



# **Testimony of VoteEarlyNY**

Presented to the

**Westchester Board of Legislators**

**Joint Meeting of the Committees on  
Budget & Appropriations, Law & Major  
Contracts and Public Works**

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Good morning Chairpersons Borgia, Gashi, and Williams, and esteemed Members of the Westchester Board of Legislators.

My name is Jarret Berg, Co-Founder of VoteEarlyNY (VENY), a non-partisan education non-profit dedicated to raising awareness among the public about New York's new early voting access and working with boards of elections (BOEs) statewide to ensure proper pro-voter implementation of Chapter 6 of the laws of 2019 and related election reforms.

In 2019 and 2020, VoteEarlyNY mapped and tracked early voting and mail ballot implementation developments statewide while pushing counties to adopt the highest standard of pro-voter policies in the many areas where the law defers to local discretion and decision-making. By the end of the June 2020, over 115,000 users had visited our website to learn about early voting options and draw upon a free library of digital and printable public education materials developed in coordination with our LetNYVote Coalition partners that anyone may use to help raise awareness about this historic expansion of our access to the ballot.<sup>1</sup>

Thank you for hosting this important Joint Meeting to discuss election administration in Westchester and for organizing the Election Information Gathering Task Force to receive feedback from the community about their voting experience in recent elections. I want to recognize your leadership in that regard. The voter access policies, siting, and resourcing decisions that impact our fundamental civil rights are too often shrouded in secrecy and generally lack accountability under New York's still-antiquated Election Law.

Prior to my work with Vote Early New York, I served as NYDLC's statewide Voter Protection Director from 2016 to 2018, during which time I helped organize and oversee election protection operations in Westchester. I've also served as Legislative Counsel to a member of the State Legislature and have been involved in voter protection programs around the U.S. since 2012.

At the outset, it is appropriate to recognize both that: **1)** Downstate New York and Westchester County in particular was home to the first largescale COVID-19 outbreak in the United States this past spring and also that: **2)** Civil rights are jeopardized during States of Emergency around the globe (and historically they are often trampled) due to the nature of the emergency measures being imposed, even where, as here, the emergency is genuine and the emergency measures imposed are responsive to it.

This is why it was so critical (and remains an urgent priority) for policymakers to ensure voter access resiliency, as the emergency persisted through Spring and Summer 2020 and as the public-health restrictions on our liberty that can suppress voting in person gradually expanded.

So we understand that election officials, especially here, were burdened with new health concerns and protocols; challenging headwinds to poll worker recruitment, training and poll site availability; programmatic uncertainty due to postponements and evolving rules, and the need to quickly develop the infrastructure to administer and process greater mail-ballot capacity than ever before. We can all lament the presence of a "perfect storm" of factors that may frustrate our ability to exercise the franchise in 2020, some natural and others of human creation.

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<sup>1</sup> VoteEarlyNY, *How Can I Vote in June Elections?*, [www.VoteEarlyNY.org](http://www.VoteEarlyNY.org).

However, it would be disingenuous in the extreme and irresponsible for us to collectively shrug at these circumstances and attribute the vast and pervasive array of administrative irregularities, lack of transparency, statutory non-compliance, training issues, and questionable resourcing that have plagued Westchester elections for as long as we can remember, and particularly those issues that preexisted the Pandemic.

As is well known, due to 2019 voting reforms and a series of Spring 2020 Executive Orders in response to the State of Emergency,<sup>2</sup> voters eligible to participate in the June 2020 Primaries were provided with “three ways to vote in June”: (1) Remotely by mail or in person either (2) during the Early Voting period or (3) on Primary Day.

In light of the above and in fairness to the WBOE, the question is not whether our elections are administered to a divine standard of perfection, but how best to prevent a repetition of the reported irregularities and incidents, and the remedial measures taken or not taken to address them, which compelled creation of the BOL’s Task Force.

My submission today focuses on **A)** the requirements of New York’s Early Voting law; **B)** several adjustments Westchester can make right now to ensure voter access and improve the voting experience in Fall 2020 across all three voting options; **C)** The potential of e-poll books to improve administration, transparency, and oversight; **D)** Lack of oversight by the State Board.

