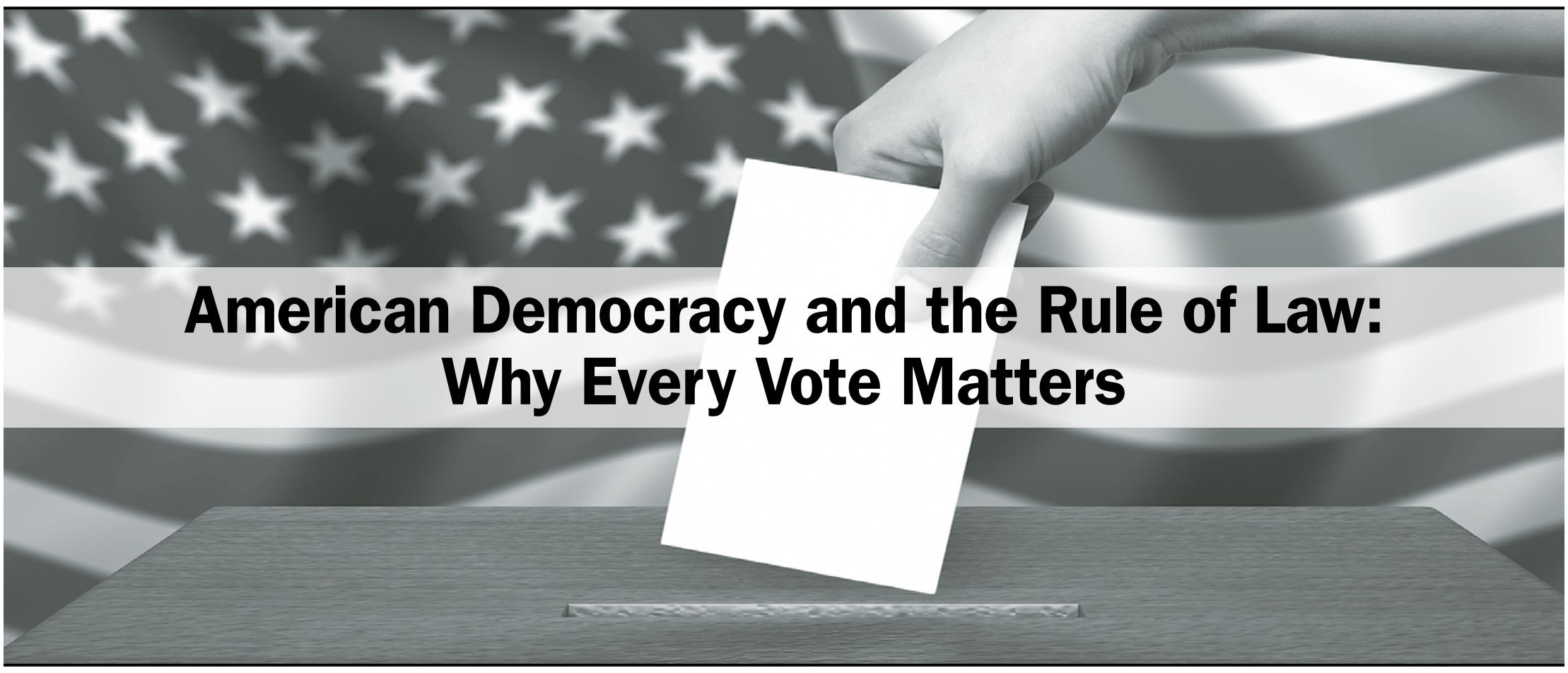
LAW DAY



American Democracy and the Rule of Law: Why Every Vote Matters

We Must Be Vigilant in Addressing Existing and Emerging Obstacles

Jonathan Lippman
Chief Judge
State of New York

Last November, the voters of New York City elected a new mayor, Bill de Blasio, to follow Michael Bloomberg's 12 years in office. This represented a changing of the guard that we in New York take for granted. And yet the right of people to exercise choice in the voting booth is fundamental to our trust and confidence in our government. Nothing is more essential to a democracy than access to the ballot. Our founding documents speak of "We, the people" and representatives "deriving their just powers from the consent of the governed." Barriers to voting threaten the very foundations of our democracy and weaken our government and our society. This year on Law Day, we reflect on why voting matters and we celebrate the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 a half-century ago, landmark legislation that brought under the tent of American democracy so many people who had historically been excluded.

Black's Law Dictionary defines democracy as a government "in which the sovereign power resides in and is exercised by the whole body of free citizens directly or indirectly through a system of representation." The word has its roots in ancient Greece, where it meant "rule of the people." Whether through direct participation or representation, a successful democracy reflects and accommodates the views of all its members, where the needs and concerns of the people are expressed through elections. Without the power to vote, we have little power to influence the direction of our government and the decisions made by our officials. Where an entire group is excluded, that loss of power is even more profound. The move toward universal suffrage in this country has meant far wider inclusion and stronger political voice for our diverse populations.

Over our nation's history we have seen many developments that broaden the scope of the right to vote. The 15th Amendment to the Constitution, ratified on Feb. 3, 1870, prohibits states from "denying or abridging the right to vote on the bases of race, color, or previous condition of servitude." The women's suffrage movement gained ground throughout the second half of the 19th century and the early 20th century, culminating in changes to the law in some states to allow women to vote and ultimately in a Constitutional amendment. We in New York can look back with pride at the Seneca Falls Convention held in Seneca Falls, N.Y. in 1848, where women's right to vote was debated and ultimately embraced; it is widely hailed as the seminal event in the women's rights movement in America. New York state extended the franchise to women in 1917, three years before the ratification of the 19th Amendment to the U.S. Constitution, which guarantees women around the country the right to vote.

Yet, even as we saw progress, states continued to impose rules that suppressed the vote of minorities and the poor. Literacy tests, poll taxes, residency requirements, grandfather clauses, "white primaries," and other pernicious laws effectively excluded people from voting on the basis of race or poverty. Beyond the » Page 12

Promoting Confidence In the Elected Judiciary

A. Gail Prudenti
Chief Administrative Judge
New York State
Unified Court System

"Without public confidence, the judicial branch could not function." *In re Raab*, 100 N.Y. 2d 305, 315-16, 763 N.Y.S.2d 213, 218 (2003).

This year's Law Day theme calls on us to reflect upon a fundamental tenet of American democracy—the right to vote and the importance of each and every citizen's exercise of the elective franchise. In New York, where 73 percent of the state's full-time judges are elected, ensuring the integrity of judicial elections is vital to instilling public trust and confidence in the judiciary. As the arbiter of disputes between private parties and between the government and private parties, the judiciary plays a critical role in our democracy, and maintaining its independence and impartiality, as well as the public perception of its integrity, is absolutely essential. Accordingly, the court system has gone to great lengths to foster dignified judicial campaigns and improve voter participation. From creating independent screening panels for elective judicial positions and posting voter guides with information on judicial candidates, to establishing a » Page 12

A Look Back at N.Y.'s Language Requirement

Luis A. Gonzalez
Presiding Justice
Appellate Division,
First Department

This year, on Law Day, we celebrate our cherished right to vote. To quote Abraham Lincoln, we celebrate our right to a "government of the people, by the people, for the people," as we recognize that we continue to face national and state challenges in ensuring that all citizens have the opportunity to participate in our democratic system of justice.

The U.S. Constitution does not contain any specific voter qualifications, and matters regarding voting have generally been left to the states. Article II of the New York State Constitution, governing suffrage, presently reads:

> Every citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that such citizen is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election.

Notably absent from this section is any require- » Page 13

Courts Play a Vital Role In Assuring Fairness

Randall T. Eng
Presiding Justice
Appellate Division,
Second Department

The preservation of a free and democratic society rests upon the vigorous enforcement of the right of every citizen to vote. An examination of voter turn-out for the 2012 presidential election reveals that nationally, 57.5 percent of eligible voters cast their ballots, which reflects a norm over the past 100 years in which the percentages ranged from a high of 62.8 percent (1960) to a low of 48.9 percent (1924).

It is readily apparent from these figures that barely half of those deemed eligible to vote have shaped the nations's destiny for more than a century. With this background, each of the states has been given the discretion to establish the qualifications of voters within its own jurisdiction, subject to constraints imposed under the Constitution or by specific federal statutes.

