

**Written Testimony of
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**Submitted to the Senate Standing Committee on Elections
at the Hearing on Reviewing Elections Administration and
Voting Rights in New York State**

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The Brennan Center appreciates this opportunity to offer our recommendations for improving election administration in New York. We are a nonpartisan, nonprofit law and policy institute that has worked for decades to improve election systems and voter service at the local, state, and federal levels through research, collaboration with voters and community-based organizations, and close partnerships with election officials.

Earlier this month, the Brennan Center, in conjunction with the Let NY Vote coalition, published *How to Fix the New York City Board of Elections*,² which I have attached at the end of this statement. My testimony summarizes the findings of this year-long study, which compares New York City's election agency with more than a dozen of the nation's largest metropolitan election agencies. What we found is striking and warrants immediate action by this Legislature. The New York City Board of Elections (the "City Board") is an extreme outlier in five key respects that cause it to fail repeatedly: the City Board's composition; how leadership is appointed, and staff are hired; training; public information-sharing; and removal authority. For over a century, its structure and procedures have bred deep dysfunction and a resistance to accountability.

We recommend solutions that the Legislature can and should enact immediately to address these structural and operational flaws. They include:

- Reduce the number of commissioners from ten to four.
- Change the process for appointing commissioners to ensure transparency and vetting for appropriate qualifications.
- Require nationwide searches for executive staff and public, detailed, and broadly disseminated job postings for all agency vacancies.
- Strike the current requirement in state statute that employees throughout the agency reflect equal representation of the two major political parties.

¹ The Brennan Center is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. The opinions expressed in this testimony are only those of the Brennan Center and do not necessarily reflect the opinions of NYU School of Law.

² The report is attached as Attachment A. Brennan Center for Justice, *How to Fix the New York City Board of Elections*, September 9, 2021, https://www.brennancenter.org/sites/default/files/2021-09/2021_08_NYC_BOE_Reform_Final.pdf.

- Require that commissioners and executive staff complete election law and administration training, and improve rank-and-file trainings.
- Give locally accountable elected officials the power to remove commissioners, with review by the courts for just cause.
- Require the agency to track and publicly report key voting and election administration data in an accessible, frequently updated form.
- Establish a working group that includes state and local officials and boards of elections representatives to provide feedback on and plan implementation of legislation.

Faulty election administration is also a problem in many other parts of this state. We are in the process of examining practices, structure, and performance at local boards of elections throughout New York and expect to publish additional recommendations in the next few months. Preliminarily, we conclude that many of our recommendations for improving the City Board should be applied statewide, including: public and widely disseminated job postings; rigorous searches for agency leadership; thorough and transparent vetting of commissioner candidates; training requirements for leadership; granting removal authority to locally accountable officials; public information-sharing standards; and data transparency requirements.

Curing dysfunction at local boards of elections is essential to fulfill the promise of the democracy reforms this Legislature has enacted in the last few years. Since 2019, New Yorkers have welcomed early voting, automatic voter registration, and small donor public campaign financing. This fall they will vote on two historic constitutional amendments that would enable election day voter registration and no-excuse absentee voting.³ These pro-voter policies, coupled with quality implementation and administration, are critical for boosting New York’s ranking from among the worst states for elections performance.⁴

I. Election Failures in New York City have Local and National Consequences

New York City’s elections impact millions of voters within its five boroughs and beyond. The City Board serves more than 5.5 million voters, or 41 percent of all registered voters in the state.⁵ Too often, problems occur under the agency’s watch that hinder or ultimately disenfranchise voters. In 2020, voters waited in hours-long lines during early voting. Widespread voting machine breakdowns created poll site chaos in 2018. Five years ago, illegal voter roll purges left

³ Brennan Center for Justice, *Guide: New York State’s New Small Donor Public Financing Program*, December 18, 2020, https://www.brennancenter.org/sites/default/files/2020-12/12.18.20%20NYPF%20explainer%20FINAL_0.pdf; Brigid Bergin, “NY’s Automatic Voter Registration Law Hailed As “Profound Reform” To Elections,” *Gothamist*, December 22, 2020, <https://gothamist.com/news/nys-automatic-voter-registration-law-hailed-profound-reform-elections>; Yancey Roy, “Referendum on same-day voter registration will be on ballot this fall,” *Newsday*, May 17, 2021, <https://www.newsday.com/news/region-state/voting-new-york-state-legislature-1.50247016>.

⁴ New York ranked 49th of 50 states in 2018, according to MIT’s Elections Performance Index. “Elections Performance Index,” MIT Election Data & Science Lab, accessed September 16, 2021, <https://elections.mit.edu/#/data/map>.

⁵ “Enrollment by County,” New York State Board of Elections, last modified February 21, 2021, <https://www.elections.ny.gov/EnrollmentCounty.html>.

more than 200,000 New Yorkers unregistered ahead of the 2016 presidential primary.⁶ Add to these more sensational problems the steady indignities and obstacles for certain voters, such as insufficient language interpretation and outreach services for the many New Yorkers without English proficiency, accessibility problems for voters with disabilities, and poll site closures and relocations that disproportionately impact communities of color and senior voters.⁷

Problems in New York's elections affect all Americans, at a time when nationally prominent voices seize every opportunity to sow doubt about our elections. The City Board's temporary tabulation error in the mayoral primary this June sparked immediate, widely broadcast claims that elections could not be trusted.⁸ The error did not prevent an accurate official count, thanks to safeguards such as paper ballots, but that mattered little to individuals bent on spreading misinformation.⁹ The stakes for improving New York's elections are higher than ever.

II. The Legislature Can and Should Immediately Remedy the City Board's Structural Flaws

Every eligible voter should be able to easily cast a ballot and trust it will be counted. No doubt election administrators at the City Board share this goal.¹⁰ But despite the best intentions and long hours of City Board personnel, the structure and procedures of the agency set it up to fail voters, repeatedly.

As discussed above, over the last year, the Brennan Center undertook a detailed examination of the City Board. In New York we analyzed applicable law in the state constitution, statute, and court decisions, reviewed previous investigations, studied historical accounts and other prior research, and interviewed affected voters, community-based advocates, former and current City Board commissioners and administrators, and other stakeholders. We also conducted a national review of best practices in election administration, including similarly large, diverse

⁶ Troy Closson, Edgar Sandoval, and Nate Schweber, "Lines Stretch for Blocks as New Yorkers Turn Out for Early Voting," *New York Times*, October 24, 2020, <https://www.nytimes.com/2020/10/24/nyregion/new-york-early-voting.html>; Sarah Holder, "In New York, Citywide Technical Difficulties Deter Some from Voting," *Bloomberg CityLab*, November 6, 2018, <https://www.bloomberg.com/news/articles/2018-11-07/were-nyc-s-technical-difficulties-voter-suppression>; Andrew Keshner, "NYC's Board of Elections will admit it purged more than 200,000 voters from city rolls," *New York Daily News*, October 24, 2017, <https://www.nydailynews.com/news/politics/board-elections-admit-purged-200-000-voters-rolls-article-1.3586490>.

⁷ Office of the New York City Comptroller, *Audit Report on the Board of Elections' Controls over the Maintenance of Voters' Records and Poll Access*, November 3, 2017, https://comptroller.nyc.gov/wp-content/uploads/documents/MG16_107A.pdf; Office of the New York City Comptroller, *Special Report on the Election Day Operations of the New York City Board of Elections*, May 14, 2020, https://comptroller.nyc.gov/wp-content/uploads/documents/FK19_113S.pdf; Bertha M. Lewis and Dmitri Daniel Glinski, *Mississippi on the Hudson*, The Black Institute, 2018, https://d3n8a8pro7vnm.cloudfront.net/theblackinstitute/pages/1448/attachments/original/1516814612/Mississippi_on_the_Hudson_%28TBI_Report%29.pdf?1516814612.

⁸ Philip Bump, "New York's Mayoral Election Is a Mess. This Doesn't Somehow Prove Donald Trump Right," *Washington Post*, June 30, 2021, <https://www.washingtonpost.com/politics/2021/06/30/new-yorks-mayoral-election-is-mess-this-doesnt-somehow-provedonald-trump-right/>.

⁹ Joanna Zdany and Hazel Millard, "How to fix NYC's Board of Elections," *New York Daily News*, July 1, 2021, <https://www.nydailynews.com/opinion/ny-oped-how-to-fix-nycs-board-of-elections-20210701-4raef74pqnkbkzmupb2tpevhbga-story.html>.

¹⁰ *How to Fix the New York City Board of Elections*, 5.

jurisdictions, and interviewed current and former administrators serving voters in major metropolitan areas such as Los Angeles, Chicago, Las Vegas, Denver, Phoenix, and Houston.

