

TESTIMONY

presented by

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before the

New York State Senate Committee on Elections,

New York State Assembly Committee on Election Law,

New York State Senate Committee on Local Government

New York State Assembly Committee on Local Governments

on

Tuesday, August 11 at 10:00am

My name is Laura Wood, and I am the Senior Advisor and General Counsel to the DemocracyNYC initiative at the NYC Mayor's Office. Thank you to the Assembly and Senate Election and Local Government Committees for holding this hearing and for the opportunity to submit testimony. Thank you to Senator Myrie, Assembly Member Lavine, Senator Gaughran, and Assembly Member Thiele for your leadership, as well as to Senate Majority Leader Stewart-Cousins and Assembly Speaker Heastie.

The DemocracyNYC initiative aims to increase access to our electoral system for all New York City residents. From voter registration to the act of voting itself, we believe that participation in our democracy must be as simple as possible. This is particularly important now, given the complex burdens the COVID-19 pandemic has placed on our communities. For that reason, on behalf of the Administration, I thank everyone who played a part in what was a very intense effort these last few months to run an unprecedented primary election in the middle of a pandemic – thank you to the Legislature, the State and City Boards of Elections, advocates and others for all you have done to make voting easier and more accessible for New Yorkers during this difficult time.

Of particular note was the implementation of a universal absentee voting system at tremendous scale. The Administration is steadfast in its belief that we cannot force voters to choose between their right to vote and their health. Thus, we were very appreciative of the efforts made in expanding absentee voting for June, and the continuation of many of those efforts for November. In response, the Administration worked closely with other City agencies, good government groups, and stakeholders to make sure that there was a robust public education campaign on how to vote by mail - previously a rarely used method since New York does not yet have no excuse absentee voting. We plan to continue these efforts through the November general election, where many New Yorkers will, most likely, be voting by mail for the first time.

Despite the tremendous efforts over the past few months, there were serious problems experienced by voters during the recent primary election, arising both out of absentee voting and in-person voting. The Administration is very grateful to the Legislature for already taking steps to address some of these problems. However, there are additional items that we believe are necessary to ensure the smooth administration and accessibility of the November election:

- Absentee ballot tracking, combined with better processing of applications and post-election canvassing;
- Accessible absentee ballots for people with disabilities;
- Additional poll worker training, planning, recruitment, and shift flexibility;
- Online Voter Registration in NYC;
- Moving the voter registration deadline to ten days before Election Day.

We view these recommendations as consistent with steps the Legislature and Governor have already taken this year - which reflect attempts to allow all voters to safely and easily participate in our democracy.

Additionally, we want to note that in order for these recommendations to be viable, they must be implemented as far in advance of the general election as possible. As such, the Administration urges our State legislative partners and the State and City Boards of Elections to take up these recommendations right away to build upon the great work that has already been done.

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Review of the 2020 Primary Election

I. Absentee Voting

It goes without saying that the lead up to the 2020 Primary election was mired with uncertainty and hardship as New York grappled with the coronavirus pandemic. As the State and City were quickly forced to shut down, it became clear the March special election for Queens Borough President, the April Presidential primary, petitioning for ballot access, and registering new voters ahead of the June primary were not going to proceed as planned. Ultimately, the progression of the pandemic resulted in a combined State and Presidential primary election in June with expanded absentee voting.

The roll out of absentee ballot applications was largely successful. A series of executive orders made applying for an absentee ballot very easy, including: allowing all voters to use “temporary illness” as a reason for requesting an absentee ballot; requiring that local BOEs mail all active and inactive eligible voters an absentee ballot application with pre-paid return postage; and allowing absentee ballot applications to be done by phone, email, fax, or online. In NYC, the BOE should be commended for quickly standing up a user-friendly online portal to apply for absentee ballots, which was also available in the Voting Rights Act languages and was compatible with screen readers. In total, NYC BOE reported that over 750,000 voters [requested an absentee ballot](#) - over 30 times more than in the last presidential primary.

However, the delivery, receipt and return of absentee ballots had scattershot success in NYC. There were widespread reports on social media and by reporters of voters requesting absentee ballots, sometimes multiple times, but never receiving one. In some cases, one member of a household received an absentee ballot, but another did not, even when both were requested at the same time. A friend who is currently out of state shared that the ballot he requested many weeks before the primary never arrived. These reports apparently affected both local and relocated voters alike, irrespective of the method of request used or when during the application period a request was

made. Many voters did not receive their ballots until the day before the primary (and in some cases, not until June 23 or later).

