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# How to Fix Election Administration in New York State

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in collaboration with Generation Vote and Let NY Vote

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

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# Introduction

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**E**arlier this year, the Brennan Center published a report detailing how to improve election administration at the New York City Board of Elections (NYC BOE), which serves more than 5.5 million voters.<sup>1</sup> While the city board’s failures often garner the most public attention, this study finds that they are not unique. Major flaws across the state’s other 57 local boards of elections (BOEs) too often hamper voting for 7.8 million more New Yorkers.<sup>2</sup>

In the past two years alone, voters across the state waited in early voting lines for as long as two hours — four times the legal limit.<sup>3</sup> The Rensselaer County BOE ignored state law and voters’ demands until a court ordered local election officials to establish an early voting site that was accessible for low-income voters who rely on public transportation.<sup>4</sup> A high-profile court dispute over challenged ballots in the 22nd Congressional District revealed inconsistent practices across eight local BOEs, including the Oneida County BOE’s failure to register 2,400 voters who had applied in time to vote in the 2020 general election. The judge observed that it was impossible to know how many of these voters left their poll sites without casting a ballot.<sup>5</sup>

In our first report, we recommended solutions that the state legislature — whose laws establish and govern local election administration throughout New York — should enact immediately to fix the NYC BOE’s notorious dysfunction. Our research beyond the five boroughs shows the need for many of the same solutions statewide, including greater accountability for commissioners, competitive hiring practices, improved training, and more information transparency.

Examination of local BOEs statewide reveals still other significant flaws that demand additional solutions. Chief among them: Though the New York State Board of Elections (NYS BOE) serves as the state’s central elections agency, it does not provide the comprehensive, centralized legal guidance and oversight needed for a voting system run by 124 local commissioners, some part-time, with no required experience or training. Current state law leaves local election officials to figure out most procedures on their own, often to the detriment of voters and sometimes in conflict with state and federal law. Many local BOEs also lack sufficient expertise, resources, and staff to meet modern election administration standards. And they typically make decisions behind closed doors, with no public forum for voters and advocates to communicate needs and ideas.

Fixing these systemic flaws is critical for our state’s democracy. As State Senate Elections Committee Chair

Zellnor Myrie put it in his November 2021 report, “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.”<sup>6</sup>

Our research, incorporating lessons from other states and insights from local stakeholders and advocates, informs the following recommendations for fundamental reforms that state lawmakers must enact immediately.<sup>7</sup>

## **Require comprehensive oversight of local election administration by the New York State Board of Elections.**

**Issue:** New York’s central elections agency, the NYS BOE, provides only limited guidance to and oversight of local BOEs, resulting in diminished and unequal voter service and failures to follow state and federal law.

### **Solutions:**

- Add a fifth NYS BOE commissioner — one who is not registered with any party — to facilitate timely action and avoid gridlock.
- Hire a single executive director — rather than bipartisan codirectors — to carry out and streamline the NYS BOE’s operations.
- Require the NYS BOE to set uniform standards and best practices for carrying out election administration duties.
- Require all local commissioners and deputy commissioners to complete training conducted by the NYS BOE and improve rank-and-file training.
- Empower the NYS BOE to request removal of failing local election officials.

## **Modernize local BOE commissioner selection and staff hiring practices.**

**Issue:** The current process for selecting local commissioners and hiring staff prioritizes political ties over experience relevant to serving voters. Commissioners who work only part-time and obstacles to hiring poll workers also hamstring local BOEs, contributing to inadequate service that modernized leadership and staffing can remedy.

### **Solutions:**

- Require county legislatures to conduct transparent, merit-based processes for appointing commissioners.
- Strike the requirement from state statute that needlessly extends the constitution's limited bipartisanship requirement to all rank-and-file staff of local BOEs.
- Require public, detailed, and broadly disseminated job postings for all local BOE positions to ensure selection from broad pools of qualified candidates.
- Require full-time commissioners with staggered terms or full-time executive directors to ensure continuity of institutional knowledge.
- Establish shared staffing programs between local BOEs and county governments during busy voting periods.
- Invest in robust recruitment and training programs for student poll workers, who tend to be technologically savvy and linguistically diverse.
- Encourage local BOEs to allow split-day shifts for poll workers, enabling more people to serve.

## **Increase and scale resources for local BOEs.**

**Issue:** Many local BOEs lack the staff capacity, funding, and infrastructure to meet the increasing demands of election administration. These shortages limit voting opportunities and leave local BOEs vulnerable to technical failures that make it more difficult for voters to cast a ballot and have their vote counted.

### **Solutions:**

- Provide long-term, sustainable funding to ensure that every local board has the resources it needs to run elections.
- Centralize and scale certain election administration needs, shifting those costs from individual counties to the state.
- Create regional election staff for certain specialized functions to assist multiple local BOEs.
- Establish an advisory group of election officials and voting advocates to help plan and provide feedback on local boards' implementation of legislation.

## **Make local BOEs transparent and accountable to the public.**

**Issue:** Local BOEs too often fail to communicate essential information to voters and do not share data in a manner that allows members of the public to understand their voting options, or advocates to determine what changes BOEs could make to improve voter service. Even when these failures cost people opportunities to vote, local commissioners face little accountability.

### **Solutions:**

- Require local BOEs to share necessary election information with voters in a timely and accessible manner.
- Require local BOEs to report — and the state to collect and publish in an accessible format — key data for assessing and improving election administration and the implementation of new state laws, such as pre-registration for 16- and 17-year-olds.
- Give locally accountable elected officials the power to remove commissioners for just cause, with review by the courts.

## **Consolidate local election dates and administration.**

**Issue:** Numerous off-cycle elections, such as school board and village contests, which are often run by entities other than BOEs, see low turnout and election administration problems.

### **Solutions:**

- Consolidate election dates to increase voter turnout and allow more time for administrative improvements between elections.
- Require local BOEs to administer village and school district elections, cutting down on duplication of services and making it easier for both the NYS BOE and independent actors to monitor elections and identify any noncompliance with state or federal law.

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As with our last report, this study recommends reforms that the state legislature can and should adopt immediately to fundamentally improve elections for all New Yorkers. Other changes, such as removing the bipartisan requirement from BOEs altogether, would require a multi-year process to amend the state constitution. While these ideas and others may be worth further study, they should not delay transformative reforms that are possible now.

