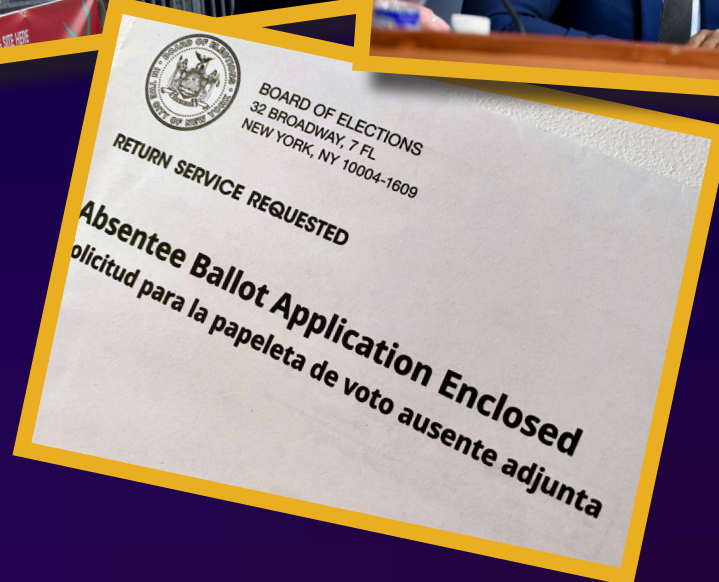


Report and Findings of the New York State Senate Elections Committee



Senator Zellnor Y. Myrie, Chair
November 15, 2021



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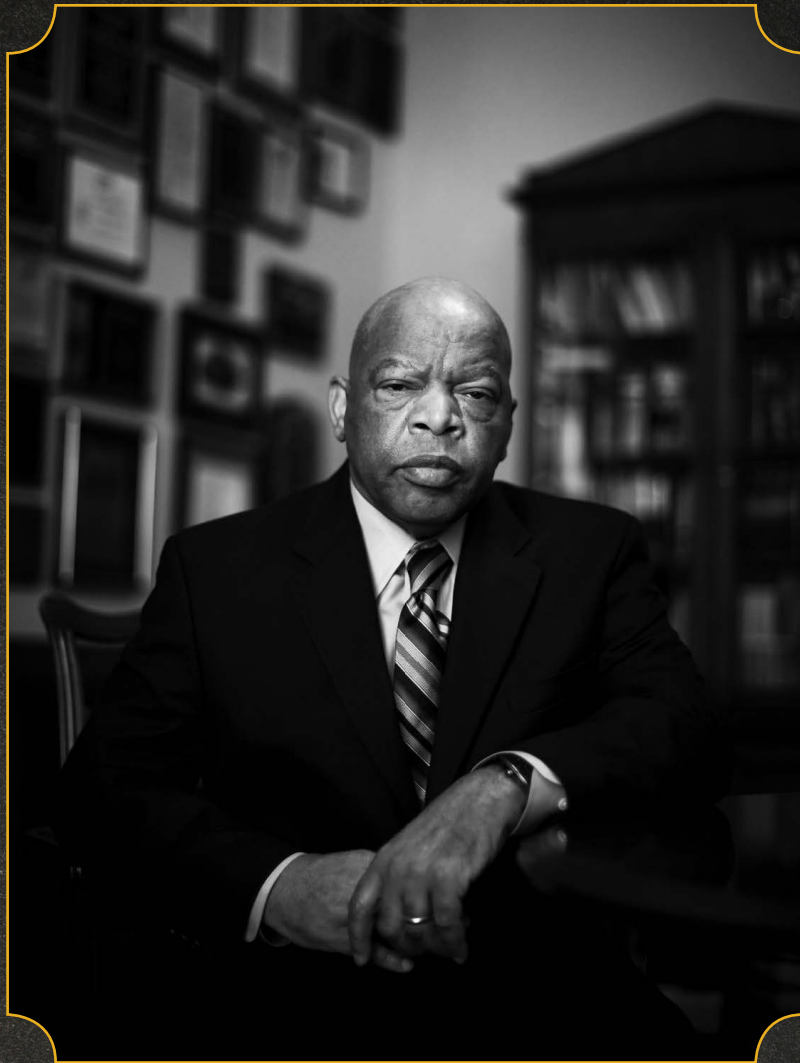
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ACKNOWLEDGMENTS

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 hearings. 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 authority."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.

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.



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

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 implementing 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

REFORMS PASSED SINCE 2019

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.

