

The New York City Bar Association
Election Law, Government Ethics & State Affairs, and New York City Affairs Committees
and Task Force on the Rule of Law
Present

NYS ELECTION REFORM 2022: THE THREE MOST IMPORTANT THINGS

Tuesday, November 16, 2021, 6:00 – 8:30 p.m.

Live at the Association and via Video Teleconference

Agenda

- Greeting, Katharine G. Loving, Chair, NYC Bar Election Law Committee
- Welcome, Sheila S. Boston, President, NYC Bar Association
- Moderator, Brigid Bergin, Senior Political Correspondent, WNYC & Gothamist
- Speakers
 - Douglas A. Kellner, Co-Chair, NYS Board of Elections
 - Michael T. Morley, Sheila M. McDevitt Professor, Florida State College of Law
 - Martin E. Connor, Election Lawyer, Former Minority Leader NYS Senate
 - Assembly Member Latrice Walker, Chair, Assembly Election Law Committee
 - Susan Lerner, Executive Director, Common Cause New York
 - Edward B. Foley, Professor, Moritz College of Law at The Ohio State University, Director, Election Law @ Moritz, Ebersold Chair in Constitutional Law
 - Senator Zellnor Myrie, Chair, Senate Election Law Committee
- Discussion led by Brigid Bergin
- Additional Viewpoints/Questions
 - Rachel Landy, VoteEarlyNY
 - Kate Doran, League of Women Voters of New York State
 - Larry Norden, Brennan Center

Co-Sponsors

Brooklyn Voters Alliance

Cmte. on Election Law & Government Affairs, NYS Bar Association General Practice Section

DemocracyNYC

Generation Citizen

Hispanic National Bar Association Region II (New York)

LatinoJustice PRLDEF

League of Women Voters of New York City

League of Women Voters of New York State

Metropolitan Black Bar Association

Muslim Bar Association of New York

National Bar Association Region II

NYPIRG

Reinvent Albany

VoteEarlyNY

Westchester County Bar Association

Co-Sponsor Priorities Prior to Date of Event
Contact Organization to Confirm Current Priorities

Brooklyn Voters Alliance

1. BOE Reform
2. Ending Felony Disenfranchisement
3. John R. Lewis NYS Voting Rights Act

Common Cause/NY

1. Election Security - voting equipment certification (S331(Myrie)/A4926(Paulin)) and ban on insecure voting machines (S309(A)(Myrie)/A1115(A)(Paulin))
2. Board of Elections Reform, including ongoing funding for election administration
3. Improve Access to the Ballot - 10-day voter registration deadline, postage pre-paid absentee ballots, NY Voting Rights Act

Generation Citizen

1. Lower the legal voting age to 16. Youth Vote is important and engaging them early in the process of voting encourage more civic engagement in the future.
2. Increased voter registration and polls in underserved communities.
3. Expand robust civic readiness education to youth in k-12 in order to expand civic readiness upon graduation.

Hispanic National Bar Association Region II (New York)

1. Elimination of 25 day voting registration deadline, i.e., same day voter registration
2. Universal mail in voting
3. Raising standards and enhancing language assistance especially in largely immigrant polling sites.

LatinoJustice PRLDEF

1. Passage of the John Lewis NYS Voting Rights Act with pre-clearance requirement
2. Improving voter registration deadlines whether through same day voter registration or extending the timeframe of voter registration
3. Accessibility of online voter registration currently only available to English language speakers

League of Women Voters of New York City

1. Repairing the voting safety net from the Voting Rights Act
2. Improving election administration in NYC
3. Continuing to make the voter registration process easier.

League of Women Voters of New York State

1. Fundamentally improve operations of county and state boards of election, with an immediate focus on increased transparency and accountability for staffing and procurement at the NYC BOE.
2. Passage of constitutional amendments to eliminate the 10-day voter registration and allow for no-excuse absentee voting.
3. Increased funding for the state and county boards of election to expand early voting statewide.