## Best Practices from Other States Can Improve Election Administration in New York

RECOMMENDATION FOR NEW YORK	WHAT OTHER STATES DO
<b>STATE GUIDANCE AND OVERSIGHT</b>	
Add a nonpartisan fifth commissioner to the New York State Board of Elections and hire a single executive director to carry out the agency's operations.	In 14 of the 18 states with a state election board, the board is odd-numbered.* New York is the only state that appoints two codirectors to lead administrative operations.
Direct the state board to set uniform standards for carrying out election administration duties, published in a clear and comprehensive manual.	State officials in Virginia and Washington have a clear mandate to ensure uniform compliance with state and federal law. In Arizona and Ohio, state officials release a comprehensive manual of election administration best practices and state law requirements.
Require the state board to conduct mandatory training for all local commissioners.	North Carolina, Ohio, and Virginia all require local election commissioners to complete training conducted by the state election board.
<b>HIRING PRACTICES</b>	
Strike the statutory requirement that extends bipartisan hiring to all local BOE positions.	Most states limit a partisan balance requirement to roles in which it clearly benefits public confidence, such as canvassing and counting ballots.
Establish shared staffing programs between local BOEs and county governments.	Some counties in California, such as Los Angeles and Santa Barbara, allow county employees to serve as poll workers during the voting period while earning their regular pay.
<b>ELECTION RESOURCES</b>	
Provide ongoing state funding for election administration.	Other states play a more active role in funding elections. Delaware covers the full cost of administering elections. Colorado covers the full cost of elections when only a state issue or question is on the ballot, and partial costs for other elections when state issues or questions are on the ballot.
Fund and hire regional election staff with specific expertise.	Illinois funds and hires experts to serve as chief information security officers for assigned regions; these experts work with local election officials to train relevant personnel and lead risk assessments.
<b>TRANSPARENCY AND ACCOUNTABILITY</b>	
Give locally accountable officials who are responsible for appointing commissioners the power to remove commissioners for cause.	Most states with bipartisan local election boards give appointment and removal authority to the same entity.
Require the state to collect data from local boards and share the data in a publicly accessible format.	Colorado collects and publishes detailed data on a central, public website. California manages similar information in a statewide database housed at the University of California and managed by university faculty.

\*The states with odd-numbered boards are Arkansas, Delaware, Georgia, Hawaii, Kentucky, Maryland, North Carolina, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, and West Virginia. The states with even-numbered boards are Illinois, Indiana, New York, and Wisconsin. In some of these states, the state election board splits election oversight responsibilities with an elected or appointed secretary of state. See Al Vanderklipp, "A Primer on State Election Boards and Commissions," Election Reformers Network, April 29, 2021, <https://electionreformers.org/guide-to-state-election-boards-and-commissions/>.

## The State Constitution Does Not Bar Legislation to Limit Partisan Influence and Increase Professionalism in Election Administration

While lawmakers sometimes point to the state constitution's bipartisan election administration requirement as an insurmountable obstacle to reform, the scope of this provision is much more limited than commonly believed. A past legislature needlessly extended the bipartisan requirement — by ordinary statute — to nearly every aspect of election administration, making political affiliation rather than professional competence the major focus of leadership selection and hiring.<sup>8</sup> The current legislature can and should undo this act.

**>> The constitution's bipartisan requirements apply only to specific functions.** Article II, § 8 of the New York State Constitution requires the legislature to “secure equal representation” of the two largest political parties only when it comes to boards and officers that

- register voters;
- distribute ballots to voters; or
- receive, record, or count votes.

The constitution's bipartisanship requirements are only relevant for staff that directly handles one of these specific tasks and board-level leadership that oversees these specific tasks.<sup>9</sup>

**>> The NYS BOE does not perform any of these constitutional functions and is therefore not subject to the bipartisanship requirements.** Its creation in 1974 and the transfer of power to it from the appointed secretary of state were solely the products of legislative decisions.<sup>10</sup>

**>> The constitution gives broad power to the legislature to establish the process for selecting commissioners.**

The constitution does not grant political parties unrestrained power to select local BOE commissioners. Instead, it simply requires boards that oversee the specific duties to be nominated by “representatives” of the two largest parties and appointed or elected “in such manner . . . as the legislature may direct.”<sup>11</sup> Three things are important to note: First, the constitution does not delegate the role of nomination to any specific party entity, but rather to “representatives of [the two largest] parties.” Second, the constitution establishes nomination and appointment as two distinct steps, assumes that party representatives have fulfilled their roles after nomination, and leaves room for another entity or official to select a candidate for commissioner. Finally, the constitution affords the legislature sweeping authority to determine the details of the nomination and appointment processes.

The constitution specifically tasks the legislature with establishing election boards and gives it wide latitude to design a system that best serves New York's voters. Though the limits in place may be outdated, they are no excuse for inaction.

# Require Comprehensive Oversight of Local Election Administration by the State Board of Elections

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The NYS BOE provides only limited guidance to and oversight of local BOEs, resulting in diminished and unequal voter service and failures to follow state and federal law.

## **Despite its discretionary authority to mandate better performance by local BOEs, the NYS BOE’s partisan divide hinders it from doing so.**

State law gives the NYS BOE broad power to “issue instructions and promulgate rules and regulations relating to the administration of the election process . . . consistent with the provisions of law.”<sup>12</sup> Yet despite this clear grant of regulatory authority, the NYS BOE typically only issues rules and instructions when they are needed to implement a new statute and when that statute expressly requires such regulations.<sup>13</sup>

Historically, the four-member state board’s evenly split bipartisan structure has led to gridlock. In 1991, the *Buffalo News* editorial board expressed frustration with the agency’s structure for enabling “nothing [to happen] if one party doesn’t want it to.”<sup>14</sup> The criticism followed an incident in which commissioners split over implementing a directive to offer voter registration forms at state offices directly serving members of the public. In its 2013 report, the Moreland Commission to Investigate Public Corruption found that commissioners rarely agreed to open investigations into election and campaign finance complaints, and that the NYS BOE’s bipartisan structure often ensured “little or no enforcement.”<sup>15</sup>

Even when gridlock does not manifest as a 2–2 vote, disagreement among commissioners along party lines in part drives inaction at the NYS BOE. During a hearing before the state senate, the NYS BOE’s co-chairs, Peter Kosinski and Douglas Kellner, explained their divergent views. Kosinski argued that the NYS BOE’s responsibility is to support the local boards, not to be a “hammer” against them.<sup>16</sup> Kellner, however, said that he interprets existing law to give the NYS BOE authority to order local boards to perform tasks within the bounds of the law.<sup>17</sup> In the absence of the NYS BOE exercising this authority, Kellner has acted individually to urge local BOEs to make changes that would improve voter service and ensure compliance with state law.<sup>18</sup> But without official action, these calls amount to mere suggestions.

This inaction was on display in 2020, with local BOEs scrambling to adjust to new requirements and voter demands and advocates repeatedly pleading with the NYS BOE to provide greater guidance and oversight before the general election. The League of Women Voters sued the NYS BOE over the state’s absentee ballot review proce-

dures, noting that in the absence of uniform guidance, local BOEs varied widely in how they addressed technical mistakes that could invalidate ballots and whether local BOEs gave notice when workers rejected a voter’s ballot.<sup>19</sup> In testimony before the state legislature, the nonpartisan, nonprofit group VoteEarlyNY pushed for the NYS BOE to issue not only guidance on new rules but also “a clear set of instructions intended for public consumption” so that voters could understand the new voting options that the governor’s executive orders made available.<sup>20</sup> “In the vacuum created by the absence of such guidance” during the primary election, the organization “witnessed widely variable action by local boards, particularly with regard to what information was posted on their websites, where it was posted, and how the information was communicated to voters.”<sup>21</sup>

## **Inconsistent and inadequate training across local BOEs contributes to diminished voter service and access to the ballot.**

