

Written Testimony of

Sean Morales-Doyle

Senior Counsel, Democracy Program
Brennan Center for Justice at NYU School of Law

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Hearing Concerning the Implementation of Early Voting in New York

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Thank you for the opportunity to submit this statement on the implementation of early voting in New York during the 2019 Election. The Brennan Center for Justice has worked for decades to make democracy in New York more accessible.¹ We are thrilled with all of the changes that this legislature passed last year, and even more pleased that the first early voting period in the Empire State was a resounding success. Tens of thousands of New Yorkers from Staten Island to Syracuse cast ballots during the nine days of early voting. The Brennan Center encourages the Legislature to build on this momentum and continue to make voting more inclusive and accessible.

A. Early Voting was a Success in New York

This November, for the first time in New York's history, registered voters could cast ballots in person in advance of Election Day. Over a quarter million New Yorkers took advantage of the program by casting ballots at close to 250 early voting centers throughout the state. While this may sound like a small number in a state the size of New York, with overall turnout low in the off-year election, the figure amounts to one out of every twelve ballots cast.²

In New York City alone, over 60,000 voters cast ballots early across 61 polling places.³ Again, early voting accounted for one out of every twelve ballots cast in the five boroughs.⁴ Broken down by borough and date, we see that the first day of early voting (Saturday, October 26) and the

¹ The Brennan Center for Justice at NYU School of Law is a nonpartisan public policy and law institute that works to reform, revitalize, and defend our country's systems of democracy and justice. I am a Senior Counsel in the Center's Voting Rights and Elections Program. The opinions expressed in this testimony are only those of the Brennan Center and do not necessarily reflect the opinions of NYU School of Law.

² A preliminary count of total ballots cast during the November 2019 Elections in New York was 3,102,177. Bernadette Hogan, "Less than 20% of NYC voters cast ballots this year," *New York Post*, Nov. 6, 2019.

³ Of the 61 polling places, 11 were situated in the Bronx, 18 were in Brooklyn, 9 in Manhattan; 14 in Queens; and 9 in Staten Island. See: "Information on Early Voting," Board of Elections in the City of New York, accessed November 14, 2019, <https://www.vote.nyc.ny.us/html/voters/earlyVoting.shtml>.

⁴ A preliminary count of total ballots cast during the November 2019 Elections in New York City was 723,462. Hogan, "Less than 20% of NYC voters cast ballots this year."

final weekend (November 2-3) yielded the highest daily average of votes.⁵ Statewide, November 3 was the most popular day for voting.⁶

Perhaps more important, no largescale or systematic problems were encountered during the early voting period. Paired with other new statewide initiatives, such as electronic pollbooks, the rollout of early voting came smoothly.

In sum, early voting in New York fulfilled its intended effects: eligible voters came out to the polls before Election Day ready to cast a ballot. The initiative launched with little disruption, a testament to the hard work of election administrators, poll workers, legislators, and advocates.

B. Opportunities to Expand and Improve Early Voting in New York

Although this first experience was a success, there are a couple ways we can improve the early voting experience going forward. Specifically, the State could mandate countywide early voting and citywide early voting in New York City. We caution, however, that the 2020 elections are sure to see much greater turnout. So, it would be wise to wait for more success before making drastic changes.

1. Mandate countywide early voting

Currently, the early voting law provides that “[a]ny voter may vote at any polling place for early voting established . . . in the county where such voter is registered to vote.”⁷ The law, however, allows jurisdictions to opt out of this countywide approach, stating that “if it is impractical to provide each polling place for early voting all of the election district ballots or if early voting at any such polling place makes ensuring that no voter has not previously voted early during such election, the board of elections may assign election districts to a particular early voting poll site.”⁸

Most jurisdictions in New York had countywide early voting, but there were a handful of notable exceptions. The five boroughs of New York City (New York County, Kings County, Bronx County, Richmond County, and Queens County) along with Westchester County and Orange County assigned residents to a single early voting poll site.⁹

In other words, Suffolk County, the largest county in New York after Kings County, Queens County, and New York County, successfully implemented countywide early voting this year. It also went off without a major hitch in Nassau, Erie, Monroe, and Onondaga Counties.

⁵ Early Voting Check-ins,” Board of Elections in the City of New York, last updated Nov. 5, 2019, <https://vote.nyc/important-notices/early-voting-check-ins>.

