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Testimony Provided to the  
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## Elections in a Pandemic: A Review of the 2020 Primaries

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Good afternoon Chairman Myrie, Chairman Gaughran, Chairman Lavine, Chairman Thiele, and esteemed members of the NYS Senate and NYS Assembly Standing Committees on Elections and Local Governments. Thank you for inviting the State Board of Elections to this virtual hearing. I am Robert Brehm, Co-Executive Director of the New York State Board of Elections (Board) and joining with me today is Co-Chair and Commissioner Douglas Kellner.

Thank you for the opportunity to speak before this panel today, to discuss and examine elections in a pandemic: a review of the 2020 primaries. While we are here testifying with my colleague, Todd Valentine, my written statement reflects only my views.

We appreciate the opportunity to provide you with information to consider knowing that election day is 84 days away, the early voting period begins in 74 days, and the Military and Overseas Voter ballot delivery deadline is thirty-eight days from today.

### The 2020 Presidential Election

The 2020 Election year consists of the Presidential Election, and contests to fill all positions in the US House of Representatives, State Senate and State Assembly as well as a host of judicial, and local contests. State and County Boards began preparation for the Presidential Election in 2019 as Presidential Election years are marked with unparalleled voter communications, unprecedented and increased voter turnout, and increased number of petitions, challenges, ballot lawsuits and all around increased volume on all election processes, including daily functions at each Board.

The State Board of Elections entered 2020 looking to implement early voting for the 2<sup>nd</sup> year across this state and to make adjustments to improve the efficiency of the early voting experience to increase voter turnout during the nine-day period. The State Board held a series of post early voting roundtables with County Boards, vendors and stakeholder groups to discuss what went well and items to improve.

State and County Boards began 2020 with a political calendar that marked the Presidential Primary to be held on April 28, 2020, federal and State primaries on June 23, 2020, a number of special elections, and the November 3, 2020, General Election, and general village elections either March or June 2020. The State Board also began 2020 with a focus on the implementation of approximately 53 chapters of Election Law passed in 2019 with no new resources provided to implement such changes.

Then came March and a global health pandemic ensued that added new and more complex problems to solve. Boards of Elections have successfully administered elections in times of turmoil, through natural disaster such as flooding in the North

Country in 2019 or through Hurricanes Irene, Lee and Sandy, through public safety issues, and through terrorist acts such as the September 11, 2001 primary election. The COVID-19 pandemic has turned out to be a longer, more sustained and more complicated world crisis which dramatically impacted the administration of 2020 elections and will impact the administration of our November 3, 2020 election. Appendix A provides a timeline of events impacting election administration, including executive orders and legislation.

A mission of the State Board is to work to ensure voter safety, the safety of our staff and poll workers while running the primary and general elections in a manner to preserve the accountability, integrity, transparency and verifiability of our elections. Even in the middle of a pandemic, New York State has ensured that voters will have an increased ability to exercise their right to vote. This was done by allowing all eligible voters to vote by absentee.

We are very proud to be here today, representing the staff of the State Board and in commending our County Boards of Elections throughout the State for their tireless effort through the pandemic. Our offices did not close during the pandemic. County Board staff worked through weekends and overtime in an environment requiring a less dense office capacity.

If we leave here today with only one message to share is: the State, County and City Board of Elections are working to administer the November 3, 2020 general election based on the provisions contained in the New York State Election Law.

While going forward with our planning, we need to incorporate lessons learned from the June 23, 2020 primaries:

- 1) Increase Preparations for the General Election. Boards need resources—more people to work at the poll sites, more poll sites to be open to accommodate an increased volume that accompanies a presidential election; more commodities (machines, poll pads, personal protective equipment (ppe) and a resource to assist in filling the gaps;
- 2) Resolve the inconsistency of the Election Law deadline for requesting an absentee ballot and the USPS mail delivery time frames to ensure that all voters are able to request, receive, process and return their ballot and that the ballot is received timely to be counted; and

- 3) To increase messaging around the election processes to ensure that registered voters are aware of their options and can plan how and when they would like to vote.

## Voting Options for June 23, 2020 Special Election and Primary Elections

Eligible voters had three options to vote during the June 23, 2020 primary: vote by absentee, during the nine day early voting period or during the statewide uniform fifteen-hour primary election day. In certain situations, a person can seek to vote by affidavit or a court order.

The voter history data reported into the New York Statewide Voter database (NYSVOTER) by the local Board of Elections report that 1,883,269 votes were cast on June 23, 2020. Of those, 1,027,234 were cast at a poll site on election day, 731,131 were cast by absentee, 118,108 were cast in person during the early voting period, 4,749 people filled out an affidavit, and 1,747 sought a court order to vote.

### Absentee Voting

Normally, under New York law, absentee voting is an exception to in-person voting, available upon application to voters who by reason of disability, illness, absence or being detained in jail cannot attend the polls.

As part of the response to the on-going COVID-19 pandemic, legislation and Executive Orders expanded access of absentee balloting for the June 23, 2020 primary elections and made the application process and return of ballots easier.

On April 9, 2020, the Governor signed an executive order enabling every eligible voter, active or inactive, to vote by absentee citing temporary illness to include fear of contracting the coronavirus. On April 24, 2020, an executive order was signed to require an absentee ballot application to be mailed, with a return postage paid envelope, to all eligible voters.

The order to require postage paid envelopes for applications and ballots dramatically impacted election administration. County Boards of Elections did not have a Business Reply Mail (BRM) Account or first-class business reply postage paid envelopes. On

April 24, 2020, the State Board held a conference call with National, Eastern Regional and New York State USPS administrators to discuss a process to assist County Boards to meet the business reply standard requirement.

On April 28, 2020, the USPS, State Board held a conference call for the Counties to discuss the requirement and the process. From April 28 through May 8<sup>th</sup>, the USPS and State Board heavily coordinated to turn around fifty-seven (57) Board of Elections BRM accounts and envelopes that met USPS , as well as, to ensure vendors had the appropriate BRM envelopes that met USPS guidelines for business return mail.

County Boards of Elections began to mail out their ballot applications as early as May 5, 2020. The decision of Yang v. NYSBOE required County Boards to mail a second, larger mailing of applications for the democratic presidential primary.

Due to running multiple elections on the same day due to the pandemic, voters requested approximately 1.8 million absentee ballots for one or more June 23, 2020 contests, depending on their eligibility. Conservatively, the number of absentees requested in 2020 were more than ten times the number cast at the equivalent election in 2016.

The executive orders both expanded access to voting and changed the method in which voters have traditionally voted. Typically, approximately 4% to 10% of New York's participating voters may cast an absentee ballot at an election. In 2016, 115,178 voters voted by absentee. For June 23, 2020 elections, the statewide voter registration list, NYSVOTER, data indicates that statewide approximately 38% or 731,131 of the votes cast were by absentee.