Metropolitan Black Bar Association

1. Voting rights should still exist for currently incarcerated offenders and/or immediately following and automatically reinstated upon release - without onerous requirements. Although the 14th amendment allows states to curtail this constitutional protected right - there is a patchwork of restrictions and complexities interwoven throughout the US. Only Maine and Vermont impose no restriction on incarcerated offenders.
2. Voter education should be a regular part of the American Educational system. NJ just passed legislation to include the subject of "Civics" (presumably including voter education) in its educational mandates.
3. Ensuring that there is an independent monitor and yearly assessment of any redistricting maneuvers in New York State - especially with respect to the voting blocks of Communities of Color.

Muslim Bar Association of New York

1. Voter Registration - ensuring that our communities are registered and that their voter information is up to date.
2. Equitable poll site locations - ensuring that poll site locations are located in easy to access places and that they are ADA compliant.
3. Educating our communities as to the local, state, and federal electoral processes --- often times some of the most consequential elections happen at the local level and in primary elections, especially as to amendments and other ordinances. We know NYCOTES does a great job of distilling these issues for voters on Instagram, but it would be great to do the same on other mediums to get a broader audience.

National Bar Association Region II

1. Pass the John Lewis Voting Rights Advancement Act
The John Lewis Voting Rights Advancement Act honors the late civil rights icon, Rep. John Lewis. Among other things, it would restore the requirement that certain states pre-clear certain changes to their voting laws with the federal government. The Act is vital to ensuring free and fair elections in our nation.
2. Expand Voter Registration to make it easier to register to vote in New York State
This could include eliminating the rule that voters must register at least 10 days before an election, enacting same-day voter registration, and eliminating the requirement that voters need to provide an excuse when requesting an absentee ballot
3. Reform the New York City Board of Elections
In recent years, the BOE illegally purged over 200,000 voters from rolls, sent almost 100,000 inaccurate absentee ballots to Brooklyn during the November 2020 election, and mistakenly included approximately 135,000 test ballots in its first full tally of mayoral votes. We need to implement common-sense measures that will establish accountability, transparency and trust in our voting system.

NYPIRG

1. NYS BOE Reform
2. John R. Lewis NYS Voting Rights Act
3. Require polling places on college campuses

Reinvent Albany

1. Establishing a nonpartisan board of elections by changing the state constitution.
2. Professionalizing board staff and requiring they pass a civil service exam..
3. Greater transparency in release of elections data and results

VoteEarlyNY

1. Curb "Wrong Church" suppression by enacting a ballot saving statute (A642A /S284A), which the Senate passed in May. We've attached a 1-page fact sheet and a memo in support. Here's a Democracy Docket article Rachel Landy and I published on this issue in early November: <https://www.democracymarket.com/news/state-lawmakers-must-step-in-to-remedy-supreme-court-voting-rights-blunder/>
2. Modernize Registration by setting a reasonable deadline: Move the 25-day voter registration deadline forward, to comply with the 10-day constitutional deadline.
3. State Board and County Board of Elections Reform and Professionalization: Objective and comprehensive election data regulation (better and more timely tracking, reporting, and disclosure of election data and performance metrics); Escalation mechanism: Empower Attorney General or SBOE to break deadlocks or intervene in cases of under-resourcing and where civil rights are jeopardized or being violated; SBOE Uniformity Role 1: Facilitate trainings and model administration guidance for Commissioners, Staff, and Inspectors; SBOE Uniformity Role 2: Provide basic model civic engagement materials (language and graphics) and deadline-oriented social media presence, to assist and supplement enhanced CBOE's local publicity obligations; Affirmatively clarify via reg or legislation that all BOEs are subject to the Open Meetings law and must timely respond to FOIL; SBOE enforcement power, removal power, and power of redress for Election Law violations (instead of impunity).

Bios

Brigid Bergin, Senior Political Correspondent, WNYC and Gothamist

Brigid Bergin is Senior Political Correspondent for WNYC and Gothamist. Her reporting has been featured on NPR, Marketplace, the BBC, ABC Radio, The Takeaway, NY1 and KPCC. Previously she worked as the station's City Hall and Politics Reporter, filing for both WNYC and NPR and has covered a range of stories including Occupy Wall Street, the 2012 elections, and the aftermath of the massacre in Newtown, CT. She's also traveled to Guantanamo Bay, Cuba to report on the trial of the five men accused of plotting the September 11th terror attacks.