### **A) New York’s Early Voting Program**

New York’s new early voting program dramatically expands the timeframe voters have to cast a ballot through the creation of a nine-day early voting period of at least 60 hours, including two weekends preceding Election Day.<sup>3</sup>

When fully and properly implemented, the Early Voting Law requires counties to permit “any voter” to cast a ballot “at any polling place for early voting established” in their county on a substantially equal basis,<sup>4</sup> and to inform and publicize the major details of the program well ahead of an election, to the public<sup>5</sup> and also to local media outlets.<sup>6</sup>

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<sup>2</sup> See NYS EXECUTIVE ORDER 202.2, 202.15, 202.23, and 202.26.

<sup>3</sup> Ch. 6 of the Laws of 2019.

<sup>4</sup> NYS ELECTION LAW § 8-600(3) (“*Any voter may vote at any polling place for early voting established pursuant to subdivision two of this section in the county where such voter is registered to vote*; provided, however, if it is impractical to [1] provide each polling place for early voting all of the election district ballots or [2] if early voting at any such polling place makes ensuring that no voter has not previously voted early during such election, the board of elections may assign election districts to a particular early voting poll site. All voters in each county shall have one or more polling places at which they are eligible to vote throughout the early voting period *on a substantially equal basis. If the board of elections does not agree by majority vote to plan to assign election districts to early voting poll sites, all voters in the county must be able to vote at any poll site for early voting in the county.* (emphasis added)

<sup>5</sup> NYS ELECTION LAW § 4-117(1-a) (The notice required . . . shall include the dates, hours and locations of early voting for the general and primary election. The board of elections may alternatively satisfy the notice requirement of this subdivision by providing in the notice instructions to obtain the required early voting information by means of a website and phone number of the board of elections.)

<sup>6</sup> 9 CRR-NY 6211.7(a).

In terms of the timing, the law prescribes early voting polling places and their hours of operation: “at a general election shall be designated by May first of each year” and that designation for: “a primary or special election shall be made not later than forty-five days before such primary or special election[.]”<sup>7</sup>

On both of these fronts—the countywide access and timely public designation and publicity of the plan, WBOE was drastically out of compliance in Fall 2019 and Spring 2020.<sup>8</sup> Because WBOE has not yet indicated it will change course, we must lay out and defend these laws here.

### **Local Boards Must Provide Countywide Access to All Early Voting Sites, unless a Decision is First Taken By a Majority of the Board Invoking a Specific and Temporary Exception**

The policy of countywide votecenter access is one of the foundational tenets and hallmarks of modernity in New York’s Early Voting Law. This represents a dramatic departure from traditional election administration, where, despite the fundamental rights at stake, the law restricts a voter’s eligibility to a single location, with the draconian consequences of being turned away, directed elsewhere, or having ones entire provisional ballot invalidated if the voter appears anywhere other than the site assigned. This is still New York’s Election Day rule.

Restricting access to early voting locations is not a policy choice Albany left to the capriciousness and political gamesmanship of 58 local Boards of Election. Instead, lawmakers included only two “practicality” exceptions that can be invoked in highly specific circumstances which are temporary in nature and safeguard the procedural integrity of New York Elections.<sup>9</sup>

For more-populous localities, deploying countywide votecenter access is a more complicated undertaking due to the greater volume of voting records and signature exemplars, ballot styles, memory storage capacity, and language access needs. Also, more populous counties are required to have multiple early voting locations,<sup>10</sup> which carries a greater administrative burden of keeping track of who has already voted than a smaller county with a single countywide site (ie, a single “gatekeeper” set of early voting check in books that can be reconciled manually). These concerns, and the budgetary considerations around the adoption of new technology are what gave rise to the inclusion of the two aforementioned temporary and specific practicality exceptions.

Where applicable, either exception<sup>11</sup> may be invoked by a Majority Decision of the local Board, with the result that voters may be restricted to accessing only one or some early voting sites, instead of having the ability to vote at any and all of the locations deployed in the county.

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<sup>7</sup> NYS ELECTION LAW § 8-600(4)(e); 9 CRR-NY 6211.1(a).

<sup>8</sup> In 2019, the official access rules of the Westchester Early Voting plan remained in flux into October, when WBOE informed author that voters from Yonkers and Greenburgh would be split (restricted) among the two sites in the municipality respectively, rather than be able to access either site in the municipality, as was initially the policy, upon inquiry on July 9, 2019. Countywide early voting access was the subject of a lengthy discussion between the Westchester BOL and BOE at a meeting that took place on July 29, 2019.

<sup>9</sup> NYS ELECTION LAW § 8-600(3), *quoted supra* note 4.

