



Legislative Affairs
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2019-2020 Legislative Memorandum

**Subject: Clarifying Availability of Absentee Ballots for Voting by Mail
During a Public Health Event
S.8015 (Biaggi)**

Position: SUPPORT

New York’s constitution recognizes that the right to vote is the foundation of our democracy. It is preservative of all other rights. Our state Bill of Rights begins with an admonition that “No member of this state shall be disfranchised.”¹ And for generations, both the law and constitution of New York have recognized that “[o]ne of the highest functions of government is the preservation of the public health.”² Safeguarding these ideals in times of crisis is essential.

Addressing the ongoing public health crisis arising out of the COVID-19 pandemic may require real changes to how New Yorkers exercise constitutional rights, including the right to vote. By adopting common sense practices used in other states, New York can continue to promote vigorous voter participation, while also ensuring that New Yorkers can comply with public health directives to protect against the spread of COVID-19.

As a first and immediate step, we must ensure that as many voters as possible can vote by mail. Currently, 33 states and the District of Columbia conduct their elections using mailed ballots or “no excuse” absentee voting. The New York legislature has already begun the process to adopt this practice by constitutional amendment, but the change cannot take effect until January 2022. In the meantime, lawmakers must act now to ensure that every eligible New Yorker can participate in this year’s important elections.

S.8015 clarifies that New York’s constitution and laws allow voters to obtain absentee ballots in the event of a public health risk, including but not limited to the ongoing COVID-19 pandemic. New Yorkers must be able to exercise their fundamental right to vote without endangering their own health or the health of their families, friends, and neighbors – especially those in high-risk groups. Ensuring greater access to voting by mail ensures that New Yorkers will not have to choose to between casting a ballot and undermining important public health measures.

The NYCLU supports S.8015 and calls for its immediate passage.

¹ N.Y. Const. Art. I, § 1 (Rights, privileges and franchise secured).

² *People v. Hawker*, 152 N.Y. 234, 241 (1897); *see also* N.Y. Const. Art. XVII, §3 (Public health).

Currently, New York’s constitution provides for absentee voting where qualified voters may be unable to appear personally at the polling place “because of illness.”³ This language contains no requirement – express or implied – that a voter must be personally afflicted by an illness in order to obtain an absentee ballot. In fact, Election Law § 8-400, which implements absentee voting statewide, confirms the language’s broad meaning by providing that absentee ballots are to be made available based on a broad class of adverse consequences due to the impacts of disease.⁴

Social distancing measures currently prescribed by the Centers for Disease Control, as well as state and local health officials, make voting by mail an imperative option for this year’s elections. New Yorkers are being urged to avoid crowded spaces, limit non-essential physical contact, and avoid touching surfaces to stem the virus’s spread. Making clear that absentee voting is widely available during a public health incident will limit the risk of transmission from voters closely standing in line, speaking in close quarters with poll workers, and repeatedly touching the same voting machines. In addition to preserving the health of in-person voters, broadly available voting by mail will protect poll workers, who are disproportionately older adults at higher risk of severe illness.⁵

Public confidence in elections, and in elected representatives, increases as political participation increases. Mail-in voting is correlated with higher turnout: In the 2018 midterm elections, states that permit voting by mail had, on average, 15.5% higher turnout than states that did not.⁶ Now, at a time when the need for confidence in our democratically-elected government is at its highest, states should be doing their utmost to encourage and facilitate political participation in these challenging times.

Additional Recommendations

Along with encouraging the use of absentee ballots in response to the ongoing public health emergency, New York must ensure that New Yorkers have equitable access to their use. To ensure that the cost of postage does not present an obstacle to voting, the state should offer pre-paid postage for absentee ballots; this will reduce the number of in-person transactions at post offices, as well as the number of people going to the polls or dropping off their absentee ballots in-person at the Boards of Elections. The state should also extend the deadline for casting an absentee ballot by providing that all absentee ballots postmarked by Election Day will be counted.

S.8015 represents the critical first step toward ensuring enfranchisement of all eligible voters during this pandemic, and the NYCLU urges its swift passage.

³ N.Y. Const. Art. II, § 2 (Absentee voting).

⁴ For example, the statute provides that caregiving obligations are sufficient cause to vote by absentee ballot.

⁵ Indeed, a national survey conducted by the federal Election Assistance Commission during the 2016 election cycle concluded that 56 percent of poll workers were aged 61 or older; 24 percent were over 71 years old. U.S. Election Assistance Commn., *EAVS Deep Dive: Poll Workers and Polling Places* (Nov. 15, 2017). <https://www.eac.gov/documents/2017/11/15/eavs-deep-dive-poll-workers-and-polling-places>.

⁶ Nonprofit Vote & The U.S. Elections Project, *America Goes to the Polls 2018: Voter Turnout and Election Policy in the 50 States* (Mar. 2019), available at <https://www.nonprofitvote.org/documents/2019/03/america-goes-polls-2018.pdf>.