

VOTE IN NYC JAILS COALITION



Via Electronic Mail

To: Jasmine Georges-Yilla, Executive Director, Board of Correction; Lynelle Maginley-Liddie, Commissioner, NYC Department of Correction; Rodney L. Pepe-Souvenir, President, NYC Board of Elections.

From: Vote in NYC Jails Coalition

Date: February 13, 2024

Memorandum on Establishing In-Person Polling Place & Improving Absentee Voting at New York City Jails

Introduction and Background on Coalition

This memorandum highlights the significant barriers to eligible incarcerated people accessing the ballot and subsequently outlines recommended best practices for improving 1) voter registration, 2) voting by early mail or absentee ballot, 3) voting access at New York City Jails (“NYC jails”) and Detention Centers. As a coalition of legal advocates, grassroots activists, and directly impacted organizers working to eliminate barriers to voting and to end the systematic disenfranchisement of people who are incarcerated, we write to express our serious concerns with access to voting in NYC jails as we approach the critical 2024 election cycle. We must ensure that all eligible voters detained in NYC jails have the opportunity to vote.

The Vote in Jails NYC Coalition has worked closely with the Department of Correction (“DOC”) for the past two years to increase voter registration and absentee ballot distribution at Rikers. In 2022, the Coalition sent a letter to the Board of Elections demanding an early voting site on Rikers Island. In 2023, thanks to the efforts of the Coalition, DOC received 227 ballots from the New York City Board of Elections, which involved a single DOC employee making multiple trips to the five borough board of elections offices. More than 100 voters who submitted ballot request forms through the DOC employee were rejected. 106 ballots were completed and returned by the employee to the appropriate board of elections office. Fifty-three voters were released from DOC custody, rendering them ineligible to vote absentee, and sixty-eight ballots were not counted for other unknown reasons. Voters were not given the opportunity to cure their ballot or ballot request form.

II. Eligible Voters are Being Denied Their Right to Vote

Individuals detained pretrial are eligible to vote, as are individuals convicted of a misdemeanor: these groups make up the vast majority of the population at Rikers Island. Their right to vote has been affirmed by the Supreme Court¹ and more recently by the John R. Lewis Voting Rights Act which emphasizes the legislature’s commitment to eliminating policies that obstruct, impede, or otherwise interfere with any voter in any manner that causes or will

¹ *O'Brien v. Skinner*, 414 U.S. 524 (1974).

reasonably have the effect of causing any delay in voting or the voting process, including the canvassing and tabulation of ballots.²

As documented, there are manifold barriers to casting a ballot from jail, ranging from a lack of information about voter eligibility and how to vote from inside, prohibitive cost, to impediments to voter registration and casting a ballot. Some of the most formidable barriers to voting in jail are informational and accessibility related. Details about voter eligibility and how to vote are often sparse, or entirely lacking. Where information is available to incarcerated voters, circulated information about eligible detained voters' right to vote is often outdated, inaccessible in practice, or inaccurate. People detained through the registration period who cannot register from jail often end up excluded from voting due to lack of access to paper registration forms and inconsistent internet access. Even those who can meet the deadline to register are likely to face problems doing so.

III. Who has been voting and the pitfalls in the current system

In 2023, DOC received 227 ballots from the New York City Board of Elections. The designated DOC employee returned 106 ballots that were completed by voters in DOC custody. Fifty-three of the 227 ballots were undeliverable because those voters were released from DOC custody, and the remaining 68 ballots were not completed for various other reasons. The 47% return rate, compared to the statewide absentee ballot return rate of 73.3%,³ constitutes voter suppression.

In the June 2023 primary election, the DOC employee returned 74 ballots to the BOE and only 32 of those ballots were counted. No feedback was given as to why such a large percentage of the ballots, more than 54%, were rejected. Comparing this number to the statewide average returned rate of 97.5%, it is clear that votes coming out of Rikers are being suppressed.

Additionally, more than 100 ballot request forms submitted by the DOC employee were rejected. The Board of Elections and the Department of Correction have not given a reason why such a large number of ballot requests and ballots were rejected. New York State Law places an affirmative duty on local boards of election to provide each voter with the opportunity to cure their ballot before they reject it,⁴ yet none is given to voters at Rikers.