<sup>10</sup> NYS ELECTION LAW § 8-600(2).

<sup>11</sup> NYS ELECTION LAW § 8-600(3), *quoted supra* note 4.

Despite the many law changes and challenges, in both Fall 2019 and June 2020 all local Boards in New York State determined it was practical to deploy countywide early voting access except for New York City, Albany, Orange, and Westchester.<sup>12</sup> This includes counties with comparable voting populations to Westchester (643,268 Registered Voters (“RVs”)) like Erie (635,384 RVs) and Monroe (499,691 RVs) and counties with far greater voting populations, like Suffolk (1,072,676 RVs) and Nassau (1,049,283 RVs).<sup>13</sup> Notably, Suffolk County contracts with the same voting machine vendors as Westchester (Dominion and KnowInk), was able to offer countywide access in 2019 and June 2020, and did not first need to purchase the Dominion ICE.

Specifically with regard to the practicality of countywide votecenters in Westchester, in light of the Board successful procurement and use in Fall 2019 and June 2020 of: [1] ballot on demand printer technology, which makes it *practical* to provide each polling place for early voting all of the election district ballots for voters in the county; and [2] Electronic poll books, which makes it *practical* for the Board to ensure, in real time, that nobody is able to vote twice during an election, and the countywide votecenter access successfully demonstrated by the overwhelming majority of Westchester’s peer Boards of Elections, Westchester must provide countywide votecenter access in Fall 2020 to comply with the early voting law. In light of past confusion and the lack of clear materials, should take proactive efforts to develop new materials and inform the public of one set of clear rules to be uniformly applied.<sup>14</sup>

Moreover, the policy decision of the State Legislature to modernize voting and make access more convenient by requiring local Boards to deploy early voting locations capable of countywide access (if practical to do so) was so important, and the awareness of the potential for meddling in voter access decisions so acute, that the drafters clarified it in a default provision to guard against abuse of these exceptions, so they would not swallow the *general rule of countywide access*: “If the board of elections does not agree by majority vote to plan to assign election districts to early voting poll sites, all voters in the county must be able to vote at any poll site for early voting in the county.”<sup>15</sup>

It follows *prima facie* that without such a “majority vote” decision of the Board, any purported restriction is *void* or *ultra vires*. The public record is devoid of evidence that such a meeting and “majority vote” decision invoking a statutorily cognizable exception ever took place.<sup>16</sup>

Despite what can only be described as the bizarre propagation of contradictory information by the WBOE regarding the access rules for early voting in public and private settings ahead of both Fall 2019 and June 2020,<sup>17</sup> Westchester voters were ultimately mailed single-site early voting

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<sup>12</sup> *How Can I Vote in June Elections?*, [www.VoteEarlyNY.org](http://www.VoteEarlyNY.org).

<sup>13</sup> NYS Board of Elections, Enrollment by County (Feb. 21, 2020), <https://www.elections.ny.gov/EnrollmentCounty.html>

<sup>14</sup> See NYS ELECTION LAW § 8-600(3).

<sup>15</sup> See NYS ELECTION LAW § 8-600(3).

<sup>16</sup> Given the significant and exceptional restrictions at issue, such a Board “majority vote” decision could only occur in a public meeting, as required by the independent provisions of the “NYS Open Meetings Law”, NYS Public Officers Law, Article 7 or NYS Election Law § 3-212 (e.g., “All actions of the board shall require a majority vote of the commissioners prescribed by law for such board.”).

<sup>17</sup> See, e.g. Westchester Board of Legislators, *Budget and Appropriations Meeting*, June 1, 2020, relevant discussion runs from 2:27:00 to 2:45:30, [https://westchestercountynyny.granicus.com/MediaPlayer.php?view\\_id=1&clip\\_id=262](https://westchestercountynyny.granicus.com/MediaPlayer.php?view_id=1&clip_id=262)

assignments and two convoluted spreadsheets of municipality-based early voting assignments were published on the Board of Elections website ahead of each election, and circulated by the Board through formal and informal email channels to local stakeholders.