It is therefore imperative that our courts take on a leading role in assuring fairness in the electoral process. In fulfilling its role, the judiciary in New York has addressed such disparate issues as term limits, redistricting and recounting of electronic ballots. Recent cases decided » Page 13

Healthy Democracy Requires Full Participation

Henry J. Scudder
Presiding Justice
Appellate Division,
Fourth Department

In May 2000, Florida Governor Jeb Bush appointed Charles Burton to the county court bench in Palm Beach, Fla. As the newest member of the bench, Judge Burton was designated chairperson of the Palm Beach County Canvassing Board. He had no idea what a canvassing board was, but was assured by his colleagues that "nothing ever happens on the canvassing board." Six months later, Burton was at the center of a national firestorm over the recounting of ballots cast in the presidential contest between George Bush and Al Gore. In the ensuing weeks, "hanging chads" and "dimpled ballots" became part of our nation's political lexicon as the presidential election hung in the balance. George Bush was ultimately declared the winner in Florida, giving him the state's 25 electoral votes and the presidency. Bush's margin of victory in Florida was 537 votes out of six million cast.

There are also many examples of congressional races decided by remarkably small margins. On election night in 2008, incumbent Minnesota sena- » Page 13

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U.S. PRESIDENT Lyndon B. Johnson hands a pen to Rev. Martin Luther King Jr. during the signing of the **Voting Rights Act** in Washington, D.C., on Aug. 6, 1965.

WIKI

ON NOV. 4, 2008, a lengthy line of voters waits to vote in the **U.S. presidential election** at PS6 in Brooklyn.

Inside

Increasing Voter Participation Is a State Bar Priority

David M. Schraver
President
New York State Bar Association

Respect for and understanding of the rule of law is a core value of the New York State Bar Association. Part of the State Bar's program to promote the rule of law is to educate the public of all ages about our democratic form of government and their opportunity and responsibility to participate in it. Voting is one of our most fundamental rights. Every vote matters and can affect the outcome of an election. In addition, voting engages the citizen in the democratic process.

Unfortunately, New York's voter participation rates have continued to decline. According to a 2010 report, New York ranked 47th among the states in average voter turnout in three previous elections. In 2012, a presidential election when turnout is usually the highest, only 53 percent of eligible voters in New York cast ballots.

In 2013, the State Bar's House of Delegates approved the report and recommendations of our Special Committee on Voter Participation, appointed by Immediate Past President Seymour James and co-chaired by John R. Dunne and Daniel F. Kolb. The Special Committee was appointed to recommend ways to remove barriers to registration and voting while maintaining the integrity of the process.

These recommendations include: changing the voter registration system so citizens are presented with voter registration opportunities each time they interact with a state or federal agency and making voter registration opportunities available online independent of such transactions; a voluntary pre-registration program for 16- and 17-year-olds so they are already registered when they reach voting age; an amendment to the State Constitution to permit election day and, with early voting including through the weekend before election day, same day registration; pending the constitutional amendment, state legislation to reduce the deadline for registration from 25 days to 10 days prior to election day; local adoption of election day or same day registration to the extent practicable. These changes to the law relating to voter registration and voting practices are included in our 2014 State Legislative Priorities.

Support for increased voter participation is also one of our Federal Legislative Priorities. The Voter Empowerment Act would, among other things, amend the National Voter Registration Act of 1993 to require each state to make available official public websites for online voter registration. It would also authorize automated voter registration of certain individuals and establish other initiatives to promote voter registration, such as same day registration and voter registration of individuals under 18 years of age.

The New York State Bar Association will continue to advocate at the state and federal levels for changes in the law to encourage increased voter participation.

David M. Schraver is senior counsel at Nixon Peabody in Rochester.

Ethics, Cynicism and the Voting Booth

Carey R. Dunne
President
New York City Bar Association

As voters, we've become a nation of cynics. Fewer than 60 percent of eligible voters turned out in the last presidential election; in New York state it was less than half. We watch with concern as people risk their lives to vote in struggling democracies around the world, yet here at home we shrug our shoulders when passing up this most democratic of opportunities.

To be sure, a number of practical steps are being pursued to make it easier to "get out the vote." Early voting, same-day registration, and no-excuse absentee ballots are all well-intentioned and increasingly successful attempts to remove obstacles in the path to the voting booth.

But we shouldn't lose sight of the most important cause of voter apathy in the 21st century: disdain for the institution of politics. Here, of course, a big finger gets pointed at the famous gridlock in Washington, D.C., but we shouldn't underestimate how our statehouse shenanigans contribute to the enervation of voters. In New York alone, 25 state legislators have left office due to criminal or ethical issues since 1999. Not surprisingly, a 2013 Siena Research Institute poll showed that two-thirds of New York voters believe "state government is becoming more dysfunctional every day" and that 89 percent believe corruption in the state legislature is a "very serious" or "somewhat serious" problem. The recent demise of the Moreland Commission to Investigate Public Corruption can only add to the public's cynicism. Is it any wonder that voters choose to stay home, convinced that their votes don't matter, that money drives policy, and that the system is riddled with hidden conflicts?

Campaign finance and political ethics reform are not sexy subjects when it comes to front-page news. But they are necessary steps in any effort to improve perceptions of, and respect for, the political marketplace. To this end, the New York City Bar Association has long championed the public financing of election campaigns on a city, state and federal level. New York City's system provides public matching funds to participating candidates in exchange for their agreement to limitations, including a ceiling on fundraising. It's a national model for leveling the playing field, and enables candidates to gain office without assembling huge war chests. Another Siena poll shows that 64 percent of New Yorkers support the creation of such a comprehensive system on the state level. The governor and the state legislature missed a great opportunity to achieve that in the final 2014-2015 state budget, but New Yorkers should continue to demand reform and, ultimately, New York should adopt it.

When it comes to political ethics, a Joint Committee on Public Ethics (JCOPE) was established two years ago, amid great fanfare, to reinvigorate and enforce state ethics laws. Yet a City Bar report by our Government Ethics Committee and Common Cause/New York recently found that JCOPE has fallen short in meeting its mission. JCOPE should live up to its initial promise to change the climate in Albany, using its regulatory power and its bully pulpit to educate the public and call politicians to task.

As long as these types of basic statutory and regulatory reforms are ignored, we shouldn't be surprised when our friends, relatives and neighbors don't vote, citing political business as usual.

Carey R. Dunne is a partner at Davis Polk & Wardwell, where he is chair of the white-collar defense and investigations practice.

Reversing Traditions Of Racism

Raymond J. Dowd
President
Network of Bar Leaders

This year the president of the Federal Bar Association is U.S. District Judge Gustavo Gelpi of the District of Puerto Rico. As a law student at Suffolk University Law School and resident of Boston, Judge Gelpi was permitted to vote in U.S. presidential elections. He is a U.S. citizen. But when he returned to Puerto Rico to practice law, he was not, and is not, even as a sitting federal judge, entitled to vote in a U.S. presidential election.

This strange situation is not the result of any statute, but of decisions of the U.S. Supreme Court known as "the insular cases," which were decided from 1901 to 1905. These cases answered the question "Does the Constitution follow the flag?" and found that constitutional rights did not automatically extend to Puerto Ricans, even if they are U.S. citizens. Unless a territory is "incorporated" into the United States, like Alaska and Hawaii, U.S. citizens there cannot vote in a U.S. presidential election. This "insular" doctrine is based on racism and a betrayal of the democratic values enshrined in the Constitution.

As Justice Hugo Black observed:

> The concept that the Bill of Rights and other constitutional protections against arbitrary government are inoperative when they become inconvenient or when expediency dictates otherwise is a very dangerous doctrine and if allowed to flourish would destroy the benefit of a written Constitution and undermine the basis of our Government.

Torres v. Puerto Rico, 442 U.S. 651 (1980), citing *Reid v. Covert*, 354 U.S. 1, 14 (1957).

On this Law Day, it is a good time to reflect on whether we need to strengthen our constitutional protections against arbitrary government. If indeed "every vote counts" as we are told, we should count every vote. By doing so, we would take a large step in the direction of reversing a shameful tradition of racism.

Raymond J. Dowd is a litigation partner at Dunnington Bartholow & Miller, author of Copyright Litigation Handbook (Thomson Reuters Westlaw 6th Ed. 2013-2014), and serves on the Federal Bar Association's board of directors.