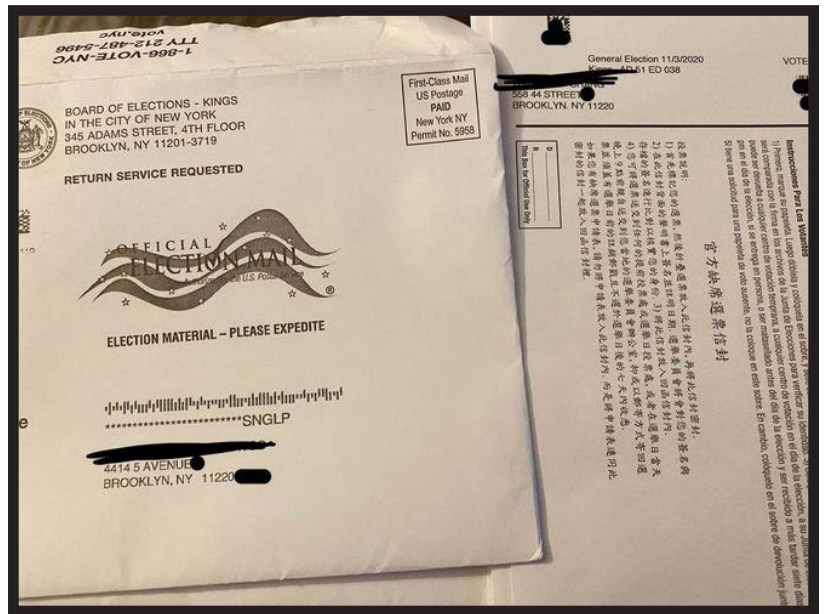
Many defenders of the current bipartisan system point to its long history in New York, dating back over 100 years.²² But New York has never hesitated to adjust, amend, or scrap entirely institutions that are no longer serving their intended purposes. At one time elections were run by an arm of the police 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.

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 e-pollbook technology and providing funding 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.³⁷

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.³⁸ 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 site 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

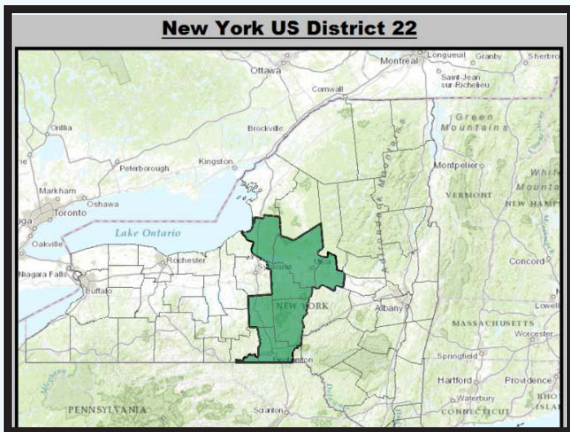
A NOTE ON SCOPE

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 wither. 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, Sullivan, 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 Manhattan 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-impaired 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-partisan 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-partisanship 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-partisan 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

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 state-wide 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 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.

- 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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www.vote.nyc

WILMA BROWN PHILLIPS
ADMINISTRATIVE MANAGER
GEORGEA KONTZAMANIS
OPERATIONS MANAGER
TRACY ROYAL
DIRECTOR OF PAYROLL

Re: Vacancies

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

Title	Borough	Party	Hiring Salary	Incumbent Salary
SENIOR COMPUTER PROGRAMMER	G.O.	TECHNICAL	\$65,702	\$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/lobs.

Current City Employees:

- Please log into [Employee Self Service \(ESS\)](#)

External Applicants:

- Please create an account at www.nyc.gov/lobs.
- 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 un-enforced 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 franchise¹¹⁹ 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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- 109 Written Testimony of the State Board of Elections (Sept. 21 2021).
- 110 Written Testimony of Laura Brazak, Democratic Elections Commissioner of Oswego County (Aug. 4 2021).
- 111 Oral Testimony of Mike Ryan, Executive Director of the New York City Board of Elections (Sept. 21 2021) (<https://youtu.be/lkw4OLG2zsc?t=10322>) at 2:52:02.
- 112 Written Testimony of Ashley Dittus, Democratic Elections Commissioner of Ulster County (Aug. 4 2021).
- 113 Written Testimony of the State Board of Elections (Sept. 21 2021).
- 114 Written Testimony of Dustin Czarny, Democratic Elections Commissioner of Onondaga County (Sept. 21 2021).
- 115 See Election Administration - Grad Cert, AUBURN UNIVERSITY (Accessed Sept. 19 2021) (http://bulletin.auburn.edu/thegraduateschool/graduatedegreesoffered/publicadministrationandpublicpolicy/mpaphd_major/electionadmin_cert/); Certificate in Election Administration, UNIVERSITY OF MINNESOTA HUMPHREY SCHOOL OF PUBLIC AFFAIRS (Accessed Sept. 19 2021)<https://www.hhh.umn.edu/certificate-programs/certificate-election-administration>).
- 116 Wright, *supra* note 15.
- 117 Written Testimony of Douglas Kellner, Co-Chair of the State Board of Election (Sept. 21, 2021).
- 118 According to SBOE data, as of November 2021, seven counties (Delaware, Oneida, Ontario, Oswe-

go, Schoharie, Seneca and Wayne) only use e-poll books for early voting and one county (Hamilton) does not use e-poll books at all.

119 Nichole M. Christian, North Elba Journal; Recalling Timbuctoo, A Slice of Black History, NEW YORK TIMES (February 19, 2002) <https://www.nytimes.com/2002/02/19/nyregion/north-elba-journal-recalling-timbuctoo-a-slice-of-black-history.html>

