



Testimony of VoteEarlyNY

at the

**Public Hearing to Discuss
Elections in a Pandemic:
A Review of the 2020 Primaries**

Presented to the

**Senate Committees on Elections and Local
Government, and the
Assembly Committees on Election Law and
Local Governments**

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Good Afternoon Chairpersons Lavine, Thiele, Myrie, and Gaughran, and esteemed Members of the Senate Committees on Elections and Local Government, and the Assembly Committees on Election Law and Local Governments.

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.¹

Thank you for hosting this important Joint Hearing to identify what action can be taken to help voters exercise their rights without disenfranchisement during the 2020 General Election and without risking contraction or further spread of COVID-19.

At the outset, it is appropriate to recognize both that: **1)** New York State 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 in New York elections. Although the prevalence this Fall of COVID-19 in New York and the resultant likelihood for disruption is unknown today, as the emergency persisted through Spring and Summer, the public-health restrictions on our liberty that can suppress voting in person gradually expanded, necessitating several rounds of emergency action.²

As is well known, due to 2019 voting reforms enacted by the Legislature and a series of Spring 2020 Executive Orders in response to the State of Emergency,³ voters eligible to participate in the 2020 Primaries were provided with "Three ways to vote in June": (1) Remotely by mail ballot or in person, either (2) during the Early Voting period or (3) on Primary Day. In combination, these changes have dramatically expanded access to voting in New York in a very short timeframe, but there is a corresponding need to train election staff and educate voters.

We also recognize that New York's traditionally limited, antiquated absentee voting regime has been entrenched in the State Constitution, and the scant regulations regarding chain of custody

¹ VoteEarlyNY, *How Can I Vote in June Elections?*, www.VoteEarlyNY.org.

² NYS EXECUTIVE ORDER 202.2, 202.15, 202.23, and 202.26; Chapter 91 of the laws of 2020 (S8130D-2020) (amending NYS ELECTION LAW § 8-400(2)(d)).

³ See NYS EXECUTIVE ORDER 202.2, 202.15, 202.23, and 202.26.

and due process had not been overhauled ahead of COVID-19 to meet the scalability needs of our local BOEs or the public's fair expectations in the modern era. Although the legislature took action in May and July to reform some of the most glaring deficiencies, more can and must be done to ensure these new voting alternatives are ready for primetime, at scale, this Fall.

Our testimony today focuses on **A) Progress on implementation of New York's 2019 Early Voting law, and its potential to accommodate millions of voters during a pandemic; B) Some due process considerations regarding New York's existing mail-balloting rules; C) The need for clear, uniform guidelines from the State Board for implementing and communicating access rules, and compliance oversight to ensure critical State action reaches voters and is effective.**

A) Early Voting Is a Great Potential Option for Many Voters, But Remains Underutilized

New York's new early voting program dramatically expands the timeframe voters have to cast a ballot through the creation of a nine-day period of at least 60 hours, including two weekends preceding Election Day.⁴ The minimum amount of required early voting locations in each county is determined by a graduated statutory formula.

For the 2019 and 2020 General Elections, the NYS early voting law requires an aggregate minimum of 145 early voting locations statewide.⁵ In 2019, localities large and small embraced the new program, deploying a total of 249 early voting sites with eighteen BOEs exceeding the minimum required sites. In addition, in 2019 nineteen BOEs exceeded the minimum hours. For the consolidated June 2020 Primaries, despite the unprecedented challenges, uncertainty, and procedural changes localities faced administering the election, this trend continued, with an aggregate increase in both the amount of early voting locations (259) and hours deployed statewide (3637 total hours counting NYC once, an increase of 29 total hours over 2019).

The counties with the most expansive plans include **Erie** county's early voting program with 37 sites (7 are required); and, **Nassau** deployed 75 hours of early voting in 2019 before increasing the program to 83 hours for June, 2020.

However, some localities did reduce their 2019 early voting footprint for the June 2020 Primaries,⁶ though this may be attributed to the lesser quantity of party-enrolled voters eligible to participate in closed June primaries and the lack of a GOP presidential primary, than as a consequence of the pandemic, particularly where these programs are being restored for the Fall.⁷

⁴ Ch. 6 of the Laws of 2019.

