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New York Still Needs More Reform



By [Jerry H. Goldfeder](#) and Myrna Pérez

In their Government and Election Law column, Jerry H. Goldfeder and Myrna Pérez write that Albany appears ready to tackle voting rights in a thorough and comprehensive way, and describe some of the initiatives that could lead to expanded voting access.

As so many corporate and law firm leaders have weighed in on the restrictive voting rights laws in Georgia and Texas, we should be proud of the direction New York is going. We should not forget that voting rights in New York have not always been as robust as they should be, and that more reform is necessary.

Some have compared our state unfavorably with Georgia—arguing that voters in the Peach State would fare even worse if they lived in the Empire State. It’s not true. New Yorkers no longer need an excuse to vote absentee, and this may be incorporated in our state constitution this November. We now have early voting; there is automatic voter registration; we are on the road to a constitutional amendment for Election Day registration; and are proud to have a 30-year-old public campaign financing law in New York City, and will soon have one for New York state elections. Of course, it took us too long to get here, but we are moving towards expanding access.

Although we have an executive order effectively allowing people on parole to vote, we do not yet have legislation allowing them to do so (which we hope will be fixed soon). Moreover, in the

face of the Supreme Court's evisceration of the pre-clearance requirement of the federal Voting Rights Act's protections by the U.S. Supreme Court's decision in *Shelby County v. Holder* (which covered Manhattan, the Bronx and Brooklyn), electoral changes can be made without any oversight by the Department of Justice or the courts.

And let's not forget the obstacles to getting on the ballot, with signature and other nitpicky procedural requirements that make it difficult for candidates to run for office—having the effect of narrowing voter choice and in some instances preventing new community leaders from emerging. So, for example, although signature requirements to get on the ballot were recently reduced by the legislature in light of the pandemic, there are no alternative procedures for ballot access for most offices in New York (such as a filing fee or a demonstration of support through fundraising). Indeed, at the very moment readers are perusing this article, dozens of candidates are being disqualified by the Board of Elections and the courts for faulty paperwork, or for failing to adhere to arbitrary deadlines.

To be clear, it would be misleading to equate New York's candidate barriers to the brazenly undemocratic restrictive voting laws introduced across the country. But, of course, we can and should do more. For example, as mentioned above, legislation is needed so that everyone in the community with a past criminal conviction can vote. And there are some technical improvements needed. Take, for example, affidavit ballots. These are provided to voters whose names are, for one reason or another, not on the voter rolls on Election Day. Federal law requires that the voter be allowed to vote provisionally, and their registration and enrollment is checked after they fill out the affidavit ballot. If the ballot is not filled out just right, it might not be counted; and if the voter is in the wrong polling site, it will not be counted. The Board's procedures require poll workers to review the affidavit to make sure it is completed properly, as well as to direct the voter to their proper polling site if they are in the wrong site. The Board workers, sometimes overwhelmed by the tasks they have during moderate to high turnout elections, often fail to properly instruct voters. As a result, too many affidavit ballots are not counted.

Let's also consider our voting machines. The vote scanning machines are not programmed to read votes when a voter circles a name rather than filling in the oval next to the candidate's name; or if the oval is not filled in sufficiently, the machine's optic laser will not capture it; and the machine will not "see" any writing on the ballot that should not be there, such as a voter's signature or other identifying marks. Unless the margin between the top two candidates are within one-half of one percent, there is unlikely to be a manual recount of the ballot to rectify these issues. And if anyone wants to verify the outcome after a winner is certified, the ballots [cannot be FOIL'ed for two years](#).

There is no magic bullet to solve many of these issues that impact voting in New York. New Yorkers can, however, show strong support for federal legislation, such as the [John R. Lewis Voting Rights Advancement Act](#), which addresses voter suppression and vote dilution, and the [For the People Act](#), which addresses much of the administrative problems that have been plaguing election administration for years. We can also support a re-invigorated Voting Rights

Section in the U.S. Department of Justice, and hope it will make a difference in voting rights throughout the entire nation.

Albany appears ready to tackle voting rights in a thorough and comprehensive way; we hope they will.

Jerry H. Goldfeder, special counsel at *Stroock & Stroock & Lavan*, teaches Election Law at Fordham Law School, and is the author of *“Goldfeder’s Modern Election Law,”* (NY Legal Pub. Corp., 5th Ed., 2018). **Myrna Pérez** is the Director of the Voting Rights and Elections Program at the Brennan Center for Justice at NYU School of Law, and regularly litigates voting rights cases.

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