Insufficient training for staff and poll workers remains one of the top problems identified by stakeholders in New York’s election administration system, including voters, election workers, commissioners, legislators, and advocates. While the NYS BOE and the New York State Election Commissioners Association offer some training materials to personnel and commissioners, local BOE staff do not always avail themselves of these resources. In some cases, new hires and appointees lean on their colleagues instead of official course materials to learn how to perform their duties.<sup>22</sup> In others, local boards do not have room in their budgets to pay for commissioners to attend trainings and conferences.<sup>23</sup>

Gaps in training at county boards have serious consequences for voters. During the 2016 presidential primaries, voters statewide reported issues with their registration statuses to the Office of the New York State Attorney General, prompting an investigation that identified insufficient and inconsistent training as a root cause of the problem.<sup>24</sup> For example, local boards in Nassau, Suffolk, and Westchester Counties did not provide adequate written protocols for staff responsible for processing registrations to follow, though they did offer one-on-one training with senior staff. Meanwhile, Onondaga and Albany Counties provided written protocols without similar one-on-one training opportunities.<sup>25</sup>

Insufficient training causes harms that fall most heavily on voters who already face greater difficulties casting a ballot.<sup>26</sup> In New York, voters with disabilities often forfeit their right to a private and independent vote due to how poll sites and ballot-marking devices are set up on Election Day.<sup>27</sup> The Office of the New York City Comptroller authored several reports uncovering widespread accessibility issues in the five boroughs, and Disability Rights New York (DRNY) — the legal advocacy organization designated as the Protection and Advocacy and Client Assistance Program system for New York State — documented similar discrimination against voters with disabilities statewide.<sup>28</sup> DRNY found problems in several counties with poll site building accessibility, poll workers’ setup of poll sites, and poll workers’ voter service.<sup>29</sup> Poll workers also do not receive sufficient training in disability etiquette and person-first language.<sup>30</sup>

Voters from language-minority communities also face significant hurdles. The U.S. Department of Justice sued several New York counties, including Westchester in 2005 and Orange in 2012, for failing to provide adequate language interpretation services for Spanish-language speakers. Both lawsuits resulted in consent decrees that required, among other measures, enhanced training for both interpreters and other poll workers on the Voting Rights Act’s requirements for Spanish-language interpretation.<sup>31</sup> During the 2020 general election, Spanish-speaking voters in Monroe County reported culturally insensitive treatment from poll workers.<sup>32</sup> As local advocate and Monroe County Legislator-elect Mercedes Vazquez-Simmons observes, “Voting is already intimidating as it is, and they added to it. Cultural sensitivity training is necessary.”<sup>33</sup>

### **Local BOEs’ failures to follow state election law create obstacles to voters accessing the ballot and having their votes counted.**

Court proceedings in New York’s 22nd Congressional District race in 2020 revealed widespread failures to implement election procedures established in state law.

Several local BOEs in the district failed to follow statutory protocols for challenged ballots, which require an election official to write the reasoning and decision directly on each ballot.<sup>34</sup> In Oneida County, election officials used sticky notes, many of which had fallen off by the time the judge overseeing the count reviewed the ballots in question.<sup>35</sup> Meanwhile, Madison County did not mark challenged ballots at all, instead providing the court with a spreadsheet. The judge wrote that the local boards “failed to comply with the plain and unambiguous statutory mandates” regarding this process. He observed that the problems voters faced in those counties were not a result of “the pandemic, recent amendments to the Elec-

tion Law, or a strain on the Boards of Elections’ capacity and resources” but instead “the careless or inadvertent failure to follow the mandate of statute and case law.”<sup>36</sup>

The court-monitored recanvass of ballots in the 22nd Congressional District race also uncovered the Oneida County board’s egregious failure to process more than 2,400 voter registration applications that voters had submitted before the statutory deadline.<sup>37</sup> As a result, the judge wrote, “No one will ever know how many individuals, when told by a poll worker that they were not listed in the poll book, simply walked away from their polling site without casting an affidavit ballot, or seeking a court order from one of the available on-call judges.”<sup>38</sup>

### **Absent effective oversight by the NYS BOE, the only avenue for concerned voters to hold local boards accountable for violating the law is through the courts — a costly and time-consuming endeavor.**

Public officials and voters in numerous counties have had to sue local boards for failures to uphold state and federal election law. Earlier this year, a state court ordered the Rensselaer County BOE to select new early voting sites after finding that the board failed to consider criteria set in state law — including whether early voting sites were accessible by public transportation — and to provide equal access to early voting for residents of Troy, the county’s most populous and diverse city.<sup>39</sup> Voters and local groups had been advocating for a site in Troy since early voting was enacted in 2019, even offering their own facilities to the board, but the commissioners ignored and dismissed their calls.<sup>40</sup>

Voters with disabilities and aging voters had to sue Rockland County when its two commissioners gridlocked on whether to increase early voting hours to ease long lines in 2020.<sup>41</sup> The New York Civil Liberties Union (NYCLU) won a federal court order requiring the county to expand hours and better accommodate voters’ legally protected needs.

In 2020, Albany, Orange, and Westchester Counties only complied with state early voting law — which generally requires local BOEs to allow voters to use any early voting site in the county — after advocates sent letters threatening to sue.<sup>42</sup>

In each of these instances, active state guidance and oversight could have prevented unnecessary obstacles for voters and ensured local boards’ compliance with state and federal law in a more timely and efficient manner. These are just the harms for which voters found legal advocates with sufficient resources and expertise to represent them. It is reasonable to assume that other violations have occurred without redress.

# Solutions

## **Add an unaffiliated NYS BOE commissioner to break gridlock and improve the appointment process for all commissioners.**

To facilitate timely action and avoid gridlock, the legislature should amend statute to add a fifth commissioner who is not affiliated or registered with any political party to serve as chair of the NYS BOE. An unaffiliated commissioner would add a tie-breaking vote while maintaining partisan balance and represent the 23 percent of New York voters who are not registered with any party.<sup>43</sup> Contrary to one common assumption, the state constitution's requirement of bipartisan balance for certain election functions does not bar this solution (see page 7).

Legislators could consider several models to ensure the nomination and appointment of a qualified and independent individual for this fifth commissioner position. In Hawaii, the legislature appoints an equal number of Democrats and Republicans to the state board, and those members then appoint an outside chairperson by a two-thirds vote.<sup>44</sup> Wisconsin's Government Accountability Board — the state election authority from 2007 to 2016 — consisted of former judges selected by the governor from lists approved by a panel of current appellate court judges.<sup>45</sup> New York could also establish a nominating commission to vet and approve commissioner candidates, similar to how it and other states nominate judges to high courts.<sup>46</sup>

In addition to restructuring the board to break gridlock, state law should require all commissioner nominees to demonstrate knowledge and experience in election administration and go through a public hearing before appointment. Given the importance of election administration for governmental legitimacy, elected representatives should have an opportunity to assess the experience and competency of nominees before they are appointed to oversee all elections in the state.

## **Hire a single executive director to carry out the NYS BOE's operations.**

The NYS BOE is the only state election board in the country that appoints codirectors to lead its administrative operations.<sup>47</sup> Again, the state constitution's requirement of bipartisan balance for certain election functions does not apply to the NYS BOE's executive leadership.