Brigid has a passion for breaking news and served as WNYC's first Breaking News Producer. In that role, she directed on-air coverage for major breaking news events like the death of Osama Bin Laden and Hurricanes Irene and Sandy. She also managed WNYC's dynamic morning team. Before becoming a journalist, Brigid spent more than eight years at JPMorgan Chase as a communications manager. She's also a proud graduate of the New York State public education system earning her B.A. at University at Albany and her M.A. from the CUNY Graduate School of Journalism.

Sheila S. Boston, President of the New York City Bar Association, Partner Arnold & Porter

Sheila S. Boston is a trial lawyer and litigation strategist who defends clients from initiation of the case through trial and/or settlement.

Ms. Boston is valued by her clients for her advocacy skills, dependability, and collaborative spirit. Ms. Boston has successfully litigated before both state and federal courts, with significant MDL experience in mass tort actions, providing litigation avoidance counseling, and conducting audits to evaluate the potential product-related liabilities in proposed corporate acquisitions and reorganizations. She helps her clients by assessing litigation risks and defending lucrative products by weeding out frivolous individual personal injury lawsuits, defending against class actions and mass torts, and devising creative settlement solutions.

Adept in "battle of the experts" litigation, Ms. Boston has served as national coordinating counsel of experts, involving the retention, development and preparation of experts for depositions, Daubert/Frye hearings and trials; she has worked with numerous experts in various fields of medicine and science including, but not limited to, toxicology, infectious diseases, epidemiology, oncology, urology, hepatology, endocrinology, cardiology, psychology, and psychiatry.

A passionate advocate of diversity and inclusion in the workplace, Ms. Boston has won several awards for her efforts including the prestigious Chambers Diversity Awards USA 2016 inaugural award for her "Outstanding Contribution to Furthering the Advancement of Diversity in the Legal Profession, Private Practice." An active participant in bar associations and the legal community at large, Ms. Boston was appointed by New York Governor Andrew Cuomo to serve a three-year term on New York's First Department Judicial Screening Committee as well as appointed by former Chief Judge Robert A. Katzmann of the Second Circuit Court of Appeals to serve on the Circuit's Attorney Grievance Committee. Notably, Ms. Boston is currently serving as the 69th President of the New York City Bar Association, and she is the first woman of color to serve in the position.

Martin E. Connor, Law Offices of Martin E. Connor

Martin E. Connor is a longtime election lawyer, and is considered one of the top attorneys in the field. He has represented candidates at every level of government, from local, state, and congressional races, to presidential campaigns. He is the immediate past chair of the NYC Bar Election Law Committee.

Mr. Connor is a former member of the New York State Senate from Brooklyn, New York, serving from 1978 to 2008, including eight years as Minority Leader. In his time in Albany, he accumulated an extensive legislative track record on a wide range of issues. He sponsored more than 100 laws. He advocated for progressive causes such as reform of the legislative process to open Albany to public scrutiny. He observed a voluntary ban on accepting gifts and meals from lobbyists and supported making such a ban mandatory for all legislators. He also supported limiting PAC and corporate campaign contributions to reduce the influence of special interest money in campaigns, as well as spending caps on state level campaigns to provide a level political playing field.

Mr. Connor earned a B.A. in politics from the Catholic University of America and a law degree from the Catholic University School of Law, where he served as an editor of the Law Review. While still a student, Connor worked part-time for the general Counsel of the National Labor Relations Board. Later, he served as a clerk to the in-house counsel of the International Brotherhood of Teamsters. Connor practiced corporate and anti-trust law at White & Case, as well as at Xerox Corporation. He also served as Assistant Counsel to New York State Comptroller Arthur Leavitt prior to his service in the Senate.

Edward B. Foley, Moritz College of Law at The Ohio State University

Edward B. Foley holds the Ebersold Chair in Constitutional Law at The Ohio State University, where he also directs its election law program. He is a contributing opinion columnist for the Washington Post, and for the 2020 election season, he served as an NBC News election law analyst.

His most current book, *Presidential Elections and Majority Rule* (Oxford University Press, 2020), excavates the long-forgotten philosophical premises of how the Electoral College is supposed to work, as revised by the Twelfth Amendment to the U.S. Constitution, and then uses this historical analysis to provide a feasible basis for reform of state laws that would enable the Electoral College to operate according to majority-rule objectives it was designed to achieve.