Though the City Board's problems are significant, we identified solutions in five areas that would bring New York into compliance with best practices and structures of other large, diverse election jurisdictions around the country and incentivize the kind of accountability and adaptability at the Board that New York's voters deserve. The Legislature can and should adopt these changes without delay. Below we provide an overview of these structural and procedural flaws and the legislative responses necessary to fix them.

1. *Reform the City Board's Decisional Structure to Ensure Greater Accountability and Equity*

The City Board's uniquely large and diffuse decisional structure creates inefficiency and disparities in service for voters. With ten commissioners, one from each major party from each county, the Board is at least twice the size of the fifteen other large bipartisan election boards in the country, save one (which has six members).¹¹ The structure of the City Board requires at least six commissioners to agree to move forward with any decision.¹² The county-based composition of the Board results in unequal representation of New Yorkers and an inequitable distribution of voting resources among the boroughs, sometimes disadvantaging more populous and diverse areas of the city.¹³ Comparable elections boards in other parts of the country do not tie member power to geographical subdivisions.

These problems can and should be remedied by legislation that reduces the number of commissioners from ten to four, which would bring the City Board in line with other large jurisdictions with bipartisan boards and untether commissioners from geographical subdivisions.¹⁴

2. *Require Best Practices for Appointments and Hiring*

The absence of transparent, qualifications-based appointments and hiring standards further stymies effective election administration. Current law requires no election administration-related experience of City Board commissioners or executive staff. Nor does it require a public, merit-based review by the appointing authority, the city council, which historically has only occasionally vetted commissioner nominees in open hearings and more often approves them with no public process.¹⁵ The City Board does not conduct a broad, national search for the best

¹¹ *How to Fix the New York City Board of Elections*, 8.

¹² N.Y. Elec. Law § 3-212(2) (McKinney 2021).

¹³ *How to Fix the New York City Board of Elections*, 7.

¹⁴ N.Y. Elec. Law § 3-200(1)–(3) (McKinney 2021).

¹⁵ Samar Khurshid, "Now in Control, City Council Opens Up BOE Appointment Process," *Gotham Gazette*, September 16, 2014, <https://www.gothamgazette.com/government/5324-now-in-control-city-council-opens-boe-appointment-process>; Shant Shahrigan, "Brooklyn Political Machine Suffers Setback at City Council," *New York Daily News*, July 23, 2020, <https://www.nydailynews.com/news/politics/ny-board-of-elections-antonio-reynoso-rodney-pepe-souvenir-20200723-js4r5yow5vgzjmpaythznbz73q-story.html>; Brigid Bergin, "Politics as Usual: City Council Democrats Approve Elections Commissioners," *Gothamist*, October 16, 2020,

executive leadership and does not post job openings publicly except for a few technical positions.¹⁶

The most important qualification for a job at the City Board is having political connections, as numerous agency personnel including one former commissioner told us.¹⁷ Permitting the primacy of party interests in City Board staffing causes real issues for voters. For instance, in 2019 the agency attempted to block a mayoral program’s language interpreters from assisting voters at the polls arguing in part that they violated the state statute’s bipartisanship requirements.¹⁸

We recommend that the Legislature put in place best practices that large election agencies across the country follow for appointing and hiring qualified leadership and other staff. For commissioner nominees, the Legislature should require the appointing authority to function as more than a rubber stamp for local party preferences. The city council should have to conduct open confirmation hearings with adequate notice and access for the public. Other large jurisdictions conduct national searches for executive positions and widely advertise open positions to attract a broad applicant pool.

The Legislature also should eliminate the current requirement in state statute that employees throughout the City Board reflect equal representation of the two major parties.¹⁹ The state constitution’s requirement for bipartisanship in election administration applies only to “boards and officers” carrying out certain limited functions.²⁰ Extending that bipartisan requirement throughout the agency serves to enable patronage hiring and local party influence in election administration decisions where voters deserve professional, unbiased service. Other large election jurisdictions limit partisan balance requirements to roles where this balance has a clear public benefit, such as canvassing votes.

3. *Require the Kind of Training for Commissioners and Other Staff that is Standard in Other States*

Deficient training in election law and protocols also harms the city’s voters. Failure by City Board employees to follow federal law or any proper protocol was the root cause of its wrongful purge of more than 200,000 voters from the rolls in 2016, which resulted in a federal court order to improve training, among other requirements.²¹ Poll workers and their trainers have attested to inadequacies in their training. During this Committee’s July hearing in Brooklyn, several

<https://gothamist.com/news/politics-usual-city-council-democrats-approve-elections-commissioners>; Rebecca C. Lewis, “Can the New York City Board of Elections Be Reformed?,” *City & State*, September 30, 2020, <https://www.cityandstateny.com/articles/politics/campaigns-elections/can-new-york-city-board-elections-be-reformed.html>.

¹⁶ *How to Fix the New York City Board of Elections*, 9, 20.

¹⁷ *How to Fix the New York City Board of Elections*, 9.

¹⁸ Brigid Bergin, “Board of Elections Is Suing New York City to Block Translators from Poll Sites,” *Gothamist*, February 22, 2019, <https://gothamist.com/news/board-of-elections-is-suing-new-yorkcity-to-block-translators-from-poll-sites>.

¹⁹ N.Y. Elec. Law § 3-300 (McKinney 2021).

²⁰ N.Y. Const. art. II, § 8.

²¹ Consent Judgement and Decree at ¶28(j), *Common Cause New York v. Board of Elections in City of New York*, No. 1:16-cv-06122 (E.D.N.Y. 2017), https://ag.ny.gov/sites/default/files/2017-10-31_final_consent_decree.pdf.

witnesses identified problems in poll worker training, including limited hands-on experience with equipment and an open-book exam that does not test actual understanding of material.²² These training deficiencies contribute to myriad problems for voters that serve ultimately to disenfranchise those who cannot afford to wait or manage to overcome them, including long lines, access problems for voters with disabilities, language barriers, and confusion about procedures.

The Legislature must remedy a major gap in the state’s election system and require training in election law and administration for commissioners and executive staff, as is commonplace in other states, including North Carolina, Ohio, and Virginia.²³ Training should cover the agency’s obligations under state and federal law and key concerns and best practices in election administration. State law should also require regular training and professional development for staff. Standards for poll worker trainings should include more hands-on experience and other measures to strengthen key skills.

4. *Ensure Appropriate Information Sharing with the Public and Policy Makers, including the State Legislature*

The City Board routinely fails to communicate basic information to help New Yorkers cast their ballots, such as poll site relocations and absentee ballot status. The aggregate data it provides in its annual reports is too infrequent and inaccessibly formatted, inhibiting public scrutiny and advice from outside election experts that would help it to improve. Other jurisdictions, including Orange County, California, and Cook County, Illinois, make a variety of election data available online in centralized and easy-to-use databases.²⁴

The Legislature should require local boards of elections to convey election day information quickly and accurately to voters and to publish aggregate data in a timely fashion and user-friendly format. Datapoints should include turnout by election district, average wait times by poll site and election district, call volume by poll site and types of complaints received, type and frequency of use of different voting methods, and rates and reasons for ballot rejections. These measures would substantially increase transparency and identify agency shortcomings ahead of future elections.

We also recommend the formation of a working group with lawmakers and representatives from local boards of elections, with a public process for soliciting information and perspectives from elections experts, voters, and community-based organizations. For new and innovative voting policies to work best, the collaboration of legislators and administrators responsible for implementation, with ongoing public discourse and debate, is key.

²² *To Solicit Testimony on Voting Experiences and Issues from Voters in New York City, Public Hearing Before the Senate Standing Committee on Elections*, New York State Senate, July 28, 2021 (written testimony of Marianne Barcellona, poll worker), https://www.nysenate.gov/sites/default/files/marianne_barcellona_testimony.pdf; and New York State Senate, *NYS Senate Public Hearing: Voting Experiences and Issues from Voters in New York City — 07/28/21*, YouTube, July 28, 2021, at 36:10 and 37:06, <https://www.youtube.com/watch?v=3dxTSkl-rI0>.

²³ *How to Fix the New York City Board of Elections*, 13.

²⁴ “Election Data Central,” Orange County Registrar of Voters, accessed July 22, 2021, <https://www.ocvote.com/datacentral/>; and “Data Visualizations,” Cook County Clerk’s Office, accessed July 28, 2021, <https://www.cookcountyclerk.gov/agency/open-data-beta>.