⁵ NYS Election Law § 8-600(2); *NYS Voter Enrollment By County, Party Affiliation and Status*, NYS BOARD OF ELECTIONS, Feb. 1, 2019, <https://on.ny.gov/2JcH9iE>; *NYS Voter Enrollment By County, Party Affiliation and Status*, NYS BOARD OF ELECTIONS, Feb. 21, 2020, <https://on.ny.gov/33QSIY9>.

⁶ Between October 2019 and June 2020, the following localities reduced the quantity of early voting sites deployed (Broome -1 site; Chautauqua -2 sites; Columbia -2 sites; Dutchess -3 sites; Oneida -1 site; Ontario -2 sites; Saratoga -2 sites; Ulster -4 sites). During that timeframe, the following localities reduced the quantity of early voting hours available (Dutchess -1 hour; Madison -6 hours; NYC -10 hours; Sullivan -1 hour). Data on file with Author.

⁷ As of August 7, 2020, the following localities have published a plan that restores access to 2019 General Election levels Chautauqua +2; Dutchess +3; Oneida +1; Ontario +2; Saratoga +2. As of this Hearing, many counties have yet to publish their 2020 General Election early voting plans. Data on File with Author.

As many Fall 2020 programs are still being finalized, there is an opportunity for localities to lean into this new option and expand upon their October and June early voting footprint in anticipation of much greater interest and expected turnout. Counties are already authorized to voluntarily increase their hours of operation or add additional locations.

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,⁸ and to inform and publicize the major details of the program well ahead of an election, to the public⁹ and also to local media outlets.¹⁰

In Fall 2019 and June 2020, voters in 54 of 58 localities had access to countywide votecenters during the early voting period (all localities except NYC, Westchester, Albany, and Orange). In light of the successful adoption and use of electronic poll books and ballot-on-demand printers by these localities in Fall 2019 and June 2020, and the countywide access successfully demonstrated by 54 of their peer BOEs, these localities are required to provide voters with countywide access to all early voting sites in 2020 in order to comply with the law.¹¹

Despite the provision of initial state funding for operations and capital upgrades, there were actually no 2019 or 2020 funds allocated specifically for public education or publicity, which must primarily be viewed as a BOE responsibility. This would be especially impactful during the first few cycles of the program, to help raise awareness among voters about their new access.

With the additional layer of recent, successive rules changes arising out the State of Emergency, there is much uncertainty among the public regarding New York’s Fall 2020 voting rules, and for the many voters who did not participate in the more limited 2019 General and 2020 Primary election events, October 2020 will be the first opportunity for these lower-propensity voters to encounter and take interest in new voting options.

Unfortunately, there is nothing in place statutorily requiring local BOEs to do a subsequent mailer informing the public about the various voting options, their respective timeframes, and deadlines. Any additional mailing or voting notice ahead of the fall, therefore, should include information about the different voting options and timeframes. There is, however, a new duty

⁸ 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)

⁹ 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.)

¹⁰ 9 CRR-NY 6211.7(a).

¹¹ NYS Election Law § 8-600(3).

that BOEs provide local media with the basic programmatic details of their early voting plan that could be expanded upon to include all voting options.¹²

For those who are physically able to wear masks and venture into public spaces, and for those not displaced outside their home county or under quarantine, early voting provides the most experientially similar alternative to voting on Election Day, with far greater ability to avoid crowds or lines, and in many counties, without the limitation of one assigned polling location.

Indeed, the administrative benefits of spreading out the systemic pressure of processing millions of voters over many days instead of a single day, and the public convenience of creating a reasonable election period that includes weekend and evening options were apparent to policymakers across America for decades before the onset of COVID-19.¹³

During a pandemic, however, the now-commonplace public health recommendations of maintaining social distance, reducing population density and occupancy limits in public spaces, and increasing the frequency of disinfecting high-touch surfaces, make early voting even more attractive as a safer alternative to forcing voters into crowded poll sites on Election Day.¹⁴

In fact, the CDC has advised Administrators on a series of *Guiding Principles to Keep in Mind*, which includes the following recommendation:

The more an individual interacts with others, and the longer that interaction, the higher the risk of COVID-19 spread. Elections with only in-person voting on a single day are higher risk for COVID-19 spread because there will be larger crowds and longer wait times. Lower risk election polling settings include those with:

- a wide variety of voting options
- longer voting periods (more days and/or more hours)
- any other feasible options for reducing the number of voters who congregate indoors in polling locations at the same time¹⁵

As such, a robust Early Voting program will provide greater flexibility for voters to find a quieter, less busy time to vote. From a due process perspective, eligible voters can bypass long lines and be certain their ballot is scanned and counted, without the many logistical hurdles involved in voting remotely that can result in lost or discounted votes, without notice or recourse.

