

**Testimony of the New York Civil Liberties Union**  
**before**  
**THE NEW YORK STATE SENATE STANDING COMMITTEE ON**  
**ELECTIONS**  
**and**  
**THE NEW YORK STATE ASSEMBLY COMMITTEE ON**  
**ELECTION LAW**  
**regarding**  
**The Implementation of Early Voting**

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**ACLU of New York**

1 Whitehall Street, 3rd Fl.  
New York NY 10004  
[nyclu.org](http://nyclu.org)

Donna Lieberman  
*Executive Director*

Robin Willner  
*President*

The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony regarding the implementation of in-person early voting in New York. The NYCLU, the New York State affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with eight offices across the state and over 190,000 members and supporters.

The NYCLU defends and promotes the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including the right to participate in the course of our democracy by voting, and the right of every New Yorker to engage with democratic institutions regardless of race, class, language proficiency, or any improper barriers that have historically impeded ballot access.

The enactment and implementation of early voting this year has been a critical and welcome step towards taking New York from one of the most hostile states for voting to one of the most hospitable. In January, the state legislature acted expediently to enact or initiate a host of long overdue reforms. Early voting was arguably the longest overdue. New York arrived as the 38th state to offer an election practice that has elsewhere expanded access to the franchise to all voters, but especially for the most vulnerable voters – low-income voters, minority voters, disabled voters, and student voters, among others.

On balance, these classes of voters often lack the flexibility to vote in-person on Election Day and, in New York, may be prohibited from applying for an absentee ballot due to the state’s restrictive “good cause” requirement. The text and legislative history of the early voting law clearly reflect an intent to expand access to the franchise to those voters who historically, recently, and currently have turned out at lower rates.



The NYCLU has been working with other civil rights groups, community partners, and scholars to study the implementation of early voting, to advocate for better early voting plans, and to develop recommendations to help the law better achieve its purpose of increasing political participation in New York State.

## **TAKEAWAYS FROM THE NOVEMBER 2019 IMPLEMENTATION OF EARLY VOTING**

The good news is that New York State now has the infrastructure necessary for a successful early voting program. The law provides for a nine-day period of in-person early voting that includes two weekends, offering substantial time flexibility to voters.

Although other states have been able to implement early voting and election day registration without the use of electronic poll books or ballot on demand systems, the authorization and funding for electronic poll books and ballot-on-demand systems allowed boards of elections to set up early voting sites on an expedited timeline for the November 2019 election. The vast majority of counties – including Nassau and Suffolk, which rank fourth and fifth, respectively, among New York counties in the size of their electorate, with over 1 million registered voters each – were able to take full advantage of these technologies to offer voters the opportunity to cast a ballot at any site in their county of residence. The positive experience of these counties with all-access early voting centers should provide New York City with the confidence to implement early voting centers successfully no later than the April 2020 election.

Some boards of elections also went above and beyond the bare minimum requirements of the law to provide a significant number of early voting sites. For example, the Erie County Board of Elections provided voters with 37 sites, the most in the state by a wide margin; in turn, Erie County saw early voting turnout that was second only to Nassau County, which has nearly 400,000 more voters, and exceeded turnout in every New York City borough. Schenectady County provided four early voting sites in a county with just over 100,000 registered voters – double the number required by law. According to Erie County’s Republican elections commissioner, on average, only 43 seconds elapsed between the time a voter signed in and when they were handed their ballot. Both Erie County election commissioners estimated that the introduction of electronic poll books cut voter waiting time in half over paper poll books.

But there were also counties that flouted the law’s mandate of equitable access to early voting sites. Few places were as hostile to equitable access in early voting as Rensselaer County.



