# A Report On Voter Access In The 2016 Presidential Primary



A Report from the Civil Rights Bureau of

New York State Attorney General Eric T. Schneiderman



December 2016

### TABLE OF CONTENTS

INTF	RODUCTION	1						
I.	REGISTRATION ISSUES	3						
	A. New York's Party Enrollment Registration Deadlines Prevented Many New Yorkers From Participating in the Presidential Primaries	3						
	B. Errors by New York State Agencies in Transmitting Registration Information to Loca BOEs Left Many New Yorkers Ineligible to Participate in the Primaries	al 5						
	C. Registration Processing Errors by Local BOEs Also Hindered Voter Participation							
II.	VOTING PRACTICES	9						
	A. Local BOE Policies Inhibited Voter Access to Affidavit Ballots During the Presidential Primaries	9						
	B. Reduced Poll Hours in Select Counties Created Confusion and Prevented Some Vote from Casting a Ballot During the Primary							
	C. Local BOE Notices Did Not Adequately Inform Voters About Election Dates and Po Site Locations							
III.	RECOMMENDATIONS	3						
	<u>APPENDIX A</u> <u>A CALL FOR COMPREHENSIVE REFORM: THE 2017 NEW YORK VOTES</u>							
	RODUCTION							
Part	I: VOTER REGISTRATION 1							
А.	Facilitate New Voter Registration	8						
	<ol> <li>Provide for Automatic Registration of Eligible Voters</li></ol>	)						
	3. Implement a System of Online Voter Registration       1	.9						
B.	Assist Registered Voters	20						
	<ol> <li>Create a System of Permanent Voter Registration</li></ol>	20 20						
Part	II: VOTING	21						
A.	Increase Opportunities for Voters to Vote	21						
	1. Adopt a System of Early Voting							
	2. Provide for "No Excuse" Absentee Voting	22						
	3. Ensure Uniformity of Poll Site Hours Across the State	22						
	<ul> <li>4. Consolidate Federal, State, and Local Primaries on a Single Day</li></ul>	23 24						
B.	Enhance Access to the Ballot							
	1. Increase Language Access	25						
	2. Protect Voters from Improper Challenges	25						
	3. Restore Voting Rights to Citizens on Parole	26						
	4. Enhance Poll Worker Training and Recruitment 2	26						

#### **INTRODUCTION**

On April 19, 2016, New York held a statewide Presidential Primary. The Primary was the subject of significant attention: both the Republican and Democratic races were hotly contested, and millions of New Yorkers went to the polls and cast ballots for their preferred candidate. In all, 2,892,671 New Yorkers – just over 21% of the State's voting-eligible population<sup>1</sup> – cast ballots in Primaries administered by County and New York City Boards of Election ("local BOEs"), the local agencies tasked with administering elections in New York State.<sup>2</sup>

These figures, however, do not capture the total number of New Yorkers who sought to vote on April 19th. Thousands of potential voters were frustrated in their attempts to cast their ballots, including both those who were registered and eligible to vote in the party primaries and others who were registered but ineligible to vote because they were unaffiliated with either the Democratic or Republican Party.<sup>3</sup> These voters encountered barriers to access erected by New York's restrictive voting laws, rules and procedures, as well as by the practices and administrative errors of state agencies and the BOEs.

During the Presidential Primary, the New York State Office of the Attorney General ("OAG") operated a statewide voter hotline designed to troubleshoot problems that voters encountered at their polling places. OAG assisted voters by contacting local election officials and reviewing public voter databases to address their complaints. OAG first opened the hotline in 2012, and operated it in each of the four elections held in 2016.<sup>4</sup> OAG's preliminary findings regarding the November 8, 2016 General Election hotline are discussed in an Appendix to this Report, which also introduces OAG's legislative and administrative recommendations to expand New Yorkers' access to the ballot and improve the administration of elections statewide. OAG's legislative proposals — entitled "The 2017 New York Votes Act" — will be introduced in a comprehensive bill for consideration by the Legislature next year.

During the 2016 Presidential Primary, OAG received approximately 1,500 complaints — ten times the previous high mark — from voters reporting problems accessing the polls, ranging from issues with registration, to concerns about procedures at polling places, to questions about directions given by poll workers.<sup>5</sup> OAG was able to provide immediate assistance to many of these voters, enabling them to exercise their right to vote.<sup>6</sup> In many other cases, however, the issues raised by voters could not be addressed on the spot, leaving them unable to participate in the election.

To examine these failures in the voting process, OAG contacted eight BOEs covering counties in which 73% of registered New York voters reside — the five counties in New York City (Bronx, Kings, New York, Queens and Richmond), as well the BOEs for Albany, Erie, Monroe, Nassau, Onondaga, Suffolk, and Westchester Counties.<sup>7</sup>

<sup>1</sup> The voting eligible population in New York consists of individuals who (1) are United States citizens; (2) are at least 18 years old; (3) live at their present address in the State for at least 30 days prior to an election; (4) are not incarcerated or on parole for a felony conviction; (5) are not currently judged mentally incompetent by a court; and (6) do not claim the right to vote elsewhere. N.Y. Elec. Law § 5-102; § 5-106; *Register to Vote,* New York STATE BOARD OF ELECTIONS, https://www.elections. ny.gov/VotingRegister.html (last visited Dec. 1, 2016).

<sup>2 2016</sup> Presidential Nomination Contest Turnout Rates, UNITED STATES ELECTION PROJECT, http://www.electproject.org/2016P (last visited Dec. 1, 2016); 2016 Election Results, New York State BOARD of Elections, http://www.elections.ny.gov/2016ElectionResults.html (last visited Dec. 1, 2016).

<sup>3</sup> New York is one of nine states with a closed primary system, meaning that in all primaries, voters are only allowed to participate in the contests of the party in which they are enrolled. Three additional states hold fully closed primaries, but for presidential primaries only. *See State Primary Election Systems*, NATIONAL CONFERENCE OF STATE LEGISLATURES (2016), *available at* http://www.ncsl.org/documents/Elections/Primary\_Types\_Table\_2016.pdf.

<sup>4</sup> In New York the annual election calendar includes up to three primaries and one general election. Political parties nominate candidates for office in primary elections, held every September for state and local offices and, recently, every other June for federal congressional offices. See N.Y. Elec. Law §8-100(2); *Appendix A, Part II.A.4.* Party nominees then compete in general elections held every year in November. OAG has operated its statewide voter hotline during the 2012 General Election (November 6, 2012), 2013 State and Local Primary Election (September 10, 2013), 2013 General Election (November 5, 2013), 2014 Federal Congressional Primary (June 24, 2014), 2014 State and Local Primary (September 9, 2014), 2015 State and Local Primary (September 9, 2014), 2015 State and Local Primary (September 10, 2015), 2016 General Election (November 8, 2016), 2016 Federal Congressional Primary (June 28, 2016), 2016 State and Local Primary (September 13, 2016), and the 2016 General Election (November 8, 2016).

<sup>5</sup> The nationwide nonpartisan Election Protection voter hotline reported that it also received a high number of calls from New Yorkers during the 2016 Presidential Primary–900 calls during the Primary itself and 150 calls before or after Primary Day. Election Protection noted that this exceeded the number of calls it received from voters in other "states with restrictive voting laws like Texas and Georgia." Press Release, Stace B. Burgess, ELECTION PROTECTION, *New York Voters Encounter Barriers to the Ballot Box During the April 19 Presidential Primary* (Apr. 19, 2016), *available at* http://www.866ourvote.org/newsroom/releases/new-york-voters-encounter-barriers-to-the-ballot-box-during-the-april-19-presidential-primary.

<sup>6</sup> OAG worked with local BOEs to ensure that broken voting machines were repaired or replaced, polling sites across the State had an adequate number of ballots, and problems with electioneering were quickly addressed. It also worked with individual voters to provide information about registration status, polling places, and affidavit and absentee ballots.

<sup>7</sup> New York State Voter Enrollment by County, Party Affiliation and Status, New York STATE BOARD OF ELECTIONS (Apr. 1, 2016), [hereinafter, N.Y. State Voter Enrollment Statistics] available at http://www.elections.ny.gov/NYSBOE/enrollment/county/county\_apr16.pdf.

In total, these 12 counties account for more than 80% of the complaints recorded by OAG during the Presidential Primary for which voters reported their county of residence. After the Primary, OAG sent letters to these BOEs requesting information regarding individual voter registration files, voter registration policies and procedures, and affidavit<sup>8</sup> and absentee<sup>9</sup> balloting information. OAG reviewed this information and interviewed senior BOE officials about their policies and procedures governing the electoral process.<sup>10</sup> OAG also spoke with representatives from the New York State Department of Motor Vehicles ("DMV") and the New York State Board of Elections ("State BOE").

In addition, in response to reports of the cancellation of more than 100,000 voters in Kings County just prior to the Presidential Primary, OAG opened a separate investigation into the New York City BOE's voter roll administration. That investigation, which has required the review of thousands of New York City BOE documents and interviews with dozens of current and former staff at the BOE, is ongoing, and is not the subject of this Report.

