

MEMORANDUM OF SUPPORT

Providing Voters an Opportunity to Contest Challenges to Absentee Ballots

S8370 (Myrie) / NSA

The New York Democratic Lawyers Council (NYDLC) strongly supports the enactment of S8370 (Myrie). The COVID-19 pandemic is unprecedented in its potential to affect the free and fair administration of democratic elections in New York State and throughout the United States.

Governor Cuomo's recent Executive Order¹ allows voters to use "the potential for contraction of the COVID-19 virus" as a "temporary illness" excuse to request an absentee ballot, effectively allowing all New York voters to vote by absentee ballot in the June primary. The likely resulting increase in absentee voting provides opportunities for greater voter participation while maintaining safety and health. But that same lack of personal interaction also poses risks of reduced transparency, efficiency, and communication between voters and election officials. To preserve and protect the ability of all voters to cast a ballot and have it counted, and thus preserve trust in our election system, voters must have a reasonable and timely opportunity to learn of any challenges to, and correct any alleged deficiencies in, their absentee ballots. And they must have a way to do so safely from home while the COVID-19 pandemic is ongoing.

The Election Law currently allows boards of elections to make final determinations as to the validity of absentee ballots that are challenged. S8370 would amend the Election Law to provide voters an opportunity to contest challenges to their absentee ballots by requiring the boards of elections to notify voters within 24 hours. Voters will then have the opportunity to submit an affidavit or other sworn statement to address or cure the challenged deficiency.

Senator Myrie's Sponsor Memo notes the State's current challenging circumstances of voting during the COVID-19 pandemic, and the bill's importance in order to preserve voters' safe and effective participation in our elections. It points out that "[m]any voters will utilize absentee ballots in order to safely exercise their constitutional right to participate in their democracy during the COVID-19 pandemic. Providing absentee voters with the opportunity to cure or address any deficiencies raised in a challenge to the casting or canvassing of their ballot will ensure that technicalities that make it difficult for absentee ballots to be counted will be addressed not just during this pandemic, but also in our elections going forward."²

The COVID-19 pandemic will affect us for years to come in ways we cannot yet anticipate. We should not let it interfere with the most basic function of a democracy – every eligible voter's ability to cast a ballot and have that ballot be counted. We must do everything possible to ensure this continued ability.

For the foregoing reasons, NYDLC strongly supports the enactment of S8370.

¹ Gov. Cuomo Executive Order 202.15, April 9, 2020, available at <https://www.governor.ny.gov/news/no-20215-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

² <https://www.nysenate.gov/legislation/bills/2019/s8370>.