WIKI

AN 1870 PRINT titled **"The Fifteenth Amendment."** The amendment prohibits denying citizens the right to vote "on the basis of race, color, or previous conditions of servitude."

Make Your Voice Heard

Jacqueline W. Silbermann
President,
New York Women's Bar Association

Given the long fight to grant women the right to vote, which was not achieved in this country until 1920, this year's theme for Law Day, "American Democracy and the Rule of Law: Why Every Vote Matters," particularly resonates with me and with our members. In the 94 years since passage of the 19th Amendment, we have seen how women's votes (and every vote) matter.

Obtaining the right to vote is but the first step to ending disenfranchisement, however, and exercising the right to vote remains critical. And we must fight against voter identification laws meant to suppress voter turnout. Such laws have created barriers for women who change their names upon marriage, including a Texas district judge who was almost barred from voting last year.

It is only in exercising our right to vote that we ensure that our elected officials represent, and hear, all of us. There are still those who engage in legislative efforts to invade a woman's body and severely restrict access to reproductive health care, and it is only if we exercise our right to vote that we can turn back the tide. And although there have been reverses, we are also seeing some positive results.

Here in New York, bills promoted by the Women's Bar to protect victims of domestic violence and matrimonial reform laws have finally, in the last few years, passed the legislature. In New York County, women comprise 50 percent of the Civil and Supreme Court judges—an elected position. This in turn has led to more women on the appellate benches, as we have seen with the recent increase in the number of women sitting on the Appellate Division, First Department. Across the country, more and more women are being elected, and their voices and votes are critical.

The 2012 elections reflect the importance of voting. Women made up the majority of those voting (53 percent), and the effects are significant. Today there are 78 women in the House of Representatives and 20 women in the U.S. Senate, the most ever elected. The Violence Against Women Act (VAWA), a successful law that had reduced domestic violence by 67 percent since it first passed in 1994, had been allowed by Congress to lapse in 2011. Among the disputes that prevented its reenactment were VAWA's expanded protection of the LGBT community, Native Americans and undocumented immigrants. In 2013, however, after seeing the high turnout of women in the 2012 elections, Congress reauthorized VAWA, with these expanded protections included.

Here at the New York Women's Bar Association, which will be celebrating its 80th anniversary in 2014-2015, we have been active on issues from voting rights, to fighting for marriage equality, to providing services to victims of domestic violence, to preventing human trafficking, and beyond. Our mission is to "promote the fair and equal administration of justice." To meet this goal, we must continue to exercise, promote and protect the right to vote, so we can be heard and to secure the rights of all.

Jacqueline W. Silbermann, of counsel at Blank Rome in New York, served as statewide administrative judge for matrimonial matters and as the administrative judge of the Supreme Court, Civil Term, New York County.

Exercise Your 'Pivotal Right'

Barbara Moses
President
New York County Lawyers' Association

Susan B. Anthony, writing in 1897, called suffrage "the pivotal right," without which all other political gains are merely privileges—"for privileges they must be called so long as others may either given them or take them away." The 15th Amendment, ratified in 1869, prohibited the states from denying voting rights based on "race, color, or previous condition of servitude," but women were still expressly prohibited from voting in all but four states. It was another 23 years before the 19th Amendment, ratified in 1920, granted women the right to vote nationally. Poll taxes were not prohibited until the 24th Amendment was ratified in 1964. That same year, Congress passed the Civil Rights Act, broadly outlawing voting discrimination on the basis of race, national original, religion or gender, followed quickly by the Voting Rights Act of 1965, which for the next 48 years required jurisdictions with a history of discrimination to obtain advance federal approval of changes to their election laws.

The genius of the Voting Rights Act was its recognition that voter suppression techniques are constantly mutating, like a dangerous virus. Justice Ruth Bader Ginsberg, dissenting in *Shelby County v. Holder*, explained:

> Early attempts to cope with this vile infection resembled battling the Hydra. Whenever one form of voting discrimination was identified and prohibited, others sprang up in its place.

The "[s]econd generation barriers" we see today "come in various forms." Those barriers, however, are not confined to the (mostly) southern jurisdictions covered by the Voting Rights Act.

In advance of the 2012 elections, 10 states passed restrictive "no photo, no vote" voter ID laws, which disproportionately affect poor and minority voters. Bills to impose or strengthen such laws are currently pending in 11 states. Two states are considering legislation to require documentary proof of citizenship to register or vote—even though the U.S. Supreme Court last year invalidated a similar Arizona law on federal preemption grounds. And according to the Brennan Center for Justice, which tracks voting laws nationwide, two states are trying to curtail early voting and five are considering bills that would make it harder to cast ballots by mail.

The news isn't all bad. The voter turnout in the 2012 presidential election was the highest since 1968. The bipartisan Presidential Commission on Election Administration (co-chaired by the heads of the Obama and Romney campaigns) recently offered a set of practical recommendations to improve access to the ballot box nationwide. And the legislative momentum in state capitals seems to be swinging toward voter empowerment. According to the Brennan Center, 18 states—including New York—have introduced bills to modernize their registration systems, 13 are considering legislation to expand early voting hours, and nine are trying to relax existing voter-ID or proof of citizenship laws. But history teaches that we can never take the right to vote for granted, and the Hydra will undoubtedly generate additional heads in the wake of *Shelby County*.

Barbara Moses is counsel at Morvillo Abramowitz Grand Iason & Anello and visiting clinical professor and director of the civil rights and constitutional litigation clinic at Seton Hall University School of Law.

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Helping Every Vote Get Cast

Clara J. Ohr

President
Asian American Bar Association Of New York

Every Election Day, whether it involves a municipal primary or a national general election with the U.S. Presidency or Congressional control at stake, I experience a contrast of emotions. On the one hand, I am enormously grateful to be part of a unique democratic process that facilitates debate and a peaceful transition of power. On the other, I am saddened to think of family I have trapped in the "Democratic" People's Republic of Korea, where a key component of survival is voting "correctly." In light of this forced choice that my North Korean family and their fellow citizens face, I am troubled when I hear of low voter turnouts in American elections. According to The New York Times, the 2013 general election for New York City Mayor saw a record low turnout of 24 percent of registered voters.

While some of this lack of voter participation may in itself be a conscious exercise of voting rights, due to disillusionment with candidates, or simply the result of a perceived lack of time to vote (I don't buy the latter), there are still too many voters not casting ballots because they are unaware of or unable to exercise their rights. Too often, these voters come from populations of color.

Progress has occurred in the United States with respect to minorities getting to the polls. According to the U.S. Census Bureau, the 2012 presidential election saw a higher percentage of eligible blacks voting than non-Hispanic whites (66.2 percent versus 64.1 percent) for the first time in American history. Nevertheless, the U.S. Census Bureau found that while Hispanics and Asians made up 10.8 and 3.8 percent of the eligible electorate in 2012, respectively, they made up only 8.4 and 2.9 percent of the voting population that actually cast ballots.

We lawyers can play key roles in helping more of these populations exercise their voting rights, which are still hampered by such barriers as shortages of language assistance, misinformation about voter eligibility and/or hostile treatment by workers at polling stations, and proof of citizenship laws with a disproportionately discriminatory effect on minorities. Organizations like the Asian American Bar Association of New York (AABANY) urging its members to volunteer for projects such as the Annual Asian American Election Protection Project (multilingual voter surveys and poll monitoring) by the Asian American Legal Defense and Education Fund (AALDEF) is but one example of lawyers helping to safeguard the participation of *all* eligible voters. Results from this AALDEF project contributed to an amicus brief that AALDEF and the Asian Pacific American Bar Association of Pennsylvania filed in a constitutional challenge (*Applewhite v. Pennsylvania*) against a restrictive Pennsylvania voter identification law that a state court judge struck down earlier this year.

Our Founding Fathers envisioned a representative democracy for America. Let us do what we can as lawyers to help strive toward this goal, which we as a country have yet to achieve.

Clara J. Ohr is assistant general counsel-trading at Hess Corporation in New York.

Rise Above Barriers to the Ballot

Matthew Skinner

Executive Director
The LGBT Bar Association Of Greater New York

The right to vote is one of the most sacred rights we hold as Americans. Although your candidate or position may not necessarily prevail, casting a ballot remains the most powerful and important way to make a statement in our system of government.