As detailed in this Report, the information gathered from investigating complaints confirmed that New York's current election system erected barriers to voter access in at least two major ways. First, the rules, laws, procedures, and practices governing *voter registration* in New York's Primary, large numbers of registered voters not affiliated with the Presidential Primary. To participate in New York's Primary, large numbers of registered voters not affiliated with the Democratic or Republican Parties confronted extremely restrictive deadlines for party enrollment; were forced to rely on error-prone communication between state and local agencies; and, finally, were subject to processing by local BOEs that do not adhere to a single, statewide set of registration standards. Given the overly complicated nature of voter registration in New York, it is not surprising that just under two-thirds of the complaints recorded by OAG during this year's Presidential Primary came from voters who encountered registration-related problems at their poll sites.

Second, some of the rules, laws, procedures and practices governing the *voting process itself* overly restricted New York voters' ability to cast their ballot. For instance, local BOEs often denied voters the opportunity to cast ballots by affidavit. Some local BOEs did not provide adequate notice to voters of their assigned polling site. Finally, many BOEs across the state were prevented, by state law, from allowing voters the opportunity to cast ballots between 6:00 am and 12:00 pm on Primary Day. Approximately 20% of the total number of Primary-related complaints recorded by OAG concerned one of these issues.

Many of the same issues giving rise to Presidential Primary complaints were the subject of complaints reported to OAG in connection with the more recent General Election of November 8<sup>th</sup>. These included registration issues and errors in poll books, lack of access to affidavit ballots, incorrect instructions provided by poll workers, and requested absentee ballots that did not arrive in time or, in some cases, at all. General Election voters also reported other barriers to voting, including broken scanning machines at hundreds of poll sites across the state, and voters waiting in lines for up to three hours to cast their ballot. OAG is in the process of following up with local BOEs on the complaints received on November 8<sup>th</sup> to learn why and how these problems occurred.

The right to vote is fundamental to our democracy, yet New York State consistently has one of the lowest voter turnout rates in the country.<sup>11</sup> OAG is committed to ensuring that every eligible voter in New York is able to exercise his or her right to vote, and believes the recommendations offered by this Report — and in The 2017 New York Votes Act — will significantly strengthen our state's democracy by expanding ballot access and improving election administration statewide.

10 OAG conducted interviews with Commissioners and Deputy Commissioners in Albany, Erie, Monroe, Nassau, Onondaga, Suffolk, and Westchester counties. For counties within New York City, OAG interviewed senior officials from the Executive Office and the Kings County Borough Office of the New York City BOE.

<sup>8</sup> An affidavit ballot is used when a voter believes he or she is eligible to vote but cannot vote on the machine. Voters cast paper ballots after signing affidavits affirming their eligibility. After the election, the local BOE determines whether the voter is eligible to vote, and whether the ballot should be counted. *See* N.Y. Elec. Law § 8-302(3-a). Alternatively, a voter can seek a court order permitting her or him to vote. *Id*.

<sup>9</sup> An absentee ballot is mailed in advance of an election to a voter who is unable to be present at the polls. N.Y. Elec. Law § 8-400.

<sup>11</sup> Data Visualization: Elections Performance Index, The Pew Charitable Trusts (Aug. 9, 2016), http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/ elections-performance-index#state-NY.

#### I. **REGISTRATION ISSUES**

The complaints received by OAG's hotline revealed that New York's voter registration system created significant barriers for individuals seeking to vote during the Primary. OAG received more than 600 complaints from voters who reported problems with their voter registration. In examining and responding to these complaints, OAG identified three key factors contributing to the registration mishaps complainants experienced. First, New York's extremely restrictive party enrollment deadline left the majority of these would-be voters ineligible to participate in the Presidential Primary. Second, other would-be voters were unable to cast ballots because of errors by state agencies in transmitting registration information to local BOEs for processing. Finally, some would-be voters were unable to cast ballots because of errors on the part of local BOEs in processing registration information. Of course, these recurring issues affected voters beyond just those who contacted OAG. Steps can and should be taken to improve the registration system to clear away these impediments to voters' access to the ballot box in future elections.

# A. New York's Party Enrollment Registration Deadlines Prevented Many New Yorkers from Participating in the Presidential Primary

The first major factor that contributed to the registration issues reported during the Presidential Primary was New York's extremely restrictive change-of-party rules. Hundreds of voters complained that they learned on Primary Day that BOE records indicated they were not affiliated with the Democratic or Republican Party. Many of these voters had sought to enroll as Democrats or Republicans several months before the Presidential Primary, but were not allowed to do so because they missed the party enrollment deadline.

**New York's change-of-party affiliation deadline**<sup>12</sup> **is by far the most restrictive such deadline in the country**.<sup>13</sup> *See Chart 1 below.* Under New York State Election Law, the deadline for enrolling in a party depends on whether a voter is (a) registering for the first time or (b) is already registered, but is adding or changing party affiliation. New registrants can enroll in a party at the same time they submit their registration, the deadline for which is 25 days prior to a general or primary election. In contrast, any voter with an existing registration in New York who seeks to change his or her party or newly enroll in a party in anticipation of a primary must do so at least 25 days prior to the general election **in the year prior to that primary**.

In the case of the 2016 Presidential Primary, the State's deadline for first time registrants to enroll in either the Democratic or Republican Parties was March 25, 2016.<sup>14</sup> The deadline to change parties or newly enroll in a party in order to vote in the April 19th Presidential Primary was October 9, 2015, 193 days prior to Primary Day.<sup>15</sup> Voters submitting a change-of-party or new party enrollment request after that date were not eligible to participate in their new or changed party's primary until 2017.

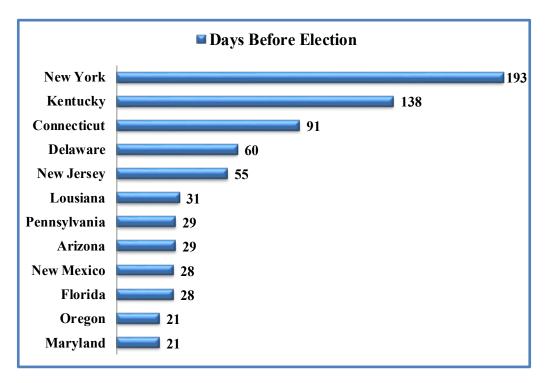
<sup>12</sup> New York's exceptionally restrictive party enrollment deadline rule was enacted in the 1800s. At that time, the purpose of the law was to discourage "party raiding," a tactic in which members of one party vote in another party's primary election *en masse*, in an effort to manipulate the outcome of the other party's election. According to a recent survey related to California's 2000 presidential primary, successful party raiding may no longer be a significant threat in the modern political system, as it requires difficult coordination among thousands of voters. "Some voters might well use their new freedoms to sabotage another party, but the great majority would probably vote for the candidate they liked best." Eric McGhee, *At Issue: Open Primaries*, PUBLIC POLICY INSTITUTE of CALIFORNIA 6-7 (2010), *available at* http://www.ppic.org/content/pubs/atissue/AI\_210EMAI.pdf\_Further, New York State's interest in discouraging party raiding could be met with a less restrictive deadline.

<sup>13</sup> Under New York State Election Law § 5-304, voters are required to submit any changes to their party enrollment by the twenty-fifth day before the general election of the previous year. N.Y. Elec. Law § 5-304.

<sup>14</sup> N.Y. Elec. Law § 5-210.

<sup>15 2015</sup> Political Calendar; New York State BOARD OF ELECTIONS (May 21, 2015), available at, http://www.elections.ny.gov/NYSBOE/

law/2015OfficialPoliticalCalendar.pdf. The deadline to change party enrollment for New York's State and Local Primary on September 10, 2015 was even more restrictive. In order to participate in that Primary, any voter with an existing registration seeking to change his or her party or enroll in a party had to do so by October 10, 2014, 335 days prior to that Primary. 2014 Political Calendar, New York STATE BOARD OF ELECTIONS (May 9, 2014), available at http://www.elections.ny.gov/NYSBOE/law/2014OfficialPoliticalCalendar.pdf.



#### CHART 1: Number of Days Between the Deadline for Changing Parties and the 2016 Presidential Primary In Closed Primary States<sup>16</sup>

Only one other closed primary state, Kentucky, set a deadline for changing parties that was not within the same calendar year as the 2016 Presidential Primary.<sup>17</sup> New York's deadline for changing party registrations was 55 days earlier than Kentucky's deadline, the next earliest for closed primary states, and 168 days earlier than the deadline for new registrants in New York to enroll in a party. Moreover, of all closed primary states, New York was one of only five that set different party enrollment deadlines for new registrants and existing registrants.<sup>18</sup>

The unusually early deadline for changing party enrollment required existing registrants to make a critical choice about whether and in which party to enroll more than half a year in advance of the 2016 Presidential Primary, long before the State's deadline for the Presidential Candidates to themselves register to be on their party's ballot.<sup>19</sup> Voters generally become most engaged with elections and knowledgeable about candidates' platforms in the last few months (or weeks) before a primary, when candidate debates and campaign activity are at their peak. By the date of New York's most recent change-of-party deadline, however, Republican candidates for President had participated in only two of their 12 debates, and the Democratic candidates were still four days away from their first debate.<sup>20</sup>

20 Democratic Debate Schedule (2016 Primary Debates), 2016 ELECTION CENTRAL, http://www.uspresidentialelectionnews.com/2016-debate-schedule/2016democratic-primary-debate-schedule/ (last visited Dec. 1, 2016); *Republican Debate Schedule (2016 Primary Debates)*, 2016 ELECTION CENTRAL, http://www. uspresidentialelectionnews.com/2016-debate-schedule/2016-republican-primary-debate-schedule/ (last visited Dec. 1, 2016).

