



May 16, 2019

John Wm. Zaccone, President
Michael J. Ryan, Executive Director
Board of Elections in the City of New York
32 Broadway, 7th Floor
New York, NY 10004

Dear Messrs. Zaccone and Ryan:

We write regarding our concern that the Board of Elections in the City of New York’s plans for in-person early voting for the city’s 5,180,155 registered voters fall far short of utilizing best practices and may violate state and federal law. On April 30, 2019, the Board announced that each New York City voter would each be assigned to, and could vote at, only one of 38 early voting sites, including only seven sites in Queens, the Bronx, and Manhattan, and ten sites in Brooklyn. This total number of early voting sites is inadequate, and their distribution across and within the boroughs will impose a severe burden on many of the City’s low-income voters, particularly those who work long or inflexible hours and face transportation challenges, who are disproportionately minority residents.

We urge the Board to take immediate steps to ensure that its implementation of early voting complies with state and federal law and achieves its purpose of meaningfully expanding access to the franchise for all New Yorker City voters. Critical steps include increasing the number of early voting sites available to each New York City voter; locating additional early voting sites in minority communities to ensure equitable access for all voters regardless of their race, color, ethnicity, or national origin; and making the early voting implementation process more transparent, promoting public trust and confidence in elections. The Mayor’s office has made clear that sufficient public funding and potential polling locations are available to the Board to meet the needs of all New York City voters. We stand ready to assist the Board in fulfilling its statutory and constitutional obligations, and to hold the Board accountable if it does not. New York City’s election systems—and its new early voting systems in particular—must be prepared for the unprecedented turnout expected for the 2020 elections.

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Election Law § 8-600 provides for “at least one early voting polling place for every full increment of fifty-thousand registered voters in each county.” With the conspicuous exception of Richmond County, no New York City borough comes close to meeting that threshold, due in large part to the Board’s announcement that voters will be restricted to casting a ballot at only one of the 38 early voting locations, instead of having the option of choosing between them. Voters in Richmond County (313,930 total registered voters) are assigned to seven early voting sites—a ratio of 44,487 registered voters to each location. Queens County, which has more than four times as many registered voters as Richmond County (1,258,019 registered voters), would also be assigned seven early voting sites—a

ratio of 179,717 registered voters to each location. Early voting sites in Bronx, Kings, and New York Counties also have between two and four times as many registered voters assigned to each location compared to Richmond County. Because of this disparity—and because of the Board’s announcement that voters will be restricted to casting a ballot at only one early voting location—Richmond County voters will have greater access to early voting locations than other New York City voters. This raises questions about whether the Board is treating similarly situated New York City voters unequally based on their borough of residence with respect to the exercise of their fundamental right to vote, protected by Art. II, § 1 of the New York Constitution, as well as the United States Constitution.

Of even greater concern is the prospect that this disproportionate assignment of early voting sites will have the effect of disadvantaging minority voters in particular. According to the most recent data available from the Census Bureau, the citizen voting age population, i.e. the population of eligible voters, in Richmond County is 68.5% white. By contrast, the population of eligible voters in Queens County is 67.2% people of color. The same data shows that the percentage of people of color among the population of eligible voters in Bronx, Kings, and New York Counties are 87.3%, 60.0%, and 46.9% respectively. In addition, our analysis indicates that there are large, predominantly-minority communities in Brooklyn, Queens, Manhattan, and the Bronx that are more than a half-hour walk from any early voting location. There is a particularly notable disparate impact in Queens with respect to the percentage of Black voters and naturalized citizen voters who are more than a half hour walk away from any early voting location. The likelihood that minority voters may be significantly disadvantaged compared to white voters in their ability to cast a ballot under the proposed early voting location scheme is gravely concerning—not only does Election Law § 8-600 require that early voting sites be located so that voters “have adequate and equitable access,” but Section 2 of the Voting Rights Act prohibits voting practices that result in racial or certain language minorities having “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301.

The Board’s implementation and rollout of its early voting scheme also raises concerns about whether the Board is complying with its transparency obligations to the public. Although the thirty-eight proposed early voting sites were announced during the Board’s April 30 meeting, The Board has not yet published a written list of these polling locations on its web site or in any other format. The Board has also not made available to the public any documents reflecting the process for identifying potential early voting sites; the criteria used to assess the adequacy of locations of potential sites with respect to ensuring equality of voter access; nor the reasons for selecting or rejecting any individual sites. Nor has the Board published any explanation or justification for its extraordinary decision to assign each voter to a single early voting location instead of permitting voters to cast their ballot at any early voting site in the city.