However, to truly reap the administrative, convenience, and public health benefits of this option, the public needs to be re-introduced to it after Labor Day and encouraged to consider using it.

¹² 9 CRR-NY 6211.7(a)-(c).

¹³ See generally DIANA KASDAN, BRENNAN CENTER FOR JUSTICE, EARLY VOTING: WHAT WORKS (2013) <https://bit.ly/2DLWXsR>; COMMON CAUSE NY, PEOPLE LOVE IT: EXPERIENCE WITH EARLY VOTING IN SELECTED U.S. COUNTIES, <https://bit.ly/2CjJJPC>.

¹⁴ *Considerations for Election Polling Locations and Voters*, CENTERS FOR DISEASE CONTROL AND PREVENTION, June 22, 2020, <https://bit.ly/2XNw1QD>.

¹⁵ *Id.*

B) Some Due Process Considerations Regarding New York’s Existing Mail-Balloting Rules

It is well known that New York’s absentee voting option is ‘excuse-based’, and, prior to Spring 2020, was limited to narrow classes of eligible voters who may access and benefit from this alternative to appearing in person to vote. The modern interpretation of “temporary illness”, adopted by the Executive and the Legislature,¹⁶ to include the risk of contraction or spread of a serious illness, is highly appropriate in light of our understanding of public health and how illness is passed from person to person in densely populated indoor spaces, particularly during a pandemic where a serious illness is prevalent in our community.

In just a few weeks, New York made great strides expanding this remote voting alternative to voting in person, in response to the unprecedented public health emergency. However, the most successful mail-balloting programs nationwide were developed and perfected over many years. Scaling up this option requires emphasis on different election infrastructure and staffing considerations, clean and current registration rolls, and better due process at every stage to ensure that perfectly eligible voters are not blocked from casting a valid ballot by logistical hurdles, clerical formalities, or administrative errors and omissions.

Although the expansion of the option to vote remotely provides a viable, welcome, and long overdue alternative to voting in person particularly during a public health emergency, the scant regulations regarding chain of custody and due process had not been overhauled ahead of COVID-19 to meet the scalability needs of our local BOEs or the public’s fair expectations in the modern era.

The overall lack of due process at each stage, including the inability to track election paper at the local Board or through the mail has given rise to significant concerns among the voting public, officials, and advocates alike. Although the legislature took several actions in May and July to reform some of the most glaring deficiencies, some of the most significant structural issues remain unaddressed and more can and must be done to ensure these new voting alternatives are ready for primetime, at scale, this Fall.

Lack of a Uniform Tracking System for Remote-Voting Applications and Ballots

At present, there is no regulation or statute requiring boards of elections to provide a public tracking system for absentee ballots. This is not merely about voter convenience and due process (recourse in the event paper goes missing), but it is also most significantly about chain of custody. The Board of elections has an interest in keeping track of election paper it propagates from start to finish—ie, from ballot request to ballot print to ballot canvass to ballot scan. A modern system would allow both the board and the voter to track a ballot through these stages.

It is submitted, at risk of oversimplification, that there are essentially two parts to proper ballot tracking and New York has neither in place uniformly today: The first part is more rudimentary and would allow a voter to track an application and ballot at the stages when the election paper is in the possession of the board of elections. The second part would allow a voter to track a ballot through the mail, as one can do presently for even the most frivolous online purchases and deliveries.

¹⁶ NYS EXECUTIVE ORDER 202.15; Senate Bill S8015D-2020; *see* NYS ELECTION LAW § 8-400.

For the first part of tracking, some counties (including Erie) did provide June voters with a reference number to track their ballot request while it was in the possession of the BOE. However, this is not uniform practice and there is no statute or regulation prescribing it. The use of different equipment vendors (with different administration tools) may explain some of the county variation.

As a consequence, even the most diligent voters who request ballots early on can only wait and see, checking the mail in hopes that everything works out, or following up with periodic phone calls to overburdened Board staff. This could take days or weeks depending on when ballot faces are finalized or whether there is a processing backlog. The voter has no insight into these circumstances or a timeframe of when to expect a ballot and when to follow up if one doesn't appear. Valuable days and weeks could pass, and the voter doesn't have a way of knowing whether to be patient or follow up by phone or email; whether to submit a subsequent ballot request, or to attempt to vote in person. Were the voter to contact the board to inquire, it's possible that the board would have no record of the request, in which case, without a reference number, the voter has no recourse or accountability, especially after the request deadline.