5. *Institute Accountability Mechanisms that are Common in Other Large Election Jurisdictions*

Finally, the current legal mechanism for holding the City Board to account clearly has failed. Statute gives the governor exclusive authority to remove a commissioner.²⁵ Through the many election cycles of errors that have disenfranchised thousands of New Yorkers, that has never happened — no commissioner has been removed.²⁶

This Legislature must make the City Board more accountable to the voters that it serves. It should give local elected officials, in addition to the governor, the power to remove commissioners for cause (reviewable by a court). Vesting appointment and removal powers in the same body would align the City Board with the accountability structure in better-functioning, large bipartisan boards outside of the state.²⁷

III. Legislation to Implement Election Day Registration and No-Excuse Absentee Voting

This fall, New Yorkers will vote on two historic constitutional amendments passed by this Legislature. The amendments would allow for election day registration and no-excuse absentee voting, two reforms that would significantly improve access to the ballot for voters. We urge the Legislature to be ready to enact legislation that will implement these two policies and to do so quickly so that local boards of elections can put them into effect for next year's elections.

Our research, along with the chorus of testimony this Committee has received from many quarters, shows the urgent need for legislative action to improve the New York City Board of Elections. The solutions we have identified would enable the City Board to more efficiently, equitably, and effectively serve all voters.

The Brennan Center commends this Committee for prioritizing improvements to election administration in New York City and across the state. New Yorkers should not have to endure one more significant election failure. Our recommendations would enable meaningful change to begin now. We will be glad to assist in any way possible.

²⁵ N.Y. Elec. Law § 3-200(7) (McKinney 2021).

²⁶ Bill Mahoney, "Support Grows for Cuomo to Remove Election Officials over Tenney-Brindisi Snafu," *Politico*, February 10, 2021, <https://www.politico.com/states/new-york/albany/story/2021/02/10/support-grows-for-cuomo-to-remove-electionofficials-over-tenney-brindisi-snafu-1362662>.

²⁷ See, e.g., 10 Ill. Comp. Stat. Ann. 5/6-21, 6-23 (West 2021) (assigning appointment and removal power to the local circuit court); Ohio Rev. Code Ann. § 3501.06, 3501.16 (West 2021) (assigning appointment and removal power to state secretary of state); N.C. Gen. Stat. § 163-22 (2021) (assigning appointment and removal power to the state board of elections); Mo. Rev. Stat. § 115.027, 115.037 (West 2021) (assigning appointment and removal power to the governor); Md. Code Ann., Elec. Law § 2-201(f), (g)(1) (West 2021) (assigning appointment and removal power to the governor, with senate confirmation of appointment); Ind. Code Ann. §§ 3-6-5-4, 3-6-5-6 (West 2021) (assigning appointment and removal power to circuit court clerk); DC Code § 1-1001.03(a) (2021) (assigning appointment power to mayor with advice and consent of council); id. § 1-1001.04(a), (d)(1) (2021) (assigning removal power to mayor).

Attachment A

**BRENNAN
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FOR JUSTICE



How to Fix the New York City Board of Elections

Solutions to the Structural Flaws That Cause
the Agency's Exceptional Dysfunction

By Joanna Zdanys, Hazel Millard, Chisun Lee, Derek Tisler, and Martha Kinsella
in collaboration with Let NY Vote

PUBLISHED SEPTEMBER 9, 2021

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ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at NYU School of Law is a nonpartisan law and policy institute that works to reform, revitalize — and when necessary defend — our country’s systems of democracy and justice. The Brennan Center is dedicated to protecting the rule of law and the values of constitutional democracy. We focus on voting rights, campaign finance reform, ending mass incarceration, and preserving our liberties while also maintaining our national security. Part think tank, part advocacy group, part cutting-edge communications hub, we start with rigorous research. We craft innovative policies. And we fight for them — in Congress and the states, in the courts, and in the court of public opinion.

ABOUT LET NY VOTE

Let NY Vote is a nonpartisan, statewide coalition of grassroots networks, civil rights and civil liberties organizations, re-entry communities, good government groups, unions, social service providers, immigrant rights groups, and everyday citizens fighting improve our elections by making registering and voting more accessible and equitable for every eligible New Yorker.

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Introduction

“**A** national embarrassment.”¹ “A disaster.”² “Wins at screwing up.”³ These were just a few assessments of the New York City Board of Elections (NYC BOE) after its most recent in a long history of errors. The agency had mistakenly counted approximately 135,000 test ballots in a preliminary announcement of the June 2021 mayoral primary results.⁴ It quickly caught the slip, but the episode only cemented the agency’s reputation for being unable to run a major election without causing some debacle.

The board’s string of failures includes more serious ones that have disenfranchised thousands of voters, from hours-long lines and untraceable absentee ballots in 2020 to widespread machine breakdowns in 2018 to the illegal purge of more than 200,000 voters from the rolls before the 2016 presidential primary. Accounts of agency mismanagement that has disenfranchised voters,⁵ along with calls for reform from politicians, advocates, and the media, go back decades.⁶ And yet, little seems to change.

This report seeks to answer the question “why?” Why have the repeated public failures, lawsuits, government investigations, civic activism, and media attention failed to substantially improve the agency’s performance? And what can be done to change that?

For the last year, we have delved deep into the workings of the NYC BOE, examined its failures, and compared its performance, structure, and processes to other large boards of elections around the country.⁷ What we found is striking. Among large, diverse election jurisdictions, New York City is an extreme outlier in five critical areas: its decisional structure; how its leadership is appointed and staff are hired; its training requirements; who holds the ultimate accountability authority for the agency; and its standards for information sharing. (See chart, “New York City’s Unique Election Administration Practices and Structure Promote Dysfunction,” page 6.)

These systemic defects explain the agency’s uniquely poor track record more than human error, the city’s size, or the complexity of new voting policies. To break the NYC BOE’s cycle of failure, the state legislature, whose laws govern all boards of elections in the state, must enact a comprehensive, systemic redesign of the agency.

The NYC BOE’s flaws — and solutions for addressing them — are outlined below.

Decisional Structure

The NYC BOE’s excessively diffuse decisional structure results in inefficiency and disparities. With ten commissioners — one Democrat and one Republican from each of the city’s five counties, each wielding equal power — the agency’s leadership is far larger and more diffuse

than that of any other major metropolitan election jurisdiction in the country.

Impact: Among other problems, the large number of nominating bodies means that no one person is responsible for the commissioners’ appointments (or failures). The county-based, equally weighted decisional structure may also disadvantage residents of more populous and diverse counties in accessing basic resources, such as adequate numbers of polling sites. To take one example of how inequitably resources can be distributed under this system, Staten Island has more than twice as many full-time employees per registered voter as Brooklyn.⁸

Solution: Streamline operations by reducing the number of commissioners from ten to four and untether them from geographical subdivisions.

Appointments and Hiring

The lack of transparent, merit-based selection standards, from commissioners down through the ranks, enables patronage and poor performance. Currently, political insiders select both NYC BOE commissioners and staffers behind the scenes and based on party machine connections rather than election administration qualifications. The law and selection process require no experience or training of commissioners or executive staff before or after they take office. The only requirements are that commissioners are registered to a major party in the county they represent and that they not hold or run for public office.⁹

Impact: Quality election administration is too often an afterthought when selection and advancement depend on political connections. The primacy of political party interests over voter interests can go so far as to risk disenfranchisement, as when the NYC BOE in 2019 sued to block a mayoral program’s language interpreters from the polls, in part because the translators might not satisfy what the board argued was a requirement under New York State law: bipartisan teams, one Republican and one Democrat, wherever they were deployed.¹⁰

Solutions:

- Require the local appointing authority — the New York City Council — to conduct a transparent, merit-based process for selecting commissioners.
- Require commissioners to conduct nationwide searches for top executive staff, and require public, detailed, and broadly disseminated job postings for all board positions.
- Strike the current requirement in state statute that employees throughout the agency reflect equal representation of the two major political parties.

Training

Insufficient training of leadership and staff impairs the NYC BOE's ability to adequately serve voters. There is no legal requirement for agency leadership to undergo training, and staff training does not keep pace with changes in the law.

Impact: From illegal voter list purges to widespread poll worker error to long lines and inaccessible poll sites for voters with disabilities due to poor planning, voters suffer countless harms when leadership and staff lack sufficient expertise. These problems can have a disenfranchising or discriminatory effect on working people who cannot afford to wait or people with accessibility needs.

Solution: Require that commissioners and executive staff complete election law and administration training and improve rank-and-file trainings.

Accountability

NYC voters have no effective path to hold their BOE accountable for persistent failures. City voters' most direct representatives — the city council and citywide elected officials, including the mayor — lack the authority to remove commissioners, even though the city council has the power to appoint them. State law gives only the governor this authority.¹¹ It appears that no governor has ever exercised this power, in spite of the agency's extensive history of poor leadership.