State law should require the board to appoint a single executive director to carry out the board's administrative responsibilities and serve as the chief election official for federal law purposes.<sup>48</sup> The executive director should have prior experience administering elections and be chosen following a nationwide search to draw in a broad pool of qualified candidates.

Moving from bipartisan codirectors to a single, nonpartisan director would underscore that the role ought to be held by a professional administrator rather than a partisan official.

## **Require the NYS BOE to set and publish uniform standards and best practices for carrying out election administration duties.**

State law should provide a direct statutory mandate for the NYS BOE to set standards that ensure proper implementation of state law and clarify that its rules are binding on all county BOEs and any other entities that carry out election administration duties. These standards should cover the entire electoral process, from voter registration to ballot counting and reporting.

In comparable jurisdictions, the state election authority plays an essential role in promoting uniformity and compliance with best practices. State law in Virginia, for example, directs the state election board to “supervise and coordinate [local BOEs] to obtain uniformity in their practices and proceedings,” and to “make rules and regulations and issue instructions . . . to promote the proper administration of election laws.”<sup>49</sup> Similarly, state law in Washington directs the secretary of state to “make reasonable rules . . . not inconsistent with the federal and state election laws to effectuate any provision of [state law] and to facilitate the execution of its provisions in an orderly, timely, and uniform manner.”<sup>50</sup> New York should adopt a similarly clear and direct mandate.

To ensure uniform compliance, legislators should direct the NYS BOE to publish an election manual containing a clear and comprehensive overview of all obligations under federal and state law, in addition to directives that establish minimum best practices at every local board.

The NYS BOE should revisit and update the election manual well ahead of every election. Arizona offers a model. State law there requires the secretary of state to compile and publish an official election procedure manual by the end of each odd-numbered year preceding a general election.<sup>51</sup> This manual includes federal and state laws in addition to rules the secretary of state has established to “achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency in the procedures for early voting and voting, and of producing, distributing, collecting, counting, tabulating and storing ballots.” In developing the manual, Arizona's secretary of state consults with county election officials and posts a draft for public comment before final approval and publication.<sup>52</sup>

The NYS BOE should also issue directives on particular matters as they arise, especially when novel issues come up or new laws are passed. Ohio's secretary of state not only creates a manual of permanent directives but also publishes case-specific directives, such as guidelines for

curbside voting at the outset of the Covid-19 pandemic.<sup>53</sup> Pennsylvania’s secretary of state similarly publishes election administration guidance upon the enactment of new laws and to address new challenges.<sup>54</sup>

Even when such manuals reiterate existing requirements rather than provide new practices, it is beneficial to compile complex federal and state election laws and regulations in an easy-to-read format. Some of the most consequential errors in New York have resulted from election administrators’ failure to understand and apply procedures required by state and federal law, evidenced most recently by Oneida County’s use of sticky notes.<sup>55</sup> Given the complexities of election administration and the number of people responsible for managing those complexities, the NYS BOE should package requirements and guidelines in as organized and clear a format as possible.

Making procedures public also increases accountability, transparency, and trust by allowing media, advocates, and the public to independently understand and monitor election processes.

### **Require all commissioners and deputy commissioners to complete training conducted by the NYS BOE and improve rank-and-file training.**

State law should require all local commissioners and deputy commissioners to complete training within a brief period following appointment.<sup>56</sup> The legislature should provide funding to ensure that every commissioner can attend. The NYS BOE should develop a training curriculum that covers obligations under state and federal election law and provides an overview of best practices for achieving accessibility, security, and broad participation in elections. NYS BOE Co-chair Kosinski also suggested that with additional staff, the state board could conduct regional trainings for groups of local BOEs, allowing commissioners to bring additional staff and creating more opportunities for one-on-one interactions.<sup>57</sup>

Commissioners from both parties broadly agree that training should be mandatory.<sup>58</sup> And required training for commissioners is standard practice in other states that use bipartisan election boards to administer elections at the local level.<sup>59</sup>

Legislators should also consider establishing a certification program for commissioners, a model that other states use wherein election officials attend a series of substantive classes on various election-related topics over one to two years and receive certification upon completion.<sup>60</sup> These states also typically set continuing education requirements that election officials must maintain.<sup>61</sup>

Additionally, state law should require regular training and continuing education for all board of elections staff, and mandate that poll worker training include a hands-on component.<sup>62</sup> According to DRNY, boards can address most accessibility barriers, particularly with accessible voting machines, by training poll workers on using and assisting voters with the machines. To improve poll site accessibility, DRNY recommends mandating training for poll workers on properly conducting site accessibility surveys, setting up accessible locations, and operating accessible voting equipment.<sup>63</sup>

### **Empower the NYS BOE to recommend removal of failing local election officials.**

State law should allow the NYS BOE to recommend removal if a local commissioner is found to be in noncompliance with state law.

As recommended later in this report, state law should give county legislatures the power to remove local commissioners for cause. NYS BOE referral would help provide evidence to meet this burden of just cause before a court.

# Modernize Local BOE Commissioner Selection and Staff Hiring Practices

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The current process for selecting local commissioners and hiring staff prioritizes political ties over relevant experience serving voters. Commissioners who work only part-time and obstacles to hiring poll workers also hamstring local BOEs, contributing to inadequate service that can be remedied with modernized leadership and staffing.

## **The nomination process and lack of minimum qualifications for local board commissioners give local parties excessive influence over who administers elections in New York.**

Current statute allows local parties to handpick commissioners.<sup>64</sup> Although the state constitution requires representatives of the two major parties to nominate local commissioners “as the legislature may direct,”<sup>65</sup> the legislature gave this nomination power to county party committees, with no transparency requirements. The county legislature’s appointment amounts to a rubber stamp.<sup>66</sup> The only qualifications for the role are the appointee’s party registration status and a requirement that they do not currently hold and are not running for public office.<sup>67</sup>

At times, the separation between party leadership and election administrator is nonexistent. As of November 2021, a commissioner or deputy commissioner at 13 of the 57 local BOEs outside New York City also serve as a local chair for one of the two major political parties.<sup>68</sup> This system too often values political loyalty over qualifications and experience in administering elections.

## **Part-time status for commissioners in some counties makes it difficult to recruit qualified candidates for the role and leaves leadership of local BOEs spread thin.**

Part-time commissioners oversee 16 of the 57 local boards outside New York City.<sup>69</sup> Current part-time commissioners serving less populous counties report a disconnect between what the NYS BOE expects of them and what they have the resources to do. “They function as if we have a tech person, lawyer, and public relations person on hand. We split all three of those jobs up among the two part-time commissioners, that’s it,” explains Cayuga County Commissioner Katie Lacey.<sup>70</sup>

## **Requiring bipartisan representation in all positions prioritizes party connections over qualifications when hiring rank-and-file staff.**

Commissioners are not the only employees at local BOEs selected according to party affiliation. New York election law needlessly extends the constitution’s limited bipartisanship requirement to all rank-and-file staff of local boards, creating an opportunity for local parties to influence hiring.<sup>71</sup> County parties’ role in selecting staff is no secret. During a state senate hearing in September 2021, Dutchess County Commissioner Erik Haight told the panel of lawmakers that parties play a critical vetting role for commissioners, and that his agency does not always publish job openings for rank-and-file positions in order to avoid “mountains of applications.” He explained that he often hires “like-minded,” “politically active” people.<sup>72</sup>