It is submitted that this basic, indispensable tool should be imposed on the relevant vendors doing business in the state, so voters in all counties can track the progress of their ballots and have some recourse and notice if election paper goes missing, at least with respect to the stages where the request or the ballot is exclusively within the control of the board of elections.

Since most remote ballots are mailed via USPS from the Board to the voter (and many are returned by the voter via the mail), the second part, of necessity, requires some coordination with the Postal Service. Since it is possible at this time to track all manner of packages and deliveries through the mail, and other states offer ballot tracking and text alerts as well, it is submitted that a longer term fix must include a more comprehensive tracking system that includes mail going in both directions, to meet people's modern commercial expectations and chain of custody.

Since our election law imposes a deadline for both requesting and returning a ballot, with fatal consequences even for action outside the voter's control, it is vital for accountability and due process purposes that a voter have some form of recourse, via a tracking number, to memorialize their submitted request and to empower a voter to pursue alternatives or follow up as needed.

Ballot Envelopes Timely Received by the Board after Election Day, but Lacking Postmarks

It is respectfully submitted that the policy presumptions underpinning New York's existing post-election canvass rules for absentee ballots run roughshod over even the most elementary aspects of due process (namely, *notice* to a party impacted by an adverse determination and *an opportunity to be heard* prior to final adverse action). A remote voter in New York whose ballot lacks a post mark actually receives less due process than a voter challenged when they appear to vote in person.¹⁷

As discussed above, New York has no basic or comprehensive public tracking system for remote ballots though it imposes harsh deadlines on the voter for compliance. Moreover, although the

¹⁷ See NYS ELECTION LAW §§ 8-504 and 8-506.

local Boards are required to ‘timestamp’ ballot envelopes when they are received, election administrators actually rely upon the USPS postmark for determining whether a ballot is timely. That is to say, for ballots received after the close of polls on election night, the Boards are piggybacking on the USPS postmark function to serve, effectively, as a timestamp or tracking system. However, USPS blue boxes and other mail receptacles do not mark a timestamp contemporaneous with when a voter mails a ballot, such that a voter who deposits a ballot in the mail on Saturday evening before Tuesday’s Election Day would not receive a postmark until at least two days later or more, if at all.

In this vein, it is common commercial practice that members of the public typically receive the benefit of the doubt, in the form of the “mailbox rule”, once they have relinquished control of their correspondence to the Government via the U.S. mail.¹⁸

It is submitted that with respect to fundamental voting rights, this presumption must apply in the case of an ambiguity—ie, where a ballot envelop is timely received by the Board of Elections but, despite the Board’s agreement with the U.S. Postal Service that all election mail be postmarked, no postmark can be ascertained, and absent any form of ballot tracking or chain of custody imposed by the board, which the voter has no control over—a voter is entitled to a rebuttable presumption that their ballot is timely, unless specific proof of a particular voter’s untimely mailing is presented by a challenger or objector (a preponderance of proof should be required, such that both inspectors canvassing ballots are inclined to agree).

At that point, in a fair system that provides due process, the impacted voter should be notified that the timeliness of their ballot has been challenged and voter should have a reasonable opportunity to resolve the challenge by swearing a timeliness oath, under penalty of perjury. Such an opportunity would at least place the remote voter on equal footing with a voter who is challenged when they appear in person to vote.¹⁹ As with that process, since the right is fundamental, an eligible voter who is challenged and is willing to take an oath swearing to their eligibility receives the benefit of the doubt, subject to prosecution or judicial intervention.

But instead, in the case of ambiguity for a timely received ballot (ie, where no postmark at all can be ascertained but the Board receives the ballot within the statutory 7-day period after Election Day for receiving mail ballots) today our law and election administrators draw unfounded, conspiratorial inferences against the voter, without a rational public policy for doing so. It has been argued privately that were the appropriate presumption described above to apply to protect voters, there remains a theoretical possibility that some quantum of unscrupulous voters, acting alone or in concert, would sit on their ballots (and jeopardize only their own rights), in order to cast a single late ballot and serve as a possible “spoiler” after the unofficial results of an extremely close contest are reported on election night. No evidence has ever been submitted to justify this theory, nor is it apparent how, in the November context or otherwise, this conduct could actually impugn the integrity of an election.

