5762.

4. Provide detailed information at each polling place about where people in the jurisdiction should vote, and direct voters to the correct polling place if they come to the wrong location.
5. Post in each polling place a visible and clear statement of the penalties for voting illegally.
6. Require the post-election investigation of all allegations of fraud.

With appropriate procedures in place, New York can welcome more citizens to the polling place on election day, and ensure that their voting experience is simple, effective, and positive.

It is true that these procedural changes — and others that might be required if EDR is implemented in New York — might call for additional resources for training polling place or election board workers. It is also possible that additional staff may be needed at polling places or elections offices under EDR. Will this substantially increase the costs of elections in New York?

We do not believe that EDR will substantially raise the costs of elections in New York, and HAVA funds could be used to help pay for EDR if it were instituted now. It is instead more likely to require a reallocation of resources. Under EDR, we expect that counties will shift part of their voter registration operations from the hectic days before the election to election day itself. Fewer resources will be devoted to voter registration before the election, resulting in less mail to process, fewer registration requests to authenticate and enter into voter registration databases, and fewer staff deployed to register voters prior to the election. Thus, while EDR may increase costs in the short-term, it is unlikely that it will impose excessive and recurring demands on New York's perennially tight election administration budgets.

6. Conclusion:

Why We Favor EDR for New York

Decades of research and study after study have found that pre-election voter registration procedures serve as barriers to voter participation, especially for certain groups of citizens. Election day registration is an effective reform that eliminates this particular barrier to greater voter participation. Accordingly, we see EDR as an important election reform that New York should adopt.

In our analysis, we found that EDR should increase voter registration and turnout in New York. In particular, we found that after adjusting for the effects of age, mobility, and many other factors, New York could see its long-run turnout rate increase by as much as 8.6 percentage points in presidential elections. Turnout in the 2000 presidential election in New York could have been as high as 59 percent if EDR had been in place.

However, our estimates of the effect of EDR on turnout are based on the experiences of other EDR states, which allow same day registration at the polling place. As current New York proposals would require voters to register on election day at a location other than the polling place, the actual impact of this form of EDR on turnout is likely to be less than the estimates that we report here. Under those scenarios, EDR in New York would entail two steps: registration at a local board of elections, and then casting a ballot at the appropriate local polling place. Were New York to pursue a one-step registration and voting process, the effects on voter turnout would likely be in line with those we estimate based on the experiences of other states now using EDR.

We also documented how EDR may make voting easier for citizens who have the most difficulty maintaining an up-to-date voter registration record in New York. Our analysis predicts the following possible changes in the composition of New York's electorate, based on the experience of states now using EDR:

- A 12.3 percentage point increase in turnout by 18-to-25-year-olds.
- A 9.8 percentage point increase in turnout by those with a grade school education or less.
- An 11 point increase in turnout by Latinos and an 8.7 percentage point increase in turnout by African Americans.
- A 10.1 percentage point increase in turnout by those who have lived at their current address for less than six months.
- A 12.2 percentage point increase in turnout by naturalized citizens.

Last, we presented arguments against EDR: its impact on election administration, the cost of elections, and the potential for voter fraud. We analyzed these arguments and, as in previous studies, found that states currently using EDR have developed effective laws and procedures that serve to minimize or eliminate these concerns. New York can effectively address these problems by making fraud prevention a top priority, by changing specific polling place practices, and providing training to election officials and polling place workers on how to effectively implement EDR in New York.

Technical Appendix

To estimate the impact of EDR in New York, we perform statistical analyses on the reported voting behavior of people who responded to surveys conducted by the US Census Bureau in 1998 and 2000. In doing so, we examine registration and turnout among eligible voters across the United States, controlling for individual characteristics as well as for state characteristics — most importantly, the implementation of EDR in the six states listed above. We do this with the Current Population Survey (CPS) Voter Supplement data collected by the Bureau of the Census at the time of the general election in 1998 and 2000. While we conducted our analysis of both the 1998 and 2000 elections, we utilize only the 2000 data in the body of this report.¹⁹ The 1998 analysis confirms the conclusions reported in the text for the 2000 election.

The CPS is a monthly survey of about 50,000 households conducted for the Bureau of Labor Statistics. The survey has been conducted for more than 50 years. In each even-numbered year since 1964, the November Current Population Survey has included questions about registration and turnout. The sheer size of this data collection makes it particularly well suited for our analysis. Unlike the NES and the GSS collections, the CPS survey is administered to a large sample of citizens in each of the 50 US states. This enables it to yield very accurate estimates of the influence of both individual and state institutional factors on voting behavior.

A long literature in political science on voting and turnout, extending back to the 1940's, demonstrates that voting and turnout are strongly correlated with demographic variables — particularly age, education, and income.²⁰ Common theories of voting behavior suggest that these variables affect the costs an individual incurs in finding out about political issues and the candidates running for office, as well as the mechanical hurdles associated with voting, such as the registration deadline and the location of polling places. For this reason, we include the following individual-specific variables in our analysis: age, education, race, gender, marital status, family income, home ownership,²¹ whether or not one is a native-born US citizen,²² and length of time at current address.

Four factors — the person's age, education, race, and income — are coded categorically. The respondent's age is

measured using five dummy variables denoting an age of 18 to 25 years, 26 to 35 years, 36 to 45 years, 46 to 60 years, or 61 to 75 years. The respondent's education is measured with three variables indicating that he or she has some grade school or high school education, a high school degree, or some college education (a BA degree is the omitted category). The race of the respondent is measured by three dummy variables denoting whether or not he or she self-identifies as white, black, or Hispanic. Lastly, the respondent's family income is categorized by three variables demarcating an income of \$0-20,000 per year, \$20,000-40,000 per year, or \$40,000-60,000 per year (\$60,000 and up is the omitted category). Gender, marital status, home ownership, whether or not one is a native-born citizen, and length of time at current address are each measured by simple dummy variables. If each of these variables takes on a value of 1, the respondent is male, married, a native-born US citizen, and a homeowner with less than six months at his or her current address. A value of zero for any of these variables denotes otherwise for the feature to which the variable pertains.

With this data of individual-specific characteristics we merge relevant contextual information from the Council of State Governments (1998-99, 2000-01)²³ using state codes included by the CPS. Three of these variables are determined by state electoral practices: whether or not the state has a voter registration system²⁴; the number of days the registration deadline occurs before the election; and whether or not the state has election day registration. Three other variables are determined by the competitiveness in the relevant state of the year's gubernatorial and senate races, as well as the competitiveness of the presidential race in the state in 2000. For each of these races we produce a dummy variable that is coded a 1 when the result of the designated race was determined by a margin of 5 percent or less of the total number of votes.

An important feature of EDR is its potential to increase turnout and registration more strongly among those who face high costs of voting and are therefore traditionally less likely to turn out to vote. To test for such effects, we include in our analysis interactions between the dummy variable indicating EDR and the variables measuring the respondent's age, education, family income, whether or not the respondent is

native born, and the length of time the respondent has lived at his or her current address. We do not include interactions of EDR with every individual-level variable included in the analysis, because many are statistically insignificantly related to registration and turnout and when included demand such a multitude of coefficients that estimation is difficult.

Our purpose with this analysis is to explain two things: voter registration and voter turnout. As dependent variables, each of these is binary. A registration value of 1 indicates being registered to vote and a turnout value of 1 indicates having turned out to vote, whereas zeros for each variable indicate the opposite. Traditionally, a simple binary logit model is appropriate for this type of analysis. However, because we are especially interested in the differing effects of state institutions on turnout and registration, we wish to control for the random disturbances that may be unique to each of the 50 US states. We do this with a random-effects logit model. We estimate four such random-effects logit models: one predicting voter registration and another predicting turnout for each of the general elections in 1998 and 2000.

All of the variables — with the exception only of some of the interaction specifications — are significantly related to turnout. The influence of these factors substantiates our hypothesis of their role in determining the individual's cost of voting and supports similar descriptions by past studies of voting in the political science literature.

It is important to recognize the implications of the nonlinear relationship between the individual's estimated utility for the dependent variable action (registering or voting) and the probability that he or she will take that action. This nonlinearity means that the magnitude of the impact of an independent variable on the likelihood that an individual registers or votes can be better understood by calculating the change in the predicted probabilities due to shifts in the independent variable rather than by simply looking at tables of estimated coefficients. This is especially true for understanding the effects of interactions like those between EDR and the cost variables. The nonlinearities of probit and logit models essentially formulate an unmeasured interactive specification among the predictive variables.²⁵ For this reason, the predicted coefficients for the variables tell us little about their true impact on the individual's likely action. It is

only by calculating the change in the probabilities of an individual voting or registering under counterfactual scenarios that we may understand the impact of a variable on the individual's behavior.