⁶ Kelly Mena, “Early voting is done. Here’s how it went. (Don’t forget: Election Day is tomorrow.),” *Brooklyn Daily Eagle*, Nov. 4, 2019.

⁷ N.Y. Elec. Law § 8-600(3).

⁸ *Id.*

⁹ “Where Can I Vote Early?,” VoteEarlyNY, accessed Nov. 14, 2019, <https://www.voteearlyny.org/>. Although Albany County assigned voters to a specific polling place, it did make one polling location available for countywide voting. *Id.*

Countywide early voting was feasible in these large jurisdictions because of other efforts New York undertook to modernize its election infrastructure, like electronic poll books and ballots on demand. Electronic poll books allowed for near-instant updates of voter registration information across a county, letting each poll worker validate registration information and ensure that the same voter does not cast a ballot twice. Ballot-on-demand printing allowed poll-workers to provide each voter with the right ballot after checking in.

Now that New York has the appropriate technology in place, the state should mandate that all jurisdictions permit countywide early voting and remove the opt out provision from the early voting law.

2. Permit Citywide Early Voting in New York City

The State can go even further here in New York City, and allow for citywide early voting. Early voting in New York City should reflect the reality that the lives of New Yorkers do not end with the boundaries of their borough. According to Census data, only 45% of New Yorkers who live in an outer borough work in the borough in which they reside.¹⁰ In the Bronx and Queens, the percentage is even lower.¹¹ With early voting hours often overlapping with the workday, adding more early voting opportunities near work or school would provide flexibility to cast an early ballot when convenient.

As noted, New York already has the infrastructure in place to make this a reality. The City also made use of e-pollbooks and ballot-on-demand printing without any widespread issues this year. The Brennan Center encourages the Legislature to pass language permitting citywide voting within New York City.

C. Pass Other Reforms to Make Democracy in New York More Inclusive

This year's success should make this Legislature proud of the sweep of other pro-voter bills passed last session, and eager to do more. Last year's reforms were needed steps to make democracy more inclusive in New York. But we should perhaps not be surprised that early voting was a success—three quarters of the country had already successfully implemented the policy. It's time for New York to be a leader. In the next legislative session, lawmakers should build on this momentum and pass two more crucial reforms: automatic voter registration ("AVR") and rights restoration for those on parole.

Legislative leaders have already announced that AVR is a priority during the next legislative session.¹² We look forward to seeing that promise become a reality early in 2020, so that boards of elections can begin the hard work of implementing the policy.

¹⁰ U.S. Census Bureau, Table S0801: "Commuting Characteristics by Sex," 2013-2017 American Community Survey 5-Year Estimates, available at American Factfinder, <http://factfinder.census.gov> (accessed Nov. 14, 2019). The percentage of residents who work inside their borough of residence are: Bronx, 42.4%; Queens, 42.6%; Brooklyn, 49.5%; Staten Island, 50.7%; Manhattan, 84.6%.

¹¹ *Id.*

¹² *Joint Statement From Senate Majority Leader Andrea Stewart-Cousins And Assembly Speaker Carl Heastie*, 2019, <https://nyassembly.gov/Press/files/20190620f.php>.

But we also need to ensure that we do not leave our neighbors behind as we build this improved system of democracy. It is past time for the legislature to codify and expand upon Governor Cuomo’s executive action to restore voting rights for people on parole. Only the Legislature can provide for a truly automatic and fully effective system of rights restoration. Nor should this be a controversial policy. It is good for our systems of democracy and criminal justice alike—that’s why the District Attorneys of Nassau County, Manhattan, Brooklyn, and the Bronx have all written letters in support of the legislation.¹³ We urge the committee to take up these bills during the next legislative session.

D. Conclusion

We applaud this Legislature for moving New York’s elections into the twenty-first century with early voting and a swath of other reforms. With early voting now up-and-running, legislators should now move to mandate countywide early voting throughout New York, and citywide early voting in New York City. The Brennan Center also encourages the Legislature to pass other pro-democracy measures such as AVR and rights restoration for New Yorkers on parole.

¹³ “Voting Rights Restoration Efforts in New York,” Brennan Center for Justice, last updated Oct. 8, 2019, <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-new-york>.