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May 6, 2022

By ECF

The Honorable Gary L. Sharpe
United States District Judge
James T. Foley U.S. Courthouse
445 Broadway, Room 411
Albany, NY 12207

Re: *United States of America v. New York State Board of Elections, et al.*
10-cv-1214 (GLS)

Dear Judge Sharpe:

On behalf of New York voters, Belinda de Gaudemar and Susan Schoenfeld ("UOCAVA Plaintiffs"), and together with the Elias Law Group LLP, we write to oppose the State Board of Elections (SBOE)'s May 5, 2022 Letter Motion Requesting a Supplemental Order (ECF No. 92). SBOE asks this Court to modify the permanent injunction it issued in 2012 (the "2012 Order") requiring New York to hold non-presidential federal primary elections on "the fourth Tuesday of June, ***unless and until New York enacts legislation resetting the non-presidential federal primary election for a date that complies fully with all UOCAVA requirements and is approved by this court***." 2012 Order at 8 (Jan. 27, 2012), ECF No. 59 (emphasis added). This year, the fourth Tuesday in June falls on June 28, 2022. Thus, under the clear terms of the 2012 Order, New York is required to hold its 2022 federal primary election on June 28, 2022, unless two conditions are met: (1) New York enacts legislation resetting that date for another that complies fully with UOCAVA, and (2) that alternative date is approved by this Court. Neither is satisfied.

SBOE chose to ignore the 2012 Order and move the date of New York's 2022 federal primary election without *either* seeking action from the State Legislature *or* approval of this Court. But the terms of the Court's 2012 Order were not only clear, they were put in place to ensure that New York complies with its obligations under UOCAVA and protects the right to vote of New York's overseas and military voters. Delaying the primary election until August 23, 2022 as SBOE has now requested, will severely burden those rights and may to lead to disenfranchisement to lawful voters—including the UOCAVA Plaintiffs here—because of the risk recognized by this Court: a primary election in August does not leave sufficient time to ensure that they will receive their general election ballots in time for those ballots to be timely returned and counted. Accordingly, the UOCAVA Plaintiffs respectfully ask this Court to deny SBOE's request.

I. Background

The Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, and the Military and Overseas Voter Empowerment ("MOVE") Act of 2009 together guarantee active-duty members of the uniformed services (and their spouses and dependents), and United States citizens residing overseas, the right "to vote by absentee ballot in general, special, primary, and runoff elections for Federal office." 52 U.S.C. § 20302(a)(1). To ensure that right was not illusory, starting in 2009, Congress required states to send absentee ballots to UOCAVA voters at least 45 days before an election for federal office to provide voters sufficient time to receive, mark, and return absentee ballots. 52 U.S.C. § 20302(a)(8)(A). To comply with these statutes and meet its obligations to UOCAVA voters, a state must hold its primary election sufficiently early within the calendar year to allow the state to certify the results of the primary election and print and mail absentee ballots for the general election by the 45-day deadline.

In 2012, after finding that New York failed to meet both this deadline *and* an extended deadline for which it had sought approval from the federal government, this Court issued a permanent injunction against the State of New York for its repeated violations of UOCAVA. To ensure that New York would finally meet its obligations to send ballots to military and overseas voters with adequate time for those voters to return them, this Court ordered the state to conduct its non-presidential federal primary on "the fourth Tuesday in June" in subsequent even-numbered years. *See* 2012 Order. The Court was clear that the only exception would be if "New York enacts legislation resetting the non-presidential federal primary election for a date that complies fully with all UOCAVA requirements and is approved by this court." *Id*. at 8.

Late last week, SBOE announced that, in contravention of this Court's order, it would hold its federal primary on August 23, 2022, citing a state trial court order requiring the move. *See* https://www.elections.ny.gov/ (last visited May 5, 2022). Neither SBOE's announcement nor the state court order so much as mentioned this Court's permanent injunction or the burden that moving the election would impose on New York's nearly 70,000 UOCAVA voters.[1]

On Monday, May 2, several New York voters, including the two UOCAVA voters who are Proposed Plaintiff-Intervenors to this suit, filed a motion for a temporary restraining order (TRO) against the SBOE, asking the Southern District of New York to order SBOE to certify the primary ballot so that New York could proceed with a June primary, as required by this Court. *See de Gaudemar v. Kosinski*, 1:22-cv-03534-LAK (S.D.N.Y. May 2, 2022), ECF No. 4. Although the court denied Plaintiffs' TRO, it also instructed SBOE to seek this Court's consent to change the primary date from the fourth Tuesday in June to the fourth Tuesday in August. Tr. of Oral Argument, *de Gaudemar v. Kosinski*, 1:22-cv-03534-LAK (May 4, 2022), at 23, attached as Ex. 7. The SBOE then applied to this court yesterday, seeking what it termed a "supplemental order" (Dkt. 92) to modify the 2012 Order. This Court should deny that request.

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[1] *See* U.S. Election Assistance Comm'n, Election Admin. and Voting Survey 2020 Comprehensive Rep. at 198, https://www.eac.gov/sites/default/files/document_library/files/2020_EAVS_Report_Final_508c.pdf (last accessed May 2, 2022).

II. Legal Standard

An application seeking to modify an injunction "must furnish credible evidence of a significant change in facts or law, or bring forward factual matters, that had the Court considered them, might have reasonably altered the result." *Sec. & Exch. Comm'n v. CKB168 Holdings, Ltd.*, 2017 WL 4465726, at *4 (E.D.N.Y. June 20, 2017) (quotations and alterations omitted); *see also New York v. Kraeger*, 972 F. Supp. 2d 291, 294 (N.D.N.Y. 2014) ("The party seeking the modification [of an injunction] carries the burden of demonstrating the significant change in circumstances."). "[T]he moving party bears the burden of showing that continuation of the injunction would be inequitable. . . . [and] must make a showing regarding two elements: that the danger which the decree was meant to foreclose must almost have disappeared, *and* that the movant faces extreme and unexpected hardship." *S.E.C. v. Prater*, 296 F. Supp. 2d 210, 216 (D. Conn. 2003) (quotations and citations omitted).

III. Argument

a. Defendants have not satisfied the preconditions necessary for modification of the 2012 Order.

Defendants' request does not comply with the plain terms of the 2012 Order. That Order entered a permanent injunction requiring New York to conduct its federal primary on the fourth Tuesday in June in even-numbered years, "unless and until New York enacts legislation resetting the non-presidential federal primary election for a date that complies fully with all UOCAVA requirements, and is approved by this court." 2012 Order at 8. New York must comply with those conditions to change the date of the federal primary election. Yet, SBOE does not come to this Court under those circumstances. Indeed, no one even suggests that the Legislature has taken the first predicate step necessary to modify the 2012 Order by enacting legislation setting the primary date "for a date that complies fully with all UOCAVA requirements." *Id.* And, as already noted, SBOE announced it was moving the primary *before* it sought approval from this Court.

The only legislation that has been passed sets the state's federal primary date as *the fourth Tuesday of June*, aligning the state precisely with the order this Court set out ten years ago. *See* 2019 Sess. Law News of N.Y. Ch. 290 (S. 6374), N.Y. Elec. Law § 8-100. As the New York Senate explained, the Legislature did so as part of a "package of election reform bills designed to protect our democracy and improve our system of elections," which included "[s]treamlining the primary election calendar" "to consolidate State and Congressional primary elections in June, ending the confusion and expense of multiple major primary dates and reducing burdens on voters and election administrators alike." Rep. & Findings of the N.Y. State S. Elections Comm. (Nov. 15, 2021), at 9, https://nysenate.gov/sites/default/files/press-release/attachment/elex1115_vfinal.pdf, attached as Ex. 1. The New York Legislature, the body tasked with determining the proper time, place, and manner of federal elections in the first place, *see* U.S. Const. art. I, § 4, cl. 1, concluded that New York's primary should the fourth Tuesday in June. It has expressly *not* determined that New York could comply with UOCAVA with a later primary date, and it has not passed any legislation to that effect. As Defendants have not satisfied the preconditions necessary for modification of this Court's 2012 Order, their request should be

denied.

b. Defendants remain unable to comply with UOCAVA requirements in the event of a delayed primary.

When the time between primary and general election is short, New York has been unable to comply with UOCAVA. In August 2010, New York sought and received a waiver from the Secretary of Defense exempting it from UOCAVA's requirement that ballots be mailed to UOCAVA voters 45 days in advance of the federal general election that year. The State's inability to meet the deadline stemmed from the too-short window between the primary—held in September that year—and the November general election. The waiver permitted the State to mail out UOCAVA ballots 32 days in advance of the federal general election (instead of 45 days in advance), on the condition that ballots returned 13 days after the election would be counted. Yet, even with these allowances, New York was unable to comply in the short window between the primary and the general: ballots in half of New York's counties were mailed later than the extended deadline. 2012 Order at 7.

Given New York's inability to comply with UOCAVA, the Department of Justice sought and obtained the permanent injunction from this Court that was part of the 2012 Order. The June primary date this Court ordered was specifically recommended by the Officers of the New York State Election Commissioners' Association ("ECA"), a bipartisan organization made up of two election commissioners from each of New York State's 62 counties. *See* Letter from N.Y. Att'y General attaching Decl. of Election Comm'rs' Ass'n (Dec. 6, 2011), ECF No. 45, attached as Ex. 2. As those Officers explained, the ECA had previously "voted overwhelmingly to recommend" to the New York Legislature and its Governor that federal primaries be held "the fourth Tuesday of June" to allow "meaningful compliance with the federal MOVE Act." *Id*. ¶ 4. The ECA warned the Court that a later primary, such as in August, would hinder New York election officials' ability to comply with federal law. *See generally id*. (explaining the logistical barriers to complying with UOCAVA and MOVE when a federal primary occurs after June in New York).

In the decade since this Court's order, New York has conducted each of its five congressional primary elections—in 2012, 2014, 2016, 2018, and 2020—on the fourth Tuesday in June. In 2019, New York enacted legislation to permanently set its primary as the fourth Tuesday in June. *See* 2019 Sess. Law News of N.Y. Ch. 290 (S.6374), N.Y. Elec. Law § 8-100.

c. New York's election administration and the USPS's performance have only gotten worse over the past decade.

There is nothing to indicate that administration of elections or the USPS's performance have improved in the last ten years such that shortening the time between the primary and general election no longer risks disenfranchising UOCAVA voters. To the contrary, both have gotten worse. Last election cycle, multiple federal courts had to issue nationwide preliminary injunctions to ensure the timely delivery of absentee ballots, finding that the Postal Service's practices risked violating candidates' and voters' rights. *See NAACP v. U.S. Postal Serv.*, 496 F. Supp. 3d 1 (D.D.C. 2020); *Jones v. U.S. Postal Serv.*, 488 F. Supp. 3d 103 (S.D.N.Y. 2020). In addition, according to

a November 2021 report from the New York Senate Elections Committee, the New York election system "lacks the oversight, transparency, and accountability mechanisms necessary to serve its vital purposes" and is plagued by "structural flaws" that "tend to have a disproportionate impact on communities most at risk of being disenfranchised…" Ex. 1 at 1. Moreover, "[l]ocal boards of elections vary widely in their capacity, staffing, and resourcing, which can and often does lead to inconsistencies in the implementation of various election laws." *Id*. The Senate Report concludes that "New York's system of election administration demonstrates it is not up to the task" of providing "for public confidence in our elections." *Id*. at 3.

There have been numerous "high-profile" examples of the structural flaws that New York faces, including "thousands" of voters in 2016 learning that they had been purged from voter rolls due to an official's error, *id*. at 10; voters in 2020 receiving "incorrect ballots during the primary election which listed candidates in a neighboring Senate district race," *id*. at 13; "discriminatory treatment" at the polls, *id*.; local boards of elections that "ignored an Executive Order allowing voters to request absentee ballots by phone or email . . . until the deadline to apply for absentee ballots was nearly passed" *id*. at 19; delays by the New York City Board "in mailing large numbers of absentee ballots in the 2020 primary election, creating situations where it was unlikely or impossible that voters would receive ballots in time to legally return them," *id*. at 11; New York City voters in 2020 who "receiv[ed] absentee ballots with the incorrect name and address printed on them," which had to be reprinted and resent to avoid fatal defects with those ballots, *id*. at 12; New York City's "misreporting" of initial primary results which caused "diminished confidence in the agency's technical competence," *id*. at 10; and voters in the 2021 primary receiving "unclear information about poll site location changes" leaving "[m]any people [who] did now know where to go," *id*. at 25. *See also*, Test. Provided to the S. Standing Comm. On Elections, N.Y. State Bd. of Elections Review of Elections Admin. and Voting Rights in N.Y. State, (Sept. 21, 2021), at 9, attached as Ex. 3 (acknowledging problems that came out of the canvass process in New York Congressional District 22 in 2020); Decl. of Ulster Cnty. Comm'r, at 2, attached as Ex. 4 (describing regular recounts including a three week, county-wide recount in 2019).

These structural flaws and rampant, recurring errors cause confusion and depress turnout. And these impacts are worse when elections are divided across separate dates as the SBOE here proposes: "[T]own, village, and other local elections occurring on separate dates from national elections was cited as a factor that reduces turnout," sometimes by more "than half." Holding elections on different days "creates a need to pay for polling inspectors and site chairs for an additional day[, and a]side from the cost burdens on localities, keeping up with elections on odd dates is an unrealistic expectation for most voters." Ex. 1 at 21.

The Senate Report also clarifies the intent behind 2019 legislation to "streamlin[e] the primary election calendar" in which "New York moved to consolidate State and Congressional primary elections in June," was, in part, to "end[] the confusion and expense of multiple major primary dates and reduc[e] burdens on voters and election administrators alike." *Id*. at 9. "Voters depend on timely, accurate communications from election administrators, and deserve a more streamlined process for casting their ballot." *Id*. at 33. Shortening the time for the state and county boards to perform their election tasks between the primary and general elections will only negatively impact their ability to protect the integrity of the election process, comply with laws

designed to protect voters such as UOCAVA, and give the public confidence in the election results. The later UOCAVA ballots are mailed, the less time UOCAVA voters will have to identify and address issues in election administration—not just limited to the late mailing of ballots—that could impede their very right to vote. As the above discussion demonstrates, this is a very real concern for these voters in the current environment.

d. It is virtually impossible for New York to hold a federal primary on August 23 and comply with UOCAVA.

SBOE's recent failures in election administration raise serious concerns about SBOE's claim that New York will actually be able to comply with UOCAVA if it waits until August 23 to hold the primary. UOCAVA ballots must be printed by September 24, 2022. That is only 32 days after the August 23 primary. The most basic thing that New York must do during that 32-day period is for the county boards to count all of the primary ballots—a process known as canvassing—so that SBOE may then certify the primary election. Under New York law, county boards cannot start canvassing ballots until 9 p.m. on election night. *See* N.Y. Elec. Law §§ 8-100(2), 9-100, 9-102(1). That count cannot be completed until all absentee ballots are in, and New York accepts ballots postmarked by election day and received by the seventh day after the election. N.Y. Elec. Law § 8-412(1). This timeline means, with an August 23 primary date, that ballots that are postmarked by that date may be received until August 30. As a result, in the best-case scenario, with the SBOE's requested August 23 primary, the county boards are finishing the counts a mere approximately 25 days before UOCAVA ballots need to be actually physically mailed out to all of New York's overseas and military voters. That is not realistic.

Because there are other crucial New York laws that the state and county also have to navigate in this short window of time, New York cannot meet its proposed schedule. If an eligible voter submits a ballot that is flagged for rejection due to a curable defect (like if the envelope was unsigned, had a signature that did not correspond to the voter's registration record, or is missing a witness signature if a witness was required), the county boards must provide voters seven *business days* after the board mails a curable rejection notice to the voter to allow the voter the opportunity to cure that ballot. N.Y. Elec. Law § 9-209(3). This means, if a ballot is received on August 30 with a curable defect, the voter will have until Friday, September 9 to cure, even if the board sends the voter notice of a need to cure the same day that the ballot is received. This puts the deadline to cure an absentee ballot three days *after* the deadline for county boards of elections to finish counting ballots (September 5, 2022, which is Labor Day, so it will be moved to September 6 this year). N.Y. Elec. Law § 9-200(1). N.Y. Gen. Constr. Law § 25-a(1). The county boards of election must then recanvass the ballots by September 12 (20 days after the election), N.Y. Elec. Law § 9-208(1).

Notably, New York's new recount law also threatens to expand the schedule. Under that law, effective January 1, 2021, there are several circumstances in which a board of elections must conduct a full manual recount of all ballots for a particular contest. *See* N.Y. Elec. Law § 9-208(3) (noting the criteria for a manual recount and that if the contest involves portions of two or more counties, SBOE must determine the margin of victory based on the recanvasses in the relevant counties). In 2018, a manual recount would have been required in at least three counties, and in

2020, a manual recount would have been required in at least two counties, based on margin of victory. *See* N.Y. State Bd. of Elections Certified Results from June 23, 2020 Primary Election, https://www.elections.ny.gov/NYSBOE/elections/2020/Primary/CertifiedJune232020StatePrimaryResults.pdf (showing narrow margins for NY12 (2020 Dem Primary), NY01 (2018 Dem Primary), NY19 (2018 Dem Primary), and NY23 (2018 Dem Primary)). Only after the recanvass and any recounts are completed may the SBOE certify the results. The deadline for the SBOE to certify the candidates on the general election ballot is the 55th day before the general election—this year, that date is September 14. N.Y. Elec. Law. §§ 9-200(1), 9-202.

Assuming there are no delays, including from any automatic manual recounts, New York would only have nine days before all UOCAVA ballots need be mailed to overseas and military voters. Once SBOE certifies the result of the primary election, the county boards must design ballots, translate them, proof them, print them, make sure they can be read properly by machines, and mail them—all before September 24. If there is a slight delay in *any* of these processes, which are complicated, labor intensive, and often error-prone, it will be impossible to comply with UOCAVA. *See* Decl. of Albany Cnty. Comm'r, at 2, attached as Ex. 5; Ex. 4 at 2-3; Decl. of Putnam Cnty. Comm'r, at 3, attached as Ex. 8; Decl. of Putnam Cnty. Deputy Comm'r at 2-3, attached as Ex. 6. Moreover, county boards have very limited resources with which to accomplish this work. Ex. 3 at 6-7 (noting that more than half of county boards of elections have six or fewer employees).

SBOE has made no showing that it or the county boards will be able to accomplish this significant and complex task. And repeatedly, including in recent years, SBOE and the county boards have fallen critically short in managing a functioning election process. All of the evidence indicates that moving the primary as SBOE now requests will irreparably harm—and likely disenfranchise—lawful New York UOCAVA voters.

e. Any inconvenience to New York resulting from enforcement of the Court's order is the responsibility of New York, not this Court.

This Court explicitly tasked the SBOE with ensuring compliance with the 2012 Order. *See* 2012 Order at 9. Despite that requirement, SBOE was prepared to ignore that Order entirely and implement an August 23, 2022 primary date without ever seeking modification from this Court. SBOE is only here seeking this Court's approval after (1) announcing to the public that the primary date had been moved, (2) being sued in another federal court for noncompliance with this Court's order, and (3) being forced to return to this one. *See* https://www.elections.ny.gov/ (SBOE announcing August 23 primary date); Ex. 7 at 23-24 (Judge Kaplan asking SBOE to "commit to applying to Judge Sharpe for leave to change the primary date" and consenting to Proposed Plaintiff-Intervenors' participation).

In every order it has issued since 2012, this Court has emphasized that New York must obtain this Court's approval *before* changing the primary election date from the fourth Tuesday of June. *See* Suppl. Remedial Order at 2, 5–6 (Dec. 12, 2013), ECF No. 85 (stating (1) "New York's non-presidential federal primary date shall be the fourth Tuesday of June, unless and until New York enacts legislation resetting the non-presidential federal primary for a date that complies fully

with all UOCAVA requirements, *and is approved by the court*;" and (2) "[N]othing herein shall prohibit the State of New York from making statutory changes in its federal office election process to put New York in compliance with the MOVE Act and that such changes, if made, may be implemented in 2014 *upon the determination of this court that such changes render the 2014 election of federal office MOVE Act compliant*") (emphasis added); Suppl. Remedial Order at 1–2, 5 (Oct. 29, 2015), ECF No. 88 (same for 2016); Suppl. Remedial Order at 1–2, 5 (Nov. 21, 2017), ECF No. 91 (same for 2018).

Despite these orders, SBOE stood silent as various actors proposed postponing New York's primary date. The SBOE neither raised a concern with this Court nor ensured that the New York Supreme Court understood that SBOE was bound by this Court's Order. New York's failure to craft a remedial plan that could resolve litigation in time for a June primary should not come at the expense of UOCAVA voters. It was the state's carelessness towards UOCAVA voters that resulted in this Court's order in the first place. Given how little has changed in the past ten years, there remains ample need to allow this Court's permanent injunction to remain in place.

* * *

For the reasons set forth above, this Court should decline to modify the existing permanent injunction.

Dated: May 6, 2022

Respectfully Submitted,

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**Pro hac vice applications to be submitted.*

Exhibit 1

Report and Findings of the New York State Senate Elections Committee

Senator Zellnor Y. Myrie, Chair
November 15, 2021

NEW YORK STATE SENATE ELECTIONS COMMITTEE

Senator Zellnor Y. Myrie, Chair
Senator Samra G. Brouk
Senator Brian Kavanagh
Senator Rachel May
Senator Shelley B. Mayer
Senator Edward A. Rath, III
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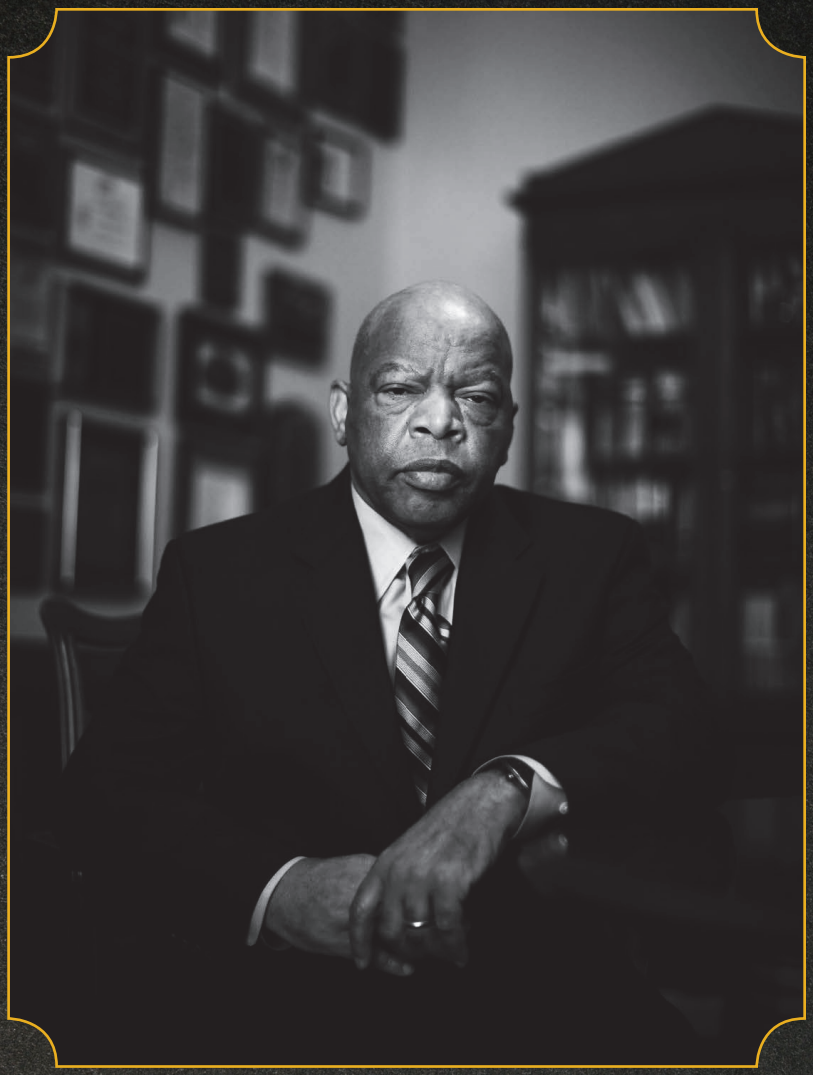
ACKNOWLEDGMENTS

The Senate Elections Committee extends its thanks to Senate Majority Leader Andrea Stewart-Cousins, the Secretary of the Senate and Senate Media Services who supported our series of hearings in 2021. The Committee is grateful to other Senators who participated in our hearings, including Senator George Borello, Senator Liz Krueger, Senator John Liu, Senator John Mannion and Senator Elijah Reichlin-Melnick. Erika Reilly designed this report, John Bellamy assisted with research and the New York State Library provided valuable resources from its collection.

The Committee thanks the following venues for their hospitality in hosting the hearings: Medgar Evers College; SUNY College of Environmental Science and Forestry; the Monroe County Legislature and the Westchester County Center.

The Committee also thanks everyone who provided written and oral testimony, as well as in conversations with Senators and committee staff. The Committee is especially grateful to those New York voters and poll workers from every corner of the state who shared their experiences in service of a democracy that works for all, and that lives up to our highest and best ideals.



Democracy is not a state. It is an act, and each generation must do its part...

Voting and participating in the democratic process are key. The vote is the most powerful nonviolent change agent you have in a democratic society. You must use it because it is not guaranteed. You can lose it.

- JOHN R. LEWIS (1940-2020)

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EXECUTIVE SUMMARY

We stand at a critical moment in the history of our democracy. The integrity of our elections and the right to vote are under assault from forces around the country that seek to undermine the foundation of our system of government. Bogus claims of fraud, wild conspiracy theories, and rampant misinformation have fueled an avalanche of restrictive voting laws in many states across the nation. The insurrection at the U.S. Capitol on January 6, 2021 demonstrated in stark terms the extent to which democracy itself is under attack.

Here in New York, two constitutional amendments to make voting easier were defeated by the voters in November 2021. The message is clear: without aggressive action to reform our elections and a full-throated defense of voting rights, opponents of expanding democracy can and will prevail.

Since 2019, the State Legislature has enacted many laws to protect voting rights and access to the ballot box. Voters have responded with enthusiasm and stronger turnout than ever before. Yet, even with the stakes as high as they are, New York's system of election administration has routinely fallen short in ways that have shaken public confidence, limited participation, and even disenfranchised voters. These unforced errors undermine state and national efforts to protect voting rights and our democratic system. Incidents in New York City and across the state have made national news and highlighted the need for improvements in our elections and greater protection for voters.

Until 2013, Americans could depend on the efforts of the federal government to closely scrutinize proposed election law changes and, when necessary, enforce the voter protections enacted over the past half century. But with the weakening of the federal Voting Rights Act by the United States Supreme Court, it increasingly falls to each state to decide for itself how best to protect voters' rights and ensure that elections are administered fairly for all.

Following a well-publicized results tabulation error by the New York City Board of Elections in June 2021, the Senate Elections Committee held hearings across the State to collect testimony from voters, poll workers, elections officials, advocates, experts, and scholars. Witnesses before the Committee generally underscored similar themes:

- New York's voters are overwhelmingly eager to participate in our democratic process, are enthusiastic about recent changes in Election Law that have made it easier to vote, and are supportive of further measures that would simplify the voting process and strengthen protections for voters;
- New York's election administrators are overwhelmingly well-intentioned, committed, and hard-working, but the system in which they work lacks the oversight, transparency, and accountability mechanisms necessary to serve its vital purposes;
- Rather than one-off incidents of malfeasance or incompetence, recent incidents in New York point to structural flaws that require thoughtful, systemic solutions;
- These structural flaws tend to have a disproportionate impact on communities most at risk of being disenfranchised, such as people of color, low-income voters, voters with physical disabilities, or voters whose primary language is not English;
- Local boards of elections vary widely in their capacity, staffing, and resourcing, which can and often does lead to inconsistencies in the implementation of various election laws

The remedy for the challenges facing New York voters is not "a moratorium on Election Law changes," as was suggested by a county elections commissioner at this Committee's September 2021 hearing.[1] Rather, it is to carefully assess whether our existing system of elections administration best serves the interests of New Yorkers and our democracy, and to thoughtfully consider changes that would have the greatest impact on improving that system.

New York's existing system of election administration has developed over the course of two centuries. It has evolved in response to changing understandings of civil rights and the importance of equitable participation in government. Our laws have always been products of the time in which they were drafted and passed.

This report is intended to provide a menu of options for the Legislature to consider as potential solutions to many of the issues the Committee heard during these hearings. Broadly, potential solutions fall into the following categories:

- Structural reforms, including:
  - Restructuring the New York City Board of Elections
  - Reforming local county boards of elections
  - Changing the relationship between the State Board of Elections and its local counterparts
- Operational reforms, including:
  - Reforming the selection process, qualifications and accountability structure for Elections Commissioners
  - Raising poll worker standards, improving recruitment and the poll worker experience
  - Other improvements to the voter experience, such as enhanced communication and increasing access to early voting
- Other Changes to the Law:
  - Enact Additional Changes to Make Voting Easier, giving voters recourse in the case of disputes, and ensuring that valid votes can be counted
- In the face of federal inaction on voting rights, enshrining necessary voter protections into State Law

This report is not meant to be prescriptive, or to suggest that any of these potential solutions would be silver bullets that solve all elections-related issues. Rather, it is designed to be a jumping-off point for a larger statewide conversation among policymakers and the public as we seek to address many of the challenges that have arisen in recent years and strengthen our system of elections for the future.

This report is the culmination of the Senate Elections Committee's review of the current state of elections and voting rights in New York State. The Committee finds that both are in need of scrutiny and reform, in order to deliver on the promises and principles of our system of government. New Yorkers have every right to expect, and even demand, elections that reflect the very best of our state's potential and ensure that every voice is heard and counted. By considering and advancing solutions to the challenges facing New York's voters, we honor the legacy of John Lewis and so many others who dedicated their lives to perfecting our democracy.

INTRODUCTION

Voting is the right that protects all our other rights. More than any other system in our democracy, the way we conduct our elections-- and the protections we offer to voters-- serves as the architecture for our institutions and way of life. Today, these systems and rights face critical external and internal threats. Some of these threats have emerged recently, while others have been present since our nation's founding.

The need for public confidence in our elections is greater than ever before. Yet it seems that each year, New York's system of election administration demonstrates it is not up to the task.

In the last 18 months alone, New Yorkers have witnessed numerous confidence-shaking incidents where our elections have fallen far short of the standards we must expect. For example, in New York City, a results tabulation error caused widespread confusion and marred the first-ever use of ranked-choice voting in a citywide election. This occurred just months after a different error led to thousands of city voters receiving misprinted absentee ballots from a vendor to whom the Board of Elections awarded a no-bid contract. Beyond New York City, Central New York was home to a drawn-out battle over the nation's last undecided congressional race of 2020. There, county elections boards mishandled voter registrations and ballots, and in some cases disregarded the Election Law entirely. Voters in some corners of the state waited more than three hours to cast ballots at overcrowded early voting sites; in other counties, these sites were placed in remote locations far from population centers and public transportation routes. Some local boards of elections have ignored Executive Orders, inconsistently applied standards and practices, appealed court rulings intended to make voting more accessible, and resisted efforts to increase transparency and oversight at every turn.

The debacles keep happening, but leaders of our elections agencies have responded by declaring themselves "models of efficiency." A bipartisan system of administration that has frequently led to paralysis at voters' expense is said to enable "transparency, efficiency, and accountability." A history of incompetence, errors, and failures is described as having "fundamentally worked for more than 100 years."[2]

New Yorkers' eyes do not deceive them. Our elections apparatus suffers from both acute instances of incompetence and deeper, systemic problems that lead to the same challenges arising again and again, year after year. Voters have every reason to be angry and they deserve better.

Throughout the summer and fall of 2021, the Senate Elections Committee held hearings across New York State to hear from voters, poll workers, and other stakeholders in our elections system. The purpose of this report is to synthesize what the Committee heard and observed during these he arings. The report also provides background on New York's recent elections-related challenges and places today's fight for voting rights and improved elections in historical context. Finally, the report provides potential solutions for improving our elections and securing voting rights while highlighting key considerations for the Legislature as it moves further toward election reform.

Moreover, this report seeks to reassure New York's voters: we hear you. Your elected officials take seriously their responsibility to defend our elections and our democracy from its detractors, and to honor the trust they have been granted.

The overwhelming majority of elections administrators in New York are competent, dedicated professionals who understand the important role they play in protecting voters and upholding democracy. Many local boards of election function well. But the problems that have made headlines (along with many that have not) in recent years are not isolated errors that occurred in a vacuum; taken together, they point to a longstanding pattern of failure and a system that is not equipped to meet the demands of our time.

Systemic failures call for systemic change. As we have always done, New York must honestly assess whether our institutions as currently constituted are up to the challenges of this moment. Where they are, we must strengthen them; where they are not, we must rebuild and reconfigure them. With democracy on the line, New York voters should expect and demand nothing less.

OUR GUIDING PRINCIPLES

In developing this report and its recommendations, the Committee has elevated several principles. Any efforts to address election reform and voting rights in New York State should adhere to these foundations as a baseline. While not an exhaustive list, these principles should form a fundamental basis for the State's work as it seeks to chart the way forward in law, policy and practice.

Principle #1: Voters first. Wherever possible, our laws and election procedures must favor the right of an eligible voter to register, cast a vote, and have it counted. Too often, our laws and regulations focus on administrative ease and simplicity at the expense of voters' needs. New York voters should face "no wrong doors" when interacting with elections agencies. Administrators must coordinate within and across agencies to share information, provide needed assistance, and move from a "compliance" mindset to a "commitment" mindset where voters are seen as the primary customers. New York's laws must stand on the side of voters and ensure that all eligible voters are treated with equal dignity in the political process. Elected leaders and election administrators must strive to reduce barriers to the franchise by encouraging and pursuing laws and policies that encourage voting.

Principle #2: Election administration matters. As we have seen around the country, the capability and integrity of the individuals responsible for administering our elections can either advance or restrict voter participation. Even if our laws and procedures reflect the best intentions, fair and voter-friendly election administration depends on people in positions of power doing the right things for the right reasons. Election administrators are quite literally the gatekeepers of our democracy and their work matters. New Yorkers must have confidence in those administering our elections, the process by which they are selected and trained, and the ways in which they can be held accountable. We must insist on a uniformly high standard for all those performing this crucially important work.

Principle #3: The past doesn't need to determine the future. Our system of election administration, and the ways we do (or do not) advance voting rights, did not spring up from the ether. They are products of the time in which they were designed and were created to produce certain outcomes and enable certain activities, all while discouraging or restricting others. Understanding this history is important. Just as our predecessors in government designed a system to fit its era, today's lawmakers must have an open mind to do the same. We have an opportunity to break from past failures and re-examine our system of election administration from top to bottom. In other words, New York can and should consider new structures, procedures, and laws that meet the needs of our moment and should not feel obligated to do things the way we always have without a compelling reason to maintain the status quo.

Finally, the Committee further acknowledges that thousands of New Yorkers' livelihoods depend on the operations of state and local boards of elections as currently constituted. Any adjustments to their structure or to staff qualifications must be sensitive to the impact they would have and be implemented on timelines that do not displace employees abruptly, particularly amid a global pandemic and recession.

ELECTIONS IN NEW YORK STATE: HISTORICAL OVERVIEW AND RECENT DEVELOPMENTS

THE HISTORY OF ELECTIONS IN NEW YORK: HOW WE GOT HERE

Throughout New York State's history, various methods have been proposed and enacted to oversee the administration of elections. Generally, the stated goals of any proposed reforms has been to improve accuracy, identify and root out (real or purported) election fraud, and remove actual or perceived bias in the running of elections. Only more recently has state government made efforts to improve voter access and reduce barriers to participating in our democracy.