His book *Ballot Battles: The History of Disputed Elections in the United States* (Oxford University Press, 2016) was named Finalist for the David J. Langum, Sr. Prize in American Legal History and listed as one of 100 “must-read books about law and social justice”.

As Reporter for the American Law Institute’s Project on Election Administration, Foley drafted *Principles of Law: Non-Precinct Voting and Resolution of Ballot-Counting Disputes*, which provides nonpartisan guidance for the resolution of election disputes. He has also co-authored *Election Law and Litigation: The Judicial Regulation of Politics* (Wolters Kluwer 2014).

During his fellowship at Stanford University’s Center on Democracy, Development, and the Rule of Law, Foley wrote *Due Process, Fair Play and Excessive Partisanship: A New Principle of Judicial Review of Election Law*, 84 U. Chicago Law Review 655-758 (2017), which was cited in briefs in *Gill v. Whitford* and *Benisek v. Lamone* (the Supreme Court gerrymandering cases). In addition to his Washington Post opinion columns, his op-eds and other essays have appeared in the New York Times, the Atlantic, Politico, and Slate, among other publications, and he frequently writes online commentary on election law issues of public interest.

Foley clerked for Chief Judge Patricia M. Wald of the U.S. Court of Appeals for the D.C. Circuit and Justice Harry Blackmun of the United States Supreme Court. He has also served as State Solicitor in the office of Ohio’s Attorney General, where he was responsible for the state’s appellate and constitutional litigation.

Douglas A. Kellner, Co-Chair NYS Board of Elections

Douglas A. Kellner has served as Co-Chair of the New York State Board of Elections since 2005. He is also the New York State representative on the U.S. Election Assistance Commission Standards Board and serves on the Advisory Board of the Verified Voting Foundation.

Before assuming his responsibilities at the State Board of Elections, he served as commissioner of the New York City Board of Elections. He is an experienced election lawyer having served as the Co-Chair of the Law Committee of the New York Democratic Committee from 1982 to 1993 and as the Chairman of the Election Law Committee of the New York County Lawyers Association.

When he was first appointed to the New York City Board, Commissioner Kellner was the very first election official to call for a voter verifiable paper audit trail for electronic voting machines, a principle now enshrined not only in New York law, but in the election codes of a majority of the states throughout the nation. While leading the opposition to unverifiable electronic machines, Commissioner Kellner was instrumental in promoting new technology for scanning absentee and provisional ballots. He drafted model procedures to open the process of canvassing ballots to public scrutiny and convinced his fellow commissioners to adopt rules that provided meaningful due process in ballot challenges. He drafted New York's regulation that requires county board to staff polls so that no voter waits more than thirty minutes to cast a ballot. He has been an outspoken advocate for improving the voting process in New York while insisting on transparency, verifiability and uniformity in voting procedures

Doug is a partner in the law firm, Kellner Herlihy Getty & Friedman LLP, where he specializes in complex international asset recovery litigation. He is the Chair of the North America Region of FraudNet, an organization of experts formed by the International Chamber of Commerce to assist in fraud recovery and tracing of assets.

Susan Lerner, Executive Director, Common Cause/New York

Susan Lerner is the executive director of Common Cause/New York, where she has served since December 2007. Passionate about voting rights and accessible, reliable, and secure elections, Susan is a founder of Let NY Vote, a statewide coalition that has successfully advocated to bring transformative election reforms, such as Early Voting and Automatic Voter Registration, to New York State. She heads Rank the Vote NYC which is conducting a citywide voter education campaign following its success in placing and passing Ranked Choice Voting on the November 2019 NYC ballot. Susan writes and speaks extensively on voting rights, election reform, campaign finance, redistricting, ethics, transparency, and other good government issues, and is a go-to source for reporters and editorial board writers throughout New York State on these issues. A former litigator, Susan is a member of the New York and California bars.

