

NEW YORK STATE SENATE --- DEMOCRATIC CONFERENCE

New York's Broken Democracy:
Senate Democrats Fight to Fix It.

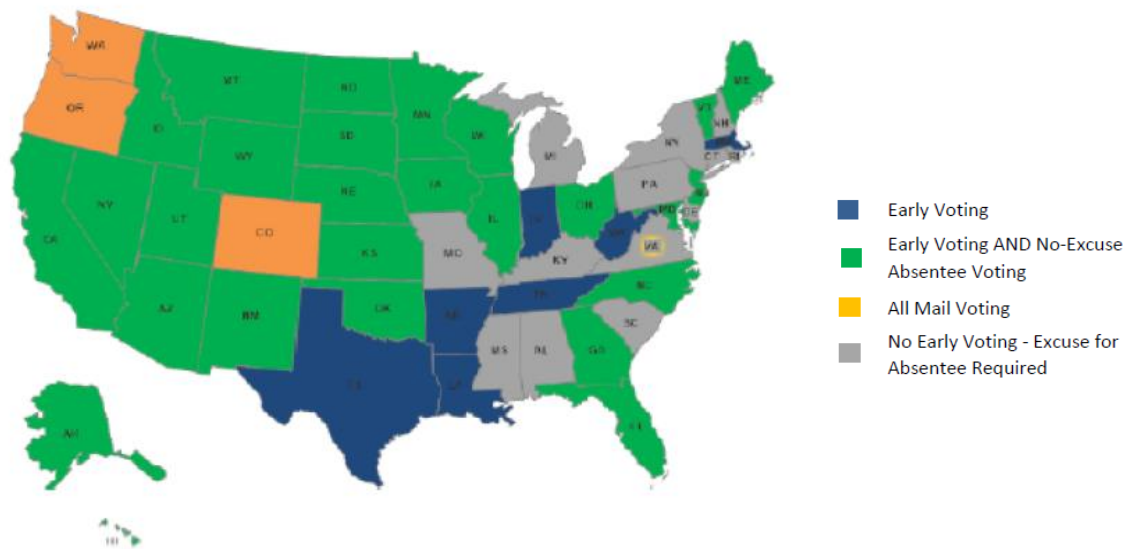


Early Voting

Early voting constitutes practices that permit voters to cast ballots without excuse prior to Election Day. The practice has more than quadrupled since the early 1990s, increasing from 7% of all votes in 1992 to over 30% in 2012.¹ In 37 states (including 3 that mail ballots to all voters) and the District of Columbia, any qualified voter may cast a ballot in person during a designated period prior to Election Day, with no excuse or justification required. In the 2016 Presidential General Election, more than 47 million voters cast ballots before Election Day.

Despite this fact, New York remains one of only 13 states that has failed to implement early voting, leading more conservative states to justify their recent attempts to suppress the vote by comparing themselves favorably to the historically progressive Empire State. As North Carolina defending its passage of the most sweeping voting restrictions in the country in 2013, its attorney defended the state against court challenges by invoking New York. “The state of New York has no early voting as opposed to North Carolina that has ten days of early voting,” North Carolina’s attorney observed “...[t]he state of New York has no same-day registration. The state of New York has no out-of-precinct voting. The state of New York has no pre-registration.”² Indeed, in a 2015 analysis by the Center for American Progress Action Fund, New York ranked 44th among the 50 states, just above South Carolina and Mississippi, with regard to ballot accessibility.³

States That Allow Early Voting⁴



¹ Burden, B., Canon, D., Mayer, K. and Moynihan, D. “Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform.” *American Journal of Political Science*. Vol. 58, No. 1 (January 2014), pp. 95-109.

² Berman, A. “27 Percent of New York’s Registered Voters Won’t Be Able to Vote in the State’s Primary: New York is the fourth-bluest state in the country, but has some of the worst voting laws.” *The Nation*. 4/18/2016. Available at <https://www.thenation.com/article/three-million-registered-voters-wont-be-able-to-vote-in-new-yorks-primary/>

³ Harmon, L. et al. “The Health of State Democracies.” Center for American Progress Action Fund. Available at [The Health of State Democracies](http://www.centerforamericanprogress.org/health-of-state-democracies/).