Many cite this level of party involvement in hiring as a root cause for local boards’ lack of professionalism. As the *Newsday* editorial board has noted, given that party leaders can recommend candidates for commissioner positions, the boards’ structure “avoids real accountability.”<sup>73</sup> Suffolk County Executive Steve Bellone has advocated for a merit-based civil service system in place of current practices.<sup>74</sup> In neighboring Nassau County, the local BOE has shown nepotism similar to New York City’s elections agency.<sup>75</sup> In 2017, a *Newsday* investigation revealed that more than 20 staffers at the local board had family ties to county elected officials or political leaders.<sup>76</sup>

## **Local BOEs face challenges recruiting a broad pool of poll workers.**

The Covid-19 pandemic exacerbated long-standing problems with poll worker shortages in New York and nationwide.<sup>77</sup> According to the NYS BOE, historically, 55 percent of all New York’s poll workers are 60 or older, making them especially vulnerable to public health crises.<sup>78</sup> During the 2020 election, local boards and the NYS BOE — like many election administrators across the country — asked the public to volunteer, and many stepped up to serve.<sup>79</sup> However, statewide shortages continued into the 2021 elections.<sup>80</sup>

# Solutions

## **Require county legislatures to conduct transparent, merit-based processes for appointing commissioners.**

State law should require county legislatures to conduct transparent, merit-based processes for selecting commissioners.<sup>81</sup> These should include public hearings, and state law should give county legislatures clear responsibility to reject a nominee whom they do not find qualified for the position.

## **Strike the bipartisanship requirement from state statute.**

Legislators should strike the current requirement in state statute that BOEs secure equal representation from both parties for all employees.<sup>82</sup> Partisan consideration in hiring should be limited to roles and responsibilities that require bipartisan representation under the constitution or when there is a clear benefit for public confidence. While the impact of this change in small counties with few employees will be lower than in New York City, voters in those counties deserve to know that board staff are hired for their qualifications rather than their political connections.

## **Require public, detailed, and broadly disseminated job postings for all board positions.**

State law should direct local BOEs to publicly post all open positions, with detailed information that includes minimum and preferred qualifications, responsibilities, and salary.<sup>83</sup> Legislation should also require local BOEs to develop standardized criteria for evaluating candidates and current staff.

## **Require full-time commissioners with staggered terms, or full-time executive directors.**

State law should require local board commissioners to serve in a full-time capacity and with staggered terms to ensure continuity of institutional knowledge.<sup>84</sup> The responsibilities of election officials have grown significantly in recent decades, to the point where an administrator must now be an expert across a range of issues, including logistics, cybersecurity, customer service, public relations, and election law.<sup>85</sup> Election administration is a year-round job that requires full-time dedication. Commissioners from both parties express broad agreement that these positions should be full-time.<sup>86</sup>

Providing commissioners with the pay and benefits of full-time work would open these leadership opportunities to a more diverse population that better reflects the communities they are appointed to serve. While pay often does not reflect it,<sup>87</sup> commissioners routinely work more than 40 hours a week, particularly as Election Day approaches, putting the position beyond reach for those who would require additional income to make ends meet.

Having commissioners serve full-time benefits voters too. Voters require the services of election offices year-round — to register to vote or update their registration, learn about candidates and races on the ballot, understand voting options for upcoming elections, and more. They should not be limited to the hours that a commissioner chooses to be in the office, particularly in counties that have few full-time staff.

To provide additional flexibility, state law should create an exception to the full-time commissioner requirement for counties that choose to delegate day-to-day election administration responsibilities to a full-time executive director. This model works well in other states with bipartisan local election boards. North Carolina, Ohio, and Virginia all have county boards that delegate responsibility for day-to-day operations to a professional election administrator.<sup>88</sup>

## **Establish shared staffing programs between local BOEs and county governments.**

Counties should establish programs that allow their employees to serve as temporary election workers while still earning their regular daily salary to help address staffing shortages during busy periods.<sup>89</sup> Los Angeles's County Employee Election Worker Program — developed in response to significant poll worker shortages — offers a model. The program allows county employees, with supervisor approval, to serve as poll workers during the voting period while earning their regular pay plus a stipend.<sup>90</sup> Training for all participants is also provided during normal work hours.

## **Invest in robust recruitment and training programs for student poll workers.**

To avoid critical shortages and expand the recruitment pool to bring in a diverse set of election workers, state law should allow college students to work as poll workers in the counties where their colleges are located even if they are not registered to vote in that county, as current law requires for poll workers.<sup>91</sup> The Covid-19 pandemic underscored the critical role that younger poll workers play in democratic processes as many older poll workers were unable to staff poll sites. College and high school students can fill critical staffing shortages during early voting peri-

ods and on election days. Student poll workers also tend to be technologically savvy and linguistically diverse, which can be invaluable for managing electronic pollbooks and assisting voters from language-minority communities.<sup>92</sup>

The NYS BOE should also standardize the current recruitment and application process for student poll workers, which currently varies widely among local boards.<sup>93</sup> Youth election worker recruitment programs in other jurisdictions can serve as models. Chicago’s Board of Election Commissioners runs a robust community partnership program to recruit more than 4,000 high school and college students as election judges.<sup>94</sup> In Minneapolis, the Student Election Judge Program places coordinators in high schools as liaisons with the Minneapolis Office of Election and Voter Services to recruit 16- and 17-year-old poll workers.<sup>95</sup>

State law should, at a minimum, make student poll worker applications available online and direct local BOEs to report how many student poll workers are recruited and trained in each county. Considering that student poll workers are also more likely to develop a civic culture of lifelong voting and recurring poll work, recruiting young poll workers will lay the groundwork for new cohorts of poll workers — and voters — in future elections.

### **Encourage local BOEs to allow split-day shifts or half-day options for poll workers.**

In 2017, New York joined 17 other states in allowing local boards to employ poll workers to work split shifts, with adjusted compensation.<sup>96</sup> Yet many local boards have refused to provide poll workers the option to work split shifts or half-day shifts.<sup>97</sup> In 2016, the NYC BOE implemented a pilot program to introduce half-day shifts and concluded that it was “unsuccessful,” abruptly ending the program and eliminating the half-day option. In a recent audit, the Office of the New York City Comptroller requested that the NYC BOE release the results of the half-day shift pilot program and provide evidence for its decision to call it off.<sup>98</sup>

Shorter workdays can help local boards widen the pool of qualified candidates and attract student and working-class applicants. The NYS BOE should encourage local boards to comply with state law and standardize staffing requirements that allow poll workers to work split-day or half-day shifts.

# Increase and Scale Resources for Local BOEs

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Many local BOEs lack the staff capacity, funding, and infrastructure to meet the increasing demands of election administration. These shortages limit voting opportunities and leave BOEs vulnerable to technical failures that make it more difficult for voters to cast ballots and have their vote counted.

## **The county-based funding model is inadequate, inequitable, and too vulnerable to local politics to reliably serve voters.**

Lack of funding is a well-documented challenge for elections agencies nationwide.<sup>99</sup> New York is no exception.

