

## **Reinvent Albany Testimony at New York State Joint Legislative Hearing On Elections in a Pandemic**

**August 11, 2020**

Good evening Chairs Myrie, Lavine, Gaughran, and Thiele and other members of the joint committee. My name is Tom Speaker, and I am a Policy Analyst for Reinvent Albany. Reinvent Albany is a watchdog organization that advocates for open and accountable government in New York.

Thank you for holding this hearing. We ask you to continue holding frequent oversight hearings on voter registration and election administration from now until November. We would like to see the Legislature and boards of election establish clear, public benchmarks and targets to ensure that New York is prepared for the November elections.

The June primaries saw election dysfunction and voter disenfranchisement at levels that would be shocking in other states, but were par for the course in New York. It is absolutely unacceptable that New Yorkers have had to wait weeks for the results of a primary that took place on June 23rd. Worse yet, as the news media has documented, many New York City residents never received absentee ballots despite making requests. Of those lucky enough to get an absentee ballot in time and mail it in, twenty-one percent saw their ballots invalidated in New York City.<sup>1</sup>

Rightly, the focus of this hearing is making sure the boards of elections do not botch the November elections. But, you, the legislature, has to move New York's voting registration and election administration beyond a state of permanent crisis and dysfunction. We urge the legislature to pass a constitutional amendment dissolving boards of election and replacing them with independent, nonpartisan government agencies.

Back to the here and now, we have six specific recommendations that you, the governor and the BOEs can take immediately.

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<sup>1</sup>

<https://www.nbcnews.com/politics/elections/one-five-mail-ballots-rejected-botched-nyc-primary-n1236143>

[www.reinventalbany.org](http://www.reinventalbany.org)

OPEN, ACCOUNTABLE, EFFECTIVE GOVERNMENT

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1. **The Governor must sign [S8783A/A10807](#) so that boards of election may begin processing applications and mailing out ballots as soon as possible.**
2. **Boards of election should establish at least one early voting site for every 50,000 voters.**
3. **The Assembly must pass and the Governor must sign [S6463/A8473](#) to allow Online Voter Registration in New York City.**
4. **The legislature should make absentee ballots more voter-friendly by passing [S8369/A10746](#) and [S8368/A10744](#).**
5. **The legislature should pass [S8630/A5671](#), allowing university students to become election workers at poll sites where they aren't registered to vote.**
6. **The legislature should pass [S8120-A/A10231-A](#), requiring the State Board of Elections to prepare for vote by mail in the event of an emergency.**

**1. The Governor must sign [S8783A/A10807](#) so that boards of election may begin processing applications and mailing out ballots as soon as possible.**

Under New York state law, boards may not begin processing absentee ballot applications until 30 days before an election, but the delays of the June primary demonstrate that 30 days is not enough. In July, the legislature passed S8783A (Myrie)/A10807 (Taylor), which would temporarily remove the 30-day requirement. We call on the Governor to sign S8783A/10807 so that boards of elections may begin processing applications and mailing out ballots immediately.

It is very possible that in New York City, over a million residents will choose to vote by mail – three times the number that voted in June. June brought countless stories of voters not receiving their ballots until after the election or not receiving ballots at all. Several New Yorkers reported having gone to their polling place to vote, then returning home and finding that their absentee ballot had finally arrived.<sup>2</sup> The Board itself recently admitted that it had been sending ballots up until the day before the election, all but guaranteeing that many voters would not receive their ballots in time.<sup>3</sup>

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<sup>2</sup>

<https://gothamist.com/news/judge-will-decide-whether-postmark-problems-should-invalidate-thousands-of-ny-primary-votes-with-implications-for-november>

<sup>3</sup> <https://nypost.com/2020/08/05/84000-mail-in-ballots-disqualified-in-nyc-primary-election/>

There are three months until the November election. Absent more staff or funding to implement absentee voting, boards must be enabled to begin processing absentee ballot applications.

## **2. Boards of election should establish at least one early voting site for at least every 50,000 voters.**

The law states that there should be at least one early voting site for every 50,000 voters, but it is also written that counties do not need to provide more than seven early voting sites each. As NYPIRG has noted, this is how many counties last year ended up with far greater than 50,000 voters per early voting site – 84,000 voters per early voting site in Queens, 97,000 in Suffolk, and 113,000 in Manhattan.<sup>4</sup> These numbers improved when more early voting sites were established this year, but most counties in NYC still fell short of 50,000.

