



## CITIZENS UNION OF THE CITY OF NEW YORK

### Written Testimony to the New York State Senate Committee on Elections

#### Elections Administration and Voting Rights in New York State

Albany, New York  
September 20, 2021

Citizens Union thanks you for the opportunity to speak to this important matter, and for holding public hearings on this issue across the state.

In the last few years, this legislature has made immense strides in turning New York's election laws more open and fair. It was a giant leap forward into the 21<sup>st</sup> century. But in one fundamental way, our state has remained in the 1800s – the party-based control of elections.

New York is the only state that handed over the administration of its elections to political parties on both the state and local level and that mandates an even number of election commissioners from the two major parties. It is also the only state that has that inscribed in its constitution, a result of a compromise going back to 1894, when parties sought to reward thousands of people with paying jobs on Election Day.

Voting is perhaps the most recognized and important democratic act that citizens execute during their lifetimes. But it is also a service a government must provide to its citizens. In New York, voters are asked to go to the polls twice a year, and sometimes more. It is an elaborate and ongoing administrative operation. And yet, **the heart of this governmental administrative service is left for political parties to run.** Nowhere in our state do we leave such an essential function to outside interest groups.

#### **NEW YORK'S ELECTION FAILURES AND THE PARTISAN STRUCTURE OF THE BOARD OF ELECTIONS**

This Tammany Hall era arrangement is not in step with the needs of voters today. It has resulted in the continued use of patronage instead of merit in hiring, gridlock in decision-making, a complete lack of accountability, exclusion of representation of minor parties, and impediments to primary challengers. Most importantly, it has damaged New Yorkers' trust in their election system.

Voters are reminded of this dysfunctional, outdated, and ineffective system every year.

Three months ago, the New York City Board of Elections included thousands of test ballots in the published preliminary result; last year, it sent nearly 100,000 absentee ballots with wrong names and addresses to Brooklyn voters. Two years ago, voting machines crashed all over the city, causing hours-long lines on Election Day. Because of the boards' partisan structure, under which election officials lack any accountability or oversight, we do not have a full report on what caused those national embarrassments or whether something was done to prevent them from happening again.

In 2019, a week before a New York City online voter registration portal was supposed to go live, the Board announced it would refuse to accept electronic signatures, despite an Attorney General's opinion allowing the practice. That same year, the Board sued the City to block it from providing free translators at polling sites, and lost in court. In fact, in recent decades New York was sued multiple times by the Justice Department for failing to comply with federal voting laws. Election administration problems are by no means confined to New York City, as the errors involved in the 2020 election in the 22<sup>nd</sup> Congressional District underscore. In a system where election commissioners serve party bosses rather than the public, gridlock and political interests trump basic voting rights.

The current structure also depresses political competition, especially in primary elections. Every year, challengers and newcomers are removed from the primary ballot because of minor errors and technical requirements. Meanwhile, investigations have found Board employees are expected to gather petition signatures for party-affiliated candidates. The supposed benefits in a system where the two parties keep each other in check become irrelevant in primary elections, which are of greater consequence in most areas in New York.

Through legislative action and subsequent practice, parties essentially control the hiring at the state and local boards of election, and most positions are duplicated to secure equal representation. This has resulted in a workforce that is not accountable to their bosses or to the public. While many election employees are conscientious, hard workers, there is no mechanism or incentive – as in virtually any other employment – for employees to perform. The irony is that legal requirement for complete parity in hiring has proven unattainable. In most of the state, one party dominates, leading to poll workers being sworn in as a different party just for Election Day.

**In sum, New York's persistent failures when it comes to administering elections are rooted in the partisan patronage structure of the Board of Elections.**

But, to paraphrase Mayor LaGuardia, there is no Republican or Democratic way to run elections.

## **OVERHAULING ELECTION ADMINISTRATION IN NEW YORK**

**Citizens Union believes removing the partisan requirement in Article II, Section 8 of New York's constitution is the best way to make meaningful progress for reform.** As a good government group that has monitored our state's election for over a hundred years, we've seen gradual reforms implemented, and reform-minded election administrators attempt to better serve voters. Yet, the gordian knot between political parties and elections administration has continued to weigh in on every improvement. That knot must be untied at the root, the New York constitution. Citizens Union has called for that change in several reports and public campaigns in the last decade. In a 2009 report, we proposed a

series of structural changes aimed at reforming the arcane election system. Chief among those was eliminating the Board of Elections.