⁴ Source data from National Conference of State Legislatures (NCLS).

To increase accessibility for all New York to participate in the democratic process, the Senate Democratic Conference supports legislation (S.7400-Kavanagh) that establishes an early voting system to permit eligible voters throughout the state to vote in person during a designated period prior to any primary, special, or general election day. To ensure the system will not burden localities with any incurred expenses, the bill also creates the Early Voting Fund to reimburse local boards of elections for costs associated with early voting.

Same Day/Easier Registration

In addition to early voting, a number of states streamline the process of registering to vote by allowing same day registration (SDR), allowing any qualified resident of the state to go to register to vote and cast a ballot all on that day, or election day registration (EDR), which allows registration and voting on election day. In 2018, 16 states plus the District of Columbia offer SDR, and 14 states plus the District of Columbia make same day registration available on Election Day. Two states—North Carolina and Maryland—make same day registration possible for a portion of their early voting periods but not on Election Day.⁵ In most other states, voters must register by a given deadline prior to Election Day, which varies by state, with most falling between eight and 30 days before the election.

Multiple studies show that same day/election-day registration boosts turnout (between 3% and 5%),⁶ and a sizeable number of voters take advantage of this option when it is available: in the 2008 Presidential Election, 15.6% of voters in Minnesota, 16.5% in Wyoming, 13.5% in Idaho, and 11.4% in Wisconsin registered to vote on election day.⁷ In 2016, states with the highest voter turnout - Minnesota (74.8%), Maine (72.8%), New Hampshire (72.5%), Colorado (72.1%), Wisconsin (70.5%), and Iowa (69.0%), all offered same day voter registration, enabling voters to register or update their registration when they vote. New York's voter turnout, by contrast, ranked 41st in 2016, at 57.3%, slightly better than its ranking at 44th in 2012, but still poor enough to, with California and Texas, to drag the national average down 1.5%.⁸ Of the 13.8 million New Yorkers who would be eligible to vote in the 2016 Presidential Election, only 9.14 million (66.5%) were registered to vote.⁹

⁵ "Same Day Voter Registration." NCSL. 10/12/2017. The original article identified 13 states that currently had EDR as of the 2017 writing, with Hawaii to join the ranks of EDR states in 2018 - accounted for above.

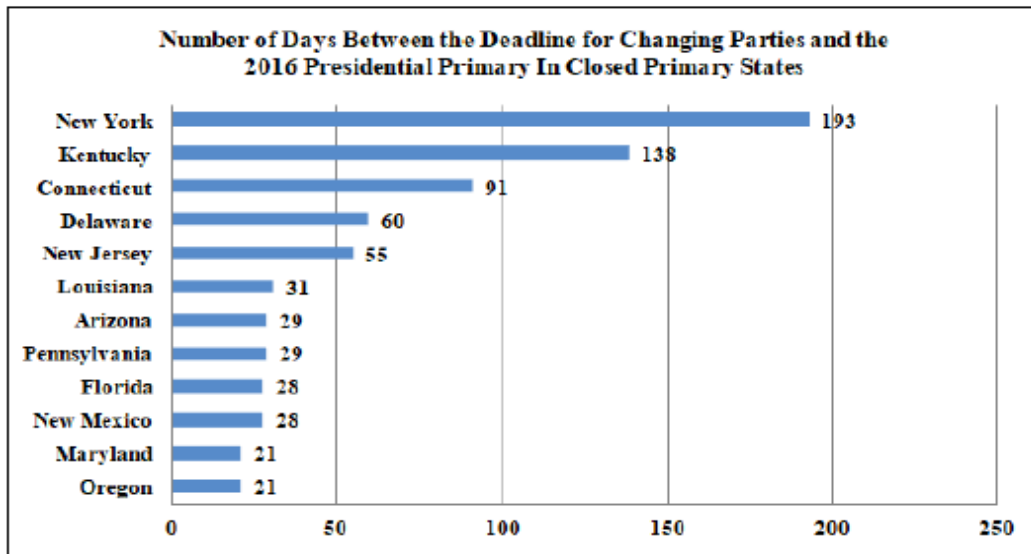
⁶ National Conference of State Legislatures at <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>.