This ultimately created a lot of confusion amongst voters, who did not have the ability to track the status of their absentee ballot. For those who were able to vote in-person, they did not know if they should make in-person voting plans or continue to wait for their ballot. Although the NYC BOE offered to look up ballot status inquiries via Twitter messenger, this system was not accessible to or scalable for all voters inquiring. Phone calls to BOE often went unanswered, and the email address BOE set up did not result in voters getting timely responses - in some cases emails to BOE went entirely unanswered. It appears that due to these failings, many voters were not able to vote.

While City BOE has made some data publicly available, we still do not have a clear and complete picture of the entire absentee process. For example, we do not know how many absentee ballots were requested each day of the application period, including on the last day to request (June 16), and by which method each request was made. We also do not know exactly how many voters who requested absentee ballots ultimately did not receive one, or how many voters received ballots close to, on, or after the deadline to postmark. We do know that the City BOE self-reported to SBOE that more than 750,000 ballots were requested and mailed out, and of those, about 403,000 or 54% were [returned](#).

To add to the difficulties, the surge in volume and delay in mailing out ballots had the unintended consequence of causing thousands of ballots to be invalidated due to a late or missing postmark. Those that received and mailed back ballots close to Election Day were more at risk of missing the statutory deadline for the Board of Elections to accept ballots- either not postmarked by Election Day or with a postmark by June 30. Lastly, the postmark date was changed by legislation from the day before an election to the day of the election on June 7. Causing further confusion, the absentee ballot instructions reflected the previous deadline of June 22.

In addition, while we are pleased that the BOE attempted to offer accessible absentee ballots to those requiring one, we have heard from disability rights advocates that there were too many challenges in returning the accessible absentee ballot. Unfortunately, although the ballot could be filled out with assistive technology, the ballot still had to be printed and mailed in paper form. This created problems with respect to the size of the paper required to print the ballot, and some voters faced challenges in being able to independently print and mail the ballot.

Finally, we are very concerned about the high invalidation rates of absentee ballots during the post election canvass. According to City BOE's [certification](#) of the presidential primary, about 315,000 of the 403,000 mail-in ballots received citywide were counted. In other words, 22% of absentee ballots across the City were thrown out. In Brooklyn, of the 120,000 absentee ballots returned, [25% were invalidated](#). A group called New Reformers received data from City BOE on absentee rejections in Queens, which shows that rejection rates reached [30% +](#) in some Assembly Districts and that rejection rates were [higher in Black and Latino communities](#). Regrettably, this high invalidation rate is not new - New York had a 14 percent absentee-ballot rejection rate statewide in the 2018 general election, the highest in the country. Reasons for invalidation vary widely, including a missing or late postmark, failing to sign the ballot envelope, ballot envelopes not being properly sealed, and the voter having voted in-person. As of today, BOE has not published detailed citywide invalidation data with reasons for rejection. The problem is not new, but the scale has

increased dramatically. Steps must be taken before November to ensure that thousands of New Yorkers are not disenfranchised for no fault of their own.

II. In-Person Voting

As DemocracyNYC does every election, we closely monitored social media reports during early voting and on Election Day, and were in close contact with City BOE to bring local and systemic issues to their attention as they arose and to provide support. From that analysis, it is our opinion that in-person voting was also met with mixed success.

In terms of COVID-19 safety precautions, the Board of Elections should be commended for their work in protecting both voters and staff. Poll sites were sanitized daily, social distancing was largely maintained, and voters were provided masks, hand sanitizer, and personal pens with which to sign the e-poll book and fill out the ballot. Thankfully, we have not heard any reports of a voter or poll worker becoming ill after being in a poll site.

Early voting went very smoothly, and voters shared that the process was quick and easy. We were pleased the City BOE stood up 79 early voting sites for the primary - 18 more than in the 2019 general election. However, early voting continues to be vastly underutilized. In total, .99% of the eligible voting population voted early in NYC (higher than the outside of NYC average of .54%). Of the 523,427 [total in-person turnout](#), 52,250 voted early, meaning almost 10% of in-person votes were early votes.