<sup>16</sup> See List of state change-of-party statutes: Arizona, ARIZ. REV. STAT. § 16-136; ARIZ. REV. STAT. § 16-120; Connecticut, CONN. GEN. STAT. § 9-59; Delaware, DEL. CODE ANN. tit. 15, § 3189; Florida, FLA. STAT. § 97.055; Kentucky, KY. REV. STAT. § 116.055; Louisiana, LA. REV. STAT. ANN. § 18:107; LA. REV. STAT. ANN. § 18:135; Maryland, MD. ELECTION LAW CODE ANN. § 3-302; MD. CODE ANN. ELECTION LAW § 3-303; New Jersey, N.J. STAT. ANN. § 19:23-45; New Mexico, N.M. Stat. Ann. § 1-4-16; N.M. STAT. ANN. § 1-4-8; New York, N.Y. ELEC. LAW § 5-304; Oregon, OR. REV. STAT. § 247.203; Pennsylvania, 25 PA. CONS. STAT. ANN. § 1503; 25 PA. CONS. STAT. ANN. § 1326.

<sup>17</sup> Voters in Kentucky, a closed primary state, seeking to change their party affiliation in anticipation of the 2016 Presidential Primary/Caucus had to do so by December 31, 2015. KY. REV. STAT. § 116.055. In addition, any Democratic or Republican voter in New Hampshire seeking to change his or her registration in anticipation of the Presidential Primary had to do so by October 30, 2015. *Voter Registration Deadlines*, New HAMPSHIRE SECRETARY OF STATE, http://sos.nh.gov/VoterRegDeadlines.aspx (last visited Dec. 1, 2016). Note, however, that New Hampshire is a semi-closed primary state, meaning Independent or unaffiliated voters could participate in either party's Primary.

<sup>18</sup> New registrants could enroll in a party in Kentucky within 29 days of the election (Ky. Rev. Stat. § 116.045), in Delaware within 24 days of the election (Del. Code Ann. tit. 15, § 2036), in Connecticut within five days of the election (Conn. Gen. Stat. § 9-23a), and in New Jersey within 21 days of the election (N.J. Stat. § 19:31-6).

<sup>19</sup> Under N.Y. Election Law § 2-122-b(3)(a-b), February 16, 2016 was the last day for "nationally known candidates" to file a certificate with the State BOE, requesting to appear on the Presidential Primary Ballot. N.Y. Elec. Law § 2-122-b(3)(a-b; *Calendar for the April 19, 2016 Presidential Primary for Selecting Delegates to a National Convention,* New YORK STATE BOARD OF ELECTIONS (Aug. 18, 2015), https://www.elections.ny.gov/NYSBOE/law/2016nyPresidentialPrimaryPoliticalCalendar. pdf. The State Board had until February 24, 2016 to certify those candidates. N.Y. Elec. Law § 2-122-b(3)(b).

More than three million New Yorkers, or about 27% of New York's registered voters, were not affiliated with the Democratic and Republican parties before the Presidential Primary Election.<sup>21</sup> While many of these individuals had no interest in affiliating with either of the two major parties, others, in anticipation of the Primary, sought but were unable to enroll as Democrats or Republicans. Nearly 450 would-be voters who contacted OAG during the Primary submitted a request to change their party to Democrat or Republican between October 9, 2015 and March 25, 2016. If these voters had been registering for the first time, they would have been eligible to vote during the Presidential Primary, but under New York State Election Law, their requested changes in party affiliation were not effective until after the 2016 General Election, thus depriving them of the opportunity to vote in the Primary.<sup>22</sup>

### **B.** Errors by New York State Agencies in Transmitting Registration Information to Local BOEs Left Many New Yorkers Ineligible to Participate in the Primary

The second key registration-related issue that prevented would-be voters from casting ballots during the Presidential Primary was transmission errors by state agencies, such as the DMV, which is, by law, tasked with receiving and sending registration information to local BOEs. During the Presidential Primary, OAG received dozens of complaints from individuals who claimed to have timely registered or updated their registration with the DMV, only to find that their registration record did not reflect these changes during the Presidential Primary. Upon further investigation, OAG found ten cases in which individuals had receipts confirming that the DMV had timely received registration applications, but where the DMV appeared to have failed to forward those applications to the would-be registrants' local BOE. OAG believes these instances to be representative of systemic errors affecting registrants across the state.

Under New York State Election Law, voters have the option of submitting completed registration forms to state agencies, including the DMV, social service agencies, and the State University of New York. Upon receipt of a completed form, the state agency must transmit that information to a local BOE for processing.<sup>23</sup>

New York State Election Law sets forth the timeline for transmitting registration forms to local BOEs. A state agency must transmit completed forms to local BOEs within ten days of receipt.<sup>24</sup> When a voter submits an application within five days of the deadline for registering, the agency must transmit forms immediately to ensure that they are received by the local BOE before any deadline for receipt of the application.

The New York DMV's recent adoption of a partial system of online registration has improved the process for transmitting registration information. In the past, voters could only submit paper registration applications to state agencies, which were then transmitted to local BOEs in paper form for manual processing. While most state agencies continue to use this system of receiving and transmitting paper applications, the DMV now offers voters the option of submitting applications online, through the "MyDMV" portal. Moreover, in the past year, the DMV has begun electronically transmitting information it receives through MyDMV to local BOEs. According to several local BOEs, electronic transmission has greatly improved the speed and accuracy of the registration process.

While the law clearly lays out the process for transmitting registrations, in practice, far too many errors occur. As noted above, the DMV sometimes failed to transmit forms. In one such example, a new voter in New York County submitted her paper registration forms to the DMV in February 2016, but never received confirmation of her registration from the New York City BOE. Several days before the Presidential Primary, she contacted the BOE to inquire about her registration status. She then learned that the BOE had not received her registration

<sup>21</sup> N.Y. State Voter Enrollment Statistics.

<sup>22</sup> N.Y. Elec. Law § 5-304.

<sup>23</sup> Local BOEs are tasked with processing voter registration information by "adding, changing, canceling, or removing" voter registrations. N.Y. Elec. Law §5-614(4).
24 N.Y. Elec. Law §5-211(11), 5-212(6).

form. When she contacted the DMV, she was informed that the agency had failed to forward her information to her BOE. On Election Day, this voter cast a ballot after undertaking the extraordinary and time-consuming step of obtaining a court order permitting her to vote.

OAG also found that state agencies often delayed sending the paper registration applications they had received. The New York City BOE, the Albany County BOE and the Monroe County BOE reported that state agencies, other than the DMV, often transmitted boxes of completed voter registration forms just before the deadline for registration. Some forms were several months old by the time the local BOEs received them.

Finally, OAG found that interrupted service on the DMV's online registration portal also led to delays in the transmission process. On March 25, 2016, the deadline to register for the Presidential Primary, the DMV's online registration system received an unprecedentedly high volume of voters seeking to register. The increased traffic overloaded the system, causing it to stall twice and then to ultimately go offline.<sup>25</sup> As a result, voters who attempted to use the website at those times may have been unable to submit their registration materials prior to the deadline. DMV posted a notice on its website at approximately 11:00 pm stating that the online voter registration system was down and that individuals seeking to register should send their completed registration forms to the DMV via email. The registration forms had to be emailed to the DMV by 11:59 pm. Thus, would-be registrants were given just under an hour after official notice of the system failure to submit applications to the DMV.

DMV officials indicated that if the DMV received registration applications the following day, on March 26th, the DMV would forward the applications to the BOEs with a cover letter explaining the system failure. The local BOEs would then decide whether to deem the applications as timely. Several local BOEs reported that they fashioned emergency measures for individuals who attempted to register while the DMV website was down, to ensure that those individuals could register in time to vote in the Presidential Primary. For instance, both the New York City and Monroe County BOEs reported that they continued accepting applications from the DMV and marked them as timely after March 25th. Nevertheless, the interruption of service may have prevented many voters from submitting their registrations. DMV officials have reported to OAG that in August 2016, they reengineered the DMV's online registration system, which would prevent future system failures caused by an increased demand.<sup>26</sup>

# C. Registration Processing Errors By Local BOEs Hindered Voter Participation

Processing errors by local BOEs was the third factor that prevented would-be voters from casting ballots during the Presidential Primary. OAG received nearly 100 complaints from voters who claimed that inaccuracies in their registration information prevented them from participating in the Presidential Primary. OAG found that most of these voters were, in fact, ineligible to participate in the Primary. *See Part I. A* above. However, OAG found at least 20 instances in which local BOEs failed to accurately process voters' registration information. OAG reviewed local BOE policies and procedures and concluded that the minimal guidance to staff provided by some local BOEs may account for these registration errors. Moreover, a wide variation in the policies and procedures developed by local BOEs led to inconsistencies in how registration processing was handled across the state.

