

Chairman Addabbo and Members and Staff of the New York State Senate Elections Committee:

On behalf of the Brennan Center for Justice at NYU School of Law, I would like to thank you for the invitation to speak today before the committee on Senate Bill 4317, changing the deadlines for enrolling in a political party before a primary election. The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. In the last few years, the Brennan Center has done extensive work on reforming processes of voter registration, and has been a continual advocate for more open voter registration processes. We believe a key part of more open processes is shortening overlong party affiliation and enrollment deadlines that serve to bar voters from participating in primary elections.

In most states, when voters register to vote, they have the option of affiliating or enrolling with a political party, and must be affiliated with that party in order to vote in that party's primaries. New York is one of only nine states in the country, however, that has a party affiliation deadline that is earlier than the voter registration deadline, requiring voters who are already registered who want to switch their party enrollment to do so well before most people are thinking of the primary election or the media is covering it. Moreover, New York is one of only five states that require even those voters who are not currently affiliated with a party to meet these early deadlines. Of these five states, New York has the longest advance deadline, which is twenty-five days before the prior general election, in early October, for both the February presidential primary in presidential election years and the regular September primary in other years. It is thus no exaggeration to say New York's current party enrollment law is the worst in the country, in terms of guaranteeing effective voter access to candidate selection mechanisms.

Over the past few decades, voting rights advocates have pushed for shorter and shorter voter registration deadlines for simple reasons: news coverage and public attention intensifies in the weeks before an election, and eligible and interested voters are left out when the deadlines are too far in advance of an election. New York's current enrollment deadline is a full four months before the presidential primary and an astounding eleven months before the September primary. These deadlines inevitably prevent eligible voters who would otherwise participate in these elections from doing so.

During last year's February presidential primary, for instance, numerous voters were caught unaware by the affiliation deadline. A voter would have had to change their party affiliation by October 12, 2007, to participate in the primary, well before there was any indication, for instance, that the Democratic nomination would be contested as vigorously as it was, and before the vote-by-vote nature of the delegate fight became clear. The *New York Times* for that date reveals how far off the election would have seemed: All the news on the election ran on page A20 of the news section, and a feature that ran in the Metro section noted, "we still have three months to go before anyone votes," and described former Mayor Rudolph Giuliani and Secretary

of State Hillary Clinton as the likely major party nominees.¹ The *Times* did not note the party affiliation deadline that day; neither did the *New York Post*, the *New York Daily News*, or *The Times Union* for that date. This reality—that voters simply miss the affiliation deadline because they are not yet focused on the election—is compounded by the fact that the affiliation deadline is a different deadline than that for voter registration. That is, voters are often aware they have to register in advance, and are made aware of that deadline by campaigns and voter education efforts, but often do not know that a party primary will require that they additionally enroll well in advance of the registration deadline.

The classic defense for long affiliation deadlines is that they are necessary to prevent “party raiding,” whereby voters sympathetic to one party cross over to vote in another party’s primary for the perceived weaker candidate. But party raiding is not in fact a problem, or at the very least not a serious one that would warrant the extra-long deadlines in the current law. As an article in *The Forum* noted last year, “studies of voting in open and ‘blanket’ primaries generally conclude that malicious strategic voting, or cross-party raiding, is very rare.”² This conclusion was reached with respect to open and blanket primaries, where voters are free to choose to vote in any party’s primary on the day of the election. There is even less evidence that party raiding is a problem in any state where a voter must enroll with a particular party in advance of an election, even where that deadline is close to the election. “The information requirements and levels of voter sophistication to accomplish cross-party raiding are daunting; and the opportunities for pay-off are scarce.”³

Last year’s presidential primary did see an episode of threatened party raiding, namely Rush Limbaugh’s “Operation Chaos,” wherein he encouraged his listeners, once the Republican nomination race was effectively decided, to cross over into Democratic party primaries and vote for Hillary Clinton, in an effort to prolong the Democratic primary battle. He began this effort on March 3, the day before the Ohio and Texas primaries, and a week before the Mississippi primaries, all of which are functionally open primaries. This was the perfect storm for party-raiding: incredible publicity and open primaries meant that significant numbers of sympathetic voters would be educated about the process, understand the scheme, and be able to carry it out without additional effort. And yet, there is no evidence that crossover party raiding happened as a result of “Operation Chaos.”⁴ If national publicity before open primaries during the most hotly

¹ Clyde Haberman, *To the Candidates: Don't Forget Cities and Their Voters*, N.Y. TIMES, Oct. 12, 2007, at B1.

² Todd Donovan, *The Limbaugh Effect: A Rush to Judging Cross-Party Raiding In the 2008 Democratic Nomination Contests*, FORUM, June 2008, at . This conclusion was reached by all expert witnesses on both sides of the case challenging California’s blanket primary, *California Democratic Party v. Jones*, 530 U.S. 567 (2000), and by a 1978 study by the Democratic Party, Commission on Presidential Nomination and Party Structure, *Openness, Participation and Party Building: Reforms for a Stronger Democratic Party* 68 (Feb. 17, 1978).

³ Donovan, *supra* note 2, at 1.

⁴ *Id.*

contested presidential nomination race in a generation can't generate crossover party raiding, it is difficult to see how a shorter affiliation deadline in a closed-primary state poses any real danger of party raiding.

Perhaps most useful in judging whether party raiding represents a serious problem that requires a nearly year-long affiliation deadline is the experience of the forty-one other states and the District of Columbia that have either open primaries or closed primaries with affiliation deadlines of no more than thirty days before the election. Of course, all of these states have functioning, vibrant political parties that have not suffered from crossover party raiding.

For these reasons, we believe a change to the New York enrollment deadline is overdue. The Brennan Center supports Senate Bill 4317 because it is a change for the better from the current law. The bill changes the party enrollment deadline, currently the voter registration deadline for the previous general election, to ninety days prior to a primary for voters already enrolled in a political party, and twenty-five days prior to a primary for voters who are not already enrolled in a political party. It additionally limits voters to one change of enrollment per year.

These steps are important ones, and will allow unaffiliated voters to enroll in a political party reasonably close to the election. But we must note where the law falls short: it leaves New York with an enrollment deadline for affiliated voters longer than that of forty-five other states; it would make New York the only state in the union that imposes a limit on the number of enrollment switches a voter can make per year; and by not tying the enrollment deadlines to the voter registration deadlines, the bill would continue the confusion that currently exists over the much-earlier enrollment deadline.

Nonetheless, we support Senate Bill 4317, which we think is an important step towards reforming New York's primary processes, and we look forward to working with the committee on further efforts to bring New York law closer to the mainstream.

Renée Paradis
Counsel, Democracy Program
Brennan Center for Justice