Michael T. Morley, Florida State University College of Law

Professor Morley joined FSU Law in 2018, and teaches and writes in the areas of election law, constitutional law, remedies, and the federal courts. He is best known for his work on election emergencies and post-election litigation, nationwide and other defendant-oriented injunctions, the jurisdiction of the federal courts and their equitable powers more generally. He has testified before congressional committees, made presentations to election officials for the U.S. Election Assistance Commission and participated in bipartisan blue-ribbon groups to develop election reforms. The governor of Florida also appointed Professor Morley to the Criminal Punishment Code Task Force, to propose potential revisions to the legislature.

The U.S. Supreme Court has cited several of his articles, and he was counsel of record for the successful Petitioner in a landmark campaign finance case. Professor Morley has appeared on C-SPAN,

Court TV, Fox News and numerous local news programs, and has been quoted in the *Washington Post*, *Los Angeles Times*, *Roll Call*, *Politico*, *U.S. News and World Report*, and a wide range of other national publications. His work has been published in many of the nation's top law reviews, including the *Georgetown Law Journal*, *Northwestern University Law Review*, *Boston University Law Review* and *Emory Law Journal*.

Before joining FSU Law, Professor Morley was a Climenko Fellow and Lecturer in Law at Harvard Law School. Prior to his experience in academia, he served in government as special assistant to the General Counsel of the Army at the Pentagon, as well as a law clerk for Judge Gerald B. Tjoflat of the U.S. Court of Appeals for the Eleventh Circuit. During his tenure with the Army General Counsel's office, he was awarded the Meritorious Civilian Service Award and the Army Staff Lapel Pin. He also worked as an associate at Williams & Connolly LLP and the Supreme Court & Appellate group of Winston & Strawn, LLP, both in Washington, D.C.

Professor Morley earned his J.D. from Yale Law School in 2003, where he was a senior editor on the *Yale Law Journal*; served on the moot court board; and received the Thurman Arnold Prize for Best Oralist in the Morris Tyler Moot Court of Appeals.

Zellnor Myrie, NYS Senator, Chair Committee on Elections

Senator Zellnor Y. Myrie is a Brooklyn native and affordable housing advocate serving the 20th Senate District.

During his first legislative session, Senator Myrie served in leadership roles on several major legislative victories. Having grown up in a rent-stabilized apartment at the epicenter of the affordable housing crisis, Senator Myrie was honored to co-lead the Senate's Housing Reform Working Group, which produced New York's strongest affordable housing and tenant protection laws in generations. During the legislature's budget negotiations, Myrie also served on the Senate's Criminal Justice Reform Working Group, resulting in sweeping reforms to cash bail, discovery, and speedy trial laws. As Chair of the Elections Committee, Senator Myrie led hearings on Public Financing of Elections and Automatic Voter Registration, and presided over historic election reforms including Early Voting, closing the LLC loophole, and many other crucial reforms to protect and expand our democracy.

Senator Myrie has been publicly recognized for his work, including City & State's Rising Stars Award, the Lindsay Fellowship in Government Leadership and Practice, and many other community awards.

Senator Myrie derives inspiration for his public service from his mother, who moved to Brooklyn 40 years ago from Costa Rica on the promise of a mattress in a friend's apartment and a job at a factory. Myrie is a graduate of Brooklyn Technical High School and earned his B.A. in Communications and M.A. in Urban Studies from Fordham University. He later earned his J.D. from Cornell Law School.

Latrice Walker, NYS Assembly Member, Chair, Committee on Election Law

Latrice Monique Walker was elected to the New York State Assembly in 2014 in a special election. A native of the Brownsville section of Brooklyn, Assemblywoman Latrice Walker is a licensed attorney, and has made a name for herself as a strong voice and advocate from the streets of Brownsville to the Halls of Justice.

Assemblywoman Walker was educated in the New York City public schools. She went on to receive her undergraduate degree from SUNY Purchase College, where she double majored in Sociology and Political Science. She achieved a Juris Doctorate Degree in Law from Pace University and was admitted to the New York State Bar in 2007. Assemblywoman Walker has dedicated her life's work to advocacy.

For nearly a decade, Assemblywoman Walker has worked with local elected officials to preserve affordable housing while advocating for residents of the New York City Housing Authority (NYCHA). Born and raised in Prospect Plaza, a NYCHA development demolished under a Federal HOPE VI grant, the Assemblywoman has firsthand experience on the effects of displacement and the need for adequate legislative representation. As a litigator, she has helped tenants avoid eviction and defended young minority victims of “stop-and-frisk” practices.