Given this, we evaluate the effect of EDR on registration and voting by simulating the change it would bring about in the individual's predicted probabilities of taking either action. As this study is concerned primarily with the effect of this change in the state of New York, we do this exercise only for CPS respondents living in New York at the time they were surveyed. We first calculate the predicted probabilities that each New Yorker registered and voted. We then set the values of the EDR variables to what they would be if New York implemented EDR and adjust the EDR interactions accordingly, and then recalculate the predicted probabilities that each New Yorker registered and voted. Averaging across New York respondents for each of these two sets of predicted probabilities and taking the difference between them gives us an estimate of the increase in the aggregate rates of registration and turnout in New York under EDR.

Voter registration and voter turnout in New York are expected to increase dramatically under EDR. In 1998, voter registration would have increased by an estimated 6.3 percentage points (meaning 724,050 new registered voters) and voter turnout would have increased by an estimated 5.2 percentage points (meaning 595,375 additional voters) among the eligible voting age population. In 2000, voter registration would have increased by an estimated 2.6 percentage points (meaning 306,124 new registered voters) and voter turnout would have increased by an estimated 8.6 percentage points (meaning 1,019,767 additional voters), again among the eligible voting-age population.

Perhaps more important than these overall increases in registration and turnout are the expected relative increases among those who are traditionally least likely to vote. Turnout among those who are younger, less educated, less wealthy, and part of a minority group is likely to increase by more than turnout among other groups of eligible voters. This would serve to make the voting population much more representative of the general population. Thus, under EDR the between voters and nonvoters would greatly diminish, helping to ensure adequate representation of all constituents' political interests.

Endnotes

- 1 While statute imposes the 25 day requirement, the state constitution requires that registration be at least 10 days prior to the election.
- 2 R. M. Alvarez and S. Ansolabehere (2002) *California Votes: The Promise of Election Day Registration*, Demos: A Network for Ideas and Action. (<http://www.demos-usa.org/pub20.cfm>)
- 3 Connecticut's state legislature had passed legislation to provide for election day registration in that state, but this legislation was vetoed by Connecticut's governor on July 9, 2003. For the arguments in favor of EDR in Massachusetts, see Stephen Ansolabehere and Charles Stewart, *Voting in Massachusetts*, August 2003, (<http://www.vote.caltech.edu/Reports/VotinginMass.pdf>). There is also a report arguing for the implementation of EDR in Ohio: Michelle R. Smith and Amy Hanauer, *Election Day Registration: Expanding the Ohio Vote*, July 2003 (http://www.policymattersohio.org/election_day_registration.htm).
- 4 Of course, under HAVA these states may change their identification requirements. HAVA requires that eligible citizens who have not voted before in a state and who register by mail to provide certain forms of identification when they register to vote. For example, Wisconsin's Preliminary State Plan notes that "Because Wisconsin has election day registration, it is exempt from using provisional ballots. However, the Elections Board has drafted legislation (LRB 0610/3) to implement this requirement (that individuals who register by mail and have not voted previously in the state provide certain forms of identification in order to register and vote)" (See <http://elections.state.wi.us/HAVA/Preliminary%20State%20Plan.pdf>).
- 5 Some of the states (like Wisconsin) currently using EDR are claiming exemption from the provisional ballot provisions of HAVA. What this might mean for New York's eventual implementation of provisional balloting under a future EDR system is unclear.
- 6 Figures are from the Compilation of Annual Reports of County Boards, provided by the New York State Board of Elections.
- 7 Op.cit., R. M. Alvarez and S. Ansolabehere.
- 8 R. M. Alvarez, S. Ansolabehere, and C.H. Wilson, (2002) "Election Day Voter Registration in the United States: How One-Step Voting Can Change the Composition of the American Electorate," Caltech/MIT Voting Technology Project Working Paper, (<http://vote.caltech.edu/Reports/workingpapers.html>); C.L. Brians, "Voter Registration Laws and Turnout in America: The Last Two Decades," Ph.D. dissertation, University of California at Irvine, 1997; C.L. Brians and B. Grofman, "When Registration Barriers Fail, Who Votes? An Empirical Test of a Rational Choice Model," *Public Choice* 99 (1999): 161-176; M.J. Fenster, "The Impact of Allowing Day of Registration Voting on Turnout in U.S. Elections from 1960 to 1992," *American Politics Quarterly* 22 (1) (1994): 74-87; B. Highton, "Easy Registration and Voter Turnout," *The Journal of Politics* 59 (2) (1997), 565-575; S. Knack, "Election-Day Registration: The Second Wave," *American Politics Quarterly* 29 (1) (2001), 65-78; G.E. Mitchell and C. Wlezian, "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate," *Political Behavior* 17 (2) (1995), 179-202; S. Rhine, "Registration Reform and Turnout Change in the American States," *American Politics Quarterly* 23 (4) (1995), 409-426; R.A. Teixeira, *The Disappearing American Voter* (Washington, D.C.: Brookings Institute, 1992); R.E. Wolfinger and S. J. Rosenstone, *Who Votes?* (New Haven: Yale University Press, 1980); S.J. Rosenstone and J.M. Hansen, *Mobilization, Participation and Democracy in America* (New York: Macmillan, 1993).
- 9 There are two common denominators used in measuring turnout: voting age population (VAP), and eligible voters. The voting age population simply refers to everyone over 18 years of age. The set of eligible voters are those persons who are citizens over the age of 18, and are not disenfranchised based on felony laws or any other factors
- 10 This evaluation is based on New York adopting EDR as it is practiced in other EDR states, allowing voters to register at the polling place. The requirements of A.5762 that voters register at Board of Election offices will lead to smaller increases in turnout than those estimated here.
- 11 These estimates are based on our analysis of the 2000 Census Bureau's Current Population Survey (CPS) Voter Supplement. Details of this analysis are provided in the technical appendix on analysis methodology.
- 12 Our statistical analysis uses individual level data from the 1998 and 2000 Current Population Survey's Voter Supplement file, collected by the Bureau of the Census, to which we append data on each state's voter registration system. With this data we use a statistical model that estimates the propensity that every eligible citizen turns out to vote in each election; the statistical model enables us to produce a simulation predicting the probability that New York's eligible citizens would turn out if New York adopted EDR.
- 13 See Rosenstone and Wolfinger, 1980, op cit; Highton, op cit; Rosenstone and Hansen, op cit.
- 14 See Demos: A Network for Ideas and Action: *Securing the Vote: An Analysis of Election Fraud*. (<http://www.demos-usa.org/pub111.cfm>).
- 15 Joan Anderson Growe, "North Star State Points the Way on Voting", *Los Angeles Times*, October 18, 2002. Further into her article, she also noted that "In Minnesota, we have a few voter fraud cases every year, but no more than we did before the election reform (EDR) was put in place."
- 16 More details of the Minnesota and Wisconsin enforcement regimes are provided in an earlier Demos report, *California Votes: The Promise of Election Day Registration*.
- 17 "New York State Voter Registration Form," (<http://www.elections.state.ny.us/voting/voting.html>).
- 18 The statistics are from the U.S. Census Bureau's Current Population Survey, Voter Supplement. See *California Votes*, page 16, for additional details.
- 19 Using the 2000 CPS Voter Supplement we estimate an eligible electorate in New York of 11,877,406. This is slightly higher than the state Board of Elections eligible voter estimate of 11,262,816. These differences in the size of the estimates of the eligible electorate do not affect any aspect of our statistical methodology. In particular, these differences do not affect our estimates of the percentage point change due to EDR in overall turnout and the composition of the electorate under EDR in New York. The use of the CPS estimates is particularly important for our analysis when we estimate the numerical change for subsets of the electorate under EDR — for example, the change in the likelihood that younger voters turn out when EDR is implemented.
- 20 Lazarsfeld, P.F., Berelson, B., and Gaudet, H., *The People's Choice* (New York: Columbia University Press, 1944). Campbell, A., Converse, P.E., Miller, W.E., and Stokes, D.E., *The American Voter*. (New York: John Wiley & Sons, 1964).
- 21 We are unable to include home ownership in the 2000 analysis because the CPS discontinued this variable in 2000.
- 22 The CPS did not ask non-citizens whether or not they voted, so we are not able to evaluate the relationship between EDR and voter fraud.
- 23 The Council of State Governments, 1998-99 and 2000-01. *The Book of the States* (Lexington, Kentucky: Council of State Governments).
- 24 This variable is coded a 1 for every state but North Dakota.
- 25 Nagler, J., 1991. "The Effect of Registration Laws and Education on US Voter Turnout." *The American Political Science Review* 85:1393-1405.