Impact: The NYC BOE's leaders have little reason to improve the agency when they can retain power for years, even after disastrous outcomes. In this report, we document the agency's major failures throughout the last decade, including long lines, machine meltdowns, voter roll purges, physically inaccessible poll sites, and inequitable language access. Each of these fiascos has disenfranchised a large number of voters or greatly undermined public faith in the board itself, and yet rarely

are commissioners or top staff replaced. The lack of accountability has led to a cycle well known to the New York voting public: failure, exposure, public criticisms, calls for accountability, and expressions of frustration by political leaders that they have no power to change things, followed by inaction and the inevitable next debacle.

Solution: Give locally accountable elected officials the power to remove commissioners, with review by the courts for just cause.

Information Sharing

The NYC BOE's failure to share timely, usable information with the public hampers voters and inhibits its own improvement. The NYC BOE has failed repeatedly to convey information to the public that is crucial to be able to vote, and it provides limited access to election data that would enable evaluation and improvement of its performance over time.

Impact: The agency's failure to provide information to voters, such as timely notices of the status of their absentee ballots, can result in confusion about how to vote, risking disenfranchisement. The lack of timely, granular, public, and user-friendly election data — such as rates of and reasons for ballot rejections, affidavit (provisional) ballot usage rates, and average wait times per poll site — hinders prompt public scrutiny and also the possibility of improvement through collaboration with outside experts and other election agencies.

Solutions:

- Improve communications with voters, including by requiring the agency's absentee ballot tracker to be timely updated.
- Require the agency to track and publicly report key voting and election administration data in an accessible, frequently updated form.
- Establish a working group that includes state and local officials and board of elections representatives to provide feedback on and plan implementation of legislation.



The good news is that all of the solutions we detail in this report can be adopted immediately. Many observers mistakenly assume that reform on this scale would require amending the state constitution, a part of which has served as an excuse for political manipulation of the agency.¹² An amendment is no small undertaking, as it involves passage by two consecutive legislatures and then by a

majority of state voters in a ballot referendum.¹³ The changes that this study urges for the NYC BOE require only the will of the state legislature to enact traditional legislation. But it will be worth studying whether significant improvements to boards of elections statewide, which together consistently keep New York in the nation's lowest rankings for election administration, warrant constitutional change.¹⁴

In the meantime, mandating the structural reforms detailed in this study, gleaned from best practices across the country, will vastly improve the NYC BOE's service and accountability to voters and provide some solutions

that could apply elsewhere in the state. Indeed, some officials and staff within the NYC BOE itself say they are eager for and open to improvement.¹⁵ Lawmakers should adopt these reforms without delay.

The need to fix the NYC BOE has never been more urgent. Of course, the city's 5.5 million registered voters — more than there are in most states¹⁶ — have always deserved better. But in this era of the Big Lie, when merchants of misinformation seize any excuse to shake the nation's trust in elections and election officials face unprecedented threats,¹⁷ curing the infamous dysfunction of the NYC BOE is critical for the entire nation.¹⁸

New York City's Unique Election Administration Practices and Structure Promote Dysfunction

	WHAT NYC DOES	BEST PRACTICE	CONTRAST TO OTHER JURISDICTIONS
DECISIONAL STRUCTURE			
Composition of bipartisan board	The 10-member board has a Democrat and Republican from each of the city's five counties.	A smaller board promotes efficient decision-making and increases accountability and equity of resources across the jurisdiction.	Outside of New York, all but one of the 15 largest local election jurisdictions with bipartisan boards have three to five members (the other has six) and no specific geographical distribution requirements.*
APPOINTMENTS AND HIRING			
Appointing commissioners	Commissioners are nominated by 10 distinct county political party committees and often rubber-stamped by the city council.	Publicly accountable officials evaluate nominees and ensure their qualification to serve before appointment.	New York gives parties more control in selecting commissioners than other comparable jurisdictions. In Virginia, where parties also nominate candidates, local parties must submit at least three candidates to the appointing authority for an open commissioner position to allow vetting of nominees.
Staff hiring	Most openings are not posted publicly. Candidates are often chosen for their political ties.	Job openings are posted widely, with detailed qualifications and clear metrics to evaluate candidates.	Outside of New York, national searches for top jobs are common, including recent searches in large, diverse jurisdictions like Los Angeles, Chicago, and Maricopa County, Arizona. Public postings of agency jobs are routine.
Partisan culture	Equal representation of parties is required at nearly every level, to the point that roles are duplicated.	Partisan affiliation requirements are limited to functions where checks and balances may be useful.	Most states limit partisan balance requirements to roles (like canvassing/counting ballots) that clearly benefit public confidence.
TRAINING			
Leadership training	Commissioners and executive staff are not legally required to have previous elections or management experience or to have ongoing training once appointed.	Commissioners and executive staff complete training upon assuming their roles to ensure that they know their responsibilities under federal and state law.	Training requirements are standard in many jurisdictions around the country. For example, North Carolina, Ohio, and Virginia all require local election commissioners to complete training shortly after appointment.
ACCOUNTABILITY			
Oversight and removal	Appointment and removal powers are divided between the city council and the governor.	A publicly accountable official with appointing authority also has the power to remove for cause.	Outside of New York, nearly all of the largest local election jurisdictions with bipartisan boards give appointment and removal authority to the same entity.
INFORMATION SHARING			
Data transparency	The NYC BOE releases data that is limited, infrequently updated, and often provided in formats that are difficult to use or interpret.	The public is kept informed through comprehensive, frequently updated information and easy-to-use data sets.	Other large jurisdictions, like Orange County, California, and Cook County, Illinois, make a variety of election data available online in a centralized database and in easily used formats to facilitate outside analyses.

* Chicago, IL (3 members); Philadelphia, PA (3); Allegheny County, PA (3); Cuyahoga County, OH (4); Franklin County, OH (4); Fulton County, GA (5); Fairfax County, VA (3); Mecklenburg County, NC (5); Wake County, NC (5); St. Louis County, MO (4); Montgomery County, MD (5); Marion County, IN (3); Washington, DC (3); Bergen County, NJ (6); Jefferson County, KY (4). See endnote 36 for full citation.

Decisional Structure

The NYC BOE's excessively diffuse decisional structure results in inefficiency and disparities.

The NYC BOE's dysfunction starts with its composition, which is far larger and more diffuse than that of any other major metropolitan election agency in the country. The board comprises ten commissioners, with two — one Democrat and one Republican — representing each of the city's five counties.¹⁹ The commissioners share equal weight in making citywide decisions, but each county's pair holds ultimate authority in their respective county office.²⁰

This structure hinders efficient decision-making. Board actions require a majority vote, so approving decisions at the citywide level, from policy to executive staff hires in the BOE's central office, requires the assent of at least six commissioners.²¹ The sheer number of votes required to move decisions forward causes delay and gives way to backroom alliances and deals among the commissioners to advance their political benefactors' bottom lines.²²

This county-based decisional structure can also result in disproportionate representation of New Yorkers' voting needs, disadvantaging residents of more populous and diverse counties.

Voters face an inequitable distribution of resources.

New York voters have consistently faced unequal access to polling places based on where they live. For instance, in 2019, Richmond County (Staten Island) secured as many early voting poll sites as New York County (Manhattan) and nearly as many as Bronx and Queens Counties, even though the latter three counties serve between 2.5 and 4 times more voters.²³ Richmond County is whiter and wealthier than the city as a whole, according to census data.²⁴ Similarly, a 2018 report by the Black Institute found that poll site relocations from election to election “were disproportionately concentrated in particular neighborhoods with distinctive racial and socio-economic makeup.”²⁵ The report described numerous instances from 2012 through 2017 of polling places closing in neighborhoods with below-median incomes or where a majority of residents were Black or Latino, even as many nearby whiter and wealthier neighborhoods were unchanged.²⁶

Staffing is allocated disproportionately among counties.

Disproportionate county influence also appears in staffing at both the central NYC BOE office and within the county offices. The agency's senior staff is divided equally among counties and parties such that each position in effect belongs to a county party leader, according to New York State Board of Elections (NYS BOE) Co-Chair Douglas Kellner, who formerly served as an NYC BOE commissioner.²⁷ And at the borough offices, rank-and-file staff are inequitably distributed among the counties and parties such that smaller counties have more full-time staffers per voter in their respective county offices than larger counties.²⁸ For instance, Brooklyn has five times as many registered voters as Staten Island but only about twice as many full-time staffers in its county office.²⁹

Disparities in voter list maintenance practices have had unequal impacts.