⁷ Burden, B. et al. "The Effects and Costs of Early Voting, Election Day Registration, and Same Day Registration in the 2008 Elections." Pew Charitable Trusts' Make Voting Work.

⁸ "American Goes to the Polls: A Report on Voter Turnout in the 2016 Election." U.S. Elections Project and Non-Profit Vote. Available at <http://www.nonprofitvote.org/documents/2017/03/america-goes-polls-2016.pdf>.

⁹ U.S. Census Bureau. See also Voter Participation Data Center at <http://data.voterparticipation.org/states/NY/>.

Table 1¹³



These restrictions disenfranchised nearly 30 percent of New Yorkers, including, most famously, the Trump children, who didn't change their registrations from independent to Republican in time.¹⁴ During the primary, the NYS Attorney General's Office (OAG) received over 1,500 complaints about ballot access, 20% of which typically regarding local Boards of Elections denying voters the opportunity to cast affidavit ballots; inadequate notice to voters of their assigned polling site; and local BOE denial, pursuant to state law, of allowing voters the opportunity to cast ballots between 6:00 am and 12:00 pm on Primary Day.¹⁵ Nationally, the nonpartisan Election Protection voter hotline, 866-OUR-VOTE, received over 900 calls from New Yorkers during the primary, exceeding the number of calls received from voters in other states with restrictive voting laws like Texas and Georgia.¹⁶

On Long Island, thousands of people showed up to vote April 19 for (or against) a candidate, but were found not to be signed up with the Democrats or the Republicans. They were given affidavit ballots to be counted later, all but 10% of which were rejected in the counting process that followed.¹⁷ In New York City, 14% percent of the City's polling sites mishandled affidavit ballots, and at one location, poll workers were unaware that a voter should have been offered an

¹³ Source: "A Report On Voter Access In the 2016 Presidential Primary." A Report from the Civil Rights Bureau of NYS Attorney General Eric T. Schneiderman. December 2016. See fn16 for comparative state statute research. Available at https://ag.ny.gov/sites/default/files/2016_statewide_elections_report.pdf.

¹⁴ Berman, A. "27 Percent of New York's Registered Voters Won't Be Able to Vote in the State's Primary: New York is the fourth-bluest state in the country, but has some of the worst voting laws." *The Nation*. 4/18/2016. Available at <https://www.thenation.com/article/three-million-registered-voters-wont-be-able-to-vote-in-new-yorks-primary/>.

¹⁵ *Supra*. Note 12.

¹⁶ Burgess, S. "New York Voters Encounter Barriers To The Ballot Box During The April 19 Presidential Primary." Lawyers' Committee for Civil Rights Under Law. April 19, 2016. Available at <https://www.866ourvote.org/newsroom/releases/new-york-voters-encounter-barriers-to-the-ballot-box-during-the-april-19-presidential-primary>.

¹⁷ Janison, D. "Big ballot toss on LI leaves hard questions in its wake." *Newsday*. 5/16/2016.

affidavit ballot, effectively disenfranchising voters requesting them.¹⁸ In the 2016 General Election, 3,440 ballots were voided for various reasons, ranging from extraneous markings to being cast in the wrong Election District.¹⁹

To allow easier access to the franchise during primaries, the Senate Democratic Conference supports the following legislation that would:

- allow a change in registration up to 90 days prior to a primary election being held, thereby giving voters much broader access to join a party of their choosing (S.5615-Krueger);
- streamline the process of registering to vote through the Voter Empowerment Act of New York (S.3304-Gianaris). This bill provides for automatic voter registration of eligible citizens at designated government agencies, permitting the pre-registration of sixteen and seventeen year-olds; transferring the registrations of New Yorkers who move within the state, providing for access to voter registration records and the registration of eligible citizens over the Internet, and moving the deadlines for voter registration and party enrollment;
- allow the counting of votes when they are cast in the wrong poll site but in the right county (S.4074-Dilan); and
- avoid the tossing of affidavits based on technical errors (S.1265-Comrie).