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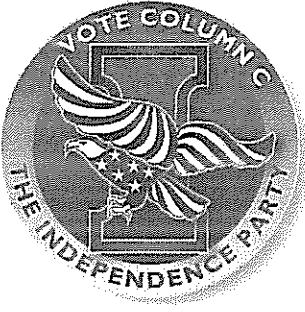
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Government Operations Committee

Public Hearings on Election Reform and Modernization: considering Early Voting, Same-day voter Registration and Electronic Voter Registration

Tuesday November 25, 2008

Public Testimony of Esteli Pacio as follows:

Good afternoon. My name is Esteli Pacio. I am a lifelong New Yorker from the Lower East Side of Manhattan and I am also a member of the executive Committee of the New York County Independence Party. I am here on behalf of independents and young voters.

I fully support resolutions 1251 and 1252.

Voting is a right, not a privileged, and administrative barriers don't make sense. We say we want more young people involved in the process, but we make it harder instead of easier for them to participate. Same day voter registration is important for young people who often focus late on elections, move around because of school or job placement, and often don't know about these restricting laws.

The resolution however doesn't specify if same day voter registration would be for all voters or new voters only, nor does it specify if it would be for all primary and general elections. If it is for all voters, and all elections, how does this affect the so called lock box? To really give voters full rights you have to get rid of the lock box. Voters should have the right to decide what party they want to be affiliated with. Resolution 1252 says "requiring registration ten days before an elections can prevent citizens from actively participating in the democratic process," but so does the lock box.

TESTIMONY OF SUSAN LERNER
EXECUTIVE DIRECTOR, COMMON CAUSE/NY
NOVEMBER 25, 2008 HEARING BEFORE
NY CITY COUNCIL COMMITTEE ON GOVERNMENTAL OPERATIONS
REGARDING RES. 1251, 1252 & 1698

Thank you for the opportunity to testify this morning. I am Susan Lerner, Executive Director of Common Cause/NY. Common Cause is a nonpartisan, nonprofit advocacy organization founded here in New York in 1970 by John Gardner as a vehicle for citizens to make their voices heard in the political process. We work at the national, state and municipal level, as the peoples' lobby, for honest, open and accountable government, as well as encouraging citizen participation in democracy. Here in New York, Common Cause is a co-facilitator of the state coalition of groups that monitor election activities, now called the New York State Citizens' Coalition for Voter Participation and Fair Elections. Nationally, we work on election reform throughout the country.

Common Cause/NY strongly supports all three of the Resolutions which are the subject of today's hearing. I will address each of the reforms proposed briefly.

Common Cause supports electronic voter registration in order to provide a more streamlined, accessible and secure voter registration process. Allowing electronic registration would improve the current system by allowing eligible New Yorkers with a valid driver's license or state identification card to register to vote entirely online. Such a procedure provides eligible New Yorkers a more safe and secure way to register to vote by allowing them to complete the entire process online, as many already do when, for example, filing a tax return.

Two other states have already implemented online voter registration systems - Arizona in 2002 and Washington State in 2008. Since implementation, Arizona has seen a dramatic increase in the number of people registering to vote, as well as significant cost savings. Allowing people to register to vote online provides a simple, convenient and secure registration process which in 2007, over 70% of people registering to vote used. In 2006 in the largest county in Arizona, cost savings were equivalent to the salaries of eight full time employees since data entry needs are reduced. Washington has also already seen a large number of potential voters registering online. A third state, California, has just joined the ranks of states permitting online voter registration systems, with Governor Schwarzenegger signing the bill into law less than 2 months ago.

With New Yorkers already using the internet to conduct a range of activities online, including filing tax returns and applying to college, online voter registration is a logical next step by adapting the voter registration process to today's technological advances. Electronic voter registration will improve the voter registration process for both applicants and elections

officials. Online voter registration will allow for improved access to voter registration and help to encourage more people to register to vote. It will also allow for easier matching of duplicate records, and other issues that arise when a voter moves from one county to another, and remove the need for large amounts of manual data entry.

We also strongly support no-fault vote by mail. I have provided copies of a January 2008 Election Reform Brief prepared by the Common Cause Education Fund entitled *What We Know About Mail Elections and How to Conduct Them Well* which reviews the experience of various states and cities throughout the country, as well as internationally, and recommends specific best practices relating to voting by mail. Among the other benefits of mail balloting are a reduction in logistical problems associated with in-person voting on Election Day, a reduction in poll-worker requirements, increased opportunities to conduct voter mobilization, minimizing the appeal of last-minute attack ads, providing more time for voters to fill out their ballots, the potential to save both time and money, and deterring fraud more efficiently than photo-ID requirements used with in-person polling. There are also some potential problems with voting by mail, but these can be mitigated or eliminated by using the recommended practices detailed in the report. Additionally, we strongly recommend that any bill introduced in New York State not only allow for no-fault vote by mail, but also allow voters to sign up for permanent absentee status, which would simplify the absentee process for many voters as well as for the Boards of Election.

Common Cause/NY strongly supports both Early Voting and Election Day Registration. However, we are concerned that Election Day Registration would place even greater strains on over-stressed staff and polling locations here in New York City on Election Day. We believe that Same Day Registration, rather than Election Day Registration, may be a more practical proposal for our state. Same Day Registration allows citizens to register and vote on the same day in advance of Election Day, but does cut off registration by a date certain before the actual Election Day.

Based on the experience of other states, most particularly North Carolina, we hope that Early Voting and Same Day Registration would be adopted in tandem. North Carolina first adopted Early Voting several election cycles ago and then added Same Day Registration this year. The figures from North Carolina are impressive. North Carolina had the largest increase in voter turn-out of any state from 2004 to 2008, an increase which my Common Cause colleague in North Carolina ascribes in major part to the combination of Early Voting and Same Day Registration. The Early Voting and Same Day Registration period started on October 16 and ended on November 1. North Carolinians were able to vote on Saturday and Sunday in some counties, giving rise to Souls to the Polls programs organized through churches. 42% of North

Carolínians voted early. 236,700 new voters availed themselves of Same Day Registration. The impact on minority registration and participation was significant. 39% of the new voters added to the rolls through Same day Registration were African American. Now, in North Carolina, an astounding 94% of African Americans of voting age are registered to vote. But it is not just battleground states that benefited from Early Voting this election cycle. In Texas, a jaw-dropping two-thirds of voters took advantage of that state's early voting opportunities.

In addition to its convenience for voters, Early Voting and Same Day Registration have benefits for election administration which would be particularly helpful here in New York City. Many New York City residents experienced long lines at their polling places, particularly in the morning, this past Election Day. Early Voting alleviates the extraordinary pressure and demands of providing facilities for our almost 2.8 million active voters exclusively on Election Day. Every election year, our Board of Elections faces the challenge of properly processing the significant number of voter registrations which come in at or near the 10 day before the election deadline. This year, the number was so large that the Board was unable, notwithstanding herculean staff efforts, to process all of the registration forms in time for every voter to be included in the voter rolls printed for the polling places, requiring the preparation of supplemental voter rolls in the week before the election. Same Day Registration helps with this processing challenge, by completing the registration process while the voter is present and then allowing them to immediately vote. It also helps resolve problems with voter status and identification, as the voter is present and able to answer questions and, if necessary, has the opportunity to provide additional identification, short-circuiting a lengthy process when done by mail.

The various proposals which are being discussed, if adopted, would substantially improve both the experience and the administration of voting here in New York. We hope that they will be adopted as a package. We commend the sponsors of these resolutions and the state legislators who have introduced or announced their intention to introduce the constitutional amendments and bills which would bring these needed reforms to New York State. We look forward to working with them for the measures' passage.



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Center for Independence of the Disabled, NY

November 25, 2008

My name is Rima McCoy. I am the Voting Rights Coordinator for the Center for Independence of the Disabled, NY (CIDNY). My comments today are primarily directed towards Resolution No. 1698 supporting early voting and no-excuse absentee ballots. However, much of my testimony also applies to the other resolutions under review.

Prior to the General Election, I gave voting information presentations at community organizations, such as Selis Manor and Goddard Riverside, for voters with cognitive, physical, and visual disabilities. During each presentation I was asked if New York has early voting. People were aware that early voting was taking place in other states and were disappointed that it was not available in New York. There are several reasons why voters with disabilities would find early voting advantageous:

- For those with visual and/or cognitive impairments, voting on the BMD could take up to 45 minutes. Long lines and impatient poll workers or voters on Election Day can intimidate voters with disabilities who feel pressure to perform quickly and this anxiety can also cause confusion. The option of early voting would reduce anxiety for many voters.
- Those who rely on Access-A-Ride will have more flexibility in arranging transportation to polling sites and less danger of missing their return pick up time.
- Early voting opportunities create the expectation that there will be well trained poll workers who are comfortable with the Ballot Marking Devices. People with disabilities can feel more confident that they will have a successful experience when they take advantage of early voting options. This is significant because CIDNY's Individual Voter Surveys from the General Election indicate that most voters who tried to use the BMDs encountered resistance from poll workers who were uncomfortable with the accessible machine. In some cases, voters who were tenacious about using the machines had to persevere, sometimes asking several poll workers for the machine. They also had to assert their right to privacy when poll workers stood by watching their entries. In other cases, voters gave up and voted with assistance on the old lever machines – not what they had hoped for when they left home to take part in this historic election.