Pursuant to Chapter 91 of the Laws of 2020, the State Board is creating an absentee application request portal for voters to request a ballot. The portal will provide a voter with the ability to complete and submit an absentee application to their respective County Board of Elections. If a Board already has a portal in place, such as Erie and NYC, our portal will link the voter to that portal. The online portal would reduce the mail delivery of absentee ballot applications to the Board of Elections and hopefully provide a more efficient processing effort.

## Procedural Challenges

While the opportunity to vote by absentee was changed, the deadline to postmark an absentee ballot application had not changed. The absentee mail canvass procedure set forth in Article 9 of the Election Law had also not changed.

The deadline to request an absentee ballot application was set by statute to be June 16, 2020 (see 8-400(2)). That deadline, coupled with a June 23, 2020 primary election date was simply unworkable. It was unworkable for two reasons: 1) election mail is first class mail, which has a in county 2-5 delivery standard, and 2) the volume of applications was a record high and County Boards need a reasonable period of time to review and process those applications.

There is an inherent conflict in section 8-400(2)(c )of the Election Law providing cut-off date to request a ballot within seven days of Election as compared to USPS guidelines on election mail. The USPS 2020 postal tool kit and a July 30, 2020 USPS letter advises all States to provide a fifteen-day turnaround for election mail, and specifically recommends a seven day return period for a ballot.

Board of Elections, campaigns and advocacy groups should all have clear and consistent communications to voters on the voting process and best practices to allow the voter sufficient time to request an absentee ballot, enable the Boards to process the request, and allow the voter time to receive, consider, complete and mail the absentee ballot back to ensure their vote is received timely.

Please refer to Attachment B which is a graphic showing election mail postmark requirements as opposed to USPS election mail recommendations and a copy of the USPS letter dated July 30, 2020

## Postmark Issues Impacting the 2020 Primary

The instructions provided to voters on absentee ballot oath envelopes shall include a "specific direction stating when such ballot must be postmarked and when such ballot must reach the office of the board of elections in order to be canvassed" (EL 7-122(7)). The post mark on the ballot return envelope serves a critical purpose. The postmark evidences that the ballot was voted and placed into the custody of the board of elections or USPS before the election ended and before results were made known. A

universal, fundamental feature of elections is that the result of all votes remain unknown until voting is completed for everyone.

The USPS Postmarking Guidelines, Fact Sheet for Election mail indicate that the USPS apply a cancellation mark to all letter pieces processed on the USPS letter automation system. See [https://about.usps.com/kits/kit600\\_online\\_027.htm](https://about.usps.com/kits/kit600_online_027.htm).

New York's postage paid ballot return envelopes were prepared by USPS specifications to ensure they would be eligible for postmarks. The State Board of Elections conferred with postal authorities and ensure envelopes used by boards of elections were reviewed by USPS and met all requirements for business reply mail and postmarking.

Communication from local Boards of Elections noticing the failure of postmarks on returned mail and the canvass of absentee ballots has revealed that not all election mail was postmarked. The USPS failure to postmark mail in Brooklyn NY was the most concentrated and notable. The USPS needs to address the breakdown within their procedure. Attachment C is a letter communicating the State Board's concerns with procedural issues within USPS, specifically raising the postmarking failure within the Brooklyn postal service.

That being said, we have a role to communicate best practices and time frames to our voters to ensure that they can plan on the method they wish to vote and have sufficient time to proceed in that direction.

Several have suggested that county boards set up drop boxes for voted absentee ballots. In fact, New York already has what effectively amounts to a drop box program. Anyone can drop off a voted absentee ballot envelope by delivering it to any poll site on Election Day, by delivering it to any early voting site during early voting hours, or to any office of any board of elections. We need to do more to publicize these options.

I also propose two recommendations for legislative change ahead of the November 3, 2020 election.

1. Change the deadline date to request an absentee ballot to fifteen (15) days ahead of election day if requesting a ballot to be provided by mail. This would also change to a receipt deadline and not a mailing deadline. Thus helping to provide a realistic opportunity within the USPS delivery time frame, enable the

County Boards to have four business days to process the application and mail the ballot. It also ensures time for the voter to timely receive the ballot, complete their selections, secure and return by mail the absentee ballot.

2. Require Boards of Elections to process absentee ballot applications and if complete provide the voter with the ballot within four business days of receipt. With the unprecedented volume of anticipated absentee ballot applications, Boards must be provided with the necessary resources to process and mail out a ballot. A four-day period provides time to process and coordinate with third party vendors for mailings of the ballots, as applicable.

## Early Voting

The nine-day early voting period for the June 23, 2020 primary was Saturday, June 13, 2020 to Sunday, June 21, 2020. Statewide, 265 early voting centers were open for voters in each County or City Borough to be able to in person vote. NYSVOTER voter history shows that 118,510 or 6.2% of the votes cast for the June 23, 2020 elections were cast in person during the early voting period. In 2019, 248 early voting sites were open with 256,251 voters opting to vote early.

While the early voting period was promoted as one of the options to vote in the June 23, 2020 elections, it was underutilized. On June 12, 2020 the State Board issued a press release detailing voting options and deadlines for the New York State June 23, 2020 elections. In addition, beginning around June 12, 2020, State Board staff answered all calls from voters asking on how to obtain an absentee ballot also with information on where and when to early vote.

All stakeholders should plan to publicly promote early voting as a means to safely cast a vote for the 2020 general election.

## Election Day

3,636 Poll sites statewide were open from 6 am to 9 pm on June 23, 2020 as uploaded in our NYSVOTER database by the local Boards. Chapter 441 of the laws of 2019 set forth uniform statewide polling hours for primary elections. Prior to Chapter 441, primary hours were 6am-9pm in New York City, Nassau, Suffolk, Westchester, Rockland, Orange, Putnam, and Erie Counties. The other fifty (50) Counties had primary day poll site hours

of 12 pm to 9 pm. NYSVOTER voter history shows 1,027,234 or 55% of all voters voted on election day.

In 2019, County Board of Elections opened 5,397 general election day poll sites. In order to accommodate eight (8) million voters this fall, we need more poll sites and expanded space within already identified sites, increased voter check in tables, voter privacy booths and ballot scanners and ballot marking devices, as well as election day workers to support the expected voting population, along with signage and personal protective equipment (PPE) for voters and workers. All of this is to ensure the full potential of early voting sites, election day poll sites, machines, staff and poll workers are deployed. Sites need to be designed in a manner to spread people around the poll site to ensure volume and social distancing are accommodated. Also, in many communities there have been changes to parking and street access are being altered to provide safe, café-style venues for restaurants. This too should be utilized near polling sites to provide safe areas for voter lines where, based on COVID safety instructions physical distance and room occupancy limits need to be provided.