<sup>25</sup> At the time of the March 25, 2016 system failure, individuals using the MyDMV online registration system were required to create an account and undergo an email verification process, in which the registrant was sent an email to confirm his or her identity. The MyDMV system was designed for the applicant to receive the verification email almost immediately after the account was created. According to DMV officials, the March 25<sup>th</sup> system failure was caused by severe delays in the MyDMV email verification process. During the periods of 1:30 pm-2:15 pm and 5:00-6:00 pm, the verification emails were "very slow" in being sent to applicants. Some individuals who attempted to register during those time frames may have had to wait hours to receive verification and others may have not have received verification emails that day at all. At 6:30 pm, the New York State Office of Information Technology Services shut down the DMV's online application system after it was evident that would-be registrants would be unable to register with the system operating that slowly. The MyDMV online registration system remained offline the remainder of the day.

<sup>26</sup> DMV officials reported that the DMV eliminated the email verification component of the MyDMV online registration system. The updated system was designed to, among other things, improve the DMV's capacity to handle a surge in online voter registration applications. DMV officials noted that it had not experienced any system failure or delay after it implemented the updated system in August 2016.

New York State Election Law tasks local BOEs with processing voter registration information. Local BOEs must add new registrants to voter rolls, update voter records with information submitted by voters themselves, and remove or cancel registrations of individuals who are no longer eligible to vote. Local BOEs maintain permanent staff to perform these duties throughout the year.

While New York State Election Law defines each task that local BOEs must perform, it does not address some critical, recurring issues that local BOEs encounter in processing voter registrations. For example, the Election Law does not provide guidance to local BOEs on how to handle missing information on registration forms, including how to interpret missing party affiliation information on registration forms submitted by preexisting voters.

Local BOEs therefore have been left wide discretion to create policies and procedures and to train their staff on how to properly process registrations. To a degree, that discretion was channeled by the State BOE, which has the infrastructure to review and provide guidance to local BOEs on these policies and procedures. For instance, to ensure compliance with state law, the State BOE has audited local BOE procedures and practices and also monitored the flow of registration information both into and out of local BOEs. According to State BOE, audits of local BOEs occurred at least once every two years, and involved reviews of a sample of voter registration records maintained by that local BOE. If the audits revealed any problems, the State BOE worked with the local BOE to address the identified issues. In addition, the State BOE reported that it staffed a unit to provide local BOEs with guidance on specific topics, such as how to process a registration form from an existing voter in which the party affiliation section is blank. Finally, the State BOE also provided training sessions each year for local BOEs. While these various forms of oversight afforded some protection against potential errors in processing at the local level, they still left local BOEs with significant discretion, which was not exercised consistently across the State.

Under New York State Election Law, the State BOE has the authority to exercise closer oversight, including the power to issue regulations requiring clear and consistent written policies and procedures at the local BOE level and to conduct audits of local BOE compliance.<sup>27</sup> In 1996, the State BOE issued a regulation that required all local BOEs to draft written procedures for processing registration and change of address forms received from state agencies.<sup>28</sup> That year, the State BOE conducted a systemic review of these written procedures for compliance with the law. Over the following twenty years, however, it did not conduct any comparable review. Further, the regular biennial audits conducted by the State BOE typically do not involve review of these materials. Since 1996, state and federal election law and state election practices have changed dramatically, including the implementation of a statewide electronic voter registration list pursuant to the Help America Vote Act ("HAVA"). The statewide registration list improves communication between state and local BOEs, and allows the latter to easily process information relating to duplicate records, and deceased and incarcerated voters. It also has resulted in the implementation of online registration, as discussed above. Renewed uniform auditing of all local BOE epolicies and procedures, including those governing new electronic systems, is critical to improved voter access.

OAG found that the broad discretion afforded to local BOEs in fashioning their own written policies and procedures led some counties to provide only minimal procedural guidance to staff. The wide variation in local BOE policies and procedures also led to inconsistencies across the state in registration processing. *See Chart 2 below*. Some counties, such as Nassau County, did not have any written procedures for staff tasked with processing voter registrations. Others, such as Suffolk County, had written procedures that were no longer used by staff. Suffolk's written procedures date back to 1997, and include information that no longer complies with New York State Election Law, such as instructions for reviewing proof of citizenship.<sup>29</sup> Still other BOEs created written materials

27 N.Y. Elec. Law § 3-102; See also N.Y. Elec. Law §§ 5-211; 5-212; 5-614.

<sup>28 9</sup> NYCRR § 6213.4.

<sup>29</sup> During OAG's interview with election officials at the Suffolk County BOE, the Deputy Commissioners indicated that their written procedures were no longer in use. Rather, BOE staff undergoes one-on-one trainings to learn BOE policies and procedures when they start at the BOE.

that provided only limited guidance. The Erie County BOE reported creating written procedures to guide staff in adding or updating registrations, but directed staff to the text of New York State Election Law for guidance on how to cancel and remove registrations.

Other BOEs provided staff with extensive documents detailing registration procedures. For example, Albany and New York City BOE staff received written guidance on adding and updating registrations, as well as removal and cancellation. Monroe and Onondaga BOEs issued extensive guidance on all these topics, as well as on more specific topics such as the handling of incomplete registrations forms. Monroe and Onondaga provided written policies that addressed the failure of existing registrants to identify a party affiliation in changing their name or address. Both Monroe and Onondaga directed staff to rely on previously identified affiliation, and to contact the voter to resolve any outstanding questions.

These varying levels of written guidance led to inconsistencies in the treatment of voters across the state. The responses by different BOEs to missing information on registration forms illustrate this point. The OAG identified nearly a dozen Democratic and Republican voters who unintentionally left the party enrollment section blank on registration forms they submitted to update their addresses or names. These voters did not indicate that they wanted to change their preexisting party affiliation to unaffiliated. However, an OAG review of documents provided by their local BOEs showed that those without clear written guidance on this issue, including the New York City, Westchester County, and Nassau County BOEs, listed those voters as "Unaffiliated" rather than keeping them enrolled in their prior parties. As a result, those voters were ineligible to cast a ballot during the Presidential Primary. In contrast, Monroe County, which has written guidance on this issue, retained the original party affiliation of these voters, thereby permitting them to vote during the Presidential Primary.

Apart from differences in written guidance, local BOEs also varied in the amount and type of training they provided for staff tasked with processing registrations. While Nassau, Suffolk, and Westchester Counties lacked adequate written procedures for staff, they did provide one-on-one training on registration processing. Newer staff members were paired with more senior-level staff as well as supervisors to learn how to process registrations and cancellations. In addition to one-on-one training, Monroe created an additional level of accountability by requiring that Clerks and Deputy Clerks check the work of new staff for errors. Albany went further and created formal training programs for staff on the different aspects of processing registration. By contrast, New York City did not have uniform training protocols across boroughs.

Some of the inaccuracies in registration records observed during the Presidential Primary seem to have resulted from lack of sufficient training for staff charged with processing registrations. Several voters complained that inaccurate registration information in poll books, such as incorrect and misspelled names, wrong addresses, and missing party affiliation information, forced them to vote by affidavit ballot. For instance, a voter in Suffolk County who had regularly voted since 1972 called her local BOE after she did not find her name in her election district's poll book. The Suffolk County BOE informed her that her voter record had been mistakenly merged with another voter of the same name and, as a result, she no longer had an active registration. OAG also received a complaint from a voter named "Alexandra" who was mistakenly listed as "Alexander" by the Queens Borough Office of the New York City BOE. Even though she submitted paperwork in 2015 to Queens County to update her voter registration information, her name still did not appear accurately in the poll book during the Presidential Primary and she had to vote by affidavit ballot. OAG also identified a voter in Westchester BOE's records and in the poll books on Election Day due to the BOE's error. As a result, she had to cast an affidavit ballot in the Presidential Primary.

Procedures and Training	Erie	Nassau	Westchester	Suffolk	Onondaga	Albany	NYC	Monroe
Procedures Covering Voter Registration	X		X	X	X	X	X	X
Procedures Covering Cancellations			X		X	X	X	X
One-on-one Training with Senior Employees		X	X	X				X
Group Training for BOE Employees						X		

# **II. VOTING PRACTICES**

OAG received more than 200 complaints from voters who encountered significant hurdles unrelated to registration while attempting to vote in the Presidential Primary. The majority of these complaints concerned voters being denied access to affidavit ballots and poll site accessibility, specifically poll site hours and notice of poll site locations.<sup>31</sup>

### A. Local BOEs Inhibited Voter Access to Affidavit Ballots During the Presidential Primary

During the Presidential Primary, OAG received complaints from individuals across the state who said that they were turned away from poll sites without casting a ballot of any kind. Many of these voters were reportedly denied an affidavit ballot because their names were not in the poll book and the poll inspectors could not verify that they were eligible to vote in that election district. In addition, OAG received complaints that some poll workers were not knowledgeable about affidavit ballots and failed to inform voters' of their right to cast an affidavit ballot. As discussed below, BOEs that deprived individuals of their right to cast a provisional or affidavit ballot may have violated laws governing access to those ballots, including New York State Election Law § 8-302(3-a), and HAVA.

