

Asian American Legal Defense & Education Fund  
Brennan Center for Justice  
Center for Independence of the Disabled, NY  
Common Cause NY  
Demos  
League of Women Voters of the City of New York  
League of Women Voters of New York State  
New York Public Interest Research Group  
Women's City Club of New York

May 23, 2011

Robert Brehm  
Co-Executive Director  
New York State Board of Elections  
40 Steuben Street  
Albany, NY 12207

Todd Valentine  
Co-Executive Director  
New York State Board of Elections  
40 Steuben Street  
Albany, NY 12207

Dear Mssrs. Brehm and Valentine:

We write on behalf of the undersigned organizations to notify you of our concern about the New York State Board of Election's potential noncompliance with Section 8-302 of the New York Election Law ("Section 8-302").

In 2010, the New York State legislature amended Section 8-302 to ensure affidavit ballots are treated as applications to register to vote or change party enrollment.<sup>1</sup> Section 8-302 previously provided that the State Board of Elections shall prescribe the form of the affidavit printed on the envelope in which an affidavit ballot is cast.<sup>2</sup> As amended, the new law provides that "[s]uch form prescribed by the state board of elections shall request information required to register such voter should the county board determine that such voter is not registered and shall constitute an application to register to vote."<sup>3</sup> The law ensures that

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<sup>1</sup> 2010 N.Y. Laws 62.

<sup>2</sup> N.Y. Elec. Law § 8-302 (3)(e)(ii) (providing "such affidavit shall be in a form prescribed by the state board of elections, shall be printed on an envelope of the size and quality used for an absentee ballot envelope, and shall contain an acknowledgment that the affiant understands that any false statement made therein is perjury punishable according to law").

<sup>3</sup> *Id.*

eligible, unregistered voters who in good faith cast an affidavit ballot that is ruled invalid nevertheless become registered to vote in future elections.

The current affidavit form fails to request all of the information necessary to process a new voter registration. Instead, affidavit voters seeking to register to vote must fill out a *separate* registration form located on the opposite side of the affidavit ballot envelope. As a result, many voters who in good faith take an oath affirming they are registered to vote do not fill out the separate registration form and continue to remain unregistered for future elections.

By failing to consolidate the affidavit form with the questions needed to register voters, the State Board of Elections may be in violation of Section 8-302. In any case, this oversight contravenes the intent of the New York State legislature by significantly decreasing the number of affidavit voters who become automatically registered for future elections. Based on conversations between Jerome Koenig and the staff of the New York City Board of Elections, it is our understanding that of the 5,000 persons who cast invalid affidavit ballots in Manhattan in the 2010 general election, nearly forty percent did not complete the registration form on the back of the affidavit ballot envelope.<sup>4</sup> This is precisely the consequence the New York State legislature intended to avoid by requiring form affidavits to double as voter registration applications.

No doubt, this problem exists in counties across the state and we are concerned that continued noncompliance with section 8-302 has the potential to disenfranchise tens of thousands of voters across New York State in elections to come.

Fortunately, this problem is easily fixed. The Westchester County Board of Elections has designed its own form that consolidates the affidavit form with the questions required to gather information to register a new voter. Other counties may be hesitant to adopt a similar fix because the State Board of Elections is charged with prescribing the form of the affidavits.<sup>5</sup> Therefore, the State Board of Elections can and should alter its own affidavit form to be fully compliant with the letter and spirit of state law.

## **Conclusion**

We hope that the State will promptly rectify its potential noncompliance with state law in order to facilitate voter registration for eligible, unregistered voters. Toward that end, we are eager to work with you to cure the deficiencies in the State's affidavit form. We would be happy to provide assistance in developing an affidavit form that effectively doubles as a voter registration form. We will follow up on this letter with a call to you next week. We would be glad to discuss potential solutions to our concerns and hope to meet with you at your earliest convenience.

Thank you for your attention to this matter.

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<sup>4</sup> Email from Parnell Sena, New York City Board of Elections to Jerome Koenig (Feb. 25, 2011).

<sup>5</sup> N.Y. Elec. Law § 8-302 (3)(e)(ii).

Sincerely,

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cc: Board Commissioners  
New York Assemblymember Brian Kavanagh  
New York Senator Joseph P. Addabbo, Jr.