Poll site preparedness is an essential key to running a smooth election day. Boards need to have finalized plans in place, maximizing the number of election day poll sites in spaces that can accommodate all of those who plan to vote. In my experience, if a poll site opens unprepared and long lines develop, much more resources are needed and it takes a significant amount of time to work to recover to an acceptable wait time, if it can ever catch up to the volume that the day brings.

In working with the County Boards on their early voting and election day site preparedness, we requested a survey identify the number of sites and workers needed for the 2020 general election. All but five counties have responded. Of those responses, seventeen (17) Counties report plans to open less election day polling places when compared to the 2019 general election poll sites data. As presidential election years are marked with heavy turnout, we urge all municipalities to review locations and sites that they can offer up to our Boards of Elections.

## Election Results

With exception of the June 23, 2020 primary, the majority of elections had been able to be unofficially "called" through Unofficial Election Night results. Campaigns and the public expect the immediate result of the contest which cannot be achieved when over one-third of the vote is cast by absentee.

The media has been reporting that the general election result will not be known until weeks after the election. This is true that under the election law a contest needs to be canvassed within twenty-five days or November 28, 2020 and in Presidential years, the process must be seamless to ensure New York State electors can be confirmed by the December 8, 2020 deadline.

We need to ensure that our County and City Boards have more resources available to them to commit toward the canvassing the vote and to ensure a safe and accurate count. It is imperative that all boards have:

- a plan in place now to identify how they can begin the process as close to election day as possible.
- adequate space and equipment to ensure multiple teams of staff and stakeholders can review and process absentee ballots as early as possible after election day;
- more staff assigned to the absentee canvass process. Staff and stakeholders should be set up to review, envelopes, make objections and have the Board Commissioners able to make rulings early on after election day.

To speed up the rulings or challenges during the absentee ballot canvass period, a recommendation is to have judges assigned to sit during the canvass, similarly to early voting and election day,

### Safety of Poll Workers and Voters

A contributing fact to the underutilization of early voting was the fear of contracting COVID-19. On March 9, 2020 and May 15, 2020, the State Board publicly released guidance to County Boards of Elections regarding COVID-19 including how to set up and maintain a safe poll site, as well as, frequently asked questions for Election Officials.

The fear of contracting COVID-19 not only resulted in voters opting to vote by absentee but resulted in a large number of poll workers not feeling comfortable to work the poll sites during early voting or on election day.

The State Board has engaged with NASED and the American Bar Association to recruit attorneys to sign up as poll workers. The Board is engaging with the federal Election Assistance Commission (EAC) on a last effort push to recruit poll workers by marking September 1, 2020 as being national poll worker recruitment day.

All stakeholders should advocate for registered voters to sign up to become a poll worker. I call on all levels of government to search within your workforce for people to sign up as poll workers and to offer more sites and resources to your Board of Elections and to engage in conversations with county board of elections commissioners as early as possible.

### Funding to Administer an Election During a Pandemic

The most significant source of funding to administer elections during the pandemic was through the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act was enacted March 27, 2020, and included \$400 million in new Help America Vote Act (HAVA) funds, made available to states to prevent, prepare for, and respond to the coronavirus for the 2020 Federal election cycle. States are subject to providing an additional 20% match.

New York State has been allocated \$20,567,088 from the federal government and New York State is providing the 20% match of \$4,113,417. New York State has \$24,680,505 for use by county boards of elections to implement measures necessary for responsible, safe, and fair elections during the COVID-19 pandemic. The State Board of Elections established a grant program to reimburse county boards of elections for eligible expenses relative to implementing measures necessary for responsible, safe and fair elections during the COVID-19 pandemic.

Expenditures related to the protection of the health and safety of poll workers, staff, and voters during the federal elections as well as those resulting from unanticipated increased demand for vote costs (e.g. printing ballots, envelopes, postage, processing, receiving, storage, etc.), equipment, temporary staff, and similar costs due to COVID-19 would satisfy these elements.

To date, County Boards have reported spending an estimated \$12 million dollars of the funds with the majority of those expenses utilized to cover the cost of the return postage paid mail for the June primary. Three (3) County Boards have spent all their HAVA CARES grant allocation.

### Outreach

The New York State Board of Elections issued a series of press release ahead of the June 23, 2020 primary elections. The press releases:

- aimed at providing voters with Guidance on how to request and vote by Absentee Ballot, issued May 22, 2020;
- Unveiling the Accessible Absentee Voter Application, issued June 3, 2020; and
- Informing Voters of Voting Options and Deadlines for the New York State June 23, 2020 Primary Election.

The State Board of Elections does not have available funding or resources to conduct public service announcements ahead of the November 3, 2020 election. We have come before this panel before asking for additional resources for outreach and in the administration of election.

I believe the State Board plans to issue a series of press releases on:

- Voter registration deadlines;
- Poll worker recruitment;
- how to complete an absentee ballot application and deadlines;
- how to complete and return an absentee ballot application and deadlines;
- the early voting period; and
- Election Day voting.

We advocate that stakeholders like you, join in this outreach effort, and develop and distribute public service announcements either statewide or to your districts.

To that end, our other efforts includes working with the Election Assistance Commission on outreach ahead of the September 1, 2020 National Poll Worker Recruitment Day. Similarly, we collaborated with National Association of State Election Directors in filming a limited, but national recruitment video geared toward the recruitment of attorneys as poll workers.

### The Security of our Election

The State Board of Elections, through its Secure Election Center, stood up an elections task force and monitoring system, in which our partners (State Police, Department of Homeland Security and Emergency Services, Office of Information Technology, Public Service Commission, Department of Transportation, the Executive Chamber and federal partners, Department of Homeland Security and the FBI) discuss the status of the election environment. Appendix D is included to provide you with updated information on our efforts in the security front.

Thank you for the opportunity to discuss lessons learned from the 2020 primary and to

highlight preparations necessary for a successful 2020 general election.