We agree with NYPIRG's February recommendation that the law should be revised so that the standard of 50,000 voters for every one polling site is consistently met.<sup>5</sup> The Assembly can help push New York closer to meeting the standard by passing [A9791](#) (Lavine), which would increase the number of early voting sites required in each county from seven sites to ten, with larger counties requiring a site in each town or city. The bill has already passed the Senate.

But boards of election do not need legislation to improve early voting: They have been given broad discretion for implementing early voting, and must use their power to establish and promote more early voting sites, particularly as early voting turnout remains low in New York. In 2019, only about two percent of votes were cast through early voting, and only 5.6% were cast in June 2020.<sup>6 7</sup>

High turnout in November could overwhelm poll sites and boards of election, creating a repeat of the long lines and delays New York has seen in years past. Expanding and promoting early voting could help prevent long waits on Election Day and the weeks after.

## **3. The Assembly must pass and the Governor must sign [S6463/A8473](#) to allow Online Voter Registration in New York City.**

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<sup>4</sup> <https://nyassembly.gov/write/upload/publichearing/001104/002339.pdf>

<sup>5</sup> <https://nyassembly.gov/write/upload/publichearing/001104/002339.pdf>

<sup>6</sup> <https://www.nycfb.info/media/reports/voter-analysis-report-2019-2020/>

<sup>7</sup> 2020 numbers are from an internal analysis shared by the Campaign Finance Board, based on documents published by the Board of Elections.

New York City has had an Online Voter Registration system ready to go since June 2019.<sup>8</sup> Unfortunately, this portal has been blocked by the NYC BOE's narrow interpretation of election law and legislation passed in 2019 ordering the State Board to create its own portal.<sup>9</sup>

Voter registrations hit all-time highs in election years, but this year, registrations are at nearly half of what they were in 2016, almost certainly due to the pandemic.<sup>10</sup> To register by mail, voters must print out a form and mail it in. Young and low-income voters who do not have access to a printer and rarely interact with government agencies are left with limited options.

The Assembly and Governor could act by passing and signing [S6463 \(Myrie\)/A8473 \(Blake\)](#), which would enable New York City to finally launch its Online Voter Registration. The Senate passed the bill in July, and the window for implementation is growing smaller every day, as the Campaign Finance Board will need time to make final updates before launching the portal. We call on the Assembly to pass the bill and for the Governor to sign it as soon as possible.

We also encourage the Assembly to pass and the Governor to sign [A5661-A \(Rozić\)](#) which would require that poll sites be on college campuses when election districts serve 300 or more registered voters (the bill also provides that election districts shall not be drawn so that they are partly on or off a college campus or contiguous property). The bill has already passed the Senate.

#### **4. The legislature should make absentee ballots more voter-friendly by passing [S8369/A10746](#) and [S8368/A10744](#).**

84,000 NYC absentee ballots were disqualified in the June 2020 primaries – 21% of the total. Brooklyn was particularly hard-hit, with 25% of ballots being disqualified.<sup>11</sup> In many cases, the NYC Board was applying a strict interpretation of the law and effectively disenfranchising large numbers of voters.

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<sup>8</sup>

<https://www.gothamgazette.com/state/9134-bill-allowing-online-voter-registration-in-new-york-city-moves-in-state-senate-stalled-in-assembly>

<sup>9</sup>

<https://reinventalbany.org/2019/06/reinvent-albany-statement-on-city-board-of-elections-refusal-to-implement-local-law-on-online-voter-registration/>

<sup>10</sup>

<https://www.nycfb.info/media/press-releases/nyc-votes-finds-new-voter-registrations-plummeted-due-to-coronavirus-releases-2020-registration-data-during-public-hearing/>

<sup>11</sup> <https://1010wins.radio.com/articles/25-of-brooklyn-primary-absentee-ballots-were-disqualified>

The legislature has taken some steps to allow for more votes to be counted, such as by passing [S8370B \(Myrie\)/A10830 \(Lavine\)](#), which would allow voters to contest challenges to absentee ballots. We believe the legislature can go further and prevent more voter disenfranchisement by passing legislation that:

- **Expands voters' options for sealing the ballot.** In numerous instances, voters' ballots were disqualified because they taped the envelope shut instead of sealing the envelope (with saliva, for example). The legislature must pass and the Governor sign [S8369 \(Myrie\)/A10746 \(Paulin\)](#), which would allow ballots to be counted when in envelopes sealed with tape and paste.
- **Prevents ballots from being disqualified because of stray marks.** We support [S8368 \(Myrie\)/A10744 \(Paulin\)](#), which would count ballots when the intent of the voter is clear.
- **Make absentee ballot instructions and the ballot itself voter-friendly.** Many voters saw their ballots disqualified simply because they did not sign in the right place. Such errors can be prevented by better absentee envelope design: We propose something like a Voter-Friendly Envelope Act that would make the signature line more prominent, reduce the number of envelopes from two to one, and clarify the instructions on the ballot. We appreciate that the State Board is taking steps to remedy the envelope's design issues through work with the Center for Civic Design.<sup>12</sup>