NYC experienced challenges with Election Day voting, particularly during the first half of the day. Some poll sites opened after the 6 a.m. start time, in some cases as late as 10 a.m. This was in part due to poll workers being late due to transportation issues. Poll workers must report at sites by 5 a.m. to set up, but the MTA system shuts down for cleaning between 1 a.m. and 5 a.m. There were also technical issues that delayed opening, such as Wi-Fi being down. In one instance, a poll site did not have keys to open scanners for several hours. A late start, combined with social distancing requirements, a lack of staffing, and increased turnout, resulted in lines that were several hours long at some sites.

Although voters have the right to return absentee ballots in-person to any early voting or election day poll site, there was widespread reporting on social media and by reporters of voters attempting to drop off absentee ballots, but being told by poll workers that they were not allowed to accept them. For other voters, poll workers did not know where the absentee ballots should be stored. There was no centralized absentee ballot drop off at poll sites, so voters dropping off ballots sometimes waited in the same line as in-person voters, or had to speak with several poll workers before someone would accept their ballot. This type of confusion was inefficient and contradictory to the point of minimizing public interactions by voting absentee.

Most troubling of all issues was the incorrect issuance of ballots. Until about 2 p.m., there were regular occurrences citywide of poll workers not giving Democratic primary voters both the Presidential and local ballot. Voters reported receiving either only the Presidential or the local. There were even reports of voters receiving ballots for incorrect districts (including Senate District 25 in Brooklyn). After Election Day, it was reported that hundreds of voters not enrolled in the SAM party received SAM party ballots.

As soon as it was apparent that incorrect issuance of ballots was a widespread issue, DemocracyNYC alerted City BOE. City BOE sent out instructions to poll site coordinators via an internal messenger to give out both ballots, and also posted on social media. However, reports of voters not receiving both ballots continued into the early afternoon. In some cases, when voters insisted to poll workers that there were indeed two ballots, poll workers searched for and produced the second ballot. In other cases, voters had no idea until after they had left the poll site that they were not given both ballots, if they realized it at all. There were reports on social media of poll workers incorrectly telling voters that the Presidential election was not until the fall, or that their local race was uncontested.

BOE advised DemocracyNYC that unfortunately once voters left the poll site they were not able to return to cast the second ballot. It is unclear how many voters were affected by this, but it could be estimated if BOE shared data on how many voters checked in in districts that had a local and Presidential race, and how many individual ballots were scanned. It is the Administration's view that this was nothing short of disenfranchisement of potentially thousands of voters, and is an incredibly serious oversight that must not be repeated.

III. Voter Registration

Lastly, something that has not received as much attention is the impact of the pandemic on voter registration. Voter registration rates typically increase in presidential election years when compared to other election years, and therefore such years present a vital opportunity to register youth and new Americans and to start a voting habit. In the last presidential election year, 155,215 new voters registered in the City by June of 2016; currently, [only 79,777](#) have registered over the same period in 2020. This is a 48.6% decrease, and is largely attributable to the absence of in-person registration events that could not take place due to social distancing requirements.

The massive drop-off in voter registrations due to COVID-19 has particularly impacted New York City. In 2016, the rest of the State had a 14% higher voter registration rate compared to the City's rate that year, but in 2020, the voter registration rate in the rest of the State is 45% higher. Additionally, accessibility to an online voter registration system is a longstanding equity issue specific to New York City. Although New Yorkers with a DMV issued ID can register online using the myDMV portal, this is not sufficient for New York City residents, 10% of whom do not have a DMV-issued ID. The myDMV system also has another serious barrier - the voter registration portal is only available in English. In a City where nearly one-half of all New Yorkers speak a language other than English at home, and almost 25%, or 1.8 million persons, are not English Proficient, we are at a clear disadvantage in registering people to vote using myDMV.

Before the onset of COVID-19, DemocracyNYC launched a hugely successful student voter registration drive in NYC high schools. In partnership with City agencies, advocates, and elected officials, we were able to register and pre-register 30,000 students over the course of two weeks. We had plans to continue aggressively registering voters ahead of the primary election, but had to suspend all in-person registration efforts as the pandemic took hold, as did our advocacy partners that typically conduct drives. Now that in-person gatherings are permitted to a limited extent, we are revisiting how to safely conduct voter registration events. However, social distancing guidelines mean that any in-person voter registration would be limited and likely inefficient. We are concerned that reduced rates of voter registration in the first half of 2020 indicate that young

people, new Americans, and other New Yorkers who would have been eligible to register for the first time may not be being reached ahead of a critical general election.