#### An elected statewide Chief Election Officer

**New York should transition to a model where an elected Secretary of State is tasked with administering elections.** Most states operate with a single official overseeing elections. Over two-thirds of those (25 states) have an elected secretary of state as the chief election official. This provides direct accountability to voters and reduces the possibility that an appointing authority would politicize that office.

**Appropriate restrictions and limitations on the Secretary of State's participation in politics and campaigns must be put in place.** For example, the elected Secretary of State may not run for any office during the term of office or for two years afterward to prevent the position from becoming a steppingstone for higher office. They should also be prohibited from participating in other campaigns. Other qualifications should be developed with the goal of reducing the politicization of this important office.

**Election policy-making should be on the state level,** leaving the local operation as ministerial as possible. In particular, decisions regarding how voter registration is conducted and what voting machines should be used should be made at the state level. The current structure is decentralized and lacks standardization, which may result in local administrators who do not follow the law, inconsistent standards, and discrepancies among counties.

#### Local election administration

New York relies on local election officials to conduct elections and should continue to do so even when the system is transformed to a Secretary of State model. With New York City and 57 other counties, plus numerous cities, towns, villages, and various districts conducting elections, local election machinery is essential to serve the diversity of voters and needs across the state.

**On the local level, elections should be run by a Chief Local Election Official, appointed by the chief executive of the county or the mayor of NYC** (or the county legislature where there is no chief executive), confirmed by the local legislature after a public hearing, and removable only for cause. Appropriate qualifications must be set, as well as limitations and restrictions on participation in party organizations, campaigns, or other political activities.

The Chief Local Election Official would be responsible for administering elections, including designating polling places, preparing ballots, conducting registration, hiring election-related workers, collecting ballots, and handling candidate petitions.

#### **IMPROVING ELECTION ADMINISTRATION IN THE SHORT TERM**

Amending the constitution is a lengthy process - though we note that if an amendment receives its first passage in 2022, it can receive a second passage in 2023 and be adopted by the voters in November 2023. **In the short term, lawmakers can significantly improve the election system through changes to state law.** Several creative legislative solutions have been proposed in recent months. Citizens Union

believes that any initiative to change state law to reform election administration must adhere to the following principles:

- **Reduce the involvement of party-appointed officers in election administration to the minimum required by the constitution** – registering voters, distributing ballots, and canvassing votes. The legislature should eliminate the provisions in the election law that secures equal representation of the major political parties in the appointment of employees (for example, in E.L. § 3–300 and E.L. § 3–401).
- Implement an **open, competitive, merit-based hiring process** for all election administration staff and certain functions at polls.
- Have a **single officer with executive authority to manage board offices**, hire staff, and administer elections. This person should **report to the county chief executive or New York City mayor** (or the county legislature where there is no chief executive) but have the job structured as an independent position. The officer should not report to any state election body.
- Set **appropriate professional qualifications for all election officials and staff**.
- Allow local authorities **greater scrutiny of nominees proposed by county parties**, including the authority to refuse to appoint a nominee.
- **Centralize policy-making decisions** and election results data with state election officials.

As noted above, although New York City has been the focus of attention in recent years, statutory reforms to election administration should not be limited to the city alone. The process for reform should incorporate input from local administrators and stakeholders around the state, and legislative solutions could include different provisions and timelines for different localities based on their needs. The recent statewide public hearing tour conducted by the Senate Elections Committee is an excellent example of such a process.

The structural shortcomings of the City’s Board of Elections, and of the state and county boards, have been well known for years. They were identified by, among others, Mayor Bloomberg’s Election Modernization Task Force in 2005, Governor Pataki’s State Task Force on elections in 2002, Attorney General Spitzer’s Task Force on Voting Matters in New York in 2001, Mayor Giuliani’s Board of Elections Task Force in that same year, and even Mayor Koch’s 1985 New York City Partnership Report. Although the way forward was clear to each one of those commissions, party powerholders have again and again prevented meaningful reform.

The legislature now has a golden opportunity to bring about true change. The public blunders of recent years have renewed the calls for effective and voter-centric elections. Legislative leaders and the new governor have admitted the current situation has become “extremely concerning” and an “embarrassment.” Meanwhile, politicians across the country are using New York’s constant mishaps to discredit the integrity of elections as a whole. Lawmakers should take action now to fix our broken election system.