Election Law § 8-600 expressly provides: “Any voter may vote at any polling place for early voting” Allowing voters to cast their ballots at any early voting site reflects clear best practices in early voting implementation, including practices adopted by other boards of election in this state. For example, the Nassau County Board of Elections, which serves more than one million registered voters, has proposed providing 15 early voting sites—five more than *any* New York City borough—and permits voters to cast their ballots at any early voting site in the county. Although Election Law § 8-600 provides for an exception to this provision if the Board determines “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,” there is no evidence that such a determination has been made, nor what criteria may have been used by the Board in making a determination. The Board must disclose to the public why it believes it cannot meet this statutory mandate, particularly when neighboring Nassau County is able to satisfy it.

Moreover, the fact that virtually all discussions concerning the Board's implementation of early voting have occurred outside of the public view raises serious questions about whether the Board is complying with the Open Meetings Law, Public Officers Law § 100, *et seq.*

To that end, the New York Civil Liberties Union, Common Cause/New York, and the Lawyers' Committee for Civil Rights Under Law submit this request for records to the Board of Elections in the City of New York (the "Board") under the Freedom of Information Law, Public Officers Law § 85 *et seq.*, for access to and copies of the records collected by Board regarding the requests described below.

1. All plans, maps, demographic profiles, drawings, photographs, GIS records, shapefiles, electronic files, lists, or other description of New York City's proposed early voting locations and early voting districts or precincts.
2. All agendas, minutes, public notices, video or audio recordings, transcriptions, social media posts, or other records of meetings or discussions concerning New York City's early voting locations.
3. All reports, analyses, spreadsheets, maps, and studies generated by the Board or for consideration by the Board in the identification or selection of early voting locations in New York City.
4. All documents prepared by or for the Board's staff discussing, analyzing or considering the implementation of the requirement contained in Election Law § 8-600 that "any voter may vote at any polling place for early voting."
5. All documents provided to, or considered by, the Board's Commissioners regarding the implementation of the requirement contained in Election Law § 8-600 that "any voter may vote at any polling place for early voting."
6. All documents discussing, analyzing or considering whether it would be "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" within the meaning of Election Law § 8-600.
7. All documents consulted, or relied upon, by the Board's Commissioners in determining that "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" within the meaning of Election Law § 8-600.
8. All documents reflecting any discussion, consideration, or decision by the Board's Commissioners whether to a) establish that any voter may vote at any polling place in their borough or county of residence for early voting or b) to assign election districts to a particular early voting poll site.
9. All documents reflecting any discussion, consideration, or decision by the Board's Commissioners not to make written application, pursuant to Section 6210.19 (d) of the Emergency Regulations promulgated by the New York State Board of Elections, seeking a reduction in the minimum number of voting devices for the Early Voting Period provided for in Section 6210.19 (c) of the Emergency Regulations.
10. All documents and communications reflecting consideration by the Board of demographic data concerning the racial, ethnic, or language minority status of residents or voters in the identification or selection or rejection of any actual or potential polling places for early voting under Election Law §8-600 in the City of New York since January 1, 2019.

11. All documents and communications reflecting the consideration by the Board of accessibility for disabled persons in the identification or rejection of any actual or potential polling places for early voting under Election Law §8-600 in the City of New York since January 1, 2019.

The Freedom of Information Law requires that an agency respond within five business days of receipt of a request. Therefore, we would appreciate a response as soon as possible and look forward to hearing from you shortly. Please furnish records to:

Perry Grossman
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New York Civil Liberties Union
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To the extent that records are available in electronic format, we request that they be provided in that format. We request waiver of any copying fees because disclosure of the requested records is made in the public interest of ensuring that early voting in the city of New York is implemented in a manner consistent with the Constitution and laws of both the State of New York and the United States.¹

Sincerely,



Perry Grossman
Senior Staff Attorney
Voting Rights Project
New York Civil Liberties Union



Susan Lerner
Executive Director
Common Cause/New York



John Powers
Counsel
Voting Rights Project
Lawyers Committee for Civil
Rights Under Law

cc Records Access Officer, FOILrequests@boe.nyc.ny.us

¹ If for any reason any portion of this request is denied, please inform us of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed. If you determine that any portions of the requested records are exempt from disclosure pursuant to FOIL, please delete only the material claimed as exempt, inform us of the basis for the exemption claim, and furnish copies of those portions of the records that you determine not to be exempt.