The earliest local officials in post-revolutionary New York were appointed, not elected. By 1821, the State Constitution explicitly allowed elections to be conducted by ballots (previously, the Legislature could authorize elections by voice votes) and enabled laws "... for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage...."[3] Of course we know that this right was far from universal, and excluded most New Yorkers who were alive at the time. During the Civil War, the first provision for absentee voting was enacted to allow soldiers to cast ballots while absent from the state.

Until 1872, conducting elections in New York City was the responsibility of a bureau within the Police Department, which itself was governed by the Tammany Hall-era Democratic party machine. That year, the state passed a law requiring the City Police Commission to appoint Democratic and Republican election inspectors in each election district.[4] While ostensibly this was to establish checks and balances between the parties, in reality the Republican legislature imposed the bipartisan system on a Democratic city to create jobs for Republicans at local taxpayer expense.[5] The state passed additional laws to further build out this bipartisan structure and by the late 1880s, political party chairs had the explicit right to recommend candidates for appointment as elections commissioners.

In the late 19th century, control of New York State government seesawed between the two major parties, who each sought to change election rules to provide themselves an advantage while in power. An 1894 investigation revealed widespread police intimidation of voters, leading to the first establishment of a Board of Elections separate from the police department. Constitutional amendments advanced by "reformers" that same year established, for the first time, a role for the two major parties in recruiting election administrators. This bipartisan system could "reward 18,400 trust-

VOTER REGISTRATION

New York was one of the first states to enact a voter registration law in 1859.[9] The original law simply directed registrars to prepare lists of eligible voters based on who participated in the previous election, imposing no actual registration requirements on voters, who could be added to the list without much effort.

Within just a few years, the Legislature reacted to allegations of "fraud, corruption and violence" with new restrictions, including a requirement for "annual, personal" registration.[10] Voters were required to register every year, in person, during designated days and hours in October. Only then would the State add the voter's name to the rolls for that November's election; the following year, the voter would need to re-register again. Notably and perhaps predictably, this requirement only applied to the cities of New York and Brooklyn at first, and was later extended to all cities in the state. Rural areas continued to use a more lenient system where voters were permanently considered registered so long as they continued to vote.[11]

The result was a persistent registration gap between urban and rural regions. In 1950, counties where voters were considered "permanently registered" boasted an 88 percent registration rate; the figure was just 58 percent in counties covered by the more stringent system. These dual systems and this gap persisted for almost a century. In 1954, all counties were permitted to offer permanent registration

VOTER REGISTRATION (CONTINUED)

and by 1967, they were required to do so.[12] During the 1970s and 1980s, further reforms were enacted to permit voter registration by mail and extend the period a voter could fail to vote but remain registered from two to four years. In 1993, New York's cumbersome voter registration form was simplified.[13]

The gradual reduction in barriers to voter registration in the past 50 years reflect a broad consensus that New York's major policy goal should be maximizing voter participation wherever possible. Since 2019, the State Senate has advanced this goal with multiple pieces of legislation designed to reduce barriers for voters and will continue to work to increase turnout and participation in our elections.

worthy adherents with jobs paying at least $5 each on Election Day," according to one estimate.[6] The bipartisan structure and its accompanying patronage system, established in 1894, generally governs the operation of the state and local boards to this day.

In 1898, the Office of the State Superintendent of Elections was created, supposedly to identify election fraud in New York City and prosecute offenders. In 1911 this office was reorganized and expanded to include the entire state, but it was abolished in 1921 when it came into bad repute for being dominated by Tammany Hall insiders. For the next half-century, election administration fell to the counties, with the Secretary of State and the Attorney General sharing responsibility for statewide oversight.[7]

In 1974, Governor Malcolm Wilson signed the New York State Campaigns, Election and Procedures Law, which enacted several campaign finance reforms as well as (re)established a permanent, bipartisan New York State Board of Elections "with overall administration and enforcement authoritv."[8]

Today's Boards of Elections

The New York State Board of Elections is governed by a bipartisan group of four commissioners. Two are appointed upon the recommendation of the state chairs of their respective political parties and the other two are appointed upon the joint recommendation of their respective parties' leaders in the Assembly and Senate. The commissioners recommended by the legislative leaders serve as co-chairs. The agency's day-to-day functions are managed by bipartisan co-executive directors.

The 2020 and 2021 elections were held against the backdrop of the COVID-19 pandemic.

Local boards in each county handle most day-to-day direct election administration tasks such as maintaining voter registries, receiving and reviewing nominating petitions for offices within their jurisdictions, siting and staffing polling places, purchasing and maintaining voting equipment, and handling the issuance and canvassing of affidavit and absentee ballots. The State Board handles statewide regulatory and technical functions such as reviewing and approving voting equipment for eligibility for purchase by the local Boards, coordinating voter registry data between local Boards, assembling and promulgating the annual political calendar, and maintaining the State campaign finance database and filings. The State Board also directly administers certain aspects of elections, such as acceptance and review of nominating petitions for offices that cross local Boards' jurisdictional boundaries.

Outside of New York City, county boards of elections are typically governed by a bipartisan pair of commissioners who are each appointed upon the recommendation of their county parties' leaders. The Election Law also authorizes the expansion of local boards of elections from two commissioners to four commissioners at local option. In smaller counties, many election commissioners serve part-time with limited full-time staff coverage throughout the year.[14]

In New York City, the five county boards of elections are amalgamated into a citywide entity. Ten commissioners, two drawn from each borough, govern the Board. The management of the agency is led by a single executive director selected by the Board, with a deputy from the other party. Though the resulting body of commissioners governs a merged citywide agency and makes policy as a group, in practice many of the agency's core functions remain distributed to the five borough offices which function semi-independently.

The relationship between the State and local boards of elections is complex. The State Board does not assert day-to-day supervisory authority over local County Boards' management decisions and indeed recently asserted that it "does not investigate local boards."[15] Many core election administration functions such as voter registration list maintenance, poll site planning, voting technology procurement, issuance of absentee ballots, review of absentee and affidavit ballots, and post-election canvassing are in the hands of the local Boards rather than being performed or supervised by the State Board.

The State Board coordinates between the local Boards, collects information from them, performs certain statewide regulatory functions, certifies voting machines and can set statewide regulation on certain issues. For elections that cross multiple local Boards' jurisdictional lines, the State Board also takes responsibility for some core election administration functions such as petition submission as well as review for certain statewide offices, Supreme Court judgeships, state legislative districts, and many congressional districts.

Change and Resistance

Clearly, the reforms implemented over the past 100 years continue to have lasting impact on voting rights and election administration in New York. Many Progressive-era reforms were aimed at addressing "fraud, corruption, and violence [that] have marked the operation of our electoral system," but often these changes had the effect of limiting voter participation.[16] For example, to address concerns about potential fraud, voters were required to register in person annually, a process that could be more strict or lax depending on the county. Requiring in-person registration and sometimes interrogation by election officials had a depressing effect on participation by Black, immigrant and other marginalized New Yorkers; this requirement persisted until 1954. It was only in 1975 that the state legislature acted to permit voter registration by mail and in the 1980s and 1990s, various other state agencies (notably including the Department of Motor Vehicles) were enlisted to encourage voter registration.

While the second half of the 20th century featured many laws designed to increase voter participation and make voting easier, the accompanying backlash was swift. Demos, an advocacy group, documented widespread failures in New York to adequately implement the National Voter Registration Act ("Motor Voter").[17] In the late 1990s, Governor George Pataki's appointees in the Department of Motor Vehicles and Department of Social Services sought to limit expansion of voter rolls by half-heartedly imeplementing federally-mandated registration programs through these agencies.[18]

In the aftermath of the controversial 2000 presidential election, the federal Help America Vote Act ("HAVA") was passed to enhance the voting process for all Americans. It required all states to meet minimum standards for elections, from voter registration to casting a ballot. Among its provisions were mandates that New York replace its antiquated lever machines, provide greater access for non-English speakers and people with disabilities, and establish a single statewide voter registration list. The federal government provided significant funding to assist in compliance with these mandates.

New York was the last state in the country to pass HAVA-compliant legislation and become eligible for the full amount of federal funds in 2005. But the state continued to delay replacement of its approximately 20,000 lever voting machines until 2010 and was also slow to implement the required statewide database.[19]

THE BASIS FOR BIPARTISANSHIP

New York's election system rests on the assumption that truly non-partisan election administration is impossible and that a bipartisan system provides necessary checks and balances while providing confidence that elections are fair.

As stated elsewhere in this report, most other states depend on partisan elected or appointed officials to oversee elections and accountability to the voters ultimately rests on political machinery. **NEW YORK IS THE ONLY STATE IN THE COUNTRY IN WHICH POLITICAL PARTIES THEMSELVES, RATHER THAN ELECTED OR APPOINTED OFFICIALS, HAVE THE SOLE RESPONSIBILITY FOR NOMINATING STATE AND LOCAL ELECTION ADMINISTRATORS.**

"The bipartisan structure… is founded on the idea that each major party would check and balance the other in election administration, thereby ensuring a fair process…. But such a view is flawed, regarding both the origins and contemporary operations of election boards. Their legal mandate and stated mission, to safeguard the ballot from fraud, is largely a product of elite Progressive Era reformers who were skeptical about extending the franchise to the less advantaged."[20]

THE BASIS FOR BIPARTISANSHIP (CONTINUED)

The goal of elections that do not structurally advantage one party over another is admirable and indeed is the foundation of a system of truly fair elections. Leaving aside the question of whether election administrators can be truly independent of party, many important and meaningful election reforms can "professionalize" [21] administration by insisting on base level qualifications, ensuring adequate training, and standardizing accountability and disciplinary procedures.

Many defenders of the current bipartisan system point to its long history in New York, dating back over 100 years.[22] But New York has never hesitated to adjust, amend, or scrap entirely institutions that are no longer serving their intended purposes. At one time elections were run by an arm of the police department; New Yorkers used to be required to re-register in-person, every year. These and other once-ironclad rules of election administration evolved when it became clear they no longer served the needs of voters, taxpayers, or democracy.

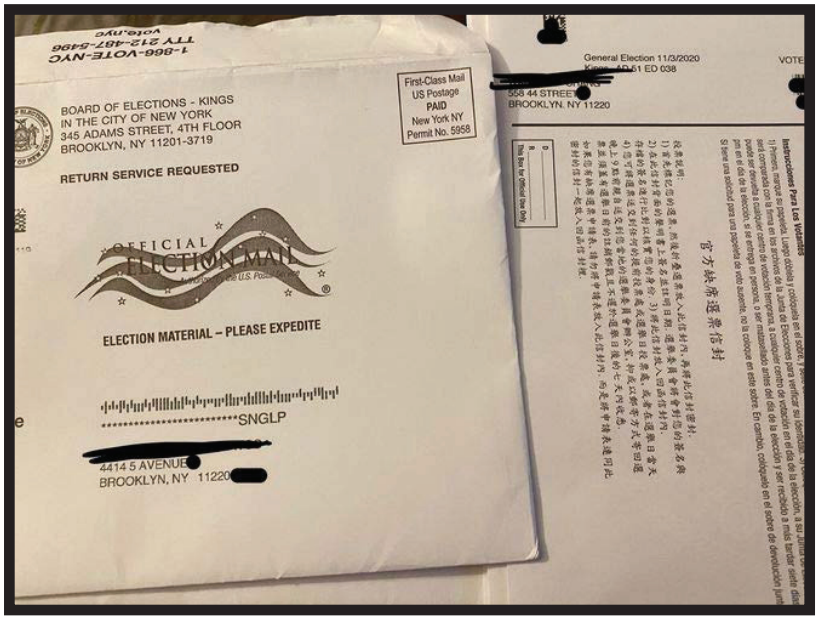
Moreover, it should be possible to establish partisan checks and balances where they are most needed while eliminating gridlock and enhancing accountability. Bipartisanship should exist to serve voters' interests, not the parties' themselves.

REFORMS PASSED SINCE 2019

In 2019, the Senate began the legislative session with a package of election reform bills designed to protect our democracy and improve our system of elections. Each year since then, the Senate has expanded on these reforms with additional legislation designed to expand access for voters and improve election administration. The reforms enacted in the past three years include:

- Creating early voting: In 2019, New York created a nine-day early voting period, from the second Saturday before the election through the Sunday immediately preceding the election, to provide voters flexibility to vote at their convenience in advance of Election Day (Chapter 6 of 2019, by Sen. Myrie).
- Streamlining the primary election calendar: New York moved to consolidate State and Congressional primary elections in June, ending the confusion and expense of multiple major primary dates and reducing burdens on voters and election administrators alike (Chapter 5 of 2019, by Leader Stewart-Cousins).
- Simplifying the process for voters who move: New York passed a law allowing all voters within the state who have moved between counties, or into/out of the City of New York, to transfer their registration to their new address instead of restricting this practice to voters who have moved within their county or within the City of New York. This allows these voters to vote by affidavit ballot on Election Day at the poll site corresponding to their new address if they have not already updated their registration instead of forcing them to re-register, disenfranchising them or forcing them to vote from their old poll site (Chapter 3 of 2019, by Sen. Carlucci).
- Simplifying the party enrollment change process: New York allowed voters to change their party enrollment with immediate effect anytime up to February 14 in a given year. Under prior law, voters who changed their party enrollment would not see their new enrollment take effect and would be excluded from primary elections unless their enrollment change was submitted at least 25 days before the previous general election (Chapter 316 of 2019, by Sen. Kavanagh).
- Automatic Voter Registration (AVR): When implemented, AVR will provide qualified citizens the opportunity to automatically register to vote or update their existing registration when they interact with a range of government agencies and entities (Chapter 350 of 2020, by Sen. Gianaris).
- Making improvements to the absentee ballot process: New York enacted several reforms, including the following:
    - Limited challenges that would invalidate ballots (mostly absentee ballots) on technical grounds by requiring that votes from qualified voters must count as long as the voter "substantially complied" with the law when filling out their ballot (Chapter 717 of 2019 by Sen. Comrie)

- Provided voters with an opportunity to cure defects that would otherwise invalidate absentee votes. (Chapter 141 of 2020 by Sen. Myrie)
- Permitted all voters to vote by absentee during the COVID-19 pandemic (Chapter 139 of 2020, by Sen. Biaggi)
- Allowed electronic applications for absentee ballots during the pandemic (Chapter 249 of 2021, by Sen. Jackson)
- Allowed voters to apply earlier for absentee ballots (Chapter 138 of 2020 by Sen. Myrie, permanently extended in Chapter 273 of 2021 by Sen. Myrie)



In the 2020 general election, many voters received absentee ballots addressed to the wrong person.

- Upgrading election technology systems: New York authorized electronic pollbook technology and providing funding to purchase e-pollbooks, to reduce errors and speed voter check-in (2019 Enacted Budget).
- Making ballots easier to read: New York reformed ballot design rules to make it easier for voters to read ballots and successfully cast their votes (Chapter 411 of 2019, by Sen. Kavanagh).
- Encouraging the youngest voters: New York allowed voter pre-registration starting at 16 years of age to help ensure younger voters are not prevented from voting due to failing to register once they are of age (Chapter 2 of 2019, by Sen. Carlucci).
- Restoring voting rights for formerly incarcerated New Yorkers: New York instituted automatic restoration of voting rights post-incarceration for all persons convicted of crimes, without the need for limited clemency for parolees or other discretionary actions by the Governor (Chapter 103 of 2021).

PROBLEMS REMAIN

In New York City

The misreporting of initial results in the 2021 primaries, the confusing and contradictory responses from the Board, and the fact that nearly all of the Board's public comments on the situation were solely posted on Twitter diminished confidence in the agency's technical competence. While the compounded errors in June and July did not jeopardize the accuracy of the election, it was a particularly egregious breakdown that occurred against a national backdrop of misinformation and conspiracy around election administration. It was also far from the first high-profile example of dysfunction and incompetence at the Board.

In April 2016, just days before New York's presidential primary, it was reported that BOE records showed the number of registered Democrats in Brooklyn had declined over 60,000 in the preceding six months, a drop of over seven percent. Initially, the Board's executive director suggested that "people die everyday, and they come off the list. People move and New York City is a very transient place to live, people move all the time."[31] On Primary Day, thousands of New Yorkers arrived at their polling places to find their registrations had been cancelled and they would be required to vote by affidavit ballot if they bothered to do so at all. It was later revealed that the supervising BOE official skipped a required step in the computerized list-maintenance procedure to prevent the purging of eligible voters.[32] The Board later admitted it broke state and federal law and accepted federal oversight of its voter registration roll management system. Still, there were widespread media reports of missing and erroneous voter registration information in the 2018 election as well.[33]

During the 2018 election, widespread scanner breakdowns resulted in confusion, delays, and lines of up to four hours at many poll sites. The Board's Executive Director initially blamed the scanner failures on moisture caused by rainy weather on election day, an explanation that drew calls for reform.[34]

In 2019, the Board's failure to recruit and deploy sufficient translators and interpreters to assist voters with limited or no English proficiency led to a City-funded effort to provide- at its own cost- additional translators in key languages. However, this effort was met with resistance, and ultimately a lawsuit by the Board.[35] Meanwhile, voters in need of language assistance have continued to struggle.[36]

The 2020 election was held against the backdrop of a global pandemic and voter interest and turnout was at a historic high. The introduction of early voting in 2019 and the wide availability of and interest in voting by absentee ballot to minimize risk of illness due to COVID-19 both underscored the importance of creating more opportunities for voters to exercise their rights.

In response to the pandemic, emergency legislation allowed any New Yorker to request an absentee ballot due to the risk of contracting COVID-19. In effect, this allowed -- for the first time -- all of the state's 12 million voters to vote by mail. Indeed, nearly 40 percent of voters cast mail-in ballots in the June 2020 primaries, up from as little as four percent in other recent elections.10 Of the absentee ballots returned to the New York City Board of Elections, more than 20 percent were disqualified for various reasons such as a missing voter signature, a missed deadline, or a missing postmark (notably, an issue over which the voter has no control). Some 30,000 absentee votes were disqualified in Brooklyn alone.[38]

The New York City Board also was delayed in mailing large numbers of absentee ballots in the 2020 primary election, creating situations where it was unlikely or impossible that voters would receive ballots in time to legally return them. The New York Times reported, and it was later confirmed, that the Board in many cases failed to provide mail vendors with voter information until the Sunday before Primary Day, leading to roughly 34,000 ballots being mailed the following day, just one day before the election.[39]

Given the difficulties experienced in the June primaries, one might have expected the general election to run more smoothly. Indeed, new legislation required the Board of Elections to notify voters of minor technical defects on their absentee ballots and allowed them to make corrections, leading to a significant decrease in the number of

"VOTER FRAUD"

For generations, politicians and pundits across the country have falsely claimed that widespread "voter fraud" has marred and undermined our elections. In recent years, this claim has risen to new prominence as some states have used these fears to justify a host of restrictive and repressive laws that disproportionately affect low-income voters and people of color. [23]

Studies by academics and legislators have conclusively determined that "voter fraud" is exceptionally rare and where it does occur, it is not happening on a scale remotely close to impacting the result of an election. One study concluded it is more likely that an American "will be struck by lightning than that he will impersonate another voter at the polls."[24] A comprehensive study found 31 incidents of fraud between 2000 and 2014 out of more than one billion votes cast. [25] Former President Trump convened a task force to pursue claims of fraud after the 2016 election; finding none, the task force was promptly disbanded. [26]

In a different era, concerns about fraud were occasionally well-founded. The second half of the 19th century was characterized by widespread political corruption in many states, including New York. Strong and competitive political parties defended their power, sometimes using violence. Organized gangs of "repeaters" voted at different locations under different names, lined up at poll sites and refused to move, and intimidated opposition voters with the complicity of the police appointed through partisan processes. [27] When the Croton Reservoir was being constructed, "crowds of thugs" converged on New York City from out of state to vote for Tammany candidates on Election Day. [28]

Our politics has changed considerably since then. The New York of 2021 is very different from the era in which fraud was

"VOTER FRAUD" (CONTINUED)

organized by powerful, massive political party machines that commanded an army of loyalists and indebted civil servants. Even the most influential political party organizations are a shell of what they once were without the huge numbers of dedicated loyalists necessary to coordinate fraud on a perceptible level. As Phil Keisling, a former secretary of state in Oregon who pioneered universal voting by mail, has said of fraud by individuals, "[v]oters don't cast fraudulent ballots for the same reason counterfeiters don't manufacture pennies—it doesn't pay." [29]

The integrity of our elections is paramount and true incidents of fraud should be punished when they occur. But the reality is that widespread coordinated "voter fraud" is a vestige of New York's past. In reality, the "fraud" that does exist are generally benign errors by voters or elections administrators. **The more concerning "fraud" is an elections administration system that doesn't respect voters, doesn't expand voter access, and routinely mismanages elections.**

"Whether intentional or not, charges of fraud [have been] the basis of justifying a host of restrictive election procedures that institutionalized a more insidious form of fraud: administrative disenfranchisement of eligible voters." [30]

disqualified ballots.[40] The New York City Board of Elections designed and implemented a system to allow voters to request and track their absentee ballot at various stages of the process, though its accuracy and usefulness was sometimes questioned. [41]

With heightened interest in the general election and the pandemic continuing to rage, many voters again requested absentee ballots (though, it must be noted, voters who received them for the primary did not automatically receive them for the general election despite the continued pandemic.[42] And unlike during the primary election, the return envelopes were not postage-paid.)

In September, voters in parts of New York City began receiving absentee ballots with the incorrect name and address printed on them.[43] What began as a trickle of reports on social media quickly turned into a national news story, with those intent on discrediting the democratic process and sowing mistrust amplifying reports that New York City had, once again, mishandled its ballots. This was the result of a printing error by a Rochester-area contractor, who had received a no-bid contract from the New York City Board of Elections to print and send absentee ballots to voters.[44] The Board stated that it sent all affected voters a replacement absentee ballot and asked voters to use the replacement. For those voters who did not notice the mismatched return address, printed in small font on one of two envelopes in their ballot package, the result was a fatal defect; the voter would have completed and returned their ballot without realizing it was erroneous and the Board would have no way of contacting the voter to tell them of the mistake.[45]

More than one million New Yorkers voted during the early voting period for the 2020 general elections, comprising over 36 percent of all votes cast.[46] Anticipating unprecedented interest in early voting, the Board of Elections assigned voters to one of 88 early voting sites across the city. The number of voters assigned to each side varied widely -- from more than 120,000 at Robert Wagner Middle School to just over 8,000 at NYU's Skirball Center. Madison Square Garden, which seats approximately 19,000 fans for Knicks games, had more than 100,000 voters assigned; Brooklyn's Barclays Center, with capacity for nearly 18,000 Nets fans, had fewer than 32,000 voters assigned, the second-fewest voters assigned to any site in Brooklyn.[47]

Voters were subject to wait times stretching as long as three hours during early voting at the most crowded locations, while other voting sites reported a smoother and quicker process for voters.[48] During the general election, lines were considerably shorter and in 2021, the BOE unveiled a color-coded map with real-time data on wait times

at polling places for the June primaries (though it should be noted, early voting turnout for the 2021 municipal primaries was under 200,000 compared to more than one million during early voting for the 2020 presidential election).[49]

Outside New York City

Concerns about the agencies that manage elections are by no means confined to New York City. Beyond the state's largest city, county boards of elections have been the subject of a number of recent incidents, both high- and low-profile.

In 2020, voters in Rochester erroneously received incorrect ballots during the primary election which listed candidates in a neighboring Senate district race. One of these voters, Belen Colon, testified at the Committee's August 2021 hearing that she and other Latino voters faced discriminatory treatment and that their complaints were unheeded by poll workers. These complaints are now the subject of a federal lawsuit against the county.[54] The Monroe County Board of Elections conceded that" approximately 200 voters" lost the opportunity to have their votes correctly counted in that year's primary election.[55]

While local Boards face funding constraints and are significantly smaller than the New York City board, in several cases it became clear that early voting site problems stemmed from commissioner gridlock made possible by the bipartisan leadership model.

In Rensselaer County, an especially high-profile example arose where early voting sites were initially set up far from the county's main population and transit center, the City of Troy. Troy has triple the percentage of black residents as Rensselaer County overall, and the majority of households without cars in Rensselaer live in Troy. Locating the county's two sites far from Troy placed an obvious burden on urban voters and voters of color. When the Legislature sought to address this and similar situations by obligating Boards to put at least one early voting site in their most populous municipality, the Rensselaer County Board of Elections responded by placing an early voting site at a church on the outskirts of the city, far from major transit routes and the bulk of the city's low-income residents and communities of color. This complied with the letter, though obviously not the spirit, of the new law.

In May 2021, the State Attorney General sued the Rensselaer Board for violating statutory language requiring early voting sites to be sited in a way that ensures "adequate and equitable access" to all.[56] While the Attorney General initially won an order directing the Board to open an additional

2021 REPORTING ERROR

After the New York City Board of Elections erroneously counted "test ballots" in a preliminary release of local primary election results, the Board's capacity to competently and "professionally" administer elections in the nation's largest city was once again called into question.

The Board's public response to this latest embarrassing episode underscored the lack of technical and "professional" expertise at the highest levels of decision-making.

At 3:29pm on June 29, 2021, the Board's official Twitter account announced that:

"Unofficial RCV [Ranked Choice Voting] Reports for Citywide races now LIVE!" [50]

The unofficial results released by the Board showed nearly 135,000 more votes tallied than the initial returns reported on Primary Night- even before absentee and affidavit ballots were counted. Almost immediately, questions were raised about this disparity. The Board issued several responses directly to Twitter users who raised questions, before issuing a statement at 6:20pm that evening:

We are aware there is a discrepancy in the unofficial RCV round by round elimination report. We are working with our RCV technical staff to identify where the discrepancy occurred. We ask the public, elected officials and candidates to have patience." [51]

2021 REPORTING ERROR (CONTINUED)

Shortly thereafter, the posted results were taken down from the Board of Elections' website. It took another four hours for the BOE to break its silence again on Twitter:

"It has been determined that ballot images used for testing were cleared from the Election Management System… EMS produces Cast Vote Records (CVR) from ballot images. RCV software uses the CVR to produce unofficial results. When the cast vote records were extracted for the first pull of RCV results, it included both test and election night results…" [52]

While voters, candidates, and the media were expected to make sense of this alphabet soup of excuses, it would be another day before the Board issued a signed statement attributed to the Commissioners apologizing for the error and pledging further levels of review for future releases of results. The following day, the planned release of initial results for Borough President and City Council races was cancelled as the Board cited "various quality control measures" newly in place. On July 6, the Board announced it would release another round of results during "brunch" hours in a Twitter reply to a journalist; the results were eventually released at 6:39pm. [53]

site in Troy, the Board appealed and the order was stayed pending an appeal that would not be decided until well after the primary.[57] Once again, a local Board of Elections filed an appeal rather than accept a judge's order to expand opportunity for voters.

Rensselaer was far from the only county that saw breakdowns in early voting site decisions. Ulster County saw a lengthy public standoff in 2019 between the Democratic and Republican commissioners who pursued competing early voting site plans. The Democratic commissioner called for locations throughout the county, in densely populated areas accessible by public transit, and a site on the SUNY New Paltz campus. The Republican commissioner disagreed, favoring more sites in outlying rural areas. While the county legislature weighed in to support the Democratic commissioner's plan, it -- like all local governments -- lacked the authority to break the Board's stalemate. The standoff risked missing the deadline to apply for State funding to subsidize the early voting sites; the commissioners agreed to a compromise plan just five days before the deadline.[58]

Onondaga County has seen repeated public disagreements between Democratic and Republican commissioners over early voting sites, with the Democratic commissioner proposing four additional sites in 2021 after seeing hours-long lines in the 2020 election. The Republican commissioner opposed the expansion plan on the basis of the added cost (which would have totaled approximately $42,000).[59]

In Albany and Saratoga counties, commissioners have similarly disagreed on the placement of early voting sites. In Saratoga, the Republican commissioner asserted the existing three sites "worked very well" even though none of the county's early voting sites were located in the most densely-populated and heavily non-white part of the county. This commissioner suggested that people should have no trouble driving to distant early voting sites since they are also able to "drive to Crossgates [the area's major shopping mall] for an iPhone."[60] In Albany County, the commissioners also disagreed about the placement of early voting sites within the City of Albany.[61] In 900-square-mile Chenango County, a single polling place was open for the primary which was located in the county sheriffs' office and staffed by law enforcement who questioned voters at the door before admitting them.[62]

S.4306B (Gianaris) was passed by both houses this June and would increase the number of early voting sites many boards of elections are legally required to deploy. When chaptered, this legislation could have a positive effect on some of these local battles over siting. However, in the absence of more specific statutory rules, a tie-breaking framework, or an alternative leadership structure for local

Boards, the bipartisan commissioner structure may continue to enable politicized vetoes and/or standoffs over the number and location of early voting sites and other basic questions of election administration.

Time and again, local boards of election are hamstrung by a system that makes it possible for one party's commissioners to block consensus without consequence, to the ultimate detriment of the voter.

Outside of early voting site locations, gridlock between the two parties has frequently paralyzed partisan county board of election leadership. Even intraparty gridlock can be problematic when a party cannot agree on who to select for the important role of Commissioner.[63]

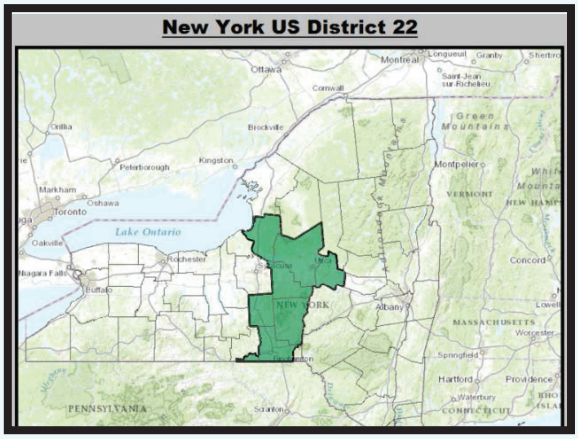
A NOTE ON SCOPE

Many concerns have been raised related to our electoral system that are less directly related, or in some cases unrelated, to the administration of elections themselves. Indeed, many witnesses at the Summer 2021 hearings provided testimony on topics of crucial importance to the health of our democracy, such as:

- Redistricting and gerrymandering
- Voter qualifications and New York's "closed" system of party primaries
- Campaign finance reform and transparency in campaigning
- Petitioning and ballot access requirements
- Ranked-choice voting (RCV) and other voting systems
- Creation of an Election Day holiday

All of these reforms are worthy of discussion and many are well-intentioned ideas that could strengthen our democracy. However, they generally are not entirely related to the mechanisms of how New York administers elections or the urgent need to protect voting rights under sustained national assault. As such, they are beyond the scope of this report. However, they remain central to the functioning of our participatory system of governance and the Committee encourages further study and legislative action to explore their implementation.

NEW YORK'S 22ND CONGRESSIONAL DISTRICT



The 2020 election for New York's 22nd congressional district was not decided until February 2021.

The 2020 rematch between then Rep. Anthony Brindisi and his Republican challenger, Claudia Tenney, for the 22nd Congressional District in parts of Central New York and the Southern Tier was one of the most hotly-contested in the country and turned out to be one of the closest. It also has the dubious distinction of being the last undecided House race in the United States in that year, with a winner not declared until nearly three months after Election Day.

The immediate aftermath of the race was the subject of much litigation and a prolonged, court-supervised ballot count. The process, supervised by Oswego County Supreme Court Justice Scott DelConte, began the judicial review phase for contested ballots on November 23, 2020. A number of extraordinary irregularities came to light during and after this process:

- As was widely reported, multiple boards of elections were found to have violated the Election Law's provisions on the handling of challenged ballots, recording (and in some cases, misplacing) challenge information on sticky notes affixed to ballot envelopes rather than on the ballot envelopes themselves.

VOTING RIGHTS MATTER

Throughout our history, we have moved -- incrementally, unevenly, and unacceptably slowly -- to deliver on the promises laid out in the Constitution and our other founding documents to more and more Americans. Sometimes this progress has been advanced by new laws or court decisions; often these changes were spurred by the righteous actions of leaders like John Lewis, Fannie Lou Hamer, and Hector Garcia. The right of all citizens to have a voice and a vote is the most fundamental tenet of our system of government and one for which countless Americans have protested, fought and died.

Another, darker undercurrent has also been present since our nation's founding. There have always been those who seek to retract, rather than expand, the promise of equality and democracy for all. Some have explicitly opposed the notion of participatory democracy in which every voice counts. Others have paid lip service to the ideals of democracy but have actively worked to undermine them or passively allowed them to whither. The push and pull between these instincts -- the drive to expand and protect voting rights versus the desire to limit them -- has characterized most of America's history.

Those who seek to discredit democracy and restrict voting are not singing a new song. But today, the forces arrayed against American democracy seem louder, stronger, and more emboldened than ever before. Across the country, many states have moved to restrict voting and erect barriers to the free exercise of voting rights. Agents of disorder and misinformation have been emboldened to cast doubt on the legitimacy of elections. This hostility erupted on January 6, 2021 when Americans turned against their own leaders and attempted to topple our system of democratic governance entirely, encouraged by lies about our elections. This threat has only grown with time.

Meanwhile, the federal government has retreated from the role it has played protecting voters in the past half century. In 2013, the Supreme Court significantly weakened the Voting Rights Act, the nation's landmark law that protected voters and subjected state election laws to strict, federal scrutiny. Individual states are now freer than ever to pass restrictive voting laws and restructure election administration in ways that suit short-term political objectives; voters can no longer count on federal oversight as a backstop to increasingly repressive state voting laws.

In the past two decades, many states have proposed or enacted laws that erect barriers for voters. Since 2020, this

NEW YORK'S 22ND CONGRESSIONAL DISTRICT (CONTINUED)

- Also during the process, boards of elections corrected errors that had affected their reported vote counts, and Justice DelConte ordered counties to preserve records of their calculations of vote counts on November 30, 2020.
- Chenango County repeatedly discovered previously uncounted affidavit and absentee ballots that had been misplaced in drawers and elsewhere in its offices.
- In January 2021, it came to light that the Oneida County Board of Elections had failed to process more than 2,000 timely voter registration applications submitted via the Department of Motor Vehicles, resulting in voters being turned away or forced to vote by affidavit. This resulted in the rejection of those affidavit ballots for lack of proper registration. On January 20, 2021, Justice DelConte ruled that these voters must be considered registered and that Oneida County must recanvass its affidavit ballots by January 27. This ruling was affirmed upon appellate review
- Justice DelConte found that Oneida County Board of Elections officials had also mishandled 1,500 affidavit ballots, rejecting them without giving the campaigns a chance to review them and, in the case of 400 ballots, storing them without any review or disposition at all. Cortland County also rejected about 100 affidavit ballots without providing notice to the campaigns.
- Broome County also failed to record objections on the face of ballots, instead devising a "numbering system" to record objections. They also failed to provide rulings on a number of objected ballots.
- As SUNY Binghamton student Shelli Cohen testified at the July 28, 2021 hearing of this committee in Brooklyn, a number of Binghamton students living in the district (and entitled to transfer their registration and vote there via affidavit ballot per Chapter 3 of the Laws of 2019) were disenfranchised because poll workers had instructed

The stakes for competent, trustworthy elections administration have never been higher.

trend has accelerated with many states looking for ways to counter political trends by limiting participation and exposing election administration to more nakedly partisan forces.[70]

Those who argue for these new, anti-voter laws aren't trying to make our elections more efficient, trustworthy, or accessible. They are fearful of a large electorate with equal, free, and fair participation. These forces are not relegated to one demographic group, region, or political party; they are simply the forces with power today and have the most to lose by anything that might challenge that power in the future.

In recent years, New York has chosen a different path. Since 2019, the New York State Senate has passed over 100 bills to improve elections, expand access to the ballot, and protect voting rights-the overwhelming majority of which have become law. In the last three years alone, New York has established early voting, made it easier to request and track absentee ballots online, and provided voters with opportunities to correct minor technical errors that, in the past, have led to many ballots being disqualified. After years of being a national laggard on voting rights, New York is firmly establishing itself as a pro-voter state.

