

MEMORANDUM OF SUPPORT

Curing Deficiencies in Absentee Ballot Envelopes

S8369 (Myrie) / NSA

The New York Democratic Lawyers Council (NYDLC) strongly supports the enactment of S8369 (Myrie), which would prohibit the boards of elections from rejecting outright ballots mailed in envelopes that are partially or imperfectly sealed. Instead, the boards of elections would be required to make a good faith effort to contact the voter and confirm the vote indicated on the ballot is the vote cast by the voter.

Election Law §9-209 currently requires boards of elections to reject mailed ballots solely for minor envelope sealing errors, which has the effect of needlessly disenfranchising voters. Under current law, the boards of elections must set aside, unopened, any envelope containing a ballot that is not sealed. Senator Myrie's bill amends the Election Law to permit voters an opportunity to cure ballots mailed in envelopes that are partially sealed, or sealed with tape, paste or other binding agents. The bill applies to absentee, military, special, as well as affidavit ballots.

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 constitutional amendment authorizing no excuse absentee voting. However, as commentators have noted, the percentage of mail-in-ballots rejected 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

If enacted, this bill would alleviate the disenfranchisement of eligible voters who make technical mistakes in sealing their envelopes. The success of absentee voting depends on voters' confidence that their votes will be counted, so long as they themselves are eligible to vote and registered, and their votes are unambiguous. Technical barriers to voting that serve no pro-voter purpose, such as imperfectly sealed envelopes, 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 S8369.

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>.