This diffuse structure also risks disparities in implementation of crucial voting policies. Investigations into the purge of approximately 200,000 voter registrations ahead of the 2016 presidential primary, which especially harmed Brooklyn neighborhoods with large Latino communities,³⁰ revealed that the NYC BOE failed to ensure that the borough offices uniformly adhered to voter roll maintenance procedures.³¹ This problem dates back decades. The director of the New York City Elections Project, a former city agency born out of recommendations from the City Bar Association and the New York City Partnership,³² reported in 1992 that, following ongoing weekly meetings with NYC BOE personnel and examinations of the board's practices, the Elections Project had found that “different borough offices often did things differently,” including practices that “had an impact on whether a voter stays registered.”³³

Two BOE officials denied that voter-affecting practices vary among the five counties, stating that the individual branches may not exercise discretion in such matters of policy.³⁴ But there is no ready means for outsiders to verify important practices such as voter list maintenance procedures across the five county offices, underscoring how the NYC BOE's diffuse operating structure thwarts public accountability.³⁵

Solution

Streamline operations by reducing the number of commissioners from ten to four and untether them from geographical subdivisions.

The state legislature should decrease the number of commissioners from ten to four, which would increase efficiency and accountability and make voter service more equitable citywide. This smaller number of commissioners would help untether commissioners' loyalties from particular counties. It would also bring the board more in line with other large elections agencies. The 15 largest elections jurisdictions with bipartisan boards outside of New York State have three to five members, except one board with six.³⁶ It may be worth considering whether still other structures would better achieve efficiency and fairness for voters, such as an odd-numbered board or a smaller two-member board.³⁷

Appointments and Hiring

The lack of transparent, merit-based selection standards from commissioners down through the ranks enables patronage and poor performance.

“The most important credential to work for the [NYC BOE] is being connected to a political club,” NYS BOE Co-Chair Kellner said.³⁸ This reality reflects the mistaken but widespread assumption that the state constitution grants major-party insiders control over selecting commissioners as well as nearly every role at the agency — an assumption that state lawmakers baked into statute and that agency leaders apply in staffing decisions, even to the detriment of voters.³⁹

Against this backdrop, the stark absence of qualifications-based standards or process for commissioner candidates enables political party interests rather than dedication to voters to drive election administration. Nor are there legal requirements concerning commissioners’ experience or training either before or after they assume their roles.⁴⁰ Rather, the state legislature has empowered unaccountable county political leaders to nominate commissioner candidates primarily based on party registration and county affiliation.⁴¹

Nearly all of these nominees have ascended with minimal or no vetting by the appointing authority — the city council — of their qualifications to run elections for 5.5 million voters.⁴² Instead, the council almost always rubber-stamps county party leaders’ nominations without so much as a confirmation hearing.⁴³

Members of the council occasionally have been more active in their appointing role. A hearing in 2014 made news for being the first of its kind (a development that did not consistently continue), as did the first public vote on nominees by the council’s Democratic conference in 2019.⁴⁴ In 2017, the then speaker of the city council unsuccessfully proposed a nominee not chosen by county party leaders, prompting a lawsuit that the party later dropped (the council ultimately appointed a different party nominee after a new speaker took office).⁴⁵ The council held a committee hearing on the reappointment of three commissioners in December 2020 (all were reappointed).⁴⁶

But such attempts to exercise appointing scrutiny continue to be the exception. As recently as July 2020, a councilmember’s request to question a commissioner nominee was, the *New York Daily News* reported, a “strange turn of events” — one that ultimately failed to generate a public discussion about the nominee’s qualifications.⁴⁷ The same county political leaders who sponsor BOE commissioner nominees also influence the fate of many councilmembers.⁴⁸ Though some have shown a commitment to bringing the appointment process out in the open, there is no guarantee that these recent practices will continue consistently.

The primacy of political party interests in the agency’s leadership structure has impeded its ability to serve voters in numerous ways.

Favoritism, not ability to serve voters, determines employee standing.

The favor of local party leaders also determines staffing of the agency, from the executive level through the ranks,⁴⁹ in a process that occurs behind closed doors and without public posting of vacancies or qualifications.⁵⁰ Technically, the commissioners hire board staff,⁵¹ but they do so based on recommendations from their party sponsors.⁵² When three commissioners introduced a motion in 2015 to post all open jobs publicly, four commissioners voted against it (including three currently sitting commissioners), one abstained, and two missed the vote.⁵³

Patronage in the secretive hiring process often takes the form of nepotism.⁵⁴ Sixty-nine NYC BOE staffers and at least two commissioners appeared to have a relative working at the agency, the city’s Department of Investigation (DOI) reported in 2013. This figure was a conservative count that likely understated the extent of the problem, the DOI explained.⁵⁵ More recent accounts show that the problem persists.⁵⁶

“The BOE suffers from a hyper-politicized environment rife with unequal treatment,” Communications Workers of America (CWA), District 1, which represents NYC BOE workers, wrote in testimony to the state senate in July 2021.⁵⁷ Commissioners installed by local party leaders “preside over all disciplinary actions,” it attested. It wrote, “The outcome of such actions is more often than not a reflection of the employees’ standing with their party leaders.” Advancement is as divorced from work performance as is disciplinary action.⁵⁸ For many agency staffers who work hard to serve the city’s voters, sometimes seven days a week in the run-up to elections, these practices and widespread public criticism damage morale.⁵⁹

Partisan interests take priority over voters’ language assistance needs.

The NYC BOE has attempted to block interpreters from poll sites, threatening to disenfranchise voters with limited English proficiency. In 2019, the NYC BOE sued to prevent interpreters from a Mayor’s Office of Immigrant Affairs program from providing increased language assistance at poll sites across the city.⁶⁰ The NYC BOE argued in part that the program violated the state constitution’s provision for bipartisan election boards⁶¹ and interfered with its

authority,⁶² and that the “interpreters did not operate in bi-partisan teams as required under the Election Law.”⁶³ The court rejected the challenge, writing that the NYC BOE “fail[ed] to explain how the elimination of the Interpreter Program would not, in effect, disenfranchise voters.”⁶⁴ Notably, the agency’s efforts prioritized party political interests over the will of city voters, who in 2018 had approved a ballot question establishing a commission whose duties included expanding language assistance at poll sites.⁶⁵

Advocates similarly contend that the BOE has resisted offers of additional language assistance. “In the past election cycle, a lot of us signed up to be interpreters and never heard back,” Wennie Chin, director of civic engagement at the New York Immigration Coalition (NYIC), told the Brennan Center. “The BOE says it has a hard time recruiting certain interpreters, but I know firsthand that when we sign up, we don’t get contacted.”⁶⁶

Melody Lopez, executive director of the nonprofit New York Civic Engagement Table, said the issue has been ongoing. “Language access has long been a huge issue for our community-based partners, especially where historically there has not been a requirement for a certain language but the population is changing and now there is a need for more languages,” she explained.⁶⁷

Providing interpretation services for broadly spoken languages is critical in a city as large and diverse as New York. Yet the NYC BOE has failed in the past to provide assistance even in languages for which the federal Voting Rights Act requires interpretation services.⁶⁸ For instance, a 2020 report by the city comptroller determined that the NYC BOE failed to provide federally required assistance for Taiwanese voters in Brooklyn, Queens, and Manhattan. (NYC BOE officials claimed they were unaware of the requirement.)⁶⁹ And in 2014, the agency settled a lawsuit brought by the Asian American Legal Defense and Education Fund (AALDEF) for its failure to provide Bengali ballots, also in violation of the Voting Rights Act.⁷⁰

Solutions

Require the local appointing authority — the New York City Council — to conduct a transparent, merit-based process for selecting commissioners.

Many observers mistakenly assume that the state constitution gives unaccountable county party insiders control over the selection of commissioners. But the constitution states only that “boards or officers” charged with certain election duties be elected or appointed on the nomination of “such representatives of [the two major] parties respectively, as the legislature may direct.”⁷¹ County party leaders’ power resides in a state statute that can and should be changed through ordinary legislation.⁷²

Without needing constitutional change, state lawmakers can and should do more to ensure qualified leadership on the board. In other states where local parties nominate candidates for election boards, such as Virginia, the parties suggest multiple candidates from whom the appointing authority chooses.⁷³ And nothing in New York’s constitution prevents the city council from requiring nominated candidates to demonstrate experience in election administration or voting rights or conducting the selection process in public — conditions that state lawmakers can and should establish.

Even without a change in current law, the city council can and should commit to consistently holding public confirmation hearings of nominees that test their experience and fitness to administer elections. Such a process would incentivize sponsors to nominate qualified candidates and increase both the board’s and the council’s accountability to the public for election administration.

Require commissioners to conduct nationwide searches for top executive staff, and require public, detailed, and broadly disseminated job postings for all board positions.