## Appendix A: The Timeline of Election Events Impacting the Primary Election

<b>Jan. 21:</b>	SAM v. Cuomo: On January 21, the Sam Party filed an action claiming that the new ballot thresholds contained in the public financing program, enacted in part zzz of the 2020-2021 budget, are unconstitutional. The Working Families Party Later joined the suit. A motion for preliminary injunction has been filed, and was fully briefed as of July 24. Oral argument has yet to be set.
<b>Feb. 25:</b>	First day for signing designating petitions §6-134(4)
<b>Mar. 7:</b>	Executive Order 202, Declared a Disaster Emergency in NYS due to COVID-19
<b>Mar. 13</b>	Last Day for CBOES to transmit Military/Special federal ballots for the Presidential Primary
<b>Mar. 17:</b>	Executive Order 202.4, Directed non-essential staff to work from home.
<b>Mar. 17 - Mar.20:</b>	Dates for filing designating petitions. §6-158(1) (was originally Mar.30-April1)
<b>Mar. 18:</b>	Chapter 24 signed into law changing the dates for the petition filing period to be March 17-20.
<b>Mar. 24:</b>	Last day to authorize designations. §6-120(3)
<b>Mar 24:</b>	Last day to accept or decline designations. §6-158(2)
<b>Mar. 29 : Executive Order 202.13 (signed)</b>	Postponed the Queens Borough President election from March 24,2020 and special election scheduled for April 28, 2020 to be held on June 23, 2020.  Rescheduled the Presidential Primary from April 28, 2020 to June 23,2020  Postponed circulation, filing and collection of designating petitions or independent nomination petitions for any office commencing March 31, 2020 to be postponed.
<b>Mar 30:</b>	Last day to fill a vacancy after a declination. §6-158(3)
<b>April 3:</b>	Last day to file authorization of substitution after declination of a designation. §6-120(3)
<b>April 9: Executive Order 202.15 (signed)</b>	Enabled absentee ballots to be granted based on temporary illness which included the potential for contraction of the COVID-19 virus for any election held on or before June 23, 2020; and  Modified 8-400 of the Election Law to allow for electronic application, with no requirement for in-person signature or appearance to be able to access an absentee ballot.

<b>April 12: Executive Order 202.16 (signed)</b>	Postponed party caucuses that were scheduled to take place in April or May until June 1, 2020.
<b>April 18 - April 26:</b>	Presidential Primary Early Voting Period (original dates)
<b>April 24: Executive Order 202.23 (signed)</b>	Provided that every voter, active or inactive, eligible to vote in a primary or special election to be held on June 23, 2020 shall be sent an absentee ballot application form with a postage paid return envelope.
<b>April 27:</b>	Presidential Primary cancelled pursuant to publicly suspended campaign determination.
<b>April 28:</b>	Original Date of Presidential Primary, postponed to June 23, 2020 EO 202.12/13.
<b>April 28:</b>	Yang v. SBOE this action challenged the SBOE's determination to remove presidential candidates from the primary ballot who were no longer seeking or publicly suspended their campaign for office of president of the United States pursuant to the Election Law. As only one candidate was still running, there would have been no presidential primary. Andrew Yang sued and moved for a preliminary injunction, requiring all candidates who were previously eligible be listed on the presidential primary ballot. The trial court granted Yang's motion (5.5.20), and the Second Circuit Court of Appeals affirmed
<b>May 1: Executive Order 202.26 (signed)</b>	Any absentee ballot sent to a voter for a primary or special election to be held on June 23, 2020 shall be provided with a postage paid return envelope.;  For any election held before July 1, 2020, upon transmitting or mailing absentee ballots to voters, the boards of elections shall provide and maintain, in its office, a voting system that is accessible for voters wishing to mark their ballot privately and independently, and provided that availability of this services hall be posted on the website of each board of elections.
<b>May 5:</b>	NYS Presidential Primary reinstated for June 23, 2020
<b>May 7: Executive Order 202.28 (signed)</b>	Limited the option to select temporary illness due to fear of contracting COVID-19 to only apply to the June 23, 2020 special and primary elections.
<b>May 8:</b>	Deadline to transmit ballots to eligible military special voters for Special Elections and Primaries.
<b>May 15:</b>	Central New York, Finger Lakes, Mohawk Valley, North Country and the Southern Tier regions enter phase 1 of reopening
<b>May 19:</b>	Western New York region enters phase 1 of reopening
<b>May 20:</b>	Capital District region enters phase 1 of reopening
<b>May 22:</b>	Hernandez v. SBOE: On May 22, 2020, the National Federation of the Blind filed an action alleging that New York's absentee ballot process is inaccessible to persons with print disabilities. An accessible process was negotiated for the June 23rd primary, but one could not be reached for the November 3rd process. Plaintiff filed for a motion for preliminary injunction. A hearing will be had on August 23,2020.

<b>May 26:</b>	Mid-Hudson region enters phase 1 of reopening
<b>May 27:</b>	Long Island region enters phase 1 of reopening
<b>May 29:</b>	Central New York, Finger Lakes, Mohawk Valley, North Country and the Southern Tier regions enter phase 2 of reopening
<b>June 2:</b>	Western New York region enters phase 2 of reopening
<b>June 3:</b>	Capital District region enters phase 2 of reopening
<b>June 7: Executive Order 202.39 (signed)</b>	Provided guidance on school absentee voting.
<b>June 8:</b>	NYC enters phase 1 of reopening and Mid-Hudson region enters phase 2 of reopening
<b>June 9: Executive Order 202.40 (signed)</b>	Provided guidance to school boards on budgets that did not pass.
<b>June 10:</b>	Long island region enters phase 2 of reopening
<b>June 12:</b>	Central New York, Finger Lakes, Mohawk Valley, North Country and the Southern Tier regions enter phase 3 of reopening
<b>June 13 – June 21:</b>	Early Voting dates for Presidential Primary and Primary Election
<b>June 16:</b>	Western New York region enters phase 3 of reopening
<b>June 16:</b>	Deadline for Postmarking an Absentee ballot application
<b>June 17:</b>	Capital District region enters phase 3 of reopening
<b>June 21: Executive Order 202.44 (signed)</b>	Required boards of elections for any election held before July 1, 2020 to maintain a voting system that is accessible for voters who want to mark their ballots privately and independently; this must be on their website, so people know of the service.
<b>June 22:</b>	NYC enters phase 2 of reopening
<b>June 23:</b>	Presidential Primary and Primary Election  Mid-Hudson region enters phase 3 of reopening
<b>June 23:</b>	Post mark Deadline for Absentee Ballot, must be received by June 30 <sup>th</sup> .
<b>June 24:</b>	Long Island region enters phase 3 of reopening
<b>June 26:</b>	Central New York, Finger Lakes, Mohawk Valley, North Country and the Southern Tier regions enter phase 4 of reopening
<b>June 30: Executive Order 202.46 (signed)</b>	Provided for the period of time for independent nomination petitions to be signed, filed and provide for the amount of required signatures.
<b>June 30:</b>	Last day a ballot can be received by a BOE if postmarked by 6.23.2020
<b>June 30:</b>	Western New York region enters phase 4 of reopening
<b>July 1:</b>	Capital District region enters phase 4 of reopening
<b>July 3: Executive Order 202.47 (signed)</b>	Provided for Party Caucus to be video-conferenced.