Over two thirds of the voters that contacted OAG on Primary Day reported that when they arrived at their poll sites they found that they were not listed in the poll book and, thus, could not cast their ballots on a voting machine. As discussed in *Part I. A above,* many of these voters were not eligible to vote in the Presidential Primary because they were not registered as Democrats or Republicans. However, several other factors also seem to have led to a voter's absence from a poll book during the Primary, including a recent change of residence, BOE printing errors, and the improper removal of eligible voters from the rolls.<sup>32</sup> These voters, and others who could not find their name in poll books on Primary Day, should have been given the opportunity to vote by affidavit ballot.

<sup>30</sup> OAG reviewed Erie, Nassau, Westchester, Suffolk, Onondaga, Albany, Monroe and New York City BOEs' written policies and procedures, which were provided to OAG in response to written requests.

<sup>31</sup> OAG also received complaints from 13 voters who reported that they did not receive the absentee ballots for which they applied prior to Election Day. This Report does not discuss findings related to absentee ballots due to the limited information available from queried local BOEs.

<sup>32</sup> As noted above, OAG is conducting a separate investigation of the events and procedures leading to the cancellation of more than 100,000 voter registrations in Kings County.

Both New York State and Federal Election Law provide voters who reside in an election district the right to cast paper ballots after signing an affidavit affirming their eligibility.<sup>33</sup> Under New York State Election Law § 8-302(3-a), if a person residing at an address in an election district is not in the poll book for that poll site, poll workers should advise "such person of his right to, and of the procedures by which he may, cast an affidavit ballot or seek a court order permitting him to vote, and shall also give every such person who does not cast an affidavit ballot, an application for registration by mail." Under HAVA:

if an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot...<sup>34</sup>

These laws provide safeguards for individuals who are eligible to vote by ensuring that voters are not excluded from the voting process due to an administrative error, which may go undetected on a busy election day. Although poll workers are permitted to verify voters' eligibility in an election district prior to providing a voter an affidavit ballot, an affidavit ballot should be offered if the voter insists he or she is eligible, regardless of whether eligibility is determined. After the election, BOEs have a process to investigate affidavit ballots and determine whether the voter was eligible to vote and, therefore, whether the ballot is to be counted. Further, New York State Election Law provides those who are not properly registered with a method for registering or updating their registration.<sup>35</sup>

OAG received complaints from voters in Albany, Clinton, Erie, Niagara, Ontario, Westchester, and Suffolk Counties who reported that they were denied affidavit ballots at their poll sites although they believed they were eligible to vote. One voter in Clinton County reported that a poll worker told her that "affidavit ballots did not exist." Some voters said poll workers dissuaded them from casting affidavit ballots. For example, a voter in Kings County stated that poll workers said he could fill out an affidavit ballot "but it may not count," even if he was eligible to vote. County BOEs that denied individuals affidavit ballots when these individuals claimed to be eligible to vote in the Primary may have violated provisions of HAVA and New York State Election Law.<sup>36</sup>

OAG found significant inconsistencies among BOE policies regarding when affidavit ballots must be provided and the steps that should be taken, if any, to verify a voter's eligibility. New York City BOE was an outlier among the BOEs queried — it was the only BOE that affirmatively stated that all voters must be offered an affidavit ballot even if the poll worker believes the voter was ineligible to vote in the election or is in the wrong poll site.<sup>37</sup> The Westchester BOE's policies stated that even if a poll worker was unsuccessful in verifying the voter's enrollment, the poll worker could allow the voter to vote by affidavit ballot if the voter insisted that he or she was eligible to vote in that election district. By contrast, the written policies of Albany, Monroe, and Onondaga BOEs stated that poll workers could not provide an affidavit ballot to a voter unless they first spoke to the BOE to confirm the voter's eligibility.<sup>38</sup>

37 New York City BOE's written procedures provide that under HAVA "a voter must be offered an Affidavit Ballot even if the Inspector believes the voter is ineligible to vote in the election or is in the wrong poll site."

<sup>33</sup> N.Y. Elec. Law § 8-302(3)(e)(ii); 52 U.S.C. § 21082.

<sup>34</sup> An affidavit ballot is the equivalent of a provisional ballot under HAVA. 52 U.S.C. § 21082.

<sup>35</sup> N.Y. Elec. Law § 8-302(3-a).

<sup>36</sup> OAG took steps to ensure that local BOEs complied with these laws during subsequent elections in 2016. For instance, prior to the 2016 Federal and Congressional Primary, OAG sent a letter to every local BOE in which poll sites were open, reminding those BOEs of their obligation to provide affidavit ballots to voters. Press Release, New York Attorney General Eric T. Schneiderman, *A.G. Schneiderman Reminds Voters of His Election Day Hotline To Ensure Access During the June Primary* (June 28, 2016), *available at* http://www.ag.ny.gov/press-release/ag-schneiderman-reminds-voters-his-election-day-hotline-ensure-access-during-june. Prior to the 2016 General Election, OAG sent a letter to the State BOE, requesting clear guidance to local BOEs on providing proper access to affidavit ballots during the upcoming Election. Press Release, New York Attorney General Eric T. Schneiderman, *A.G. Schneiderman Calls On NYS Board of Elections To Clarify Affidavit Ballot Process Ahead of November 8th Election* (October 17, 2016), *available at* http://ag.ny.gov/press-release/ag-schneiderman-calls-on berg-scheiderman-calls-on-scheiderman-cal

<sup>38</sup> For example, Onondaga's materials state, "DO NOT GIVE A VOTER AN AFFIDAVIT BALLOT UNTIL YOU OR THE VOTER SPEAKS TO THE BOARD OF ELECTIONS." (emphasis in the original).

Most of the queried BOEs indicated that they have an informal policy of providing liberal access to affidavit ballots if voters stated that they were eligible to vote, even if this could not be verified on Election Day. For example, senior officials in the Onondaga and Monroe County BOEs indicated during interviews that, in contrast to their written procedures, poll workers are instructed during trainings to provide affidavit ballots to voters who insisted they were eligible. Further, they stated that poll workers were not required to call the BOE to verify eligibility. This was echoed in interviews with senior election officials at the Nassau and Suffolk County BOEs. New York City and Onondaga BOE election officials reported that prior to the Presidential Primary, they encouraged poll workers to provide affidavit ballots to voters who requested them, in anticipation of a higher number of voters and requests for affidavit ballots.<sup>39</sup> New York City BOE also supplied additional affidavit ballots to poll sites during the Primary for this reason.

In contrast, Albany County BOE indicated during interviews that, in practice, they did not provide affidavit ballots to everyone who requested them — if a poll worker did not believe a voter was registered they would not provide an affidavit ballot unless the voter was "fighting."

Many poll workers were unaware of their legal obligations to provide affidavit ballots because they did not receive clear and consistent guidance on when to provide affidavit ballots. As a result, during the Primary Election some voters were denied their right to vote by affidavit ballot, a potential violation of New York State Election Law and HAVA. Further, the inconsistencies in policies and practices regarding affidavit ballots among the local BOEs caused drastically different voter experiences depending on which county a voter resided in — in one county a voter may have been found eligible to cast an affidavit ballot upon request, whereas another county may have denied a similarly-situated voter such a ballot, and potentially run afoul of its obligations under law.

# **B.** Reduced Poll Hours in Select Counties Created Confusion and Prevented Some Voters from Casting a Ballot During the Primary

OAG received complaints during the Presidential Primary from individuals reporting that their poll sites were closed when they tried to vote in the morning. Late openings confused some voters and prevented others from casting their ballot.

Poll opening and closing times are established by New York State Election Law, and differ for counties across the state for primaries.<sup>40</sup> With the exception of New York City, and Nassau, Suffolk, Westchester, Rockland, Orange, Putnam and Erie Counties, poll sites do not open until noon on primary days.<sup>41</sup> Poll sites in the counties in and around New York City as well as Erie County were open from 6:00 am to 9:00 pm, to accommodate residents who commuted to New York City and Buffalo. The extended poll hours also served to prevent overcrowding at polling stations in heavily populated counties, where there would otherwise be a higher concentration of voters after work.<sup>42</sup>

<sup>39</sup> On April 18, 2016, one day before the Presidential Primary, a non-profit advocacy group, Election Justice USA, filed suit against the New York State Board of Elections on behalf of several unaffiliated voters. *See* Verified Compl., *Campanello v. New York State Bd. of Elections*, No. 16-1892 (E.D.N.Y. Apr. 18, 2016). The suit alleged that the voters were long affiliated with the Democratic Party, but that, prior to the Primary, their enrollment had been improperly adjusted such that they were no longer eligible to participate in the Primary. To remedy the situation, Election Justice USA sought a court order to open the New York State Primary to any registered voter. On Election Day, OAG was contacted by dozens of individuals unaffiliated with either party who reported that they sought to cast affidavit ballots at their poll sites in the event that the court order was granted. Ultimately, Election Justice's request to open the Primary was denied. *Campanello v. New York State Bd. of Elections*, No. 16-1892 (E.D.N.Y. Apr. 19, 2016) (order denying T.R.O. Application).