Assemblywoman Walker is not new to the legislative process, having served as Counsel to U.S. Representative Yvette D. Clarke since 2007; helping to plan, organize, and integrate the congressional agenda to improve her community. She played a central role in facilitating the federal, state, and city governments’ community planning and development initiatives while evaluating their economic and civic effect on the community.

Assemblywoman Walker represents the 55th Assembly District in the New York State Legislature as the chair of the Election Law Committee. Assemblywoman Walker is a member of the Codes, Correction, Housing, and Judiciary Committees as well as a member of the Taskforce on Woman’s Issues. Currently, she serves as the 1st Vice Chair of the New York State Black, Puerto Rican, Hispanic & Asian Legislative Caucus, the Vice President of the African American Clergy and Elected Officials, as well as the Chair of the New York State Association of Black, Puerto Rican Hispanic and Asian Legislators.

Assemblywoman Latrice Walker is a proud member of Zeta Phi Beta Sorority, Inc., Sigma Kappa Zeta Chapter, the New York City Bar Association and a founding member of the Ocean Hill-Brownsville Coalition of Young Professionals. As a private citizen, Latrice remains very active in community affairs and is a member of Wayside Baptist Church, a preeminent faith institution in her community.

Assemblywoman Latrice Walker resides in Ocean-Hill Brownsville and is the proud mother of a daughter, Nile Anderson.

MATERIALS FROM VoteEarlyNY

VoteEarlyNY

IMPACT OF ‘WRONG CHURCH’ VOTER SUPPRESSION IN NEW YORK

More than 13,800 affidavit ballots fully disqualified in the 2020 General Election¹

What is the Wrong Church Ballot problem?² A technicality that suppresses the votes of thousands of registered New Yorkers each year. This restriction in New York’s Election Law *fully* disqualifies affidavit ballots that are cast at any poll site other than the site assigned to the voter, even for contests voters were eligible to participate in. In Election 2020, this overbroad policy accounted for the largest source of disqualified affidavit ballots cast by duly registered New York voters (more than 50%), statewide and in nearly every county.³ The Federal *Freedom to Vote Act* and state voting rights legislation ([A642A](#)) that has passed the Senate would prohibit this harsh impact, as several other states already do (e.g., NJ, MD, CA, UT, NM, MA).

Who is Affected? “Wrong church” disproportionately disqualifies ballots in population dense counties. In 2020, the 15 most population dense counties accounted for 13,008 disqualifications, or over 94%. In New York City, majority-minority communities are disproportionately affected. Four of the top five impacted NYC Assembly Districts (and six of the top ten) were in the Bronx. In each of those six districts, the 18+ population is over 70% non-white.

A PROBLEM IN NEW YORK CITY

Nearly 69% (9,481 lost votes) were cast by registered New York City voters, who make up less than 42% of all voters.

- Of the five boroughs, the Bronx saw a disproportionate number of disqualifications: approximately one for every 187 voters in the borough.
- More voters had ballots disqualified for voting at an unassigned site in each of Assembly District 79 in the Bronx and Assembly District 24 in Queens than in all of Staten Island.
- Voters in the top 20 impacted NYC Assembly Districts had nearly as many ballots disqualified for wrong church (4,278) as residents in all 57 counties outside NYC (4,348).

¹ RACHEL LANDY AND JARRET BERG, IMPACT OF NEW YORK’S “WRONG CHURCH” BALLOT DISQUALIFICATIONS RULE IN THE 2020 GENERAL ELECTION, VoteEarlyNY, May 21, 2021, <https://bit.ly/2XmNSR3> (“WRONG CHURCH REPORT”).

² “In 2005 the Court of Appeals held that an affidavit ballot cast by an individual who voted at the wrong polling site cannot be counted. This is often referred to as the ‘wrong-church, wrong-pew’ rule.” *Tenney v. Oswego Cty. Bd. of Elections*, 2021 N.Y. Misc. LEXIS 386, [*3] (N.Y. Sup. Ct. 2021) (citing *Panio v. Sunderland*, 4 NY3d 123, 128 (2005)).