Moreover, even if such a plot was alleged, per the same mailbox rule, ballots are out of a voter’s control once they are relinquished, and either a USPS postmark or a BOE tracking system can

¹⁸ 26 U.S. Code § 7502 (codifying the common law rule that timely mailing is treated as timely filing and paying)

¹⁹ See NYS ELECTION LAW §§ 8-504 and 8-506.

prevent this, but the presence or absence of those tools are not in the control of the voter. In fact, this supposed class of unscrupulous voters have no ability to determine which ballots in which regions will be postmarked as intended and which ones will be passed on to the Board of Elections without a postmark, rendering this strategy useless and the concern ridiculous, or at least, unfounded based on all available evidence.

All of this was apparent before it was revealed in the recent *Postmarks Litigation* that a large quantity of ballot envelopes were returned to the City Board of Elections by the USPS without any postmark, that this occurs in uneven fashion, with dramatic disparities even within the City of New York depending on local practice, and that over 34,000 blank ballots were only mailed out to voters on the day prior to the election.²⁰ Moreover that decision didn't touch upon, at all, the fate of ballots sent from beyond the City Limits (which take longer to arrive) at a time when thousands of New Yorkers are displaced.

Recent legislation and litigation to address this only deals with ballots missing postmarks that are timely received by a Board of Elections on the first and second day after Election Day, leaving a five day hole wherein ballots can be timely received by a Board of Elections, but, through no fault of the voter, lack a postmark and are presumed invalid, without any fraud or misconduct being alleged, let alone proven. And, voter has no notice or opportunity to swear otherwise.

Ballot Envelopes Laid Aside Because They Were Not Sealed with Saliva

Similarly, the election law does not actually define how a ballot envelope can be “sealed”, but merely requires that “if the envelope is not sealed, such envelope shall be laid aside unopened.”²¹ Over time, it appears a practice has developed during the post-election canvass where “sealed” is strictly limited to an envelope that has been licked shut with saliva, whereas any other method of securely closing the envelope (to use another phrase), by sealing it with tape, paste, or any other binding agent or device, is discounted as “not sealed”.²²

Not only is this interpretation bizarre from a commercial standpoint (departing from what a New Yorker would typically expect the rules to be in other situations where a person needs to securely close an envelope before placing it in the mail) and anti-voter in its impact (the envelope is laid aside unopened), but the voter is never proactively made aware of this unique prohibition on taping or otherwise securing the envelope in the materials accompanying the ballot application or the ballot itself, nor is voter given an opportunity to remedy this minor and prevalent technicality when it occurs.

Putting aside the interpretive ambiguity about the word “sealed” that jeopardizes fundamental rights and is drawn against the voter, the underlying policy rationale for laying these envelopes

²⁰ See Jane Timm, *1 in 5 mail ballots rejected in botched NYC primary*, NBC NEWS, Aug. 7, 2020, <https://nbcnews.to/30LQMOW>; David Brand, *Judge orders state to count disputed ballots in NY primary*, BROOKLYN DAILY EAGLE, Aug. 5, 2020, <https://bit.ly/31Bjil8>.

²¹ NYS ELECTION LAW § 9-209(2)(a)(i)(A).

²² Jesse McKinley, *Why the Botched N.Y.C. Primary Has Become the November Nightmare*, N.Y. TIMES, Aug. 3, 2020, <https://nyti.ms/31H0hxN> (NYC election officials “cited state laws requiring the disqualification of ballots for various small errors—including . . . envelopes sealed with tape—for contributing to the high number of invalidated ballots.”).

aside has not been convincingly articulated and, such that a rationale can be discerned as intending to be in furtherance of election integrity, the policy is overinclusive and appears to prohibit a theoretical election meddling scheme that has not been documented and would be extremely risky and inefficient to undertake.

On the contrary, during the June primary the Coalition received reports that—perhaps due to humidity or defects related to printing and mailing thousands of ballots and envelopes, some quantity of ballot envelopes arrived already sealed or stuck shut, or unable to be sealed without adding a binding agent. The issue was prevalent enough that it was included as one of a few culprits in press reports about the high mail-ballot discount rate.²³ Faced with this situation, a voter could rationally decide to secure their envelope with tape or glue and mail it back. The alternative of contacting the board of elections to document the defect and request a new envelope has obvious feasibility drawbacks the closer one gets to an election, in light of strict deadlines, the lack of ballot tracking, and snail mail inconsistencies.