<b>July 3:</b>	Eisen v. Cuomo: filed July 3, 2020 was a matter that challenged New York's revised independent nominating petition process that was revised pursuant to an Executive Order. The matter was dismissed on July 27th.
<b>July 6: Executive Order 202.48 (signed)</b>	Extended EO 202.28 through August 5, 2020.
<b>July 6:</b>	Canvass of Absentee can begin
<b>July 6:</b>	NYC enters phase 3 of reopening
<b>July 7:</b>	Mid-Hudson region enters phase 4 of reopening
<b>July 8:</b>	Long Island region enters phase 4 of reopening
<b>July 8:</b>	League of Women Voters v. Kosinski: a motion was filed challenging NY's absentee ballot process in so much as it doesn't have a cure provision. NYSBOE was granted an extension to file an answer until August 13, 2020.  It should be noted that there is a bill that passed both houses of the legislature that would go a long way in resolving this matter as it provides a cure mechanism for absentee ballots.
<b>July 8:</b>	Upstate Jobs Party v. Kosinski is a matter where plaintiffs are seeking housekeeping accounts for independent bodies, and for independent bodies to have the same "hard money" contribution limits as parties. Upstate Jobs filed for summary judgment on July 8th. The NYSBOE response is due August 25.
<b>July 12: Executive Order 202.51 (signed)</b>	Provided guidance for school boards and library boards on petitions.
<b>July 17:</b>	Gallagher v. SBOE. Plaintiffs seeks to "count[] all absentee ballots received on or before June 30, 2020" with respect to the June 23, 2020 primary election. The claims revolve around postmark issues; particularly postmarks on envelopes that are prepaid. On August 3rd, the court ruled on Plaintiffs motion for preliminary injunction, ordering the SBOE to direct all local boards of elections to count all otherwise valid absentee ballots cast in the June 23 Primary which were (1) received by June 24, 2020, without regard to whether such ballots are postmarked by June 23, 2020 and (2) received by June 25, 2020, so long as such ballots are not postmarked later than June 23, 2020.
<b>July 20:</b>	NYC enters phase 4 of reopening
<b>July 20:</b>	The State Legislature passes ten election law related bills. Six which would change election administration for the November 3, 2020 general election
<b>July 28:</b>	On July 28th, the Green Party and Libertarian Party filed a lawsuit challenging the party threshold law in the SDNY.
<b>July 29:</b>	League of Women Voters v. SBOE: On July 29th filed a motion for Preliminary injunction; challenges the 25 day cutoff period for new voter registrations. The NYSOBE response is due on August 14th.

<b>July 30:</b>	NYSBOE was notified that the Budget Director will not certify the “Environmental Bond Act of 2020; Restore Mother Nature, Part QQ of Chapter 58 of the Laws of 2020
<b>August 3, 2020</b>	Gallagher v. NYSBOE: Court rules NSYBOE must direct all Boards to count those ballots received by June 24 <sup>th</sup> without a postmark.
<b>August 6, 2020</b>	NYSBOE directs local boards to “count all otherwise valid absentee ballots cast in the June 23 Primary which were received by June 24, 2020, without regard to whether such ballots are postmarked by June 23, 2020 and (2) received by June 25, 2020, so long as such ballots are not postmarked later than June 23, 2020.”

## **Executive Orders**

Nine executive orders impacting New York's Elections and changing the process elections were signed between March 29, 2020 and June 21, 2020 impacting the June 23, 2020 Special and Primary Elections.

202.13, signed March 29, 2020

- Postponed the Queens Borough President election from March 24, 2020 and special election scheduled for April 28, 2020, to be held on June 23, 2020.
- Postponed circulation, filing and collection of designating petitions or independent nomination petitions for any office commencing March 31, 2020 to be postponed.

202.15, signed April 9, 2020

- Enabled absentee ballots to be granted based on temporary illness which included the potential for contraction of the COVID-19 virus for any election held on or before June 23, 2020; and
- Modified 8-400 of the Election Law to allow for electronic application, with no requirement for in-person signature or appearance to be able to access an absentee ballot.

202.16, signed April 12, 2020

- Postponed party caucuses that were scheduled to take place in April or May until June 1, 2020.

202.23, signed April 24, 2020

- Provided that every voter, active or inactive, eligible to vote in a primary or special election to be held on June 23, 2020 shall be sent an absentee ballot application form with a postage paid return envelope.

202.26, signed May 1, 2020

- Any absentee ballot sent to a voter for a primary or special election to be held on June 23, 2020 shall be provided with a postage paid return envelope.;
- For any election held before July 1, 2020, upon transmitting or mailing absentee ballots to voters, the boards of elections shall provide and maintain, in its office, a voting system that is accessible for voters wishing to mark their ballot privately and independently, and provided that availability of this services shall be posted on the website of each board of elections.

202.28, signed May 7, 2020

- Limited the option to select temporary illness due to fear of contracting COVID-19 to only apply to the June 23, 2020 special and primary elections.

202.39, signed June 7, 2020:

- Provided guidance on school absentee voting.

202.40, signed June 9, 2020:

- Provided guidance to school boards on budgets that did not pass.

202.44, signed June 21, 2020:

- Required boards of elections for any election held before July 1, 2020 to maintain a voting system that is accessible for voters who want to mark their ballots privately and independently; this must be on their website so people know of the service.

202.46, signed June 30, 2020;

- Provided for the period of time for independent nomination petitions to be signed, filed and provide for the amount of required signatures.

202.47, signed July 3, 2020:

- Provided for Party Caucus to be video-conferenced.

202.48, signed July 6, 2020

- Extended EO 202.28 through August 5, 2020.

202.51, signed July 12, 2020

- Provided guidance for school boards and library boards on petitions.

## **Legislative Proposals Impacting November 3, 2020 General Election**

Ten election law bills passed both houses the week of July 20, 2020 and have yet to be delivered to the Governor for consideration. Six of these bills would impact election administration of the November 3, 2020 general election.

