

Joint Testimony of
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before the
New York City Council Speaker, Committee on Governmental Operations and
Committee on Oversight and Investigation
Hearing on
A local law to amend the New York City Pro-Voter Law
on
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Good morning Mr. Chairman and members of the committee. My name is Jessie Allen, and I am an attorney at the Brennan Center for Justice at NYU School of Law. I am here with Erika Wood, an attorney at the Legal Action Center, who joins in and will read point 2 of our testimony.

The Brennan Center's Democracy Program works on a number of litigation, research and advocacy initiatives aimed at expanding voter participation and eliminating barriers that prevent registration and voting, especially by people of color and low-income citizens traditionally excluded from the polls. My testimony today is informed by two such projects. First, based on our participation in the Citizens' Coalition on HAVA Implementation, the Center seeks to ensure that New York State implements the Help America Vote Act (HAVA) in a manner that protects voters' rights. Second, as a member of the Right to Vote campaign and its New York partner coalition, the Center advocates to restore voting rights and remove registration barriers for people with felony convictions. The Legal Action Center is a nonprofit law and policy organization here in New York City that specializes in issues relating to the rights of those with criminal records, HIV/AIDS or addiction histories.

First, we would like to commend Speaker Gifford Miller, Deputy Majority Leader and Chair of the Committee on Governmental Operations Bill Perkins, and Chair of the Committee on Oversight and Investigation Eric Gioia for investigating agency compliance with the Pro-Voter law and introducing legislation to fortify its provisions. We support the proposed amendments, and believe they are an important step towards making sure that agencies *actively* comply with their duty to assist voters with registration. We would like to make two additional points.

(1) Compliance with HAVA's ID Requirements for First-Time Voters who Register by Mail

The Brennan Center recommends that the bill be amended to ensure that HAVA's new ID requirements are not imposed on first-time voters who register *in person* at a designated city agency. HAVA provides that first-time voters who register *by mail* after January 1, 2003, and do not fall within certain important exceptions, shall be permitted to vote a regular ballot on a machine only after presenting one of the following items to

election officers at the polling place: a current and valid photo identification, utility bill, bank statement, government check, pay check, or government document that shows the voter's name and address. 42 U.S.C. § 15483(b)(1)-(2). If the person votes by absentee ballot, she must submit the above ID along with her ballot. 42 U.S.C. § 15483(b)(2)(ii). A voter does not have to show ID, however, while voting, if the Board of Elections is able to match the person's driver's license number or the last four digits of a Social Security number -- listed on the registration form -- with an existing state record, or if the person submits a copy of the above-listed ID along with her registration form. 42 U.S.C. § 15483(b)(3).

Without proper safeguards, these ID requirements potentially pose a serious barrier to voting for first-time voters, particularly in New York City where only 53% of those over 18 possess a driver's license. Accordingly, the City Council should amend the Pro-Voter law to establish that individuals who register in person at a city agency and provide their registration forms to agency officials for transmission to the board of elections shall not be subjected to these ID requirements. HAVA's ID requirements should not apply to persons who register *in person* at a city agency, even if the city agency then mails the forms to the Board of Elections. Other jurisdictions -- for example, New Mexico -- do not require ID from individuals who register in person with third-party registrars. In the alternative, the Pro-Voter law should mandate that city agencies hand deliver registration forms to the Board of Elections.

(2) Registration by Citizens Interacting with the Criminal Justice System

Good morning Mr. Chairman and members of the committee. My name is Erika Wood and I am an attorney with the Legal Action Center, an organization that, among other things, fights discrimination against people with criminal records by advocating to protect their civil rights and to obtain employment and other services needed to successfully re-enter society.

The Legal Action Center and the Brennan Center for Justice support the testimony submitted by Joseph Hayden, which highlights how important it is that city agencies actively register people who interact with the criminal justice system. We would like to make a few additional comments on that subject. The Board of Elections should process registration forms in a manner that does not impose additional burdens on eligible voters who pass through the criminal justice system. Additionally, in overseeing compliance with the strengthened Pro-Voter law, the City Council should monitor the Boards' registration practices with respect to those eligible voters in local jails, on probation, or who have completed their sentences.

Our recent efforts to eliminate registration barriers for people with past felony convictions demonstrate the need for the City Council's special attention to this issue. A Brennan Center study found that more than half the counties in the state, including all of New York City, refused to register individuals with past felony convictions unless they provided various documents that were difficult or impossible to obtain. All five boroughs previously required a certificate of relief, a document that is unavailable to anyone with

multiple felony convictions, and even when theoretically available, is only issued (if at all) at the parole board's discretion after lengthy waiting periods. Together with the Brennan Center for Justice and the Community Service Society, we brought these onerous practices to the state and local boards' attention.

As a result of discussions with our organizations and state criminal justice agencies, the State Board of Elections issued a memorandum on October 29, 2003 directing local boards to stop asking for documents proving eligibility. The memorandum instructs local boards to register citizens with felony records in the same manner as they would any other eligible voter – by accepting a completed voter registration form with the signed affidavit stating that the person is eligible to vote. Although the City Board of Elections has improved its registration practices under this policy, there remains a continued need for the City Council to monitor the Board's compliance to ensure that its registration practices do not disenfranchise eligible voters.

Since appearing before you last year, our organizations have continued advocacy and outreach efforts, working closely with the New York City Department of Corrections and the Department of Probation. As a result of our efforts, Corrections and Probation agreed to distribute information about voting rights to all probationers and detainees. They also improved and expanded the voting rights information contained in posters placed in every City jail, and in the handbooks distributed to all probationers and detainees. Finally, Probation and Corrections invited our agencies to provide training and education to service providers at Riker's Island and to perform voter outreach and registration at periodic resource fairs for probationers.

We commend the Department of Probation and the Department of Corrections for their willingness to improve and expand their efforts to reach eligible voters on probation or detained in City jails, but these are only preliminary (and voluntary) steps on a long road to making sure that every eligible voter is registered and casts a vote in future elections. Moreover, despite these efforts, probation officers, corrections officials and other city employees remain largely uninformed and misinformed about the voting rights of formerly incarcerated people.

The proposed amendments to the Pro Voter Law will codify and institutionalize good practices, similar to those the Departments of Probation and Corrections have voluntarily undertaken, assuring that all City agencies do what they can to encourage voter registration and participation. The need for training is especially critical, given the enormous confusion that still exists regarding the eligibility of people with criminal records to vote. We therefore encourage the Council to pass these amendments.