New Yorkers have responded to these new laws with enthusiasm. Statewide turnout increased by nearly 860,000 votes between the 2016 and 2020 presidential election. Over 2 million people took advantage of early voting in the 2020 general election and more than 1.7 million voted absentee.[71] Across the state, over 8,700 voters were able to "cure" technical defects on their absentee ballots and ensure their votes were counted, rather than disqualified as they would have been in the past.[72]

But protecting and expanding the right to vote is only part of the equation. Voters must have confidence that those entrusted with the awesome power of administering our elec-

NEW YORK'S 22ND CONGRESSIONAL DISTRICT (CONTINUED)

them to use their out-of-district home addresses on their affidavit ballots and the Court found it was therefore constrained by law to reject the ballots.

- In addition, there were 51 "BOE Forwarded Ballots" from registered voters who had correctly requested, received and returned their absentee ballots to elections offices elsewhere in the state. When other Boards around the state forwarded these ballots to the appropriate county board within NY-22, these mailings were themselves postmarked after Election Day and the Court found it was constrained to allow local boards to disqualify these ballots.[64]

On February 5, 2020, the Court ordered the election certified, with Tenney ahead by just 109 votes at the time. Justice DelConte publicly denounced multiple local boards of elections for "systemic violations of state and federal election law," but the Court could not order a new election despite the obvious doubt as to the winner.[65] Voters, too, have few good options when their votes are illegally disqualified; their sole remedy is to bring a special proceeding pursuant to the § Election Law.[66]

The post-election count and litigation in the 22nd Congressional District provided a particularly glaring example of local Boards' failure to adhere to the Election Law and basic best practices when handling absentee and affidavit ballots but a number of staff, advocates and election administration experts have observed similar issues across multiple campaigns and boards of elections.

S.1027A (Gianaris), passed by both houses this year and awaiting action by the Governor, would comprehensively overhaul the post-election canvass process and dramatically limit campaigns' ability to challenge ballots that would otherwise be counted, mooting a number of the problems with ballot challenges and counting delays seen in the 2020 election. However, NY-22 illustrates that even with the most well-intentioned statutory requirements, incompetence and disregard for the law at local boards of elections can risk changing outcomes in close elections.

tions are competent, qualified, and fair. And our system of election administration must be capable of serving voters, their most important constituency.

Administering elections is a government function unlike any other; it is democracy's operating system. Yet New York's system of election administration offers less oversight, accountability, and transparency to elected officials and the public than the agencies that regulate parking meters and playgrounds. Lines of authority trail off into nothingness or end in a circular blame game that results in the same debacles occurring again and again. And through it all, New York voters remain overly burdened by election laws and processes that have disenfranchised voters and depressed turnout. Despite improvements in our laws and the increase in turnout from 2016, during the consequential 2020 election New York State's voter turnout still ranked 40th in the nation.[73]

New York's mishaps have provided fodder for those seeking to undermine elections generally. After the New York City Board of Elections sent misprinted absentee ballots to voters in 2020, former President Trump gleefully retweeted several stories about the error, called the incident "big fraud," and even mentioned the issue in his first televised debate with now-President Biden, turning a local story into national news.[74] After the Board released incorrect results during the 2021 primaries, the former president and his supporters again seized on the mistake to cast doubt on the reliability of elections.[75]

The online provocations of a TV-entertainer-turned-aspirational-strongman are not sufficient grounds for improving our elections. But at a moment when many Americans are questioning the value of public institutions and a cult of personality looms large over a chaotic landscape shaped by lies, distrust, and social upheaval, perception does matter.

The strongest defense against the forces seeking to create chaos is valuing our democracy more than they despise it. The best answer to the fear-mongering, conspiracy theories, and lies is an election system that is reliable, dependable, and beyond reproach.

The stakes simply couldn't be higher for a reliable, trustworthy system of election administration.

2021 AND THE SENATE'S HEARINGS

The Senate Elections Committee held five hearings across the State in 2021.

WHY WE DID THEM, WHAT WE HEARD

On June 30, 2021, in response to the New York City Board of Elections' reporting of incorrect preliminary results for the 2021 Primary Election, Senate Majority Leader Andrea Stewart-Cousins issued the following statement:

> "Each year the State Senate begins session by passing voting reforms that languished under the previous Republican majority, including early voting, automatic registration, and a better absentee voting process. The situation in New York City is a national embarrassment and must be dealt with promptly and properly. In the coming weeks, the Senate will be holding hearings on this situation and will seek to pass reform legislation as a result at the earliest opportunity."[76]

In response to this charge, the Senate Elections Committee announced a series of public hearings throughout the state. The intention of the hearings was to solicit testimony, feedback, and recommendations from voters on the 2020 and 2021 elections, including the Primary and General Elections, as well as on pending elections legislation. These hearings were also meant to focus on gathering input and suggestions on how to improve New York state election laws and the administration, operations, and procedures of local boards of elections across the state. In addition, these hearings were aimed at addressing recent canvassing and other election administration errors by the New York City Board of Elections and other local boards of election.

RESISTING HELP AND PUTTING VOTERS LAST

When the Rensselaer County Board of Elections appealed an attempt by the Attorney General to improve access for frequently- and historically- marginalized voters, it was another example of New York election administrators putting other interests ahead of voters' rights. Without a clear mechanism for oversight and accountability, Boards feel empowered to make self-interested decisions and actively resist interventions that could help them serve more voters, better.

In the 2020 primaries- at the height of the pandemic- the Nassau County Board of Elections ignored an Executive Order allowing voters to request absentee ballots by phone or email. While advocates intervened, the board continued resisting following the law until the deadline to apply for absentee ballots was nearly passed.[67]

During the 2021 New York City primary election, the city Board repeatedly turned down offers of assistance from its vote tabulation software vendor that might have avoided the error in reporting results.[68] The Board's commissioners refused to take action to reduce long lines during early voting until litigation was threatened. Memorably, the Board resisted efforts by New York City to provide additional interpreters at certain poll sites in 2019 and rejected $20 million in additional funding in exchange for additional oversight by City Hall.[69]

These hearings were believed to be the first time that the Senate put its focus squarely on voters, poll workers, and other stakeholders who are most directly impacted by changes to election processes and procedures. Crucially, this initial set of public hearings was not designed for legislators to interrogate boards of elections representatives about their operations; instead, it was meant to gather anecdotal examples and other feedback for the Committee on Elections to take into account as it considered changes to the Election Law.

The hearings took place between July 28 and August 9, 2021 in Brooklyn, Syracuse, Rochester, and Westchester County. The Committee received oral or written testimony from over 100 individuals.

At the hearings, voters and pollworkers provided first-hand accounts of their experiences voting and working during recent elections in New York. Although local boards of elections were not specifically requested to testify at this initial set of public hearings, representatives from several local Boards did attend and provide remarks, including Chenango, Dutchess, Erie, Fulton, Jefferson, Madison, Monroe, Onondaga, Oswego, Schenectady, St. Lawrence, Suffolk, Sulivan, Tompkins, Ulster, and Yates Counties.

Several themes figured prominently in the testimony received by the Committee:

Voter Registration and Outreach

Several witnesses raised concerns related to voter registration and how those registrations are processed. When voters' names do not appear in the registration book on Election Day, these voters are supposed to be directed to fill out affidavit ballots. However, as demonstrated by the NY-22 election and many other recent examples, these affidavit ballots can be inconsistently counted and may be invalidated for a host of reasons not expressed to the voter.[77] Some voters therefore prefer to cast their votes on the machines, ensuring they will be counted. The process of obtaining a court order to cast a machine vote on Election Day is exceptionally cumbersome.

Westchester voter Patrick Mehler shared a story about an acquaintance who "registered to vote on April 22, nearly two months before the primary. (...) the woman at the front desk who, when looking up his name, said he was not registered to vote. He retorted that he had email confirmations that he was registered and should be able to vote. We were asked to sit down and wait for the Commissioner to come settle things."[78]

Brooklyn voter Shelli Cohen worked to register voters on her college campus upstate, and testified that "a week before the voter registration deadline, students were stopping by… texting and calling me because their voter registration still wasn't showing up online. This demonstrated that the BOE was too overwhelmed. They were understaffed and were struggling to process the forms at the same time as prepping all of the absentee ballots."

Cohen further testified:

> "Students face many barriers to voting, most prominently, we frequently move. Therefore, many students tend to have to vote via affidavit ballot. For example, students tend to register to vote as freshmen, who live on campus, and forget to update their registration when they move off-campus as upperclassmen… Students followed our instructions but poll workers sent them to campus to vote. We sent them back, but some were so frustrated, they just gave up….
>
> "Poll workers instructed students to put their parents' address on the form, instead of their address in Broome County. This is obviously problematic because they were trying to vote in NY-22, not back home. These ballots were contested in the NY-22 congressional race and the judge threw out the ballots because students had signed a legal document that they lived outside the district in which they were voting. So, 20 students who simply followed directions did not have a voice in choosing their representation in 2020."[79]

Westchester also had several younger voters express their concerns with voter outreach and how New York's failings disenfranchise younger voters. Online registration requires a Department of Motor Vehicle issued license or permit and the last four digits of their Social Security Number. Younger people often do not know their Social Security Numbers or have DMV identification, particularly in urban areas.

Another issue discussed was voter education. Voting can be complicated and some Monroe County residents believe the state does not do enough to simplify the process for voters. There are too many steps where a vote can be thrown out and no easy way to determine if your vote cleared those thresholds. Some individuals, like New Yorkers with felony conviction records, are often unaware that they have the right to vote.

Additionally, town, village, and other local elections occurring on separate dates from national elections was cited as a factor that reduces turnout. For instance, Pittsford held its mayoral election on a different date from the presidential election, resulting in 434 votes cast. That was less than half of what the town cast for president a month earlier. Some villages were required to hold elections on separate days. This creates a need to pay for polling inspectors and site chairs for an additional day. Aside from the cost burdens on localities, keeping up with elections on odd dates is an unrealistic expectation for most voters.

Poll Worker Experiences

The hearings featured considerable testimony from poll workers. New York City alone employs over 51,000 poll workers to serve voters at early voting and general election poll sites.

The process to become assigned as a poll worker has been described as overly-complex and unnecessarily political. One New York City poll worker, Jamie Maxner, said that when signing up for a training, "there was no list of trainings to sign up for or clarity around where or when those trainings would or could take place. Training assignments seem to be made at random, with no fore-warning or giving any choice so that poll workers can choose trainings that fit their schedule or commuting needs."[80]

The same poll worker also described her experience getting assigned to a polling place after completing the training: "After many attempts, I finally spoke to a person at the BOE who gave me the name and phone number of my District Leader (who is not an employee of the BOE), suggesting that person would be best equipped to provide any answers and help getting an assignment."[81] In other words, the Board of Election has largely outsourced a critical responsibility- matching poll workers with sites in need of resources- to unaccountable non-employees.

Laura Kleinman, a Brooklyn poll worker, described arriving at her assigned poll site on Election Day to find the assigned site coordinator had not arrived. Another worker invited her to serve as "acting coordinator" for the day, even though she had not completed required training.[82] Jan Combopiano, another Brooklyn poll worker, testified that she had only 9 of the required 26 workers available at her site as voting began and had to put out a call for volunteers on Facebook to train on the spot.[83]

Numerous voters cited the length of a poll worker's day as a disincentive for serving in this role. Poll workers are expected to arrive at polling places at 5:00am on Election Day and remain to properly close the poll sites, often as late as 10:00pm or 11:00pm. The sheer length of the day makes it difficult to recruit some people to serve as poll workers and the important activities at both the very beginning and very end of the day create pressure on those poll workers who are able to commit to a 17+ hour shift, many of whom are

senior citizens. Manhattan poll worker Dana Watters testified that "a 17-hour day that starts very early, and those two hours on either side—opening and closing the polls—is chaotic and complicated, and something almost always goes wrong to throw off the procedures. If you've ever been at work for seventeen hours, you know that by the end of that, even the sharpest mind is foggy and close to the point of emotional break."[84]

The Election Law currently authorizes "split shifts" whereby poll workers can be assigned for a partial day but many county boards of election- and the New York City Board of Elections- do not take advantage of this permission and only assigns workers for an entire day-long shift.[85]

Many voters and poll workers raised concerns about the requirement that all poll workers be enrolled as either Democrats or Republicans, which is seen as limiting the pool of eligible poll workers. Ostensibly this requirement is to ensure fairness and bipartisan oversight; in reality, poll workers can sign an oath agreeing to serve as a poll worker representing a different party from the one in which they are enrolled. Anecdotally, especially in places where there is an overwhelming Democratic or Republican registration advantage, many voters are serving as representatives of other parties. Leaving aside the merits of this requirement, it is worth considering whether it is even meeting its intended objectives.

Election Day Operations

Many voters expressed frustration with extremely long waits during the 2020 election, the competence of poll workers they encountered, and the ways they were treated while casting their ballots.

Several voters raised concerns, detailed elsewhere in this report, about the distribution and locations of early voting sites. Trish Anderton, a Manhattan voter, expressed this concern: "Inwood needs an early voting site -- this year Washington Heights had three (!) but Inwood still had none. Yes, we can take the train down to 168th, but a local site would be more accessible to more voters."[86] Again and again, witnesses seemed fairly dumbfounded by the rationales for deciding where to place early voting locations and how voters were assigned to them.

Mary Jensen, a Manlius voter, testified: "My husband and I voted in the Presidential election in November 2020. On the first day of early voting, we went and stood in line for 2 hours in some moderately bad Central New York weather. Fortunately, we are able to do that. Not everyone is so lucky. While we are grateful for the option of early voting, we believe that there should be more early voting sites here in Central New York."[87]

Judith Hertzberg, a Brooklyn voter, suggested: "More early voting sites, especially to ensure that they are within reasonable walking distance for voters assigned to them. Voters should not have to pay for transportation to exercise their right to vote."[88]

Issues that arise on Election Day can be incredibly difficult to resolve. Westchester County voters reported having to spend hours crossing the county and waiting at the Board of Elections offices and many cannot dedicate the time it would take to resolve their issues, resulting in their votes not counting. These voters end up confused and when voters know that options exist but cannot access them, they wind up even more frustrated. The phone lines to report problems often have no one reachable at the Board of Elections as well so those voters have no choice but to travel to the BoE office, which is especially problematic due to Covid-19. Voters overwhelmingly want their interactions with their local boards of elections to be simple, quick, and easy to understand and when that does not happen, their trust in the system falls.

Frustrations with poll workers' lack of consistent training was explained during the course of the hearing. Many witnesses- voters, advocates, and commissioners alike- conveyed their support for an adequate training program for all poll workers. Several testifiers believed a required training program would result in more efficiently-run polling sites, decreasing the frequency of complaints and increasing their ability to be helpful to the voters. This training should include hands-on experience with current elections technology, which may be unfamiliar to many new or veteran poll workers.

"...Having poll workers helping to adjust the new iPad style sign-in portal to assist those with poor digital dexterity, having the current Ballot Marking Device up and running when a person with disabilities comes into the polling site and requests to use it, having poll workers who understand the problems that voters with different disabilities face when at the polls..." [89]

Concerns were especially acute among voters requiring additional assistance. One issue raised at the Rochester hearings were the challenges faced by blind and visually-impared voters. Such voters cannot vote privately or independently since the process involves paper forms that are not accessible with screen reading software since they are scanned pictures or pdfs. Furthermore, no access to a printer means no access to vote. While online voting may be unfeasible, other states like Maryland, Colorado, and Hawaii all have secure software systems that are helpful to blind voters. Witnesses cited the Military, which uses electronic ballot returns, and may be worth examining as well. Finally, in counties with small enough blind populations, the anonymity of their votes are compromised. Other groups with accessibility needs can suffer from similar problems.

During the height of the COVID-19 pandemic, many people wanted to use the mail-in voting option rather than cast their vote at a public polling place. The boards of elections' main system for this is to simply mail the voter a paper affidavit ballot upon its request. These ballots cannot be cast independently by the blind or visually impaired.

New York State's Accessible Absentee Ballot process utilizing some features of the internet is a confusing system that has not been well publicized. This system relies on disabled voters to have an extensive array of computer equipment, which is needed to download software and print, and then mail in a paper ballot.

On top of the difficulties disabled individuals face while voting, members of the disabled community told of how they were subjected to rudeness, abuse, and fecklessness. Syracuse voter Agnes McCray testified:

"Last year for the Presidential election I had to vote by paper ballot because the technicians could not get the accessible ballot device to work. This year I had to wait over 45 minutes for the technicians to fix the ballot device and it got to a point where they were blaming me as to why the device was not working. The technicians can become very condescending to me and this made me feel that my choice should only be an absentee ballot. I also do not feel as though I have the opportunity to make the choice on how I would like to vote."[90]

Voters who speak languages other than English also raised concerns. Rochester has the largest population of Latino voters in upstate New York. However, several witnesses testified that poll workers often lack training to deal with these voters with voters unable to communicate with poll workers as well as poll workers lacking the knowledge required to help these citizens. Latino voters often have multiple last names, which can confuse poorly trained poll workers. Most egregiously, multiple Latino witnesses described aggressive physical contact from poll workers. One told of a poll worker grabbing her hand while she was speaking Spanish on the phone to take the phone from her, while an elderly woman who was subjected to literacy tests in her youth broke into tears as she described how she was shoved by poll workers:

"They were pushing me and pushing me and treating me like a piece of garbage." [91]

Voters also raised concerns about the illegibility of ballots, even for voters without visual impairments. Martin Ascher of Brooklyn mentioned the "Charter Revision Commission proposals printed in 7.5-size font in 2019," an incident that gained significant media attention.[92] At the time, the Board claimed the tiny font size was to avoid printing ballots on more than one page, but this concern had apparently evaporated by the 2021 mayoral primaries which featured two-page ballots.

Poll workers themselves described Election Day as an imperfect process. For instance, poll workers mostly document errors, such as reconciliation errors or premature locking of machines, to address at the end of the day. This leads to delays in sending errors to the board of elections and a lack of real-time response to address potentially-urgent issues.

Absentee Voting

Prior to 2020, absentee ballots represented a marginal component of voter turnout, generally serving between two and four percent of voters who were physically unable to vote in person. New York maintained strict limitations on who could apply for an absentee ballot, contributing to their relatively limited use.

With the onset of the pandemic, absentee ballots have become an essential part of voting infrastructure. In 2020, some 20 percent of voters statewide used absentee ballots.[93] In New York City, over 37 percent of voters used absentee ballots during the primaries.[94] Despite the widespread use of absentee ballots beginning in 2020, many voters reported issues with requesting, receiving, and returning them.

By law, voters may return their completed absentee ballots to any polling place in New York State.[95] Bonnie Nelson reported that she returned her 97-year-old mother-in-law's absentee ballot to an early voting site in Brooklyn, despite living in Manhattan. The online absentee ballot tracking system never updated the ballot's status from "Out For Delivery" and Ms. Nelson testified that the Board of Elections office advised that she should not have returned the ballot to a different borough than the one she resided in.[96] Several other voters also noted that the tracker reflected their ballots were "out for delivery" even though they were never delivered or arrived.

Communication and Information Sharing

Numerous voters reported on the lack of timely or accurate communication from election administrators. Amanda Ritchie, a Brooklyn voter, testified that "In the June 2021 primary, many voters only found out their Early Voting poll site changed when they went to vote and were notified they were in the wrong location."

Ruth Cowan, 80, of Irvington testified that:

"My election district was changed (without notice) for the Democratic primary election in 2021. My polling place used to be in the Irvington Public Library, which is just down the street from where I live. When I was notified, by postcard, that my polling place had been changed to Irvington Town Hall I was incredulous. So I went on the WCBOE website to locate the correct polling place. The website polling place location system DID NOT WORK. I tried this at least five times. Each time it told me that my address, 1 South Astor Street, Irvington DID NOT EXIST." [97] -

John Filberti, a Westchester voter, testified that:

"Last November, 3 of the 4 election districts on Garth Road in Eastchester were not open. This past June, for the Democratic Primary, all 4 were closed. These changes happened very late - too late to adequately inform the residents of alternates. Almost 25% of the Democrats that live in the Town of Eastchester, outside the Villages of Bronxville and Tuckahoe, live on Garth Road. The loss of these polling locations placed an extreme burden on Democratic

candidates involved in elections on both of those dates."[98]

Other voters received unclear information about poll site location changes. Margaret Bradbury of Westchester testified that:

"[M]any people did not know where to go. The official listed information on the BOE website for 4 EDs including ours is "MAXWELL AVE FACILITY 40 MAXWELL AVE". For those who are not aware that this is the garbage transfer facility, there is no indication that the actual site is the Dept Public Works Garage. (...) The words in the County's notification "FACILITY" are nowhere to be seen. The larger picture shows the view driving on Madison Ave to turn onto Maxwell. The on ramp to I-95 is blue, and Maxwell is in red. If this site is to be used again in the general election, there must be better signage."[99]

BOE Structure

The legal and administrative structure of boards of election is essentially invisible to most voters. This is as it should be; if everything is functioning properly, most voters won't have a need to understand how the agency works or how its leadership is selected.

However, several voters provided testimony about their experience and insight into the structure of local boards, particularly outside of New York City where the Boards are typically much smaller. Many of these boards feature part-time commissioners and a small number of staff.

Tim Perfetti, Vice Chair of the Democratic Rural Conference of New York, testified: "I think that the state, through legislation mandating that all counties have a Full Time Commissioner and a Full Time Deputy at a minimum could help bring a more consistent and uniform approach that would be a step in the right direction to giving more stability to the local boards of elections."[100]

Kathy Zahler, a voter from Erieville, testified:

> "Because the commissioners are appointed by the parties, they are untouchable by county administrators or even county legislators. Given a complaint about any other department head, county administrators may use HR or their own offices to follow up. Given a complaint about an election commissioner, they are likely to throw up their hands and say, 'There's nothing we can do.'"[101]

Ms. Zahler, herself a former county party official, further testified of the politically-appointed commissioners:

> In theory, the election commissioners are accountable to the parties, but I don't know any party committee anywhere that takes this duty seriously. Certainly once I hired the Tompkins commissioner, I never followed up, provided guidance, or assessed his work. It never occurred to me that this should be part of the process. I have never heard of a committee that does so."[101]

THE BOE'S RESPONSES

On September 21, the Elections Committee held a final hearing in Albany which featured testimony from the State Board of Elections, the New York City Board of Elections, and several county boards. Though the initial set of hearings explicitly focused on soliciting voter and poll worker testimony, several county elections commissioners submitted written testimony to the regional hearings as well.

Overwhelmingly, elections commissioners from across New York-- from our largest city to the most rural areas-- describe themselves as committed to their work. Many Boards of Elections function well, with leaders and staff who understand the important nature of serving voters and supporting democracy. Particularly in 2020, election administrators-- from senior leadership to poll workers, technicians and door clerks-- performed their work diligently under exceptionally challenging circumstances.

Commissioners generally spoke in favor of the bipartisan system that governs election administration in New York. While bi-partisian support was not universal, particularly among independent voters, Democratic and Republican commissioners from both suburban and rural counties expressed support for the system. Advocates, commissioners, and voters in upstate New York explained how critical the structure of bi-partisianship is, especially in counties with Legislatures overwhelmingly dominated by one party or the other.

Laura Brazak, the Democratic Oswego County elections commissioner, echoed:

> "Structural Bi-Partisanship in BOEs, while far from perfect, is still my preferred method by which to administer fair elections. Other states have found different organizational models but our method (New York State) lends itself to oversight by both sides of the aisle thereby ensuring a system of checks and balances."[102]

Ashley Dittus, the Democratic Ulster County elections commissioner, agreed:

> "There have been many instances in the past where I have wished I was the sole authority in my Board of Elections, especially when I have faced obstructionist behavior from my counterparts. However, I do not believe the alternative would favor the voters, nor the institution."[103]

The main argument made for continued bi-paritisan boards was that it provides transparency for the voters. If one individual is in charge, it provides no incentive for transparency and gives no image of cooperation. When two individuals are administering the elections in a county, one official for each of the two major parties can monitor, contest one another when necessary, while providing a system of checks and balances that is palpable at the local level.

> "Particularly in rural counties, if you did not have a mandated bipartisan personnel structure, you would in fact have a partisan one and whatever party dominated in that county would be able to appoint the personnel and you would not have the built in checks and balances of the mirrored system."[104]

The Co-Chairs, Commissioners and Executive Directors of the New York State Board of Elections testified:

> "... the foundation, the bedrock, the guiding principle that undoubtedly helps us get it done is bi-partisan cooperation and administration. There are many models within which to administer elections, but the State Constitution wisely requires a bi-partisan approach that fosters the checks and balances that are part of our American governmental system. But even absent the mandate of the State Constitution, the State Board supports the bi-partisan structure because it provides for transparency, efficiency, and accountability. Bi-partisan election administration shows where the two major parties work together in consensus."

> "As a matter of experience, in election administration in New York the election process and related rules are well defined, and this generally prevents gridlock in election administration. Overwhelmingly fair consensus is reached."[105]

Elections commissioners noted how recent changes in the Election Law have imposed significant burdens on administrators. Commissioner Peter Kosinski of the State Board of Elections described that "over the last couple of years there has been a great change… they've really put a burden on our boards… It's a benefit to the voters, no question, but it's a burden on our boards that people need to understand."[106]

Local commissioners agreed that recent updates to election laws, such as the newly enacted absentee ballot cure process requiring local boards to contact a voter when they return an absentee ballot with certain correctable mistakes to allow the voter to fix it and prevent the ballot from being disqualified, as being substantial impositions on their ability to perform.

Many Boards noted their relatively small size and low levels of funding. The State Board of Elections noted that 27 of the 58 boards have six or fewer people:

> "Six employees in total, including the commissioners, to perform all the election tasks in that county – registering voters, processing absentee ballots, testing and deploying a fleet of machines for multiple elections each year, designing and proof-reading thousands of ballots, training poll workers, processing hundreds of petitions, finding qualified poll sites and then running each election, accurately canvassing all the ballots and declaring the winners."[107]

On September 21, 2021, the State Board of Elections testified before the Committee.

Ashley Dittus of the Ulster County Board of Elections noted that:

> "Mandatory minimum staffing legislation is critical to ensuring that the voters are being served by an office that is functioning properly, not treading water… Our Board has operated with full time Commissioners for decades, I cannot fathom how an office can operate without the department heads having a daily presence…. A minimum staffing of a Board should be four full time Commissioners and Deputies with an additional two full time staff members for every complete unit of twenty thousand voters."[108]

Boards generally expressed a wariness to increased "professionalization" of their organizations. The State Board of Elections testified that "elections is a learned process," continuing:

> "There is no way to gain experience in New York elections without doing it hands on. The State Board has always supported finding the most qualified candidates. The State Board has also consistently supported legislation to mandate uniform training for county election staff to enhance professional standards. But making "experience" a prerequisite will restrict the potential pool of applicants unreasonably."[109]

However, the State Board did express a preference for full-time commissioners.

This was echoed by Laura Brazak, the Oswego commissioner: "It is also important to remember that there is no "training" to work at the BOE. Only those who actually work here understand what it is that we actually do and what the job entails."[110]

The New York City Board of Elections acknowledged not conducting searches or advertising the vast majority of its jobs, with Executive Director Michael Ryan stating "I think that that's the normal way things get done in a lot of the government processes, particularly with the smaller offices outside of the civil service system."[111]

Ashley Dittus, the Ulster County commissioner, was alone in expressing support for more "professionalization" among non-management staff:

> The State legislature should consider requiring non-management BOE staff members who serve in roles below the Commissioner and Deputy positions to become public employee unionized positions. Additionally, uniform job descriptions should be implemented by the State Board of Elections for the County Boards and there should be a nepotism ban in place for all BOE employees. These initiatives role into the desire for the Boards to be staffed by professionals and not populated by individuals protected by their political connections. Finally, reoccurring standardized training that is mandatory and facilitated by the State Board of Elections for all Board of Elections employees would foster uniformity and put everyone on the same page.[112]

Boards generally testified that there exists sufficient oversight of their work. The state board testified of county boards:

> They are subject to very close scrutiny by their local legislative bodies and elected officials and justify every penny they spend. Typically, they are models of efficiency. [113]

Kosinski acknowledged that no Elections Commissioner had ever been removed for cause by the governor but that commissioners do resign voluntarily under scrutiny. He expressed openness to a removal process vested in the State BOE that would allow for adjudication or appeal.

Boards also generally argued that recent changes to the election law and Executive Orders often carried substantial costs. These costs, they argued, typically come in the form of unfunded mandates. Several commissioners testified about the unclear and occasionally contentious relationship between local county boards of election and their associated local funding sources.

Dustin Czarny, Democratic Commissioner from Onondaga County, testified:

> "Often county legislatures try to intercede in election administration by stripping budgets or even threatening nominations of individual Commissioners they disagree with. County Executives that cannot control the offices hiring treat boards of elections as bastard step-children with minimal funding allocations…
>
> "Where boards of elections have come up short is when funding for increased spending has not been provided and clearer direction not given by the legislature… I must emphasize though that New York State cannot solely fund elections. We need a commitment from our host counties to funding the building blocks of our Democracy. Often the increase in funding from New York State would be used to offset budget cuts at the local level."[114]

This sentiment about funding was not unanimous. The New York City Board of Elections, generally considered one of the most well-resourced boards, testified that "not every problem is a money problem."

ANALYSIS

Through these hearings, the Committee was able to hear directly from the primary consumers of our election administration and the intended beneficiaries of our efforts to expand and protect voting rights: the voters themselves. The Committee publicized the hearings widely and invited voters of all political persuasions and experiences to share their observations and recommendations in an open forum. The Committee also heard from elections commissioners at the state, city and county level about what they see as highlights and friction points in the current election administration system.

On some topics there was broad agreement: the right to vote is cherished by New Yorkers and the election law changes enacted since 2019 have opened more doors and created more options for voters to exercise their rights. Voters generally supported these enhancements, and are hungry for further action to simplify and improve election administration in New York.

Boards of Election similarly expressed appreciation for the critical nature of their work. Commissioners were generally unanimous in their requests for more resources, and many called for more standardized and widespread training.

But in many areas, the differences between what we heard from voters and election administrators were stark. Voters were more likely to express support for recent innovations such as early voting and the absentee ballot cure process; administrators largely named these changes as burdens. Where voters saw opportunities for further expansions of voter access, boards expressed concern about the rapid pace of change, in one case explicitly arguing for "a moratorium on election law changes." Voters raised concerns about gridlock and unclear lines of authority at election boards; administrators saw a system that generally worked well with sufficient oversight and limited opportunities for gridlock. While arguing that "elections administrators… can hardly keep up" with recent changes to election laws and Executive Orders, the State Board simultaneously testified that "the election process and related rules are well defined, and this generally prevents gridlock in election administration." This contradiction is representative of much of the Board testimony heard by the Committee: the laws are becoming more difficult to implement, but the existing structure is the only method capable of implementing them.

Some aspects of the Boards' testimony revealed deep structural challenges. In discussing the NY-22 election in which the Oneida County Board of Elections simply stopped processing timely registrations received through the Department of Motor Vehicles, the State Board testified that Oneida County "did not disclose this decision to the State Board" on a required resource survey. The fact that this violation of the law was a "decision" in the first place, improperly made by Oneida County for which voters had no recourse other than to be disenfranchised through no fault of their own, was not addressed in the State Board's testimony. The State Board correctly noted that both Oneida Commissioners resigned "because of the pressure" in the wake of that contested and contentious election; it is not hard to imagine a different outcome in which recalcitrant Commissioners, feeling accountable to no one but a Governor, remain in their roles despite mounting external pressure to step aside.

Boards were generally unified in their skepticism that statutory qualifications would improve the readiness of elections administrators. There may be few formal programs to expose would-be election administrators to the real-world scenarios they would face in the role, though it is inaccurate to say they do not exist.[115] Moreover, many aspects of the role-- management, effective communication, logistics, budgeting, public finance, and law-- are experiences of a general nature that can obviously be made into prerequisites for election administration jobs, as they are for many others in government.

RECOMMENDATIONS

The Committee's 2021 statewide hearings clearly suggest the need for reforms to New York State's election laws and measures to strengthen voter protections. The Committee collected testimony from voters, poll workers, election administrators, advocates and scholars about leading practices and opportunities for improvement.

As stated earlier, these recommendations are not contemplated as a prescriptive list of needed improvements, or a checklist of legislative solutions that would solve the myriad problems facing voters. Rather, these recommendations are meant to provide lawmakers and the public with a menu of issues, possible solutions and key considerations that have been shared with the Committee. The Committee recommends further study and public discussion around any of these proposed solutions, and consultation with administrators, advocates and relevant experts to guide any proposed implementation.

STRUCTURAL REFORMS

1. Recommendation: Restructure the New York City Board of Elections

Issue: The consistent string of failures exhibited by the New York City Board of Elections (NYC BOE) in recent years has revealed an agency in desperate need of significant reform. The errors exhibited by the NYC BOE, detailed elsewhere in this report, point to systemic flaws rather than isolated incidents of failure. These flaws begin at the Board's top levels and trickle down throughout the agency, diminishing confidence in our elections, wasting taxpayer dollars and, in some cases, depriving voters of their constitutional rights.

Potential solutions: Addressing the persistent challenges at the NYC BOE requires a multi-faceted approach. The Legislature should consider solutions that would:

- Reduce the number of Commissioners, and de-couple appointments from county political party recommendations. Currently, Commissioners are appointed by ten separate nominating bodies from different boroughs throughout the city - namely, the Democratic and Republican parties in each of the five boroughs. The diffuse leadership structure results in inefficiency, muddled lines of authority, and disparities.
- Require that the Executive Director and other senior staff be recruited and hired through a transparent search process, including public hearings by the appointing authority.
- Appoint Senior and Executive staff by some combination of the Mayor, City Council and Public Advocate, and ensure they are removable by this same combination.
- Specify that senior staff, and not the commissioners, shall appoint and oversee other staff, and require that job descriptions be publicly posted for open positions.
- Remove the requirement that employees throughout the agency reflect equal representation of the Democratic and Republican parties.

Considerations: The existing, 10-Commissioner structure has been fiercely defended by leadership of both political parties. Untethering the appointment of Commissioners from specific borough political party recommendations may require finding other ways of ensuring that all voters' interests are represented at the Board. Some functions related to registration, distribution of ballots and canvassing may still need to be conducted in a bipartisan manner unless the State Constitution is amended.

2. Recommendation: Reforms at Local Boards of Election Outside NYC

In 2021, Georgia Secretary of State Brad Raffensperger resisted political pressure to overturn valid election results. "Public pressure" is currently the only practical method for removing election administrators in New York State.

Issue: Outside of New York City, the 57 county boards of election are governed by a bipartisan pair of commissioners who are each appointed upon the recommendation of their county parties' leaders. County Boards are funded locally by each county and vary widely in size, resources, and capacity, leading to inconsistencies for voters in different jurisdictions.

Potential solutions: The Legislature should consider ways to bolster the capacity and capability of county boards of election, such as:

- Require transparent recruitment and hiring of Commissioners including public hearings by the appointing authority, which typically is the county legislature.
- Require minimum staffing levels to ensure that Boards have sufficient capacity to manage their work.
- Require non-management staff be hired through normal government hiring channels as opposed to party recommendations, and develop standard qualifications for non-Commissioner roles.
- Require that Commissioners serve in a full-time capacity.
- Require minimum funding levels from local and county governments, to ensure that Boards have the resources they need to administer elections consistently
- Repeal antiquated statutes from current law that hinder the applicant pools for jobs such as election inspectors and coordinators.
- Strike requirement in statute that employees throughout the agency must reflect equal representation of two major political parties.