Resolution No. 1698 should include the following critical considerations:

- The general public ought to receive voting information well in advance of an election through multiple outlets and repetition. In order for people to digest changes in voting regulations, information has to be disseminated several times in all of the available resources: TV, radio, newspapers, bus and subway ads, local representatives' newsletters, handouts at community events, etc. A single mailer, like the one distributed before the primary, which mentioned the BMD, is not enough. Sixty-seven percent of the 54 people who completed our voter survey said they did not receive any materials about the BMD from the NYC BOE before the election. Effective communications about voting pertains to all three resolutions.
- The general public ought to receive voting information in accessible formats. According to CIDNY's Individual Voter Survey, among those reported receiving



materials from the BOE, 25 percent said it was not useful because it was not in an accessible format. Accessible formats include: Braille, audio CD or data CD for those who have computers but not web access. Providing voting information in accessible formats pertains to all three resolutions.

- Sites for early voting should be fully accessible. CIDNY's survey of 65 polling sites during the November 4th election showed that many barriers to access can be corrected with low cost fixes, such as placing cones under protruding objects that could injure those who would not otherwise be able to detect the danger because of a visual impairment. We surveyed 65 polling sites throughout the city and found that 54 or 83% had barriers.
- Voter registration forms should have a section for indicating preferred methods of communication and include all the accessible formats so that people with disabilities can get the information they need in a way that they can understand. This point pertains to all three resolutions.
- There should be year-round demonstrations of the BMDs at public events.

When people go to vote, they don't expect to be turned away from voting machines or to be watched as they select their candidates of choice. The experiences of voters with disabilities during the November 4th election show how little of the established norms for voting were in place for people with disabilities. CIDNY strongly urges systemic changes so that people with disabilities will no longer be 'off the radar' and that when election reform resolutions are introduced they incorporate measures that ensure voting equality for everyone.

**Testimony of
Andrew M. Stengel
Election Advocacy Director¹
Brennan Center for Justice at NYU School of Law
Before the
Committee on Governmental Operations
Council of the City of New York
Hearing on Voting Registration and Election Resolutions
November 25, 2008**

On behalf of Brennan Center for Justice at NYU School of Law, we thank the Committee on Governmental Operations for holding this hearing and for providing us with the opportunity to discuss voter registration and election administration proposals.

The Brennan Center for Justice is a nonpartisan think tank and advocacy organization that focuses on issues of democracy and justice. We are deeply involved in the effort to ensure fair and accurate voting and voter registration systems, and to promote policies that maximize participation in elections in New York and throughout the nation. In this past election, through advocacy and litigation, we prevented more than 500,000 voters in Florida, Ohio, Colorado, Wisconsin, and Montana from disenfranchisement.

Put simply, the implicit question before us today is how to make it easier to register and vote. The three resolutions under discussion would be a step toward catching up to other states and rethinking New York's cumbersome election code and regulations. In general, the Brennan Center supports steps to ease election administration.

However, I'm here today to urge you to consider something in addition and even bolder. A system of universal or automatic voter registration. (Actually, Assemblyman Michael Gianaris sponsored similar legislation back in 2004.)

The 2008 general election will be remembered for many reasons. One relevant to today's hearing are the images of long lines of people snaking around blocks waiting to vote early. Yet, despite the spike in early balloting and the overall increase of five million voters from 2004, only about 62% of eligible voters went to the polls.² That is an improvement over the 60.6% in 2004, but still below the 1964 turnout of 64%.³

In the November 2004 presidential election, 28% of eligible Americans were not registered to vote. That's more than 50 million who were not on the electoral rolls and could not vote on Election Day.⁴ According to 2006 data from the U.S. Census Bureau and the New York State Board of Elections, about 21% of potential voters in New

¹ I am not an attorney, nor am I admitted to the bar. My testimony has been approved by attorneys at the Brennan Center.

² Brian C. Mooney, *Voter Turnout Didn't Set Record*, Boston Globe, November 14, 2008.

³ *Id.*

⁴ Wendy Weiser, Michael Waldman, Renee Paradis, Brennan Center for Justice at NYU School of Law, *Universal Registration Policy Summary*, (2008), available at http://www.brennancenter.org/content/resource/universal_voter_registration_draft_summary [herein *Universal Registration Policy Summary*].

York—*more than 3 million eligible voters*—were not registered to vote.⁵ Voter protection efforts, including the Election Protection toll-free hotline, in which the Brennan Center participated, consistently report that the single greatest source of voting problems is the registration system. New York is no exception.

Automatic voter registration is the most comprehensive means available to ensure all who are eligible may vote and to increase participation in the electoral system. In addition, it shifts the burden of registration from citizens and third-party organizations to the government, removes several barriers and smoothes election administration.

Voter registration laws weren't widely enacted in the United States until the 19th century. These laws were often used as a means to keep “undesirable voters” from the polls, including African-Americans, the working-class, immigrants, and the poor.⁶ Sadly, that discriminatory effect is still felt today.

In 2006, while nearly 70% of white voters were registered to vote nationally, only 61% of African American and 54% of Hispanic populations were.⁷ And, 82% of people earning over \$100,000 were registered, but the ratio drops precipitously in lower income categories: 67% of those who earn between \$30,000 to \$39,999; 66% of those who earn between \$20,000 to \$29,999; and 56% of those who earn less than \$20,000.⁸ Only 54% of the unemployed and the 48% who didn't graduate from high school are registered to vote.⁹

Under the current system of registration, voters often makes mistakes, including submitting multiple forms or omitting information. Voters may use a different form of their name than that which appears in Department of Motor Vehicles or Social Security databases. Fixing these errors delays processing of forms. If the information isn't corrected, the voter is barred from the polls for reasons having nothing to do with eligibility, through error-prone purges and “no match/no vote” policies. Essentially, it's disenfranchisement by typo.

With the burden resting upon the individual, it's also a challenge to keep lists current. Voters rarely cancel registrations when they move, leaving no-longer-valid records on voter lists. Such bloated lists fuel false claims about potential for fraud, thus giving way to suppression or unlawful purges.

Our highly mobile population exacerbates flaws in the system. More than two-fifths of nonvoters in 2000 were ineligible because they had moved and did not re-register.¹⁰

⁵ In 2006, the U.S. Census Bureau estimated New York state population to be 19,306,183, and 23.4% was under the age of 18. The New York State Board of Elections indicates there were 11,669,573 registered voters as of November 1, 2006.

⁶ Alexander Keyssar, *The Right to Vote* (Basic Books, 2000), 312.

⁷ U.S. Census Bureau, Voting and Registration in the Election of November 2006, at 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ Universal Registration Policy Summary, at 3. Thomas Patterson, *The Vanishing Voter: Public Involvement in an Age of Uncertainty* (Knopf, 2002), 178.

Populations that are more likely to relocate, including low-income citizens and those who are less educated, are disproportionately impacted by the burden of registering in each new location.¹¹

Finally, the rush to register voters as Election Day approaches creates a strain on the local boards of election to process the paperwork and update poll books. Without knowing in advance the actual total number of voters in a district, it is difficult to plan the allocation of voting equipment and poll workers.

The solution to all of these issues is universal voter registration. How can that be accomplished? There are a number of ways that can succeed. For example, through lists that already exist and by a process known as enumeration.

States have a variety of databases that have information on citizens including, DMV databases, state tax rolls, and social service lists. These would be the building blocks of a comprehensive voter registration roll. Another method of registration could be enumeration, like the decennial Census. The local boards could send out mail surveys to each known address asking citizens over 18 to complete the form and return it. Follow-up could be conducted by going door to door, making an effort to include those who do not live at a fixed address.

Back to resolutions under consideration. If New York added the millions of unregistered to the rolls, early in-person voting could be useful to reduce the strain on the election system. And a comment about electronic voter registration. While the intent is to ease administration, consider the demographics of citizens who are unregistered; they are the least likely to have access to the Internet. Electronic registration may theoretically lower a barrier, but this alone is probably little or no relief for most of those who aren't registered.

In sum, my colleagues and I thank you for this opportunity to testify and for your continued oversight of and concern for the electoral process. The Brennan Center is eager to work with the State and City Boards of Elections on the many issues discussed.

6

¹¹ Universal Registration Policy Summary, at 4.