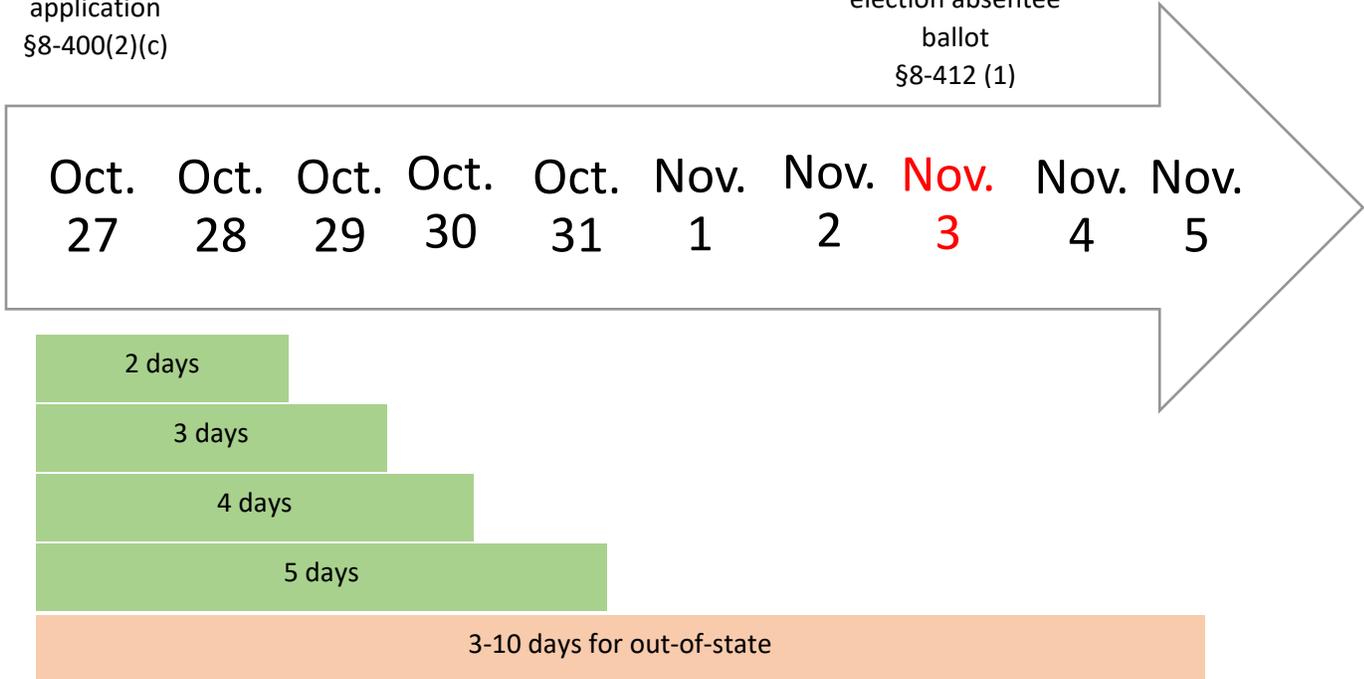
- S8015-D would expand the definition of temporary illness on an absentee ballot application to include instances where a voter is unable to appear personally at the polling place of the election district because there is a risk of contracting or spreading disease.
- A10807 would enable Boards of Elections to send out absentee ballots earlier than thirty (30) days before the election.
- S8370B would provide absentee voters with an opportunity to cure deficiencies on their absentee ballots to ensure their vote is counted.
- A10808-A would provide that an absentee ballot received by a County or City Board of Elections without a postmark to be deemed timely mailed if the Board of Elections time stamp of receipt is the day after the election.
- S5188 would prevent that the entrance to and exit of polling stations are not changed except to increase access or to maintain public safety, and that any alteration is clearly marked with signage next to the former entrance or exit.
- S8796-A would enable certain party designations and nominations to be made via video teleconference after notice to its members.

## Appendix B: Election Mail Postmark and Receipt Dates Reviewed Against USPS Election Mail First Class Delivery Standards for In State and Out of State Mail

### NYS Election Law deadlines with USPS First Class delivery standards

Last day to postmark absentee application §8-400(2)(c)

Last day to postmark general election absentee ballot §8-412 (1)



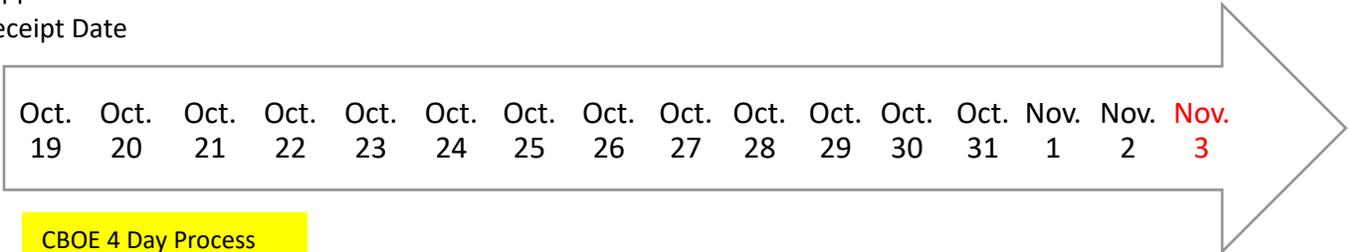
**Legend:** For the CBOE to receive an absentee application.

= in state mailing

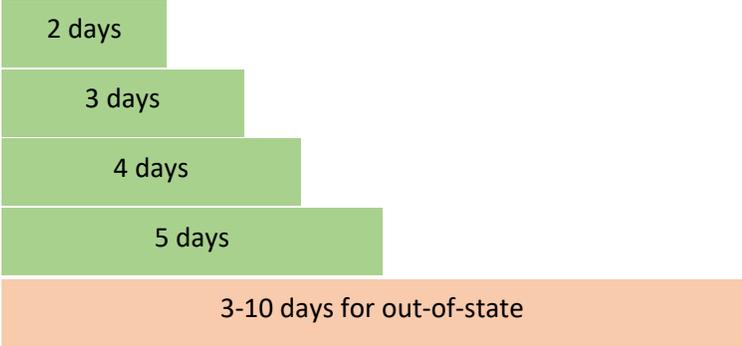
= out-of-state mailing

**Planning based on USPS delivery standards**

Absentee  
Ballot  
Application  
Receipt Date



CBOE 4 Day Process



**Legend:** For the Voter to Receive a Ballot

 = in state mailing

 = out-of-state mailing

THOMAS J. MARSHALL  
GENERAL COUNSEL  
AND EXECUTIVE VICE PRESIDENT



July 30, 2020

Honorable Robert A. Brehm  
Honorable Todd Valentine  
Co-Directors, State Board of Elections  
40 North Pearl Street, Suite 5  
Albany, NY 12207-2729

RECEIVED - NYSDGE  
JUL 31 20 PM 12:09

Dear Mr. Brehm and Mr. Valentine:

Re: Deadlines for Mailing Ballots

With the 2020 General Election rapidly approaching, this letter follows up on my letter dated May 29, 2020, which I sent to election officials throughout the country. That letter highlighted some key aspects of the Postal Service's delivery processes. The purpose of this letter is to focus specifically on the deadlines for requesting and casting ballots by mail. In particular, we wanted to note that, under our reading of New York's election laws, certain deadlines for requesting and casting mail-in ballots may be incongruous with the Postal Service's delivery standards. This mismatch creates a risk that ballots requested near the deadline under state law will not be returned by mail in time to be counted under your laws as we understand them.