Considerations: Mandating standards and fixed staffing levels at local BOEs could require funding from local governments. In exchange for this funding, local governments may want an enhanced oversight role over the selection and removal of Commissioners, as well as investigatory/audit powers over county BOE operations.

3 Recommendation: Change the relationship between the State Board of Elections and local boards of elections

Issue: The existing relationship between the State Board of Elections (SBOE) and local counterparts, both in New York City and in counties across the state, is overly complex and unnecessarily decentralized. Local Boards' management decisions are not supervised in a meaningful way by the SBOE, which recently confirmed it "does not investigate local Boards, they are our colleagues."[116] The SBOE (or another statewide entity or official) could provide meaningful oversight and assistance to county boards, setting important standards for local Boards.

Potential solutions: To strengthen the SBOE's role, the Legislature should consider measures that would:

- Codify a stronger role for the SBOE to oversee local boards of elections.
- Clarify that the SBOE's role is to set statewide standards for all aspects of election administration performed by local Boards
- Require the SBOE to develop minimum qualification standards for local Commissioners and standardize job descriptions and qualifications for all other Board of Elections roles.
- Require trainings for local Boards to be developed and administered by SBOE.

- In cases where local Commissioners cannot reach consensus, permit SBOE to serve as a "tie-breaker" allowing important decisions to be made.
    - Where the SBOE cannot break a deadlock, a higher level of appeal to the Attorney General or Secretary of State should be established

Considerations: The State Board of Elections may be well-positioned to provide direct oversight and set minimum standards for local Boards, but may need additional resources and staffing to do so effectively. Other entities could provide, or complement, this oversight; the Secretary of State (either an appointed official as currently situated, or as a newly-elected official), a unit within the Attorney General's office, or a qualified arm of local government.

OPERATIONAL REFORMS

4. Recommendation: Reform Selection Process, Qualifications and Accountability Structure for Commissioners

Issue: Elections Commissioners are entrusted with significant responsibility, yet there are essentially no standards in place for their qualifications or training. Commissioners are appointed by their respective political parties and may only be removed by the Governor, a provision that has never been used.[117] There are no standards for conflicts of interest, or opportunities for the public to understand how and why Commissioners are appointed to their roles.

Potential solutions: The Legislature should reform the selection process and increase standards and accountability for Commissioners by acting to:

- Develop conflict of interest rules such as prohibition of a Commissioner or Deputy Commissioner from simultaneously serving as an elected or political party official, who necessarily have a stake in specific primary and general election outcomes and a prohibition of candidates for local office from being employed at a board of elections overseeing the election they are running in.
- Require local Commissioners to meet minimum qualification standards , and participate in regular training provided by SBOE.
- Require public confirmation hearings and reviews of qualifications prior to selection and appointment of Commissioners.
- Enable Commissioners to be removed for cause by either the SBOE or the associated local government.

Considerations: There may need to be further redesign of the selection process for commissioners to clarify the roles played by political parties in nominating candidates to serve, versus local governments serving as the "appointing" authority. An appeals process for Commissioners subject to removal may need to be adopted. A process for ensuring prompt replacement of a removed commissioner should be established.

.5. Recommendation: Raise Poll Worker Standards, Improve Recruitment and Experience

Issue: Poll workers are critical employees, serving on the front lines of the democratic process. Even before the pandemic, poll workers have been performing essential work under difficult conditions. Poll workers are also, for the most part, temporary employees which presents challenges for institutional knowledge retention, training, and standardization. Many poll workers and voters who testified before the committee described an overly-complex and politicized recruitment process, inadequate training for those selected, and unrealistic workload expectations.

Potential solution(s): New York must recognize the importance of recruiting qualified poll workers, training them properly, and ensuring they can perform their important duties. Some strategies for accomplishing this objective should include working to:

- Remove the requirement that all poll workers be enrolled in either the Democratic or Republican parties, allowing any qualified and interested New Yorker to serve in this role.
- Enhance the training requirements for poll workers by mandating a hands-on curriculum, requiring training to be held at least quarterly throughout the year, adding topics to the list of statutorily-required materials that must be reviewed.
- Allow poll workers to work during early voting only, if they so choose.
- Change time training occurs to coincide with updates to the election law.
- Allow rolling-basis certification of poll workers in a process open to the public rather than one annual recruitment/training/testing process Increase poll worker pay and allow for overtime pay to account for extra hours and required training.
- Review and revise pay scales between early voting and election day to prevent poll worker shortages on election day.
- Exempt poll worker pay from state and local taxes to incentivize recruitment and retention efforts.
- Require online poll worker training to be paired with in-person hands-on training on relevant voting machine operation, the affidavit process, and customer service.
- Reconsider the traditional inspector role and instead consider inspectors-at-large and those trained for specific tasks only, especially first-time poll workers.
- Require local boards of elections to provide for "split shifts," allowing poll workers to work only part of the day, and "dynamic scheduling" that provides greater staffing during high-traffic hours (for example, during the morning and evening rush hours and during poll opening and closing times).

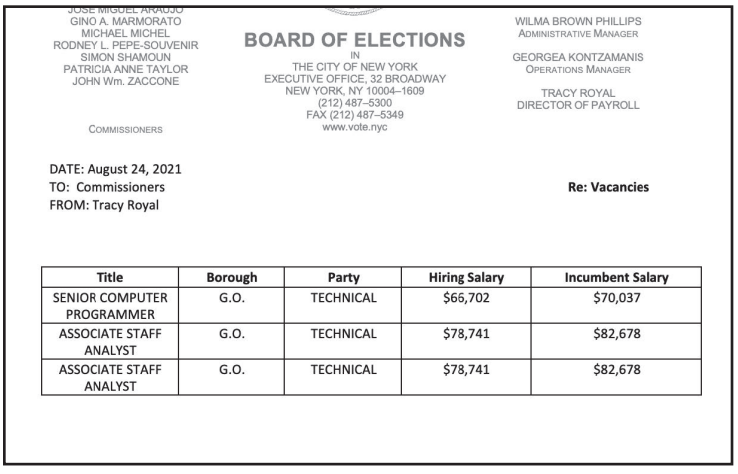
Considerations: Some poll workers may be reluctant to work fewer hours in exchange for less compensation. Dynamic scheduling may not be practical in some counties.

6. Recommendation: Other Improvements to the Voter Experience

Issue: Nearly everyone who provided testimony to the Committee noted various shortcomings related to the voter experience. Voters depend on timely, accurate communications from election administrators, and deserve a more streamlined process for casting their ballots.

Potential solutions: Ideas proposed to the Elections Committee include:

- Standardize notification requirements for poll site relocations, to include common sense and clear language on mailings and posted signs.



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WILMA BROWN PHILLIPS
ADMINISTRATIVE MANAGER

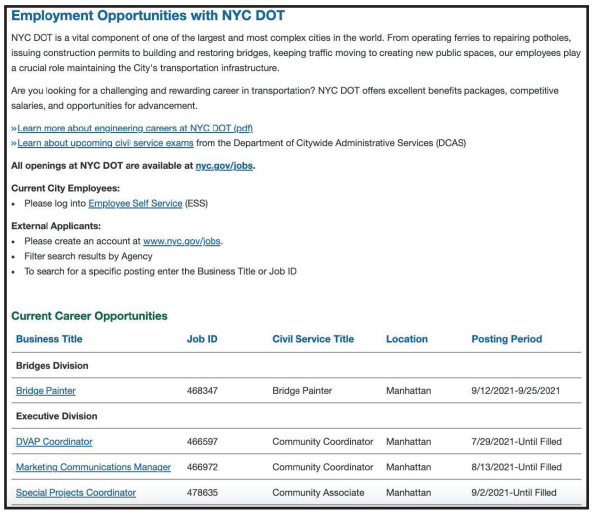
GEORGEA KONTZAMANIS
OPERATIONS MANAGER

TRACY ROYAL
DIRECTOR OF PAYROLL

DATE: August 24, 2021
TO: Commissioners
FROM: Tracy Royal

Re: Vacancies

Title	Borough	Party	Hiring Salary	Incumbent Salary
SENIOR COMPUTER PROGRAMMER	G.O.	TECHNICAL	$66,702	$70,037
ASSOCIATE STAFF ANALYST	G.O.	TECHNICAL	$78,741	$82,678
ASSOCIATE STAFF ANALYST	G.O.	TECHNICAL	$78,741	$82,678



Employment Opportunities with NYC DOT

NYC DOT is a vital component of one of the largest and most complex cities in the world. From operating ferries to repairing potholes, issuing construction permits to building and restoring bridges, keeping traffic moving to creating new public spaces, our employees play a crucial role maintaining the City's transportation infrastructure.

Are you looking for a challenging and rewarding career in transportation? NYC DOT offers excellent benefits packages, competitive salaries, and opportunities for advancement.

»Learn more about engineering careers at NYC DOT (pdf)
»Learn about upcoming civil service exams from the Department of Citywide Administrative Services (DCAS)

All openings at NYC DOT are available at nyc.gov/jobs.

Current City Employees:
- Please log into Employee Self Service (ESS)

External Applicants:
- Please create an account at www.nyc.gov/jobs.
- Filter search results by Agency
- To search for a specific posting enter the Business Title or Job ID

Current Career Opportunities

Business Title	Job ID	Civil Service Title	Location	Posting Period
Bridges Division				
Bridge Painter	468347	Bridge Painter	Manhattan	9/12/2021-9/25/2021
Executive Division				
DVAP Coordinator	466597	Community Coordinator	Manhattan	7/29/2021-Until Filled
Marketing Communications Manager	466972	Community Coordinator	Manhattan	8/13/2021-Until Filled
Special Projects Coordinator	478635	Community Associate	Manhattan	9/2/2021-Until Filled

Most city agencies post job openings publicly (left), including detailed job descriptions and information on how to apply. The New York City Board of Elections posts a small number of titles only and does not include any information about the roles or the application process.

- Require timely and clear updates be posted to inform voters of their absentee ballot status and whether an absentee or affidavit vote was counted successfully.
- Amend §8-600(3) of the Election Law to require local boards to comply with the mandate for county-wide early voting centers, instead of assigning voters to particular early voting sites
- Require early voting sites be designated on college campuses.
- Provide for postage to be paid on all absentee ballots mailed out to voters.
- Repeal the ban on providing food and beverages to voters waiting in line to enhance the voting experience when individuals may be facing long lines.
- Consider a vote center model on Election Day, not just Early Voting.
- Require the state board of elections website to post information about all candidates in state and local races to educate voters.
- Require use of e-poll books in all races by 2024.[118]
- Amend state and local boards of elections websites to allow for a registration lookup tool to show whether a vote was counted.

Considerations: A more detailed and integrated ballot tracking system, and postage for absentee ballots, may result in additional costs.

OTHER CHANGES TO THE LAW

1. **Recommendation: Enact Additional Changes To Make Voting Easier**
   Issue: Multiple other issues specific to New York election law create unnecessary barriers to the free and fair exercise of voting rights, while also resulting in confusion for voters, election administrators, and the courts. The legislature should continue working to modernize the election law and administration of elections in the state.

Potential solutions: Multiple remedies for these impediments exist, such as:
Consolidate election days for town, village, school district and/or special purpose district elections to reduce costs of administration and improve turnout by holding more elections on fewer days throughout the year

- Amend relevant Election laws to ensure that a voter impacted by a BOE error (such as an erroneous voter purge) can have their affidavit ballot counted
- Clarify rules and standards for manual or machine recounts
- Increase transparency and access to election data by establishing a data repository and codifying consistent rules on data sharing and open meetings
- Move to a statewide voter registration model
- Fix “wrong church, wrong pew” issue by allowing an affidavit ballot to count in elections the affidavit voter is eligible to vote in even if they inadvertently completed at the wrong poll site in their county
- Allow for an online petitioning system

Considerations: As town, village and school district elections are currently administered locally, there may need to be additional changes to state law to align the administration of these elections.

STRENGTHENING VOTER PROTECTIONS

2. Recommendation: Enshrine Voter Protections in State Law.

Issue: Existing statutes do not provide sufficient protection for voters to have their ballots counted and fully participate in the electoral process. Although its record has significantly improved in recent years, New York has a long history of discrimination against racial, ethnic, and language minority groups in voting. The result is a persistent gap between white and non-white New Yorkers in political participation and elected representation.

Potential solution(s): In the face of federal inaction on voter protection, New York must move to address a wide variety of long-overlooked infringements on the right to vote and put in place protections that are among the strongest in the country. The John R. Lewis New York State Voting Rights Act (S.1046A) would put the law firmly on the side of voters wherever possible. Among other provisions, this bill would:

- Grant the New York State Attorney General (or certain state courts) the authority to "pre-clear" changes to election rules, a role previously enforced by the US Department of Justice
- Shift the burden of proof from voters having to prove new election laws or rules are discriminatory, instead requiring jurisdictions or boards of elections to prove that they are not
- Strengthen laws against voter deception and intimidation
- Create a non-partisan, statewide database of information such as election results, voter files, shape files, and more
- Allow plaintiffs to recovery attorney fees if they win a voting rights case
- Require language assistance be provided to more voters in more places
- Help judges interpret the law in favor of allowing every eligible person to register and vote

Considerations: This bill would add many new protections currently missing from state law and unenforced by the federal government. It would not, by itself, fundamentally alter the structure of the Board of Elections or the mechanisms of election administration.

CALL TO ACTION

New York has long been a leader in protecting civil rights and expanding democracy. From the days of the Underground Railroad and abolitionists giving away property to grant Black citizens the franchise[119] to Seneca Falls and Stonewall, New York has often led the nation in the quest to perfect our union. What happens here matters in the rest of the country.

Throughout our history, brave Americans have agitated, fought and died for the right to vote. They did this not to bolster a candidate, political party or ideology; they did this because of their unwavering commitment and unshakeable belief that voting is the right that protects all our other rights-- that the way we make decisions as a collective is important, and worthy of protection.

Today, our democracy faces existential peril, and the stakes for our elections have never been higher. Now, the baton is passed to us, to ensure that our voting rights are protected, and the institutions entrusted with administering our elections are well-positioned to meet this moment.

Our elections infrastructure isn't like any other agency that processes drivers licenses, collects taxes or even administers life-saving vaccines against a global pandemic. It is literally the guts, the back office, the backbone of democracy itself. It is deserving of scrutiny, capable of change, and worthy of our defense.

At its best, our elections infrastructure works to ensure our votes are counted, equally and accurately, and that everyone eligible has an equal opportunity to participate and make their voice heard. And most of our state's election administrators are doing their jobs well, to the best of their ability.

But at their worst, election administrators and the system in which they work can restrict access and limit participation, and diminish confidence in the elections. This can be done with ill intent or, more often, by inaction, passive aggression or incompetence. No matter the reason, the result makes a mockery of the urgent, national fight to protect voting rights. After all, how can we point to intentional, discriminatory efforts to restrict voting in other states when, by sheer incompetence and error, hundreds of thousands of eligible New York voters are removed from the rolls, forced to endure hours-long waits, mailed misprinted ballots and have their ballots and registrations mishandled despite following the rules to the letter?

We must improve our elections, protect and expand the rights of voters, and in so doing strengthen our democracy. We must seize this opportunity to build institutions that reflect our values, write laws that reflect our ideals, and design systems that meet the needs of today.

New York's democracy stands at a crossroads. Since 2019, we have demonstrated to the rest of the nation what is possible when we elevate the voice of everyone; when we cherish and defend every vote; when we encourage participation in civil society; and when we rethink and reform the institutions that underpin that society.

We must continue to advance that work. The future of our state and nation demands that we do no less.

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NEW YORK STATE
SENATE

Exhibit 2

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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Writer Direct: (518) 473-7614

December 6, 2011

Honorable Gary L. Sharpe
James T. Foley U.S Courthouse
445 Broadway, Room 441
Albany, NY 12207-2926

Re: *United States v. State of New York, et al.*
Northern District of New York
10-CV-1214 (GLS)

Dear Judge Sharpe:

As the Court is aware, the Department of Defense recently denied New York State's application for a waiver of the 45-day deadline for transmitting UOCAVA ballots for the 2012 federal non-presidential primary and general elections. The State's prematurity argument with respect to the 2012 federal elections is thus no longer viable. Several important issues do, however, remain before the Court.

As set forth in the State's memorandum of law in opposition to the United States' motion for supplemental and permanent relief, New York does not dispute that, given the fact of the waiver denial, the federal non-presidential 2012 primary should be held at least 80 days before the 2012 general election to insure compliance with UOCAVA. As the State also pointed out, however, the United States seeks additional relief that goes beyond that required to guarantee compliance with federal law and which, if granted, would improperly infringe on the State's prerogative to set its own UOCAVA-compliant primary date. Specifically, the federal government asks the court to direct that the State propose a new primary date, and any other necessary election calendar adjustments, within ten days of the issuance of a remedial order. As explained in the State's opposition papers, the ten-day deadline would deprive the Legislature of a reasonable opportunity to develop a revised primary schedule. Instead, the Court can issue a remedial order requiring that the primary election be scheduled for a date prior to August 18, 2012, and then should set a status conference for a later date to allow the Court sufficient time to take any necessary action to insure UOCAVA compliance in 2012 if a new primary date has not been set by that date.

In its reply papers, the Proposed-Intervenor New York State Senate, requests that the Court grant relief significantly beyond that sought by the United States by ordering that the primary be held in August 2012. The State Senate would thus have the Court involve itself -- to a far greater extent than contemplated by even the federal government -- in an area traditionally

left to the states. See Bush v. Hillsborough County Canvassing Board, 123 F. Supp.2d 1305, 1317 (N.D. Fla. 2000) (requiring compliance with UOCAVA but declining to "legislate the intricacies of state election procedures" in its remedial order). Further, the Legislature is best suited to resolve the implementation issues that would arise from the setting of dates for state and federal primaries. An order directing that the primary be held before August 18, as requested by the United States, insures UOCAVA compliance; the State should be allowed to set the specific date.

Should the Court, at some point, nonetheless deem it appropriate to direct that the primary be conducted on a particular date, it should be mindful that there is a widely held view -- among elected officials of both major political parties and public interests groups -- that an August primary date could significantly disrupt election operations in a manner that could be avoided by holding the primary in June. It should also be noted that, for many years, New York's primary elections were held in June. Although the State of New York does not take a position as to the appropriate primary date, and remains hopeful of a legislative solution, the Court should have before it the fullest record upon which to render a decision should it reach the primary date issue. Accordingly, annexed to this letter are (1) a letter signed by the Speaker of the New York State Assembly and (2) an affidavit from the bi-partisan Election Commissioners' Association, to which the Speaker refers, each of which offers a factual basis and rationale for holding the primary in June. In addition, several civil rights and civic groups (Dkt. 38) and the Election Commissioners' Association (undocketed) have already submitted letters to the Court in support of a June primary. Any determination by the Court as to the primary date would involve the consideration of a highly complex pre-election process. The State, therefore, urges the Court to take into account the information in support of a June primary should it be deemed necessary to impose a Court-ordered date.

Finally, the State respectfully submits that any order regarding the primary election schedule be limited to 2012, thus affording the State Legislature and the Governor an opportunity to set the primary dates for future primaries.

Thank you for your consideration of this matter.

Respectfully yours,

S/ Jeffrey M. Dvorin
Jeffrey M. Dvorin
Assistant Attorney General
Bar Roll No. 101559

cc: All attorneys of record via CM/ECF

Exhibit 3

NEW YORK STATE Board of Elections

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Testimony Provided to the Senate
Standing Committee on Elections

Review of Elections Administration and Voting Rights in New York State

New York State Board of Elections

September 21, 2021

Douglas Kellner and Peter Kosinski
Co-Chairs and Commissioners

Anthony Casale and Andrew Spano
Commissioners

Kristen Zebrowski Stavisky and Todd Valentine
Co-Executive Directors

Good morning Chairman Myrie and esteemed members of the NYS Senate Standing Committee on Election. Thank you for inviting the State Board of Elections to this hearing. Representing the Board are Co-Chairs and Commissioners Douglas Kellner and Peter Kosinski, Commissioners Anthony Casale and Andrew Spano, and Co-Executive Directors Kristen Zebrowski Stavisky and Todd Valentine.

We appreciate the opportunity to speak before this panel today to discuss and examine election administration and voting rights in New York State. We are pleased to provide testimony, feedback, and recommendations on the 2020 and 2021 elections.

We are proud to be here, representing the staff of the State Board and in commending our fifty-eight County Boards of Elections throughout the State for their tireless effort of administering the 2020 elections through the pandemic. We note they continue those efforts during 2021, as the pandemic continues to create challenges to voting. Our offices did not close during the pandemic and continue to remain fully staffed. County board staff worked through weekends and overtime in an environment not generally conducive to social distancing and reduced office capacity.

New York State has seen a whirlwind of legislative changes in the elections area since 2019. So much so, that election lawyers, candidates, the major parties, the election administrators, and the voters can hardly keep up. In the past two and a half years there have been more than 100 legislated changes to the Election Law, more than 40 Executive Orders affecting the conduct of elections, the elimination of 5 official parties, the implementation of early voting, a tumultuous presidential election, and the creation of a statewide public campaign financing system to name just a few milestones. The elections community has not seen that much activity since New York passed its version of the Help America Vote Act in 2005 – and that was only five chapters.

The 2020 elections saw a dramatic increase across the board in terms of enrollment

and turnout. Compared to the February 21, 2020 voter registration report, voter registration increased by over 661,936 to a new record high of 12,363,072 Active Voters, and the total (Active & Inactive) rose to 13,555,547. In all, in 2020 boards processed 2,299,890 voter registration forms – effectuating not only new registrations but also address changes, name changes, enrollment changes, etc. In the 2020 General Presidential Election turnout was a record 8,690,614 voters. Turnout was up by nearly 889,000 voters over 2016 (7,801,985) and up more than 1.5 million more than the Presidential election in 2012 (7,135,322).

Election administration also saw record increases in the use of absentee ballots, early voting, and an increase in poll worker deployment. In 2020, the entire absentee ballot application process was changed so that the number of absentee ballots in that year rose by more than 400% over the previous presidential election year. Any other State that transitions from machines to that much paper in an election historically takes years to accomplish it. These boards had only a few months to find a way to do it with limited staff and almost no added resources. Plus, there was no historical data at all to tell them what the numbers of absentee voters might look like in terms of numbers or supplies that they would need. The local boards were overwhelmed as millions of absentee applications needed to be processed and ballots sent out and returned and canvassed.

The principles of election administration: transparency, uniformity, accuracy, and verifiability remain of highest importance. We are here with a shared goal to ensure transparent, uniform, verifiable, and accurate standards continue to be in place, reviewed and enhanced after the challenges of administering a federal presidential election during a pandemic where the laws of election administration changed weekly, if not daily. **Appendix A** provides a timeline of events impacting election administration, including executive orders and legislation.

We are here to review the lessons learned from the 2020 elections and to review the strengths and weaknesses of New York election administration. We begin with an overview of elections in New York State, including the importance and history of bipartisan boards. This history and learnings from 2020 elections are informed by a description of the vast changes to elections from 2019 to present. We appreciate the opportunity to provide you with information and remain available to you for future discussion.

Bipartisan Election Administration: The Foundation of Democracy and Integrity in New York State Elections

The State Board of Elections was established in the Executive Department on June 1, 1974, as a bi-partisan agency vested with the responsibility for administration and enforcement of all laws relating to elections in New York State, including campaign finance matters. During the time leading up to the Board's creation, the political environment was defined by the throws of the unfolding Watergate scandal[1] which brought light to the use of governmental power to gain a corrupt advantage in the electoral sphere. To prevent such abuses, structures like bipartisan boards with authority over election-related matters and enhanced transparency and accountability mechanisms were established at the federal level with the creation of the Federal Election Commission.

At the state level, the post-Watergate environment invited a similar concerted effort to make sure New York's enforcement of campaign and election laws was fairly applied in a balanced and bi-partisan manner. New York did not have far to look for a model because our local boards of elections were bipartisan by Constitutional mandate, providing a ready blueprint. The State Legislature was painstaking in its review of state election laws and related statutes in 1973 and 1974. The final report to the Legislature recommended the creation of a bi-partisan election commission and it "should have

[1] *The Watergate scandal related to a cover-up of a break-in at the opposing party's political headquarters designed to steal documents and place wiretaps.*

under its jurisdiction campaign finance, mechanics of the election, supervision of questions and the regulation of campaign practices and procedures."[2] The final legislation creating the bi-partisan State Board was hailed by future Speaker of the Assembly, Stanley Steingut, as "a landmark piece of legislation for our State and a forerunner for the country at large." On May 30, 1974, Governor Malcolm Wilson signed Chapter 604 of the Laws of 1974.

The legislation created the Board as a bipartisan entity governed by four commissioners, two from each major party. In so doing, the oversight and administration of elections was moved out of, primarily, the office of a political appointee, the Secretary of State, and an elected official, the Attorney General,[3] and transferred to the new bipartisan-controlled State Board of Elections. At the time, Assemblyman John LaFalce, noting the political compromise embodied by the legislation, offered: "I would like to commend you for getting the Governor to buy certain key points, and particularly I would like to commend you for enabling this House, again, to vote upon a bipartisan Election Commission, rather than have the enforcement of the laws of this State in the hands of a political appointee of the Governor."[4]

Through it all – the foundation, the bedrock, the guiding principle that undoubtedly helps us get it done is bi-partisan cooperation and administration. There are many models within which to administer elections, but the State Constitution wisely requires a bi-partisan approach that fosters the checks and balances that are part of our American governmental system. But even absent the mandate of the State Constitution, the State Board supports the bi-partisan structure because it provides for transparency, efficiency, and accountability. Bi-partisan election administration shows where the two major parties work together in consensus. Winston Churchill once said that democracy was the worst form of government…except for all the others. The natural tension and

[2] *Final Report, Advisory Committee to the Select Committee to Make a Study of the Election Law and Related Statutes (1974).*
[3] *The Attorney General in 1974 endorsed the creation of the Board.*
[4] *Debate on Assembly Bill Number 12485 at 9027 (1974).*

opposite polarity in a bipartisan agency creates an environment of counter-critical assessment that compels the agency to keep fixed to a course of fairness. To the extent that this structure could sometimes lead to gridlock in enforcement matters, a tie breaking mechanism or ready resort to judicial process addresses this concern. As a matter of experience, in election administration in New York the election process and related rules are well defined, and this generally prevents gridlock in election administration. Overwhelmingly fair consensus is reached.

People point to other models in other states and suggest there are better structures for administering elections. Any system that puts the state's election apparatus in the hands of one partisan elected official for two or four years or similarly, any structure that allows a partisan elected official to appoint a sole chief election official has the inherent conflicts. There is a real and an apparent conflict of interest for a public official to be running the election when their name is on the ballot. We all know that elections are cyclical and that over time, numbers and power can shift. Placing power in the hands of one entity undermines the confidence of the voters and the candidates in the system. New York rejected the appointed Secretary of State model as flawed nearly 50 years ago; we should not contemplate returning to it now. A multi-member board composed of the major political parties provides the checks and balances that has served our governmental system for more than 200 years. At both the state and county level, bi-partisan boards of commissioners work together, but also effectively police each other in the best interests of the candidates and the voters.

We know that the committee has previously heard from several election commissioners, both Republican and Democratic, and will hear from more on this subject, so we do not need to belabor it. But there are several common misperceptions that we must address. Reform proposals often talk about inefficiencies at the county boards because of excessive staffing due to bi-partisan requirements. This is not true, 27 of the 58 boards in the state have 6 or fewer employees – 6 employees in total, including the commissioners, to perform all the election tasks in that county – registering voters,

processing absentee ballots, testing and deploying a fleet of machines for multiple elections each year, designing and proof-reading thousands of ballots, training poll workers, processing hundreds of petitions, finding qualified poll sites and then running each election, accurately canvassing all the ballots and declaring the winners. They are subject to very close scrutiny by their local legislative bodies and elected officials and justify every penny they spend. Typically, they are models of efficiency. If county boards of elections are guilty of duplicative actions, it is more likely that they have done everything to prepare for an election and an Executive Order has changed the rules at the last minute and they must do everything all over again.

New York election officials are professionals. There is no way to gain experience in New York elections without doing it hands on. The State Board has always supported finding the most qualified candidates. The State Board has also consistently supported legislation to mandate uniform training for county election staff to enhance professional standards. But making "experience" a prerequisite will restrict the potential pool of applicants unreasonably. Civil Servants can and do become entrenched. They can only be asked to work within their title. Imagine the ever-changing rules of last year's elections…not one element of the pandemic and ever shifting responsibility and actions would fit into a "title." It was all hands-on deck, all hours of every day, to do whatever was needed to make the election run. Just because someone is a civil servant does not in any way mean that they are free from partisanship nor from making mistakes. Our system has accountability built into it. After the issues were uncovered in NY-22, the State Board commissioners took action regarding the Oneida commissioners as warranted. They resigned because of the pressure brought by our disciplinary oversight.

Let us not use the extremes of the 2020 election to change what has fundamentally worked for more than 100 years and has seen us through two World Wars and much more. It is often said that a crisis provides an opportunity, but we believe it is not always the best benchmark for meaningful analysis. 2020 was a year like no other. The pressure on the state and county election boards was more intense than other year in our history.

Elections were moved, then cancelled, then reinstated after drawn out court cases. The petition process was drastically changed with little to no notice. There were poll worker shortages and poll sites turned us away in the droves. For those that opened, they had to be fundamentally reimagined for social distancing. The use of absentee ballots rose by more than 400% as millions of absentee ballots were processed for multiple elections. County budgets were stretched to the breaking point. Nearly every board in the state was touched by the Coronavirus and some saw tragically fatal consequences to being at their desks as essential workers.

We persevered in the face of a global pandemic. Despite offices being shut down by the local departments of health, sickness waving through the counties and even election workers succumbing to the virus, we all rose to the challenge and overcame all these obstacles to provide voters with safe, clean, and reasonable voting options through absentee voting, Election Day voting and Early Voting with significantly more sites offered above the minimum established by the statute.

The State Board recognizes there were problems that came out of the canvass process in NY Congressional District 22, and we are addressing those problems and working with the counties to ensure it does not reoccur. We are working on a list of issues that have come from our monitoring of the court case. The CD 22 recount involved an extremely close congressional contest. In the end, 326,566 people voted and the margin of victory was 109 votes --- 156,098 for Claudia Tenney and 155,989 for Anthony Brindisi.

<u>CD-22 - Statistics</u>

- 8 Counties
- Over 326,500 people voted
- Just over 60,000 pieces of paper to be canvassed (absentee, military, affidavit)
- 46 board employees total across all 8 counties, the smallest board having 2, the largest having 10 employees.
- Over a dozen attorneys—not including volunteers at the canvas
- COVID shutdowns during the process when a bd employee tested positive and protocols having to be in place for the canvass
- 109 votes ultimately decided the race.

- If it was this year, a full manual recount would have to be done.

Among the problems encountered were an estimated 1,500 affidavit ballots that had been initially administratively invalidated without going through the normal canvassing procedure, improperly administering the objection process at certain boards of elections, not timely sending some cure notices and breakdowns in chain of custody records for a small number of ballots requiring the chain of custody to be recreated through testimony in court. At the Oneida County Board, it was found that there were approximately 2,400 timely DMV voter registration applications than had not been processed because the board simply did not process any DMV applications after September 24, 2020. The Oneida Board did not disclose this decision to the State Board or any other agency that it had simply given up on processing these forms. This occurred even with the required resource survey that the County returned to the State Board by September 21, 2020. The County advised the State Board that it did not need more resources. New York State Supreme Court ordered the Oneida County Board of Elections to process the forms in the context of reexamining all affidavit ballots that had been invalidated, and many additional affidavit ballots were accordingly counted. The State Board has sought to address these issues.

We are reviewing all our training guidelines and memos and reexamining our processes. We will draw upon the years of collective experience we have at the State Board and from the county boards to enact a plan that will ensure the county boards are in the best position to perform their jobs. The answers though do not point to a redesign of the very election system that met the challenges of 2020. Working to strengthen boards of election while identifying areas that need to be improved is the best way forward for New York.

One thing we believe we can all agree on is that New York needs to increase the resources devoted to elections in this state. Critics often cite California and Texas as places with well-run elections, but these are also states that spend hundreds of millions

of dollars on elections in comparison to New York State. You supported us in 2020 with capital and operating funds. We need your continued support.

2019-2021 Elections in New York State Enters a New Era

Over the past two and a half years, elections in New York State underwent a dramatic transformation. A presidential election year is always challenging, but no one could have foreseen a worldwide pandemic and over eighty new chapters forever altering the election law and election administration. This type of sweeping, lasting change has not been seen since the shift from lever machines to scanners and ballot marking devices. Last year was truly unprecedented and overwhelmingly, our county boards rose to the occasion. They did so during one of the most difficult and divisive periods in our nation's history, when election officials across the country found themselves under attack. While we are lucky New York has been mostly spared from serious threats, we were not immune to the rampant disinformation and mistrust of elections spread through social media. Local commissioners found themselves fighting on multiple fronts. Certainly, there were some missteps and mistakes; at the end of the day elections are run by human beings. We are committed to working with counties, to alleviate issues and make improvements. However, we would be remiss if we failed to point out the successes and perseverance displayed by our county boards. They worked tirelessly to ensure all eligible voters had unfettered access during a difficult and uncertain time. They deserve our respect and our admiration.

Reviewing 2020, Looking Forward

The 2020 Presidential Election

The 2020 Election cycle was a challenging one for both the State Board and County Boards, consisting of the Presidential Election, contests to fill all positions in the US House of Representatives, State Senate and State Assembly as well as a host of judicial, and local contests. State and County Boards began preparing for the Presidential Election in 2019 as Presidential Election years are marked with unparalleled voter communications, unprecedented and increased voter turnout, and increased number

of petitions, challenges, ballot lawsuits and all-around increased volume on all election processes, including daily functions at each Board.

In addition to the challenges usually associated with Presidential years, this cycle also marked the second year of early voting across the state. The State Board worked with counties to determine and make whatever adjustments may have been necessary to improve the efficiency of the early voting experience to increase voter turnout during the nine-day period. To that end, the State Board held a series of post early voting roundtables with county boards, vendors, and stakeholder groups to discuss what went well and items to improve upon from 2019.

The State Board also began 2020 with a focus on the implementation of approximately 52 chapters of Election Law passed in 2019 with few resources provided to implement such changes, either on the state or county level. An additional 18 chapters related to election administration passed in 2020 and thus far in 2021, 22 chapters have been signed into law and 7 passed both houses and are awaiting action by the Governor. See **Appendix B**, which provides an overview of election law changes from 2019-2021.

Adding new and even more complex problems to solve, the COVID-19 pandemic dramatically impacted the administration of 2020 elections and continues to impact our operations in 2021. While New York State ensured that voters have had an increased ability to exercise their right to vote by allowing all eligible voters to vote by absentee, the logistics and increased volume resulting from this change brought its own challenges for boards of elections to bear. Chapter 139 of the laws of 2020 extended the increased absentee voter access through 2021.

Boards of Elections have successfully administered elections in times of turmoil, through natural disasters such as flooding in the North Country in 2019 or through hurricanes and storms Irene, Lee, and Sandy, through public safety issues, and through terrorist acts such as the September 11, 2001 primary election. The COVID-19

pandemic has turned out to be a longer, more sustained, and more complicated world crisis which continues to dramatically impact the administration of elections. As we prepare for the 2021 General Election, county boards are again grappling with COVID-19 threats, including an uptick in infections and new variants of the virus.

A mission of the State Board is to work to ensure voter safety, the safety of our staff and poll workers while preserving the four pillars of election administration: accountability, uniformity, transparency, and verifiability of our elections.

When we testified to you in August 2020 regarding the 2020 General Election planning, we identified three lessons from the June 23, 2020 primary and advocated for their implementation going forward. Those lessons and a status update are outlined below.

