

MEMORANDUM OF SUPPORT

Counting Timely Received Absentee Ballots Without a Postmark

S8367 (Myrie) / NSA

The New York Democratic Lawyers Council (NYDLC) strongly supports the enactment of S8367, which would eliminate the rejection of absentee ballots solely because they are contained in envelopes that lack a postmark.

The Election Law currently provides that, in order for an absentee ballot to be counted, it must arrive at the board of elections in an envelope postmarked no later than the day of the election and be received by the board of elections no later than seven days after election day. This has the effect of needlessly disenfranchising voters whose ballots are timely received by the board of elections, but whose envelopes do not bear any postmark at all.

If enacted, this bill would alleviate the disenfranchisement of eligible voters whose absentee ballots are received by the boards of elections but do not have an official postal service postmark. The bill creates a presumption that an absentee ballot was timely mailed and delivered if the envelope is received by the board of elections no later than seven days after election day (as evidenced by a time-stamp).

New York State is on a path to increased voting by mail. Just this year, Governor Cuomo issued an executive order authorizing all voters to vote absentee in primaries and other elections, due to the coronavirus pandemic. In 2019, both houses of the Legislature approved a bill to begin the process of amending the constitution to authorize no-excuse absentee voting. However, as commentators have noted, the percentage of mail-in-ballots rejected by the boards of elections is quite high, and ballots mailed by duly registered voters are often rejected for minor, technical reasons having nothing to do with inability to discern the voter's intent or their eligibility to cast the ballot.¹ As more people cast ballots by mail, more votes are at risk of being disqualified for benign reasons, such as the lack of a postmark, through no fault of their own.

The success of absentee voting depends on voters' confidence that their votes will be counted. Technical barriers to voting that serve no pro-voter purpose, such as the existence of a postmark, will disenfranchise voters and hinder the wide adoption of absentee voting, which is more important than ever this year.

For the foregoing reasons, NYDLC strongly supports the enactment of S8367.

¹ Enrijeta Shino, Mara Suttman-Lea and Daniel A. Smith, "Here's the problem with mail-in ballots: They might not be counted," *Washington Post*, May 21, 2020, *available at* <https://www.washingtonpost.com/politics/2020/05/21/heres-problem-with-mail-in-ballots-they-might-not-be-counted/>; *see also* Anna Baringer, Michael C. Herron, Daniel A. Smith, "Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of Coronavirus," *available at* https://electionscience.clas.ufl.edu/files/2020/04/Baringer_Herron_Smith_VBM_FL.pdf and Tamar Hallerman, Tyler Estep, Amanda C. Coyne, "Democrat Bourdeaux sues Gwinnett over rejected ballots in 7th District race," *The Atlanta Journal-Constitution*, Nov. 12, 2018, *available at* <https://www.ajc.com/blog/politics/democrat-sues-gwinnett-7th-district-race-remains-unresolved/Dz9vE4Y7pyGgZidcaAB7M/>.