Preventing Disenfranchisement

States around the country have recently enacted laws that threaten the right to vote. After years of multi-state initiatives to limit voting rights, approximately 43 percent of eligible Americans and 47 percent of adults over 18 years old did not participate in the 2016 election. Some of them chose not to participate, while others were prevented from participating because of state voter suppression laws. Some of the challenges voters faced during early voting periods and when casting their ballots on Election Day included restrictive photo identification (Photo ID) requirements, and problems with early voting, polling places, and voter registration.²⁰

The Joint Center for Political and Economic Studies found that black voters have double the average wait time of white ones. The Center estimates that long lines deterred at least 730,000 Americans from voting in November 2012. Voting lines also cost Americans \$544 million in lost productivity and wages, creating a kind of feedback loop for voters of color, who are often less able to sacrifice their wages therefore stay away from polling places.²¹

¹⁸ "Audit Report on the Board of Elections' Controls over the Maintenance of Voters' Records and Poll Access." Report MG16-107A. NYC Office of the Comptroller. Available at https://comptroller.nyc.gov/wp-content/uploads/documents/MG16_107A.pdf.

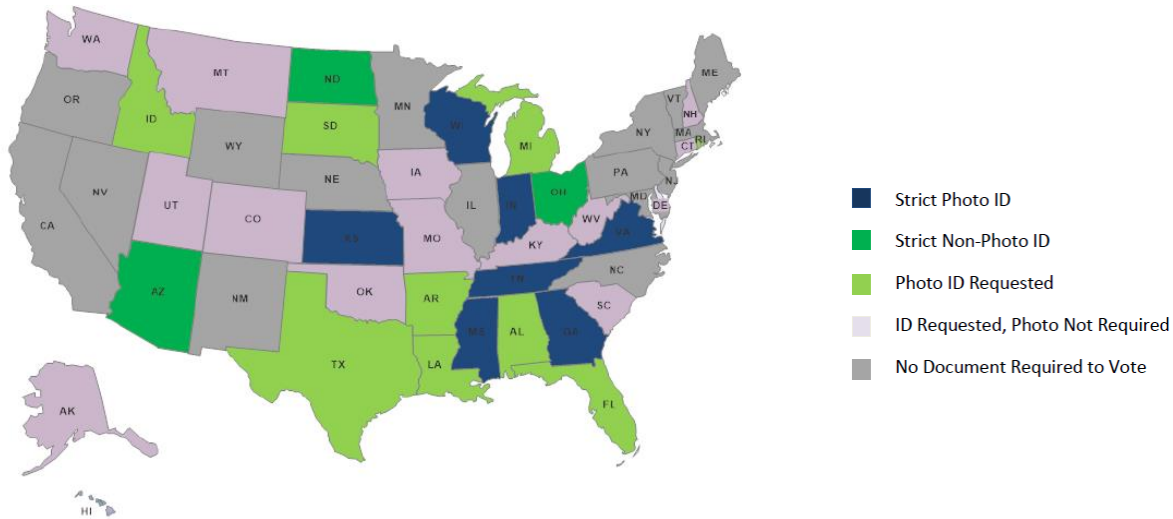
¹⁹ NYS Board of Elections, 2016 General Election Results.

²⁰ Kennedy, L. "Voter Suppression Laws Cost Americans Their Voices at the Polls." Center for American Progress. 11/11/2016. Available at <https://www.americanprogress.org/issues/democracy/reports/2016/11/11/292322/voter-suppression-laws-cost-americans-their-voices-at-the-polls/>.

²¹ "How to Reduce Long Lines to Vote—Joint Center Policy Brief." Joint Center for Political and Economic Studies. Available at <http://jointcenter.org/blog/how-reduce-long-lines-vote%E2%80%9494joint-center-policy-brief>. Reported in Wile, R. "Black people wait twice as long to vote as white people, a new study finds." Splinter. 8/11/2016. Available at <https://splinternews.com/black-people-wait-twice-as-long-to-vote-as-white-people-1793861100>.