1) Increase Preparations for the General Election. Boards need resources—more people to work at the poll sites, more poll sites to be open to accommodate an increased volume that accompanies a presidential election; more commodities (machines, poll pads, personal protective equipment (PPE) and resources to assist in filling the gaps).

   Status:

   a. Grant Funding**.** The Capital and Aid to Localities grants created in the 2019 budget were extended, enabling county boards to continue to process funds and purchase the resources necessary to successfully administer early voting. Funding passed in the 2021 budget provided a new capital grant, Technology Innovation and Election Resource (TIER), along with an additional Aid to Localities Grant for early voting. Grant funding is helpful, but does not address long term, sustained needs for staffing. Pending legislation related to absentee canvassing would increase responsibilities for county boards, requiring additional staff and resources. A more in-depth section on funding may be found further in this testimony.

   b. Outreach. The State Board coordinated with national resources and state

and local partners to hire a new pool of poll workers. County Boards were able to compensate for the loss of veteran poll workers due to fear of Coronavirus.

2) Resolve the inconsistency of the Election Law deadline for requesting an absentee ballot and the USPS mail delivery time frames to ensure that all voterscan request, receive, process, and return their ballot and that the ballot isreceived timely to be counted.

Status: Chapter 273 of the Laws of 2021 addressed this issue and requires absentee applications requested by mail, portal, or fax to be received no later than 15 days before an election or requested in person at the board of elections the day before an election. This creates a more realistic timeline and prevents the voter from submitting a postmarked application too late in the process, leading to dissatisfaction and the loss of franchise. See absentee voting section below.

3) To increase messaging around the election processes to ensure that registered voters are aware of their options and can plan how and when they would like to vote.

Status: A $5 million private grant enabled the State Board of Elections to conduct a statewide, multilingual, multi-platform media campaign to increase voter awareness on how to register to vote, the three methods to vote in the 2020 General Election, how to vote by absentee, where and how to vote during early voting and on election day.

Increased Access: Three Ways to Vote in New York State

Absentee Voting

Prior to 2020, under New York law, absentee voting was an exception to in-person voting, available upon application to voters who by reason of disability, illness, acting as a caretaker, absence or being detained in jail could not cast a ballot in

person.

As part of the response to the on-going COVID-19 pandemic, legislation and Executive Orders expanded access to absentee balloting for the 2020 primary and general elections and made the application process and return of ballots easier. Under this expansion, every eligible voter, active or inactive, was able to vote by absentee citing temporary illness, which included fear of contracting the coronavirus. Legislation extended this expanded access through 2021. As in 2020, eligible voters have three options to vote: absentee, early voting, or in person on election day. In certain situations, voters may seek to vote by affidavit or a court order. No-excuse absentee voting is on the November 2, 2021 ballot, when voters will decide whether to amend the State Constitution to codify this expanded access.

Executive Orders and legislation both expanded access to voting and changed the method in which voters have traditionally voted. Typically, approximately 4% to 10% of New York's voters cast an absentee ballot at an election. For the June 23, 2020 Presidential Primary, approximately 38% or 731,131 of the votes cast were by absentee. The 2020 General Election similarly showed a dramatic increase in the number of voters choosing this method for casting their votes. Whereas in the 2016 General Election, just over 5% (400,660 voters) cast their ballot by absentee, 2020 saw a roughly 400% increase, with just over 21% (1,833,340 voters) returning absentee ballots.

Returned absentee ballots require manual handling, time to process cures if applicable, and time for review by numerous individuals from both County Boards and candidates, campaigns and/or their attorneys. The normal process for review also must be altered to ensure safety protocols due to COVID-19. The time and resources needed to handle the drastically increased volume in 2020 taxed County Board even further than usual in an already difficult election administration environment.

During the most recent legislative session, A4186-B/S6395A passed both houses and is awaiting action by the Governor. This legislation creates a statewide online absentee ballot tracking system which will allow voters to track the processing of an absentee ballot application as well as the delivery and validity of an absentee ballot. Set to become effective January 1st of 2022 this will, if signed into law, require the State Board to work with counties and their voter registration system vendors to expand the type of information that can currently be captured. Once expanded, boards will need to put processes and procedures in place to ensure they are entering the required information into their systems as applications and ballots are received and processed. The State Board will then need to construct a system that will collect that information from counties and provide an online portal to voters to give them access to the information needed by them to determine the disposition of their absentee application and/or ballot. To date, no additional funding resources have been provided.

As noted above, one of the five statewide ballot proposals to be voted on by New York's electorate will allow "no-excuse absentee voting" which, if passed, will undoubtedly make this manner of voting far more prevalent than it has been in years past. Adapting to this change will require boards to add resources to not only handle the increase in outgoing ballots, but also processing all ballots returned by an increasing percentage of voters.

As noted earlier in this testimony, Chapter 273 of the Laws of 2021 modified the application by mail deadline and requires absentee applications requested by mail, portal, or fax to be received no later than 15 days before an election or requested in person at the board of elections the day before an election. This creates a more realistic timeline and prevents the voter from submitting a postmarked application too late in the process, leading to dissatisfaction and the loss of franchise.

Chapter 273 addressed an inherent conflict in section 8-400(2)(c) of the Election Law, which provided a cut-off date to request a ballot within seven days of an election as compared to USPS guidelines on election mail, which called for a fifteen-day turnaround. The USPS 2020 postal tool kit and a July 30, 2020 USPS letter advised all States to provide a fifteen-day turnaround for election mail, and specifically recommended a seven-day return period for a ballot. County boards continually faced impossible scenarios. A voter in California could conceivably postmark the application seven days prior to the election. That application would need to get across the country, be processed by the board, and a ballot would need to be sent out to the voter, only to require a return ballot postmark of the day before the election (Executive Orders and legislation changed this to the day of the election through 2021), six days after the initial request was mailed. The time conflict set the voter and County Board up for failure and lead to voter dissatisfaction. The law also changed the deadline to a receipt deadline rather than a postmark deadline, thus helping to provide a realistic opportunity within the USPS delivery time frame, enable the County Boards to have four business days to process the application and mail the ballot. It also ensures time for the voter to timely receive the ballot, complete their selections, secure, and return by mail the absentee ballot.

Boards of Elections, campaigns and advocacy groups should all have clear and consistent communications to voters on the voting process and best practices to allow the voter sufficient time to request an absentee ballot, enable the Boards to process the request, and allow the voter time to receive, consider, complete, and mail the absentee ballot back to ensure their vote is received timely. Chapter 273, coupled with clear communications, should improve the absentee process and decrease the number of untenable requests. We have a role to communicate best practices and time frames to our voters to ensure that they can plan on the method they wish to vote and have sufficient time to proceed in that direction.

Increased access was also extended to absentee application process. Pursuant to Chapter 91 of the Laws of 2020, the State Board created an absentee application request portal for voters to request a ballot. The portal provided a voter with the ability to complete and submit an absentee application to their respective County Board of Elections. If a Board already has a portal in place, such as Erie and NYC, our portal simply links the voter to that portal. The online portal reduced the mail delivery of absentee ballot applications to the Board of Elections and provided a more efficient processing effort. Chapter 249 of the Laws of 2021 reopened the web portal, which shut down once then Governor Cuomo discontinued the COVID-19 State of Emergency. As was done under the Executive Order, this bill removed the requirement that the absentee ballot application be signed by the voter. This sunsets on December 31, 2021, though A6970A/S6482B passed both houses and has not yet been sent to Governor Hochul. This bill establishes an electronic absentee application and transmittal system through which voters may apply for and submit an absentee ballot application online. Unlike the temporary measures, this portal will include a signature requirement. To date, no additional funding resources have been provided.

Early Voting

The nine-day early voting period for the November 3, 2020 General Election was Saturday, October 24, 2020 to Sunday, November 1, 2020. Statewide, 281 early voting centers were open for voters in each County or City Borough to be able to in person vote. The unofficial report on early voting numbers shows that 2,507,341 voters cast for the November 2, 2020 election were in person during the early voting period. On average, more than a quarter million New York Voters cast a ballot on each of the nine days of early voting. In 2019, 248 early voting sites were open with 256,251 voters opting to vote early.

Election Day

5,008 sites statewide were open from 6 am to 9 pm on November 3, 2020. NYSVOTER voter history shows 4,349,933 voters cast a ballot on election day.

In our August testimony, the State Board looked back to 2019, where County Board of Elections opened 5,397 general election day poll sites. We made recommendations to accommodate the increased number of voters, there was a need for more poll sites and expanded space within already identified sites, increased voter check in tables, voter privacy booths and ballot scanners and ballot marking devices, as well as election day workers to support the expected voting population, along with signage and personal protective equipment (PPE) for voters and workers. All of this was to ensure the full potential of early voting sites, election day poll sites, machines, staff, and poll workers were deployed. Sites needed to be designed in a manner to spread people around the poll site to ensure volume and social distancing were accommodated. We provided updated information to county boards to ensure polling sites provided safe areas for voter lines where, based on COVID safety instructions, physical distance and room occupancy limits need to be provided.

Poll site preparedness is an essential key to running a smooth election day. Boards must have finalized plans in place, maximizing the number of election day poll sites in spaces that can accommodate voters. In our experience, if a poll site opens unprepared and long lines develop, much more resources are needed and it takes a significant amount of time to work to recover to an acceptable wait time, if it can ever catch up to the volume that the day brings.

In working with the County Boards on their early voting and election day site preparedness during 2020, we requested a survey to identify the number of sites and workers required for the General Election. Of those responses, seventeen (17) Counties reported plans to open less election day polling places when compared to the 2019

general election poll sites data. As presidential election years are marked with heavy turnout, we urged all municipalities to review locations and sites to ensure proper coverage.

Safety of Poll Workers and Voters

A contributing factor to the underutilization of early voting during the 2020 primary, along with difficulties securing and staffing poll sites for the 2020 General Election, was the fear of contracting COVID-19. On March 9, 2020 and May 15, 2020, the State Board publicly released guidance to County Boards of Elections regarding COVID-19 including how to set up and maintain a safe poll site. The State Board also frequently reached out to local Election Officials.

The fear of contracting COVID-19 resulted in many poll workers not feeling comfortable to work the poll sites during early voting or on election day. Poll worker recruitment is always a struggle. The hours are long, and the pay is nominal. The Board engaged with the federal Election Assistance Commission (EAC) on a last effort push to recruit poll workers by marking September 1, 2020 as being national poll worker recruitment day.

At the 2020 General Election, boards deployed 73,198 poll workers – up nearly 20% from the 61,790 inspectors who served in 2016 – to staff 5,008 poll sites. In addition, boards deployed approximately 15,065 poll workers to staff early voting sites.

The State Board and local county boards need to continue to reach out to stakeholders to advocate for registered voters to sign up to become a poll worker. We need to engage at all levels of government to search within their workforce for poll workers and to engage with county boards to offer sites, volunteers, and additional resources.

Threats to Election Officials

During the 2020 elections, there were increased threats towards election

administrators. The National Association of State Election Directors had continual outreach to election administrators and coordinated with the FBI and other law enforcement agencies for assistance. On June 25, 2021, the US Department of Justice issued a memorandum to all federal prosecutors and the FBI providing guidance regarding threats towards election workers. The DOJ announced the establishment of a task force to address the rise in threats against election officials, including a toll-free hotline.

Social Misinformation

The 2020 election cycle saw a dramatic increase in election-related misinformation. Although most of the content was observed or propagated through social media sites like Facebook and Twitter, the content is not restricted to one platform. Social misinformation was utilized to spread confusion about voting processes or technical processes. The results of misinformation created a mistrust of election results and created a large volume of calls to the State Board expressing fear over misinformation that was understood to be fact.

An example of misinformation triggering a public panic regarding election results was a false social media meme originating in Arizona advising that a ballot would be invalidated if a sharpie was used to mark the ballot. The State Board of Elections issued a press advisory on November 6, 2020, advising that a "voting machine/scanner will accept and count a ballot marked by any pen, marker or pencil, blue or black ink, ball point, felt-tip or sharpie." The press advisory was shared by media statewide.

Canvassing Ballots and Providing Election Results

Campaigns and the public often expect the immediate result of the contest. However, this simply is not statistically feasible if a significant percentage of the vote is cast by absentee.

During the last legislative session, A7931/S1027-A was passed by both houses and is awaiting action by the Governor. If signed, this bill would require review of returned ballots with four days of receipt by the county board to determine if the ballot is valid, defective, but curable, or invalid. Valid ballots would be counted beginning on the first day of early voting, though results would not be tabulated until 8PM on election night. The cure process was implemented during the 2020 General Election and is outlined later in this section. Although this will allow boards to mitigate any delays the expected increase in paper ballots to be processed could pose to certifying election results, boards will require additional resources and modified procedures as they are simultaneously undertaking preparations for early voting and Election Day. We need to ensure that our County and City Boards have more resources to commit toward the canvassing the vote and to ensure a safe and accurate count. We worked with county boards prior to the 2020 General Election to make sure they:

- Put a plan in place now to identify how they can begin the process as close to election day as possible.
- Had adequate space and equipment to ensure multiple teams of staff and stakeholders could review and process absentee ballots as early as possible afterelection day.
- Had more staff assigned to the absentee canvass process. Staff and stakeholders had to be notified and assembled to review envelopes, make objections, and have the Board Commissioners able to make rulings early on after election day.

Absentee/Affidavit Cure Process

As a result of Chapter 141 of the Laws of 2020, signed in August of last year, County Boards became required to inform absentee voters of certain deficiencies in their absentee ballots discovered before or at the time of the canvass proceeding and, if deemed curable, provide them with an opportunity to take action to remediate such a deficiency. The State Board quickly drafted and distributed guidance and forms

necessary for County Boards for the implementation of this new requirement, covered the topic at one of the NYS Election Commissioners Association's biannual conference and held a conference call to review said guidance and answer any questions boards had in advance of the 2020 General Election.

After the election, the State Board surveyed counties to determine the impact the new law had. More than 20,000 notices were sent to absentee voters who had returned a ballot deemed to have a curable defect. Of that number, just under half (9,199 voters) returned the requisite affirmation. Of those affirmations returned, 8,725 resulted in the voter's ballot being counted, with only 522 found to be insufficient. While the implementation of this policy does require more resources of the County Boards for them to make timely determinations as to returned ballots validity, mail out of notices and process returned affirmations, the numbers above show the impact on voters whose ballots would not have previously been counted.

During this most recent legislative session, A7931 / S1027-A passed both houses and is awaiting action by the Governor. This legislation, if signed into law, would expand the cure process to also cover affidavit ballots with missing or non-matching voter signatures. This legislation will also require County Boards to record information in their voter registration systems as to whether an affidavit ballot was counted in a manner which would allow that information to be displayed to a voter utilizing the tracking system created by A4186-B / S6395A, which is also awaiting action by the Governor. To implement this will require both State and County Boards to make the necessary technical changes to the systems involved in a compressed timeframe (both are effective January 1, 2022) without any additional resources provided.

Funding to Administer an Election During a Pandemic

The COVID-19 pandemic has had a substantial impact on administering elections in 2020 and 2021. The most significant source of funding to administer elections during the

pandemic was through the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act was enacted March 27, 2020 and included $400 million in new Help America Vote Act (HAVA) funds, made available to states to prevent, prepare for, and respond to the coronavirus for the 2020 Federal election cycle. New York State was subject to providing an additional 20% match.

New York State had been allocated $20,567,088 from the federal government and New York State provided the 20% match of $4,113,417. New York State had $24,680,505 for use by county boards of elections to implement measures necessary for responsible, safe, and fair elections during the COVID-19 pandemic. The State Board of Elections established a grant program to reimburse county boards of elections for eligible expenses relative to implementing measures necessary for responsible, safe, and fair elections during the COVID-19 pandemic.

Expenditures related to the protection of the health and safety of poll workers, staff, and voters during the federal elections as well as those resulting from unanticipated increased demand for vote costs (e.g., printing ballots, envelopes, postage, processing, receiving, storage, etc.), equipment, temporary staff, and similar costs due to COVID-19 would satisfy these elements. The HAVA CARES grant program is now closed.

Grant Funding to Support County Board of Elections

County Board of Elections are funded through each County budget. Supplemental funding to support the administration of elections is achieved through a series of federal and State grants administered by the New York State Board of Elections.

Currently, the NYSBOE administers eight (8) grant programs to support the County Board of Elections. The eight grant programs are:

- The TIER Grant. The NYS SFY 2021/22 Capital Projects Budget provided $25 million dollars to support the State and County Board of Elections for expenses

related to the upgrade of software, technology, equipment, and broadband services. $5 million dollars was earmarked for the State Board capital and implementation costs. $20 million dollars established the Technology Innovation and Election Resource (TIER) reimbursement grant program.

- The EVE Grant. The NYS SFY 2021/22 Aid to Localities Budget authorized $2 million dollars for use by County Board of Elections for early voting expansion.
- The Early Voting Aid to Localities Grant program. The NYS SFY 2019/20 budget authorized a $10 million grant program to reimburse County Board of Elections for expenses to implement early voting. There are approximately ten County Boards that have some funding remaining.
- The Electronic Poll Book Capital Grant program. The NYS SFY 2019/20 budget authorized $14 million grant program for the State Board to reimburse County Board of Elections for expenses related to electronic poll books and associated software, on-demand ballot printers and related cybersecurity. $700,000 was provided to the State Board of Elections for the review and implementation of electronic poll book systems. Most of the County Boards exhausted their allocation. There are approximately twelve County Boards that have some funding remaining.
- The Elections Cybersecurity Remediation Grant program. In December 2019, the NYSBOE authorized a total of $9 million dollars, combined from the 2018 and federal HAVA funds, to create a grant program for use by county board of elections to implement cybersecurity remediation and mitigation services.
- The HAVA Temporary Poll Site Improvement grant funds. Implemented in 2006, a few counties have remaining HAVA funds to enhance poll sites. While most of the County Boards utilized their allocated amount of funding, there is a balance of $988,947 dollars remaining.
- The HAVA Voter Education and Training grant program. Voter education funds can be used to for public relations activities to train and education voters,

mailings, and similar expenses. While most of the County Boards utilized their allocated amount of funding, there is a balance of $1.2 million dollars remaining.

- The State HAVA Operating Expenses by Board of Elections (SHOEBOX) grant program was implemented in 2006. SHOEBOX expenses support federal election administration activities.

The State Board created a grant team within the Public Information Unit to assist the County Boards on grant contract and claim for payment requirements. Grant program trainings are conducted at least two times a year, and generally more frequently.

While the grant programs assist County Boards of Election in meeting administration needs, the short duration of each program requires CBOEs to budget for the present and not the future. Grant programs are good supplementation for a County Budget. A dedicated, reliable, steady stream of funding would be the more effective and efficient for CBOEs to plan for out years.

Voter Outreach in 2020

The State Board has never been appropriated funding to conduct voter outreach. The NYSBOE achieves voter outreach through interviews with media outlets, issuing press releases and the use of its twitter and Facebook account. The New York State Board of Elections issued a series of press release ahead of the June 23, 2020 primary elections, aimed at:

- providing voters with Guidance on how to request and vote by Absentee Ballot, issued May 22, 2020.
- Unveiling the Accessible Absentee Voter Application, issued June 3, 2020.
- Informing Voters of Voting Options and Deadlines for the New York State June 23, 2020 Primary Election.
- Recruiting Poll Workers During National Poll Worker Recruitment Day; and
- Advertising the One-Stop Absentee Ballot Web Portal.

The State Board of Elections did not have available funding or resources to conduct public service announcements ahead of the November 3, 2020 election. At the August 2020 hearing, the Board requested additional resources for outreach and in the administration of elections.

At that time, the Board's press voter outreach plan was to issue a series of press releases on:

- Voter registration deadlines.
- Poll worker recruitment.
- How to complete an absentee ballot application and deadlines.
- How to complete and return an absentee ballot application and deadlines.
- the early voting period; and
- Election Day voting.

Other efforts included working with the Election Assistance Commission on outreach ahead of the September 1, 2020, National Poll Worker Recruitment Day.

Knowing our limited resources for voter outreach, in September 2020, the State Board obtained a $5 million-dollar private Voter Education/Communication Grant Award from the Center for Election Innovation and Research.

The $5 million dollar grant award was utilized to conduct an extensive, multi-lingual statewide media campaign to increase voter education and awareness ahead of the 2020 General Election. The State Board contracted with OpAD media, a MWBE firm on the State's centralized contract, to assist in conducting the campaign.

The State Board had an aggressive timeline from late September through November 6th to:

- apply and receive the award.

- publicly bid and award a contract for media services.
- select voice over talent.
- create a media narrative.
- create, translate, and approve scripts, content, and run times; and
- ensure the 18 and over demographic was reached Statewide and via multiple languages.

NYSBOE developed a media campaign surrounding the following themes:

- The 3 ways to Vote in NYS (by Absentee, Early Voting, Election Day)
- How to vote by Absentee/ the nine days of early voting/ November 3, 2020 is Election Day)
- Make a Plan to vote (find your polling site / hours of operation)
- pertinent deadlines (how to vote by absentee, nine days of early voting and election day poll site hours) and
- safety considerations relative to the 2020 General Election. (Mask Up, social distance)
- Post-election timelines (absentees)
- And a Thank you NY ad.

The statewide media campaign content began to air on October 15, 2020 and concluded on November 13, 2020. It was staggered to provide highlight time constraints in the election process and to provide fresh content during the month-long campaign. The campaign was conducted in English, Spanish, Bengali, Chinese and Korean and utilized print ads, out of home advertising, social media, streaming audio, streaming video, streaming digital mediums such as banner ads. The campaign targeted the age demographic of 18 and older. The NYSBOE YouTube channel hosts all the streaming video content at: https://www.youtube.com/user/NYSBOE/videos.

During the month of October, the media market was saturated with the NYSBOE voter awareness campaign. It was difficult to pick up a paper, go on the internet, watch the

news, go on social media, TikTok, or drive on a major State highway without seeing an ad.

The media spots directed voters to our website, www.elections.ny.gov which provided a host of information from voting hours, polling locations and hours, and how to request an absentee ballot. While the State Board realized a dramatic increase of users on our website, our call center received less calls on voting location and hours this year. The media campaign connected voters directly with the information they were seeking to be able to vote.

Per our vendor, OpAD media, a conservative estimate that the overall media campaign reached approximately 95% of the New York State adult population. This means that approximately 14.7 million adult New Yorkers were reached. There were over 178 million impressions and 15 million video completions during this campaign.

Lessons Learned and New Directions

Training and Support of County Boards

One of the State Boards missions is to provide assistance to County Boards to ensure their compliance will all state and federal laws relating to elections in New York State. However, recent years has seen a significant increase in laws which impact election administration. With 52 Chapters in 2019 impacting election laws, 18 in 2020 and 22 thus far in 2021, the State and County Boards have had to react to a dramatically changing environment. Two of the statewide proposals on the ballot this year (No-Excuse Absentee and Same Day Registration) will also add to the challenging conditions under which boards find themselves when administering elections in New York State.

The State Board holds monthly conference calls with the County Boards to keep them abreast of any deadlines or developments they should be made aware of, and to allow them to raise any questions or requests for support. State Board staff also presents

informational sessions at the NYS Election Commissioners Association's biannual conferences to provide additional support and guidance. Although the pandemic has stunted the ability for State Board staff to conduct in-person reviews or trainings, we have attempted to adapt to the current conditions by providing virtual trainings and developing updated informational content to provide County Boards with additional support.

Resources permitting, we are looking to further expand our training and support activity and County Board monitoring to ensure ongoing compliance with all applicable laws and to help to identify and address any potential issues before they can have an impact on an election.

Additionally, as multiple units within the State Board have reason to visit County Board offices, we are looking to streamline the process with cross training of our staff to allow for one visit to cover multiple content areas, from review of list maintenance procedures to proper storage of voting system technology to the cybersecurity of county networks. This will allow the State Board to be more efficient and timelier in its direct oversight of County Board activities.

The State Board already requires that County Board employees take annual cybersecurity training, but recent legislative activity indicates a desire to have the State Board expand its direct training of County Board personnel. Senate Bill S5800, which was introduced this year and was passed in the Senate, would require election commissioners and board of elections employees to complete mandatory training within six months of appointment, and continuing education annually, with the curriculum to be established by the state board of elections, with training available via a web-based format among other methods. It would also require the state board of elections to establish a training institute to develop curriculum for certified poll worker training and train-the-trainer programs.

Another bill, S263/A904, would require Election Commissioners, and other staff as determined by the State Board, to complete a course of instruction within six months of their appointment. It also requires Election Commissioners, and other designated staff, to complete continuing education on an annual basis.

The State Board supports the movement towards regular training of county commissioners and their staff. If such legislative activity translates into law, the State Board would request that the proper level of resources be committed to ensuring that such efforts are comprehensive and well-implemented.

The State Board's Election Operations Unit, currently composed of a staff of nine, has designated two staff to focus full-time on the training and support of county boards. As new commissioners are appointed, staff will conduct outreach to determine what assistance or information is needed. Such assistance would include, but not be limited to, providing documented guidance on various election administration tasks, scheduling conference calls to review questions new commissioners or staff have, or conducting in-person board visits to provide a more one-on-one level of support.

As the issues brought to light by the election last year in the 22nd Congressional District showed, the need for training and support is not limited to new commissioners. The State Board expansion of board visits, training materials and outreach hopes to obviate such issues before they have a chance to develop into larger problems. However, issues impacting elections don't always occur at County Board offices. Last year, the NYC Board experienced an issue where thousands of voters received the wrong ballots. This error was traced back to the printing/mailing vendor used by not just the City Board, but also many of the other boards throughout the State. The State Board immediately engaged this vendor as well as the other main printing/mailing vendor used by numerous county boards to determine what led to the error and what additional processes were being put

in place to prevent a reoccurrence of the error.

The Security of our Election

Since the 2005 adoption of the Election Reform and Modernization Act[5] and other legislation to implement HAVA in New York State, New York has been a leader to ensure the security of its elections systems.

- New York requires that every voting system produce a voter verifiable paper audit trail (NY Election Law § 7-202(1)(j))
- New York requires that there be an audit of the paper trail of at least 3% of the voting machines in each county and authorizes the escalation of the audit to a greater number of machines where errors warrant. (NY Election Law § 9-211); the Legislature recently expanded the recanvass process to provide for manual recounts in very close contests (NY Election Law § 9-208(4))
- New York prohibits any device or functionality potentially capable of externally transmitting or receiving data via the Internet or radio waves or other wireless means. (NY Election Law § 7-202(1)(t));
- New York requires that the manufacturer and/or vendor of each voting machine, system or equipment place into escrow a complete copy of all programming, source coding and software. (NY Election Law § 7-208).

The regulations adopted by the New York State Board of Elections to implement the New York Election Modernization and Reform Act also contain a number of positive features that have formed a model for other states: [6]

- New York was the first state to require compliance with the 2005 Voluntary Voting System Guidelines adopted by the US Election Assistance Commission;
- New York provides for public access to observe usability testing of the voting systems in the certification process and provides public access to all test plans and test results, except where disclosure would compromise the security features of

[5] *2005 Laws of New York, c. 181.*

[6] *The New York Voting Systems Standards are found at 7 NYCRR 6209, http://www.elections.state.ny.us/NYSBOE/hava/voting_systems_standards-4-20.pdf*

the voting system;

- New York requires that vendors disclose all litigation and any problems experienced by the voting system in other jurisdictions, so we can learn from those problems and not repeat them here; New York requires that vendors disclose any pecuniary interest in the laboratories that test their products.

Most of the staff in the Election Operations Unit have been devoted to the extensive testing and review of voting systems and appurtenant equipment. This testing included the successful rollout of electronic poll books in 2019.

In SFY 2018/19, New York State firmly committed resources to create a Secure Elections Center to protect NY's election infrastructure from cybersecurity threats with a $5 million state appropriation for "services and expenses related to securing election infrastructure from cyber-related threats including, but not limited to the creation of an election support center, development of an elections cybersecurity support toolkit, and providing cyber risk vulnerability assessments and support for local board of elections."

In SFY 2018/19, $5 million dollars was appropriated to protect NY's election infrastructure. In the SFY 2019/20 budget, the re-appropriation of the fund had a broadened purpose to also cover daily operating expenses of the Board. The language now reads: "For services and expenses related to campaign finance compliance training and compliance reviews, national voter registration act training and compliance reviews, election technology systems operations and securing election systems infrastructure and operations from cyber-related threats…"

Federal funding is available through the 2018 HAVA (Help America Vote Act) Election Security Grant which allocated $19,483,647 to the State of New York "to improve the administration of elections for Federal office, including to enhance election technology

and make security improvements.

Additional federal resources are available in the federal 2020 HAVA grant which allocated $21,838,990 to New York State provided, however, that the State enacts a 4% match or $4,367,798. This would provide the Board with $26,206,788 in resources to improve the administration of elections for federal office for qualifying purposes.

The State Board has been diligently working to assess the risks posed against the state and county boards of election, monitor the ongoing operations of the boards and to respond to incidents when they occur. The State Board has been actively partnering with federal, state and county stakeholders to, share information, leverage shared resources, and identify cybersecurity priorities to maintain a secure elections infrastructure.

The Secure Elections Center (SEC) is responsible for securing the statewide elections infrastructure, end-to-end, from cyber- related threats by developing an elections cyber security tool kit, providing risk vulnerability assessments and support for County Boards of Election (County Boards). The SEC has:

- conducted extensive outreach to inform and involve federal, state, and local stakeholders to increase the communication, expertise, and cybersecurity resources available for the State and County Boards;
- implemented a uniform cybersecurity hygiene web-based training for all State Board, County Board and IT staff supporting elections infrastructure;
- tested incident response capabilities and plans of State Board/ County Boards/ County and State IT by conducting six (6) regional elections tabletop exercises;
- implemented a uniform statewide cyber incident reporting procedure;
- initiate and complete uniform, comprehensive risk assessments of all County Boards. To dates, the State Board has provided all County Boards and County IT with three years of Security Awareness cybersecurity training (provided by the

SANS Institute);

- participating in federal working groups on social mis/disinformation;
- contract and implement uniform Intrusion Detection Systems (IDS) at all County Boards; and
- contracted for Managed Security Services (MSS) for use by all County Boards.

The State Board completed its comprehensive risk assessment in the first quarter of 2020. Risk assessment findings will highlight the priorities and areas of greatest impact for SEC remediation efforts during SFY 2020-21 and beyond. The implementation of IDS is complete and the implementation of MSS began in November 2018 and continue through SFY 20-2021.

The State Board has allocated $9 million dollars of the federal HAVA cybersecurity funding toward a newly created NYS Elections Cybersecurity Risk Remediation grant program to directly provide County Boards of Elections with funds to implement remediation efforts tied back to their risk assessment plan. This effort is not just benefiting County Boards; it also helps countywide IT services in New York State counties.

The State Board has successfully implemented a monitoring and rapid response team to prepare for and respond to cyber incidents, as well as emergency events. Prior to every election, the State Board sets up a monitoring system composed of our partners - State Police, Department of Homeland Security and Emergency Services, Office of Information Technology, Public Service Commission, Department of Transportation, and the Executive Chamber. We also consult with our federal partners - Department of Homeland Security and the FBI to discuss the status of the election environment. This collaboration has enabled the Board to plan around emergency events, such as the severe storms in the North Country during the 2019 early voting period.

The State Board has initiated a project with the State University of New York, Center for Technology in Government (CTG), to detect potential abnormalities in voter registration data. Through this project we will perform a full analysis of historical voter registration transactions to establish baselines and create a system to review current and future streams of data from the County Board systems for variances.

Going forward, we are engaged in future initiatives such as researching the utility of data analysis to monitor transaction history and in examining how best to design election infrastructure. As a result of these efforts, New York State is positioned as a national leader in election cybersecurity efforts.

Thank you for the opportunity to discuss lessons learned and our plans for strengthening election administration across the state.

Appendix A: The Timeline of Election Events Impacting 2020 Elections 2020 Elections and Listing of Executive Orders

Jan. 21:	SAM v. Cuomo: On January 21, the Sam Party filed an action claiming that the new ballot thresholds contained in the public financing program, enacted in part zzz of the 2020-2021 budget, are unconstitutional. The Working Families Party Later joined the suit. A motion for preliminary injunction has been filed, and was fully briefed as of July 24. Oral argument has yet to be set.
Feb. 25:	First day for signing designating petitions §6-134(4)
Mar. 7:	Executive Order 202, Declared a Disaster Emergency in NYS due to COVID-19
Mar. 13	Last Day for CBOES to transmit Military/Special federal ballots for the Presidential Primary
Mar. 17:	Executive Order 202.4, Directed non-essential staff to work from home.
Mar. 17 - Mar.20:	Dates for filing designating petitions. §6-158(1) (was originally Mar.30-April1)
Mar. 18:	Chapter 24 signed into law changing the dates for the petition filing period to be March 17-20.
Mar. 24:	Last day to authorize designations. §6-120(3)
Mar 24:	Last day to accept or decline designations. §6-158(2)
Mar. 29 : Executive Order 202.13 (signed)	Postponed the Queens Borough President election from March 24,2020 and special election scheduled for April 28, 2020 to be held on June 23, 2020. Rescheduled the Presidential Primary from April 28, 2020 to June 23,2020 Postponed circulation, filing and collection of designating petitions or independent nomination petitions for any office commencing March 31, 2020 to be postponed.
Mar 30:	Last day to fill a vacancy after a declination. §6-158(3)
April 3:	Last day to file authorization of substitution after declination of a designation. §6-120(3)
April 9: Executive Order 202.15 (signed)	Enabled absentee ballots to be granted based on temporary illness which included the potential for contraction of the COVID-19 virus for any election held on or before June 23, 2020; and Modified 8-400 of the Election Law to allow for electronic application, with no requirement for in-person signature or appearance to be able to access an absentee ballot.

April 12: Executive Order 202.16 (signed)	Postponed party caucuses that were scheduled to take place in April or May until June 1, 2020.
April 18 - April 26:	Presidential Primary Early Voting Period (original dates)
April 24: Executive Order 202.23 (signed)	Provided that every voter, active or inactive, eligible to vote in a primary or special election to be held on June 23, 2020 shall be sent an absentee ballot application form with a postage paid return envelope.
April 27:	Presidential Primary cancelled pursuant to publicly suspended campaign determination.
April 28:	Original Date of Presidential Primary, postponed to June 23, 2020 EO 202.12/13.
April 28:	Yang v. SBOE this action challenged the SBOE's determination to remove presidential candidates from the primary ballot who were no longer seeking or publicly suspended their campaign for office of president of the United States pursuant to the Election Law. As only one candidate was still running, there would have been no presidential primary. Andrew Yang sued and moved for a preliminary injunction, requiring all candidates who were previously eligible be listed on the presidential primary ballot. The trial court granted Yang's motion (5.5.20), and the Second Circuit Court of Appeals affirmed
May 1: Executive Order 202.26 (signed)	Any absentee ballot sent to a voter for a primary or special election to be held on June 23, 2020 shall be provided with a postage paid return envelope.; For any election held before July 1, 2020, upon transmitting or mailing absentee ballots to voters, the boards of elections shall provide and maintain, in its office, a voting system that is accessible for voters wishing to mark their ballot privately and independently, and provided that availability of this services hall be posted on the website of each board of elections.
May 5:	NYS Presidential Primary reinstated for June 23, 2020
May 7: Executive Order 202.28 (signed)	Limited the option to select temporary illness due to fear of contracting COVID-19 to only apply to the June 23, 2020 special and primary elections.
May 8:	Deadline to transmit ballots to eligible military special voters for Special Elections and Primaries.
May 15:	Central New York, Finger Lakes, Mohawk Valley, North Country and the Southern Tier regions enter phase 1 of reopening
May 19:	Western New York region enters phase 1 of reopening
May 20:	Capital District region enters phase 1 of reopening
May 22:	Hernandez v. SBOE: On May 22, 2020, the National Federation of the Blind filed an action alleging that New York's absentee ballot process is inaccessible to persons with print disabilities. An accessible process was negotiated for the June 23rd primary, but one could not be reached for the November 3rd process. Plaintiff filed for a motion for preliminary injunction. A hearing will be had on August 23,2020.