Looking Ahead to the 2020 General Election

In recent weeks, the President's Administration has put a spotlight on New York's primary election. The challenges we faced conducting an election heavily reliant on absentee voting is being used as a premise for absentee voting being unreliable. The President has even used New York's experience in holding an election during a pandemic as a reason for delaying the general election altogether. Whether these claims are being made under false pretense or not, New York is now under mounting pressure to address the challenges of the primary election and prepare for possibly the highest turnout we have ever seen, all while the pandemic continues to rage on. It is an extraordinary task, particularly if the next federal stimulus bill does not include enough (or any) funds for election expenses and to sustain the postal service. The Brennan Center estimates that \$4 billion is needed nationally to effectively run this election. By comparison, the CARES act included \$400 million. Regardless, our local government and the Boards of Elections must make paramount the administration of a safe and effective election that maintains faith in franchise.

If there was one lesson from the primary election that we must remember, it's that having clear and decisive information as early as possible in the process is key. In that vein, we are grateful for the State Legislature acting quickly in July to pass needed election reform measures, including continuing to allow temporary illness to be used as an excuse to apply for an absentee ballot; allowing absentee applications to begin earlier than 30 days before election day; giving voters an opportunity to cure absentee ballots; and requiring BOEs to accept absentee ballots that arrive by mail without a postmark until the day after election day. These measures will go a long way in addressing the problems outlined above, and we hope the Governor will sign them into law immediately.

There are several additional reforms that we believe the State Legislature should consider addressing if session is reconvened again before the general election, or that the State and local Boards of Elections could pursue administratively.

I. Absentee Voting

First, regarding absentee voting, it is clear that voting by mail at this scale cannot be managed effectively without the ability to track absentee ballots for both voters and BOE staff. It is critical that voters are able to independently check the status of their absentee ballot in real time so that they can follow up on potential delays, know in advance whether they need to make in-person voting plans or not, and be assured that their ballot was ultimately counted. Tracking would also alleviate pressure on BOE staff to respond to inquiries, and would assist staff in determining if delays are occurring within vendors or USPS. It is our understanding that the City BOE has an internal system that may be adapted for public use, and that there are also off the shelf options that can be purchased.

It is also clear from the absentee ballot invalidation rates that the instructions and design of the absentee ballot envelopes are not intuitive enough. Many voters forgot to sign the ballot envelope - something that can be easily fixed by including a large arrow and "sign here" lettering. Hopefully if the legislation allowing voters to cure absentee ballots with missing signatures is signed into

law, this will not be as big of an issue. However, we should still try to prevent this mistake as much as possible to make the process more efficient. Additionally, the instructions regarding submission deadlines should be in layman's terms, and include information regarding timely mailing of ballots and instructions of the different ways one could submit a ballot by mail and in-person.

Lastly, absentee ballots should be made fully accessible for people with disabilities - from requesting the ballot to returning the ballot. The current absentee system for military voters is entirely online, and can be expanded for those with disabilities.

II. In-person voting

City BOE must be prepared for much higher in-person turnout than we saw for the primary. In the 2016 presidential general election, 2.7 million New York City residents voted. If we have similar turnout for the general election, and the same percentage vote in-person as did in this year's primary (about 61%), this means we can expect 1.6 million people to vote in-person - if not more. This is more than three times the in-person total for the 2020 primary. As with the primary, we can also expect an overwhelming majority of these votes to be concentrated on a single day, Election Day, the infrastructure for which was already strained during the primary. Of course, the surge in turnout will have to be met with continued social distancing measures - meaning the status quo of operations from past presidential general elections cannot possibly be reused.

There are many changes that can be done right away that would assist in smoother operations of in-person voting procedures. First, significantly more promotion of early voting to move pressure off Election Day would result in a good return on investment. Second, having a set procedure for collecting absentee ballots at poll sites that includes a clearly marked "express" line and ballot drop off into a secure receptacle would instill more confidence in voters to use this method rather than the post office. In-person drop off of ballots should also be promoted more in public communications and explicitly included as an option in absentee ballot instructions.