Equally as inexplicable, despite multiple pleas by the author ahead of each election and subsequent interventions by author, the County Counsel, and the Attorney General's office, a clear statement on the parameters of Westchester early voting access has never and still does not appear on the WBOE website.<sup>18</sup>

Although an outside investigation of this conduct by the State Board of Elections or the Office of the Attorney General would be highly appropriate, welcome by many residents and community leaders, and advisable given the multiple, repetitive violations of state law and the chronic failure to adhere to the most basic transparency practices of public (and many private) entities in democratic societies, **perhaps the most important issue at this time from a forward-looking perspective is that Westchester Board of Elections has not publicly committed to non-repetition of these documented violations of State law. That must be the starting point.**

## **B) Adjustments Westchester Leaders Can Make Right Now to Ensure Voter Access and Improve the Voting Experience in Fall 2020, across “Three Ways to Vote”**

### **i. Improvements to Early Voting**

- **The timeframes and requirements of the NYS Early Voting Law and related Regulations should be adhered to**, regarding equitable site selection, deadlines for publicly designating early voting locations, hours and access policy (“Countywide Votecenters”), the timely submission of Security Plans and annual Communication Plans, and timing of mailings and other publicity efforts to raise awareness about the program.
- **Compliant Communications Plan.** The Early Voting Law requires WBOE “to inform eligible voters of the opportunity to vote early” via a communications plan that must publicize all key details of the early voting program. The plan must be filed with the State Board of elections annually.<sup>19</sup>
- **WBOE should timely provide all key details of the early voting program to media outlets within the county as required by the Election law.**<sup>20</sup>

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(Commissioner Colety @ 2:27:00: “Now with early voting; Last year we purchased the new ICE machines that were able to accommodate every ballot style in the county.”; Commissioner Lafayette @ 2:35:00: “We did not say this out openly when it was the first [2019] early voting; we knew what the machines could do; we knew what they were capable of; we did not say that you could have voted anywhere in Westchester county,...”); Email from Tajian Nelson to unknown recipients, *2020 Early Voting Information for the June 23, 2020 Primary Election*, on file with author and shared with BOL (June 10, 2020).

<sup>18</sup> Westchester Board of Elections, Election Dates and Calendars, <https://citizenparticipation.westchestergov.com/election-dates-and-calendars> (accessed July 12, 2020).

<sup>19</sup> NYS ELECTION LAW § 8-600(5); 9 CRR-NY 6211.7(c) (in 2019 only, the filing date was July 1st).

<sup>20</sup> 9 CRR-NY 6211.7(a)-(c).

- **Equity and Public Rights.** Without robust public funding for an awareness, promotional, or educational campaign, it falls upon local leaders, candidates, civic groups, the press, and a coalition of the willing to publicize voting options. Also, the transparency provisions and publicity deadlines are not mere inconveniences for the board, but serve a public trust function, so stakeholders can assess the equity of the county program. If WBOE ignores filing and designation deadlines and puts out contradictory information, or no timely information at all, stakeholders are deprived for weeks of the opportunity to assess the plan for equity or engage the community effectively, which is prescribed by the statute.<sup>21</sup>
- The Early Voting Communications Plan and non-sensitive portions of the Security Plan should be proactively made available on the WBOE website and a copy forwarded to the BOL, the County Executive, and County Counsel's office, in addition to the requirement to file these documents on time with the State Board of Elections. All stakeholders should have timely access to basic Westchester election information on a fair and equal basis.
- **The Communications Plan should include a collaborative public information campaign with a budget** and include and engage local officials at all levels, civic groups, candidates, and stakeholders like the disability community and prevalent language minorities. Collaboration harmonizes messaging and conserves resources.
- Early Voting is new. Voting behavior takes time to adjust to new procedures. Voters should be informed about new voting options at least during the four weeks leading up to the start of early voting via modern and traditional communication channels likely to reach them, in addition to a timely and accurate mailing as a backstop.
- **The BOL and County Executive can and should supplement the Board's efforts to raise awareness and spread accurate information about voting options.** The Early Voting Law encourages use of modern media, but it leaves discretion to WBOE whether to build out a robust and modern public engagement campaign, or not. Dedicated BOL and WBOE staff should be identified so they can liaise and coordinate publicity efforts and ensure the accuracy and consistency of public messaging.
- A Joint publicity budget and a basic public awareness campaign that utilizes modern digital channels and social media is indispensable to speeding up the learning curve about new options and rules among the public, and can supplement efforts by non-partisan civic groups, community leaders, candidate campaigns, and the Board to reach the voting public. **Here are some examples of recent publicity initiatives from around NYS:**
  - In Fall 2019, the NYC Board launched a new website, developed a short video and made available a digital media kit, graphics, and undertook a public awareness campaign that included ads in public spaces, local media, and a digital campaign, as well as a few public demonstrations. During Early Voting, the NYC Board deploys sandwich boards and branded floor-stickers outside and in proximity to early voting

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<sup>21</sup> NYS ELECTION LAW §§ 8-600(2)(d) and (4)(e). "Polling places for early voting shall be located so that voters in the county have adequate and equitable access, taking into consideration [a list of non-exhaustive factors]." *Id.*

sites and provided early voters with stickers and durable wristbands, encouraging them to share photos (after voting) which organically harnesses the energy and excitement of the public to amplify the program information among social networks.