<sup>40</sup> Poll sites open at 6:00 am across the state during general elections. N.Y. Elec. Law § 8-100(2).

<sup>41 &</sup>quot;Polls shall be open for voting during the following hours: a primary election from twelve o'clock noon until nine o'clock in the evening, except in the city of New York and the counties of Nassau, Suffolk, Westchester, Rockland, Orange, Putnam and Erie, and in such city or county from six o'clock in the morning until nine o'clock in the evening." N.Y. Elec. Law § 8-100(2).

<sup>42</sup> Corning v. Bd. of Elections, 57 N.Y. 2d 746 (N.Y. 1982).

OAG found that the delayed opening of polling places in most New York counties hindered participation in primaries. For example, one voter in Schoharie County arranged for a home health aide to care for her mother, who is 91 years old and suffers from dementia, so that she could vote in the morning. However, when this voter arrived at the polling station she was informed that voting did not start until noon.

The law disadvantages voters in many large metropolitan and suburban counties throughout the State, including Monroe, Onondaga, Broome, Albany, Schenectady, Oneida, and others. Since many voters throughout the state work regular business hours, it is only appropriate to open all polls in primary elections from 6:00 am to 9:00 pm, as they are in the General Election. Uniformity amongst counties in poll hours would create a fairer election system and, as a practical matter, decrease voter confusion as to poll hours.

# C. Local BOE Notices Did Not Adequately Inform Voters About Election Dates and Poll Site Locations

OAG also received complaints from voters confused about their poll site location. Dozens of voters contacted OAG to learn the location of their poll site. Others contacted OAG when they did not find their names in the poll book at the site they believed was their polling place. These voters raised concerns about whether they had received adequate notice of their polling place.

New York State Election Law and State and local BOE policies require BOEs to provide annual personalized notices to voters of their polling place and upcoming elections. That notice is sent in August of each year.<sup>43</sup> In 2016, the annual mailer was sent after the Presidential and Federal Congressional Primaries. Aside from the annual personalized notice, local BOEs are also required to publish notice of upcoming elections in local newspapers.

The only other form of personalized notice sent by local BOEs are confirmation notices mailed to voters after they first register. The confirmation notice includes the dates of upcoming elections within the calendar year and the voter's poll site.<sup>44</sup> In early April 2016, OAG worked with the New York City Board of Elections to ensure that the confirmation notices sent to 60,000 newly registered voters informed them not only of upcoming State and Local Primary and the November General Election, but also the imminent April 19th Presidential Primary.

Finally, if a local BOE decides to change a voter's poll site after sending out the August mailer, the BOE must send notice to the voter of those changes at least five days prior to the next election.<sup>45</sup> BOEs are not required to provide any other notices directly to voters.<sup>46</sup> As a result, even in a year such as 2016, when the State holds four elections, many New York voters may receive only one mailer, and only after two of the year's four elections have already taken place.

Ensuring that voters have accurate and up-to-date information regarding the location of poll sites is essential. Affidavit ballots cast by voters that appear at the right poll site but the wrong election district are deemed valid by local BOEs.<sup>47</sup> However, an affidavit ballot cast at the wrong poll site is deemed invalid.

OAG found that prior to the April 19th Presidential Primary many registered voters did not receive personalized notice of the election from their local BOE. For example, New York City's August mailer sent in 2015 did not include notice of the Presidential Primary. As a result, voters did not receive personalized information from their local BOE about the Presidential Primary.

<sup>43</sup> N.Y. Elec. Law § 4-117(1).

<sup>44</sup> N.Y. Elec. Law § 5-210(9).

<sup>45</sup> N.Y. Elec. Law § 4-104(2).

<sup>46</sup> BOEs must publish notices in newspapers before primary and general elections. N.Y. Elec. Law § 4-118, § 4-120.

<sup>47</sup> In New York, a single poll site may include several election districts.

During the Presidential Primary, dozens of voters reported that they did not know the location of their polling site, or indicated that it was moved without notice. One voter visited the site he had voted at for years and did not find his name in any of the poll books. The voter was eligible to cast a ballot during the Presidential Primary, but was not informed that his election district had been moved to a different poll site. As a result, the voter cast an affidavit ballot at his original poll site; the ballot was later deemed invalid because he did not vote at the correct polling place. This voter's experience was not uncommon. In fact, approximately 400 affidavit ballots were deemed invalid in Nassau County alone because of votes cast at the wrong polling place.

# **III. RECOMMENDATIONS**

### Amend New York State Election Law § 5-304

OAG recommends amending New York State Election Law § 5-304 to allow voters with existing registrations to change their party affiliation up to 25 days (if so postmarked by mail) or up to ten days (if delivered in person to the local BOE) prior to any primary election. This will limit confusion about the registration deadlines and increase access to the ballot. *See Appendix A, New York Votes Act 2017, at Part I.B.2.* 

# \* Online Registration

OAG recommends that the State create a robust, fully online system of registration, whereby voters can submit registrations online, and through which the registrations can be transmitted to local BOEs in electronic format for easy and accurate processing.<sup>48</sup> Any such system must be able to withstand increased web traffic in and around the time of registration deadlines. To that end, OAG proposes amending the New York State Election Law to implement personal electronic voter registration in the state such that any qualified registrant can submit new registration forms or make changes to their registration information, including change of address and party affiliation, via desktop computer or handheld device. *See Appendix A, New York Votes Act 2017, at Part I.A.3.* 

#### Standardized Registration Procedures and Training

OAG recommends that the State BOE require that all local BOEs develop a comprehensive set of policies for processing registration information, and annually submit their policies for processing registration information to the State BOE for review and approval. The policies should be reviewed for compliance with New York State Election Law, as well as to ensure that they address major barriers to access for voters across the state identified in this Report. The policies also should stipulate training requirements for employees tasked with processing registrations. Moreover, OAG's proposed voting reform bill would mandate that all poll workers throughout the state complete training approved by the State BOE. This bill also would provide grants for local BOEs to strengthen existing training programs. *See Appendix A, New York Votes Act 2017, at Part II.B.4.* 

#### **Statewide Guidelines for Affidavit Balloting**

<sup>48</sup> In April, in response to an inquiry from Suffolk County, OAG issued an advisory opinion finding that New York State Election Law permits voters to submit their registration information online with an electronically affixed signature. The opinion paves the way for the State BOE or other organizations or entities to develop mobile and online applications, which voters can complete and submit online. *Informal Opinion of the Attorney General No. 2016-1*, New York State Office of the Attorney General (April 25, 2016), *available at* http://www.ag.ny.gov/sites/default/files/opinion/2016-1\_pw.pdf.

OAG recommends that prior to any election the State BOE issue clear notice to local BOEs regarding the (a) procedures for determining the eligibility requirements for affidavit ballots; (b) process for casting such ballots; (c) importance of reviewing affidavit envelopes for completeness; and (d) need to provide voter registration applications to persons who decline the opportunity to cast an affidavit ballots. In addition, local BOEs should supply poll sites with sufficient affidavit ballots and voter registration applications to meet demand. Finally, local BOEs should ensure that poll workers are adequately trained on when and how to provide such ballots to voters.

# **\*** Uniformity in Poll Hours

OAG recommends amending New York State Election Law § 8-102 to require all poll sites to open at 6:00 am to 9:00 pm during all Statewide Primary elections. *See Appendix A, New York Votes Act 2017, at Part II.A.3.* 

# Creation of a State Fund to Support Cost of Uniformity in Poll Hours

OAG recommends the creation of a state operated fund for reimbursement of costs incurred by County BOEs to extend poll hours in statewide primary elections. This fund would be overseen by the State BOE, and consist of a reimbursement program modeled after HAVA's financial assistance program;<sup>49</sup> this is a program which the State BOE and local BOEs have previously used to cover costs.<sup>50</sup> The state fund would be limited in scope to cover the minimal costs of a statewide system of extended polling hours in statewide primary elections.

# Provide Additional Notice to Voters

OAG recommends that BOEs across the state send notice of an upcoming election to all eligible voters several weeks before each election, informing them both of the date of the election as well as their polling place. BOEs in possession of voters' email addresses should consider sending this information by email to voters in lieu of sending postcards as a cost-saving measure.

<sup>49</sup> Grants Primer for State Election Officials, UNITED STATES ELECTION ASSISTANCE COMMISSION, available at https://www.eac.gov/assets/1/workflow\_staging/Documents/4719.pdf.

<sup>50</sup> New York State Board of Elections Annual Report 2015, New YORK STATE BOARD OF ELECTIONS, available at https://www.elections.ny.gov/NYSBOE/download/ AnnualReport2015.pdf.