The Rensselaer County Board of Elections designated only two early voting sites – the bare minimum required for a county with over 100,000 registered voters. The City of Troy is the largest municipality in Rensselaer County – about three times larger than any other in the County. According to the American Community Survey conducted by the United States Census Bureau, Troy is home to approximately 82 percent of the County’s Black population, over 70 percent of its non-white population overall, and over 70 percent of all Rensselaer County residents without access to a vehicle. The American Community Survey also shows that Black and Hispanic residents in the area are five times more likely than white residents to lack regular access to a vehicle. Troy is also the location of the County’s college student population at Rensselaer Polytechnic Institute, Hudson Valley Community College, and the Sage Colleges. Locating early voting sites in places that are not accessible by public transportation denies these groups access to early voting. Certainly, the spirit, if not the letter, of the early voting law called for an early voting site in the City of Troy.

But neither of the two sites designated by the Rensselaer County Board of Elections was located in the City of Troy. Instead, the two sites – Schodack Town Hall and Brunswick Town Office – were located in areas that are neither densely populated nor meaningfully accessible by public transportation. For voters living in minority neighborhoods in Troy to travel to Schodack Town Hall via public transportation, they would have had to take a 60-90 minute bus ride that routed over the Hudson River through Albany. Similarly, to travel to Brunswick Town Office, downtown Troy voters would have to walk for over 2 miles from the last bus stop, on a highway with spotty sidewalks.

Like most Rensselaer County residents, Troy residents generally commute within Troy or head west into the Albany-Schenectady area. Neither site was located on prevailing commuting routes for Troy residents. A site in downtown Troy would have provided an opportunity to make an early voting site a part of the commuting routes for most residents of northern Rensselaer County, including Troy. Instead, the two sites were located just outside the commuting patterns of Troy voters, while remaining convenient for all other Rensselaer County voters.

A group of advocates including the League of Women Voters, the NAACP, Troy Area United Ministries, the Sage Colleges, the NYCLU and Unity House of Troy, worked together to identify and propose an early voting site that fulfilled the central purposes of the law: to expand access to the franchise in an equitable manner by providing a site in a densely populated area, accessible by public transportation, compliant with the Americans with Disabilities Act, and located along prevailing



commuting routes for all Rensselaer County voters, including Troy voters. The Troy City Council – in a bi-partisan and unanimous vote – authorized the appropriation of \$15,000 to fund an early voting site in Troy. And yet, in spite of identifying a site that fit the law’s criteria and months of diligent advocacy, Rensselaer County and the Rensselaer County Board of Elections patently refused to consider extending equitable access to early voting for the citizens of Troy. The law must be amended so that this egregious error cannot be repeated.

The Suffolk County Board of Elections provides another example of the failure to satisfy all of the goals of the early voting law. The Suffolk County Board of Elections designated only one early voting site in each of the county’s 10 towns – including a single site in the Town of Brookhaven with its nearly 500,000 residents, and a site in the Town of Shelter Island, with fewer than 2,500 residents. Initially, the Suffolk Board of Elections planned to assign each voter only to the one early voting site in their town of residence. Ultimately, the Board of Elections agreed to allow any Suffolk County voter to cast a ballot at any early voting site, but the site plan remained grossly inequitable due to one-per-town site placement – especially given the sparse availability of public transportation on the eastern end of Long Island.

New York City provides a third problematic example, and a special case which needs to be addressed specially in the law, given its unique status as the only multi-county jurisdiction in the state. In New York City, the Board of Elections designated a total of 61 sites to serve over five million registered voters. Kings County, the largest county in the state with over 1.6 million registered voters, had only 18 early voting sites – less than half as many sites as Erie County, which has 1 million fewer voters. And unlike Erie County, voters in Brooklyn were not able to cast their ballots at any early voting site in the county.

Instead, Kings County voters were each assigned to only one site. Bronx and Queens County voters were each assigned one of only eleven and fourteen sites respectively – leaving neighborhoods like Mott Haven, Hunts Point, Williamsbridge, College Point, Whitestone, and Elmhurst without equitable access to early voting. Richmond County’s 319,000 voters were assigned to nine sites – the same number as the nearly 1.2 million voters registered in New York County. Voters in Washington Heights, Central and North Harlem, and Inwood did not have access to early voting that was equal to voters living on the Upper East or Upper West Sides.

