

# New York's Noncitizen Voting Is Illegal

A state judge strikes down the city's law to enfranchise about 800,000 aliens.

By The Editorial Board, WSJ, June 28, 2022 6:40 pm ET

[https://www.wsj.com/articles/new-yorks-noncitizen-voting-is-illegal-eric-adams-staten-island-judge-constitution-11656444148?mod=MorningEditorialReport&mod=djemMER\\_h](https://www.wsj.com/articles/new-yorks-noncitizen-voting-is-illegal-eric-adams-staten-island-judge-constitution-11656444148?mod=MorningEditorialReport&mod=djemMER_h)



Poll workers direct voters in New York City, Nov. 3, 2020. Photo: Richard Drew/Associated Press

Well, that was quick work. In December the New York City Council passed a law to **let about 800,000 non-citizens vote in local elections.**

Mayor Eric Adams, man of action, neither signed nor vetoed the bill, allowing it to take effect. But on Monday a state judge declared it **“illegal, null and void because it violates the New York Constitution.”**

This was always a distinct possibility, as we warned at the time. The state constitution guarantees “every citizen” the right to vote, **“provided that such citizen” is 18 years old and has lived in New York for 30 days.** Another constitutional section promises a process **“for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage.”**

Ah-ha, argued advocates of the city's bill: The constitution says **“citizens” may vote, but it is silent about noncitizens.** This is the kind of too-cute-by-half logic that gives the legal profession a bad name. If it prevailed, then could the city enfranchise 12-year-old noncitizens? After all, the constitution's age requirement for citizens wouldn't apply to them.

*“It is this Court's belief,”* says a Staten Island judge, *“that by not expressly including non-citizens in the New York State Constitution, it was the intent of the framers for non-citizens to be omitted.”* Also, this is state law: *“No person shall be qualified to register for and vote at any election unless he is a citizen of the United States.”*

Add New York's law on home rule, which says that any local change to “the method of nominating, electing or removing an elective officer” **must go through public referendum,** which this didn't.

**How many ways is the city's noncitizen voting plan illegal?** We've lost count.

It's also a bad idea. **To vote, the law said foreigners must at least have work authorization, and the argument was they pay taxes like everyone else.** Yet Americans with second homes in New York might pay taxes or have a stake in efficient public services, and they don't get to vote for Mayor. If green-card holders want ballots, they can apply for citizenship.

One Democratic councilman who opposed the law said the **30-day residency rule was too short,** since it would cover “a transient” and leave New York “vulnerable to outside influence.” Or think of the practical headaches. The city's Board of Elections is no case study in competence, to put it lightly. **Since noncitizens can't vote in federal races, it would have needed to manage two registration lists and two sets of ballots.**

Perhaps proponents of the law will appeal. But sometimes, especially in a one-party state like New York, a judge's job is to block politically self-serving power grabs.

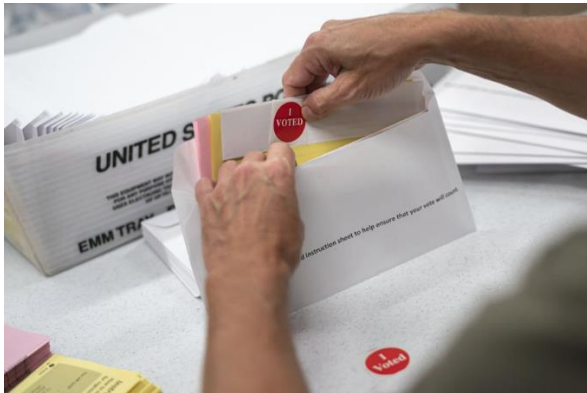
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# An Autopsy of New York's Mail-Vote Mess

Lax deadlines. Late ballots. Carelessness. Missing postmarks. And a warning for Nov. 3.

By The Editorial Board, WSJ, Aug. 7, 2020

[https://www.wsj.com/articles/an-autopsy-of-new-yorks-mail-vote-mess-11596841128?mod=article\\_inline](https://www.wsj.com/articles/an-autopsy-of-new-yorks-mail-vote-mess-11596841128?mod=article_inline)



Six weeks after New York's primary elections on June 23, **the final vote tally in the 12th Congressional District remains a mystery.** On Monday a federal judge ordered the counting of certain mail ballots that arrived after Election Day but without a postmark to prove when they were sent. **Imagine this kind of mess 45 days following Nov. 3.**

After primary day, an initial count of 40,000 ballots had Rep. Carolyn Maloney beating progressive challenger Suraj Patel by 648 votes. The canvassing of some 65,000 absentee ballots didn't start until July 8 but unofficial data last month showed a preliminary rejection rate of 28% in Brooklyn. Mr. Patel joined a

federal lawsuit, and Judge Analisa Torres held two days of hearings last week. The court transcript is a bracing read.

