



**NEW YORK
CITY BAR**

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**REPORT ON LEGISLATION BY THE
ELECTION LAW COMMITTEE**

A.8198

Speaker Silver

AN ACT to amend the election law, in relation to primary elections and amending certain deadlines to facilitate the timely transmission of ballots to military voters stationed overseas; to amend the public officers law, in relation to filling vacancies in elective offices; and to amend the election law, in relation to date of primary elections

THIS BILL IS APPROVED

The Election Law Committee of the New York City Bar Association supports, as a matter of public policy, A.8198, which would establish the fourth Tuesday in June as New York's Primary Day for both federal and state offices and party positions.

Currently, New York holds its primaries for public office in state and local municipalities and for party positions (other than President and National Convention delegates and alternates) in September, while primaries for public offices at the federal level are held in June. This creates the possibility of as many as three primaries in a given calendar year, as was the case in the 2012 election cycle. Holding a single primary is estimated to save our state and local governments approximately \$50 million.

The current system requires candidates to organize and consolidate their support in the summer, when potential voters are less likely to be available to participate. Under the reformed calendar proposed, this organization can occur at a time when people are more available and accessible.

With more people accessible to candidates, the reformed political calendar would mean the greater availability of voters so that petition signatures designating candidates for public office and party positions can be gathered more efficiently. In 2012, candidates were hard-pressed to find sufficient volunteers to petition on their behalf given the two separate periods for petitioning, first for candidates for federal offices, followed by candidates for state offices and party positions. Under the reformed calendar proposed, petitioning for all candidates can be consolidated into the same period of time.

Litigation involving ballot access issues would occur during the normal litigation season instead of during special sessions set up in the month of August. This will relieve the present burden on candidates, their counsels and the courts, and the additional expenses associated with the rush from filing of the action, to decision, to appeal. Rather than the present schedule, where there can be as little as three weeks during which an action is filed, a trial is conducted, and an appeal is taken and heard, under the reformed calendar proposed, ballot access issues can be resolved sufficiently in

advance of the general election in November, allowing the Board of Elections time to address absentee and military ballots in compliance with state and federal law in advance of the 45 day deadline prior to the general election.

Litigation involving election contests pursuant to Article 16 of the Election Law can be handled by the Courts with ample time to order a new Primary if necessary. This issue was specifically highlighted in 2012 in Kings County in Matter of Gallo v. Akselrod,¹ where a candidate - whom the Court noted commenced his primary contest action timely upon finding of irregularities in the election's administration and merited the Court's direction of a new primary - was prejudiced because of insufficient time available for the Board of Elections to conduct a new election under its new electronic voting procedures. The judge presiding over the matter, Hon. David I. Schmidt, even noted that "it would appear appropriate that the legislature take action, and perhaps provide more time between the primary and the general election in order that the judiciary can conduct meaningful review of primary election."

Finally, adoption of A.8198 would maximize voter turnout for primary (which has been decidedly – and dangerously – low in recent election cycles) and cut the costs of running additional separate primary elections.

For the foregoing reasons, the City Bar supports A.8198. The Legislature should schedule the date annually to be as close as possible to the fourth Tuesday of June, so as not to conflict with any significant religious observance (i.e. the Jewish holy days of Passover and Shavuot that frequently fall on Tuesdays in the spring), as a necessary First Amendment accommodation. The bill should also take into consideration post-census reapportionment years (which, as we all saw in 2012, was frustrated by legislative indecision and litigation over new district lines) and the need for meaningful elections in the context of the national nominating process for President. This would maximize voter turnout and eliminate the expense of separate primaries for local offices.

The City Bar recommends adoption of A.8198 despite the fact that there are perceived disadvantages. We recognize that pushing back the election calendar may lengthen the post-primary campaign season, and that some candidates may feel that they have to spend and raise more money than they do now. We understand that an earlier primary may inhibit non-incumbents, because challengers have to decide to run for office sooner and to start their campaign earlier. It should be emphasized that the date recommended is after the legislative session has ended, and that legislators would therefore be free to return to their own districts to campaign. We acknowledge political concerns that holding primaries for local offices and party positions on the same day as races with national implications could run the risk of "coat-tail" ticket voting and that issues of local concern may be eclipsed by national issues, but believe that, on balance, less voter burn-out and more voter participation is critical to the democracy that we cherish.

However, it is the City Bar's position that, on balance, an earlier primary election is preferable to our current system, and that one primary election is preferable to two, or even three in a given political calendar. Based on the foregoing, the City Bar recommends the adoption of A.8198.

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¹ Sup. Ct., Kings County, Index. No. 700026/2012.