In addition, it is clear that a closer look at poll site staffing, including finalizing transportation plans in advance for staff if the subways continue to close for cleaning, having more in-depth poll worker training on policies and procedures, and recruiting more workers for Election Day is called for. We believe that the City BOE would have an easier time recruiting poll workers if they took advantage of split shifts, authorized by Election Law § 3-400(7), which would allow BOE to staff up during the morning and evening rush, and offer flexibility for those unavailable for an entire 17 hour shift. We also suggest making efforts to recruit students, including seventeen-year-olds as authorized by Election Law § 3-400(8), and unemployed workers, particularly those with service industry experience. For all of these recommendations, the Administration is willing to assist in any capacity possible.

III. Voter Registration

Of course, none of these fixes mean much to those that are unable to access voter registration. As the first step in participating in our democracy, it is the most critical for voter registration to be the most accessible. We applaud the Legislature for its passage of Automatic Voter Registration (AVR) in the July session and for statewide online voter registration last year. The Administration

is committed to implementing a robust AVR system in partnership with our agencies, and looks forward to offering this service in our City. However, these systems do not go into effect until 2023 and 2021 respectively. In light of COVID-19 and the severe drop in voter registrations so far this year, as outlined earlier, there is an urgent need in New York City for an online voter registration system ahead of the critical 2020 presidential election. In particular, our youth and New Americans cannot wait, and need access to online voter registration now.

It was with the Presidential general election in mind, and the voter registration opportunities that come with it, that led us to request legislation sponsored by Senator Myrie and Assembly Member Blake, which would allow NYC to implement its ready to go online voter registration system, sunseting when the State system is up and running (S6463/A8473). The Campaign Finance Board's online voter registration platform has undergone months of testing and is ready to be rolled out immediately once this legislation is passed. The bill was passed by the Senate during the July legislative session, and if the Legislature returns to Albany this month, we hope that the Assembly will pass the bill in their house as a critical COVID-19 measure.

Passage of this bill would provide a timely way for future voters to safely register to vote during a pandemic, and would provide a safe and efficient way for our Administration, our elected partners, good government groups and advocates to register our communities. If passed, the Administration would also coordinate a plan to provide access to OVR in communities with internet deserts, and leverage our network of partners to reach those underserved communities. Given the constraints of the pandemic, we would not want to miss a once in every four years opportunity to capture tens of thousands of future voters and galvanize their energy into local elections, including the critical local New York City elections in 2021. Every day without this tool is an opportunity lost for leaders in voter registration to hold drives, many of whom have been carrying this work for decades.

Additionally, as you may be aware, the New York Civil Liberties Union and League of Women Voters is seeking, through litigation, to move the voter registration deadline from 25 days before election day to the constitutional minimum of 10 days before election day. We are aware that there is also pending legislation that would align the voter registration deadline with the constitutional minimum. If the registration deadline is changed, this could result in a "Golden Day" where the last day to register to vote would also be the first day of early voting - meaning one could potentially register to vote and vote on the same day. An opportunity to promote such a seamless process would make encouraging new voter registrations much easier, and is in line with the spirit of the same day voter registration constitutional amendment that was passed last year.

Conclusion

In conclusion, the Administration again thanks the Legislature for acknowledging the importance of our electoral process, and the need to maintain it to the highest degree despite the challenges of a pandemic. We hope this hearing will assist all of us to be as prepared as possible for the critical upcoming general election- often noted as the most important election of our lifetimes.

In order to learn from the primary election, the Board of Elections must begin work right away to improve absentee voting, notably via an absentee ballot tracking system, and improve in-person voting by investing more in early voting promotion and providing support to poll workers via increased recruitment, training and shift flexibility. Lastly, we hope that the Legislature will make voter registration as seamless as possible by passing online voter registration for NYC. In all of these efforts, the Administration is prepared to assist and support the BOE.

We are grateful for the opportunity to participate in this hearing, and for the opportunity to hear feedback from all those contributing today. We will be listening closely for ways in which the Administration can continue to assist in ensuring that future election administration goes smoothly. I would like to thank the Committee members for their time today, thank Chair Myrie, Chair Lavine, Chair Gaughran, and Chair Thiele for their leadership, and thank the Legislature for their attention to voting accessibility for New Yorkers.