##### **5. The legislature should pass [S8630/A5671](#), allowing university students to become election workers at certain poll sites where they aren't registered to vote.**

Poll workers tend to be elderly, but many are declining to participate this year due to the COVID-19 crisis.<sup>13 14</sup> To make up for the deficit, what's needed is an influx of more and younger poll workers. The legislature can help by passing [S8630 \(Kaminsky\)/A5671 \(Rozić\)](#), which would allow college students to work poll sites outside their election districts and pick up some of the slack.

We also hope that the City resumes its push to have municipal workers staff poll sites.<sup>15</sup> We believe it would be worthwhile to adopt this proposal statewide, but there does not yet appear to be any legislation addressing the issue.

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<sup>12</sup> <https://nypost.com/2020/08/10/new-york-board-of-elections-adds-quick-fix-to-mail-in-ballots/>

<sup>13</sup>

<https://www.pewresearch.org/fact-tank/2020/04/06/older-people-account-for-large-shares-of-poll-workers-and-voters-in-u-s-general-elections/>

<sup>14</sup> <https://time.com/5876195/coronavirus-poll-workers-election/>

<sup>15</sup> <https://www.gothamgazette.com/city/8791-promising-reform-board-of-elections-poll-workers>

## **6. The legislature should pass [S8120-A/A10231-A](#), requiring the State Board of Elections to prepare for vote by mail in the event of an emergency.**

New York is still a long way from having vote by mail – such a system couldn't be established until a constitutional amendment is passed again by the legislature next year then approved by the voters. Even after passage of the amendment, absentee voting troubles and distrust in the system may slow down the process of adopting vote by mail. Still, the legislature can help ensure the Board of Elections is better prepared going forward by passing [S8120-A \(Metzger\)/A10231-A \(Jacobson\)](#), which would require the BOE to establish a plan for implementing vote by mail during natural disasters by September 1st. (We recognize that the date should be pushed back through a B version.)

### **Restoring voter confidence through independent, nonpartisan boards**

Adopting all of the above proposals will not be enough to restore New Yorkers' confidence in their boards of election. New York's boards of election have a history of voter disenfranchisement that cannot be resolved through changes to the law alone. Even when election law is reformed, boards still tend to err on the side of invalidating ballots and discouraging new voters. This is why Reinvent Albany believes that the most effective way to resolve the boards of election's systemic dysfunction is to dissolve the state and local boards and replace them with independent, nonpartisan entities.

Citizens Union made a similar proposal in a 2009 report over ten years ago,<sup>16</sup> and in the decade since, not much appears to have changed. New York's boards of election have undermined New Yorkers' faith in our public institutions for decades. Almost every year, some election mishap has made headlines and further undermined New Yorkers' trust in their democratic institutions:

- In 2016, 200,000 voters were illegally purged from the voter rolls prior to New York's presidential primary election.<sup>17</sup>
- In 2018, voters had to wait long hours to vote after weather issues caused machines to shut down. Many of these voters left the lines before they could vote, meaning that they were effectively disenfranchised.<sup>18</sup>

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<sup>16</sup>

[https://citizensunion.org/wp-content/uploads/2010/08/CUF\\_Election\\_ReformExSummaryandRecommdations05091.pdf](https://citizensunion.org/wp-content/uploads/2010/08/CUF_Election_ReformExSummaryandRecommdations05091.pdf)

<sup>17</sup>

<https://www.cityandstateny.com/articles/politics/campaigns-elections/new-york-city-purged-voters-2016-it-wasnt-mistake.html>

<sup>18</sup> <https://www.nydailynews.com/new-york/ny-metro-city-voting-problems-scattered-20181106-story.html>

- In 2019, numerous affidavit ballots were invalidated in the Queens District Attorney race for minor technical errors.<sup>19</sup>
- In 2020, numerous absentee ballots never arrived,<sup>20</sup> 21% of New York City absentee ballots have been disqualified,<sup>21</sup> New Yorkers have had to wait many weeks for the results of elections that took place on June 23rd.<sup>22</sup>

Unsurprisingly, New York’s voter turnout has also continued to be abysmal. In the 2018 midterm elections, when voters showed up to the polls in record numbers, only 45.2 percent of New Yorkers came out – placing the state’s turnout at 42nd in the nation.<sup>23</sup>

Replacing the state and local boards could not be done in the near term as it would require a constitutional amendment that could not be passed by the voters until 2023 – this is due to the constitutional requirements for equal representation of the two major parties in election administration.<sup>24</sup> Still, the frequency and severity of election mishaps show that the boards are in need of a complete overhaul.