## How Much Mail Arrives Late?

The share of election and political mail that was delivered on time during the 2018 elections. Shown below are the **USPS's seven lowest-performing processing and distribution centers.**

Site	Percent On Time
Anaheim, Calif.	83.8
Cleveland, Ohio	79.4
Dominick V. Daniels, N.J.	90.9
Eau Claire, Wis.	86.6
Fox Valley, Ill.	88.8
Royal Palm, Fla.	75.7
Suburban, Md.	84.2
Average	84.2

Source: USPS Inspector General's audit, Nov. 4, 2019

City officials were deluged. Eleven days before the election, *"the Manhattan borough office had something like 30 or 40,000 pending applications for absentee ballots, and I was told that they could only process 5,000 per day,"* testified Douglas Kellner, the co-chair of the New York State Board of Elections. *"Basically my view is that they threw up their hands and said, 'Well, there's nothing more that we can do.'"*

As a result, many ballots were sent to voters late. Allen Tanko, a marketing manager with the U.S. Postal Service, said that one day before the voting, on June 22, the city Board of Elections dropped 34,359 items, presumably ballots, into the mail stream. Postal workers tried to expedite them, but some of these ballots were sent to New Yorkers temporarily out of state, who could not possibly have received them in time.

New York lets voters request an absentee ballot with a mail application, which can be **postmarked a mere seven days before the election.**

*"The state Board of Elections has repeatedly advised the legislature and the executive chamber that that date is unrealistic,"* Mr. Kellner said. Fourteen days would be better, he added, but New York's political leaders *"have rejected that because they don't want to be perceived as doing something that's not voter friendly."* For the record, the USPS suggests that voters allow seven days for mailing their *completed ballots.* The USPS's policy is to postmark all ballots, and the city was assured it would happen.

## What went wrong?

Testimony by Michael Calabrese, a manager at a New York postal processing facility, offered two possibilities:

- First, postmarking machines can reject mail if, for example, it isn't "folded over properly." On Election Day, USPS staff were ready to grab bypassed ballots and **postmark them by hand.** "We were doing so for thousands of ballots," Mr. Calabrese said. He wasn't sure, however, if this happened before June 23: "That's the only day I recall doing so with a hundred percent certainty."
- Second, *most prepaid mail usually skips postmarking altogether and goes "directly to a sortation machine,"* Mr. Calabrese said. On Election Day, USPS staff overrode that procedure and forced everything through the postmarking system. But again, he wasn't sure about before June 23, saying it was "very possible" that some ballots went straight to sorting.

Stranger mishaps suggest carelessness. Raymond Riley, the chief clerk at the Kings County Board of Elections, testified that someone on his staff **went to a local USPS office to drop mail, and postal workers unexpectedly gave over "a hand cart of ballots."** His office then complained to the USPS: "Obviously, staff safety was my biggest concern."

Another incident: In the spring of 2018, Mr. Riley said, the USPS delivered "several hundred absentee ballots **from the previous November.**" Many of these votes were valid, except "this was **five months after Election Day.**"

Under oath, the skepticism of the USPS was broad and deep. "We certainly did alert the governor's office to the fact that partnering with the U.S. Postal Service in running an election **has a lot of risks,**" Mr. Kellner said. Later he was more direct: "**I don't have a great deal of confidence in the U.S. Postal Service.**"

Emily Gallagher, a Democratic candidate for state Assembly, testified:

- I myself had an absentee ballot and went and voted in person because I had a sense of distrust of what would happen with my ballot once I mailed it in.

City attorney Stephen Kitzinger, in his closing argument, said that **if voters dropped their ballots in a mailbox, "they bore the risk of it not being postal marked, timely or otherwise, if they relied on the postal service for delivery."**

Judge Torres issued a preliminary injunction on Monday. Because the USPS's delivery process takes two days, she said, it's a "virtual certainty" that any ballots received by election officials on June 24 or 25 were in fact mailed by Election Day, even if they don't have any postmark saying so. **Judge Torres therefore ruled that all such ballots, statewide, must be counted.**

On Tuesday the city certified Ms. Maloney as the victor, up by about 3,500 votes, not including the ballots Judge Torres ordered counted. New York state officials plan to appeal her ruling. Mr. Patel is refusing to concede. What a fiasco.

Meantime, the national debate over mass mail voting proceeds like two postcards passing in the night. President Trump uses the word "fraud." The factotums of conventional wisdom hit their computer hotkeys for phrases like "**no evidence**" of "**widespread fraud.**" Why focus on criminality? Old-fashioned government incompetence is clearly sufficient to create a mail-vote debacle the country might come to regret in November.

## Whose Mail Votes Are Rejected?

Rates of ballot rejection during Florida's 2018 elections, by voter group.

Race/Ethnicity	Total Ballots	Rejected Ballots	Percent Rejected
Black	240,254	4,713	2.0
Hispanic	356,917	7,325	2.1

Race/Ethnicity	Total Ballots	Rejected Ballots	Percent Rejected
White	1,926,619	17,340	0.9
Other	148,196	3,055	2.1
Total	2,671,986	32,433	1.2

Source: ACLU Florida: Report on Vote-by-Mail Ballots in the 2018 General Election