State law should require the NYC BOE’s commissioners to conduct national searches for executive staff to draw a broad pool of qualified candidates. At least as far back as 1988, editorial boards, mayors, and governors have called for nationwide, merit-based searches for the executive director position, to no avail.⁷⁴ Other agencies serving New Yorkers conduct far-ranging searches to find experienced leaders. The former president of the New York City Transit Authority, for example, had previously run transit for Toronto.⁷⁵ It is a best practice of similarly large elections jurisdictions such as Maricopa County, Arizona, Los Angeles County, and Chicago.⁷⁶ The current head of elections in Los Angeles previously served as state elections director for Washington.⁷⁷

A competitive national search need not exclude current high-performing employees, who may have important institutional knowledge. In hiring for the election director position in Maricopa County, former County Recorder Adrian Fontes and the county’s human resources department established professional standards for the search process and posted the position nationally, bringing in 80 candidates, 12 of whom were deemed the most qualified. Ultimately, the best candidate was already working in the office — but following this best practice led to that informed decision.⁷⁸

Legislation should also direct the NYC BOE to publicly post all open positions, which it currently does not do. Those postings should include detailed information, including minimum and preferred qualifications, responsibilities, and salary. This information should be dissem-

inated widely and publicly on high-traffic websites, including via postings on government websites, job search platforms, and social media.⁷⁹ A pending bill in the New York legislature would require all vacant positions to be posted on a publicly accessible website, in the city record, or on an open data portal.⁸⁰

“We want people to know that we’re hiring. We want the best applications,” said Fontes, who recommended making job postings “as widely available as possible.”⁸¹ Election officials who spoke with the Brennan Center disseminate job postings through a variety of channels to reach general audiences, individuals with election or government experience, and graduating students from colleges and technical schools.⁸²

In addition, legislation should require the board to develop standardized candidate evaluation practices. Candidates should also undergo skills assessments tailored to the needs of the job.⁸³ Guidance from the Ohio secretary of state directs boards of elections to assess candidates using a predetermined scoring system,⁸⁴ a measure that would bring objectivity to a hiring process currently plagued by political favoritism.

Strike the current requirement in state statute that employees throughout the agency reflect equal representation of the two major political parties.

Current law unnecessarily extends the state constitutional requirement of equal bipartisan representation in “boards or officers charged with the duty of qualifying voters, or of distributing ballots to voters, or of receiving, recording or counting votes at elections” to cover all board of elections staff.⁸⁵ The state legislature should eliminate this needless extension of political party influence into all board operations. The current law has enabled the inefficient duplication of most every city board role with a Democratic and Republican staffer⁸⁶ and has exacerbated patronage hiring.⁸⁷

Many roles at the agency, such as training, hiring, handling candidate records, and procurement, can and should be handled by staff hired for their professional qualifications and not for their partisan affiliations. Indeed, one NYC BOE official acknowledged that certain roles at the board do not warrant duplicative partisan representation, attributing the practice to the statutory requirement of equal representation on staff.⁸⁸ The same should be true for poll workers, who under a separate statutory provision must secure equal representation of the two major parties.⁸⁹ The NYC BOE at times has abandoned this requirement — underscoring its limited utility — when there are too few Democratic or Republican poll workers at a site, instead requiring individuals to take an oath as a poll worker for the other party.⁹⁰ Eliminating this requirement would “let poll workers of every affiliation be staffed for every needed function, not just in a crisis.”⁹¹

To be sure, bipartisan representation can promote public confidence in certain aspects of elections, which is why many states require bipartisan teams for tasks such as canvassing ballots and conducting recounts.⁹² The goal of projecting fairness purportedly motivated the bipartisan representation requirement in New York’s constitution.⁹³

But as far back as 1910, city officials saw party leaders exploiting the bipartisan requirement in ways that undermined rather than furthered the public interest. The city’s commissioner of accounts (the equivalent of today’s DOI commissioner⁹⁴) concluded that the “board exerted significant discretionary capacity in administering the election law and did so in the interests of the Democrat [*sic*] and Republican parties largely to the detriment of efficiency and economy, and more importantly, to the detriment of voters’ interests,” according to political scientist Ronald Hayduk.⁹⁵ More than a century later, this warping of the constitution’s requirement continues. The state legislature must enact a correction.

Training

Insufficient training of leadership and staff impairs the NYC BOE's ability to adequately serve voters.

Unlike some other major elections jurisdictions, New York does not mandate any training in election law or procedure for BOE commissioners or executive staff — only for certain lower-ranking staffers and Election Day workers.⁹⁶ According to CWA District 1, the NYC BOE employees' union, the training that does occur leaves staffers ill-prepared to implement new voting laws.⁹⁷ One NYC BOE official who has sought out external training told the Brennan Center that some colleagues want more training along the lines of the Election Center's highly regarded Certified Elections Registration Administrator (CERA) program. The NYC BOE is working to improve its internal trainings with the Election Center's guidance, the official said.⁹⁸

Coupled with selection procedures for leadership that require no qualifications to administer elections, the current insufficiency of training sets the agency up to fail at the complex job of adequately serving millions of diverse voters through cycles that are sure to bring new challenges. The consequences have been severe: valid registrations have been canceled and eligible voters have been turned away at the polls.

Illegal voter list purges reveal poor staff training in proper procedures.

Improper training and oversight disenfranchised more than 200,000 New Yorkers in the 2016 presidential primary election.⁹⁹ The New York attorney general, intervening in a lawsuit brought by Common Cause New York and individual voters, described investigation findings that agency staff had failed to follow federal and state law requirements in removing these voters from the registration rolls and that senior agency officials had allowed illegal practices to continue.¹⁰⁰ The attorney general documented widespread training failures in the agency's borough and central offices.¹⁰¹ The lawsuit spurred the agency to promise a federal court that it would fix its procedures,¹⁰² including implementing additional training for staff,¹⁰³ and a 2017 audit by the city comptroller found that all removed voters were back on the rolls.¹⁰⁴ Yet reports during the 2018 state primaries suggested that similar problems persisted. Registered voters reported arriving at their assigned poll sites only to find that they were not on the rolls or were no longer registered with their party.¹⁰⁵

Widespread poll worker error shows the need for improved poll worker training.

Poll workers are the main point of contact between voters and the NYC BOE. Finding and training as many as 51,000 people to serve as poll workers is a challenge but is critical to elections operations.¹⁰⁶ Despite the importance of this role, poll workers report significant problems with their training. During a July 2021 state senate hearing, poll workers and trainers testified that the training they receive is too brief,¹⁰⁷ provides little or no hands-on experience with equipment,¹⁰⁸ and ends with an open-book exam that does not test actual understanding of the training.¹⁰⁹

Gaps in poll worker training and the inadequacy of the assessments that follow manifest as voter service problems at the polls. Audits by the city comptroller of elections in 2016 and 2019 found poll workers mishandling affidavit ballots, failing to follow protocol for tasks such as closing poll sites and comparing voter signatures, and improperly demanding voter identification.¹¹⁰ Yet the NYC BOE's annual reports for those years show that nearly every poll worker had passed the training exam.¹¹¹

Excessive wait times demonstrate a lack of proper planning.

Though state law and regulations set the maximum wait to vote at 30 minutes, New Yorkers routinely end up waiting much longer.¹¹² For some, these waits can be disenfranchising. Long lines become impossible hurdles to voters who cannot afford to stay away from work or child-care, and they disproportionately affect voters with lower incomes and voters of color.¹¹³

"I often meet people who have those long commutes to the Bronx, from Brooklyn. They must choose between voting and potentially being late when loss of employment is not an option. We have turned polling site access into a privilege," Jasmine Cordero, a poll worker, testified at a July 2021 New York State Senate hearing on the voter experience in New York City.¹¹⁴

Long waits trace to the NYC BOE's failure to plan adequately. During the 2020 general election, some New Yorkers stood in line during early voting for as long as four

hours.¹¹⁵ Turnout in the heated presidential election was projected to be high, and voters during the Covid-19 pandemic could have been expected to want to avoid the crush of Election Day itself.¹¹⁶ But the agency had prepared too few polling sites for the early voting period and distributed them illogically.¹¹⁷ It opened only 88 sites for early voting, compared to nearly 1,200 for Election Day.¹¹⁸ It assigned to Barclays Center — a centrally located sports arena that accommodates nearly 20,000 people — the second-fewest voters of 27 early voting sites in Brooklyn.¹¹⁹ The distribution of voting equipment revealed similar planning failures: early voting poll sites serving more than 60,000 voters received the same number of ballot scanners as sites serving roughly half as many people.¹²⁰

The NYC BOE's failure to plan for predictable problems also resulted in hours-long waits in 2018.¹²¹ That election involved an unusually long two-page ballot. As voters waited in the rain, NYC BOE officials blamed ballot scanner breakdowns not on their own inadequate testing of the unusual ballots but on the damp weather — an issue that can decrease scanners' reliability, but for which the agency should have planned. The agency also failed to order enough scanning equipment to accommodate the extra paper from the longer ballots.¹²²

To its credit, the NYC BOE recently has taken affirmative steps to improve its communications with voters about wait times. During early voting in the 2021 city primary, the agency launched a wait time map on its website,¹²³ an important step forward in helping voters plan when to vote and avoid long lines.

