

MEMORANDUM OF SUPPORT**Allowing Voters to Vote Absentee Due to COVID-19 Concerns
S8015D (Biaggi) / 10833 (Dinowitz)**

The New York Democratic Lawyers Council (NYDLC) strongly supports the enactment of S8015D (Biaggi), which would “allow voters who are concerned about voting in-person due to an epidemic or disease outbreak to request an absentee ballot.”¹

Election Law §8-400 currently allows an individual to request an absentee ballot if they are “unable to appear at the polling place due to illness,” which may be temporary or permanent.² If enacted, S8015D would define “illness,” for the purpose of absentee voting, to include “instances where a voter is unable to appear personally at the polling place of the election district in which they are a qualified voter because there is a risk of contracting or spreading a disease causing illness to the voter or to other members of the public.” In practice, this bill would let New York voters request an absentee ballot during the pandemic under the “temporary illness” provision,³ as voters did for the June primary pursuant to the Governor’s Executive Order.⁴ That Executive Order has since expired.

In its COVID-19 health guidance for elections, the Centers for Disease Control and Prevention (“CDC”) states that “[t]he more an individual interacts with others, ... the higher the risk of COVID-19 spread.”⁵ Accordingly, the CDC recommends “offering alternatives to in-person voting.”⁶ New York remains one of the sixteen states still requiring an excuse to vote absentee in an election.⁷ With the ongoing pandemic, such limitations on voters’ ability to stay safe while participating in elections poses risks to both our public health and our democracy.

With no sign of the COVID-19 pandemic ending soon, the State legislature must act now to ensure that voters can vote absentee in November. Time is truly of the essence - we know now that last-minute expansion of New York’s absentee voting for the June primary “caught local boards of elections unprepared and revealed some significant weaknesses ... which appear to be leading to many thousands of voters who tried to cast ballots either not being able to or having their attempted vote invalidated.”⁸

With the November election just around the corner, the legislature must immediately pass S8015D to give voters and the Boards of Elections certainty about how the election will be conducted.

For the foregoing reasons, NYDLC strongly supports the enactment of S8015D.

¹ Sponsor Memo for S8015D, available at <https://www.nysenate.gov/legislation/bills/2019/S8015/amendment/D>.

² Id.

³ Id.

⁴ Executive Order No. 202.15 (Gov. A. Cuomo), April 9, 2020.

⁵ Centers for Disease Control and Prevention, Considerations for Election Polling Locations and Voters, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

⁶ Id.

⁷ National Conference of State Legislatures, Voting Outside the Polling Place, Table 1: States with No-Excuse Absentee Voting (updated May 1, 2020), available at <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx>.

⁸ Push Is On for 10 Bills to Strengthen Absentee Voting and More Ahead of Fall Election, Gotham Gazette, July 17, 2020, <https://www.gothamgazette.com/state/9600-push-10-election-reform-bills-to-strengthen-absentee-voting-fall-presidential-election-new-york>.