In New York, election administration funding is primarily a local responsibility. State law requires county legislatures to pay for polling places and polling place materials; the purchase, maintenance, and storage of voting machines; and compensation for all poll workers.<sup>100</sup> While federal and state grants provide additional funds, they are intermittent and represent just a fraction of what the boards require.<sup>101</sup>

For many local BOEs, county funding fails to meet the increasing demands of election administration. Local board commissioners cite underfunding as a reason for insufficient training for commissioners and staff, difficulty recruiting top talent, outdated voting machinery, and challenges implementing new voting reforms.<sup>102</sup> In 2020, at least 35 counties sought out private grants just to meet the election administration challenges caused by the pandemic.<sup>103</sup>

Relying on county legislatures for funding also creates disparities between local boards. Outside New York City, the state's wealthier counties, such as Nassau, Putnam, Suffolk, and Westchester, tend to allocate more funding per voter to their local boards than counties with lower median household incomes, such as Broome, Montgomery, and St. Lawrence. For example, Westchester County allocated more than four times as much funding per voter as Montgomery County in 2020.<sup>104</sup>

And overreliance on local funding leaves local BOE budgets vulnerable to county politics. Whereas commissioners in Schenectady and Dutchess Counties told us

that they have supportive relationships with their county legislatures, local boards elsewhere in New York struggle to get necessary funding.<sup>105</sup> For example, the Onondaga County board has been the focus of partisan budget fights, with the county legislature and executive refusing to provide funding to cover the costs of additional early voting sites and slashing commissioner pay.<sup>106</sup> The county's voters felt the impact of opening fewer early voting sites, with some waiting up to two hours to cast a ballot during the nine days of early voting.<sup>107</sup>

## **Insufficient staffing strains local boards and leaves voters vulnerable to system failures.**

As election administration grows increasingly complex, election boards that do not have enough staff for specialization feel the burden on their resources. Nearly half of New York's local BOEs have six or fewer employees performing all the duties of election administration.<sup>108</sup> In Cayuga County, Commissioner Lacey explains that her small staff wears many hats in order to run elections and must rely on the county's IT department being available and responsive to handle technology and security.<sup>109</sup> NYS BOE Co-chair Kosinski notes that as election systems become more technically complex, local BOEs require a higher degree of sophistication to maintain the various components.<sup>110</sup>

While the introduction of new technology — including the recent adoption of electronic pollbooks — has made voting more convenient and efficient for New Yorkers, system failures can quickly lead to long lines and difficulties casting a ballot if proper precautions are not taken.<sup>111</sup> Insufficient expertise and attention at local BOEs leaves voters vulnerable to these risks.

# Solutions

## **Provide long-term, sustainable funding to ensure that every local BOE has the resources it needs to run elections.**

As election administration responsibilities increase for local officials, the state must recognize its own interest in election administration and be an active partner in ensuring well-run elections. Most critically, the state legislature must provide regular and ongoing funding to all local BOEs so that they can meet the needs of voters every election.

As Co-chair Kosinski argues, “When you go in and vote in an election, you don’t just vote for local office. You vote for state and federal office too. Counties are providing a service to these other levels of government, and these entities have an obligation to help.”<sup>112</sup>

States play a more active role in funding elections elsewhere in the country.<sup>113</sup> Delaware covers the full cost of election administration in the state.<sup>114</sup> Colorado covers the full cost of elections when only a state issue or question is on the ballot, and partial costs for elections in which state issues or questions are on the ballot.<sup>115</sup> Michigan reimburses local jurisdictions for the costs of running presidential primaries.<sup>116</sup> New Jersey covers the cost of special elections for state legislative seats.<sup>117</sup>

New York state law should set a baseline formula for distributing annual funding to counties that considers the needs of each county, the number of voters that each county serves, and each county’s ability to raise revenue.

## **Centralize and scale certain election administration needs, shifting those costs from individual counties to the state.**

In addition to directly funding local BOEs, the state legislature should shift more election administration expenses to the state to take advantage of economies of scale. For example, Colorado, Maryland, and New Mexico have all recently moved away from county-by-county approaches to purchasing voting machines toward a uniform system wherein the state negotiates contracts with vendors and covers some or most of the cost of new equipment.<sup>118</sup>

As explained earlier in this report, the NYS BOE can also alleviate the administrative costs faced by local BOEs by expanding its role in interpreting state and federal law into practicable, comprehensive guidelines for local officials to implement.

## **Create regional election staff positions for certain specialized functions to assist multiple local BOEs.**

Legislators should fund regional election staff, hired by the NYS BOE and directed to fill critical staffing needs at local boards. Rather than needing to hire someone to do every critical task involved in election administration, counties can share staff with specific expertise in areas such as accessibility, cybersecurity, information technology, and communications.<sup>119</sup>

Illinois’s Cyber Navigator Program serves as a model for what this type of initiative could look like in New York. Under this program, the state funds and hires experts to fill the role of chief information security officer for an assigned region. These experts work with local election officials to train relevant personnel and lead risk assessments and evaluations.<sup>120</sup> In testimony to the New York State Senate Elections Committee submitted in September 2021, the nonprofit advocacy group Reinvent Albany suggested a similar program for data collection and sharing.<sup>121</sup>

## **Establish an advisory group that includes election officials, advocates, and experts to help local BOEs implement new election laws and procedures.**

The legislature should set up an advisory group of state and local election officials, statewide officeholders, legislative leadership, voting rights organizations, and other stakeholders to help develop and implement legislation affecting election administration.<sup>122</sup> Such a group would help legislators understand the unique needs and capacities of counties across the state — particularly election boards with small staff in rural areas — and ensure that new policy sets up election officials for success.

# Make Local BOEs Transparent and Accountable to the Public

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Local BOEs too often fail to communicate essential information to voters and share data in a manner that allows the public to understand their voting options, and advocates to determine what changes would better meet voters' needs. Even when failures cost voters opportunities to vote, local commissioners face little accountability.

## **Local boards fail to communicate basic information essential for voters to cast their ballots.**

Voters across the state too often receive inaccurate information about polling locations and insufficient notice of poll site changes. In 2020, Dutchess County voters expressed confusion when their poll site changed from a senior housing community to a new facility down the street.<sup>123</sup> In Rochester, the Monroe County board consolidated poll sites during the 2020 election, including one that had served a predominantly aging, Latino population for decades, without providing adequate notice to voters.<sup>124</sup> Ahead of the 2020 election, Westchester County voters received mailings from the board with incorrect addresses for polling sites.<sup>125</sup>

While New York City voters can glean some basic insight into BOE decision-making at regular, public meetings, voters across the rest of the state lack that most basic form of transparency. The NYC BOE is the only local board that abides by the state's open meetings law (and even still, the city board's record is imperfect).<sup>126</sup> Voters in other counties have no way to observe or participate in meetings of their local boards.<sup>127</sup> This lack of insight into decision-making makes it difficult to address inaccurate information or infringements on voting rights without going to court in the weeks or days before Election Day.