May 26:	Mid-Hudson region enters phase 1 of reopening
May 27:	Long Island region enters phase 1 of reopening
May 29:	Central New York, Finger Lakes, Mohawk Valley, North Country and the Southern Tier regions enter phase 2 of reopening
June 2:	Western New York region enters phase 2 of reopening
June 3:	Capital District region enters phase 2 of reopening
June 7: Executive Order 202.39 (signed)	Provided guidance on school absentee voting.
June 8:	NYC enters phase 1 of reopening and Mid-Hudson region enters phase 2 of reopening
June 9: Executive Order 202.40 (signed)	Provided guidance to school boards on budgets that did not pass.
June 10:	Long island region enters phase 2 of reopening
June 12:	Central New York, Finger Lakes, Mohawk Valley, North Country and the Southern Tier regions enter phase 3 of reopening
June 13 – June 21:	Early Voting dates for Presidential Primary and Primary Election
June 16:	Western New York region enters phase 3 of reopening
June 16:	Deadline for Postmarking an Absentee ballot application
June 17:	Capital District region enters phase 3 of reopening
June 21: Executive Order 202.44 (signed)	Required boards of elections for any election held before July 1, 2020 to maintain a voting system that is accessible for voters who want to mark their ballots privately and independently; this must be on their website, so people know of the service.
June 22:	NYC enters phase 2 of reopening
June 23:	Presidential Primary and Primary Election Mid-Hudson region enters phase 3 of reopening
June 23:	Post mark Deadline for Absentee Ballot, must be received by June 30th.
June 24:	Long Island region enters phase 3 of reopening
June 26:	Central New York, Finger Lakes, Mohawk Valley, North Country and the Southern Tier regions enter phase 4 of reopening
June 30: Executive Order 202.46 (signed)	Provided for the period of time for independent nomination petitions to be signed, filed and provide for the amount of required signatures.
June 30:	Last day a ballot can be received by a BOE if postmarked by 6.23.2020
June 30:	Western New York region enters phase 4 of reopening
July 1:	Capital District region enters phase 4 of reopening
July 3: Executive Order 202.47 (signed)	Provided for Party Caucus to be video-conferenced.

July 3:	Eisen v. Cuomo: filed July 3, 2020 was a matter that challenged New York's revised independent nominating petition process that was revised pursuant to an Executive Order. The matter was dismissed on July 27th.
July 6: Executive Order 202.48 (signed)	Extended EO 202.28 through August 5, 2020.
July 6:	Canvass of Absentee can begin
July 6:	NYC enters phase 3 of reopening
July 7:	Mid-Hudson region enters phase 4 of reopening
July 8:	Long Island region enters phase 4 of reopening
July 8:	League of Women Voters v. Kosinski: a motion was filed challenging NY's absentee ballot process in so much as it doesn't have a cure provision. NYSBOE was granted an extension to file an answer until August 13,2020. It should be noted that there is a bill that passed both houses of the legislature that would go a long way in resolving this matter as it provides a cure mechanism for absentee ballots.
July 8:	Upstate Jobs Party v. Kosinski is a matter where plaintiffs are seeking housekeeping accounts for independent bodies, and for independent bodies to have the same "hard money" contribution limits as parties. Upstate Jobs filed for summary judgment on July 8th. The NYSBOE response is due August 25.
July 12: Executive Order 202.51 (signed)	Provided guidance for school boards and library boards on petitions.
July 17:	Gallagher v. SBOE. Plaintiffs seeks to "count[] all absentee ballots received on or before June 30, 2020" with respect to the June 23, 2020 primary election. The claims revolve around postmark issues; particularly postmarks on envelopes that are prepaid. On August 3rd, the court ruled on Plaintiffs motion for preliminary injunction, ordering the SBOE to direct all local boards of elections to count all otherwise valid absentee ballots cast in the June 23 Primary which were (1) received by June 24, 2020, without regard to whether such ballots are postmarked by June 23, 2020 and (2) received by June 25, 2020, so long as such ballots are not postmarked later than June 23, 2020.
July 20:	NYC enters phase 4 of reopening
July 20:	The State Legislature passes ten election law related bills. Six which would change election administration for the November 3, 2020 general election
July 28:	On July 28th, the Green Party and Libertarian Party filed a lawsuit challenging the party threshold law in the SDNY.
July 29:	League of Women Voters v. SBOE: On July 29th filed a motion for Preliminary injunction; challenges the 25 day cutoff period for new voter registrations. The NYSOBE response is due on August 14th.

July 30:	NYSBOE was notified that the Budget Director will not certify the "Environmental Bond Act of 2020; Restore Mother Nature, Part QQ of Chapter 58 of the Laws of 2020
August 3, 2020	Gallagher v. NYSBOE: Court rules NSYBOE must direct all Boards to count those ballots received by June 24th without a postmark.
August 6, 2020	NYSBOE directs local boards to "count all otherwise valid absentee ballots cast in the June 23 Primary which were received by June 24, 2020, without regard to whether such ballots are postmarked by June 23, 2020 and (2) received by June 25, 2020, so long as such ballots are not postmarked later than June 23, 2020."
August 24, 2020	EO 202.58 issued on 8.24.20 required: • Sections 15-120 and 15-122 of the Election Law, Sections 2018-a and 2018-b of the Education Law and section 84-a of the Town Kaw, as well as any provision of law related to a special district election taking place prior to November 3, 2020, and not administered by the County Board of elections to the extent necessary to include the potential for contract of the COVID-19 virus as an illness for purposes of request of receipt of an absentee ballot; • Section 8-400 was amended in order to provide that every voter that is in active and inactive statue and eligible to vote in any election on or before 11/3/2020, may be able to request an absentee ballot via phone, internet or electronically. Requires documentation for phone receipt. • Section 9-209(3) of the Election law related to curing deficiencies in absentee ballots is modified to require that a BOE provide a five-day cure period for any eligible deficiency instead of seven if the absentee ballot is received after November 3,2020. Requires that a BOE first notify any voter of any eligible deficiency within 24 hours of identifying the deficiency by phone or email., if available and shall only mail such notification to the voter if notice to the voter by phone or email was not possible; and • Article 16 of the Election Law was modified to provide that no cause of action shall be maintained against a BOE if, notice is not able to be made within the time period in 9-209-3 after a good faith effort and through no fault of the BOE. • Requires all BOES to send an information mailing to every registered voter by 9/8/2020 including the dates, hours and location for early voting and location; information on how to apply for an absentee ballot the dates and hours of the 11.3.2020 general election and the voters polling place location, information regarding how the voter can look up

	their registration status; a reminder of the opportunities to vote before election day; expected mail times if a voter chooses to request an absentee ballot. • Requires All BOES to submit a staffing plan and needs for early voting and election day poll site operations by 9.20.2020. • All CBOES must take all steps possible to count ballots as soon as possible, including reviewing absentee or military ballot envelopes prior to Election day to ensure efficient and timely canvassing of ballots., including to establish objections by the Board to ballot envelopes prior to election day, and reporting of affidavit ballots by counties to the SBOE to compare against absentee ballots must be completed within 48 hours of the election. • The SBOE must develop a uniform envelop for absentee ballots for use by BOES by 9.8.2020. Auch envelope shall establish where a voter must sign to be valid. All COBEs must use such uniform envelope for absentee ballots developed by the SBOE.
August 29, 2020	EO 202.59 ceased the director to permit telephone or virtual party nominating conventions which has been superseded by Chapter 142 of the laws of 2020.
September 9,2020	EO 202.61required all BOES to develop a plan to allow a registered voter to drop off a completed absentee ballot at a BOE, early voting location, or election day voting location, without requiring they wait in line with in-person voters, to help minimize delays during in-person voting and promote contactless voting. Plans must be submitted to be SBOE by September 21, 2020 and made publicly available in the CBOE office and on their website when submitted; and For any absentee ballot issued pursuant to Chapter 91 and 138 of the Laws of 2020 and/or the provisions of Executive Order 202.58 for which a prepared application need not be returned by the voter because the voter applied for an absentee ballot by letter, email, fax, phone internet or electronically, the BOE shall not send such voter a paper absentee ballot application with their ballot, and such voter shall not be required to complete a paper application either prior to or simultaneously to receive the ballot.
September 19, 2020	Section 522 of the Labor Law is modified to exclude from the definition of “total employment” per diem, part-time work performed between September 18, 2020 and November 3, 2020 for the NYSBOE or a local board of elections where the total earnings for the week form all work performed for any employer do not exceed $504.00…”

December 14, 2020	EO 202.87 continued the ability of an individual to request an absentee ballot. Was to have sunset 12.31.2020.
January 8, 2021	EO 202.89 – • article 6 and 15 of the Election Law in relation to conducting any village election all party nomination made by party caucus may be conducted remotely in whole or in part as set for by the chair of such party; • continued the potential for contracting of COVID-19 as an illness for purposes of request or receipt of an absentee ballot for special district elections; • Provided for supplemental notice of electronic participation in a caucus to be not less than 5 days before the caucus. • Amended 8-407 to allow that election inspectors shall not attend or visit facilities to provide absentee ballots physically and will send them by mail or personal delivery.
February 11, 2021	EO 202.93 provided that caucus meetings may be held by telephone or video conferencing. Must be public notice to access video conference.
February 14, 2021	EO 202.94 required change of enrollments that are due by 2.14.2021 to be accepted by the BOE through the next business day following the 2.4.21 and any such change of enrollment shall be processed until 2.16.2021.

Executive Orders

Nine executive orders impacting New York's Elections and changing the process elections were signed between March 29, 2020 and June 21, 2020 impacting the June23, 2020 Special and Primary Elections.

202.13, signed March 29, 2020

- Postponed the Queens Borough President election from March 24,2020 andspecial election scheduled for April 28, 2020, to be held on June 23, 2020.
- Postponed circulation, filing and collection of designating petitions or independent nomination petitions for any office commencing March 31, 2020 tobe postponed.

202.15 signed April 9, 2020

- Enabled absentee ballots to be granted based on temporary illness which included the potential for contraction of the COVID-19 virus for any election heldon or before June 23, 2020; and
- Modified 8-400 of the Election Law to allow for electronic application, with norequirement for in-person signature or appearance to be able to access an absentee ballot.

202.16 , signed April 12, 2020

- Postponed party caucuses that were scheduled to take place in April or May untilJune 1, 2020.

202.23, signed April 24, 2020

- Provided that every voter, active or inactive, eligible to vote in a primary or special election to be held on June 23, 2020 shall be sent an absentee ballotapplication form with a postage paid return envelope.

202.26, signed May 1, 2020

- Any absentee ballot sent to a voter for a primary or special election to be held onJune 23, 2020 shall be provided with a postage paid return envelope.;
- For any election held before July 1, 2020, upon transmitting or mailing absentee ballots to voters, the boards of elections shall provide and maintain, in its office, avoting system that is accessible for voters wishing to mark their ballot privately and independently, and provided that availability of this services hall be posted on the website of each board of elections

202.28, signed May 7, 2020

- Limited the option to select temporary illness due to fear of contracting COVID-19 to only apply to the June 23, 2020 special and primary elections.

202.39 , signed June 7, 2020:

- Provided guidance on school absentee voting.

202.40 , signed June 9, 2020:

- Provided guidance to school boards on budgets that did not pass.

202.44, signed June 21, 2020:

- Required boards of elections for any election held before July 1, 2020 to maintaina voting system that is accessible for voters who want to mark their ballots privately and independently; this must be on their website so people know of theservice.

202.46 , signed June 30, 2020;

- Provided for the period of time for independent nomination petitions to besigned, filed and provide for the amount of required signatures.

202.47 , signed July 3, 2020:

- Provided for Party Caucus to be video-conferenced.

202.48 , signed July 6, 2020

- Extended EO 202.28 through August 5, 2020.

202.51, signed July 12, 2020

- Provided guidance for school boards and library boards on petitions.

202.58, signed August 24, 2020 required:

- Sections 15-120 and 15-122 of the Election Law, Sections 2018-a and 2018-b of the Education Law and section 84-a of the Town Kaw, as well as any provision of law related to a special district election taking place prior to November 3, 2020, and not administered by the County Board of elections to the extent necessary to include the potential for contract of the COVID-19 virus as an illness for purposes of request of receipt of an absentee ballot;
- Section 8-400 was amended in order to provide that every voter that is in active and inactive statue and eligible to vote in any election on or before 11/3/2020, may be able to request an absentee ballot via phone, internet or electronically. Requires documentation for phone receipt.
- Section 9-209(3) of the Election law related to curing deficiencies in absentee ballots

is modified to require that a BOE provide a five-day cure period for any eligible deficiency instead of seven if the absentee ballot is received after November 3,2020. Requires that a BOE first notify any voter of any eligible deficiency within 24 hours of identifying the deficiency by phone or email., if available and shall only mail such notification to the voter if notice to the voter by phone or email was not possible; and

- Article 16 of the Election Law was modified to provide that no cause of action shall be maintained against a BOE if, notice is not able to be made within the time period in 9-209-3 after a good faith effort and through no fault of the BOE.
- Requires all BOES to send an information mailing to every registered voter by 9/8/2020 including the dates, hours and location for early voting and location; information on how to apply for an absentee ballot the dates and hours of the 11.3.2020 general election and the voters polling place location, information regarding how the voter can look up their registration status; a reminder of the opportunities to vote before election day; expected mail times if a voter chooses to request an absentee ballot.
- Requires All BOES to submit a staffing plan and needs for early voting and election day poll site operations by 9.20.2020.
- All CBOES must take all steps possible to count ballots as soon as possible, including reviewing absentee or military ballot envelopes prior to Election day to ensure efficient and timely canvassing of ballots., including to establish objections by the Board to ballot envelopes prior to election day, and reporting of affidavit ballots by counties to the SBOE to compare against absentee ballots must be completed within 48 hours of the election.
- The SBOE must develop a uniform envelop for absentee ballots for use by BOES by 9.8.2020. Auch envelope shall establish where a voter must sign to be valid. All COBEs must use such uniform envelope for absentee ballots developed by the SBOE.

202.59, signed August 29, 2020

- ceased the directive to permit telephone or virtual party nominating conventions which has been superseded by Chapter 142 of the laws of 2020.

202.61, signed September 9, 2020

- required all BOES to develop a plan to allow a registered voter to drop off a completed absentee ballot at a BOE, early voting location, or election day voting location, without requiring they wait in line with in-person voters, to help minimize delays during in-person voting and promote contactless voting. Plans must be submitted to be SBOE by September 21, 2020 and made publicly available in the CBOE office and on their website when submitted; and
- For any absentee ballot issued pursuant to Chapter 91 and 138 of the Laws of 2020 and/or the provisions of Executive Order 202.58 for which a prepared application need not be returned by the voter because the voter applied for an absentee ballot by letter, email, fax, phone internet or electronically, the BOE shall not send such voter a paper

absentee ballot application with their ballot, and such voter shall not be required to complete a paper application either prior to or simultaneously to receive the ballot.

202.64, signed September 18, 2020

- Section 522 of the Labor Law is modified to exclude from the definition of "total employment" per diem, part-time work performed between September 18, 2020 and November 3, 2020 for the NYSBOE or a local board of elections where the total earnings for the week form all work performed for any employer do not exceed $504.00…"

202.87 signed December 14, 2020

- continued the ability of an individual to request an absentee ballot. Was to have sunset 12.31.2020.

202.89 signed January 8, 2021

- article 6 and 15 of the Election Law in relation to conducting any village election all party nomination made by party caucus may be conducted remotely in whole or in part as set for by the chair of such party;
- continued the potential for contracting of COVID-19 as an illness for purposes of request or receipt of an absentee ballot for special district elections;
- Provided for supplemental notice of electronic participation in a caucus to be not less than 5 days before the caucus.
- Amended 8-407 to allow that election inspectors shall not attend or visit facilities to provide absentee ballots physically and will send them by mail or personal delivery.

202.93, singed February 11, 2021,

- provided that caucus meetings may be held by telephone or video conferencing. Must be public notice to access video conference.

202.94, signed February 14, 2021,

- required change of enrollments that are due by 2.14.2021 to be accepted by the BOE through the next business day following the 2.4.21 and any such change of enrollment shall be processed until 2.16.2021.

APPENDIX B: ELECTION BILLS AND PENDING LEGISLATION 2019-2021				
	Title/Bill #	**Bill Description**	**Signed/Chapter**	**Effective Date**
1.	**Early Voting** A780 / S1102	Provides nine days of early voting prior to any special, primary, or general elections.	1/24/2019 Chapter 6	October 2019
2.	**Statewide address changes Transfers** A775 / S1099	Provides that the board of elections shall transfer a registration and enrollment of a voter to wherever they move in the state.	1/24/2019 Chapter 3	3/25/2019
3.	**16-Year-old Pre-registration** A774 / S1100	Change NYSVoter formula for 17-year-olds to extend to 16-year-olds for effective date when applicant turns 18.	1/24/2019 Chapter 2	1/1/2020
4.	**Closing LLC loophole** A776 / S1101	Relates to political contributions by limited liability companies; requires limited liability companies that make expenditures for a political purpose to file with the state board of elections, the identity of all direct and indirect owners of the membership interests in the limited liability company and the proportion of each direct or indirect member's ownership interest in the limited liability company.	1/24/2019 Chapter 4	1/31/2019
5.	**June Primary** A779 / S1103	Changes the State/Local Primary date to match the Federal Primary date. Shift of Primary from September to June.	1/24/2019 Chapter 5	June 2019
6.	**Signatures for Designating Petitions** A2570 / S2862	Relates to the number of signatures for designating petitions in the year 2019.	2/20/2019 Chapter 17	Effective Immediately Sunsets 12/31/2019
7.	**Signatures for Party Position** A2693 / S2699	Reduces the petition signature requirement for member of county committee to 3 percent.	2/20/2019 Chapter 18	Effective Immediately Sunsets 12/31/2020
8.	**Signatures for Designating Petitions** A5979-A / S4350	Relates to signature s for designating petitions for political subdivisions outside the city of New York and the counties of Erie and Nassau; must be signed by not less than three and three-quarters per centum.	3/25/2019 Chapter 22	Effective Immediately Sunset 12/31/2019
9.	**Time allowed for employees to vote** A2005-C / S1505-C Budget Article VII	Relates to time allowed for employees to vote.	4/12/2019 Chapter 55, Part YY	Effective Immediately

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10.	**Use of force policy for any agency that employs peace officers** A2005-C / S1505-C Budget Article VII	Requires Use of Force Policy; applicable to State Board Enforcement	4/12/2019 Chapter 55, Part ZZ	60th day after it became law, 6/12/2019
11.	**Candidate or Political Committee – prohibition on certain loans** A2005-C / S1505-C Budget Article VII	Prohibits certain loans to be made to candidates or political committee	4/12/2019 Chapter 55, Part AAA	60th day after it became law, 6/12/2019
12.	**Uniform polling hours during primary elections** A2005-C / S1505-C Budget Article VII	Uniform hours across the state; 6AM-9PM	4/12/2019 Chapter 55, Part BBB	1/1/20 and applies to any election held 120 days thereafter, April 29, 2020.
13.	**Online Voter Registration** A2005-C / S1505-C Budget Article VII	Establishes the voter enfranchisement modernization act	4/12/2019 Chapter 55, Part CCC	2021
14.	**Renamed Veterans' Affairs to Veterans' Services** A2006-C Budget Article VII	Impacted NVRA materials.	4/12/2019 Chapter 56, Part AA, Section 1	Effective Immediately
15.	**Public Campaign Finance** A2009-C / S1509-C	Establishment of commission. The state shall establish a system of voluntary public campaign financing for statewide and state legislative public offices. The commission's report is due by December 1, 2019 and shall have the full effect of law unless modified or abrogated by statute prior to December 22, 2019. 42 (b) Members of commission.	4/12/2019 Chapter 59, Part XXX	Effective Immediately
16.	**Early Voting Grant Program** Budget	Aid to Localities Budget providing grant money for early voting.	4/12/2019 Chapter 53	Effective Immediately
17.	**E-Poll Book and Ballot Printing Grant Program** Budget	Capital Projects Budget providing grant money for purchase of electronic poll books and on demand printers.	4/12/2019 Chapter 54	Effective Immediately
18.	**Electronic Poll Books** S1505-C Budget Article VII	Authorizes computer generated registration lists; relates to the list of supplies to be delivered to poll sites.	4/12/2019 Chapter 55, Part XX	Effective Immediately

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19.	**Increases the number of supreme court judges and county court judges** A8433 / S6615	Increases the number of supreme court judges (+3): · JD 11 from 40 to 41 (+1) · JD 12 from 26 to 27 (+1) · JD 13 from 4 to 5 (+1) Tompkins County judge from 2 to 3 (+1)	6/24/2019 Chapter 39, Part T	Effective Immediately
20.	**Party Committee Organization Meeting** A8227B / S6427B	Moves the organization meeting time period for county committees and local committees from 20 days of the June primary election to between September 17th and October 6th.	6/25/2019 Chapter 42	Effective Immediately
21.	**On Demand Ballot Printing Ballot Accountability** A7123/S5129	Relates to instituting additional ballot accountability practices.	7/3/2019 Chapter 63	Effective Immediately
22.	**Removes color from primary ballot** A7606/S5839	Removes the requirement for color stripe to appear on primary ballot, reducing expense of on demand ballot printing. Also fixes effective date for the Voter Friendly Ballot Act (see A2682A/S2300A).	7/3/2019 Chapter 66	7/1/2020
23.	**New Parties – Nominations** A4081/S4426	Changes deadline for new parties in the first year of their existence to file nominations no later than September 1.	7/3/2019 Chapter 46	Effective Immediately
24.	**Use of campaign funds for childcare expenses** A1108-B / S2680-A	Authorizes the use of campaign funds for childcare expenses where they are incurred in the campaign or in the execution of the duties of public office or party position.	7/30/2019 Chapter 136	60th day after becoming a law 9/28/19
25.	**Special Ballots – Authorizes by Mail** A219A/S3232A	Authorizes special ballots to domestic violence survivors via mail.	8/8/2019 Chapter 150	Effective Immediately
26.	**Presidential Primary 2020** A8176 / S6374	Sets out ballot access process to elect delegates to national conventions.	9/13/2019 Chapter 290	Effective Immediately Repealed 12/31/2020
27.	**Special Ballots to BOE** A202 / S5199	Changes the current two weeks prior to election deadline to send special ballots to election workers to anytime up to close of polls on election day.	9/13/2019 Chapter 257	Effective Immediately

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28.	**Change of Enrollment** A8228-A / S6532	Changes the deadline to file a change of enrollment from the October cut-off to February 14th.	9/26/2019 Chapter 316	Effective Immediately
29.	**Restricts Corporation re political campaign** A623 / S4347	Restricts certain corporations from participating or intervening in any political campaign on behalf of or in opposition to any candidate for public office.	10/23/2019 Chapter 407	Effective Immediately
30.	**Two-sided ballot indicator** A112/S3145	Adds arrow to indicate ballot is two sided for when ballot proposal is on a two-sided ballot.	10/24/2019 Chapter 409	12/15/2019
31.	**Candidate and Ballot Information on Websites** A163/S1590	Requires the posting of candidate and ballot information on State Board and County Boards of Elections websites.	10/24/2019 Chapter 410	1/1/2021
32.	**Voter Friendly Ballot Act** A2682A/S2300A	Enacts the voter friendly ballot act; relates to the form of the ballot for elections; removes additional provisions for primary elections for New York city.	10/24/2019 Chapter 411	7/1/2020
33.	**Contribution Limits** A111/S3140	County boards to publish local office contribution limits on their county website.	10/25/2019 Chapter 412	12/15/2019
34.	**Special Election Notice** A837-A / S211-C	Boards of elections to notify all eligible voters of any special elections being held in their jurisdiction.	10/25/2019 Chapter 413	Effective Immediately
35.	**Campaign Finance Filings** A1641/S3903	Requires all committees and candidates, including local ones, to file campaign finance reports electronically with SBOE.	10/28/2019 Chapter 416	12/15/2019
36.	**Appointment of Poll Watchers** A1525A / S3141A	Clarifies language about appointing poll watchers. SBOE supported bill from SBOE legislative package 2019-13.	10/29/2019 Chapter 418	Effective Immediately
37.	**Poll Site Staff Plan** A1454 / S3146	Allows CBOE to design an alternative poll site staffing plan to conduct an election. NYSBOE Program Bill No. 19-12.	10/29/2019 Chapter 417	1/1/2020
38.	**Consolidation of certain voting districts** A3543 / S6449	Authorizes consolidation of certain voting districts with less than 10 eligible voters with another district. Removes the cap on combined district.	10/30/2019 Chapter 438	Effective Immediately

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39.	**OTB Committee to Receive Notices** A6714 / S5475	Clarifies committee named by an Opportunity to Ballot petition has capacity to seek judicial relief in the same manner as a candidate named by a petition. NYSBOE Program Bill No. 19-20	10/30/2019 Chapter 440	12/15/2019
40.	**Election Night Reporting Procedures** A2264 / S2346	Makes the procedures for election night reporting uniform.	10/30/2019 Chapter 437	Effective Immediately
41.	**Amends effective date for Uniform voting hours for primary elections to apply to Pres Primary on April 28, 2020.** A7709/S6163	Relates to the effectiveness of providing uniform polling hours during primary elections.	10/30/2019 Chapter 441	1/1/20 and applies any election held 115 days after, April 24, 2020
42.	**Time to File Petitions – Westchester County** A349A / S4264	Westchester County – last day to file petitions of designation or petitions of nomination, the BOE shall remain open between the hours of 9:00 am and midnight to receive said petitions.	10/30/2019 Chapter 439	Effective Immediately
43.	**Campaign Finance Filings/NYCCFB** A1740/S3134	Eliminates duplicate financial disclosure reports for those who file with NYCCFB.	11/8/2019 Chapter 465 Memo 13	1/1/2020
44.	**Committee to Receive Notices – Acceptance** A5219 / S5180-A	Each OTB submitted to a board of elections be accompanied by a certificate of acceptance completed by those appointed as the committee to receive notices.	11/8/2019 Chapter 456 Memo 11	Effective Immediately
45.	**Political Communication Disclosure** A4668 / S4910	Requires that political communications disclose the identity of the political committee that made the expenditure for the communication	11/8/2019 Chapter 454 Memo 10	1/1/2020
46.	**Buffalo City School Dist. Election at November General Election** A4949-B / S5224-B	Provides for the election of members of the board of education of the Buffalo city school district in November rather than in May.	11/25/2019 Chapter 561	11/25/2019
47.	**Testimony related to voter's signature on petition** A120 / S3133	Relates to testimony related to voter's signature on a petition.	11/25/2019 Chapter 533	12/15/2019

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48.	**E-Mail Address on Voter Registration; Use for Notice** A1565 / S1718	E-mail address (optional by voter) to be included on the voter registration application; notices to be sent to voters by NYSBOE shall be sent via email in addition to postal mail; notices to be sent to voters by CBOEs may be sent via email address, still must send via postal mail.	11/25/2019 Chapter 536	One year after it shall become law, 11/25/2020
49.	**Voter registration form distribution** A2599-A / S1128-A	Requires SUNY and CUNY to provide voter registration forms and absentee ballots to students, and for these locations to assist in completion of these documents.	12/6/2019 Chapter 587 Approval Memo 30	Effective Immediately
50.	**Absentee Ballots** A2687 / S3125	Requires party position for ward, town, city or county to appear on absentee ballots	12/10/2019 Chapter 615	Effective Immediately
51.	**Independent Body Name** A2047-A / S5974-A	Prohibits the change of name of any independent body.	12/11/2019 Chapter 619	Effective Immediately
52.	**Affidavit Ballot substantial compliance** A1320-A / S3045-B	BOE to cast and canvass voters affidavit ballot if it substantially complies with law.	12/20/2019 Chapter 717 Memo 64	Effective Immediately
53.	**Timing of the Annual Check of Registrants** A9128 / S7236	Moves the dates for the annual mail check.	2/11/2020 Chapter 21	Effective Immediately Sunsets 12/31/2020
54.	**Timing of Filing Designating Petitions** A10151 / S8058	Provides that a designating petition for the June 2020 primary election shall be filed with the appropriate board of elections on March 17 through March 20, 2020; makes related provisions.	3/18/2020 Chapter 24	Effective Immediately
55.	**Provides for a Mandatory Hand Recount** S7505-B Budget Article VII	Makes a hand recount mandatory when the margin of victory is .5% or less; or twenty votes or less; or in a contest where one million or more ballots have been cast and the margin of victory is less than 5,000 votes.	4/3/2020 Chapter 55, Part JJ	Effective 2021

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56.	**Voter registration form distribution** S7505-B Budget Article VII	Subpart M provides for chapter amendments to Chapter 587 of the Laws of 2019, which require SUNY and CUNY to provide voter registration forms and absentee ballots to students, and for these locations to assist in completion of these documents.	4/3/2020 Chapter 55, Part XX, Subpart M	
57.	**Affidavit Ballot substantial compliance** S7505-B Budget Article VII	Subpart N provides for chapter amendments to Chapter 717 of the Laws of 2019, relating to the requirement that a BOE shall cast and canvass a voter's affidavit ballot if it substantially complies with law. The chapter amendments define substantial compliance as when the board can determine the voter's eligibility based on the statement of the affiant or records of the board.	4/3/2020 Chapter 55, Part XX, Subpart N	
58.	**Time allowed for employees to vote** S7505-B Budget Article VII	Amends the time off to vote law. The amended time off to vote law provides that if a voter may receive up to two hours of paid time off to vote if the voter does not have four consecutive hours to vote, either from the opening of the polls to the beginning of your work shift, or between the end of your working shift and the closing of the polls.	4/3/2020 Chapter 55, Part AAA	
59.	**Eligibility of Presidential Candidates** S7506-B Budget Article VII	Part TT provides that: "if a candidate for office of the president of the United States…publicly announces that they are no longer seeking the nomination for the office of president of the United States, or if the candidate announces that they are terminating or suspending their campaign, or if the candidate sends a letter to the state board of elections indicating they no longer wish to appear on the ballot, the state board of elections may determine…that the candidate is no longer eligible and omit said candidate from the ballot; provided, however, that for any candidate of a major political	4/3/2020 Chapter 56, Part TT	

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		party, such determination shall be solely made by the commissioners of the state board of elections who have been appointed on the recommendation of such political party or the legislative leaders of such political party, and no other commissioner of the state board of elections shall participate.		
60.	**New York State Public Financing Program** S7508-B Budget Article VII	Part ZZZ codifies the New York State public financing program; establishes the New York state campaign finance fund; establishes the NYS campaign finance fund check-off; amends the definition of a party to political organizations that, in last preceding election for governor received, at least two percent of the total votes cast for its candidate for governor, or one hundred thirty thousand votes, whichever is greater, and at least two percent of the total votes cast for its candidate for president, or one hundred thirty thousand votes, whichever is greater, in a year when a president is elected; and changed the threshold for statewide independent nominating petitions to forty-five thousand signatures from registered voters, or one percent of the total number of votes, excluding blank and void ballots, cast for the office of governor at the last gubernatorial election, whichever is less, of whom at least [one] five hundred, or one percent of enrolled voters, whichever is less, shall reside in each of one-half of the congressional districts of the State.	4/3/2020 Chapter 58, Part ZZZ	
61.	**Certificates of Acceptance – Committee to Receive Notices** A8999 / S7196	Chapter 456 of 2019 requires individuals nominated to serve on committee to receive notices to sign and accept the nomination of	4/17/2020 Chapter 33	Effective Immediately

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		the committee, otherwise such nomination shall be null and void. The law further required all certificates of acceptance to be filed no later than the fourth day after the last day to file petitions for the opportunity ballot. This chapter amendment replaces the term "nomination" with "appointment" and "nominated" with "appointed" as the correct terms of art as it relates to committees to receive notices for opportunity to ballot petitions.		
62.	**Elimination of Duplicate Filing** A9001 / S7309	Chapter 416 of 2019 provided that any candidate or authorized candidate's committee required to file electronically with the State Board of Elections would satisfy their requirement upon making electronic filings with a local campaign finance board if the filing format and audit procedures meet or exceed the requirements imposed by Article 14 of the Election Law, the data is publicly available at a substantial equivalent to the State Boards publication standards, and the local board provides the State Board with notices of filing delinquencies. This chapter amendment provides clarity that if any one of the three requirements listed is no longer followed by a local campaign finance board, then the local filers will have to file with the State Board of Elections.	4/17/2020 Chapter 34	1/1/2021
63.	**Relates to the disclosure of the identities of political committees making certain expenditures for political communications.** A9002 / S7313	This legislation amends the underlying chapter by making technical changes for clarity and consistency of drafting. Language is added clarifying that paragraphs 3 and 5 of section 14-106 of the Election Law shall not apply to the disclosure requirements under certain	4/17/2020 Chapter 87	Effective Immediately

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		sections of the underlying chapter, and additionally the term "political committee" to "political communication" in section 3 of the underlying chapter.		
64.	**Permits electronic application for absentee ballots and removes requirement that such application be signed by the voter.** A19516-A / S8130-D	The purpose of the bill is to recognize increased options for qualified voters to request an absentee ballot in light of the COVID-19 pandemic emergency by recognizing requests through electronic means, and to modify certain requirements relating to the date by which a ballot must be postmarked.	6/7/2020 Chapter 91	Section one: 6/24/2020 Sections two-six immediately. Repealed 12/31/2020
65.	**Relates to requests for absentee ballots; when they may be received.** A10807 / S87873-A	The bill would amend paragraph (d) of subdivision two of section 8-400 of the election law to allow receipt and require processing of absentee ballot applications received by county boards of election earlier than the 30-day period before election currently specified in paragraph (d).	8/20/2020 Chapter 138	Effective Immediately Sunset 12/31/2020
66.	**Expanded Absentee Access** A10833 / S8015-D	By redefining "illness," this legislation allows New Yorkers to request an absentee ballot if they are unable to appear personally at their polling place due to an epidemic or disease outbreak.	8/20/2020 Chapter 139 Approval Memo 4	Effective Immediately Repealed 1/1/2022
67.	**Relates to the receipt by the board of elections of certain absentee ballots received by a board of elections that do not bear or display a dated postmark** A10808-A / S8799-A	This bill will allow the board of elections to cause all absentee ballots that do not bear or display a dated postmark to be presumed to have been timely mailed or delivered if such ballot bears a time stamp of the receiving board of elections indicating receipt by such board on the day after the election.	8/20/2020 Chapter 140	Effective Immediately This act shall apply to elections occurring on or after such effective date; provided, however that the amendments to subdivision 1 of section 8-412 of the election law made by section one of this act shall be subject to the expiration and reversion of such

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				subdivision pursuant to section 7 of chapter 91 of the laws of 2020 when upon such date the provisions of section two of this act shall take effect.
68.	**Relates to changes to the entrance and exit of polling places** A8257 / S5188	Prohibits the making of any change, alteration or modification to any entrance to or exit from a polling place unless such change, alteration or modification is necessary to maintain public safety due to the occurrence of an emergency and requires the posting of signage in relation to such change, alteration or modification.	10/7/2020 Chapter 232	Effective Immediately
69.	**Relates to requiring municipalities with the highest population in each county to have at least one polling place designated for early voting** A8610-B / S8782	Requires municipalities with the highest population in each county to have at least one polling place designated for early voting	12/15/2020 Chapter 344 Approval Memo 48	Effective Immediately
70.	**Automatic Voter Registration** A8280-C / S8806	Establishes an electronic personal voter registration process integrated within designated agency applications; requires the state board of elections to promulgate necessary rules and regulations; makes related provisions.	12/22/2020 Chapter 350 Approval Memo 54	This act shall take effect January 1, 2023; provided, however, the state board of elections and any participating agency shall be authorized to implement necessary rules and regulations and to take steps required to implement this act immediately.
71.	**HAVA CARES ACT Federal Stimulus Bill**	Provides emergency assistance and health care response for individuals, families and businesses affected by the 2020 coronavirus pandemic.		