**CITIZENS UNION TESTIMONY
TO THE NEW YORK CITY COUNCIL
COMMITTEE ON GOVERNMENTAL OPERATIONS**

on

**Election Reform and Modernization:
Considering Early Voting, Same-Day Registration and Electronic Voter Registration**

**Delivered by
Dick Dadey, Executive Director, Citizens Union
November 25, 2008**

Good morning Chairperson Felder and committee members. My name is Dick Dadey, Executive Director of Citizens Union of the City of New York, an independent, nonpartisan civic organization of New Yorkers that promotes good government and advances political reform in our city and state. For more than a century, Citizens Union has served as a watchdog for the public interest and an advocate for the common good. I would like to thank the New York City Council Committee on Governmental Operations for the opportunity to testify today on innovative ways New York State can explore to make increase voter participation.

The recent presidential election demonstrated that increased interest in voting and the electoral process can be generated. It is the responsibility of New York State and election officials to make voting as accessible as possible. Removing barriers will allow and in fact encourage voters to participate in greater numbers. With advances in technology, and a greater capacity to allow voters to participate through different processes, creative approaches aimed at boosting voter participation should be explored. Among them include instituting Election Day voter registration (EDR or also known as same-day registration), exploring the use of early voting and “no-excuse” absentee voting, and allowing voters to register online to vote. By creating a system through which people have a greater ability to participate at the fundamental level of voting, we can not only increase voter turnout, but also encourage their involvement in other areas of elections and government.

ELECTION DAY REGISTRATION

The deadlines for voter registration can have a significant affect on the ability of eligible voters to participate in elections. New York State currently requires registration to be completed twenty-five days in advance of the election. During this year’s general election, this restrictive deadline meant that voters had to register by **October 10th**. This registration deadline can create a barrier for voters interested in casting a ballot, specifically for those who may become interested in the election too late or are frequently mobile. The advancement of EDR has been a long-held goal of CU, and we believe it can be a forward thinking solution to New York’s notoriously low voter turnout. In a report published by Citizens Union Foundation, Citizens Union’s affiliated non-profit research and education organization, in 2005 titled “*Election Day Registration: Simplifying the Voting Process and Increasing Voter Turnout in New York City*,” we detail not only why New York can benefit from the

implementation of same-day voter registration, but also provide recommendations for how to securely and efficiently institute the practice.

In the 2004 presidential election, New York ranked 46th in voter turnout across the nation. Since 1960, New York's turnout rate has fallen from over sixty percent to just over fifty percent in 2004 and with turnout rates below the national average since 1972.¹ In the last five presidential elections, New York State voter turnout failed to exceed fifty-one percent of the voting age population, while the state's population continued to increase.² By implementing EDR, New York could encourage participation among all voters, and particularly late interest, recently mobile, marginally interested, incorrectly registered, and first time voters.

Based on research and analysis in our report, EDR in New York would:

- Streamline registration and voting into a single process, diminishing administrative burdens associated with registration procedures and affidavit ballots.
- Allow eligible voters with uncertain registration status to re-register, therefore decreasing the number of provisional ballots cast.
- Eliminate confusion and uncertainty over voter registration status.
- Generally enfranchise and turn out more citizens to vote.

Currently nine states across the country have implemented EDR, including Maine, Minnesota, and Wisconsin. In these three states specifically, voter turnout has seen large increases over the national trend, and, at times, even when voter turnout across the country decreased. Only once has Wisconsin's voter turnout rate dropped below sixty percent since 1976 when EDR was implemented—and all three states exceeded seventy percent participation in the 2004 presidential election.³

Criticism of EDR include concerns of voter fraud and increased errors, administrative burdens on Board of Elections (Board) staff, and the financial costs associated with its implementation. Other states that have instituted EDR, however, have shown that precautionary measures can be implemented to safeguard the ballot. Voters registering on Election Day may be required to provide photo identification, proof of address, and/or sign a voter oath or affidavit to prevent attempts by voters to register illegally. Stiff penalties for voter fraud should be implemented for voters who violate the law as a strong deterrent to any possible fraud. Voter fraud is already an infrequent occurrence in New York, and there is no evidence based on other states that EDR would increase the potential for voter fraud. To address concerns that EDR would overburden Board staff, some states have introduced "greeters" inside the polling place to direct voters and those wishing to register to the appropriate locations. Placing one or more poll workers at each site solely assigned to Election Day registrants, may also be another option. With an increased number of poll workers, voters can submit their registration forms under the supervision of election officials, reducing mistakes and in turn decreasing the resources needed to follow up and correct erred forms.

There are concerns that New York City, in particular, would have a difficult time implementing EDR because of the size of our electorate. In order of preference, CUF has identified available

¹ Israel, Doug and Ngai, Amy. "Making Votes Count: Election Day Registration: Simplifying the Voting Process and Increasing Voter Turnout in New York City." Citizens Union Foundation. November 2005, available at: http://www.citizensunion.org/www/cu/site/hosting/Reports/CUF_Election_Day_Registration_Report.pdf

² *Id.*

³ *Id.*

approaches the City can utilize to implement EDR, as well as the advantages and disadvantages of each approach:

- Election Office EDR and Voting—Voters can register and vote at their local election office instead of their assigned polling place. New York City allows voters to vote by absentee ballot in advance by visiting their Board borough office within a specified time period before the election. Voters would only have to go to one place to register and vote; however, the borough office may not be convenient for all voters wishing to register on Election Day.
- Precinct-level EDR (utilized in Idaho, Minnesota, New Hampshire, Wisconsin and Wyoming) —Voters can register to vote in an election at their local polling site. This would require one to two additional poll workers per poll site to assist in voter registration, but would provide the most convenient method for voters to register on Election Day.
- Election Office EDR (utilized in Maine) —Voters can register at their local borough office, and would travel to their local polling location to cast a ballot after registration. While this system would allow registration to take place in centralized locations and minimize the need to hire additional poll workers, it would also require voters to register and vote in separate locations.

EDR can also be beneficial in eliminating affidavit ballot errors and administrative burdens associated with voter registration. The implementation of the statewide voter database, which is intended to make verifying voters easier, and a process to address ballot security concerns, coupled with EDR may reduce some of the administrative errors that prevent people from voting and remove onerous steps for various voting groups. EDR also has the potential to reduce the number of uncounted affidavit ballots, which demand increased time and effort to verify, and may indicate inefficiencies in election administration. According to the EAC Election Day Survey, provisional ballots in New York in 2004 accounted for four percent of ballots cast and one percent of ballots counted. Over half of the provisional ballots cast, 144,457 votes, were not counted. Yet, in Wisconsin, a state with EDR, the percentage of provisional ballots cast was 0.01%, with 0.00% counted.

By eliminating this extra step of registering before Election Day, New York State can provide all citizens with the opportunity to participate in elections, no matter when they become engaged in the process. EDR, however, cannot be implemented in New York without a constitutional change that eliminates the requirement that registration be completed at least ten days before each election. Prior to becoming Assembly Speaker, Sheldon Silver in 1992 sponsored and passed in the Assembly EDR legislation. It never passed the Senate so the constitutional amendment was not presented to the voters. Assemblymember Michael Gianaris from Queens currently is the lead sponsor. We continue to work toward this goal and support *Res. 1252*, calling on the State to implement EDR.

ONLINE REGISTRATION

In addition to EDR, there are other innovative ways to allow voters greater opportunity to participate in the electoral process and ease access to voting. In the same vein as EDR, online registration also provides voters with an easier way to register to vote.

To register to vote in New York State, citizens must complete a form in-person at a State agency or local board office, or mail in the completed form. As mentioned before, registration is a major

obstacle for many potential voters, and increasing their ability to become registered more quickly and easily can not only increase registration rates, but also voter turnout. Online registration is convenient, and would accommodate an increasingly mobile and virtual population. According to a study by the Center for Technology in Government at the University of Albany, the second most common request by citizens for electronic government services is online voter registration.⁴ Additionally, online registration may encourage younger citizens, whose registration rates are consistently lower than those of older age groups, to become involved in the electoral process. A Pew Research report found that 88 percent of 18- to 29-year-olds are online and nearly two-thirds check their e-mail daily.⁵

Two states currently permit online voter registration—Arizona and Washington—and both have experienced significant increases in voter registration which can be directly correlated with higher voter turnout.⁶ Arizona implemented online registration in 2003, in response to their registration rates which were the lowest in the nation, tied with Hawaii, at forty-one percent of voter-age population. During their first year of implementation, twenty-five percent of all voter registrations were completed online. Four years later the number of online voter registrations increased to seventy-two percent.⁷ The website of Arizona's Secretary of State, which hosts online registration, provides voters with a clear and accessible way to complete their voter registration in both English and Spanish. Since its implementation in 2003, the service has only experienced one problem, when its computer system—which is linked to the nationwide database of driver's licenses—temporarily experienced service failures on the last day to register for the 2008 presidential primary.⁸ The requirements of the online form are identical to the paper version, and in Arizona all voters must present valid government identification when they show up at the polls.