That inequity was even worse when looking closely at concentrations of low-income minority voters in Northern Manhattan, i.e., census tracts where the median income was under \$35,000 per year.



For example, in white neighborhoods in Manhattan, the average distance to an early voting site was about 7 blocks. For low-income Hispanic neighborhoods in Manhattan, the average distance was about 20 blocks. In New York City, where the vast majority of residents typically travel by means other than personal automobile, public transportation routes can make cross-borough travel onerous, and neighborhood boundaries have real meaning, early voting site plans must be more closely tailored to the City’s unique needs.

To be sure, most Boards of Election deserve credit for implementing these reforms for the first time on an expedited timeline. Some growing pains were inevitable. We expect the Boards of Elections to learn from the debut of early voting and to make improvements for each coming election cycle, beginning with the April 2020 Presidential Primary. But the state legislature needs to amend the law to ensure that Boards of Elections cannot backslide and that some of the worst plans of 2019 – plans that not only fell short of the goal of equitable access, but were aggressively discriminatory – cannot be repeated.

### **RECOMMENDATIONS FOR IMPROVEMENTS TO THE EARLY VOTING LAW**

After monitoring the implementation of early voting and soliciting the input of community groups, scholars, and election administrators, the NYCLU has several recommendations for amendments to the early voting law.

1. ***Ensure that all voters cast can ballots at all sites.***

Currently, Election Law § 8-600(3) permits Boards of Elections to deny voters the opportunity to cast a ballot at any early voting site in their county of residence only if “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.” (Please note the typographical error in this statutory text.) With the technology available today, and changes in the law to expressly permit the use of that technology, there is no reason for Boards of Elections to opt-out of offering county-wide vote centers going forward.

In November 2019, Nassau and Suffolk Counties, each with more than one million registered voters, successfully implemented county-wide voting at 15 and 10 sites respectively. Same for Erie County, which provided 37 early voting sites to approximately 636,000 registered voters, and Onondaga County, which offered 6 vote centers to over 300,000 registered voters. By contrast, New York City, Westchester



County, Albany County, and Orange County were among the jurisdictions that voted not to allow all voters to cast ballots at any early voting site in their county of residence. In the case of New York City, home to approximately 40% of all registered voters in the state, further amendment to the law should expressly require city-wide voting. Because the majority of outer borough residents commute into Manhattan for work, city-wide voting would help fulfill the purpose of the early voting law to help New Yorkers better fit political participation into their daily routines.

**2. *Eliminate the provision that effectively exempts counties with more than 350,000 registered voters from the voters-per-site requirement and lower the standard of voters per site.***

Currently, Election Law § 8-600(2)(A) sets a standard of requiring counties to provide at least one early voting site for every 50,000 registered voters, but also provides that counties shall not be required to offer more than 7 early voting sites. This provision effectively exempts counties with more than 350,000 registered voters from the requirement that Boards of Elections designate at least one site per 50,000 registered voters. The one site per 50,000 voters standard already permits counties to designate too few early voting sites to guarantee equitable access, but the provision that allows the state's most populous counties to provide far fewer sites per voter is unworkable. New York City and Suffolk County, together home to nearly half the state's voters, are the most egregious examples.

Suffolk County provided only one site for every 100,000 voters. In New York City, the early voting plan for four out of five boroughs failed to satisfy the standard of one site per 50,000 registered voters by a wide margin. In New York County, the Board of Elections designated only one site for every 133,000 voters; in Queens and Kings Counties, one site for every 91,000 voters; and in Bronx County, one site for every 75,000 voters. By contrast, Richmond County, which has fewer than 350,000 voters, had nine sites, or approximately one site for every 35,000 voters. Every voter in New York City should have access to early voting that is at least comparable to voters in Richmond County. Disparities this enormous raise the specter of Equal Protection violations, given that voters in all five boroughs are voting for the same city-wide offices. The law should be amended to hold all counties to the same standard.