Though the boards’ bipartisan structures, established nearly a century ago, were intended to ensure that elections are fair and free, over the past years the state and local boards have hardened into inefficient and ineffective agencies notorious for gridlock, partisanship and patronage.<sup>25</sup> In NYC, all of the Board’s ten county commissioners are nominated by party officials, and numerous reports have documented how many Board staff earn their positions not through their qualifications, but through their connections. A Department of Investigation report from 2013 found that the NYC BOE had at least 69 employees working with relatives.<sup>26</sup>

Our elected officials have made many laudable efforts to reform New York’s elections, such as by passing Automatic Voter Registration, the Voter Friendly Ballot Act, and launching early voting, all of which we have supported. Yet these reforms, though

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<sup>19</sup> <https://www.nytimes.com/2019/07/15/nyregion/queens-da-recount-caban-katz.html>

<sup>20</sup>

<https://gothamist.com/news/judge-will-decide-whether-postmark-problems-should-invalidate-thousands-of-ny-primary-votes-with-implications-for-november>

<sup>21</sup> <https://nypost.com/2020/08/05/84000-mail-in-ballots-disqualified-in-nyc-primary-election/>

<sup>22</sup> <https://nymag.com/intelligencer/2020/07/new-york-primary-results-still-waiting.html>

<sup>23</sup> <https://patch.com/new-york/bedford/here-s-how-new-york-ranked-voter-turnout-last-year>

<sup>24</sup> NYS Constitution, Article II, §8, Bi-Partisan Registration and Election Boards,

[https://www.dos.ny.gov/info/constitution/article\\_2\\_suffrage.html](https://www.dos.ny.gov/info/constitution/article_2_suffrage.html)

<sup>25</sup>

<https://www.gothamgazette.com/city/8786-new-york-s-election-administration-accountability-vacuum-part-ii-partisanship-patronage-potential-fixes>

<sup>26</sup> <https://qns.com/story/2014/01/16/city-board-of-elections-rife-with-patronage-report/>

helpful, are band-aids at best, as the boards of election's problems persist. The boards must be dissolved and replaced.

The ideal boards of election would have their Commissioners independently nominated and selected, rather than directly appointed by elected officials. California's Independent Redistricting Commission is widely regarded as the gold standard for independent nominations. Under the nomination process, any resident of the State of California may apply to serve on the Commission. Three auditors, none affiliated with a political party, are randomly selected by the state to examine the applications and, after conducting interviews, narrow the list down to 60.<sup>27</sup> Those applicants are then sent to the Legislature, which narrows down the list to 36, then back to the auditors, who randomly select eight commissioners. After being selected, these eight commissioners choose the final six. The Commission must have five Democrats, five Republicans, and four unaffiliated with a political party.<sup>28 29</sup>

This is just one model, but alternatively the legislature could also look at Arizona's redistricting Commission, Hawaii's Campaign Spending Commission, or Wisconsin's former State Elections Board, which was considered independent until its dissolution by the notoriously partisan Republican legislature and governor in 2015.<sup>30</sup>

Until New York's boards of election are completely reformed, election mishaps are all but certain to happen again. Changing the state's absentee ballot laws may lead to better elections, but New York will still be left with an agency that routinely disenfranchises the very people whose vote it is supposed to protect. Lawmakers can help restore New Yorkers' trust through a constitutional amendment that establishes a truly independent and nonpartisan board.

Thank you for the opportunity to testify today. I welcome any questions you may have.

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[https://govt.westlaw.com/calregs/Document/I494BF0DA67344FC4A288AC9885ADBA92?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)&bhcp=1](https://govt.westlaw.com/calregs/Document/I494BF0DA67344FC4A288AC9885ADBA92?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1)

<sup>28</sup> [http://shapecaliforniasfuture.auditor.ca.gov/pdfs/selection\\_process\\_flowchart.pdf](http://shapecaliforniasfuture.auditor.ca.gov/pdfs/selection_process_flowchart.pdf)

<sup>29</sup> <https://wedrawthelines.ca.gov/>

<sup>30</sup> <https://www.wpr.org/senate-approves-campaign-finance-changes-elimination-elections-board>