Washington State implemented online voter registration in January of 2008, and uses the same verification procedure as Arizona, requiring voters to provide identification both when completing the form online and in-person at the polls. Additionally, the website of the Secretary of State is available in Spanish and Chinese, and registration forms are available in Spanish, Chinese, Cambodian, Korean, Laotian, Russian, and Vietnamese. Its capacity to translate and process voter registration forms in varied languages is particularly relevant to New York City, which hosts a large and widely diverse voting population that speaks many languages. Furthermore, Washington's system is not connected to the nationwide database of driver's licenses, thereby reducing their risk of associated technical problems. This year Washington state reported that voter enrollment had reached a new record since 2004, with a total of over 3.5 million registered voters.⁹

⁴ Pardo, Theresa A. "Realizing the Promise of Digital Government: It's More Than Building a Web Site." Center of Technology in Government (CTG), October 2000.

http://www.ctg.albany.edu/publications/journals/realizing_the_promise/realizing_the_promise.pdf

⁵ Ari Hoffnung, *Point of view: Getting young people to the polls*. The Riverdale Press, February 21, 2008, available at: http://www.riverdalepress.com/full.php?sid=3180¤t_edition=2008-02-21

⁶ Marcelo, Karlo Barrios. "Voter Registration Among Young People." The Center for Information and Research on Civic Learning & Engagement (CIRCLE), June 2008.

http://www.civicyouth.org/PopUps/FactSheets/FS07_Registration.pdf

⁷ See, http://www.secstate.wa.gov/elections/online_reg_faq.aspx

⁸ Gregory Roberts, *Washington starts up online voter registration*, January 14, 2008, available at: http://seattlepi.nwsourc.com/local/347217_voterregistration14.html.

⁹ See, "Washington Voter Registration hits record at 3.5 million." Puget Sound Business Journal, October 7, 2008, available at: <http://www.bizjournals.com/seattle/stories/2008/10/06/daily13.html>.

Following these states' lead, California passed a bill on September 30, 2008, to implement their own online registration. "Californians can pay bills and file their taxes online. Being able to register to vote online is the next logical step in making it easier for Californians to participate fully in their democracy," said Secretary of State Debra Bowen, California's chief elections officer. California's online registration system requires the online registrant to provide their birth dates, the last four digits of their Social Security numbers, and the numbers from either a valid California driver's license or identification card.¹⁰

California also allows voters to request an absentee ballot online. In New York voters must first submit an application to receive an absentee ballot at their home through the mail, or must appear in person to their county board office. Increasing New York's capacity to accommodate online registration, subject to the same identification requirements for any newly registered voter, and requests for absentee ballots and communicate more effectively through the internet has the potential to positively affect voter participation, and should be further explored. CU supports *Res. 1251* and encourages the state and election officials to explore ways to allow online voter registration and increase voter information available on the State and City Boards' websites.

EARLY VOTING AND NO-EXCUSE ABSENTEE VOTING

Beyond Election Day and online voter registration, New York State can implement other changes to increase New Yorkers' ability to vote as easily as possible. Early voting is one option that can allow voters who may not be able to reach their polling location on Election Day to still participate by casting their ballot at an earlier time. In the 2004 elections, twenty percent of voters nationwide voted early,¹¹ and the increase in voter participation from 2002 was higher in states with early voting than those without.¹² In the 2008 General Election, early voting has reached a record high, especially in certain swing states in which early voting may account for the majority of ballots cast.¹³

At a recent City Board meeting, it was reported that the City received up to 800 voters per day prior to November 4th wishing to cast an absentee ballot in person at one of the five local Board offices. While Citizens Union has yet to take a position on how best to implement early voting, its potential to allow those unable to reach their polling location on Election Day, or cast an absentee ballot, the opportunity to cast their ballots is a laudable goal that must be studied further.

Unlike New York, thirty-one states offer the chance to vote in-person before Election Day.¹⁴ Although the time period and locations vary by state, most states offer early voting ten to fourteen days before the election, and some allow voting at county or state offices, grocery stores, shopping malls, schools, libraries, or other locations. In the states that had early voting in both 2002 and

¹⁰ "Electronic Vote: California Creating Online Voter Registration System." September 30, 2008.
<http://www.govtech.com/gt/articles/418758>

¹¹ See, Associated Press Elections Unit, http://elections.gmu.edu/early_vote_2008.html

¹² ReformElections.org, available at: <http://www.reformelections.org/feature.asp?menuid=%7B88D32B43-3876-4B06-A941-25A33211CBE5%7D>

¹³ See, Janet Hook and Noam N. Levey, *Early voting hits record high*, The Los Angeles Times, November 4, 2008, available at: <http://www.latimes.com/news/politics/la-na-voting4-2008nov04.0.1104991.story>.

¹⁴ See generally, National Conference of State Legislatures, available at: <http://www.ncsl.org/programs/legismgt/elect/absentearly.htm>, accessed November 5, 2008.

2004, turnout increased by seven percent compared to an increase of six percent in states without early voting.¹⁵

In addition to exploring the use of early voting, the State should consider changes to the use of absentee ballots. The New York Constitution requires all voters who wish to cast an absentee ballot to declare a reason why they will be unable to vote at their respective poll sites on Election Day.¹⁶ Permissible reasons are illness or absence from the county.¹⁷ Twenty-eight other states, such as California, have instituted “no-excuse” absentee voting, allowing voters who would prefer to vote early and through the mail to do so.

No-excuse absentee voting would provide an additional opportunity to vote for those who have difficulty showing up on a business day, or do not wish to wait on long lines at their poll sites. Hawaii and Nevada, included among the states that provide early vote and no-excuse absentee voting, even pay postage for absentee ballots. Georgia, whose voter turnout was below the national average in 2000, rose from forty-six percent in 2000 to fifty-six percent in 2004 after the adoption of these voting methods.¹⁸ In states which do not require an excuse, absentee voting reached levels as high as eighty-eight percent in Washington state in 2006, while in states which do require an excuse, absentee rates ranged from four percent in New York to three percent in Delaware.¹⁹

Citizens Union is supportive of *Res. 1698* encouraging the United States Congress and the New York State legislature to implement early voting, and we encourage further study of the best way to institute the program here. We would also be supportive of a constitutional amendment needed to reform New York’s restrictive absentee ballot requirements and allow voters to obtain an absentee without declaring a reason.

New York State has a responsibility to its citizens to make voting as accessible as possible and encourage their participation by removing barriers – all of which would be achieved by the implementation of these proposed reforms. If implemented correctly with the proper precautionary measures in place, Election Day registration, online registration, early voting and no-excuse absentee voting can ensure that all eligible voters have the opportunity to cast a ballot, which ultimately will increase voter participation and civic engagement. These reforms represent a new commitment and creative approach to increasing voter participation, which has been and continues to be a top priority of Citizens Union.

Again, thank you for the opportunity to testify today, and we look forward to working with you and our colleagues to make progress on these important reforms.

¹⁵ See, ReformElections.org, available at: <http://www.reformelections.org/feature.asp?menuid=%7B88D32B43-3876-4B06-A941-25A33211CBE5%7D>

¹⁶ N.Y.S. Const. Article II, Section 2 (2008).

¹⁷ *Id.*

¹⁸ See, Sam Rosenfeld, *A Few Good States*, available at: http://www.prospect.org/cs/articles?article=a_few_good_states, December 20, 2004.

¹⁹ U.S. Election Assistance Commission, *The 2006 Election Administration and Voting Survey*, available at: <http://www.eac.gov/files/Eds2006/eds2006/edsr-final-adopted-version.pdf>, at pg. 16



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**Testimony to the Governmental Operations Committee of
The New York City Council on Resolutions in Support
Of Same-Day Voter Registration and No-Excuse Absentee Ballots
November 25, 2008**

Good Morning Chairman Felder, members of the committee and the Council. My name is Adrienne Kivelson and I am an Elections Specialist of the League of Women Voters of the City of New York. As an organization which has been promoting election reform and modernization for more than 80 years, we're very pleased that you have placed the issue high on your agenda and look forward to working with you on developing a comprehensive program for improving election administration in New York City.

The League of Women Voters of the United States believes that voting is a fundamental citizen right that must be guaranteed. Through study and the consensus of our members we develop and support measures at the local, state and national level to protect, extend and encourage the use of the franchise by emphasizing participation in the electoral process.

At the state level we have been fervent supporters of Same-Day Registration and No-Excuse Absentee Ballots.

Election Day registration encourages voters to come to the polls and know that their votes will be counted. This year our Telephone Information Service was inundated with calls from new voters who couldn't confirm that their registration forms were received or entered in the system. Voters who moved or changed their status didn't know how or when they should have filed new voter registration forms. Too many voters stayed home rather than cast affidavit ballots which they didn't think would be counted. The process for same-day registration could be designed with strict guidelines to prevent fraud, and would not unduly burden the poll workers or the Board of Elections. Election Day registration is currently permitted in eight states –Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin and Wyoming. A study by Demos found an average 10 – 12% higher turnout in every election, with 6% directly attributable to Election Day Registration.