IV. The Board of Elections and the Department of Correction have not given a reason why such a large number of ballot requests and ballots were rejected.

Despite requests from the Vote in Jails Coalition, the New York City Board of Elections has not reached out to the DOC to reach out to incarcerated voters and provide them the opportunity to cure their ballot request forms or their ballots. While the Coalition has repeatedly inquired as to the reasons for the ballot rejections, the Board of Elections has repeatedly declined to provide even broad feedback about the reasons for the rejections of such a disproportionate number of Rikers' ballots.

NY State Election Law provides special accommodations for nursing homes, residential health care facilities, facilities operated or licensed, or under the jurisdiction of the Veterans

² §17-212 1.(a)iii

³ United States Election Assistance Commission, 2022 EAVS Data Interactive (December 19, 2023) <https://www.eac.gov/research-and-data/studies-and-reports>.

⁴ N.Y. Elec. Law § 9-209(c) (McKinney)

Administration. The section of the law sets a time frame, staffing requirements, and directions for voting equipment to support voters at these types of facilities when more than 25 absentee ballot requests have been received by the local board for a particular election. The legislature is clearly committed to protecting the franchise for seniors, veterans, and medically vulnerable voters and fashioned a solution to address the unique challenges they face. At the same time, those legislators have ignored the needs of similarly burdened pre-trial detainees and other people incarcerated at Rikers. These populations are similarly situated in that they are physically unable to vote at their neighborhood polling place and represent vulnerable groups that often lack visibility to the elected officials who represent them. Because both groups encompass voters who may be unable to petition their representatives at public meetings, lack access to quality legal services, and otherwise struggle to communicate with folks outside of their residential facilities, the only logical factor separating them under the current election law is animus toward pre-trial detainees, including racial animus toward the majority Black population incarcerated at Rikers⁵.

V. Recommendations

A. The Board of Elections must provide this Coalition detailed anonymized feedback about their rejections of ballots coming from Rikers Island from the past two years and for future elections and implement measures to meaningfully mitigate the rejection rate.

B. The Department of Correction must devote more resources around election season to support voters with registering to vote, requesting, receiving, and returning absentee ballots. This must include working with the Board of Elections to provide voters with the opportunity to cure their ballot before it is rejected.

C. The Board of Elections must provide voters at Rikers with the same opportunity to vote in-person via the same mechanism the law provides for nursing home residents.⁶ This provision includes appointing election inspectors to preside over portable voting machines on-site at Rikers Island so that registered voters can cast their ballot directly with the Board of Elections, eliminating the need for a logistically complex curing process that the Board must undertake with regard to the absentee ballots of the detainees.

D. Finally, offering a voter education program and providing non-partisan resources on voting is critical to cultivating an informed and robust voting culture at NYC jails.

We understand there may be follow-up questions and necessary discussions, including with BOE Commissioners and General Counsel. We are happy to assist in any way we can, including meeting to further discuss the above recommendations. Because the planning for the 2024 Primary election is already underway, we hope to discuss next steps for an in-person polling location at the NYC jails as soon as possible.

Sincerely,

Vote in NYC Jails Coalition

⁵ Population Demographics Report, NYC Department of Correction, FY 2024 (covering 2023) <https://www.nyc.gov/assets/doc/downloads/pdf/Population%20Demographics%20Report%20-%20FY24%20Q1.pdf>, last visited December 15, 2023.

⁶ N.Y. Elec. L. § 8-407 (McKinney)

Endorsed by:

New York City Council Member Tiffany Cabán

New York City Council Member Jennifer Gutiérrez

New York City Council Member Sandy Nurse

Freedom Agenda

League of Women Voters of the City of New York

LatinoJustice PRLDEF

Envision Freedom Fund

The Legal Aid Society

New York County Defender Services

Scrutinize

ANISAH AAS EMPOWERMENT LLC

NYC Chapter National Action Network Second Chance Committee

Community Service Society of New York

Police Reform Organizing Project

CAIC/JAC

Urban Justice Center Mental Health Project

The Rev. Christine Lee at St. Peter's Chelsea

Queens Defenders

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Jails Action Coalition

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Black Attorneys of Legal Aid