Persistent denial of federally mandated disability access further undermines voters' rights.

New York City voters with disabilities routinely face difficulty casting ballots privately and independently due in part to insufficient staff and poll worker training. Among other issues, these voters often have encountered accessibility problems at polling places, including voting equipment that is improperly set up or inoperable, a lack of on-site staff available to resolve problems, and poll workers unprepared to offer guidance on how to use equipment.¹²⁴ This inadequate staff training exacerbates the NYC BOE's broader failures to provide accessible poll sites to voters with disabilities — in violation of federal and state law. City comptroller investigations in 2016 and 2019 found sweeping accessibility violations,¹²⁵ including that 70 percent of poll sites examined in 2019 were illegally inaccessible.¹²⁶ Violations persisted in spite of a 2012 federal court order directing the agency to implement a remedial plan following a lawsuit by the United Spinal Association and Disabled in Action over Americans with Disabilities Act and Rehabilitation Act violations.¹²⁷

Solution

Require that commissioners and executive staff complete election law and administration training and improve rank-and-file trainings.

State law should require commissioners and executive staff to complete training before appointment or within a brief period following their appointment. This training should cover the board's obligations under state and federal election law and provide an overview of best practices for achieving accessibility, security, and broad participation in elections.

Other jurisdictions require such training. In Ohio, all elections board members and directors must complete a state training program within six months of appointment and every four years thereafter, or more regularly as the secretary of state requires, and fulfill annual continuing education credit requirements.¹²⁸ North Carolina requires that every county board member receives training within six months of appointment and at least once again during the first two years of service,¹²⁹ and that county election directors complete a state certification program within three years of appointment.¹³⁰ Virginia requires elections board members to attend state training before the first election in which they will be serving as an election officer and to repeat this training upon subsequent reappointments.¹³¹ Several bills pending in the New York State legislature would require election commissioners and staff to complete training within a short time after assuming their roles.¹³²

State law should also require regular training and continuing education for all board staff. This training should be refined and updated to reflect performance issues, organizational changes, and changes to federal or state law. Other jurisdictions use these strategies to continually improve staff readiness to serve voters. In Cuyahoga County, Ohio, for example, the elections board gleans information like common voter mistakes and the number of ballots rejected to adjust staff training.¹³³

In addition, state law should mandate that poll worker training include a hands-on component and that the board routinely update its curriculum.¹³⁴ The NYC BOE should proactively collect feedback from poll workers on the “real time on-site learning and experiences [that] could help prevent the same problems from re-occurring,” one poll worker suggested.¹³⁵

Accountability

NYC voters have no effective path to hold their BOE accountable for persistent failures.

The NYC BOE is able to dodge accountability to the city’s voters because New Yorkers’ most direct representatives lack the ultimate oversight authority — the power to fire commissioners. The disconnect between the powers to appoint and to remove commissioners is a major flaw in the agency’s accountability structure, one that sets it apart from other large jurisdictions with appointed boards.¹³⁶

While the city council appoints NYC BOE commissioners, state law gives the governor the sole authority to remove them.¹³⁷ No governor appears to have ever exercised this power, in spite of the agency’s extensive track record of poor leadership.¹³⁸ Indeed, even as he condemned the agency’s failures and called for an overhaul, in 2020, then-Gov. Andrew Cuomo insisted that “the state has no role” in administering New York City elections.¹³⁹

Though the board’s membership changes over time, many have continued to serve through the most recent parade of fiascos. Four current BOE commissioners have served tenures ranging from 8 to 26 years.¹⁴⁰ While the others were appointed more recently, the timing of departures and lack of removals demonstrate that these changes in no way track the board’s performance in the most recent elections.

Solution

Give locally accountable elected officials the power to remove commissioners, with review by the courts for just cause.

Nearly all of the nation’s largest elections jurisdictions with appointed boards vest appointment and removal power in the same entity.¹⁴¹ To better empower New York City residents to hold their election agency accountable, state lawmakers should give the city council and the mayor joint removal authority and add them to the authorities, along with the governor, with the power to remove failing commissioners, subject to approval by the courts to ensure just cause.

Information Sharing

The NYC BOE’s failure to share timely, usable information with the public hampers voters and inhibits its own improvement.

The NYC BOE’s poor track record for communicating important information to the public has had serious consequences, including disenfranchising voters and hindering its own ability to improve voter services.

Communication shortcomings can disenfranchise voters.

The NYC BOE has repeatedly failed to convey information that the public needs to cast a vote that counts.¹⁴²

A lack of information on the status of their absentee ballots hamstrung voters in the 2020 election cycle. Like other agencies nationwide, the NYC BOE saw record demand for absentee ballots due to the pandemic, including more than 10 times the normal volume of absentees received during the primary.¹⁴³ Though the agency had just launched a long-awaited ballot tracker (the city council had passed legislation in 2016 requiring such a portal),¹⁴⁴ it was slow to update. Delayed updates left voters to wonder whether their ballots were counted — and whether to trust the mail or to brave long lines to vote.¹⁴⁵ Following suit, according to testimony at a July 2021 Senate Elections Committee hearing, some June 2021 primary ballots remained labeled “out for delivery” more than a month after Election Day.¹⁴⁶

Relatedly, the BOE fails to make data available about why absentee ballots were rejected. This lack of information makes it far more difficult to refine voter education efforts to help people avoid making potentially disenfranchising mistakes in the future.¹⁴⁷

In the 2016 election cycle, the agency flouted voters’ interests when it refused to post commonsense notices at old poll sites that had been relocated, even though a city law required it to do so.¹⁴⁸ This decision may have had serious repercussions for voters who did not know where to vote. Research has shown that poll site closures and relocations in recent years have disproportionately affected communities of color and elderly voters in New York City.¹⁴⁹

Voter outreach has also failed to be sufficiently inclusive of the needs of the city’s diverse electorate. The NYC BOE’s inadequate engagement with voters with limited English proficiency shows a glaring gap in its voter education efforts, according to NYC’s Wennie Chin: “Their limited outreach, even in mandated languages, really shows a lack of interest in serving all New Yorkers.”¹⁵⁰

Failure to share timely, usable election data limits the agency’s ability to receive feedback to improve.

Timely and user-friendly election data is an important tool for assessing an agency’s performance and enabling it to improve its service to voters. The NYC BOE’s public data sharing falls far short. One NYC BOE official said that the public can ask the agency for information,¹⁵¹ but advocates and others attest to the difficulty of doing so.¹⁵²

“Getting information from the BOE is like pulling teeth,” Chin said. “It shouldn’t happen if you’re an agency chartered to serve the public.”¹⁵³

A city official echoed this sentiment: “Most of us know what the problems are, but we can’t back them up without linking to people’s complaints on Twitter.”¹⁵⁴

Data that the NYC BOE does provide can defy meaningful external analysis.¹⁵⁵ The board’s annual reports convey statistics including turnout, the number of votes cast by method, and poll worker test passage rates. But the PDF format is hard to use and lacks clear keys to explain the information.¹⁵⁶ In past cycles, the agency has been slow to publish, for instance reporting voter turnout data months after the public’s interest in the relevant election passed.¹⁵⁷

The New York City Campaign Finance Board (NYC CFB) manages to publish more comprehensive, accessible, timely election data with an operating budget about one-tenth the size of the NYC BOE’s.¹⁵⁸ The NYC CFB website features a library of machine-readable, clearly explained data to enable outside research,¹⁵⁹ providing a model for what the NYC BOE can and should implement.

Solutions

Improve communications with voters, including by requiring the agency’s absentee ballot tracker to be timely updated.

The NYC BOE should improve communications with the public and share timely information that helps voters cast ballots and be confident that their votes will be counted. One important step is to strengthen the BOE’s flawed absentee ballot tracker. For such a system to be useful for voters, information must be updated promptly after every major status change, including when the ballot is sent to

the voter, when the ballot arrives back at the election office, and when the ballot is processed for counting. A bill pending in the state legislature would require a more detailed and integrated tracking system statewide.¹⁶⁰

Require the agency to track and publicly report key voting and election administration data in an accessible, frequently updated form.