Since 1963, the League of Women Voters of New York State has supported the position that all those otherwise eligible to vote in the state should be able to vote by absentee ballot. Over the years we have consistently argued for simplification of the process and the form. The questions on the current 21-inch long application form delve into matters which are an invasion of privacy and are not needed to determine the voter's eligibility for an absentee ballot. It asks the name of your employer if you're going to be out of town on business or vacation; when you're going to leave and when you are going to return and where you are going, although none of that matters because you are entitled to get an absentee ballot

whether you are recovering from brain surgery or going to Atlantic City to gamble for two days. Seventeen states currently have no-fault absentee voting and New York should be among them. Absentee voting should be a simple process for both the voter and the Board of Elections. Unfortunately, that did not happen in either case in 2008. Many applicants never received their ballots. Board offices were overwhelmed with voters who appeared in person to apply and cast their ballots without adequate staff to process the applications or space in which voters could privately mark their ballots. Absentee voting should be easily accessible to those voters who want to do it. The Board of Elections should receive funding adequate to train designated staff and to put procedures in place to facilitate absentee voting.

As someone who fielded calls at the League from frustrated voters and would-be voters, I can tell you that if both of these reforms had been in place on November 4th -- Election Day Registration and No-Excuse Absentee Ballots -- there would have been less tension at poll sites, more confidence that votes would be counted, and possibly shorter lines because more voters would have chosen to vote by absentee ballot rather than stand on line on Election Day.

At this time the League of Women Voters does not have positions on either early voting or electronic voting. However, we fully support your efforts to have the State Legislature pass enabling legislation on Same-day registration and no-excuse absentee voting.



JONATHAN L. BING
Member of Assembly
73RD District

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

CHAIR
Subcommittee on
Mitchell-Lama Housing

COMMITTEES
Banks
Health
Housing
Judiciary
Social Services
Tourism, Arts & Sports Development

**TESTIMONY BEFORE THE NEW YORK CITY COUNCIL
GOVERNMENTAL OPERATIONS COMMITTEE ON
ELECTION REFORM AND MODERNIZATION**

November 25, 2008

I am Assembly Member Jonathan Bing and I represent the 73rd Assembly District on Manhattan's East Midtown and Upper East Side with over 80,000 registered voters, 10% of whom registered in the last year. I appreciate the opportunity to testify today before the New York City Council Governmental Operations Committee on Election Reform and Modernization. I applaud the City Council's call for Early Voting, Same-day Voter Registration and Electronic Voter Registration, and look forward to their support in the coming session. I am here today to address Resolution 1251 which calls for electronic voter registration.

Earlier this year I proposed A.11167, legislation that seeks to remove many barriers to registration and electoral participation with the aim of improving voter registration among young people. In addition to providing for distribution of voter registration cards at institutions of higher learning, early registration for 17 year

olds, and postage pre-paid voter registration forms, the legislation also provided for online voter registration.

In the first two weeks of October in 2008 the New York City Board of Election was crushed under nearly 204,000 voter registration forms which it had serious difficulty processing. This brought the 2008 total for voter registrations received by the New York City Board of Election to nearly 715,000, as compared with 253,000 in all of 2007. Local Boards of Elections throughout the State reported similar unprecedented volume and struggled to get thousands of voter registration records entered in time for the General Election.

On Election Day, Voters appeared to discover their names were not listed in the poll book, which is required to vote on the machines. Many of these voters fell victim to data entry errors, something that is common for voters with ethnic names. A simple misspelling in their name made it nearly impossible to locate their name in the poll book and vote on a machine. While some voters obtained a court order to vote on a machine, many voters were forced to vote by a paper ballot called an “affidavit ballot” and will learn the fate of whether their votes were counted later

this year. Online voter registration would solve data entry errors by allowing the prospective voter to enter their own name.

In response to these situations and Resolution 1251 calling upon the State Legislature to amend the State election law to permit electronic voter registration, I will be proposing new stand alone legislation, to supplement my previous bill, which will specifically allow citizens to register to vote online with the New York State Board of Elections by filling their voter registration card online. Voters will be able to provide Social Security numbers or the identification number from their New York State driver license or non-driver identification. Those that use DMV identification will have signatures imported from the DMV and would not need further identification when voting for the first time. Those using Social Security numbers would need to show identification when voting for the first time since they would be unable to meet New York State's signature requirements.

Both of my bills would use online voter registration to improve poll book accuracy and cure recent backlogs at local Boards of Election across the State. We have to make it as easy as possible for people to register to vote and ensure the hardworking public servants in the city's Board of Elections offices can properly

JONATHAN L. BING
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handle the large amount of new registrations, these bills will help make that possible.

Thank you for calling attention to election reform and electronic voter registration. I look forward to working with the New York City Council in the coming session to accomplish these reforms.

James A. Walsh
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**TESTIMONY BEFORE THE NEW YORK CITY COUNCIL
DOUGLAS A. KELLNER
Co-Chair, New York State Board of Elections
November 25, 2008**

The time has come for comprehensive legislation to make the principle of universal suffrage truly meaningful by also providing for universal registration. It should be unacceptable in our democratic society that citizens are deprived of their right to vote by the requirement of advance registration. The concept is quite simple: every citizen over 18 years of age, who is not incarcerated for a felony conviction and who has not been declared judicially incompetent should be entitled to vote. Period.

There should be a legal presumption that everyone is entitled to vote and the burden should be on the government to show that the voter is ineligible. All of the technical barriers erected by the voter registration system should be abolished.

North Dakota is the only state that does not require any form of voter registration. In order to vote in North Dakota, one simply must be 18, a U.S. citizen, a North Dakota resident, and a resident in the precinct for thirty days prior to the election. If New York were to adopt the North Dakota model, it could save upwards of \$50 million per year that it now spends to maintain its voter registration lists. I urge all of us in government to consider whether the cost of maintaining voter registration lists is worth the effort and actually accomplishes the goal of preventing voter fraud.

Of course this is a radical proposal that requires serious thought in order to implement it properly and to make it clear that individuals are still only entitled to vote once from the place where they are domiciled.

Nevertheless, even if we determine to maintain a separate system of voter lists, there are many steps that can be taken to make voter registration less of a barrier to exercising the right to vote:

- **Same day voter registration** — Article II § 5 of the New York State Constitution requires that voters register at least ten days in advance of all elections (except elections for town and village offices). This 10-day requirement was enacted long before New York started using provisional ballots. At least nine states have adopted some form of election registration¹ without any increased allegations of voter fraud. I fully support a constitutional amendment to allow same day voter registration. Furthermore, without waiting for a constitutional amendment, New York can change its registration deadline which is now 25 days before the election to 10 days before the election as allowed by the State Constitution. Realistically, it would be impossible for Boards of Elections to include all late-registered voters in the poll books distributed to each poll site, but it would allow late-registered voters to cast provisional ballots, and to have those provisional ballots counted in the final canvass.
- **Transfer of registration** — The National Voter Registration Act of 1993 requires all jurisdictions that conduct voter registration to transfer the registration of any voter who moves within the jurisdiction. Now that New York maintains a state-wide voter registration list, there is no reason why voters who move from one county to another county should not be allowed to transfer their registration to their current residence address when they go to vote. Indeed, New York should consider allowing voters registered in other states to transfer their registration when they move to an address in New York. Just as now occurs when a voter moves within the jurisdiction of a local board of elections, the voter would cast a provisional ballot, and the ballot would be counted in the canvass.
- **Provisional Ballot as a registration form** — New York should also enact the legislation passed by the Assembly many times that makes a provisional ballot affidavit a voter registration form. Most counties outside of New York City already use the provisional ballot as a registration form, so that even if the vote is not counted in the instant election, the voter will be registered for future elections. The Republicans have blocked implementation of this simple reform in New York City. Under current New York City practice, a provisional ballot that is rejected because the voter is not already registered in New York City receives a notice by mail that the ballot was rejected together with a registration form. If the voter does not return the registration form, the voter remains ineligible to vote in future elections. This unnecessary administrative burden should be eliminated.

¹ Connecticut, Idaho, Maine, Minnesota, Montana, New Hampshire, North Carolina, Wisconsin and Wyoming.

Early Voting

One of the key changes that I have observed over the years is the increasing waiting time that voters experience during the “rush hours” on election day morning. The waiting time to vote during the morning rush has been growing at an alarming rate in presidential election years. Conversely, there have not been any significant lines at most poll sites in the afternoon and evening hours.

The problem arises because more and more voters want to vote on their way to work. The number of voters in the workforce has increased significantly in the last few decades as the number of housewives has declined. In addition, fewer and fewer government agencies and employees close for the election day holiday. The result is long lines in the early morning as well as fewer people available to serve as poll workers.