## **Limited data transparency makes it difficult to understand and measure performance at local boards.**

Data transparency varies significantly from county to county in New York,<sup>128</sup> with many counties failing to go beyond the minimum statutory requirements for sharing election results.<sup>129</sup> Reinvent Albany found that of the state's 62 counties, only 16 offered election results in a format that can be automatically read and processed by a computer. Meanwhile, 35 counties offered data exclusively as a PDF, which requires a researcher to manually collect data through a far more time-consuming process. One-quarter of counties do not offer election district-level results.<sup>130</sup>

Advocates and journalists are often forced to submit Freedom of Information Law (FOIL) requests to access data beyond the most basic information provided by election boards. As is often the case in New York City, responses to FOIL requests are not always timely or thorough.<sup>131</sup> Local election administrators agree. As Schenectady County Co-commissioner Amy Hild puts it, concerned New Yorkers "should not have to FOIL each county to get the information they need."<sup>132</sup>

The lack of transparency also makes it difficult to implement and assess the impact of new state laws. For example, although New York's law allowing preregistration of 16- and 17-year-olds went into effect in 2020, a study by the nonprofit advocacy group the Civics Center one year later found that "only 61,567 of the state's estimated 484,317 16- and 17-year-olds were preregistered to vote. That's just 13% statewide — a failing grade by any high school's standards."<sup>133</sup> Sanda Balaban, executive director of the youth-focused nonprofits YVote and Next Generation Politics, points to the lack of information and accountability as a reason why rates are so low: "We work with hundreds of young people in high schools across New York City, yet none are familiar with pre-registration. In effect, it doesn't exist and feels like a facade."<sup>134</sup>

## **Even after egregious failures, there is little public accountability for local BOE commissioners.**

Although county legislatures appoint local BOE commissioners, state election law grants the governor the sole authority to remove commissioners — the ultimate accountability mechanism over local boards of elections.<sup>135</sup> However, no governor has ever exercised that power.<sup>136</sup> This includes the 22nd Congressional District debacle, when mismanagement of the election process by the Oneida County board led to intense public pressure for the commissioners to be removed. It was only after litigation in state courts and national media attention that the commissioners voluntarily resigned.<sup>137</sup>

By separating commissioner appointment and removal powers, state law limits the ability of voters to hold their local commissioners accountable through their local elected representatives.

# Solutions

## **Require BOEs to share necessary election information with voters in a timely and accessible manner.**

State law should require every board of elections to post up-to-date information on its website related to deadlines to register, request an absentee ballot, and vote, as well as all polling locations available to cast a ballot. The NYS BOE should collect relevant voting information from individual BOEs in a centralized location accessible to voters.

The NYS BOE should also use social media channels to amplify local information. A recent transparency procedures memo by the NYS BOE notes that the agency could do more with its social media profiles, including Twitter, to get the word out on upcoming elections and other deadlines, and that it intends to take advantage of these platforms more going forward.<sup>138</sup>

Regional staff with technical expertise, as explained earlier in this report, should assist local BOEs that do not have staff or technical capacity to post required information. And the NYS BOE should develop, for use by local BOEs, online tools for voters to request, track, and cure mail ballots; understand their voting rights under state and federal law; and get answers to frequently asked questions.<sup>139</sup>

The NYS BOE should also issue guidance clarifying the application of open meetings law requirements to local boards and establish a list of actions — such as setting polling place locations — that must be presented in an open meeting with a rationale for the decision and an opportunity for public input before a decision is made final.

## **Require the state to collect data from local BOEs and share the data in a publicly accessible format.**

Robust data collection is essential to successful election administration. It allows election administrators to assess previous elections, identify patterns, and improve processes. Sharing this data openly allows experts and the public to evaluate election administration independently and push for changes that may be necessary to strengthen their democracy. But New York falls short in this area, especially in counties outside New York City that lack resources to collect and share data sufficiently.

The state should collect data from local election boards and organize this data in a central, publicly accessible location. Models exist for what this can look like. Colorado's secretary of state office collects and publishes detailed data on a central, public website.<sup>140</sup> California established a statewide database, housed at the University of California and managed by university faculty, that collects data from each election along with information

needed for redistricting. This data is available free of charge to anyone.<sup>141</sup> The proposed John R. Lewis Voting Rights Act of New York would establish a program similar to California's statewide database, to be housed at the State University of New York and administered by faculty with expertise in demography, statistical analysis, and electoral systems.<sup>142</sup>

## **Require local BOEs to report the number of students preregistered to vote to the NYS BOE and advertise online preregistration in schools.**

In 2020, New York began permitting 16- and 17-year-old citizens to preregister to vote so that they can be enrolled and ready to participate as soon as they turn 18.<sup>143</sup> But the effectiveness of the reform's implementation is unclear, as the state has failed to create any assessment process, and local BOE efforts to raise awareness with young voters have been limited at best.<sup>144</sup> State law should require local boards to report the number of students preregistered to vote to the NYS BOE in order to understand the impact of preregistration across the state.

To improve the low number of preregistered 16- and 17-year-olds — which stood at 13 percent as of April 2021 — state law should also include explicit directives for how local boards of elections and boards of education can promote preregistration in schools and online.<sup>145</sup> In other states that have a statutory requirement to promote preregistration in high schools, such as Washington, county election offices hold annual voter registration drives in public schools.<sup>146</sup> A pending bill in the New York State Legislature would create a framework for local election boards to promote preregistration and school voter registration for students in 10th, 11th, and 12th grades.<sup>147</sup>

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

State law should give county legislatures the power to remove commissioners when necessary. Doing so will bring New York more in line with other states — which typically assign appointment and removal power to the same entity<sup>148</sup> — and ensure that the public can obtain redress for BOE failures through local elected representatives. Coupled with the addition of NYS BOE referrals as a mechanism for removing problem commissioners, tougher accountability measures will better protect voters.

To avoid unjustified firings and partisan interference, removals should be subject to approval by the courts.<sup>149</sup> This condition would require county legislatures to compile well-documented evidence and make a public case for why removal is appropriate.

# Consolidate Local Election Dates and Administration

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Numerous off-cycle elections, such as school board and village contests, which are often run by entities other than BOEs, see low turnout and election administration problems.

## **New York’s election calendar suppresses voter turnout for local and school district elections, leaves little time for local board staff to reflect and reassess, and strains resources for boards with tight budgets.**

While federal and state elections get the most attention, voters across New York also elect representatives and decide ballot issues for 62 counties, 62 cities, 932 towns, 343 villages, and 7,658 special purpose districts that oversee local services like schools, fire, water, sewers, parks, lighting, and libraries.<sup>150</sup>

Though the state legislature recently streamlined New York’s election calendar when it consolidated state and federal primaries, many of these local elections still take place on different calendars.<sup>151</sup> School board and budget elections take place every year on the third Tuesday in May.<sup>152</sup> Village elections can take place in March or June.<sup>153</sup> Fire and various special district elections take place in December.<sup>154</sup>

Turnout in these off-month local elections has declined in recent years, creating a disconnect between these entities and the communities they serve. Between 2012 and 2019, turnout in school board elections dropped by 35 percent.<sup>155</sup> Declines in school board and budget election participation are particularly concerning, since these elections “have the greatest disparities between users and electorate. Public school students are blacker and browner than the school district electorate,” observes Perry Grossman, a supervising attorney at the NYCLU.<sup>156</sup> Declining turnout means that consequential decisions are increasingly made by a small fraction of voters. Case in point: in 2021, voters in Troy approved a \$115.3 million school budget in a 624-to-129 vote.<sup>157</sup> Those 753 votes accounted for only about 3 percent of the city’s registered voters.<sup>158</sup>