³ WRONG CHURCH REPORT 1-2; see Nick Reisman, *Lawmakers want to address ‘wrong church, wrong pew’ voting*, SPECTRUM NEWS 1, May 3, 2021, <https://bit.ly/3ITJOk3> (“This translates to a heavy percentage of affidavit ballots being rejected . . .”).

A PROBLEM ACROSS THE STATE

Over 4,000 registered voters were disenfranchised outside New York City on Election Day 2020 alone.

- Over 3,500 of these were cast in the ten most population-dense counties outside New York City.⁴
- In Erie, 83% of rejected affidavits cast by registered voters (nearly 1000) were “wrong church” ballots.
- At least 128 wrong church ballots from voters registered in New York’s 22nd Congressional District were disqualified, a contest certified with only 109 votes separating the candidates.

VoteEarlyNY

MEMORANDUM OF SUPPORT

Count Votes Cast By Registered Voters in the Correct County: A642A / S284A (2021)

VoteEarlyNY supports the enactment of **A642A / S284A**, a proposal to remedy an overbroad civil rights injustice that disqualified more than 13,800 New York ballots in the 2020 General Election.

This bill amends the Election Law to avoid disqualifying a registered voter’s *entire* ballot solely because it was cast at a poll site in their county that is different from the voter’s assigned polling place.⁵ If enacted, voters who are directed to cast an affidavit ballot instead of being redirected to their assigned site (as EL § 8-302(3)(e) requires), will still have their ballots counted for the races they are entitled to vote in. This will improve due process and ensure more accurate results.

Many states count the eligible votes on ballots cast at unassigned poll sites and the federal *Freedom to Vote Act* would require all states to do so.⁶ But in New York, these ballots are fully disqualified, even for the statewide contests that all voters may participate in like U.S. President, Senator, or

⁴ Nassau, Westchester, Rockland, Suffolk, Monroe, Erie, Schenectady, Onondaga, Albany, Orange. In addition, Dutchess, Oneida, and Ulster each voided over 100 wrong church ballots. Niagara, Broome, and Rensselaer voided over 50. WRONG CHURCH REPORT 4, App. A.

⁵ N.Y. Elect. Law § 9-209(2)(a)(iii) (“If the board of elections determines that a person was entitled to vote at such election, the board shall cast and canvass such ballot if such board finds that the voter appeared at the correct polling place, regardless of the fact that the voter may have appeared in the incorrect election district.”); Chs. 248 and 489 of 2009. “In 2005 the Court of Appeals held that an affidavit ballot cast by an individual who voted at the wrong polling site cannot be counted. This is often referred to as the ‘wrong-church, wrong-pew’ rule.” *Tenney v. Oswego Cty. Bd. of Elections*, 2021 N.Y. Misc. LEXIS 386, [*3] (N.Y. Sup. Ct. 2021) (citing *Panio v. Sunderland*, 4 NY3d 123, 128 (2005)).

⁶ Statewide ballot saving laws: CAL. ELEC. CODE § 14310 (c)(3)(A) and (B); N.J. STAT. § 19:53C-17; MD. CODE ANN., ELEC. LAW § 11-303(e)(2). Correct county ballot saving laws: UTAH CODE § 20A-4-107(2)(C); N.M. STAT. ANN. § 1-12-25.4(F). Massachusetts protects ballots cast in the correct city or town, MASS. GEN. LAWS ch. 54, § 76C(d). Georgia recently severely limited (but did not eliminate) its countywide ballot saving rule. 2021 Ga. Laws Act 9 (enacting SB 202) §§ 34 and 35. *Freedom to Vote Act*, S. 2747, 117th Cong. § 3911 (2021) (counting provisional ballots).

Governor; as well as offices these voters are usually eligible to vote for like their Member of Congress, county- or citywide officials, and state legislators. **In Election 2020, this was the largest source of disqualified affidavit ballots cast by duly registered voters. 9,481 (~69%) were cast in New York City. Several majority-minority NYC communities were disproportionately impacted—the top 20 NYC Assembly Districts had nearly as many disqualifications as all 57 counties outside NYC** (see full [VoteEarlyNY Report](#)).