While the LGBT community has always been committed to the right to vote, it is no secret that we have repeatedly and loudly voiced our disagreement with the proposition of having the wider electorate vote on certain matters that deeply affect us. It has not been uncommon to see the voting public asked to decide on our ability to teach in public schools, be free from discrimination in housing and employment, or marry the people we love.

Despite the problematic nature of these votes, we have accepted the reality that these questions will sometimes be on the ballot. When they are, we fight hard in the court of public opinion to persuade the electorate to support us, and have thankfully seen our efforts bear fruit in recent years.

Meanwhile, the democratic election of representatives gives legitimacy to the important decisions that they will make in office. When we exercise our right to vote for pubic officials, we are able to elect, or hold accountable, individuals who will make concrete decisions on our behalf about how our government will be run and how precious resources are distributed.

In addition, as minorities, we also value the election of candidates hailing from diverse communities. When a diverse group of candidates wins, it serves to create a leadership base that gives more groups a place at the table. At that table, there is a much greater chance that the particularized needs of different communities will be met.

The high stakes of elections are why it is so important to make sure every eligible voice can be heard at the polls. This fundamental principle has been under attack this past year, as the U.S. Supreme Court gutted the Voting Rights Acts and sharply reduced the federal government's ability to oversee voting discrimination in areas with a history of discriminatory voting standards against minorities, most specifically African-Americans. The LGBT community joined its coalition partners in expressing dismay at this ruling, and promised to work with them to undo the damage inflicted by this troubling development.

Indeed, many states have responded to the Supreme Court's decision by immediately passing draconian voter identification laws. Advocates have rightly raised alarm about what voter identification laws mean for people of color and the poor. There is additional reason to be concerned about what they mean for transgender citizens. It has never been easy for transgender people to vote, or participate in any activity that requires government-issued identification. The transgender community has faced significant challenges at the ballot box and voter intimidation as well.

The significant challenges we face should not keep us from rising to the occasion. This Law Day, let us recommit to the important work of fighting for everyone's right to vote.

Matthew Skinner previously litigated at Proskauer Rose and clerked for Judge Richard K. Eaton at the U.S. Court of International Trade.

Reflections on the Women's Suffrage Movement

Holly E. Peck

President
Brooklyn Women's Bar Association

The next time that you are standing in a long line to vote, please keep in mind Abigail Adams' remark "to remember the ladies." When she made that comment in her March 1776 letter to her husband, President John Adams, she did not realize that it would take another 144 years until women finally won the right to vote in 1920.

The women's rights movement began in Seneca Falls in 1848 with Susan B. Anthony and Elizabeth Cady Stanton as its leaders. Women leaders discussed for the first time women's right to vote. While the issue was contentiously debated, Frederick Douglass, the only African American in attendance, eloquently advocated on its behalf. Thereafter, the beginning of the women's suffrage movement began to grow after the Civil War during the Reconstruction Period of 1865-1877.

With the advent of the 13th, 14th and 15th Amendments, women rights leaders hoped that now was the time to persuade their fellow citizens that women should have the right to vote. Although they initially encountered resistance to their idea, women leaders continued to raise the issue.

As new states and territories joined the union as the country expanded westward, people were willing to consider new ideas. Women over 21 years old were allowed to vote in the territories of Wyoming in 1869, Utah in 1870 and Washington state in 1883.

Since the West was amenable to change, New York's own Susan B. Anthony and Elizabeth Cady Stanton were able to convince U. S. Senator Aaron A. Sargent of California to introduce the proposed 19th Amendment in the U.S. Senate in January 1878. Sargent was a great believer in the women's suffrage movement. According to local lore, Sargent met Ms. Anthony on a train ride. What a fateful train ride that was!

The amendment was drafted by Ms. Anthony with the help of Ms. Cady Stanton. The measure was bottled up in committee until it was considered and rejected by the full U.S. Senate in 1887. The amendment sat for another three decades as the women suffragists continued to fight for the right to vote in individual states and territories with the ultimate goal of passing the 19th Amendment. When 1912 came with the election of President Woodrow Wilson and the newfound popularity of progressivism, the amendment was again considered in the U.S. Senate in 1914 but rejected. In 1915 and 1918 it was once more considered and defeated.

Hoping to turn the tide, President Wilson called a special session of Congress in order for the proposal to be brought before the U.S. House and U.S. Senate. The measure passed both houses in May and June 1919. Thirty-five of the necessary 36 state legislatures ratified the amendment. On Aug. 18, 1920, Tennessee narrowly approved the 19th Amendment, providing the final ratification necessary to enact the amendment, some 42 years after its introduction in the U.S. Senate. Two years later, its constitutionality was unanimously upheld by the U.S. Supreme Court in *Leser v. Garnett*, 258 U.S. 130, 42 S.Ct. 217, 66 L.Ed 505 (1922).

So whenever you feel too tired, too busy or take the right to vote for granted, please remember the feistiness of our suffragists who remained persistent and refused to back down in the face of defeat. Surely they exhibited courage, character and commitment. Also please remember the men who bravely supported them. Abigail Adams steered this country in the right direction. So go out and vote! Yes, that vote makes a difference, so use it to make our country even stronger.

Holly E. Peck is principal law clerk to Judge Dawn Jimenez-Salta, Kings County Supreme Court.

WOMEN surrounded by posters supporting Franklin D. Roosevelt, Herbert H. Lehman, and the American Labor Party **teach other women how to vote** in 1935.

WIKI

Monetizing Free Speech Creates a Divide

Elba Galvan

President
Puerto Rican Bar Association

This month on April 2, 2014, the U.S. Supreme Court further asserted its belief that campaign contributions are constitutionally protected speech. In *McCutcheon v. Federal Election Commission*, the Supreme Court lifted campaign finance spending limits by allowing donors to contribute $5,200 to as many candidates and $32,400 to as many party committees as desired. The First Amendment protects our freedom of speech. The Supreme Court believes the First Amendment also protects the freedom of our money to speak.

Numerous regulations on how we spend money are not subject to constitutional scrutiny. For example, monetary transactions in excess of $10,000 are reportable to the Financial Enforcement Network Bureau of the IRS; sales and services are subject to taxation; anti-competition legislation protects industry from monopolies; usury laws cap interest rates. Despite these common sense approaches to regulating money, a majority of the Supreme Court fails to recognize that unlimited campaign contributions are incongruent with a healthy democracy. Democracies are founded on and responsive to the wishes of the electorate. However, by conflating the freedom of speech with spending money—"spending money is essential to disseminating speech"—five justices of the Supreme Court allow the candidates with the largest purse to have the loudest voice. Yet, would anyone argue that wealthy people should have more than one vote?

The concept of the "freedom of money" is at the core of *McCutcheon*. The holding threatens the anti-corruption goals of campaign finance reform. One wonders: How will the "freedom of money" evolve in the foreseeable future? Will it be able to trump our penal law? Does the freedom to spend mean we can challenge laws against drugs and prostitution, if those laws restrict our ability to freely express ourselves through our monetary choices? And can "freedom of money" trump other priorities in the Bill of Rights? Is voter suppression a valid exercise of speech through money?

The implications are varied and the consequences deep. Take the Fourth Amendment, for example, which preserves our right to be free of unreasonable searches and seizures. That right applies to every citizen equally, in theory, and is certainly not for sale. And, despite the ability of wealthy individuals to better insulate themselves from "unreasonable searches and seizures," there is no constitutionally cognizable claim that the more money you have, the more privacy you are entitled to. A direct monetary correlation between those who could shield themselves from privacy infringements and those who could not would be offensive. Yet, this is the dichotomy that *McCutcheon* creates with respect to the First Amendment.

By monetizing free speech, the court creates a stratification between the voices and opinions of those who can afford to be heard and those who cannot, eventually silencing the viewpoints of the unendowed. Limiting governmental restrictions on speech, as *McCutcheon* does, is meaningless without the freedom for all, regardless of financial means, to participate civically and chart our political destiny. As lawyers, we must critically examine cases like *Buckley v. Valeo*,*Citizens United v. Federal Election Commission* and, more recently, *McCutcheon v. Federal Election Commission*, and raise public awareness of their true impact. Regrettably, unless we act in the public interest, under the court's trajectory, speech will eventually be anything but free.

Elba Galvan is a court attorney in New York.