Collecting and using data is a growing practice among successful election administrators to assess their current performance and make improvements for future cycles. Doing so enables their agencies to provide better voter service and ease administrative burden. Denver's elections division used data that it collected over time to create a predictive tool to anticipate voter demand within 100 ballots each day in a jurisdiction with more than half a million registered voters, according to Amber McReynolds, the former director of elections for Denver, Colorado.¹⁶¹ In contrast, one NYC BOE official expressed frustration that the agency's approach too often is reactive rather than proactive.¹⁶²

State law should direct the NYC BOE to collect election data and make it available on a publicly accessible and searchable database. The metrics tracked should include turnout by election district; average wait times by poll site and election district; call volume by poll site and types of complaints received; the type and frequency of use of different voting methods (including absentee, early, and Election Day voting); affidavit ballot usage rates; rates of and reasons for ballot rejections; and language interpreter staffing by language per poll site.¹⁶³ To be most effective, election data should be updated frequently; kept at a granular level of detail to help pinpoint problems (for example, by election district instead of assembly district); stored in a machine-readable format that is easy for practitioners to download and use; and made permanently available to help assess progress over time, according to the Open Election Data Initiative.¹⁶⁴

Models already exist. The Accountability in Colorado Elections program, run by the secretary of state's office, collects and publishes detailed data on registration, turnout, vote methods, and costs and publishes this data for use by election officials, journalists, advocates, and other members of the public.¹⁶⁵ Orange County, California, and Cook County, Illinois, similarly maintain detailed, publicly accessible databases that researchers can use to monitor election performance and hold the county responsible for its decisions.¹⁶⁶ Implementing this kind of change in New York City could transform the agency into a leader in election transparency nationally.

Establish a working group that includes state and local officials and board of elections representatives to provide feedback on and plan implementation of legislation.

New policies are more likely to succeed when they reflect the feedback of those who must implement them. The NYC BOE's problems have not occurred in a vacuum. The agency must contend with legal changes and new requirements that impact daily operations, sometimes with a tight turnaround. Two officials from the NYC BOE told the Brennan Center that legislative changes do not reflect election administrators' input and that being required to implement various reforms quickly and simultaneously can set the board up to fail.¹⁶⁷

The Brennan Center previously has recommended that states create election administration advisory boards or working groups that include local and state election officials, statewide officeholders, legislative leadership, voting rights organizations, and other stakeholders to foster better implementation of new election administration policy.¹⁶⁸ In New York, such a working group would help ensure that logistical concerns best known to the NYC BOE are accounted for in decisions that ultimately influence its operations. Administration at other boards of elections across the state similarly could benefit from this model. One NYC BOE official suggested including election officials from urban, suburban, and rural counties of different sizes, along with good government groups and other stakeholders. Topics that official wished to address include the timeframes for implementing new voting laws; updates of equipment, especially for voters with disabilities or limited English proficiency; and a more regular and better-trained poll site workforce.¹⁶⁹

Conclusion

The state legislature must immediately and fundamentally improve election administration in New York City, home to more registered voters than live in most states and more than 41 percent of the state’s voters.¹⁷⁰ This report’s recommendations would meaningfully strengthen the NYC BOE’s structure and practices and help the agency to more efficiently, equitably, and effectively serve voters. But the need and possibilities for deeper election administration reform for New York City — and, more broadly, New York State — do not stop here.

Many observers have suggested replacing the NYC BOE with an entirely new structure, such as a nonpartisan board. Such an avenue, among others, may be worth exploring. The current bipartisan structure leaves out a significant proportion of city voters, more than one-fifth of whom are unaffiliated with a major party, and serves as an excuse for the inefficiencies and other problems this report details.¹⁷¹ This scale of change, however, likely would require an amendment to the state constitution. That avenue for reform will be the subject of further Brennan Center study.

These deeper questions about the NYC BOE also counsel consideration of the experiences of voters served by the state’s 57 other county boards. The practices of other boards of elections have harmed voters, from massive voter registration failures in Oneida County to inequitable poll site access in Rensselaer County.¹⁷² As of this writing, the New York State Senate is in the process of collecting testimony from voters, poll workers, advocates, and voting rights experts across the state on their experiences and the need for reform.¹⁷³ This is an important step.

Many of the recommendations in this report — from empowering appointing authorities to remove commissioners to revamping hiring and training — would go a long way toward improving the functioning of other boards. But suburban and rural areas of the state also face unique challenges. Our continuing study of election administration in New York will examine the roots of dysfunction in county boards across the state and whether deeper structural change may be needed statewide.

The stakes have never been higher for improving New York’s elections. What happens in New York matters nationally. For too long, voting problems in the city and the state have given cover to other jurisdictions rolling back voting rights.¹⁷⁴ In the era of the Big Lie, with regressive voting laws passing at an unprecedented clip and election officials increasingly under attack,¹⁷⁵ it is more urgent than ever to revitalize election administration in New York and strengthen faith in our systems of democracy. Voters should not have to wait for another scandal before their experience improves. The work can and must start now.

Endnotes

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- 4 NYC Board of Elections (@BOENYC), Twitter, June 29, 2021, 10:34 p.m., <https://twitter.com/BOENYC/status/1410064145064599554> (NYC BOE statement on tabulation error).
- 5 Ronald Hayduk, *Gatekeepers to the Franchise: Shaping Election Administration in New York* (Dekalb: Northern Illinois University Press, 2005), 52 (during the 1912 primary election, according to a report by New York City Commissioner of Accounts Raymond B. Fosdick, in "many of the election districts no ballots were received at all, while in others they were received too late to be of service. The result was that thousands of voters were effectively disenfranchised. . . . It appears that the greatest inconvenience was felt in Brooklyn.").
- 6 Brian M. Rosenthal and Michael Rothfeld, "Inside Decades of Nepotism and Bungling at the N.Y.C. Elections Board," *New York Times*, October 26, 2020, <https://www.nytimes.com/2020/10/26/nyregion/nyc-voting-election-board.html> (recounting calls for reform from as early as 1940).
- 7 The findings in this report — of the nature and consequences of these systemic flaws and of the potential for progress in fixing them — derive not merely from study of law, policy, investigative reports, and court decisions. They also reflect the perspectives and lessons gleaned from interviews with current and former elections officials from 10 major elections jurisdictions across the country. In addition, we interviewed two current officials at the NYC BOE who spoke on the condition of anonymity (hereinafter NYC BOE Official A and NYC BOE Official B) and a New York City government official with direct knowledge of the NYC BOE's operations who asked to remain anonymous (hereinafter NYC Government Official A). We also interviewed two former NYC BOE commissioners, one of whom requested to speak anonymously. The Brennan Center emailed each of the 10 current commissioners a list of questions but as of this writing has not received responses. This report also draws from essential insights contributed by experienced advocates and civic leaders, many of whom are fellow members of the Let NY Vote coalition that has achieved a historic spate of voting reforms just since 2019. See "Wins," Let NY Vote (website), accessed August 9, 2021, <https://letnyvote.org/wins>.
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- 9 N.Y. Elec. Law § 3-200(4), (6) (McKinney 2021) (listing qualifications for commissioners. Some public office exceptions exist, including acting as a commissioner of deeds or member of a community board).
- 10 Plaintiff's Complaint for Injunctive and Declaratory Relief at ¶ 13. Board of Elections in City of New York v. Mostofi, No. 700001/19 (Sup. Ct. Kings Cnty. 2019) ("The city-funded MOIA interpreters do not operate in bi-partisan teams as required under the Election Law."); id. at ¶ 36 ("[N]or do the city-funded interpreters operate in bi-partisan teams as required under the Election Law."); and Board of Elections in City of New York v. Mostofi, 65 Misc. 3d 876, 881–82, 886–87, 108 N.Y.S. 3d 819 (Sup. Ct. Kings Cnty. 2019).
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- 40** See generally N.Y. Elec. Law § 3-200 (McKinney 2021).
- 41** See N.Y. Elec. Law § 3-200(4) (McKinney 2021) (listing qualifications for commissioners); and N.Y. Elec. Law § 3-204(1)–(2) (McKinney 2021) (describing the process for parties to nominate commissioners). The officers who lead county committees are elected by the committee’s members pursuant to the committee’s rules, not by the public. N.Y. Elec. Law § 2-112(1) (McKinney 2021). And while state law provides for elections of party committee members, in 2016, fewer than 30 percent of the Democratic committee members in Brooklyn and Queens had been elected. Sarina Trangle, “You Could Be on the Bronx Democratic County Committee and Not Even Know It,” *City & State*, December 5, 2016, <https://www.cityandstateny.com/articles/politics/new-york-city/you-could-be-on-the-bronx-democratic-county-committee-and-not-even-know-it.html>. The July 2021 testimony of one Brooklyn Democratic party member to the State Senate Standing Committee on Elections indicates that many rank-and-file party members are excluded from the process of selecting commissioner nominees. *To Solicit Testimony on Voting Experiences and Issues from Voters in New York City*, Public Hearing before the Senate Standing Committee on Elections, New York State Senate, July 28, 2021 (statement of Genevieve Vaida, vice president of policy at New Kings Democrats), https://www.nysenate.gov/sites/default/files/new_kings_democrats_testimony_072021.pdf.

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