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### EXPLAINER

## **New York State Voting Rights Constitutional Amendments on the November 2021 Ballot**

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*The Government Law Center's explainers concisely map out the law that applies to important questions of public policy.*

At this moment in time, our country is in the midst of a vigorous and often contentious debate with regard to the right to vote. Congress has several pending bills that are hotly contested, and many state legislatures have either adopted bills or are working on bills that will affect the voting process and procedures in their states. New York, where the rhetoric has been far more subdued, has also taken some action with respect to voting. Furthermore, New York voters will get to have a say in some of the choices our state will be making.

When voters go to the polls in November there will be three New York State constitutional amendments on the ballot related to voting. They will be asked to approve or disapprove each of these. The purpose of this explainer is to make sure that New Yorkers understand the choices they are being asked to make. It does not in any way suggest whether voters should vote yes or no on any of the proposals.

Two of the proposals that the voters will find on the ballot deal directly with rules applicable to them. One concerns the time within which a voter may register, and the other concerns the ability to obtain an absentee ballot. The third proposal would make changes in the process for redistricting, covering the districts of U.S. congressional members as well as those of state legislators. This will affect the districts in which voters will cast their ballots in future elections.

With respect to registration, the proposal (Number 3 on the ballot) would amend Section 5 of Article II of the New York State Constitution, which authorizes the legislature to adopt laws related to registration. The current section provides that "registration shall be completed at least



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ten days before each election.” The proposed amendment would remove this language, thereby authorizing the legislature to permit registration up to and including the day a voter casts his or her ballot. It authorizes what is commonly called “same day registration,” allowing an unregistered person to register and then immediately vote.

Should the amendment pass, it would then be up to the state legislature to decide whether to amend the law setting the last day for registration. Currently, the statute requires that an application to register must be mailed to the board of elections no later than 25 days before the election or filed in person with the board at least ten days before the election<sup>1</sup>. Should the amendment be adopted, the legislature would be empowered to reduce or eliminate these deadlines.

The proposal concerning absentee voting (Number 4 on the ballot) would amend Section 2 of Article II of the New York State Constitution, which authorizes absentee voting. Currently, this section provides that voting by absentee ballot is authorized when on election day voters “may be absent from the county of their residence or, if residents of the city of New York, from the city...” It is also authorized if on election day they are “unable to appear personally at the polling place because of illness or physical disability...” The proposal would eliminate these conditions as a requirement for voting by absentee ballot. Basically, it would authorize the legislature to eliminate all requirements for casting an absentee ballot and permit any voter to do so. This is often referred to as “no-excuse absentee voting.”

As with the change in the registration deadline, the legislature would need to amend the law if the proposal is adopted by the voters to effectively change or completely remove the current requirements<sup>2</sup>. The state constitutional amendment would authorize it to do so.

The proposal dealing with redistricting (Number 1 on the ballot) is far more complex. In 2014, a state constitutional amendment was approved by the voters creating an independent redistricting commission to draft the initial maps when the state engaged in the once-a-decade process of redrawing district lines to comport with population changes after the census. That process is now underway. The 2014 amendment not only created the commission, but it also contained many



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details regarding the procedure it is to follow and the requirements that it must meet<sup>3</sup>. In many ways, it included details usually left to the legislature. While the 2014 amendment authorized the commission to draft the initial maps, it left the final approval of the maps with the legislature, which has always had this authority. In that sense, the redistricting process did not change.

The amendment that will appear on the ballot modifies many of the details. If adopted, it takes effect on January 1, 2022, which is before the commission is to complete its work on the current redistricting process now underway. Thus, the operating rules of the commission after January 1 will depend upon whether the voters approve this proposal.

Many of the technical changes are too complex to describe in a document intended to explain the basic changes on which the voters will be casting their ballots. Thus, we examine those changes that are significant to the work of the commission and the legislature.

The amendment contains several provisions unrelated to the procedures of the commission. It would fix the number of senate districts at 63. It would also require that in counting population for state legislative redistricting, all residents, including non-citizens and Native Americans, be counted. Finally, it would require that those who are incarcerated be counted at their last residence rather than the location at which they are incarcerated. This is by statute the current rule for assembly and senate districts, but if the amendment is adopted, it would also be applicable to congressional districts.

The remainder of the amendment deals with the procedure for adopting the redistricting plans for Congress and the houses of the state legislature. The major changes are as follows:

For a plan to be approved by the commission, seven of its ten members would need to vote to approve it. Any plan so approved must then be approved by a majority of each house of the legislature and by the governor to be adopted as the state's plan. If no plan receives seven votes, the commission would then send to the legislature the plan or plans gathering the largest



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number of votes. Should this happen, a legislative vote of 60 percent would be required to approve a plan. Then there is a provision in case the commission fails to vote on any plan. In such case, it must send to the legislature all plans, including draft plans, and the legislature may adopt a plan submitted with or without amendments.

It is unfortunate, but to fully comprehend all of the changes, including the technical changes included in this proposal, the voter would need a detailed knowledge of the current constitutional provisions applicable to the commission, many of which are quite complex.

Whether these constitutional amendments are approved will be a decision for the voters when they cast their ballots in the upcoming general election.

#### Endnotes

<sup>1</sup> See election law, section 5-201(3).

<sup>2</sup> See election law, section 8-400(1).

<sup>3</sup> See explainer “[Redistricting for the 2022 Elections](https://www.albanylaw.edu/redistricting-for-the-2022-elections)” on the website of the Government Law Center, Albany Law School, <https://www.albanylaw.edu>.