Efforts to prevent people from voting can be both systemic through state initiatives like requiring a photo ID, which has been shown to impact low-income, and less-educated residents,²² or some other form of documentation. A total of 34 states have laws requesting or requiring voters to show some form of identification at the polls, all of which are in force in 2018. The remaining 16 states, including New York, use other methods to verify the identity of voters at the polling place.²³

Voter ID Laws in Effect 2018²⁴



Regardless of a state’s statutory requirements, voter suppression can take other forms, such as those employed for “ballot security,” an umbrella term for a variety of practices that are carried out by political operatives and private groups with the stated goal of preventing voter fraud.²⁵ In one election in New York State, poll watchers from one camp were seen “...at the sign-up tables, challenging one voter after another, insisting that their signatures didn't match the ones in registration books.”²⁶ In another, hundreds of students at Skidmore College were challenged during a mayoral election in Saratoga Springs that was ultimately decided by less than a hundred votes, and students at Vassar and Bard Colleges in Dutchess County faced a series of residency-based challenges on Election Day.²⁷

To stop this effort and take a stand against national disenfranchising tactics, the Senate Democratic Conference proposes legislation that would create a new electoral crime of voter suppression to penalize abuse and intimidating behavior and put an end to intentional efforts to

²² See, e.g. Barreto, M. et al. “The Disproportionate Impact of Voter-ID Requirements on the Electorate: New Evidence from Indiana.” *Political Science and Politics*, Vol. 42, No. 1. January 2009. American Political Science Association. See also Gillespie, J. “Voter Identification and Black Voter Turnout An Examination of Black Voter Turnout Patterns. in Georgia, 2000-2014.” *Phylon*, Vol. 52, No. 2. Winter 2015). Clark Atlanta University

²³ Underhill, W. “Voter Identification Requirements | Voter ID Laws.” National Conference of State Legislatures. 1/5/2018.

²⁴ Source: National Conference of State Legislatures

²⁵ Weiser, W. and Agraharkar, V. “Ballot Security and Voter Suppression: What It Is and What the Law Says.” The Brennan Center for Justice at New York University School of Law. 2012.

²⁶ Downes, L. “Editorial Observer; In a Gym in Yonkers, a Game of Block the Vote.” *New York Times*. 11/9/2006.

²⁷ Riley, N. “Voter Challenges.” Brennan Center for Justice at New York University School of Law.

steal elections by suppressing the vote (S.2952-Stewart-Cousins). The Conference also proposes legislation that would provide college and university campuses properties with large concentrations of voters with their own election districts and their own poll sites (S.3092-Parker), and the “Uniform Election Night Procedure Act of 2018” to streamline the process for winding down poll sites at the end of an Election Day (S.7090-Kavanagh).

Combine the State/Federal Primary

New York's annual primary moved from June to September in 1974, and from then until 2012, were held in September of even-numbered years. In January of 2012, the U.S. District Court ordered the state's primary for the U.S. House and Senate be moved to June, to ensure that absentee ballots from overseas military personnel will be sent and received in enough time to comply with the federal Military and Overseas Voter Empowerment (MOVE) Act.²⁸ The move means that every even-numbered year, New Yorkers pay for separate federal and state primaries and every four years face the prospect of paying for four statewide elections: the Presidential Primary in April, federal primaries in June, state and local primaries in September, and the general election in November.

The costs associated with each election (e.g. payments to poll workers, printing and processing ballots, and transporting equipment to and from polling sites, etc.) is borne by the locality. For the June 2016 federal and September 2016 state primary elections, New York City spent about \$9 million and \$11 million, respectively, and police overtime costs averaged about \$450,000 per primary election.²⁹ Statewide, the costs associated with each primary is estimated at \$25 million.³⁰

The Senate Democratic Conference supports legislation that would consolidate the federal and state primaries to a single primary on the fourth Tuesday in June (S.3562/Stewart-Cousins).

²⁸ See Seiler, C. “U.S. Judge Sets June Primary Date.” *Times Union*. 1/28/2012. See also *United States of America v. State of New York, et al.*, Case no 1:10-CV-1214.

²⁹ Independent Budget Office. Available at <http://www.ibo.nyc.ny.us/iboreports/shifting-state-and-federal-burdens-options-march-2017.pdf>.

³⁰ Wetzler, L. “New York Primaries are Closed, Repetitive and Costly.” *Gotham Gazette*. 7/15/2016. Available at <http://www.gothamgazette.com/index.php/state/6438-new-york-primaries-are-closed-repetitive-and-costly>.