One Vote Can Make All the Difference

Joseph F. DeFelice

President
Queens County Bar Association

Voting is one of the most important things we can do as citizens. It not only influences who is elected to office but it gives us an opportunity to express our viewpoints and positions on issues to elected officials. Unfortunately, apathy and issues concerning the time it might take to vote leave many citizens choosing not to cast a ballot. Many of them may believe the following: "After all it's only one vote, it doesn't make a difference." Of course, it does make a difference. On the national scene it could not have been better illustrated than in the Presidential election of 2000 when Al Gore lost Florida and the election by only hundreds of votes.

We all must wonder how the world events may have been different after Sept. 11, 2001 if Al Gore had been president. Would there have been a war in Iraq to uncover "weapons of mass destruction"? Life and history are changed and effected by who our votes are cast for and who wins a general election. Likewise, the election for Nassau County Executive was altered by some 300 plus votes in 2009 leading to different policy decisions and choices by local government. We are very fortunate to be living in the United States where the government strives to ensure a free and secret ballot. It is not only who is elected but also the issues that are often decided on election day. Recently, there were ballot issues on casino gambling, which were passed, and on the extension of time for which judges can serve, which was rejected. Whether you supported one or both of those issues or not, the fact remains that the vote on these matters was decided by a small percentage of eligible voters. Having our policies decided by such a small percentage of eligible voters harms the foundation of our democracy.

As lawyers we have a social responsibility to urge our legislators to initiate policies that will make voting more streamlined and easier and enable people to cast a ballot within 30 minutes or less.

There needs to be better training of poll workers possibly through a one-hour training session so that they are in a better position to deal with issues that arise on election day and not "learn on the job." Better training can lead to more efficiency when dealing with machines that malfunction, or how to deal with paper ballots and affidavits for voters who may for some reason not be listed as eligible voters.

As citizens we should exercise our right to vote but citizenship also requires that we stand up for everyone's right to vote. Voting is, after all, the foundation of any democratic nation. Urging our legislators to enact laws that will make voting easier and more accessible without long lines at polling locations will be a good beginning.

Joseph F. DeFelice handles criminal and immigration matters from his office in Kew Gardens.

Voting Engages Citizens on Important Issues

Thomas J. Hall
President
Richmond County Bar Association

This year's Law Day theme, "American Democracy and the Rule of Law: Why Every Vote Matters," goes to the very heart of the most basic and fundamental principle of our democratic system of government. The Boston Tea Party and the American Revolution emanated from an intolerable situation in which the citizens of the colonies of America were subjected to taxation by a government in which they had no say. Throughout our nation's history, many lives have been sacrificed and much blood has been shed by members of our armed forces and by private citizens in defending and protecting our right to vote.

Today, in many communities, although we have the unfettered right to vote, there is often a poor turn out in elections. The justification one often hears from someone who fails to vote is that their one vote "wont make a difference." Such an attitude is not only wrong on a number of levels, it undermines the very notion that, as Abraham Lincoln stated, we are a government "of the people, by the people [and] for the people." Our right to vote comes hand in hand with each and every citizen's obligation to vote.

History has taught us that in many elections, one vote can make a difference. For example, in 1800, Thomas Jefferson was elected president by one vote in the House of Representatives after a tie in the electoral college. In 1824, Andrew Jackson won the presidential popular vote but lost by one vote in the House of Representatives to John Quincy Adams after an electoral college dead-lock. More recently, in 2000, the presidential election was decided by an extremely narrow margin. George W. Bush won the state of Florida by just 537 votes, making him the next president of the United States. Close to six million voters went to the polls in Florida. It might not have been by one vote, but certainly every vote counted.

While thinking about our individual vote strictly from a numerical perspective is one way to look at the issue, the idea that "every vote matters" should be considered from a very different perspective. Every citizen who exercises his or her right to vote becomes engaged on the variety of issues that affect that citizen's national, state and local government. These issues can, and should be, debated and discussed with our family, friends and co-workers. This free exchange of ideas and healthy differences of opinion are what make our democracy thrive and truly make us a government "of the people, by the people [and] for the people."

As attorneys, we have a special duty to encourage our friends, family members and acquaintances to exercise their right to vote. I urge each of you to use this Law Day as an opportunity to reinforce with everyone that you know, the basic, yet essential and fundamental concept that *every vote matters*.

Thomas J. Hall practices at The Law Firm of Hall & Hall.

Low Voter Turnout Is an Urgent Problem

Andrew M. Fallek
President
Brooklyn Bar Association

Compared with other states, New York has comparatively low voter registration rates and low voter turnout rates. Do we need to actively work to remedy this?

Voting is a fundamental right and one of our duties as lawyers is to remove obstacles to the exercise of that right. It goes without saying that eligible voters who want to exercise the franchise should not be subjected to onerous and meaningless requirements or be compelled to stand on line for hours to use voting machines that don't function properly. The latter problems require money, not talk. Funding the mechanisms that permit the actual voting process would appear to be among a democratic government's most basic functions and it is inexcusable that we still struggle with this.

If we ensure the ability to cast a vote and have that vote counted, are we any less of a democracy if a significant percentage of eligible voters choose not to make the effort to cast their ballots? We generally do not concern ourselves in this country when people fail to join a church, marry, buy a gun or exercise one of their other fundamental rights. Is something to be gained by pushing the unmotivated to come to the voting booth simply for the sake of boosting our percentages?

We could remind people to register with clever quips like, "turn your clocks back, change the batteries in your smoke detector, register to vote," but is it possible that anyone who otherwise meets the eligibility requirements for voting doesn't know the basics about why the vote is important? Although it may be somewhat of an embarrassment in intellectual circles, low overall turnout rates do not seem to prevent elected officials who win with a high percentage of the actual vote from claiming a mandate to govern.

Of greater concern are those who might otherwise be enthusiastic participants in our system but who either withhold their vote to express their displeasure with the system itself or the candidates that the system has produced. In a country where eligible voters increasingly identify themselves as independent, and where opinion polls indicate that most people fall in the middle of the political spectrum, there seem to be fewer centrist candidates to choose from in general elections. Major party candidates are typically decided in party primaries where those with far left or far right views attract a disproportionate share of the vote from the few party members who bother to come out. New York, New Jersey and Connecticut have closed primaries (only registered party members can vote in their party's primary) meaning that those registered as independent will have no say in the selection process at all. We need to take a hard look at why our current system is producing final candidates with views so far from the norm.

Andrew M. Fallek handles commercial litigation and complex personal injury and insurance matters at Joseph Fallek, P.C.

Lippman

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misuse of the law, criminal acts of violence during the Civil Rights Era suppressed voter registration through terror.

The Voting Rights Act was a transformative event that changed the course of political inclusion in this country. By the end of 1965, a quarter of a million Southern blacks were registered to vote for the first time; by the end of 1967, the number was more than twice that. The new law was the culmination of decades of groundwork and the intense activism of the Civil Rights movement. Social, political, and legal pressure finally pushed the federal government to act.

A preeminent New York-based institution, the NAACP Legal Defense Fund, brought some of the most significant affirmative voting-rights litigation that lead to the Voting Rights Act, much of it under the leadership of the great Thurgood Marshall. Involvement by the NAACP in lawsuits challenging barriers to full participation in the electorate began in earnest with an amicus brief in the 1915 case *Guinn v. United States*, 238 U.S. 347. The U.S. Supreme Court in *Guinn* held that the "grandfather" clause in Oklahoma that exempted voters from literacy tests if they were already registered and similar provisions in Maryland violated the 15th Amendment to the U.S. Constitution. That was not the end of the story, however, as the Oklahoma legislature quickly enacted new voter registration legislation that had similar effects on access. Under the new law, anyone who had voted in 1914 was automatically qualified to vote, while new registrants had a 12-day window to register or be permanently barred from voting. The NAACP continued to challenge Oklahoma's registration laws, and the Supreme Court held Oklahoma's new law unconstitutional in 1939 in the case of *Lane v. Wilson*, 307 U.S. 268, stating that the new laws "operated unfairly against the very class on whose behalf the protection of the Constitution was here successfully invoked."