As I stated in my May 29 letter, the two main classes of mail that are used for ballots are First-Class Mail and USPS Marketing Mail, the latter of which includes the Nonprofit postage rate. Voters must use First-Class Mail (or an expedited level of service) to mail their ballots and ballot requests, while state or local election officials may generally use either First-Class Mail or Marketing Mail to mail blank ballots to voters. While the specific transit times for either class of mail cannot be guaranteed, and depend on factors such as a given mailpiece's place of origin and destination, most domestic First-Class Mail is delivered 2-5 days after it is received by the Postal Service, and most domestic Marketing Mail is delivered 3-10 days after it is received.

To account for these delivery standards and to allow for contingencies (e.g., weather issues or unforeseen events), the Postal Service strongly recommends adhering to the following timeframe when using the mail to transmit ballots to domestic voters:

- **Ballot requests:** Where voters will both receive and send a ballot by mail, voters should submit their ballot request early enough so that it is received by their election officials at least 15 days before Election Day at a minimum, and preferably long before that time.
- **Mailing blank ballots to voters:** In responding to a ballot request, election officials should consider that the ballot needs to be in the hands of the voter so that he or she has adequate time to complete it and put it back in the mail stream so that it can be processed and delivered by the applicable deadline. Accordingly, the Postal Service recommends that election officials use First-Class Mail to transmit blank ballots and allow 1 week for delivery to voters. Using Marketing Mail will result in slower delivery times and will increase the risk that voters will not receive their ballots in time to return them by mail.

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- **Mailing completed ballots to election officials:** To allow enough time for ballots to be returned to election officials, domestic voters should generally mail their completed ballots at least one week before the state's due date. In states that require mail-in ballots to be *both* postmarked by Election Day *and* received by election officials by a specific date that is one week or more after Election Day, voters may generally mail their ballot up until November 3. However, voters who mail in their ballots on Election Day must be aware of the posted collection times on collection boxes and at the Postal Service's retail facilities, and that ballots entered after the last posted collection time on a given day will not be postmarked until the following business day.

Under our reading of your state's election laws, as in effect on July 27, 2020, certain state-law requirements and deadlines appear to be incompatible with the Postal Service's delivery standards and the recommended timeframe noted above. As a result, to the extent that the mail is used to transmit ballots to and from voters, there is a risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted.

Specifically, it appears that a completed ballot must be postmarked by Election Day and received by election officials 7 days after the election. If that understanding is correct, voters who choose to mail their ballots may do so on or before Tuesday, November 3. However, it further appears that state law generally permits voters to apply by mail for a ballot as late as 7 days before the election. If a voter submits a request at or near the deadline, and the ballot is transmitted to the voter by mail, there is a risk that the voter will not receive the ballot before Election Day or have sufficient time to complete and mail the completed ballot back to election officials in time to satisfy the state's postmarking deadline. That risk is exacerbated by the fact that the law does not appear to impose a specific time period by which election officials must transmit a ballot to the voter in response to a request.

To be clear, the Postal Service is not purporting to definitively interpret the requirements of your state's election laws, and also is not recommending that such laws be changed to accommodate the Postal Service's delivery standards. By the same token, however, the Postal Service cannot adjust its delivery standards to accommodate the requirements of state election law. For this reason, the Postal Service asks that election officials keep the Postal Service's delivery standards and recommendations in mind when making decisions as to the appropriate means used to send a piece of Election Mail to voters, and when informing voters how to successfully participate in an election where they choose to use the mail. It is particularly important that voters be made aware of the transit times for mail (including mail-in ballots) so that they can make informed decisions about whether and when to (1) request a mail-in ballot, and (2) mail a completed ballot back to election officials.

We remain committed to sustaining the mail as a secure, efficient, and effective means to allow citizens to participate in the electoral process when election officials determine to utilize the mail as a part of their election system. Ensuring that you have an understanding of our operational capabilities and recommended timelines, and can educate voters accordingly, is important to achieving a successful election season. Please reach out to your assigned election mail coordinator to discuss the logistics of your mailings and the services that are available as well as any questions you may have. A list of election mail coordinators may be found on our website at: <https://about.usps.com/election-mail/politicaelection-mail-coordinators.pdf>.

We hope the information contained in this letter is helpful, and please let me know if you have any questions or concerns.

Sincerely,



Thomas J. Marshall

RECEIVED - NYSBDE  
JUL 31 20 PM 12:09



Peter S. Kosinski  
Co-Chair

vacant  
Commissioner

Todd D. Valentine  
Co-Executive Director

**STATE BOARD OF ELECTIONS**  
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Douglas A. Kellner  
Co-Chair

Andrew J. Spano  
Commissioner

Robert A. Brehm,  
Co-Executive Director

August 10, 2020

Dane Coleman  
Vice President, Regional Processing Operations, Eastern  
United States Postal Service  
Via email: [Dane.A.Coleman@USPS.gov](mailto:Dane.A.Coleman@USPS.gov)

**Re:** Absentee Ballot Issues for the November 3, 2020 General Election

Dear Mr. Coleman:

First, I would like to thank you for the collaboration your office provided regarding the June 23, 2020 primary and special election. Due to the COVID-19 pandemic, local boards of elections were required to send all eligible voters an absentee ballot application with a postage paid envelope and to those who applied, an absentee ballot with a return postage paid envelope. Heavy collaboration between USPS and NSYBOE was successful in setting up business reply accounts and first-class election business reply envelopes.

Your office's assistance with setting up election business mail envelopes to ensure envelopes get postmarked or ensuring ballots get delivered to voters, was essential in making the June 23, 2020 primary and special election work. Thank you for your assistance.

As you know, the November 3, 2020 general election is going to occur in less than three months. This is a presidential election year, which historically sees a significant increase in voter participation. Additionally, it does not appear that the COVID-19 pandemic will abate; as such, the number of absentee ballot applications and ballots for the November election is going to increase exponentially. Given the unprecedented volume of election mail that is to be expected for the November 3, 2020 election, several issues must be addressed swiftly.

