

## **Testimony**

**of**

**Michael Miller, President**

**New York State Bar Association**

**Election Hearing of the Assembly Standing  
Committee on Election Law, Subcommittee on  
Election Day Operations and Voter  
Disenfranchisement**

**November 15, 2018**

My name is Michael Miller; I am President of the New York State Bar Association.

Thank you for providing us with the opportunity to present the Association's views on access to the electoral system for New York's voters, an issue that will be among our legislative priorities in 2019.

In 2012, then-President Seymour James established the Association's Special Committee on Voter Participation, to identify ways to increase voter participation. In bringing together the twenty-one lawyers who make up the Special Committee he took care to assure that the Committee was balanced, especially as to possible perspectives on voting issues. The result is a Committee composed of ten Republicans, ten Democrats and one Independent. The Members were from all parts of New York State, six from New York City, eight from Westchester and Long Island and seven from upstate counties.

The Committee included a former State Senator, a former New York City Corporation Counsel, a former candidate for Governor, both large and small firm practitioners, and six women and minorities. The Committee Co-Chairs were a Republican and a Democrat and the Co-Chairs of the Committee's principal subcommittees were also represented the two major parties in the state.

The Committee's Report was adopted as policy of the Association by our House of Delegates in 2013. Further, the topic of voter participation is among the Association's state legislative priorities.

As the Report points out, voting in the United States is one of our most fundamental rights, ensuring our ability to participate in the electoral process. However, the rate of voter participation in New York State is frequently ranked among the lowest in the nation. Measures to remove barriers to registration and voting and to encourage participation, while maintaining the integrity of the process, could go a long way to improve civic engagement and enhance our democracy.

The Report's primary conclusion is that the State of New York needs to modernize its system for registering voters. If implemented, such modernization would result in a significant increase in voter participation. Such a change would also promise increased efficiency and accuracy in the voter rolls and a reduction in cost.

The Report makes several specific recommendations, as follows.

### The State Bar Association's Recommendations

#### **Modernization of Registration**

The voter registration system in New York is a creation of the New York Constitution as well as statute. Over the years the Legislature has imposed numerous and detailed requirements for registration of voters. As a result more than 100 sections of the state Election Law – virtually all of which were written before the age of computers and the Internet – address issues relating to registration.

In order to substantially increase registration and with it voter participation, we strongly recommend that the registration process be modernized so that:

- (1) Voter registration opportunities are affirmatively offered to New Yorkers whenever they engage in a transaction with a state agency, as a seamless and electronic part of that agency's existing process; and,
- (2) Voter registration opportunities are also made available online, just as they are now available by regular mail.

Moreover, as in existing law, to assure the integrity of the process, we recommend that when registering at a state agency all registrants be required to provide appropriate identification to confirm their status as eligible voters and provide a "wet signature" that will be retained as a permanent record.

Consistent with current law, all new online or agency registrants or applicants whose identifying information has not yet been verified, should be required to present an ID that complies with the Help America Vote Act (HAVA) and a "wet signature" before they are allowed to vote.

#### **Pre-Registration of 16 and 17 Year-Olds**

As a complement to modernization of registration, we also recommend that a program for the voluntary pre-registration of 16 and 17 year-olds be developed. New Yorkers aged 18 to 24 have the lowest rate of registration in the state. The experience in other states and countries indicates that pre-registration of students before they reach 18 will significantly increase voter participation in that younger age group.

## **Election-Day and Same-Day Registration**

Although it would require a constitutional amendment, we also recommend that the state take the steps necessary to permit Election-Day or, if there is early voting, Same-Day Registration – that is, registration at the polls at any time and place when the polls are open. The evidence is that such a practice, which is now used in several other states, will in itself increase registration and with it voter turnout.

Given the time it would take for a constitutional amendment and the need for further consideration of Election-Day or Same-Day Registration before it could be adopted, we urge that, in the interim, to the extent practicable, Same-Day or Election-Day Registration be considered for adoption at the local level, consistent with the freedom afforded to towns and villages under the Constitution. Such initiatives at the local level could serve as a valuable first step for the rest of the state. We further recommend that in the interim the law be changed to require that registration be allowed up to ten days before an election, as allowed by the Constitution, rather than the current twenty-five days.

## **Online Registration**

Many states have fully automated their voter registration process through their motor vehicle departments, with the result that their DMV offices collect and transmit voter registration to election officials electronically so that they may be uploaded directly to the voter registration systems. Other states, including New York, have partially automated systems.

On balance, we submit that because it would result in a greater increase in voter registration, it would be best to have the registration option at various government agencies. Thus, steps should be taken to enhance practices involving online registration, whether by administrative regulation or legislation if necessary.

## **The Voting Process**

### **Early In-Person Voting**

As an important change in the voting process we recommend that a form of In-Person Early Voting be adopted. The practice of affording voters the option of voting in person earlier than Election Day has proved to be extremely popular in other states and we would expect it to be welcomed by those in New York. In-Person Early Voting makes it easier for many voters to get to the polls and, for some, it permits them more time on a non-working day to consider the ballot and then vote more carefully. Depending on how it is managed it can also reduce lines and waiting time.

We urge that an Early In-Person Voting program be adopted that extends the time for voting back only through the weekend before Election Day and possibly, at the most, up to three additional days into the previous week. Although that would be less of an expansion of the voting period than in other states that have adopted early voting, it would nevertheless make the voting hours more convenient for most of those who have difficulty voting on a particular Tuesday and it should also be sufficient to allow for the problems of most voters who have varying days off and, especially important, for different days of religious observance. It should also permit sufficient time for those who vote early but encounter specific problems, such as the not infrequent need to prove they are registered. The relatively shorter period would at the same time serve to preserve a community spirit and leave a more concentrated period for mobilization of voters. That could itself permit a greater voter turnout.

We believe that a constitutional amendment would be necessary before such Early In-Person Voting is permitted.

### **Other Recommendations Relating to Voting**

Beyond early voting we believe there are three additional important changes that should be implemented to make the voting process more accommodating for voters:

- Improve ballot design to minimize voter confusion and mistakes by boosting the minimum font size to 12 points; clear away clutter such as the required "closed fist" (with pointing finger) symbol at the head of rows and columns; simplify voting instructions; and provide ballots in multiple languages to encourage voting among those for whom English is not their first language.

Expand recruitment and training of polling place workers and improve conditions for them to alleviate some of the difficulties voters face at their polling places; and,

- Address deceptive practices that are designed to discourage voter participation, and change New York's laws to provide criminal penalties for deceptive practices that suppress voting. In particular, we recommend boosting penalties to reflect existing penalties for voter registration fraud, including creating a Class E felony punishable by up to 4 years in prison.

## **Conclusion**

Thank you again for the opportunity to provide you with an overview of the State Bar Association's policy on increasing voter participation. I have also provided copies of the Association's full Report for your further consideration. The Report from the Special Committee on Voter Participation can be [read in full here](#). I know that you will find this to be a valuable resource as you work on the important topic of voter access.

We believe that, if implemented, the changes we recommend would have a very significant impact on voter participation, bringing New York's rates of registration and voter participation up to levels above 80% within a few years is an attainable goal if the changes we recommend are implemented.

Thank you for providing us with the opportunity to present these views on this highly important issue.