In other litigation, the NAACP Legal Defense Fund challenged "white primaries," where minorities were not permitted to vote in primary elections, and redistricting cases, where the boundaries of electoral districts were drawn to ensure the election of white candidates. *Smith v. Allwright*, 321 U.S. 649 (1944), held that the policy of the Democratic Party in Harris, Tex. of prohibiting blacks from voting in primary elections violated the Constitution. In the words of the court:

> The United States is a constitutional democracy. Its organic law grants to all citizens a right to participate in the choice of elected officials without restriction by any state because of race. This grant to the people of the opportunity for choice is not to be nullified by a state through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election.

In *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), the Supreme Court addressed a challenge to redistricting in Tuskegee that changed the district from a square shape to an "uncouth twenty-eight-sided figure" and removed from the city all but four or five of its black voters but none of its white residents, finding that petitioners had stated a claim under the Constitution. This is hardly an exhaustive list of cases, and there were many courageous individuals and organizations that joined the NAACP in fighting for full inclusion in the political process. We have them all to thank for helping to bring about the Voting Rights Act of 1965.

The Voting Rights Act reaffirmed our democracy and helped to ensure that Americans had the right to participate fully regardless of race or income level. It continues to be of paramount importance today, nearly 50 years later. At present, we are faced with a new wave of efforts by state legislatures to restrict the ballot. Laws that have the effect of disenfranchising minority groups or the poorest among us based on dubious claims of potential voter fraud are destructive to the democracy and principles of equality that are central to our national identity. Laws that are passed not for a legitimate purpose but to exclude groups of voters are unacceptable. We cannot call ourselves a true democracy if our citizens are prevented or unfairly discouraged from voting. Government by the people is meaningless if some voices are not heard. It is more critical now than ever to remember the history of voting discrimination in this country. As we look back a half-century to the birth of the Voting Rights Act, we must remain vigilant in addressing any existing or emerging obstacles to voting. The very legitimacy of our democracy depends on it.

FOLLOWING the 2000 U.S. presidential election, Supervisor of Elections Theresa LePore and Canvassing Board chairman Judge Charles Burton, **inspect a questionable ballot** on November 11 in Palm Beach County, Fla., where a recount by hand was conducted. After review, the vote went to Republican presidential candidate George W. Bush.

AFP/GETTY IMAGES

ELIZABETH CADY STANTON (1815-1902), a U.S. suffragist, social reformer, and author, is quoted in a March 1863 circular calling for a convention of the Women's National Loyal League, as saying: **"The history of the past is but one long struggle upward to equality."**

AP PHOTO

Prudenti

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Judicial Campaign Ethics Center and adopting a rule restricting the assignment of cases involving attorneys and litigants who contributed to judicial campaigns, New York's judiciary is dedicated to ensuring that New Yorkers have confidence in their elected judiciary and that every vote counts.

In 2003, then-Chief Judge Judith S. Kaye established the Commission to Promote Public Confidence in Judicial Elections, and the group's thorough study and thoughtful recommendations led to the institution of several important programs. Among the Commission's recommendations was the creation of a statewide network of independent screening panels tasked with evaluating those seeking elective judicial office to ensure that they possess the qualities necessary for effective judicial performance. These Independent Judicial Election Qualification Commissions (IJEQCs), established in each judicial district in 2007, are neutral bodies that provide an independent, apolitical assessment of judicial candidates based on professional ability; character, independence and integrity; reputation for fairness and lack of bias; and temperament, including courtesy and patience.[1] The commissions then rate judicial candidates "highly qualified," "qualified" or "not qualified" and make this information available to the public. While candidates' participation in the commission evaluation process is voluntary and its findings are not binding, the IJEQC's screening has become akin to a "Good Housekeeping Seal of Approval," which provides a significant measure of confidence in the qualifications of judicial candidates while helping voters make more informed choices in these important, yet often less-publicized, elections.

The New York State Judicial Candidate Voter Guide is another means by which the court system seeks to promote an educated voting public and thereby enhance confidence in the judicial election process. The Voter Guide, available on the Unified Court System's website approximately two weeks before the general election, centrally coordinates pertinent information about the different courts and the judicial candidates, encouraging a wider understanding of the judiciary and judicial elections. For each candidate who chooses to participate, the guide contains biographical information including educational and professional history and a short personal statement provided by the candidate, as well as the rating issued by the IJEQC and a link to the candidate's campaign website for further information.[2]

The integrity of judicial elections begins with the way in which judicial campaigns are conducted. While the Rules Governing Judicial Conduct detail ethically permissible political activities for judges,[3] applying those rules in specific situations can often be complicated. The Judicial Campaign Ethics Center (JCEC) was established in 2004 to assist judicial candidates by providing ethics advice about their prospective campaign conduct. Detailed information on how to seek advice from the center, from calling for informal guidance to submitting a written request for a formal opinion, is available on the Unified Court System's website.[4] In addition to providing this valuable service, the center also serves as a central resource on campaign ethics for judicial candidates and provides the public with general information about judicial campaigns. The center's website includes a link to the Judicial Campaign Ethics Handbook, which contains summaries of selected ethics opinions dealing with questions frequently asked by judicial candidates.

To further ensure that judicial candidates are well versed in the rules of ethical campaign behavior, in 2006 the courts adopted a rule requiring candidates to complete ethics training.[5] This two-hour training program, required for all judicial candidates except those seeking election to town or village courts, includes a discussion of court rules relevant to judicial candidates, common ethical questions that may arise during a judicial campaign and hypothetical scenarios. The services offered by the JCEC, the guidance provided by the handbook, and the mandatory training program help educate candidates on how to avoid misconduct during judicial campaigns that can adversely affect the integrity of the election and of the judiciary itself.

The integrity of the judiciary rests upon its fundamental commitment to impartiality. While judges are required to remain uninformed of and unaffected by campaign contributions, foreclosing even the appearance of impropriety can be challenging because judicial campaigns are often funded in part by contributions from attorneys and firms who might later appear before the judge, and contribution information is easily accessible online. To address this challenge head-on, in 2011 Chief Judge Jonathan Lippman proposed, and the Administrative Board of the Courts subsequently adopted, a rule which provides that recently elected or re-elected judges will not be assigned to cases involving litigants, counsel or firms who made substantial contributions to their judicial campaigns.[6] Under its provisions, a "campaign contribution conflict" preventing assignment arises where an individual party or attorney involved in the case has donated $2,500 or more, or a group of participating attorneys and their client have collectively contributed $3,500 or more, to the judge within the prior two years. The rule also includes a waiver provision designed to prevent misuse of the rule and "judge shopping."[7] Since its adoption, this bright-line assignment rule has worked to systematically address the implications of the judicial campaign process, foster both the perception and reality of impartiality, and in doing so, bolster public confidence in the integrity of the elected judiciary.

Finally, it is also worth noting briefly that our courts are involved in all elections in a more general sense. The judiciary plays a central role in resolving election law cases, a process that involves an expedited briefing and hearing schedule for both our trial and appellate courts. We take our responsibilities in these matters very seriously and our administrative judges recognize both the importance of processing them in a timely fashion and of assigning judges with broad-based experience to handle them. In addition, to help ensure that every vote counts, on the day of elections, judges are made available to hear and determine any disputes that may arise relating to eligibility for voting.

Through all of these efforts, New York's judiciary strives to enhance voter education, ensure the integrity of judicial elections and make sure that every vote truly counts. By doing so, we strengthen the public trust and confidence that is essential in order for our courts to fulfill their central role in our democratic society.

1. See Part 150, Rules of the Chief Administrator of the Courts, available at https://www.nycourts.gov/rules/chiefadmin/150.shtml.
2. The Voter Guide is available at http://www.nycourts.gov/vote/.
3. See Part 100, Rules of the Chief Administrator of the Courts, available at https://www.nycourts.gov/rules/chiefadmin/100.shtml.
4. See http://www.nycourts.gov/ip/jcec/contactus.shtml. (Significantly, subsequent conduct that complies with written advice received from the center will be presumed proper for the purposes of any subsequent investigation by the Commission on Judicial Conduct. This presumption applies only to the individual candidate for the duration of the campaign season.).
5. See Part 100, Rules of the Chief Administrator of the Courts, §§100.5(A)(4)(f); 100.6(A); NY Rules of Professional Conduct, Rule 8.2(b).
6. See Part 151, Rules of the Chief Administrator of the Courts, available at https://www.nycourts.gov/rules/chiefadmin/151intro.shtml.
7. For more detail on Part 151 and its application, see Judge A. Gail Prudenti, "Assignment of Cases Involving Contributions to Judicial Campaigns," N.Y.L.J. (July 19, 2013), available at http://www.newyorklawjournal.com/id=1202611480859/AssignmentofCasesInvolvingContributionstoJudicialCampaigns.