- DemocracyNYC, a civic engagement initiative of the Mayor’s Office independent from the NYC Board advertised early voting in public spaces, electronic information kiosks around the city, online via email and through City government communications.
- In Erie, Nassau, Onondaga, and Ulster Counties—populous counties that deployed the most voter-friendly early voting programs statewide in 2019—public demonstrations and forums were facilitated in partnership with local officials or civic groups, where voters could test out new equipment like e-poll books and learn from administrators and advocates about the new program. This helps demystify the changes and break down information and technology barriers.
- **An opportunity for collaboration between WBOE, the BOL and County Executive,** and civic groups would be to calendar a series of press-friendly briefings or webinars (virtually and perhaps eventually in person via tabling or e-poll book demonstrations) to bring information about the new technology and access options to the public.
- **As a trust-building exercise among local stakeholders,** a twice-monthly conference call held to discuss shared priorities (like clear information and equitable siting) and shared challenges (like poll worker recruitment or availability of convenient facilities), and programmatic publicity. This also provide policymakers with a feedback loop.
- **A visitor who clicks “Early Voting” on the Board of Elections website** landing page should, without more action, be directed to a single page or graphic that clearly states the program dates, hours of operation, accurate early voting location names and addresses (with specification if street entrances of a site other than the main entrance are to be used, or if the site is in a portion of a larger facility/campus), ADA accessibility, and a clear statement of the access policy, to the effect of “Westchester voters may visit ANY of the below Countywide Early Voting sites during the dates and times listed” (or, alternatively if an exception applies “voters are assigned to specific sites”).
- **A few pending early voting sites need not delay publication of the rest of the plan.** Although it would be ideal for all sites to be confirmed well ahead of the designation deadline, that may be difficult during a Pandemic. Under a countywide access plan, additional locations may be added if/as/when they become available closer to an election. Where it can’t be avoided, it is preferable to expand access to voting in the run up to an election. Where any voter may use any site, there is no need to withhold the entire plan (the already-confirmed locations) if only a few final confirmations are pending. This is one reason a countywide plan is easier to deploy, administer, and publicize.
- **WBOE should add additional early voting hours for Fall 2020.** The 60 early voting hours required by law is a minimum-hours requirement. In June 2020, twenty-two local boards offered more than 60 hours to vote early, up from eighteen boards that did so in 2019. Nassau is now offering 83 hours; Monroe offers 70. This reduces density too.



- **WBOE should allow voters who may have requested or returned an absentee ballot to vote in person using a regular ballot** if they so choose, as the Election Law permits. There is no risk of a voter casting two ballots, per the post-election canvass process.<sup>22</sup>
- **Remedial Measures.** Administration hiccups discovered during early voting should be resolved and remediated to minimize impact. Voters who are subject to poll worker mistakes or technology glitches should be contacted immediately and offered a fair remedy. The scale and scope of the incident should dictate the nature of the remedy.
- There is an ongoing statutory duty for administrators to continue to optimize and tailor these programs, including during an early voting period.<sup>23</sup>