The NY-22 *Tenney-Brindisi* case recently highlighted this pitfall.⁷ The *Tenney* court, consistent with current law, disqualified 128 wrong church ballots, suppressing a greater swath of registered voters on this basis than the certified 109 vote margin. Notably, the court invited lawmakers to act: “no Court has subsequently rejected the rule set forth by the Court of Appeals in *Panio*. In addition, the Legislature, despite recent sweeping reforms to the Election Law, continues to codify the ‘wrong-church, wrong-pew’ rule in Election Law § 9-209(2)(a)(iii)[.]”

In 2013, the Governor endorsed this proposal to ensure eligible votes are counted. Responding to *Tenney-Brindisi*, several election officials and a NYSECA leader announced support as well.⁸

Apart from the total suppression this harsh rule imposes on thousands of voters, the full disqualification policy causes surprise and is unjust: voters cast these ballots under the mistaken belief their votes will count. The lost voters and poll workers assisting them with affidavits are generally unaware they are assigned elsewhere, which staff can determine far more easily today using e-poll books, smart phones, or the streetfinder. But instead of being redirected as the law now requires, they are instructed to vote by affidavit without being told the full ballot will be void.

The U.S. Supreme Court recently reversed a sustained Voting Rights Act challenge to Arizona law which, like New York law, entirely disqualifies ballots cast at unassigned poll sites. In 2020, the 9th Circuit found a discriminatory *impact* on Arizona’s minority communities. Experts cited three factors making it more likely these voters turn out to vote at unassigned sites: 1) frequent site changes; 2) confusing poll site assignments; and 3) high rates of renters and resident mobility.⁹ Those factors may ring familiar to voters in several New York communities. The court found that difficulty locating the proper polling place after moving a short distance in an urban area leads to more “wrong church” ballots; that counterintuitive site assignments result in voters going to a nearby site where neighbors vote, not realizing they are assigned further away; and, that when they arrive at an unassigned site, these voters are not redirected nor informed their ballot will be void.

Moreover, during nine days of early voting, all 57 counties outside New York City permit residents to vote at any county location, i.e., there are no “wrong church” ballots to fully void in the counties during early voting. Meanwhile, City voters are still assigned to one site. Maintaining the *Panio*

⁷ *Tenney v Oswego Cty. Bd. of Elections*, *supra* note 1.

⁸ Press Release, Gov. Cuomo (2013), <https://on.ny.gov/2PjPtDL>; Patrick Lohmann, *Brindisi, Tenney Argue, Vote By Vote*, in *Epic Nail-Biter. How Perfect Does a Voter Have to Be?*, Syracuse.com, Jan 3, 2021, <https://bit.ly/3rz7A5r>.

⁹ *DNC v. Hobbs*, 948 F.3d 989, 1001-1005 and 1045 (9th Cir. 2020) (en banc), cert. granted sub nom. *Brnovich v. Democratic National Committee*, No. 19-1257, 2020 WL 5847130 (U.S. 2020). In 2018, renters made up nearly two thirds of New York City’s population and 58.5 percent of Buffalo residents. Noah Manskar, *Fewer New Yorkers Own Homes As Number Renting Grows, Figures Show*, Patch, Jan. 25, 2018, <https://bit.ly/3uVXAFu>.

rule with this access disparity in place magnifies its suppression impact in the Five Boroughs, where one out of every 187 Bronx voters cast a void affidavit ballot in the “wrong church.”

The complete disenfranchisement of thousands of registered voters compels lawmakers to fix this overbroad statute. Weighed against the avoidable impact, there is no State interest in maintaining the status quo, which punishes legitimate voters. There is no increased risk of foul play—affidavits are never scanned during voting hours and before being canvassed, officials cross-reference in-person voters and those who recently moved to prevent duplicates.¹⁰ Nationally, other states have demonstrated that it is administratively feasible for county officials at a centralized canvass to tabulate the votes for eligible contests, rather than summarily disqualifying the entire ballot.

Because this small change improves due process, protects civil rights, and ensures more accurate election results, *VoteEarlyNY* strongly supports the enactment of **A642A / S284A**.

¹⁰ Election Law § 9-209(2)(a)(i)(A) and (D)).