One solution would be to change election day from a Tuesday to Saturday or Sunday or both weekend days in order to address those voters whose religious observance might interfere with weekend voting. Another option is to add early voting as an option.

An increasing number of New Yorkers already vote early by going to their board of elections office to cast an absentee ballot in person. Article II § 2 of the New York State Constitution, however, limits those eligible for absentee ballots to persons who may be absent from the county on election days, or those who because of illness or disability are unable to appear personally at the polling place.

Article III § 8 of the State Constitution authorizes the Legislature to change the date for state elections, but federal law sets the date for presidential and congressional elections.² The courts have ruled that early voting is permissible as long as the final day for voting occurs on the date set by Congress.

Early voting is an attractive way to increase the options available for people to vote. On the other hand, it could increase the costs of administering the election because of the need to provide additional staffing. Many states that have implemented early voting have funded their programs by reducing the number of poll sites available on election day. If New York City were to make a significant reduction in the number of available poll sites, this could have a dramatic impact on the substantial number of New Yorkers who now walk to their neighborhood polling place. I would not support expansion of early voting unless there is a concomitant commitment to fund the program without reducing local poll sites.

The New York State Board of Elections has proposed regulations that would require local boards of elections to provide adequate staffing so that lines

² 2 U.S.C. §§ 1 and 7; 3 U.S.C. § 1.

do not exceed one half hour.³ This standard is achievable by reorganizing the way poll sites operate when boards of elections begin using ballot scanning in place of lever voting machines. Because ballot scanners can accept multiple ballot forms, it will no longer be necessary to segregate voters by election districts. Instead, I urge the New York City Board of Elections, and other boards throughout the state, to reorganize how they divide tasks among poll workers in order to make the poll site more efficient. This also means increasing the number of poll workers assigned during the morning rush and reducing the number of poll workers for the less busy afternoon and evening hours. If there are savings from increased poll worker efficiency those savings can be used to make early voting more convenient.

Vote by Mail – No Excuse Absentee Voting

I distinguish vote by mail or “no excuse absentee voting” from early voting because most early voting schemes require that the voter appear in person to cast the ballot.

Many states have dramatically increased availability of voting by mail and Oregon has eliminated all poll sites and requires that all voters vote by mail. Oregon and some other states have reported significant savings by closing poll sites and encouraging or requiring voters to vote by mail.

This dramatically changes the way we conduct elections. In New York, typically only 3.5% of the electorate casts an absentee ballot. Unlimited absentee voting introduces new risks to the integrity of the election process:

- **Coercion** Because the voter is not voting in a public poll site supervised by election officials, there is no way to assure that the voter is making a private choice uninfluenced by others. For example, there are reports of churches, union and employers asking their members or employees to bring their ballots and mark them communally. There are also reports of a single family member marking and returning ballots for all members of the family.
- **Fraud** Almost all of the fraud that I have encountered as an election lawyer and as an election administrator has been connected with absentee ballots. In the 1980’s it was well-known that campaign operatives would intercept absentee ballots sent to nursing home residents. (The Legislature subsequently amended the Election Law to require that bi-partisan poll workers personally deliver absentee ballots to nursing home residents and supervise the voting of those ballots.⁴ In 1993, the New York City school system’s investigator documented that more than 100 fraudulent absentee ballots were issued in the school board election for Bronx

³ 9 NYCRR § 6210.19(c)(1)

⁴ See Election Law § 8-407

District No. 10 in the names of unsuspecting Fordham students. There were also indictments and convictions arising out a 2004 scheme where there were more than 100 ineligible absentee voters in a hotly contested Flushing Assembly race.

- **Ballot Chain of Custody** It is also much for difficult to maintain proper chain of custody for each ballot when both voters and election officials are relying on the post office for delivery of ballots. Please recall that a substantial number of persons claim that they never received their absentee ballots after sending applications to the Board of Elections. There is also little way to determine whether the post office has actually delivered the voted ballot to the Board of Elections.

At the time our republic was founded in the 18th century, all elections were conducted in public meetings. The voters had an opportunity to meet each other and voting was a communal experience. That democratic ideal has gradually broken down with the introduction of multiple poll sites and extended voting hours. While those reforms have made it easier to vote, they have also altered the communal experience of voting.

Some argue that unlimited absentee voting increases voter turnout. The academic research, however, does not bear out the claim, or that there have only been small increases.⁵ At least one study concluded that vote-by-mail had a disproportionate effect in favor of affluent voters.⁶ My conclusion is that "vote-

⁵ Gronke, Galanes-Rosenbaum, Miller: "Early Voting and Turnout"
<http://thecommoninterest.org/docs/Gronke2007.pdf>

Gronke: "Ballot Integrity and Voting by Mail: The Oregon Experience"
<http://people.reed.edu/~gronkep/docs/Carter%20Baker%20Report-publicrelease.pdf>

Kousser, Mullin: "Vote-by-mail doesn't deliver voters"
http://www.signonsandiego.com/uniontrib/20070419/news_lz7e19kousser.html

Kousser, Mullin: "Will Vote by Mail Elections Increase Turnout? Evidence from California Counties".
<http://weber.ucsd.edu/~tkousser/Will%20Vote-by-Mail%20Elections%20Increase%20Turnout.pdf>

"Instead of boosting turnout, forcing voters to cast their ballots by mail led to a drop in turnout of 2.6 percentage points in the 2000 general election and 2.9 points in the 2002 governor's race."

Gronke, Miller: "Voting by Mail: A Replication and Extension"
http://www.allacademic.com//meta/p_mla_apa_research_citation/2/1/1/7/1/pages211717/p211717-1.php

⁶ Slater, James: "Vote-by-Mail Doesn't Deliver"

by-mail" or "no excuse absentee voting" is not a panacea and raises significant other issues that suggest that legislators should exercise great caution before creating a system that significantly increases the number of ballots delivered by mail.

Would we be better off increasing voter turnout to 110%?

http://www.tompaine.com/articles/2007/06/29/votebymail_doesnt_deliver.php

"'Vote by mail' effect on voter turnout is at best neutral, but may favor affluent voters."

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: Nov 25, 2008

(PLEASE PRINT)

Name: Adrienne Kivelson

Address: 43-10 Kissena Blvd, Flushing, NY 11355

I represent: League of Women Voters

Address: 150 Broadway, N.Y.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 11/25/08

(PLEASE PRINT)

Name: Robert Gordon

Address: _____

I represent: New York Democratic Lawyers Council

Address: 461 Park Avenue South

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: William McDonald

Address: 183-11 145 Ave

I represent: Southeast Queens

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 11/25/08

(PLEASE PRINT)

Name: Andrew Stengel

Address: 161 6th Ave NYC, NY 10013

I represent: Brennan Center for Justice

Address: above

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 4 Res. No. 1698

in favor in opposition

Date: 11/25/08

(PLEASE PRINT)

Name: Rima McCoy

Address: 841 Bway

I represent: CIDNYU

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1251, 1252 Res. No. 1698

in favor in opposition

Date: 11/25/08

(PLEASE PRINT)

Name: Daniel F. Kolb

Address: 450 Lexington Avenue

I represent: Election Protection and Lawyers' Committee

Address: 1401 New York Ave, NW, Suite 400
Washington DC 20005

for
Civil
Rights

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)
Name: Teresa Hommel

Address: 10 St Marks

I represent: where's the paper

Address: _____

Please complete this card and return to the Sergeant-at-Arms

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 11/25/08

(PLEASE PRINT)
Name: Rosemond W. Dana

Address: 302 E 88 St

I represent: VAC

Address: 100 Gold St

Please complete this card and return to the Sergeant-at-Arms

THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 11/25/08

(PLEASE PRINT)
Name: SUSAN LENER

Address: 155 6th Ave. NY

I represent: Common Cause/NY

Address: 155 6th Ave. NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: Nov 25

(PLEASE PRINT)

Name: Marjorie Gersten

Address: 50 Willow St

I represent: Community Clinical Task Force

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 11/25/08

(PLEASE PRINT)

Name: REGINA M EATON

Address: 220 5TH AVE

I represent: DEMOS
220 5TH AVE

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 11/25/08

(PLEASE PRINT)

Name: Marjorie Gersten

Address: 50 Willow St Bklyn

I represent: where the paper

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 11/25/08

(PLEASE PRINT)

Name: Dick Dadey

Address: 299 Broadway, Suite 700

I represent: Citizens Union

Address: 299 Broadway, Suite 700

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 11/25/2008

(PLEASE PRINT)

Name: Douglas Kellner

Address: NYS Board of Elections

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1251
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: BENJAMIN KALLOS, Office of Assemblyman Bing

Address: 360 E 57TH ST, MEZZANINE LEVEL, NYC 10022

I represent: of

Address: _____

Please complete this card and return to the Sergeant-at-Arms