Where school districts and villages have delegated election responsibilities to local BOEs, New York’s election calendar can strain those boards’ staff and resources. “Every time we think we’re going to have a slow period and we tell people when to plan their vacations, it’s getting so you just can’t. You can’t find a time that’s really good for anything,” notes Cayuga County Commissioner Lacey.<sup>159</sup> In local election offices nationwide, workload contributes to staff burnout and makes recruiting talent to work in election administration difficult.<sup>160</sup>

## **Allowing school districts and villages to administer their own elections creates unnecessary duplication of services and hurdles for voters and candidates.**

Most school district elections and many village elections are run by the entities themselves rather than the local BOEs.<sup>161</sup> When these entities fail to arrange shared service agreements with local BOEs, this division of election administration can result in unnecessary costs and duplication of effort.<sup>162</sup> Furthermore, this division puts the protection of voting rights into the hands of individuals who are not experts on elections. For example, school districts in counties covered by the language interpretation requirements of the Voting Rights Act are often unaware that they too are required to provide language assistance to voters.<sup>163</sup>

Having entities with little expertise in election administration run elections also creates hurdles for candidates. Patrina Freeman, who currently sits on the Irondequoit Town Board, previously ran for her school district. She notes that the school district did not have enough staff to both run the local school system and be responsive to candidate questions about voter rolls and other basic election information. She explains, “it’s hard to keep up enthusiasm [for a campaign] while struggling to get information about how school board elections run.”<sup>164</sup>

# Solutions

## **Consolidate election dates to increase turnout and allow more time between elections.**

State law should consolidate election dates so that all general elections — including for schools, villages, and special districts — take place on Election Day in November. Consolidating and standardizing the election calendar reduces barriers to the ballot and promotes broader participation, especially among historically underrepresented communities, ensuring in turn that elected officials better represent the needs of their communities.<sup>165</sup>

Consolidation also promotes efficient and effective election administration by reducing costs associated with holding multiple elections each year and giving more time in between elections for officials and workers to evaluate previous elections and improve processes for the future. These factors are a major reason for the nationwide trend toward moving local and school elections to coincide with state and federal elections.<sup>166</sup>

The legislature can require village, school, and special district elections to be held in November simply through changes to state law.<sup>167</sup> But New York should also consider constitutional changes to move other elections to even-numbered years, including elections for city officers. The state constitution currently mandates that these elections be held in odd-numbered years,<sup>168</sup> but city elections consistently see lower turnout than elections held in even years.<sup>169</sup>

## **Require local BOEs to administer village and school district elections.**

State law should require local BOEs to administer all elections that take place within their counties, including village, school district, and special district elections.<sup>170</sup> Election commissioners are expected to be experts on federal and state election law requirements as well as best practices to promote voter access and election integrity. They should manage all elections within their jurisdiction and ensure that voters' rights are protected every time they go to the polls to elect a representative. In addition, consolidating election administration responsibilities under the local boards makes it easier for both the NYS BOE and independent actors to monitor elections and identify any noncompliance with state or federal law.

Recommendations discussed earlier in this report to provide more resources and increase NYS BOE assistance would help offset the costs of adding additional elections to local BOE responsibilities.

## Conclusion

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**C**urrent election administration practices in New York deserve the state's 13.3 million voters.<sup>171</sup> The impact of this dysfunction reaches far beyond the state's borders, helping to fan the flames of antidemocratic narratives across the country.

Last June, during the New York City primary election, the NYC BOE mistakenly included roughly 135,000 test ballots in a preliminary announcement of the mayoral primary results.<sup>172</sup> Administrators at the local board quickly resolved the error, but advocates of the Big Lie took to Twitter to call into question the integrity of New York's — and the nation's — elections.<sup>173</sup>

Leading up to November, opponents of two ballot proposals that would have brought New Yorkers the proven benefits of same-day voter registration and no-excuse mail

voting argued in part that local BOEs were incapable of properly implementing the reforms.<sup>174</sup> When turnout in favor of the proposals proved too low, political opportunists once again used New York as “proof” to justify their anti-voter agenda nationwide.<sup>175</sup>

The stakes of fixing election administration in New York are higher than ever. The legislature can and should act now to improve service to voters throughout the state and strengthen their trust in elections.

# Endnotes

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- 5 Patrick Lohmann, “Claudia Tenney to Be Certified as Winner of New York’s 22nd Race, Judge Rules,” *Post-Standard* (Syracuse, NY), February 5, 2021, <https://www.syracuse.com/politics/cny/2021/02/claudia-tenney-to-be-certified-as-winner-of-new-yorks-22nd-race.html>; and *Tenney v. Oswego County Board of Elections*, 71 Misc.3d 421, 425 (Sup. Ct. Oswego Cnty. 2021).
- 6 *Report and Findings of the New York State Senate Elections Committee*, New York State Senate Elections Committee, November 15, 2021, 18, [https://www.nysenate.gov/sites/default/files/press-release/attachment/elex1115\\_vfinal.pdf](https://www.nysenate.gov/sites/default/files/press-release/attachment/elex1115_vfinal.pdf).
- 7 The findings in this report — of the nature and consequences of these systemic flaws and of the potential for progress in fixing them — derive not merely from study of law, policy, investigative reports, and court decisions. They also reflect the perspectives and lessons gleaned from interviews with five current local election officials and the co-chairs of the NYS BOE. We also interviewed advocates devoted to improving voter service in New York, many of whom are members of the Let NY Vote coalition.
- 8 N.Y. Elec. Law § 3-300 (McKinney 2021).
- 9 The New York Court of Appeals has affirmed that the bipartisan representation requirement is limited to boards and officers that perform these specific tasks. In *Clark v. Cuomo*, for example, the Court of Appeals found the bipartisan representation requirement inapplicable to employees at state agencies that facilitate voter registration “because the personnel who implement [that program] do not register voters, distribute ballots or receive, record or count votes at elections.” *Clark v. Cuomo*, 486 N.E. 2d 794, 798 (N.Y. 1985). See also *New York State Senate Republican Campaign Committee v. Sugarman*, 165 A.D. 3d 1536, 1537, 88 N.Y.S. 3d 580, 583 (N.Y. App. Div. 2018) (ruling that equal bipartisan representation requirement did not apply to State Board of Elections chief enforcement counsel because “respondent’s statutory powers and duties do not include registering voters, distributing ballots or receiving, recording or counting votes at an election”); and *Board of Elections in City of New York v. Mostofi*, 65 Misc. 3d 876 at 884, 108 N.Y.S. 3d 819 at 827 (Sup. Ct. Kings Cnty. 2019) (holding that the constitution’s bipartisan requirements do not apply to interpreter services, even where those “services may be necessary for a voter to intelligently exercise his or her franchise”).
- 10 N.Y. Elec. Law § 3-100 (McKinney 2021).
- 11 N.Y. Const. art. 2, § 8.
- 12 N.Y. Elec. Law § 3-102(1) (McKinney 2021).
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