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72.	**Reduces Signatures Required for Designating Petitions in 2021** A3356/S2733	This law reduces the required signature threshold by 70 % for 2021 designating petitions.	1/28/21 Chapter 22	Effective Immediately Expires Dec 31, 2021
73.	**Automatic Voter Registration Chapter Amendment** A2574/S2076	This law changes the effective date for the implementation of automatic voter registration (Chapter 350 of 2020) to January 1, 2024. The law further adds SUNY as a participating agency.	2/16/21 Chapter 37	Effective January 1, 2024
74.	**The Election of County Committee Members in 2021** A4357/S4382	This law allows the option for County party committees to adopt temporary amendments to party rules forgoing elections for committee members in 2021. Such committee members would then be required to run for election in 2022.	2/16/21 Chapter 38	Effective Immediately
75.	**Eliminates Opportunity to Ballot Petitions for 2021 Elections** A4447/S4381	This bill eliminates the opportunity to ballot petition for 2021 elections.	3/7/21 Chapter 69	Effective Immediately
76.	**Requires Washington County to have at least One Early Voting Poll Site in its County Seat** A1394/S1310	Chapter 344 of 2020 required at least one poll in the largest municipality in each county. In recognizing that the County seat in Washington County (Ft. Edward) better serves the needs of voters than the nearby largest municipality (Hudson Falls) this law would allow Washington County to move the required poll site to Ft. Edward.	3/9/21 Chapter 74	January 1, 2021
77.	**Reduces the Designating Petition Signature Requirements for Towns and Villages** A5844-A/S5256-A	This law provides that any office to be filled by all the voters of towns containing one hundred thousand inhabitants or less, shall not exceed two times the number of election districts in such town. Additionally, the number of signatures required on a designating petition for a village election shall be one and one-half per centum of the number of enrolled voters of the party residing in the village.	3/24/21 Chapter 81	Effective Immediately Expires Dec 31, 2021

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78.	**Reduces the number of Signatures needed for Independent Nominating Petitions in 2021 by 50%** A4686/S4380	This law reduces the number of signatures required for an independent nominating from 5% to 2.5% of active enrolled voters in a political subdivision who voted for the office of governor in the last election.	3/29/21 Chapter 90	Effective immediately Repealed Dec 31, 2021
79.	**BUDGET – Aid to Localities Early Voting Grant Program** A 3003C/S 2503C	$ 2 million grant program to reimburse county boards of elections for expenses related to expanding early voting.	4/19/21 Chapter 53	Effective Immediately
80.	**BUDGET – Capital Technology Innovation and Election Resource (TIER) Grant Program** A 3004D/S 2504D	$20 million grant program to reimburse county boards of elections for expenses related to election improvements.	4/19/21 Chapter 54	Effective Immediately
81.	**Restoration of Voting Rights for Parolees** A4448-A/S830-B	This bill provides that individuals released from State or local facilities are notified that their voting rights will be restored upon release. The parolee shall be provided a voter registration form and further assistance, if necessary, in filling out voter registration and/or transmitting the form to the Board of Elections. This law additionally requires the development of an outreach program to educate professionals, including lawyers, judges, election officials, corrections officials and the public about the new parolee voting rights policy.	5/4/21 Chapter 103	120 Days after becoming a law (Sept 4, 2021)
82.	**Early Voting in Largest Municipality** A6478/S6215	This bill provides that if there is no primary election in the largest municipality within a county than the board of elections may designate a poll site in the next largest municipality that has a primary election.	5/21/21 Chapter 110	Effective Immediately
83.	**Number of Supreme Court Justices** A8027/S7220	Increases number of Supreme court justices across all JDs except JD 1 and JD 4	6/29/21 Chapter 188	Effective Immediately

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84.	**Notice of Polling Place Change** A2168/S6216	This bill requires that if a change in poll site location happens after the last primary or general election the old polling place must post signs noting that the poll site has been moved and include the address of the new poll location. For some unknown reason it requires the notice must be on yellow paper.	7/16/21 Chapter 241	Effective Immediately
85.	**Electronic Absentee Ballot Application** A6046/S6379	This bill provides for an electronic application for absentee ballots. This bill re-opens that web portal to apply for absentee ballots. As was done under the EO, this bill removes the requirement that the absentee ballot application be signed by the voter.	7/16/21 Chapter 249	Effective Immediately Sunsets 12/31/21
86.	**Mailing and receipt of absentee ballots** A 6047/S 6429	Temporarily eliminated the need to file a separate signed application when applying by written letter to request for an absentee ballot; and allows absentee ballots with a postmark/cancellation mark by the day of election to be rendered a timely ballot.	7/16/21 Chapter 250	Effect immediately; provided, however, that sections one and five shall sunset 12/31/21 where upon section six takes effect.
87.	**Election District Size Increase** A7478/S6855	This bill would increase the maximum size of an election district from 1100 to 2000 registrants. This bill also allows county committees to add additional members to adjust for the potential reduction in election districts.	7/16/21 Chapter 260	Effective Immediately
88.	**Absentee Ballot Application Deadline** A5783/S264	This bill requires absentee applications requested by mail to be received no later than 15 days before an election or requested in person at the board of elections the day before an election. This bill allows for the slower current delivery standards of the USPS.	7/16/21 Chapter 273	Effective Immediately (see additional provisions of effective date)

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89.	**Candidate Declination** A 4142-A/S 613-A	Provides that a person designated as a candidate for two or more party nominations for an office to be filled at the time of a general election, who is not nominated at a primary election by one or more such parties may decline the nomination of one or more parties not later than ten days after the primary election. This will eliminate the need for nominating candidates to a second office to get them off a party line after losing a primary for another party under EL 6-146(5). This bill did not change the date to decline an independent line after losing a primary, that is still just 3 days after the primary under EL 6-158(11).	7/16/21 Chapter 276	Effective Immediately
90.	**Election Inspectors Nursing Home Facilities** A6220/S1644	Provides that inspectors of the board of elections shall not physically deliver absentee ballots to residents of nursing homes but must mail or deliver the absentee ballots to the facility.	7/16/21 Chapter 279	Effective Immediately. Repealed January 1, 2022
91.	**Online Poll Worker Training and Examination** A4257A/S1277A	This bill allows the option to offer poll worker training and examination both online and in person.	7/27/21 Chapter 310	90 Days after becoming law, 10/25/21
92.	**Proclamation of Special Election** A8028/S7227	Requires the Governor to proclaim a special election to fill a vacancy within 10 days of the vacancy	8/2/21 Chapter 320	Effective Immediately
93.	**Replaces inmate with incarcerated individual** A2395/S3322	This bill amends any reference in NYS law to the word inmate or inmates with the words incarcerated individual or incarcerated individuals.	8/2/21 Chapter 322	Effective Immediately

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	PASSED BOTH HOUSES			
1	**Confidential Registration** A 465-A/S 1555	Section 5-508 of the election law to allow victims of domestic violence to opt in to voter confidentiality by delivering to the board of elections a signed written statement that because of a threat of physical or emotional harm, their registration record is to be kept confidential; such confidential application expires after four years.	A 465-A – 6/10/21 Passed Assembly S 1555 – 6/7/21 Passed Senate	Effective Immediately
2	**Candidate Name** A 4136/S 1133	The use of a candidate's alternate, familiar or anglicized name is permissible on election nominating petitions and ballots.	A4136 – 6/7/21 Passed Assembly S1133 – 5/12/21 Passed Senate	Effective Immediately
3	**Online Absentee Ballot Tracking System** A4186B/S6395A	This bill would create a statewide online absentee ballot tracking system to allow voters to track the process of an absentee ballot application and delivery of the absentee ballot.	A4186A – 5/26/21 Passed the Assembly S6395 – 6/9/21 Passed Senate	January 1, 2022
4	**Increase the number of early voting sites and expands weekend early voting hours** A5424A/S4306B	To require the board of elections to designate at least one early voting polling place for every full increment of forty thousand registered voters in each county with at least five hundred thousand registered voters, and for every full increment of thirty thousand registered voters in each county with less than five hundred thousand registered voters, and to extend voting polling site hours of operation during weekend early voting.	A5424A – – 6/10/21 Passed Assembly S4306B – – 6/10/21 Passed Senate	Effective 4/1/22
5	**Electronic Absentee Ballot Application Transmittal System** A 6970-A /S 6482-B	Establish an electronic absentee ballot application and transmittal system through which voters may apply for and submit an absentee ballot application online.	A6970-A – 5/26/21 Passed Assembly S6482-B – 6/9/21 Passed Senate	Effective 1/1/22
6	**Restricts OTB's to only enrolled candidates** A7761A/S7191	This bill would provide that write-in votes in a primary resulting from the filing of an opportunity to ballot petition will only count if the write-in candidate is enrolled in the party holding such primary.	A7761A – 6/10/21 Passed Assembly S7191 – 6/9/21 Passed Senate	Effective Immediately

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7	**Timeline for Canvassing of Absentee, military, special and affidavit ballots** A7931/S1027A	This bill would require review of returned absentee ballots within 4 days of receipt by BOE to determine valid, defective but curable, or invalid. Valid ballots will be counted starting the first day of early voting, but results will not be tabulated until 8 pm election night.	A7931 – 6/10/21 Passed Assembly S1027-A - 6/9/21 Passed Senate	Effective 1/1/22 except 9-209(7)(h) shall be effective 1/1/23
	Bills that Impact Elections			
8	**State Websites in 12 most common census languages** A6215A/ S4716A	Requires state agencies to use language translation technology to allow users to translate the text of the website into at least the twelve most common non-English languages spoken by individuals with limited-English proficiency in the State of New York.	A6215A – 6/10/21 Passed Assembly S4716A – 5/3/21 Passed Senate	90 days

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Exhibit 4

DECLARATION OF ASHLEY DITTUS AS THE DEMOCRATIC COMMISSIONER OF THE ULSTER COUNTY BOARD OF ELECTIONS

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am over the age of 18, have personal knowledge of the facts stated in this declaration, and can competently testify to their truth.

2. I am the Democratic Commissioner of the Ulster County Board of Elections. I was appointed to this position on August 15, 2017.

3. County and City Elections Commissioners and their staff have the ultimate responsibility for complying with the 45-day pre-election ballot transmission requirement of the Uniformed and Overseas Absentee Voting Act, as amended by the Military and Overseas Voter Empowerment Act (collectively, "UOCAVA").

4. I believe that if New York delays its federal primary election to August 23, 2022, the Ulster County Board of Elections will have difficulty meeting the 45-day deadline for the general election that federal law imposes (or the 46-day deadline that New York law imposes) for sending ballots to overseas and military voters. If there are any close elections in the primary that trigger the new automatic manual recount law or result in any post-election litigation, or there are other delays, it will be impossible to meet the UOCAVA deadline. I am equally concerned that this problem would plague all of the county and city boards of elections in the state ("Boards"), especially ones that are in counties that are more populous than Ulster County.

5. An August 23 primary date puts extreme pressure on an already tight deadline for transmitting absentee ballots to overseas and military voters. Before a Board can transmit absentee ballots to UOCAVA voters for the general election, many steps need to occur.

6. First, Boards must count the primary election ballots in a process known as the "canvass." Boards are not allowed to tabulate any ballots, including absentee or early voting ballots, until 9 p.m. on Election Day. Thus, there is no way to get a head start on this counting process. Further, Boards must count absentee ballots that are postmarked by election day that arrive until the seventh day after the election. If an absentee ballot is rejected for certain minor issues, a Board must inform the voter, by mail, of the voter's right to cure the defect and have the ballot counted. The voter then has seven business days to cure their ballot starting from the date of the Board mailing the cure notice. The statutory deadline for finishing the canvass is 13 days after the primary.

7. Along with the canvass, the Board must audit 3% of the voting machines that were used in the election. This audit must also be completed within 13 days of the primary election.

8. After that, the Board must conduct a recanvass by the 20th day after the election. If the margin of an election following the recanvass is 20 votes or less or 0.5% or less, then the Board

must conduct a manual recount. Further, in a contest where 1 million or more ballots have been cast and the margin of victory is less than 5,000 votes, the Boards involved must conduct a manual recount. Where two or more counties are impacted by a specific election, the state board of elections must determine whether a recount is triggered based on the recanvass results of all the Boards of the counties involved. Additionally, candidates could petition a court for a recount even if the margin is greater. Manual recounts are common in Ulster County. We have had to recount at least one race in every primary election for upwards of five years, including a countywide recount in 2019 into 2020 that took three weeks to complete.

9. Following the canvass, audit, and recanvass, the Board must send certified election results to the State Board of Elections so that the State Board can determine the winner of any elections involving districts that cross county lines. Only once the State Board certifies the results does the Board know who will be on the ballot. The State Board must certify the candidates on the general election ballot by the 55th day before the general election.

10. Only once the Board knows which candidates will be on the general election ballot can it design absentee ballots. Because of overlapping political boundaries, boards usually have to design several different ballot styles. For example, if everyone living in a county resides in the same Congressional district, but there are two State Senate Districts and three Assembly Districts crossing through the county, the Board needs to make sure it has ballots with each possible ballot permutation. This process usually takes about a day to complete. Ulster County currently has 15 ballot styles.

11. Boards then have to proof all the forms of the ballot, print test versions of every ballot, make sure the machines can read all the tests ballots properly, then print the ballots that will go to the voters. These steps take another couple days.

12. The Board must place ballots in envelopes and audit that it has put the correct ballot for each voter in the applicable envelope. This process takes another day. After all this work is done, the Board may deposit the absentee ballots in the mail for UOCAVA voters.

13. In addition to preparing to transmit UOCAVA ballots, the Board will be recruiting and training poll workers, securing polling sites, registering voters, setting up and testing electronic poll books, obtaining election supplies, and preparing for early voting. The Board has 14 fulltime staff members. These competing needs detract limited resources and staff time from UOCAVA compliance.

14. The UOCAVA deadline under federal law is September 24, and New York requires such ballots to be mailed the day prior. Thus, the deadline this year is September 23. That leaves Boards only 32 days from the August 23rd primary election to complete all the steps just described. The State Board does not even have to certify which candidates will be on the ballot until September 14, providing just 9 days to design, print, and mail ballots. Given this short time frame, it will be difficult for the Ulster County Board of Elections or any Board to meet the deadline for

transmitting UOCAVA ballots. In the event any delays to the process described above occur, including any administrative errors, and especially manual recounts or post-election litigation, it would be impossible to meet the deadline. Although there is no way to predict specific delays, in my experience, elections rarely go perfectly.

Executed on this 6th day of May, 2022.

Ashley Dittus

Ashley Dittus

Exhibit 5

DECLARATION OF KATHLEEN A. DONOVAN AS THE DEMOCRATIC COMMISSIONER OF THE ALBANY COUNTY BOARD OF ELECTIONS

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am over the age of 18, have personal knowledge of the facts stated in this declaration, and can competently testify to their truth.

2. I am the Democratic Commissioner of the Albany County Board of Elections. I was appointed to this position on January 1, 2021, after having over 30 years experience with the Board.

3. County and City Elections Commissioners and their staff have the ultimate responsibility for complying with the 45-day pre-election ballot transmission requirement of the Uniformed and Overseas Absentee Voting Act, as amended by the Military and Overseas Voter Empowerment Act (collectively, "UOCAVA").

4. I believe that if New York delays its federal primary election to August 23, 2022, the Albany County Board of Elections will have difficulty meeting the 45-day deadline for the general election that federal law imposes (or the 46-day deadline that New York law imposes) for sending ballots to overseas and military voters. If there are any close elections in the primary that trigger the new automatic manual recount law or result in any post-election litigation, or there are other delays, it will be impossible to meet the UOCAVA deadline. I am equally concerned that this problem would plague all of the county and city boards of elections in the state ("Boards"), especially ones that are in counties that are more populous than Albany County.

5. An August 23 primary date puts extreme pressure on an already tight deadline for transmitting absentee ballots to overseas and military voters. Before a Board can transmit absentee ballots to UOCAVA voters for the general election, many steps need to occur.

6. First, Boards must count the primary election ballots in a process known as the "canvass." Boards are not allowed to tabulate any ballots, including absentee or early voting ballots, until 9 p.m. on Election Day. Thus, there is no way to get a head start on this counting process. Further, Boards must count absentee ballots that are postmarked by election day that arrive until the seventh day after the election. If an absentee ballot is rejected for certain minor issues, a Board must inform the voter, by mail, of the voter's right to cure the defect and have the ballot counted. The voter then has seven business days to cure their ballot starting from the date of the Board mailing the cure notice. The statutory deadline for finishing the canvass is 13 days after the primary.

7. Along with the canvass, the Board must audit 3% of the voting machines that were used in the election. This audit must also be completed within 13 days of the primary election.

8. After that, the Board must conduct a recanvass by the 20th day after the election. If the margin of an election following the recanvass is 20 votes or less or 0.5% or less, then the Board must conduct a manual recount. Further, in a contest where 1 million or more ballots have been cast and the margin of victory is less than 5,000 votes, the Boards involved must conduct a manual recount. Where two or more counties are impacted by a specific election, the state board of elections must determine whether a recount is

triggered based on the recanvass results of all the Boards of the counties involved. Additionally, candidates could petition a court for a recount even if the margin is greater.

9. Following the canvass, audit, and recanvass, the Board must send certified election results to the State Board of Elections so that the State Board can determine the winner of any elections involving districts that cross county lines. Only once the State Board certifies the results does the Board know who will be on the ballot. The State Board must certify the candidates on the general election ballot by the 55th day before the general election.

10. Only once the Board knows which candidates will be on the general election ballot can it design absentee ballots. Because of overlapping political boundaries, boards usually have to design several different ballot styles. For example, if everyone living in a county resides in the same Congressional district, but there are two State Senate Districts and three Assembly Districts crossing through the county, the Board needs to make sure it has ballots with each possible ballot permutation. Albany County currently has 319 election districts within 13 municipalities, and the process of designing these ballots usually takes about a week to complete.

11. Boards then have to proof all the forms of the ballot, print test versions of every ballot, make sure the machines can read all the test ballots properly, then print the ballots that will go to the voters. These steps normally take another three days to a week.

12. The Board must place ballots in envelopes and audit that it has put the correct ballot for each voter in the applicable envelope. This process takes another day. After all this work is done, the Board may deposit the absentee ballots in the mail for UOCAVA voters.

13. In addition to preparing to transmit UOCAVA ballots, the Board will be recruiting and training poll workers, securing polling sites, registering voters, setting up and testing electronic poll books, obtaining election supplies, and preparing for early voting. The Board has 20 fulltime staff members and two part-time employees. These competing needs detract limited resources and staff time from UOCAVA compliance.

14. The UOCAVA deadline under federal law is September 24, and New York requires such ballots to be mailed the day prior. Thus, the deadline this year is September 23. That leaves Boards only 32 days from the August 23rd primary election to complete all the steps just described. The State Board does not even have to certify which candidates will be on the ballot until September 14, providing just 9 days to design, print, and mail ballots. Given this short time frame, it will be difficult for the Albany County Board of Elections or any Board to meet the deadline for transmitting UOCAVA ballots. In the event any delays to the process described above occur, including any administrative errors, and especially manual recounts or post-election litigation, it would be impossible to meet the deadline. Although there is no way to predict specific delays, in my experience, elections rarely go perfectly.

Executed on this 6th day of May, 2022.

Kathleen A Donovan

Kathleen A Donovan

Exhibit 6

DECLARATION OF ANDREA BASLI AS THE DEPUTY DEMOCRATIC COMMISSIONER OF THE PUTNAM COUNTY BOARD OF ELECTIONS

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am over the age of 18, have personal knowledge of the facts stated in this declaration, and can competently testify to their truth.

2. I am the Deputy Democratic Commissioner of the Putnam County Board of Elections. I was appointed to this position on January 1, 2022.

3. County and City Elections Commissioners and their staff have the ultimate responsibility for complying with the 45-day pre-election ballot transmission requirement of the Uniformed and Overseas Absentee Voting Act, as amended by the Military and Overseas Voter Empowerment Act (collectively, "UOCAVA").

4. I believe that if New York delays its federal primary election to August 23, 2022, the Putnam County Board of Elections will have difficulty meeting the 45-day deadline for the general election that federal law imposes (or the 46-day deadline that New York law imposes) for sending ballots to overseas and military voters. If there are any close elections in the primary that trigger the new automatic manual recount law or result in any post-election litigation, or there are other delays, it will be impossible to meet the UOCAVA deadline. I am equally concerned that this problem would plague all of the county and city boards of elections in the state ("Boards"), especially ones that are in counties that are more populous than Putnam County.

5. An August 23 primary date puts extreme pressure on an already tight deadline for transmitting absentee ballots to overseas and military voters. Before a Board can transmit absentee ballots to UOCAVA voters for the general election, many steps need to occur.

6. First, Boards must count the primary election ballots in a process known as the "canvass." Boards are not allowed to tabulate any ballots, including absentee or early voting ballots, until 9 p.m. on Election Day. Thus, there is no way to get a head start on this counting process. Further, Boards must count absentee ballots that are postmarked by election day that arrive until the seventh day after the election. If an absentee ballot is rejected for certain minor issues, a Board must inform the voter, by mail, of the voter's right to cure the defect and have the ballot counted. The voter then has seven business days to cure their ballot starting from the date of the Board mailing the cure notice. The statutory deadline for finishing the canvass is 13 days after the primary.

7. Along with the canvass, the Board must audit 3% of the voting machines that were used in the election. This audit must also be completed within 13 days of the primary election.

8. After that, the Board must conduct a recanvass by the 20th day after the election. If the margin of an election following the recanvass is 20 votes or less or 0.5% or less, then the Board

must conduct a manual recount. Further, in a contest where 1 million or more ballots have been cast and the margin of victory is less than 5,000 votes, the Boards involved must conduct a manual recount. Where two or more counties are impacted by a specific election, the state board of elections must determine whether a recount is triggered based on the recanvass results of all the Boards of the counties involved. Additionally, candidates could petition a court for a recount even if the margin is greater.

9. Following the canvass, audit, and recanvass, the Board must send certified election results to the State Board of Elections so that the State Board can determine the winner of any elections involving districts that cross county lines. Only once the State Board certifies the results does the Board know who will be on the ballot. The State Board must certify the candidates on the general election ballot by the 55th day before the general election.

10. Only once the Board knows which candidates will be on the general election ballot can it design absentee ballots. Because of overlapping political boundaries, boards usually have to design several different ballot styles. For example, if everyone living in a county resides in the same Congressional district, but there are two State Senate Districts and three Assembly Districts crossing through the county, the Board needs to make sure it has ballots with each possible ballot permutation. Putnam County currently has 86 ballot styles. It usually takes a few days to design and proof ballots, and it will take longer if anything is wrong with the designs.

11. The Board then has to print test versions of every ballot, which takes a day to two days, and make sure the machines can read all the test ballots properly, which takes a few days even if there are no flaws with the ballots. The Board then prints the ballots that will go to the voters.

12. The Board must place ballots in envelopes and audit that it has put the correct ballot for each voter in the applicable envelope. This process takes another day. After all this work is done, the Board may deposit the absentee ballots in the mail for UOCAVA voters.

13. In addition to preparing to transmit UOCAVA ballots, the Board will be recruiting and training poll workers, securing polling sites, registering voters, setting up and testing electronic poll books, obtaining election supplies, and preparing for early voting. The Board only has 10 fulltime staff members, 2 part-time employees, and 2 technicians who help with discrete projects. These competing needs detract limited resources and staff time from UOCAVA compliance.

14. The UOCAVA deadline under federal law is September 24, and New York requires such ballots to be mailed the day prior. Thus, the deadline this year is September 23. That leaves Boards only 32 days from the August 23rd primary election to complete all the steps just described. The State Board does not even have to certify which candidates will be on the ballot until September 14, providing just 9 days to design, print, and mail ballots. Given this short time frame, it will be difficult for the Putnam County Board of Elections or any Board to meet the deadline for transmitting UOCAVA ballots. In the event any delays to the process described above occur,

including any administrative errors, and especially manual recounts or post-election litigation, it would be impossible to meet the deadline. Although there is no way to predict specific delays, in my experience, elections rarely go perfectly.

Executed on this 6th day of May, 2022.

Andrea Basli

Exhibit 7

M545degC - Corrected

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

BELINDA DE GAUDEMAR, *et al.*,

Plaintiffs,

v.

PETER S. KOSINSKY, *et al.*,

Defendants.

----------x

New York, N.Y.

22 Civ. 3534 (LAK)

May 4, 2022
10:40 a.m.

Before:

HON. LEWIS A. KAPLAN,

U.S. District Judge

APPEARANCES

EMERY CELLI BRINCKERHOFF & ABADY, LLP
Attorneys for Plaintiffs
BY: ANDREW G. CELLI, JR.
-AND-
ELIAS LAW GROUP LLP
BY: ARIA BRANCH
CHRISTINA FORD

NEW YORK STATE BOARD OF ELECTIONS
BY: BRIAN L. QUAIL
BY: TODD D. VALENTINE

TROUTMAN PEPPER HAMILTON SANDERS, LLP
Attorneys for Proposed Intervenors: Tim Harkenrider, et al.
BY: BENNET J. MOSKOWITZ
BY: MISHA TSEYTLIN

(Case called)

THE DEPUTY CLERK: Counsel, for plaintiff, are you ready? Please place your appearances on the record.

MR. CELLI: I am Andrew Celli for plaintiffs. I am here today with my colleagues from the Washington firm of the Elias Law Group, Christina Ford and Aria Branch.

MS. BRANCH: Good morning, your Honor. My name is Aria Branch from the Elias Law Group.

MS. FORD: Good morning, your Honor. My name is Christina Ford also from the Elias Law Group.

THE COURT: Good morning.

THE DEPUTY CLERK: Counsel for defendants, are you ready?

MR. QUAIL: Yes, your Honor. I am Brian Quail representing the New York State Board of Elections.

MR. VALENTINE: And Todd Valentine, also representing New York State Board of Elections.

THE COURT: Good morning.

THE DEPUTY CLERK: Counsel for proposed intervenors, are you ready?

MR. MOSKOWITZ: Yes. Good morning, your Honor. Bennet Moskowitz, Troutman Pepper. Here with me is my law partner Misha Tseytlin from our Chicago office.

THE COURT: Good morning.

Judge Livingston has designated a three-Judge panel in

accordance with 28 U.S. Code 2284(b)(1) by appointing, in addition to myself, Circuit Judges Sullivan and Nardini. We are here this morning solely on the temporary restraining order application and not on any of the matters which, under the statute, can be decided only by the three-Judge panel.

Ms. Branch, it is your application so you can go to the lectern where you will have the luxury of taking your mask off.

MS. BRANCH: Thank you, your Honor. My colleague Christina Ford will be arguing today.

THE COURT: All right.

Ms. Ford, before you get into your argument I want to go through some of what I understand to be the timeline and the questions that the timeline raises, just so I can see whether we are all on the same page.

I take it to be the plaintiff's starting point that there is a June 28th primary date fixed pursuant to the second decretal paragraph of Judge Sharpe's injunction in the Northern District on January 7, 2012, which is applicable unless and until New York enacts legislation resetting the non-presidential federal primary for a date that complies with all UOCAVA requirements and is approved by the Northern District of New York.

Is that an agreed proposition?

MS. FORD: Yes, your Honor.

THE COURT: OK.

So it seems to me we have at least the following questions: We now have an August 23rd primary date purportedly set on remand from the New York Court of Appeals by and the New York Supreme Court in Steuben County, and the questions whether there is a conflict between the Northern District date -- the June date -- and the August date set by the state court turns on whether the August date was first-enacted New York legislation, whether the dates for the August date comply with UOCAVA requirements, and whether the dates set by Judge McAllister in Steuben County have been approved by the Northern District under the 2012 injunction.

Do we agree so far, counsel?

MS. FORD: Yes, your Honor.

THE COURT: So I suppose a question is whether, within the meaning of the injunction in Albany 10 years ago, the resetting of the presidential primary by the Steuben County Court constituted the enactment of legislation by New York; second, whether the dates in the reset order comply with UOCAVA; and whether it has been approved by the Northern District. And I think we can eliminate the last question because, obviously, it hasn't been.

We agree that the other two questions are issues or not?

MS. FORD: Your Honor, can you restate your first

issue, please?

THE COURT: Whether the resetting of the primary date by the Steuben County Judge recently, the August date, is the enactment by New York of legislation resetting the presidential federal primary as required by the Northern District injunction in 2012.

MS. FORD: Your Honor, no, I do not think when Steuben County attempted to change the primary date that that was what this order was contemplating. As I read it, it says unless and until New York enacts legislation. That usually has a fairly particular meaning "enacts legislation." And, as defendants pointed out in their papers -- and they're correct on this -- New York did enact legislation in 2019 setting the federal primary as the fourth Tuesday in June. However, they never went back to Judge Sharpe to seek approval to get out of the injunction which is the second key contingent part of Judge Sharpe's order.

THE COURT: Yes, but we are getting away. You dispute whether Judge McAllister's order is or may be treated as an enactment by New York legislation. I understand that that's an issue. Do the dates in Judge McAllister's order comply with your UOCAVA requirements?

MS. FORD: Your Honor, technically on paper if you calculate it, it is theoretically possible to comply with UOCAVA with an August 23rd primary. However, I would point you

to the findings before Judge Sharpe when he put this injunction on place that said --

THE COURT: On a 10-year-old record.

MS. FORD: That is true, it is 10 years old, but your Honor I don't know that the facts on the ground have meaningfully changed that would make an August primary workable now.

THE COURT: I don't either, and it would seem to me as the applicant for some pretty extraordinary equitable relief the burden of showing that the dates set in Steuben County could not be achieved consistent with UOCAVA. I am just trying to get the shape of the battlefield here. We are preparing the battlefield. We know it is not approved by the New York court, I know your position there is a legislative enactment. Now, common ground, I think that decretal paragraph 13 of the 2012 order provides that the Northern District of New York retains jurisdiction in that case, among other things, to ensure additional relief as appropriate. Yes?

MS. FORD: Yes, your Honor.

THE COURT: And I take it it is also undisputed that the Northern District Court for the June primary dates in 2014, 2016, and 2018 altered the state's political calendar so that the elections -- the primary elections could be held on the June date. Yes?

MS. FORD: Yes. That's correct, your Honor.

THE COURT: And that wasn't even a matter of controversy.

MS. FORD: No.

THE COURT: And that Court, quite apart from the retention of jurisdiction in decretal paragraph 13, has authority within certain constraints to modify the 2012 injunction if it concludes that the requirements are satisfied, yes?

MS. FORD: Yes. I agree with that, your Honor.

THE COURT: OK. Now I will let you get started.

MS. FORD: Thank you, your Honor.

Your Honor, I just want to clarify what I believe we are here to talk about and what is at issue, what is not at issue. What is not at issue here is whether the New York Court of Appeals was right or wrong in striking down New York's Congressional maps, but what is at issue is what happens as a result of that order which left New York with no map in place to conduct its elections. I understand we likely need to talk about this June 28th primary date more, but if the Court agrees with us that that is the date unless Judge Sharpe says otherwise and New York gets approval from him --

THE COURT: Well, I don't see why that necessarily follows, does it. You have an order of a state court saying that the date is in August and you have a 10-year-old order that contains a formula to select the date and the formula

comes out to June 28th. That's what's undisputed, right?

MS. FORD: Your Honor, our read of this is that this was a permanent injunction setting the date that could only be changed with the Court's approval.

THE COURT: Well, I understand it says that, yes. So you have got a federal court order which, as you read it -- and I don't think is a controversy -- purports to set the date as June 28th and a state court order that says it is August 23rd.

MS. FORD: Yes, your Honor.

Traditionally, when federal and state law conflict on an issue like this, federal law would trump it, particularly where a federal election is at issue.

THE COURT: Well, why haven't you gone back to Judge Sharpe and sought a modification or appropriate relief that would enable New York to do what its Court of Appeals has said is necessary?

MS. FORD: That is a good question, your Honor.

THE COURT: I thought it might be.

MS. FORD: We are not parties to Judge Sharpe's -- that original lawsuit. The State Board of Elections is and, frankly, this case is about more than just the primary dates, it is about the fact that New York does not have a map in place.

THE COURT: Believe me, I understand that.

MS. FORD: I appreciate that.

And so, this is a very different case than what was --

THE COURT: If Judge Sharpe were to say -- in the unusual and certainly unforeseen circumstances -- I'm allowing the State to change the date on a showing that they can do so consistent with UOCAVA, this whole case vanishes into thin air; right?

MS. FORD: I agree with that, your Honor. If the State Board of Elections went back before Judge Sharpe and he signed off on the August 23rd primary date, yes, I think this case would go away but the status quo --

THE COURT: And if you went back to Judge Sharpe and he took the same action, that's also true, yes?

MS. FORD: Well, your Honor, we believe the June primary date is technically what is in effect given this order and that the state court order essentially has no effect given that it does conflict.

THE COURT: Suppose it is, right? And suppose the State goes ahead and makes the primary August 23rd and complies with UOCAVA. What happens next?

MS. FORD: Your Honor --

THE COURT: The State gets redistricted, UOCAVA notices go out, the absentee ballots are solicited. They come in, are tabulated, the election is held. What happens?

MS. FORD: Your Honor, I think that's a best case scenario but not likely, given the record that was before Judge

Sharpe.

THE COURT: I didn't ask you what is likely given the record before Judge Sharpe 10 years ago -- which can't possibly bear directly on what's going on now. It just can't. The facts were all different so address my question, please.

MS. FORD: Your Honor, if they did that I think they would be out of compliance with the federal court order.

THE COURT: And then what's going to happen?

MS. FORD: Your Honor, only federal courts can do anything about this.

THE COURT: So you think the Department of Justice will charge the State Board of Elections with contempt of court?

MS. FORD: I certainly hope that DOJ takes action. They're not here today, so we are.

THE COURT: I'm sorry. So what?

MS. FORD: We are here on behalf of UOCAVA voters who are among our plaintiffs.

THE COURT: Whose rights would be protected if the primary date was changed until August 28th and UOCAVA were complied with.

MS. FORD: Yes, your Honor. I just think that "if" is a very big question.

THE COURT: Well, you would have to prove to me that it can't happen. Not that maybe it won't happen, that it can't

happen.

MS. FORD: Your Honor, I realize the record before Judge Sharpe is 10 years old. The core elements, though, of conducting a primary, the steps that have to take place both before and after have not changed in those 10 years. After a primary the results have to be certified. Just in 2020, for example, there was a six-week delay in certifying the primary results before counties could put together a ballot for the general election. If that kind of delay happened under an August 23rd primary, or even anything nearly like it --

THE COURT: What evidence shows that that's likely to happen in 2022?

MS. FORD: Frankly, your Honor, I think the State Board of Elections would admit that recounts, certification disputes are very normal practice.

THE COURT: I imagine they might admit that they happened, on occasion. 2020 is in fact possibly not a very useful comparator for reasons that everyone in this room understands, not least being that it was a presidential election which the president announced would be fraudulent if he didn't win.

MS. FORD: Your Honor, I think the record before this Court also demonstrates that New York is struggling to comply with UOCAVA even under a June primary date. We have submitted to the Court an affidavit from one of our plaintiffs, Susan

Schoenfeld, who is a UOCAVA voter and who has told this Court that in recent years she has not gotten her UOCAVA ballot on time and neither has her friends living overseas and so, consequently, they have a regular practice of having to request emergency ballots from the federal government. And this has been --

THE COURT: So the State is responsible for foreign postal services, are they?

MS. FORD: No, your Honor. But that's why there is supposed to be that 45-day grace period. That's the exact reason for it.

