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Quickly end NY's suppressive ballot policy

Jarret Berg and Rachel Landy

April 10, 2022

Earlier this year, with the 2022 midterm elections looming, New York's Democratic members of Congress sued their own state Board of Elections in federal court for unconstitutional practices that disqualify ballots cast by duly registered voters. Chief among the alleged violations of New Yorkers' right to vote is the practice of fully disqualifying so-called "wrong church" ballots cast by lost or misdirected voters at poll sites other than the ones to which they are assigned.

Maintaining this suppressive policy means that each year, election officials void thousands of legitimate ballots containing contests all voters are eligible to participate in — like president, U.S. senator, governor, statewide ballot questions — and other contests these voters are often eligible to vote for, like congressional, countywide, legislative or local races.

This administrative pitfall led to the disqualification of nearly 14,000 votes across New York in the 2020 general election, a massive figure that the non-partisan VoteEarlyNY discovered was the largest source of disqualified provisional ballots cast by registered voters statewide. Even now, most of these registered — but disenfranchised — voters likely have no idea that the provisional ballot they cast was quietly disqualified by election officials a few days later. In fact, more voters were disenfranchised due to this rule in the race to represent Central New York's sprawling 22nd Congressional District than the margin of victory for the certified winner, Claudia Tenney.

Moreover, as the federal complaint sets out, continued enforcement of the "wrong church" rule "disproportionately burdens and disenfranchises the state's minority voters ... at a staggering rate." Voters in demographically diverse New York City, and especially in the Bronx (a majority-minority borough), bore the brunt of the 2020 wrong church disqualifications.

There is pending legislation to fix this technicality at both the federal and state level. The "Freedom to Vote Act," a sweeping voting rights

bill introduced in Congress, would have required election officials everywhere to count the eligible votes on “wrong church” provisional ballots, as many states already do, but the proposal has been repeatedly blocked by Senate Republicans.

In New York, the state Senate has repeatedly passed a simple fix to this unjust policy that preserves voters’ fundamental rights, but the legislation has yet to move in the Assembly. In March, Assembly bill sponsors Robert Carroll, D-Brooklyn, and Chantel Jackson, D-Bronx, co-hosted a legislative briefing with Election Law Committee Chair Latrice Walker, D-Brooklyn. Walker announced her support for ending this little-known form of suppression that disproportionately impacts her Brooklyn district and dozens of others around the city, including Speaker Carl Heastie’s Bronx district. Yet, the bill has not been voted out of committee.

To continue summarily voiding “wrong church” ballots punishes individual voters for falling prey to a structurally flawed barrier to voting while distorting the political will of the communities they disproportionately hail from.

The legislative fix is pragmatic, can be implemented at negligible cost, and would provide a level of certainty that waiting for a judicial resolution would not. New York’s provisional affidavit ballots are already canvassed centrally by county boards of elections, so there is minimal additional work required of election administrators to count what amounts to thousands of legitimate votes each year. That’s part of why a dozen prominent election commissioners from across the state have signed on to a letter to the Assembly speaker recommending that the Assembly remedy the problem in time for the 2022 Midterms.

Moreover, across the country, several states have remedied this disenfranchisement in the exact way contemplated by the Assembly bill.

For those tracking federal voting rights litigation, it’s an eye-opening national embarrassment for state lawmakers that New York’s congressional representatives opted to seek protection for their constituents in federal court from Albany’s antiquated and discriminatory voting policies.

They can be forgiven for expecting so little of city and state actors who — with notable exceptions — have largely ignored this problem for years. However, now that the scale of the harm has come to light, the Assembly bill has picked up serious traction, with more than 50 cosponsors and a massive showing of support from a diverse range of civic, civil rights and community groups, and election commissioners around the state. The proposed bill remains the cleanest, cheapest, and most feasible fix for the thousands of New Yorkers disenfranchised each election, and perhaps it will come to pass.

But without immediate action from the Assembly, New Yorkers (and their representatives in Congress) will be left to rely on costly, lengthy, and unpredictable litigation to protect their civil rights. With the 2022 midterms just around the corner, the Assembly has a fleeting opportunity to remedy this unjust technicality and show New York to finally be a leader on voting rights.

Jarret Berg is co-founder and voting rights counsel. Rachel Landy is a voting rights advocate and adviser for [VoteEarlyNY](#).