## ii. **Improvements to Mail Balloting** (for those eligible)

- **If a mail ballot option is broadly available to the public**, the aforementioned recommendations generally apply equally to publicizing that option, including how and when to obtain and cast a mail ballot, FAQs, deadlines, and common errors.
- **Already enacted recent legislation**<sup>24</sup> requires local Boards to accept mail ballot requests online by “electronic mail or through an electronic transmittal system or web portal established by the state board of elections or city or county board of elections,” without the need for a “wet signature”. Ahead of Fall 2020, this permits WBOE to offer voters a quick and streamlined online request tool (a mail-ballot request submission form) that should be placed prominently on the WBOE website or a dedicated mail-balloting page, with a sharable link that can be publicized on social media, by email, or by text.
- If there is a separate dedicated webpage, it should be easy to access via the WBOE landing page.
- **Online request forms were a welcome convenience** among the public in the several localities that offered them for June 2020. This included Erie, Wyoming, Livingston, Monroe, Broome, and NYC Boards. Compared to the clunky alternatives, this tool best effectuated the intent of the mail balloting Emergency Orders, by eliminating antiquated rules, needless paper, and redundancy. An online tool eliminates the potential need to download, save, print, handwrite, sign, scan, attach and email or snail mail a ballot request form to the Board, and the potential errors this entails.
- **WBOE should publicize all of the traditional and new methods made available for requesting a mail ballot**, as doing so gives people in different circumstances various options and furthers the intent of responsive laws and Emergency Orders. For example, ahead of June, the Governor laid out a detailed new process for requesting a ballot over

<sup>22</sup> NYS ELECTION LAW § 9-209(2)(a)(i)(A) and (B). § 8-302(e) contains a list of circumstances where a voter must use affidavit ballot, which does not include a voter who has previously requested (or returned) a mail ballot.

<sup>23</sup> NYS Election Law § 8-600(2)(d); 9 CRR-NY 6210.19(c)(3) and (d)(1).

<sup>24</sup> Chapter 91 of the laws of 2020; S8130D-2020 (amending NYS ELECTION LAW § 8-400(2)(d)).

the phone in addition to a new email-request option.<sup>25</sup> However, when these new options are not publicized to voters via concise language that also appear prominently on the landing page of the WBOE website, with any necessary links, most voters have little likelihood or ability to discover and use them.

- **WBOE should inform mail voters of the option to return completed ballots to any Early Voting or Election Day polling place,**<sup>26</sup> and structure this “drop off” option in such a way that the voter can do so without needing to venture inside the polling place. This reduces dependency on separate USPS processes.
- **WBOE should engage local USPS officials** to set down a basic, shared understanding of how election mail will be handled in the run up to Fall 2020. This should include any relevant topics and potential pitfalls, like the logistics and timeframes for delivery, especially as deadlines approach, the policy for postmarking or barcoding election mail, and how to handle common mailing errors to reduce lost votes.
- WBOE should proactively inform and encourage voters who requested mail ballots but have not received them in a reasonable timeframe of their **right to still vote in person** (early in-person, in-person absentee, or on Election Day), rather than discourage this remedy, or treat these voters with heightened scrutiny. Without a modern ballot tracking system, this may be the only way such voters may participate in the election.

### iii. Improvements to Election Day Administration

- **Long lines and crowded poll sites on Election Day during a pandemic are a major source of voter suppression.** Every effort should be taken to reduce density at Election Day poll sites, by encouraging voters to use alternatives, and making access to those alternatives as clear and convenient as possible.
- **Site consolidations should be avoided whenever possible in Fall 2020,** when voter interest and turnout will be at the pinnacle of the four-year cycle, and in light of the Public Health directives to social distance and generally reduce density and avoid large indoor public gatherings.
- **Polling place consolidations or site changes** should be publicized to voters as far in advance as possible, using various means of communication likely to reach the most voters, including where appropriate, the contact information in the voter file. This “program change” information should also be provided proactively to candidates in a fair and impartial manner, since they are engaged in ongoing voter contact.
- **Consolidated sites must be reevaluated after consolidation and properly resourced.** Consolidations may be unavoidable. However, to prevent long lines and overcrowding, a site that will be hosting far more voters than usual must be reevaluated in light of the increased volume of voters to be serviced. This may require using a larger space or

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<sup>25</sup> See NYS EXECUTIVE ORDER 202.15 and 202.26.

<sup>26</sup> NYS ELECTION LAW § 8-412(1).

revising the site layout, providing more inspectors or assigning Coordinators, and additional voting equipment to avoid delays at each step in the process: voter check-in, ballot distribution, privacy booths, ballot scanning, and any troubleshooting (challenges, redirecting lost voters, affidavit voting, fixing machine breakdowns).