1) As you are aware, postmarking absentee ballot envelopes is essential in determining whether an absentee ballot was timely mailed. Most places throughout the state did not have significant issues in relation to ballot envelopes not having a postmark (e.g. the Bronx had 67 without a postmark; Manhattan had 89; Queens had 69; and Staten Island had 84). Brooklyn, however, appeared to have a significant issue in placing postmarks on absentee ballot envelopes. According to our records, 4,886 ballot envelopes did not have a postmark. I am sure you agree that is an unacceptably high number. In fact, this was subject to litigation, where a federal judge found that such a discrepancy was unconstitutional under the Equal Protection clause, as voters in the Bronx and Manhattan did not have anywhere near as many postmark "failures" as

Brooklyn. *See Gallagher v New York State Bd. of Elections*, 20 CIV. 5504 (AT), 2020 WL 4496849 [SDNY Aug. 3, 2020]. In looking forward to the November 3, 2020 election, what steps is USPS going to take to ensure this failure does not happen again? As you are aware, a lack of a postmark results in disenfranchising voters, and our efforts should focus on preventing such disenfranchisement.

2) In addition to the Brooklyn failure above, we have received complaints from upstate counties that a number of absentee ballots did not have a postmark, presumably due to mechanical or human error. What protocol is going to be put in place to minimize such errors?

3) We have received complaints from some voters that when they requested a hand postmark on their absentee ballot, postal staff refused. *See* attached email from a voter regarding a post office in Fulton County. An essential function of the elections process is that voters are confident that their vote will be casted and counted. This confidence diminishes if a voter requests a postmark and staff refuses to provide one. How is your office going to notify and train staff to place postmarks on election mail when a voter makes a request?

4) During the 2017 November election, there was an incident where large batches of absentee ballot envelopes in Brooklyn were not delivered to the New York City Boards of Elections until well after the election (April 24 and 25, 2018). Your letter to the New York City board indicates that the local post office anticipated a continuation of a verbal agreement, where the city board would pick up the ballots. What protocol will be put into place in regard to handling election mail?

As I stated earlier, the number of absentee applications and ballot envelopes going through the post office is likely to reach an unprecedented level this election season. From my experience, I can tell you that voter participation is going to be especially high this election year. While the post office handled a lot of mail for the June 23, 2020 primary election, I can say, with certainty, that the volume of election mail for the November 3, 2020 general election will be exponentially much higher. To ensure that every New Yorker's right to vote is preserved, I urge you to look into the issues highlighted above, and work with my office as soon as possible regarding election mailings.

Again, thank you for your assistance, and I look forward to working with you in the near future.

Sincerely,



Robert A. Brehm  
Co-Executive Director

## Appendix D: Security Efforts

In SFY 2018/19, New York State firmly committed resources to create a Secure Elections Center to protect NY's election infrastructure from cybersecurity threats with a \$5 million state appropriation for "services and expenses related to securing election infrastructure from cyber-related threats including, but not limited to the creation of an election support center, development of an elections cybersecurity support toolkit, and providing cyber risk vulnerability assessments and support for local board of elections."

In SFY 2018/19, \$5 million dollars was appropriated to protect NY's election infrastructure. In the SFY 2019/20 budget, the re-appropriation of the fund had a broadened purpose to also cover daily operating expenses of the Board. The language now reads:

*"For services and expenses related to campaign finance compliance training and compliance reviews, national voter registration act training and compliance reviews, election technology systems operations and securing election systems infrastructure and operations from cyber-related threats..."*

Federal funding is available through the 2018 HAVA (Help America Vote Act) Election Security Grant which allocated \$19,483,647 to the State of New York "to improve the administration of elections for Federal office, including to enhance election technology and make security improvements.

Additional federal resources are being made available in the federal 2020 HAVA grant which allocated \$21,838,990 to New York State provided, however, that the State enacts a 4% match or \$4,367,798. This would provide the Board with \$26,206,788 in resources to improve the administration of elections for federal office for qualifying purposes.

The New York State Board of Elections has been diligently working to assess the risks posed against the state and county boards of election, monitor the ongoing operations of the boards and to respond to incidents when they occur. The State Board has been actively partnering with federal, state and county stakeholders to, share information, leverage shared resources and identify cybersecurity priorities to

maintain a secure elections infrastructure.

The Secure Elections Center (SEC) is responsible for securing the statewide elections infrastructure, end-to-end, from cyber- related threats by developing an elections cyber security tool kit, providing risk vulnerability assessments and support for County Boards of Election (County Boards). The SEC has:

- conducted extensive outreach to inform and involve federal, state and local stakeholders to increase the communication, expertise and cybersecurity resources available for the State and County Boards;
- implemented a uniform cybersecurity hygiene web-based training for all State Board, County Board and IT staff supporting elections infrastructure;
- tested incident response capabilities and plans of State Board/ County Boards/ County and State IT by conducting six (6) regional elections tabletop exercises;
- participating in three federal tabletop exercises in 2018, 2019 and 2020;
- conducted Statewide tabletop exercises in 2018 and 2020;
- implemented a uniform cyber incident reporting procedure;
- initiate and complete uniform, comprehensive risk assessments of all County Boards. To dates, the State Board has provided all County Boards and County IT with three years of Security Awareness cybersecurity training (provided by the SANS Institute);
- participating in federal working groups on social mis/disinformation;
- contract and implement uniform Intrusion Detection Systems (IDS) at all County Boards; and
- contracted for Managed Security Services (MSS) for use by all County Boards.

The State Board completed its comprehensive risk assessment in the first quarter of 2020. Risk assessment findings will highlight the priorities and areas of greatest impact for SEC remediation efforts during SFY 2020-21 and beyond. The implementation of IDS is complete and the implementation of MSS began in November 2018 and continue through SFY 20-2021.

The State Board has allocated \$9 million dollars of the federal HAVA cybersecurity funding toward a newly created NYS Elections Cybersecurity Risk Remediation grant program to directly provide County Boards of Elections to implement remediation efforts tied back to their risk assessment plan.

The State Board has successfully implemented a monitoring and rapid response team to prepare for and respond to cyber incidents, as well as, emergency events. Prior to every election, the State Board sets up a monitoring system, in which our partners (State Police, Department of Homeland Security and Emergency Services, Office of Information Technology, Public Service Commission, Department of Transportation and the Executive Chamber). We are also in consultation with our federal partners, (Department of Homeland Security and the FBI) discuss the status of the election environment. This collaboration has enabled the Board to plan around emergency events, such as the severe storms in the North Country during the 2019 early voting period.

The State Board has initiated a project with the State University of New York, Center for Technology in Government (CTG), to detect potential abnormalities in voter registration data. Through this project we will perform a full analysis of historical voter registration transactions to establish baselines and create a system to review current and future streams of data from the County Board systems for variances.

Going forward, we are engaged in future initiatives such as researching the utility of data analysis to monitor transaction history and in examining how best to design election infrastructure. As a result of these efforts, New York State is positioned as a national leader in election cybersecurity efforts.