Appendix A

A Call for Comprehensive Reform: The 2017 New York Votes Act

#### **INTRODUCTION**

During the 2016 election cycle, the laws and rules governing the voting process caused legal, procedural, and logistical hurdles that prevented thousands of New Yorkers from voting. As detailed in *A Report on Voter Access In The 2016 Presidential Primary*, during the hotly contested Presidential Primary on April 19th, hundreds of thousands of voters were ineligible to vote because they were not affiliated with either the Republican or Democratic Parties, as the deadline for affiliating was half a year before Primary Day. In addition, voters in counties across the state were denied their right to cast affidavit ballots. During the General Election on November 8th, scanning machines broke down in hundreds of poll sites across the state and some voters reported waiting in lines for up to three hours to cast their ballots. Many voters complained that they had to abandon the excessively long lines before they could vote due to childcare responsibilities, disabilities, or employment demands.

While these issues gained significant attention in 2016, they are not new. In fact, OAG has operated a voter hotline since 2012 and has received numerous complaints about these same issues — and others — over these past four years. For example, in November 2012, many voters displaced by Hurricane Sandy were denied the right to cast affidavit ballots, and broken voting machines and long lines were reported at poll sites across the state. Prior to the September 2013 Mayoral Primary in New York City, OAG fielded calls from voters who were unaware that the deadline for affiliating with the two major parties was more than 330 days prior to Primary Day. Thus, the problems that New Yorkers experienced in 2016 are persistent, and reform is needed to eliminate New York's barriers to voting.

Based on its experience fielding and troubleshooting voter issues across the state, OAG now proposes a comprehensive legislative solution that would significantly reduce problems in voting and expand this fundamental right. OAG intends to introduce the 2017 New York Votes Act in the coming legislative session.

The voter registration reforms proposed below in *Part I.A* would increase opportunities for new voters to register and minimize registration errors by requiring any state or local agency with which the citizen has contact to automatically register the individual unless he or she formally declines; allow new voters to register and vote on the same day; and implement an online voter registration system. *Part I.B* outlines provisions to assist alreadyregistered voters, including eliminating automatic cancellation of a registration record when a voter moves within New York and allowing registered voters to change their party enrollment closer to a primary day.

*Part II.A* below outlines proposed legislation to increase the opportunities for voters to cast their ballot. These include adopting a system for early voting and "no excuse" absentee voting; ensuring uniformity of poll site hours across the state; consolidating all primaries on a single day; and the development of procedures for voting in emergency situations. Finally, the proposed legislation described in *Part II.B* is designed to enhance access to the ballot by increasing language access for New Yorkers who are Limited English Proficient; protecting voters from improper challenges on Election Day; restoring voting rights for citizens on parole; and improving poll worker training and recruitment.

# I. VOTER REGISTRATION

At least 2 million New Yorkers are eligible to vote but are not registered.<sup>51</sup> Since the inception of its voter hotline, OAG has received hundreds of complaints from otherwise eligible New Yorkers who sought to vote on an election day but had not registered by the applicable deadline. This includes reports from citizens who had moved within the state and were surprised to find that their registrations were cancelled when they tried to vote. Many other New Yorkers have complained about errors in their voter records. During both the 2016 Presidential Primary and

<sup>51</sup> Sam Kurshid, *Deadline Looms for Unregistered, Unaffiliated New York Voters*, GOTHAM GAZETTE (October 13, 2016), http://www.gothamgazette.com/index.php/ city/6569-deadline-looms-for-unregistered-unaffiliated-new-york-voters.

the 2016 General Election, OAG received more than 700 complaints from New Yorkers who went to the polls on Election Day and found that their names were not on the voter rolls or their voting registration records were inaccurate, including misspelled names and incorrect addresses. Many of these voters were unable to vote on Election Day or had to vote by affidavit ballot.

The proposed legislative reforms that follow are designed to increase the opportunities for <u>new</u> voters to register and to reduce the chances of errors that would impede their ability to vote on Election Day. Other bill provisions would facilitate voting by <u>already-registered</u> voters by eliminating automatic cancellation of a registration record when a voter moves within New York, and allowing registered voters to change their party enrollment closer to a primary day.

#### A. Facilitate New Voter Registration

# 1. Provide for Automatic Registration of Eligible Voters<sup>52</sup>

In each 2016 election, voters contacting OAG's hotline expressed frustration with the registration process, including how, when, and where to submit relevant forms. Accessibility to the ballot is directly tied to providing more opportunities for voters to register and higher registration rates in turn lead to higher voter turnout. Unfortunately, New York has one of the lowest voter turnout rates in the country. In the 2016 Presidential Primary, 2,892,671 New Yorkers — or just over 21% of the State's voting-eligible population<sup>53</sup> — cast ballots.<sup>54</sup> And according to the Pew Charitable Trust's Elections Performance Index, voter turnout in New York in the Midterm 2014 elections was 29%, which ranked New York 41st in the nation for voter participation.<sup>55</sup>

To address these issues, OAG's bill would amend New York State Election Law to implement "automatic voter registration" in the state. Under the proposed bill, any state or local "source agency" that collects information from a person who has formal contact with that agency as part of an application, registration or other similar process would be required to automatically electronically transmit identifying information for that person (e.g., name, address, date of birth, driver's license number, Social Security Number) to the New York State Board of Elections (BOE) for inclusion in a statewide voter registration database. The bill requires that any such person be allowed to *decline* the opportunity to have his or her personal information transmitted to the BOE. The term "source agency" is broadly defined by the bill to include all state and local agencies or entities required by existing New York state law to participate in "agency assisted" voter registration (e.g., the New York State Department of Motor Vehicles, Department of Labor, Department of Health, Department of Social Services, Office of Mental Health, Department of State, Division of Veterans Affairs, and local departments of health and social services), as well as public housing authorities, the New York State Department of Corrections and Community Supervision, the State University of New York, the City University of New York, and any other state agency subsequently designated by the State BOE as a "source agency." This automatic system would supplement, not supplant, other methods of voter registration under existing state law.

<sup>52</sup> See, e.g., the "Voter Empowerment Act of New York" [S.2538-C //A.5972-A (2015-16)].

<sup>53</sup> The voting eligible population consists of individuals who are (1) United States citizens; (2) at least 18 years old; (3) live at an address in the state for at least 30 days prior to an election; (4) not incarcerated or on parole for a felony conviction; (5) not currently judged mentally incompetent by a court; and (6) not claiming the right to vote elsewhere. N.Y. Elec. Law § 5-102; § 5-106; *Register to Vote*, New York State Board of Elections, https://www.elections.ny.gov/VotingRegister.html (last visited Dec. 1, 2016).

<sup>54 2016</sup> Presidential Nomination Contest Turnout Rates, UNITED STATES ELECTION PROJECT, http://www.electproject.org/2016P (last visited Dec. 1, 2016); 2016 Election Results, New York State Board of Elections, http://www.elections.ny.gov/2016ElectionResults.html (last visited Dec. 1, 2016).

<sup>55</sup> Data Visualization: Elections Performance Index, The Pew Charitable Trusts (Aug. 9, 2016), http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/ elections-performance-index#state-NY.

Since March 2015, automatic voter registration has been approved in six states.<sup>56</sup> Automatic voter registration increases the amount of information transmitted to local BOEs from other state agencies, thereby ensuring greater accuracy in voter rolls. Agencies that process automatic registration would vet the data being used for the voter's registration before election officials review applications for both eligibility and errors.

### 2. Allow New Voters to Register and Vote on the Same Day ("Same Day Registration")<sup>57</sup>

OAG has received more than 1,000 complaints from voters who learned only on Election Day that they missed voter registration deadlines or had errors in their registration records, and were thus prevented from voting. Allowing voters to register and vote on the same day would minimize the negative consequences of such registration errors and could increase voter turnout. Presently, thirteen states and the District of Columbia offer Same Day Registration ("SDR").<sup>58</sup> SDR improves access to the election process, increases voter turnout,<sup>59</sup> and facilitates the remediation of inaccuracies in the voter rolls.<sup>60</sup>

OAG's bill would amend New York State Election Law to permit a qualified person who is not registered to vote in the state to appear personally at the appropriate polling place on the day of any primary, general or special election, register to vote, and simultaneously cast his or her ballot. Once the registration is vetted, the voter's ballot would be counted, and the voter would be added to the voting rolls.<sup>61</sup>

### 3. Implement a System of Online Voter Registration<sup>62</sup>

As described in *A Report on Voter Access In The 2016 Presidential Primary* at *Part I.B.*, New York recently implemented a system whereby voters could submit registration materials online through the DMV. The online portal has been a convenient and effective way for voters with state identification to register to vote and update their address. However, the online portal has not provided comprehensive service, as it has not afforded access to voters without identification obtained from the DMV. As a result, even after the development of the online portal, many voters continued registering directly with their local BOE or with other state agencies, both of which conducted their registration process entirely using paper registration forms. Errors that often arose in these processes lead to inaccurate registration rolls. For instance, OAG found that state agencies that received voter registrations sometimes did not forward them to the BOEs as they were received, and instead bundled registration forms together and mailed them to the appropriate BOE just before a registration deadline. OAG also received reports of errors in processing forms received by local BOEs, such as misspelled names and other inaccuracies. A comprehensive online registration system would not only help reduce the likelihood of delays in transmissions, it would also improve the accuracy of records entered directly by the voter, and it would provide an easy and convenient way for voters to correct errors should they arise.