But at no point, prior to a ballot being laid aside nor subsequently, does a challenger or the Board of Elections need to present any evidence of actual fraud or specified impropriety. The mere theoretical possibility, without more, that a ballot sealed with tape could have been tampered with by a bad actor at some point after the voter marked and sealed the ballot with saliva is enough to discount it. No fraud must be alleged; no clarification from the voter must be solicited;²⁴ and, voter does not even receive official notice that their ballot is challenged or discounted.

C) The Need for Clear, Uniform Guidelines from the State Board to Ensure Critical State Action Reaches Voters Intact, and Is Effective.

This past Spring, in the wake of so much change to New York’s voter access rules, one unintended consequence that can and should be avoided for the fall is the lack of a set of clear and concise, uniform guidance from the State Board of Elections regarding not only the contours of the new rules the local Boards must administer, but also, a clear set of instructions intended for public consumption, that is publicized to voters via the local Board’s website, digital communications, and mailers.

In the vacuum created by the absence of such guidance this Spring—which should be done on a statewide basis to ensure fairness and equal application of the rules—we witnessed widely variable action by local boards, particularly with regard to what information was posted on their websites, where it was posted, and how the information was communicated to voters.

²³ Jesse McKinley and Luis Ferré-Sadurní, *3 Weeks After Primary, N.Y. Officials Still Can’t Say Who Won Key Races*, N.Y. TIMES, Jul. 17, 2020, <https://nyti.ms/2F1UcEj> (“Data compiled by New Reformers, a Queens political organization, shows that election officials have invalidated at least 22,000 out of about 89,000 absentee ballots received in the borough, or about 25 percent, sometimes for minor issues like an envelope’s being sealed with tape or missing signatures on ballot envelopes.”).

²⁴ Editorial Board, *New York Shows One of the Many Ways Election Day Can Go Wrong this Year*, WASHINGTON POST, Jul. 22, 2020, <https://wapo.st/31EDlz5> (“Unlike some states, New York does not allow election officials to contact voters whose mail-in ballots are on the verge of being thrown out. The result is disenfranchisement for even small errors — like forgetting to sign in the right place, failing to sign in a way that resembles one’s signature on file or sealing a ballot envelope with tape.”)

For example, many boards took weeks to communicate developments to voters; some merely linked to the legalese of the Executive Orders themselves leaving it to the public to decipher their rights, while others appear to have cherry-picked what to communicate to voters from the various Orders (for example, some boards chose to emphasize that all voters could vote absentee and would be mailed an application, while deemphasizing that all voters could actually apply online or over the phone to do so, leaving the antiquated snail-mail option as the primary way to apply); some boards announced that voters could apply by email by submitting an application electronically or by phone, but then omitted the links to the form, or made it difficult to find the email address and phone number; Some boards placed information prominently on their landing pages and even deployed online forms to make it easy for voters to request ballots, while other localities buried the information they did include on secondary webpages that voters were unlikely to discover, particularly if they weren't proactively made aware of the new options.

All boards relying on the State Board's residual absentee ballot application unwittingly provided misinformation to the public, since the form includes instructions and FAQs that had not been updated to remain consistent with the Executive Orders or the legislative action extending the deadline for returning ballots. The result is that voters searching for an update on the rules were likely to find conflicting information about eligibility and how to request a ballot.

Also, because of the flood of new information that needed to be communicated, some Boards focused on remote voting to the detriment of informing voters about the new early voting option.

These are just some examples of how the *intent* of good, responsive emergency relief provided by Albany can be misconstrued or lost in translation as it trickles down to 58 localities to administer. To avoid this from recurring in the future, the substantive voter access reforms should be accompanied by directives to the State Board to promulgate a set of clear, concise instructions to be placed prominently on local Board of Elections websites. This eliminates the "middle man" filter which can lead to misapplication or non-uniform administration of rights-advancing policies.

The dramatic disparity in county practice in response to the Executive Orders this spring necessitates that local Board discretion be further limited by a clear guidance on what to communicate to the public to inform them of their rights and how to exercise them.

Thank you for your attention to these important issues and for your leadership improving voter access and modernizing due process safeguards ahead of the Fall elections, so all eligible New York voters can participate in our democracy and minimize public health risks. VoteEarlyNY and our Coalition partners stand ready to assist in improving administration and safeguarding civil rights.