- **WBOE should allow voters who may have requested or returned an absentee ballot to vote in person using a regular ballot** if they so choose, as the Election Law permits. There is no risk of a voter casting two ballots, per the post-election canvass process.<sup>27</sup>
- **WBOE should improve poll worker training and revise outdated processes to safeguard rights.** Training, and the process for affidavit ballots should be reviewed to eliminate recurring errors, like the misuse of affidavit ballots when emergency ballots should be used and the refusal to offer of affidavit ballots to persons entitled to them.
- **Eg: Stylus Signature.** The adoption of e-poll books, where signature check-ins occur using a stylus instead of a pen may give rise to a new wave of “signature challenges”. However, challenging voter’s signature is actually a challenge to voter’s identity. Poll worker training or signage should emphasize that voters must sign legibly as they would a document, and in light of this change, signature scrutiny should be *more lenient*, given that all voters are adapting to checking in on a new medium.

### C) New Technology Provides Objective Election Oversight Capability and Rich Analytics

The authorization for localities to adopt electronic poll books<sup>28</sup> provides potentially transformative opportunities for objective oversight of New York elections. The new capabilities have not been explored in detail during implementation. The 2019 electronic poll book law merely authorized their use as an alternative to paper check-in books to reconcile voter check-ins in real time. KnowInk (e-poll book vendor) mostly engages directly with WBOE for contracting, staff training, configuration, optimization, servicing, and troubleshooting.

Aside from the fact that a person has voted early, the recent voting reforms are silent on what data must be collected by the e-poll books during voting, how and when such data must be organized, stored, and shared, and with whom. For example, the law and the regulations don’t set a uniform statewide standard for ensuring that the affidavit ballot process, the challenge oath process, the assistance oaths and language access happen as part of the e-poll book check-in process or that they are compliant with New York law, but these can be programmed into the e-poll book workflow as some other localities have done. Vendors are working directly with counties on local configuration preference, with no known state oversight post-certification.

**That administrative patchwork raises civil rights concerns.** While the residual election law applies, it bears recalling that each of the vendors’ software has its own front-end workflow for use by poll workers to check in voters and a backend “dashboard”, presumably for use by county or state officials to gain a birds-eye view of administration. These tools have massive potential to

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<sup>27</sup> NYS ELECTION LAW § 9-209(2)(a)(i)(A) and (B). § 8-302(e) contains a list of circumstances where a voter must use affidavit ballot, which does not include a voter who has previously requested (or returned) a mail ballot.

<sup>28</sup> Ch. 55 of the Laws of 2019, Part XX; Robert Harding, *NY Elections Board OKs Three E-Poll Book Vendors to Help Counties With Early Voting*, AUBURN PUB, Jun. 7, 2019, <https://bit.ly/2MQRou1>.

advance or infringe rights and it is unclear who has access under the law (and how and when), but it is submitted that **this data is public property**.

In sum, this new data-rich environment can help gauge performance of election equipment, adequacy of early voting access and siting, election law compliance, and the ability to conduct more dynamic resource allocation and oversight by identifying trends or anomalies in real time.

However, without clear rules, there is also the potential for whitewashing, withholding, or deleting this data, or leaking it selectively to favored campaigns, so it is actually critical that some uniform rules be laid down to ensure that as much of the voting process as possible is captured by e-poll book records and that transparency and accountability prevail. It is submitted that absent a compelling reason for specific redaction, policymakers, voting rights advocates, campaigns, and the public all have a legitimate interest in this data.

### **State Board of Elections Is not Conducting (or Lacks Power for) Meaningful Oversight**

The new early voting law and regulations place various reporting requirements and deadlines on local Boards to provide greater transparency and so the State Board may satisfy its “responsibility for administration and enforcement of all laws relating to elections in New York State.”<sup>29</sup> This includes deadlines for: designating early voting locations and hours, and indicating whether site access is countywide or assigned; submitting state funding reimbursement requests; producing a modern communications plan; developing a security plan when a new early voting plan is announced; complying with a cyber-security checklist for counties adopting new technologies, and an ongoing implicit requirement that local BOEs keep SBOE aware of subsequent adjustments to these plans.

However, at each turn it appears some counties have no inclination or ability to abide by SBOE reporting deadlines and that when local boards miss filing deadlines little investigatory, enforcement, or corrective action is taken, including with respect to chronic patterns of non-compliance, nor is action taken to assure the public that these violations won’t be repeated. For this reason alone, state and local lawmakers and the Attorney General should take an active role.

Thank you for the opportunity to speak with you today and for your continued leadership and interest in improving New York’s voting experience in 2020 and beyond. VoteEarlyNY and our Coalition partners stand ready to assist in improving administration and safeguarding civil rights.

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<sup>29</sup> *About the New York State Board of Elections*, <https://www.elections.ny.gov/AboutSBOE.html>.