THE COURT: Well, the 45-day grace period is almost infinitely variable under UOCAVA.

MS. FORD: Yes, your Honor, but it is a pretty wide grace period, and if ballots are not reaching --

THE COURT: Look. The statute says that the 45-day grace period applies only with respect to ballots that are requested at least 45 days before the election and there is a hardship exemption available to the State. Under 20302(g) that applies if the State can show that the time tables couldn't be met because of a legal contest.

Would you say we are having a legal contest in New York right now?

MS. FORD: Yes, your Honor. I think not the one that that statute is contemplating. I believe that statute is

contemplating when there is a necessary recount or an actual dispute over which candidate won the primary.

THE COURT: It doesn't say that.

MS. FORD: It doesn't say that though I think that was the intent.

THE COURT: Well, how am I supposed to get to that intent? By psychoanalyzing the members of the legislature or the Board of Elections?

MS. FORD: No, your Honor. But I would also say here that New York has not sought a hardship exemption and has not been granted one.

THE COURT: Not yet.

MS. FORD: Not yet.

THE COURT: They may not need it at all.

MS. FORD: I would say, though, that today --

THE COURT: There is an August election, they have plenty of time to request it.

MS. FORD: Your Honor, as we see the facts on the ground, what is in place today is Judge Sharpe's June 28th order and today is the day to certify the ballot if that election is going to proceed timely. I realize there are still questions that may need to be sorted out but to the extent that Judge Sharpe's order is still in effect, which I believe it is, this Court really needs to take action today if it is going to retain the possibility of New York complying with that order.

THE COURT: Well, this Court can't do anything today except freeze the status quo until a three-Judge Court can hear a preliminary injunction.

MS. FORD: Well, I believe your Honor could order the New York State Board of Elections to certify the primary ballot today. Under a TRO that would then be later heard by the three-Judge court.

THE COURT: You are looking for a mandatory injunction right, against a government agency, and you have to show clear likelihood of success, don't you?

MS. FORD: Yes, your Honor.

THE COURT: You better start convincing me that there is a clear likelihood of success.

MS. FORD: Your Honor, we realize that that is an extraordinary remedy but I think we have extraordinary circumstances here. I understand that is it possible that New York could go to DOJ, get the hardship waiver; could the State Board of Elections go back to Judge Sharpe and get permission.

THE COURT: Why couldn't you? You are here telling me that you are representing the interests of the UOCAVA voters and trying to ensure that they have the best possibility of casting meaningful ballots in the primary election, and you are telling me in order to do that you are unwilling to go to the District Court in Albany and ask them to permit the date set by the State of New York to go forward and to have the State

re-districted in a constitutional manner so that your clients will not only be able to cast ballots and have them counted, but to have them be cast in districts that are not, as a matter of law, malapportioned.

MS. FORD: Your Honor, I agree it would have been, in theory, a cleaner solution to go before Judge Sharpe. We were not parties to that lawsuit and there is no private right of action under UOCAVA to enforce the statute which we think potentially poses a real hurdle for us to enforce that and that is why we are here.

THE COURT: But you wouldn't be asking him to enforce the statute, you would be asking him to modify his injunction or to grant limited relief under the decretal paragraph and you would undoubtedly, I suspect, be supported by the State Board of Elections.

MS. FORD: Your Honor, it is in our client's -- my plaintiffs' interest -- that New York conduct its elections as early as possible so that they will receive their ballots on time. They do not believe they will receive their ballots on time for the August primary.

THE COURT: Let's be frank. This is a Hail Mary pass, the object of which is to take a long shot try as having the New York primaries conducted on district lines that the State says are unconstitutional.

That's what it is. No?

MS. FORD: Your Honor, with all due respect, I believe that New York has put itself in this position in striking down a map and having no remedy on the date by which they are supposed to certify the ballot.

THE COURT: So you really are contesting the decision of the New York Court of Appeals.

MS. FORD: I am not, your Honor. I am not contesting the substantive decision. I am -- not contesting -- I am stating that they had a responsibility when they did that to set an order, a remedy that would allow New York to conduct timely elections and they failed to do that. And under a host of federal precedent that I can give you, when a state fails to do that, federal courts have to step in.

THE COURT: OK. Anything else?

MS. FORD: No, your Honor. Not at this time.

THE COURT: Where is the irreparable injury if nothing is done until the three-Judge court can consider the injunction motion?

MS. FORD: Yes, your Honor.

So my understanding is that if the New York State Board of Elections doesn't start that process today of certifying the ballot for a June primary, these deadlines just slip by and slip by and at some point it is not feasibly -- it is not administratively possible to conduct a June primary and then we just slip into the land of an August primary. And so,

if this Court were to issue a TRO at least stating that the map that all the candidates petitioned under, that voters signed petitions under, that is was, until a few days ago, in place to be used in New York and essentially is already loaded up and ready to go, if all this Court does is say you need to keep moving ahead and assume there is a June election, if the three-Judge Court agrees with you then great, New York will be in a good position to conduct that June primary. If the three-Judge Court disagrees with this Court, the Steuben process will have continued. We are not asking this Court to tell Steuben County that it has to stop everything it's doing and the State could proceed with an August election. But I think if this Court lets deadlines slip by --

THE COURT: How is the public interest served by my issuing a TRO today that, no matter what I say, will be construed as at least requiring the preservation of the possibility of a June 28th primary on the basis of unconstitutionally drawn district lines while the state's position is it is not a June 28 -- June whatever the date is -- primary, it is an August 23rd primary, and that's what we are preparing for and we are going to be redistricting the state in the meantime. I'm hard pressed as to see how the confusion created by setting that process in motion serves anybody's interest.

MS. FORD: Your Honor, I think all it would be is what

you said it is -- preservation -- so that New York could conduct a June primary if that is what it is supposed to do, what we believe it is supposed to do. I realize that the ultimate remedy we are seeking is not ideal. I would say there are no ideal remedies on the table at this point.

THE COURT: It is not just that it is not ideal, it is unconstitutional and it is unnecessary.

MS. FORD: Your Honor, I agree it is unnecessary. I think we should have never come to this point. I think that New York had time.

THE COURT: As of today it's unnecessary.

MS. FORD: Your Honor, I respectfully disagree, but.

THE COURT: OK.

All right. I will hear from the other side.

MR. QUAIL: Good morning, your Honor. I'm Brian Quail of the New York State Board of Elections.

THE COURT: Question number one for you, sir.

MR. QUAIL: Yes, sir.

THE COURT: Why haven't you gone back to Judge Sharpe?

MR. QUAIL: We should have.

Your Honor, one of the things I would --

THE COURT: How fast can you do it?

MR. QUAIL: One day.

THE COURT: OK.

MR. QUAIL: Judge McAllister's order came down on the

29th. This action was commenced a few days ago. And in contemplating whether or not to go forward, we do think there was some ambiguity as to whether or not that application would be necessary and we also felt that if we had proceeded while this matter was proceeding in front of your Honor, that that may have been offensive to this Court in terms of sorting out some of these issues.

The context of Judge Sharpe's order, your Honor, was a September primary under state law that was clearly not compliant with UOCAVA. The primary was actually held typically just days before the 45 days before the general election deadline to send the ballots out.

THE COURT: And that was 2012.

MR. QUAIL: Yes, sir. And so, the State Board of Elections was sued by the Department of Justice and they prevailed in getting Judge Sharpe to make an order initially that the state's primary date in September was not UOCAVA-compliant. Judge Sharpe asked the State of New York, via the New York State Board of Elections, to submit a singular plan for a UOCAVA-compliant primary. The State Board of Elections did not accomplish that; we submitted two plans because the board was split.

The Department of Justice did not take a position as between the August plan and the June plan, but the Judge looked at both plans and determined that, on balance, the June plan

was the better one and it culminated in the order that your Honor discussed, at length, with counselors for the plaintiffs.

Where we find ourselves today is clearly a situation that, 10 years on, simply would not have been anticipated by Judge Sharpe. Indeed, the State of New York, after three cycles of needing judicial intervention by the Northern District, actually in 2019 enacted the fourth Tuesday in June as the singular state primary for federal and state elections and proceeded in 2020 on the basis of that legislation with no intervention from the federal court required at all.

So, having this permanent June primary in state law, the state had sort of moved on from this order except not so much because of the very odd circumstance that we find ourselves in presently where we need a different primary date in order to comply with the mandate of the Court of Appeals to conduct Congressional elections on constitutionally sound lines. In accordance with that requirement, the Steuben County Supreme Court ordered an August 23rd primary and specifically ordered that ballots for that primary be sent in compliance with the MOVE Act. So the primary itself would be MOVE Act-compliant and the Court of Appeals, in its order, specifically mandated that in implementing any remedy, that all provisions of federal law -- and they single out UOCAVA -- must be complied with. The state is committed to that.

The deadline to transmit ballots before the general

election, your Honor, under federal law, is the 24th day of September. The state is committed to completing its post-election processes in time to meet that deadline without making a hardship waiver and, indeed --

THE COURT: Don't you think it might be a good idea to try to wear a belt and suspenders and make such an application?

MR. QUAIL: I will tell you, your Honor, we have learned since 2012 that it is fruitful to be in communication with our colleagues in Washington on all matters related to election administration that can threaten, potentially, the transmission of UOCAVA ballots. When we see a scenario developing, it is our protocol to talk to persons in the voting rights section of the Department of Justice and seek their counsel. Technically the application for a hardship waiver goes to the Department of Defense but the Department of Justice is consulted on those instances.

Our plan at the State Board is to monitor all activities related to post-election canvassing and ensure that they unfold in a manner which will ensure the full and complete rights of all UOCAVA voters under both federal and complimentary and consistent state law. That is our commitment, that is what we do year in and year out, and we take the responsibility incredibly seriously, as do all of New York's County Board of Elections. And in this context, my colleague for the plaintiffs mentioned an instance where we had

a six-week post-election count in one congressional district. As your Honor may well be aware, the time to do work will often equal the work to be done. In the context of a June primary, it is absolutely true there is more time to deal with post-election activities, exigency is less. So on that particular matter it took six weeks. There was six weeks. In the end, as I recall, that matter was resolved in August and there was no issue with ballots flowing in a timely manner for that congressional district. If that particular recount was under tighter constraints, then the Court would need to move more quickly. And if for some unforeseen and, in our view, likely unacceptable reason it took too long, we would be watching it as it unfolded and would seek the appropriate hardship waiver if the Court ordered an injunction against sending out ballots in a timely manner. That's our job and we take it very seriously.

I would very much, your Honor, like to point out in the declaration of the UOCAVA voter Susan Schoenfeld which was mentioned by my colleague when she argued, that there is no statement in that affidavit that alleges any violation of UOCAVA by the State of New York. She simply says she didn't get her ballot. She did not allege that it was requested before 45 days, she did not allege that it was not timely transmitted. There is no allegation whatsoever that points out the reason why she did not get her ballot. And as your Honor

pointed out, there are instances where a ballot transmitted, by mail, by the County Boards of Elections in New York, will sometimes not get to a voter and it has absolutely nothing to do with the failing of the New York State Board of Elections nor anything to do with a violation of the 45-day transmittal. Indeed, we certify to the Department of Justice that we have fully complied with the transmittal -- the 45-day transmittal requirement and if there is any deviations for errors that a County Board of Election or something like that, we report to the Department of Justice any instance where the state has failed to transmit a UOCAVA voter ballot timely and counsel with them for any remedial actions that should be taken to remedy those situations. This is a paramount and important function of the election administration system in New York to ensure that UOCAVA is complied with, and there is no allegation here that we have not done so.

THE COURT: Counsel, would your client commit to applying to Judge Sharpe for leave to change the primary date and supporting an application for that relief by the plaintiffs in this case?

MR. QUAIL: We would commit, your Honor, to making that application by close of business tomorrow.

THE COURT: OK.

MR. QUAIL: I just want to make sure I understood what I just committed to because there were a few words that you

said that I didn't quite hear.

We would be committed to making an application to Judge Sharpe in relation to the August 23rd primary date and anything that he would need to see from us to ensure that he was satisfied that the provisions of federal law under UOCAVA, and otherwise, are complied with.

THE COURT: And would you consent to the intervention of these plaintiffs before Judge Sharpe on such an application?

MR. QUAIL: I -- we would, yes.

THE COURT: Anything else?

MR. QUAIL: No, your Honor.

THE COURT: Nobody has formally moved to intervene but in the interest of time I will hear from Mr. Moskowitz, without prejudice, to ultimately acting on an intervention motion.

MR. MOSKOWITZ: Thank you, your Honor.

Before I go up, two things. One is we did, as of last night, formally file for intervention, and also I would respectfully request -- and I don't believe this is at all different from some of plaintiffs' counsel -- I request that Mr. Tseytlin, my colleague, be permitted to speak. His *pro hac* application is in process, we just didn't have time to get every certificate required.

THE COURT: Yes, sure.

MR. MOSKOWITZ: Thank you.

THE COURT: OK.

Mr. Tseytlin.

MR. TSEYTLIN: Thank you, your Honor. I will be brief. I just want to make three brief points.

First, I think it is clear that their TRO application is now moot. We have pointed out in our opposition that they have only challenged -- and there are two counts in this case -- the 2012 map which has already been enjoined in state court. They seemingly --

THE COURT: But it is not moot, is it? Because it may be moot as to those two specific claims but the prayer for relief asks for an order directing the defendants to certify a primary ballot under a plan adopted by this Court and so forth, and given the factual allegations of the complaint, I'm not sure that that's not still alive.

MR. TSEYTLIN: Well, your Honor, in order to obtain a TRO they have to have likelihood of success on their claims. Their two claims are moot. Now, the reason I say their TRO is now procedurally defective is because --

THE COURT: Look. I don't know that this matters all that much here but the complaint, at least arguably, alleges facts as distinguished from legal theories and some specific claims for relief that might support an application for an order along the lines I just indicated to you, and my obligation is not only to rule on the legal sufficiency of the specific claims they make but, in order to dismiss the case, I

have to be clear in my mind -- and I can't dismiss it anyway --

MR. TSEYTLIN: Yes.

THE COURT: -- I and the three-Judge panel would have to be clear in their minds that given the facts alleged, the request for an order requiring certification of the ballots for the election -- maybe ballots is not the right word in this context but you know what I am driving at, the primary ballot -- that's theoretically alive, isn't it?

MR. TSEYTLIN: Well, your Honor, the reason -- I will answer that but the reason I raise this point only because they attempted to amend their complaint this morning. They sought the TRO in their prior complaint. Their new complaint moots the TRO, it is binding Second Circuit case law. So that's the only point I was trying to make, is that the TRO request is now procedurally gone because they amended their complaint after filing their TRO.

THE COURT: Well, I haven't seen the amended complaint and I don't know what it says therefore. But unless they've withdrawn the request for an order such as I have recapitulated to you, I don't see how it is moot.

MR. TSEYTLIN: Your Honor, after this hearing *Shields v. Citytrust*, 25 F.3d 1124, 1128, the amendment of a complaint renders the PI sought under the prior complaint moot.

THE COURT: So what you want me to do here, where there is allegedly this temporal emergency, is now to have them

file a new TRO application based on the second complaint and start this all over again so that you can come up from Washington -- or wherever you come from -- and we can all do this again. Is that about the size of it?

MR. TSEYTLIN: No, your Honor. I am just pointing out a jurisdictional defect in there but I understand your Honor's point. Let me just move on to my two other brief points.

THE COURT: Always a good idea to get to what matters.

MR. TSEYTLIN: Second, they are asking for your Honor to do something today and they said just to put a pause that would create chaos in what is currently an orderly system. The orderly system is that the Steuben County court will adopt a remedial congressional map by May 20th. Everybody knows that that will be the map that will govern the election and everyone is getting ready for that. If there is any sort of order from this Court there is going to be chaos. No one is going to know if there is going to be a primary on the 28th in August, what's going to be the map, there will be emergency applications to the U.S. Supreme Court. It would turn an orderly process into a chaotic process.

Finally -- and I will be brief on my final point -- is their only authority for what they're asking your Honor to do, their cited authority, is what the three-Judge panel is currently doing in Ohio. What the three-Judge panel did is, in Ohio, it gave the State of Ohio until the 28th of May to get

its act together and have a constitutional map that the State enacts which is the state's responsibility and the right under the U.S. Supreme Court decision of *Growe*. That's the 28th.

The Steuben County court will adopt a constitutional map that can be used for the 2022 elections by the 20th, eight days before what their lead authority has allowed another state to do. Clearly there is no equity that would support their request.

That's all that I wanted to say to your Honor.

THE COURT: Thank you.

Does plaintiff wish to be heard in rebuttal in any respect?

MS. FORD: Yes, your Honor. Very quickly.

THE COURT: Briefly.

MS. FORD: Your Honor, I have just a few short points.

I believe the State of New York when they say that they fully intend to comply with UOCAVA. I don't think any elections official intends to violate the statute but, in reality, that is what happened before and can happen. Just to walk you through some of the things that need to happen before -- or in between a primary and a general election there needs to be a canvass, a re-canvass, an audit, counties need to design the ballot, they have to translate that ballot into all the languages that are required under the Voting Rights Act, they have to proof the ballot, send the ballots to the

printers, get those ballots back, stuff them and send them out to voters. That is a lot of work to do. And, even if elections officials don't intend to violate UOCAVA, they very well may under the schedule that New York is attempting to proceed under.

Your Honor, I also say that -- I mean, I can tell that this Court is not completely comfortable with the remedy that we have suggested. I don't think any Court relishes the idea of instituting a map or suggesting that a state should go forward on a map that has been invalidated but that is, in fact, what is happening in multiple states all around the country when that state has run out of time to redistrict. And, I do think that the State of Ohio is a very good example here. In that three-Judge Court there was an evidentiary hearing there where the Court took in tons of testimony about what the state could and could not do. It ultimately decided that --

THE COURT: Where are your witnesses?

MS. FORD: Your Honor, we would -- again, we did not bring witnesses here today to prove to you anything about what New York can or cannot do because we think that the June 28th primary order is in effect. It is just plainly in effect. And so the burden is on the State of New York to go to that Court and prove that it can get out of that order. I think the burden is on them to do that.

So, your Honor, at the end of the day, if you are not willing to grant our TRO, would I ask that you at least order the New York State Board of Elections to go do that and go seek that approval and I think it would be --

THE COURT: I have just got a commitment on the record that they're going to do it by tomorrow.

MS. FORD: Great. Well, we appreciate that.

In the interim, given that that process is likely to take at least a few days, I would think, I think it would be prudent for this Court to order the New York State Board of Elections to proceed so that if Judge Sharpe does not give them permission to change the primary, that New York is in a good position to conduct its June primary.

THE COURT: If Judge Sharpe does not give them permission you have an appeal to the Court of Appeals.

MS. FORD: OK. Thank you, your Honor.

THE COURT: Thank you.

I have before me a motion for a temporary restraining order and a preliminary injunction in relation to the redistricting of New York's congressional districts for the congressional election in 2022. New York, in 2014, I believe -- but I may stand corrected on the date -- adopted a constitutional amendment setting up a procedure for congressional redistricting and, indeed, possibly state districts as well but that's extraneous to this application,

and I think it is not unfair to say that the constitutionally required system for bipartisan redistricting didn't work as it was supposed to work and, in consequence, litigation began in the state courts and last week, as everyone knows, the New York Court of Appeals held, possibly to the surprise of some people but nonetheless held that the congressional districts that ultimately were adopted by the legislature and signed by the governor were not constitutionally adopted and I believe also not constitutionally apportioned.

I think I am right about that. Am I, counsel? Yes. I'm seeing affirmative nods from counsel.

The Court of Appeals sent the case back from whence it came to Justice McAllister in Steuben County, New York, with instructions to adopt a plan, probably for an August primary and consistent with federal requirements, including in particular a statute with the snappy acronym of UOCAVA, which is admirably intended to ensure that overseas and military personnel otherwise entitled to vote are able to apply for, receive, cast, and have counted, their votes in federal elections. Everybody agrees that's the objective to be achieved if it can be. The New York Court of Appeals order made clear that in whatever the Steuben County proceedings ultimately adopt, those federal guidelines are to be complied with.

Now, we indulge in a little bit of history.

Years ago New York, according to the Department of Justice, was not wholly successful in discharging its obligations under UOCAVA and the related statute. The Justice Department brought suit in 2010. The result of that was an injunction issued by the U.S. District Court in the Northern District of New York, specifically Judge Gary Sharpe, that was, in almost every respect, aimed at the 2012 elections. In as much as the parties could not agree on a plan for the future, a paragraph of Judge Sharpe's order provided that in future elections in even numbered years -- and I refer to the second decretal paragraph, and the title and docket number of the case is *United States v. State of New York*, 10 civil 1214 -- in future non-presidential federal elections in even-numbered years, the primary date would be the fourth Tuesday of June, unless and until New York enacts legislation resetting the non-presidential federal primary election for a date that complies fully with all UOCAVA requirements and is approved by that court.

Over the years, the State proceeded with the specified June dates but, in fact, it repeatedly went back to Judge Sharpe for alterations in the state's political calendar and other phases of the election law, to facilitate holding those primary elections in a manner consistent with state law, and without exception, Judge Sharpe granted all of those applications. Concededly, they were all unopposed, but they

were all granted and they are suggestive of the availability or at least possible availability of accommodations with respect to the new primary date that in consequence of the Court of Appeals decision last week Judge McAllister, in Steuben County, has adopted.

I would note also in respect of Judge Sharpe's 2012 injunction that paragraph 13 provides that his court retains jurisdiction to ensure additional relief, as appropriate, so it is perfectly clear that it is open to both sides to apply to Judge Sharpe for whatever relief they think is necessary in order to accommodate what the state courts have done, and the June primary date that currently applies under Judge Sharpe's 10-year-old order, rendered in entirely different circumstances on an evidentiary record which is 10 years or more old, and directed to achieving compliance with UOCAVA which would be the objective of an application to him for leave to have the state operate with respect to the state court set August date, everybody agrees on what the goal is and the question is how to make it happen. And, obviously, I don't speak for Judge Sharpe, we all paddle our own canoes, quite appropriately, and he will do what he thinks is right and necessary. And, the State Board of Elections has committed to applying to him for permission, no later than tomorrow, to proceed with the August date. They have consented to the intervention of the plaintiffs in this case to be heard on that application. The

plaintiffs here have made what, in my mind, are almost wholly unsubstantiated claims, that there would be no way to comply with UOCAVA in connection with the August date set by Judge McAllister.

There is a phrase that I have heard used in relation to the tech industry, the phrase is airware. You simply assert that you have a product coming out but you don't actually have the product. That is kind of an apt characterization on the plaintiff's position on UOCAVA compliance vis-à-vis an August primary. Did the State of New York, in the years prior to 2012, miss deadlines? I imagine they did. I think the record before Judge Sharpe -- though I have only had this case for 24 hours and I'm not intimately familiar with the record in that case -- probably supported that. Does that mean that in 2022 the State can't comply under an August primary date? It is a fallacy. It is complete fallacy. It just doesn't follow. Maybe the plaintiffs are right, maybe they're wrong, but there is no evidence before me to suggest that they're right.

Now, not only is there the availability of an application to Judge Sharpe, which would entirely eliminate this problem were he to see things the way the Board of Elections indicates that it will ask him to see things, there is another course that is still open to the State and the other course comes under UOCAVA, and specifically 52, United States Code, Section 20302. 20302(a)(2) requires mailing of absentee

ballot applications at least 30 days before the election. If the election were to be held on June 24, that date would be May 25th. I gather there are some other things that would have to happen first before that took place, but if the mailing would have to happen on May 25th for a June 24 primary, there is oodles of time to comply with the 30-day mailing of applications in advance of an August date. Then the statute goes on to provide, in 52302(a)(8)(B), that except as provided in 20302(g), ballots requested 45 or more days before an election -- and if we were operating on a June 24 date that would mean before May 14 -- must be mailed at least 45 days before the election. Ballots for requests received less than 45 days before the election must be mailed -- and I am summarizing briefly what the statute says -- essentially, as required by state law and as soon as practicable. But all of that is subject to the exemption in 20302(g) which provides for the availability, in an appropriate case, for a hardship exemption from this timetable at the behest of the State if the State convinces the presidential authority that it can't meet those timetables in a number of circumstances, most salient of which is if that the reason for not being able to reach or to comply with the timetables is based on the existence of a legal contest. That, it seems to me, obviously has potential application here because we have had a legal contest going on for some time in the state courts and it continues and we now

have this case going on and it is -- there is just no clear reason to believe that the UOCAVA requirements can't be met for the August date. It is far from clear that the Northern District of New York would not accommodate the August date. And, the Northern District of New York has ample jurisdiction and availability to do that.

So in all of the circumstances, I'm going to deny the TRO. Now, in *Favors v. Cuomo*, 881 F.Supp.2d 356, another redistricting case, the Court wrote that in order to justify a preliminary injunction, a motion must demonstrate irreparable harm absent injunctive relief, either a likelihood of success on the merits, or a serious question going to the merits to make them a fair ground for trial with the balance of hardships tipping decidedly in the plaintiff's favor, and that the public's interest weighs in favor of granting an injunction. The plaintiff agrees that that's the standard on a TRO application. I should note also that in footnote 8 of the *Favors* decision, the three-Judge Court there wrote that it was hardly clear that the movants could rely on the serious questions prong of the test because a party seeking to enjoin governmental action taken in the public interest pursuant to a statutory or regulatory scheme cannot rely on that branch even if it seeks to vindicate a sovereign or public interest. That doubt was well-founded and I think is now the law in the Second Circuit and has been for some years. But the standard doesn't

really matter here because the plaintiff, in my view, failed the likelihood of success or on substantial questions.

In either event, whether the right word here is ripeness or not, it gets at one concept that is critical, and that is that without knowing whether the Northern District injunction in *United States v. State of New York* would in fact stick to a June date, I don't see how there is anything that this Court can properly decide. If that Court accommodates the State's new schedule, there is really no question here, I think.

So the plaintiffs' fail on the likelihood of success standard. They fail on that standard for another reason and it is one to which I alluded already. It seems to be critical to their argument, at least judging by what I heard this morning, that despite all of the words in the Court of Appeals -- and I am speaking of the New York Court of Appeals decision -- and, I believe, in Judge McAllister's subsequent order about having a redistricting plan adopted that would satisfy all of the UOCAVA requirements and the other federal requirements that may apply in connection with an August primary the State would not satisfy them. There is absolutely no persuasive evidence before me to suggest that that's true. There is just no evidence. So, they fail the likelihood of success standard for at least two reasons.

Now let me say a word about the public interest. I

yield to no one on the importance of the right to vote and the right to have every legal vote counted and the principle of one man, one vote, and that's what both the Courts of the State of New York and the federal courts have sought to achieve, lo these many years of judicial involvement in redistricting. They're likely to be involved in it for years to come now that the Supreme Court has taken the view that they're out of this business for good or for ill. But what the plaintiffs are really seeking to do is one of two things -- or maybe both. What they really want in this case is sought along the following path of reasoning:

First, the June 24th primary is carved in stone. Nothing can change it. It came down on a stone tablet in the middle of the Negev or wherever Moses brought the tablet down from on high. They say that there is not enough time now to hold that primary on districts drawn by this Court which, if the timing were different, would be possible and it has happened before, but there isn't enough time and I surely do agree with that. And therefore, they say, this Court should order that the primary be held on June 24th because that's immutable and that it be held on the improperly gerrymandered districts -- gerrymandered as held by the New York Court of Appeals which is the last word on state law and it was done on state law grounds -- on the gerrymandered districts that are illegal. And if I got the arithmetic wrong I will correct it

in the transcript. And they want to do this not only ignoring that their requested districts were improperly gerrymandered districts, they want to do it without any regard for the chaos that they are asking me to trigger. If I order the Board of Elections to certify the ballot based on the gerrymandered districts for the purpose of holding a primary on June 24th and the State is proceeding, as it has every right to do and as the plaintiffs concede they have the right to do, is engaged in a redistricting of the state with a view to an August 24th primary, what are people supposed to do? What are candidates supposed to do? What are voters supposed to do? What are all the people who are concerned with elections supposed to do?

Now, I would be hard pressed to imagine a scenario that would cast into greater disrepute the rationality, the fairness, the consistency of the holding of elections in this great country than to precipitate that and it is against the public interest. It is decidedly against the public interest. And I'm simply rejecting the application and it also brings disrepute on the judicial system. There is a perfectly orderly way to deal with this problem, it is to go back to Judge Sharpe and, if need be, to the Second Circuit. I doubt very much it will be necessary but that's, as I said, Judge Sharpe's canoe to paddle.

And if I could just add a personal note to this, it is 102 years since my father, then a Ukrainian refugee, came to

this country. And if there were two things that he drilled into my head they were, apart from the usual hard work and all of that, the two political things: Free, open, rational elections; respect for the courts. The relief I am being asked to give today impinges, to some degree, on the public perception of both and I am not going to do it.

That is my ruling. I may conceivably write something, but once I read the transcript I may conclude it is not necessary to do that. I reserve the right to make grammatical and other error corrections in the transcript but that will be transparent if I do that.

Did I get any facts wrong?

MR. TSEYTLIN: So, your Honor, I don't know if you meant to say malapportioned and then do it numbers -- the lines were declared substantively unconstitutional for being -- for being unconstitutional gerrymanderers, not being malapportioned in terms of the number of voters per district.

THE COURT: Does everybody agree with that?

MR. QUAIL: I do. Yes.

THE COURT: OK. I will correct that in the transcript. But it is clear that they are malapportioned, is it not, by virtue of the fact that New York only has 26 representatives?

MR. TSEYTLIN: So the map that was --

THE COURT: Strike that.

The legislature's map has 26 -- right. OK, I take your point. You are right, they were unconstitutional procedurally and they were politically gerrymandered.

MR. TSEYTLIN: That's right, your Honor.

THE COURT: That's the correct statement. I accept that.

OK. Anything else?

MS. FORD: No, your Honor.

MR. QUAIL: Not for the State Board, your Honor; no.

THE COURT: Did I misstate any principle of law that ought to be corrected while I can?

MR. QUAIL: No, your Honor.

THE COURT: No? OK.

Look. I appreciate nobody wanted to come to New York. Here we are, the greatest city in the world and nobody wanted to be here, and as somebody who has, for various reasons for a great many years, gotten back and forth without any material difficulty at all between New York City and Washington and New York City and Albany, I thought this case was important enough that you all ought to be here. I know it was inconvenient, but there is nothing like being in a face-to-face situation.

Thanks, folks.

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Exhibit 8

DECLARATION OF CATHERINE CROFT AS THE DEMOCRATIC COMMISSIONER OF THE PUTNAM COUNTY BOARD OF ELECTIONS

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am over the age of 18, have personal knowledge of the facts stated in this declaration, and can competently testify to their truth.

2. I am the Democratic Commissioner of the Putnam County Board of Elections. I was appointed to this position on January 1, 2014.

3. County and City Elections Commissioners and their staff have the ultimate responsibility for complying with the 45-day pre-election ballot transmission requirement of the Uniformed and Overseas Absentee Voting Act, as amended by the Military and Overseas Voter Empowerment Act (collectively, "UOCAVA").

4. I believe that if New York delays its federal primary election to August 23, 2022, the Putnam County Board of Elections will have difficulty meeting the 45-day deadline for the general election that federal law imposes (or the 46-day deadline that New York law imposes) for sending ballots to overseas and military voters. If there are any close elections in the primary that trigger the new automatic manual recount law or result in any post-election litigation, or there are other delays, it will be impossible to meet the UOCAVA deadline. I am equally concerned that this problem would plague all of the county and city boards of elections in the state ("Boards"), especially ones that are in counties that are more populous than Putnam County.

5. An August 23 primary date puts extreme pressure on an already tight deadline for transmitting absentee ballots to overseas and military voters. Before a Board can transmit absentee ballots to UOCAVA voters for the general election, many steps need to occur.

6. First, Boards must count the primary election ballots in a process known as the "canvass." Boards are not allowed to tabulate any ballots, including absentee or early voting ballots, until 9 p.m. on Election Day. Thus, there is no way to get a head start on this counting process. Further, Boards must count absentee ballots that are postmarked by election day that arrive until the seventh day after the election. If an absentee ballot is rejected for certain minor issues, a Board must inform the voter, by mail, of the voter's right to cure the defect and have the ballot counted. The voter then has seven business days to cure their ballot starting from the date of the Board mailing the cure notice. The statutory deadline for finishing the canvass is 13 days after the primary.

7. Along with the canvass, the Board must audit 3% of the voting machines that were used in the election. This audit must also be completed within 13 days of the primary election.

8. After that, the Board must conduct a recanvass by the 20th day after the election. If the margin of an election following the recanvass is 20 votes or less or 0.5% or less, then the Board must conduct a manual recount. Further, in a contest where 1 million or more ballots have been cast and the margin of victory is less than 5,000 votes, the Boards involved must conduct a manual recount. Where two or more counties are impacted by a specific election, the state board of elections must determine whether a recount is triggered based on the recanvass results of all the Boards of the counties involved. Additionally, candidates could petition a court for a recount even if the margin is greater.

9. Following the canvass, audit, and recanvass, the Board must send certified election results to the State Board of Elections so that the State Board can determine the winner of any elections involving districts that cross county lines. Only once the State Board certifies the results does the Board know who will be on the ballot. The State Board must certify the candidates on the general election ballot by the 55th day before the general election.

10. Only once the Board knows which candidates will be on the general election ballot can it design absentee ballots. Because of overlapping political boundaries, boards usually have to design several different ballot styles. For example, if everyone living in a county resides in the same Congressional district, but there are two State Senate Districts and three Assembly Districts crossing through the county, the Board needs to make sure it has ballots with each possible ballot permutation. Putnam County currently has 86 ballot styles. It usually takes a few days to design and proof ballots, and it will take longer if anything is wrong with the designs.

11. The Board then has their printer print test deck versions of every ballot, which takes a day to two days, and make sure the machines can read all the test ballots properly, which takes a few days even if there are no flaws with the ballots. The Board then sends their ballot order to their printer of the ballots that will go to the voters.

12. The Board must also perform a similar process on absentee ballots, conducting an absentee ballot test deck audit. This audit involves taking voted absentee ballots and runs those through the absentee ballot scanner to make sure those votes are accurately counted. Depending on the amount of ballot styles, this process takes at least another day to complete. After all this work is done, the Board may deposit the absentee ballots in the mail for UOCAVA voters.

13. UOCAVA voters' ballots are also uploaded to a secure internet site where the voters can download the ballot and envelopes with instructions on how to vote the ballot and make the envelopes (outer and inner). The inner ballot envelope needs to be signed and sent back to the Board. In the past, when ballots have changed (for example, a Supreme Court race one year), we have had to issue a new ballot. Having to make any last-minute changes to ballots after they were initially issued can lead to confusion for voters.

14. In addition to preparing to transmit UOCAVA ballots, the Board will be recruiting and training poll workers, securing polling sites, registering voters, setting up and

testing electronic poll books, obtaining election supplies, and preparing for early voting. The Board only has 10 fulltime staff members, 2 part-time employees, and 2 technicians who help with discrete projects. These competing needs detract limited resources and staff time from UOCAVA compliance.

15. The UOCAVA deadline under federal law is September 24, and New York requires such ballots to be mailed the day prior. Thus, the deadline this year is September 23. That leaves Boards only 32 days from the August 23rd primary election to complete all the steps just described. The State Board does not even have to certify which candidates will be on the ballot until September 14, providing just 9 days to design, print, and mail ballots. Given this short time frame, it will be difficult for the Putnam County Board of Elections or any Board to meet the deadline for transmitting UOCAVA ballots. In the event any delays to the process described above occur, including any administrative errors, and especially manual recounts or post-election litigation, it would be impossible to meet the deadline. Although there is no way to predict specific delays, in my experience, elections rarely go perfectly.

Executed on this 6th day of May, 2022.

Catherine Croft

Catherine Croft