

Testimony of the New York Civil Liberties Union
before
THE NEW YORK CITY COUNCIL COMMITTEE ON
GOVERNMENTAL OPERATIONS
regarding
Oversight - New York City's Early Voting Rollout

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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, naturalized citizen 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. In New York City, these communities constitute a very large and often overlooked part of our electorate. The majority of New York City residents are members of a racial or ethnic minority group, over three

million are foreign born, and approximately one million self-identify as having a disability. Nearly twenty percent of all New York City residents live below the poverty line. The City is also home to approximately 600,000 college or university students at over 100 institutions of higher education, including 275,000 students of the City University of New York on the system's 26 campuses. With robust implementation, in-person early voting stands to increase participation among these groups and to make our democracy a stronger and more inclusive one. 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 these goals.



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TAKEAWAYS FROM THE NOVEMBER 2019 IMPLEMENTATION OF EARLY VOTING ACROSS THE STATE

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. Rensselaer County provides a cautionary tale for the discrimination that can result without sufficient vigilance over the implementation of early voting.

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.

EARLY VOTING IN NEW YORK CITY – SUCCESSES AND OPPORTUNITIES FOR IMPROVEMENT

The case of New York City is neither as significant a success as Erie County nor as egregious a failure as Rensselaer. First, the successes: The Board of Elections deserves credit the successful implementation of new technology, including electronic poll books and ballot-on-demand printers, during early voting. Anecdotally, voters who cast ballots early generally reported good experiences at the poll site and poll workers reported favorably about their experience with the new technology. The Board of Elections should also be praised for working with community groups to devise its communications plan and we look forward to continuing that collaboration. The Board of Elections has indicated that it will increase public participation in the identification and selection of early voting sites for the 2020 election cycle, and we applaud that approach as well.

However, the November 2019 rollout of early voting in New York City also illustrates the need for a greater number of early voting sites overall, for paying closer attention to the demographics of where sites are located, and for ensuring that all voters have access to every site.

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. As we move forward into 2020, it will be critical to engage closely with a comprehensive set of demographic data and as well as public input to prevent disparities like this from occurring in the future.

To be sure, the Board of Elections deserves credit for implementing these reforms for the first time on an expedited timeline. Some growing pains were inevitable. We expect the Board of Elections to learn from the debut of early voting and to make improvements for each coming election cycle, beginning with the special election for Queens borough president and the April 2020 Presidential Primary. But legislators must continue to engage in diligent oversight to ensure that the Board of Elections can improve its performance and cannot backslide.

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 improvements to early voting in the New York City.

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. 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 voted not to allow all voters to cast ballots at any early voting site in their county of residence. 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. The City Council should ensure that the Board of Elections has the resources necessary to implement at least borough-wide voting, and preferably city-wide voting.

2. *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, CUNY facilities 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 City Council should also consider whether and to what extent additional classes of public buildings—including public libraries, transit facilities, social service offices, and cultural

institutions—would be good candidates to serve as perennial early voting sites.

3. *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. The Board of Elections and the City should look closely at a comprehensive set of demographic data and also solicit substantial public input to create an early voting plan that provides sites equally accessible to lower-income and minority voters as they are to affluent white voters, accounting for differences in scheduling flexibility and access to modes of transportation between the groups.

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