The voter-per-site standard should also be changed to require all counties to offer more early voting sites. For example, Erie County was able to offer 37 sites to 636,000 voters – a ratio of approximately one site for 17,000 voters. Schenectady County provided 4 sites to 103,000 voters



– one site for 25,750 voters – and, notwithstanding their strong efforts, still could have used an additional site convenient to voters in the northern part of the county. For geographically large counties, the standard of one site per 50,000 voters is leaving populations of significant size without convenient access to early voting. For the densest counties, where personal vehicles are not the primary mode of transportation, equitable access requires an increase in the number of early voting sites to better account for walking distances and the difficult of crosstown travel on public transit. The early voting law should thus be amended to reduce the number of voters per site by at least half and to provide a geographic standard that provides for early voting opportunities in large but less densely populated counties.

3. ***Require certain public buildings to be designated as early voting sites.***

In our conversations with election administrators, we heard their concerns about some locations that resisted being designated as early voting sites, including some public institutions. One important way to reduce the number of moving parts and friction in the early voting process would be to require certain public facilities to be designated as early voting sites. For example, every public college and university in the state should be required to host an early voting site. Doing so would guarantee election administrators a perennial group of locations and also ensure that student populations have greater access to early voting.

In New York City, designating early voting sites at CUNY-City College, Hostos Community College, Queens College, CUNY-Staten Island, and Borough of Manhattan Community College would have helped close critical gaps in early voting access. Moreover, it is only fitting that institutions dedicated to training New Yorkers to become active participants in our democracy take part in expanding access to the franchise. The state legislature should consider whether and to what extent additional classes of public buildings would be good candidates to serve as perennial early voting sites.

4. ***Authorize and fund mobile early voting sites.***

In Travis County, Texas, where the state capitol, Austin, is located, the chief elections official has said that dollar for dollar, mobile voting sites were “the most effective program we had” in increasing turnout among student voters. A program of mobile voting sites would address the difficulty of providing early voting sites at equitable



intervals in both very dense urban environments and geographically vast rural ones.

***5. Increase focus on locating early voting sites in low-turnout and low-income areas to help reduce turnout disparities correlated with income and race.***

In New York City, early-voting sites in 2019 were disproportionately close to higher turnout areas, particularly in Brooklyn and Queens. In Brooklyn, low turnout areas tended to be about half a mile farther from an early-voting site than high turnout areas. In Queens, it was a little less than that. Placing early-voting sites in some of these areas would both make access more equitable and potentially boost turnout. In The Bronx, our preliminary analysis shows relatively large geographic gaps without an early voting site and that neighborhoods that were both poor and Black were particularly in need of more convenient early voting sites. Areas near Crotona Park, Claremont Park, St. Mary's Park, the Forest Houses, and the William McKinley Houses simply do not have a proximate early-voting site. It is also worth noting that the wealthier and more middle-income areas around Pelham Bay are also lacking an early-voting site, but this population is significantly more mobile and more likely to encounter a site elsewhere in the city.

***6. Define more clearly the expenses for which Boards of Elections are required to compensate early voting sites.***

Another concern we heard from elections officials was that when they were negotiating with privately-owned facilities to become early voting sites, there were difficulties in agreeing upon the scope of expenses for which the Boards were required to compensate landlords. State intervention may be helpful here to reduce the friction involved in the process of developing early voting plans.

***7. Require Boards of Elections to demonstrate greater transparency and to accept more public input.***

The state legislature must also remedy the gross lack of transparency in the development of early voting plans. Many boards of elections failed to hold commissioner's meetings and public votes on their early voting plans, failed to disclose the records undergirding their decision-making, or dismissed the concerns of New Yorkers who tried to give input on early voting. The state legislature should amend the early voting law to ensure that decisions on the identification and selection of early voting sites are made in the open, giving members of the public an opportunity to weigh in, and that the basis for board decisions on early voting are published and held up to scrutiny.