Gonzalez

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ment that citizens prove themselves literate in any language prior to voting. This was not always the case.

For about 40 years preceding 1965, Article II, §1 of the New York Constitution stated that "…no person shall become entitled to vote … unless such person is … able to read and write English." In 1965, Congress enacted the Voting Rights Act, §4(e)(2) of which provides:

> No person who demonstrates that he has successfully completed the sixth primary grade in a public school in … the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any federal, state, or local election because of his inability to read, write, understand, or interpret any matter in the English language … .

On Sept. 30, 1965, Maria Lopez, a 21-year-old citizen and resident of New York, approached the election inspectors in Rochester and attempted to register to vote. She showed that she had completed the ninth grade in Puerto Rico. Because Spanish was the predominant classroom language, she could not read or write English to the satisfaction of the election officials, and they refused her registration for the upcoming statewide general election. She challenged the denial of her right to vote, and in *United States v. County Board of Elections of Monroe County*, 248 F. Supp. 316 (W.D.N.Y. 1965), app. dismissed 383 U.S. 575 (1966), a federal district court held:

> To the extent that the New York Constitution and Election Law prevent Miss Lopez and other American citizens educated in Spanish-language Puerto Rican schools from registering to vote in violation of the provisions of Section 4(e) [of the federal Voting Rights Act], the state constitution and law are invalid and the enforcement thereof must be enjoined.

Id. at 323. Subsequent to *Monroe*, the U.S. Supreme Court affirmatively declared §4(e) of the Voting Rights Act constitutional. *Katzenbach v. Morgan*, 384 U.S. 641 (1966). Justice William J. Brennan authored the majority opinion, which found the section a proper exercise of Congress' legislative powers under the Equal Protection Clause of the 14th Amendment. The court ruled that according to settled rules of federal preemption, New York's English literacy requirement could not be enforced, to the extent that it was inconsistent with the Voting Rights Act. The decision stated that the right to vote is "*the right that is preservative of all rights* [and that] … enhanced political power will be helpful in gaining non-discriminatory treatment in public services for the entire Puerto Rican community." Id. at 652 (internal quotation omitted; emphasis added). Justices John Marshall Harlan II and Potter Stewart dissented. It was their view that the case posed a straightforward equal protection problem—that New York state had a legitimate concern in promoting and safeguarding the voting process, which was impermissibly usurped, in the circumstances presented, by §4(e) of the Voting Rights Act. They would have found the federal provision unconstitutional.

Upon the authority of *Katzenbach*, Congress enacted the 1970 amendments to the Voting Rights Act expressly banning literacy as a qualification for voting, thereby eradicating this discriminatory practice. There is presently language assistance available to voters in New York City, but there have been problems with its implementation.

More than 40 years later, §5 of the Voting Rights Act, which required "covered jurisdictions" including nine states and various counties (e.g., Manhattan, Brooklyn, and the Bronx), to get pre-clearance from the federal government before changing its election laws, was struck down by the U.S. Supreme Court. See *Shelby County v. Holder*, 570 U.S. _, 133 S. Ct. 2612 (2013). The majority in *Shelby* found that the Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem at the time: the suppression of voting rights in certain "covered jurisdictions." The court concluded that voter disenfranchisement as it existed in 1965 no longer exists today. The dissent in *Shelby* is of the view that there is a new generation of barriers to minority voting rights, which would warrant maintaining federal pre-clearance requirements.

It has been estimated that New York's former language requirement prevented close to 300,000 eligible voters from casting their ballots. Hypothetically, these votes could have changed the results of the 1876, 1960 and 2000 presidential elections, and with that the course of history. Domestic and foreign policy decisions, including taxes, spending, military involvement in domestic and foreign disputes—all of these matters are largely affected by the way "we the people" vote. The importance of protecting every citizen's suffrage rights is as important today as it was in 1965.

Scudder

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tor Norm Coleman held a slim 215 vote lead over challenger Al Franken. After a mandatory recount and numerous legal challenges, the outcome was reversed and Franken was declared the winner by a margin of just 312 votes out of nearly three million ballots cast.

The 2000 presidential election and the 2008 Minnesota senatorial election quickly come to mind when reflecting on the law day theme "Every Vote Matters." While much attention is paid when close elections are played out on the national stage, the number of close races at the local level is often overlooked.

New York state has 62 counties, which are subdivided into 62 cities, 932 towns and 556 villages. Our 62 cities range in size from New York City, with a population of more than eight million, to Sherrill in Oneida County, with a population of just over 3,000. Almost nine million New Yorkers—46 percent of the state population—live in towns ranging in size from Hempstead in Nassau County, with a population of more than 750,000, to Red House in Cattaraugus County with a population of 38. More than 20,000 New Yorkers hold elected positions in local government. These elected officials make decisions that can directly affect people's lives.

Town residents elect supervisors, council members, town clerks and town justices. Some towns also elect their assessor, tax collector and highway superintendent. Supervisors and council members make decisions that impact tax rates, policing, residential and commercial development, open space, park systems, recreational programs, local ordinances, and highway maintenance, to name a few. Town clerks maintain town records and issue a variety of licenses from marriage to dogs to hunting and fishing. The nearly 2,200 town and village justices handle about two million cases annually, including criminal, small claims, evictions, and vehicle and traffic.

Every vote matters in these elections. In 2013, the town justice race in Plattekill, Ulster County, between Democrat John Sisti and Republican Robert Murphy ended in a 1,050 to 1,050 tie. The Plattekill town board appointed Murphy by a 3-2 vote to serve until a new election is held in November 2014. The previous year saw the candidates for town justice in East Rochester, Monroe County, deadlocked, each with 1,274 votes.

The 2013 election in my home county of Steuben further exemplifies the importance of every vote. Steuben County is located in the southwestern corner of New York state, just north of the Pennsylvania border. Its population is 98,000. Steuben County contains the cities of Corning and Hornell and 46 towns and villages.

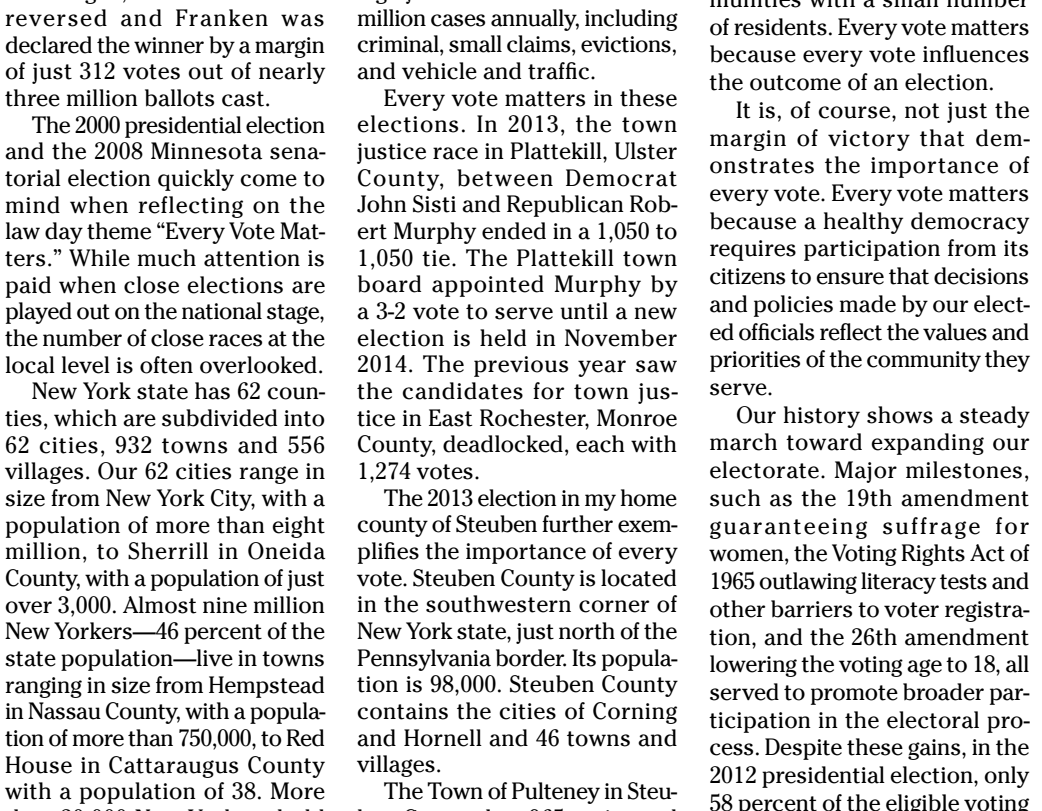
The Town of Pulteney in Steuben County has 965 registered voters. This past November, those voters were divided over the fracking issue and enforcement of the town's dog licensing ordinance. The incumbent town supervisor was defeated by four votes, 266-262, and just 31 votes separated the two candidates competing for a seat on the town board.