## **APPENDIX: A LIST OF NEW YORK CITY BOARD OF ELECTIONS BLUNDERS IN THE LAST DECADES**

- 2021: The BOE mistakenly [counted](#) more than 100,000 test ballots in their preliminary ranked choice vote tabulations.
- 2020: The BOE [sent](#) nearly 100,000 defective absentee ballots to Brooklyn voters, with wrong names and addresses. It sent thousands of others with a design flaw that misled voters to think they are getting military ballots.
- 2020: The BOE [failed to send](#) absentee ballots to thousands of primary election voters who requested them on time, effectively disenfranchising them. Over 30,000 absentee ballots were only mailed to voters the day before the election. The BOE [disqualified](#) more than 84,000 absentee ballots it has received, one out of four mail-in ballots.
- 2019: A week before a city online voter registration portal was supposed to go live, the BOE [refused to accept](#) electronic signatures, despite an Attorney General's opinion allowing the practice.
- 2019: The BOE [sued](#) the city to block it from providing free translators to aid voters at polling sites. A judge rejected the lawsuit.
- 2018: Large numbers of voters mysteriously [disappeared](#) from voter rolls.
- 2018: Election Day [lines reached](#) four hours long. Voting machines crashed all over the city.
- 2016: The BOE [rejected](#) Mayor de Blasio's offer of an additional \$20 million in funding, which was contingent upon the acceptance of a number of reforms, including hiring an outside consultant.
- 2016: Over 200,000 voters were illegally [purged](#) from voter rolls.
- 2016: An audit conducted by the Comptroller's office [found](#) that 90% of polling sites over three elections had "significant problems," and more than half were breaking state and federal election laws.
- 2013: A report from the city's Department of Investigation detailed how investigators successfully [posed](#) as ineligible voters who had not been removed from voter rolls. The investigators were able to cast ballots in the voters' names, without being challenged, in 61 of 63 attempts. The report also found BOE employees are [expected to gather petition](#) signatures and fundraise for party-affiliated candidates.
- 2013: The BOE [removed](#) a slate of Democratic judicial delegate candidates because of a typo in their nominating petitions--a routine occurrence--despite state law stipulating otherwise.
- 2012: In reporting results for New York's 13<sup>th</sup> Congressional district, the BOE erroneously [recorded](#) zeros, rather than vote totals, in 79 of 506 precincts, leading State Senator Adriano Espaillat to concede prematurely.
- 2010: BOE ballots [instructed](#) voters to fill in the oval "above or next to" candidates' names, while the corresponding ovals were in fact below the names.

- 2010: The U.S. Justice Department [sued](#) the BOE for missing the deadline to mail absentee ballots to military service members and overseas voters from New York City and several other counties.
- 2006: The U.S. Justice Department [sued](#) New York State for failing to comply with the Help America Vote Act (HAVA), after years of partisan gridlock prevented the certification of accessible voting machines.
- 2004: The day before the presidential election, and on Election Day, the BOE's website and hotline [crashed](#), leaving voters [scrambling](#) to find their polling place in a high-turnout election. After claiming the problems stemmed from lack of funding, it was revealed that the BOE [spent](#) \$6 million on chauffeurs for after-hours work, a vast sum compared to similar spending in other, regulated agencies.
- 2000: Months after a State Senate election was decided by fewer than 200 votes, hundreds of ballots were [found](#) in an air conditioning duct in a BOE building.
- 1997: After the State Legislature passed a statute to remove highly technical ballot requirements that had been used to kick newcomers off the ballot, the State BOE [reinterpreted](#) the statute to introduce even more stringent requirements.
- 1996: In May, it took the BOE 35 days to [count](#) 172,000 school board ballots; in September, many voting machines [arrived](#) at polling places in Brooklyn only after the sites had already closed.
- 1994: After [failing](#) to comply with the Voting Rights Act for two years, the BOE finally agreed to transliterate candidates' names into Chinese on ballots. The BOE claimed that space and time limitations prevented it from complying, and that transliterations would confuse voters. Only after the U.S. Department of Justice denied preclearance of election plans, did the BOE concede and modified its plan.
- 1993: the U.S. Department of Justice found the New York City Board of Elections [discriminated](#) against Chinese-American voters by failing to provide appropriate language assistance. The DOJ found the BOE failed to include any measures for quality control over the accuracy of translations, failed to acknowledge the presence of different dialects of the Chinese language, failed to train Chinese translators or interpreters, failed to allocate translators according to need, and more.
- 1985: A city report [said](#) that the BOE employees charged with supervising the printing of ballots showed an "almost embarrassing lack of understanding" of their role.