The results in Pulteney were not unique. In 2013, a council seat in the Town of Caton was decided by a 186-167 margin, the town supervisor in Fremont was elected by a margin of 145-141, and the final vote count for a council seat in Hartsville was 88-85. Political races decided by just a handful of votes are more common than most would think, especially in those communities with a small number of residents. Every vote matters because every vote influences the outcome of an election.

It is, of course, not just the margin of victory that demonstrates the importance of every vote. Every vote matters because a healthy democracy requires participation from its citizens to ensure that decisions and policies made by our elected officials reflect the values and priorities of the community they serve.

Our history shows a steady march toward expanding our electorate. Major milestones, such as the 19th amendment guaranteeing suffrage for women, the Voting Rights Act of 1965 outlawing literacy tests and other barriers to voter registration, and the 26th amendment lowering the voting age to 18, all served to promote broader participation in the electoral process. Despite these gains, in the 2012 presidential election, only 58 percent of the eligible voting population cast a ballot. Sadly, voter turnout is even lower in non-presidential years.

It's been said that "decisions are made by those who show up." Those words have variously been attributed to everyone from Benjamin Franklin to President Harry S. Truman to President Josiah Bartlet from the television drama "The West Wing." Whatever the correct attribution, the words should ring true for voters everywhere.



GETTY IMAGES

WOMEN LINE up to vote for the first time in New York in 1920 following the passage of the **19th Amendment**.

WIKI

PROTESTERS urge voting against California's **Proposition 8**, which sought to eliminate the right of same-sex couples to marry. Although passed in the November 2008 California state election, Prop 8 was ultimately ruled unconstitutional by a federal court in 2010.

Eng

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by the Appellate Division, Second Department and reviewed by the Court of Appeals serve to underscore its vigilance in these areas of the law.

First (and most recently) is *Matter of Hoerger v. Spota*, 109 A.D.3d 564, aff'd 21 N.Y.3d 549. This case involved term limits; more specifically, it addressed the question of jurisdictional authority to impose such limits. The petitioners alleged that the respondent, the district attorney of Suffolk County, was ineligible for designation as a candidate for that public office. In support, they relied on Suffolk County Local Law 27-1993, which, among other things, provides that "[n]o person shall serve as district attorney for more than [12] consecutive years." The term limit law was added to Suffolk County's charter as a result of a public referendum that passed with the support of more than 70 percent of county voters.

The respondent argued, inter alia, that the local law could not be enforced against him because it had been invalidated by the Supreme Court, insofar as it pertained to the "state" office of the district attorney for the county of Suffolk, in a separate action. The Suffolk County Board of Elections accepted the respondent's argument and determined that his designating petitions were valid. The Supreme Court, adhering to its prior determination, denied the petition to invalidate the designating petitions and dismissed the proceeding. The Second Department voted 3-2 to affirm. The majority concluded, inter alia, that the state has preempted the issue of term limits for district attorneys and that, as such, Suffolk County did not have the power to restrict the number of consecutive years that a person may serve as district attorney for the county. "Under our existing law, the authority to promulgate such a restriction is vested with and retained by the State."

The Court of Appeals agreed with the majority, noting that the office of district attorney was subject to comprehensive regulation by state law, leaving the counties without authority to legislate in that respect. "Permitting county legislators to impose term limits on the office of district attorney would have the potential to impair the independence of that office because it would empower a local legislative body to effectively end the tenure of an incumbent district attorney whose investigatory or prosecutorial actions were unpopular or contrary to the interests of county legislators. The state has a fundamental and overriding interest in ensuring the integrity and independence of the office of district attorney" (21 N.Y.3d at 553).

Another case that came through the Second Department was *Yatauro v. Mangano*, 87 A.D.3d 582, rev'd 17 N.Y.3d 420. This involved the redistricting of the 19 legislative districts of the Nassau County Legislature based on the results of the 2010 census. At issue was whether the Supreme Court had properly held that, under the pertinent sections of the Nassau County Charter, the new legislative districts were merely proposed districts in the first step of a three-step approval process or whether, as the appellants claimed, the districts were to be used for the upcoming 2011 election. The redistricting transferred hundreds of thousands Nassau County residents into newly formed legislative districts throughout the county.

In a 3-2 decision, the appellate division disagreed with the Supreme Court and concluded that the new districts could be utilized in the upcoming election. The Court of Appeals disagreed and concluded that the Nassau County Charter called for a three-step process for legislative redistricting. Specifically, the court held that the Nassau County Charter required a three-step deliberative process to be employed prior to final redistricting. The court noted that the three-step procedure in the Nassau County Charter was the ultimate outcome of a legislative restructuring that resulted from a finding, in federal court, that the "weighted voting" of the previous legislative scheme (involving a County Board of Supervisors) ran afoul of the Equal Protection Clause.

A third case that merits discussion involves the use of electronic voting machines and the circumstances under which a manual audit of voter verifiable paper records may be ordered. In this case, *Matter of Johnson v. Martins*, 79 A.D.3d 913, aff'd 15 N.Y.3d 584, a candidate for state senator won by 415 votes, a margin of 0.5 percent out of the 85,000 votes cast. Pursuant to Election Law §9-211, the Board of Elections conducted a mandatory audit of 3 percent of the 249 machines used in the district. This consisted of the physical counting of the marked electronic ballots that are stored in the scanning machines. Changes in the tally resulting from some minor discrepancies yielded a net change of two votes. The issue was whether these discrepancies necessitated a manual audit of the district-wide election results.

The Supreme Court had held that the discrepancies, when projected to a full audit, would not change the election result and denied the request for a manual audit of all the ballots. The Second Department upheld this determination and the Court of Appeals affirmed. The Court of Appeals held that in order for a denial of a manual audit to be deemed an abuse of discretion "the record must demonstrate the existence of a material discrepancy likely to impact upon the result of the election, or flagrant irregularities in the election process." There was no such legal error in the case, "where … the discrepancy rate is significantly below the margin of victory, such that there is no substantial likelihood that the result of the election would be altered by the conduct of a full manual audit" (*Matter of Johnson v. Martins,* 15 N.Y.3d 584, 588). This brief survey confirms the role that the courts continue to play in protecting the voting franchise. In vindicating the right to fair elections, the courts have ensured that this central bulwark to our democracy remains intact now and for future generations.

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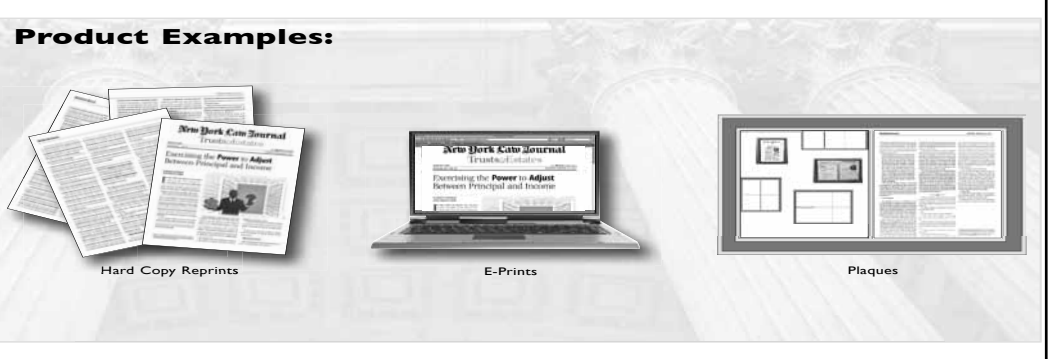

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