62 See, e.g., A.10370 (2016); A. 5564// S.859 (2015-16).

<sup>56</sup> Automatic Voter Registration, BRENNAN CENTER FOR JUSTICE (September 22, 2016) https://www.brennancenter.org/analysis/automatic-voter-registration.

<sup>57</sup> See, e.g., S. 1770-A // A.6038-A (2015-16); S.2416//A.5590 (2015-16) and S.2483 (2015-16).

<sup>58</sup> Several states allow SDR in both primary and general elections, including Colorado, Idaho, Illinois, Iowa, Maine, Minnesota, and Wisconsin. The District of Columbia also permits SDR in primary and general elections. *Same Day Voter Registration*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Nov. 23, 2016), http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx.

<sup>59</sup> J. Mijin Cha and Liz Kennedy, *Millions to the Polls: Same Day Registration*, Demos, (February 18, 2014), *available at http://www.demos.org/publication/millions-polls-same-day-registration*.

<sup>60</sup> Eligible voters can use SDR to correct an outdated voter registration record and remedy inaccuracies in the voter rolls. As a result, SDR has been shown to increase voter turnout.

<sup>61</sup> Because New York State's Constitution currently requires that voter registration be completed at least ten days before an election (other than a town and village election), the bill expressly provides, in the effective date clause, that this statutory amendment shall not take effect until such time as the Constitution is duly amended to allow for same-day registration in the State. That proposed constitutional amendment has been separately drafted by the OAG's legislative staff and would be offered as a companion bill to the "2017 New York Votes Act."

The current online registration system housed at DMV relies on on-file signatures and therefore does not allow for personal online registration. On April 25, 2016, OAG issued an advisory opinion confirming that New York state law does not prohibit a prospective voter from electronically affixing his or her signature to a voter registration application.<sup>63</sup>

The OAG bill would amend New York State Election Law to allow electronic voter registration, so that any qualified registrant can complete the entire registration process via desktop computer or handheld device. It would further require the State BOE to develop and implement a statewide online personal voter registration system. Such a system would allow for electronic signatures (as defined in the Electronic Signatures and Records Act),<sup>64</sup> electronic capture of an exemplar signature, a photo or scan of a signature, or signatures on file with the State as means for signing the registration form, and also permit online registrants to change their address and party affiliation. OAG's proposal would require BOEs to issue an electronic receipt and provide electronic verification once a registration is processed. In addition to other means of notice, the proposal would allow online registrants to opt to receive electronic notices from BOE, including changes in registration status and notification of polling place.

# **B.** Assisting Registered Voters

### 1. Create a System of Permanent Voter Registration<sup>65</sup>

Currently, under New York State Election Law, if a voter moves outside the county<sup>66</sup> where he or she is currently registered, his or her registration is automatically cancelled.<sup>67</sup> In order to remain registered when moving within the state, a voter must submit another registration form to his or her new local BOE. During both the 2016 Presidential Primary and the 2016 General Election, OAG received complaints from voters confused about the requirement to re-register when moving within the state. Specifically, during the 2016 General Election, approximately 3% of voter complaints to OAG were from voters who had a change of address and experienced problems with their registration status. In some instances, the issues were attributable to delays in updating registration information by either the DMV or the local BOE. In other instances, however, voters were simply unaware that they needed to re-register if they moved within the state.

OAG's proposed bill would implement a system of "permanent" voter registration in the state by requiring the State BOE and local BOEs to update the registration of any consenting voter who moves within the state and submits change of address information to officials at designated government agencies. The bill would amend the New York State Election Law to provide for automatic cancellation of voter registration based on a change of address <u>only</u> when the voter moves <u>outside</u> the state.

# 2. Allow Registered Voters to Change Their Party Enrollment Closer to Primary Day<sup>68</sup>

As discussed in *Part I.A* of *A Report on Voter Access In The 2016 Presidential Primary*, during the April 19, 2016 Presidential Primary hundreds of voters complained to OAG about New York's restrictive change-ofparty enrollment rules, which are the most restrictive in the country. Because New York is a closed party state, voters must have been members of the Republican or Democratic Parties in order to vote in these parties' 2016 Presidential Primaries. Many voters sought to enroll as Democrats or Republicans several months before the Presidential Primary, but were not allowed to vote because they missed the party enrollment deadline, which was 193 days before the Presidential Primary, in October 2015.

<sup>63</sup> Informal Opinion of the Attorney General No. 2016-1, New York State Office of the Attorney General (April 25, 2016), http://www.ag.ny.gov/sites/default/files/ opinion/2016-1\_pw.pdf.

<sup>64</sup> N.Y. Tech. Law § 302(3).

<sup>65</sup> See, e.g., S.2538-C //A.5972-A (2015-16); S.858-A //A.5598-A (2015-16).

<sup>66</sup> With the exception of New York City, where if a voter moves between counties (i.e., the boroughs) their registration status will not be automatically cancelled. 67 N.Y. Elec. Law § 5-400(a).

<sup>68</sup> See, e.g., S.2538-C //A.5972-A (2015-16); S.570 //A.5777(2015-16).

The unusually early deadline for existing voters to change party enrollment required existing registrants to make a critical choice about whether and in which party to enroll more than half a year in advance of the 2016 Presidential Primary, long before the State's deadlines for the Presidential Candidates to themselves qualify for their party's ballot.

OAG's bill would amend New York State Election Law to allow already-registered voters to change their party affiliation up to 25 days (if so postmarked by mail) or up to ten days (if delivered in person to the local BOE) prior to any primary election.

# II. VOTING

OAG's bill provisions described here in *Part II* directly address persistent voting problems. For example, the proposals for early voting and "no excuse" absentee ballots would ensure that citizens are not prevented from voting because of long lines, broken scanners, or polling sites that are not open in the mornings. Improving the training for poll workers statewide would prevent voters from being provided incorrect instructions or denied affidavit ballots. Other bill provisions — such as making registration and voting materials available in more languages, implementing safeguards for when individuals challenge a voter's right to vote, and restoring the voting rights of citizens who are on parole — increase access to the ballot for thousands of New Yorkers.

#### A. Increase the Opportunities for Voting

# 1. Adopt a System of Early Voting<sup>69</sup>

In New York, all voters, save those casting absentee ballots, must vote in person on Election Day. As a result, voters often experience unacceptably long lines at poll sites. The 2016 General Election provides ample evidence of this problem. On November 8<sup>th</sup>, OAG received dozens of reports from voters regarding exceptionally long lines. One voter from New York City reported that the line to enter a poll site in midtown Manhattan stretched two city blocks. OAG received reports from voters in Queens, Brooklyn, and the Bronx of wait times eclipsing two hours. In Erie and Ulster counties, OAG received reports of voters waiting in line for more than 45 minutes. Malfunctioning scanning machines also contributed to the long waits during the 2016 General Election. OAG received more than 100 reports of scanning machines that failed to operate correctly. In New York City, where the majority of malfunctioning scanner reports were documented, the New York City BOE made concerted efforts to address these issues as they arose, dispatching maintenance teams to poll sites across the City. Nevertheless, the frequency of machine malfunctions led to widespread voter confusion and significant delays at poll sites.

Permitting early voting is an easy solution to the problems of long lines and overwhelmed poll sites. Under New York State Election Law, the only way by which voters can cast a ballot early is by submitting an absentee ballot.<sup>70</sup> However, access to absentee ballots is limited to a specific set of circumstances. *See Appendix A, Part II.A.2 below.* As a result, New York is one of only 13 states that fails to provide all voters the opportunity to cast a ballot in person prior to an election day.<sup>71</sup> Permitting early voting in New York would make voting more accessible while simultaneously alleviating some of the pressure on poll sites and workers caused by heavy Election Day traffic.

<sup>69</sup> See, e.g., S.2566 (2015-16); S.2307//A.3117 (2015-16); S.3813-C//A.4433 (2015-16); A.2057 (2015-16); A.6334 (2015-16).

<sup>70</sup> N.Y. Elec. Law § 8-400.

<sup>71</sup> Absentee and Early Voting, National Conference of State Legislatures (October 25, 2016), http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx.

OAG's proposed bill would amend New York State Election Law to permit a registered voter to vote at the local BOE in the same county or city where the voter is registered, and at one or more other designated polling places, seven days per week (excluding certain holidays) starting two weeks before an election. Each early voting polling place would be required to be open during the same hours as is currently required of polling places within the same county or city for an election, and the State BOE would be required to provide timely, pre-election notice to all registered voters of the availability of, and the applicable procedures for, early voting. There would be at least one designated polling place for every 50,000 registered voters in a county, but no county would be required to have more than seven designated polling places for early voting. Any county with fewer than 50,000 registered voters would have at least one designated polling place. Finally, BOEs may opt to open more polling places than the minimum required.

# 2. Provide for "No Excuse" Absentee Voting<sup>72</sup>

While New York provides for absentee voting, it is one of 20 states that only permits access to such ballots under limited conditions.<sup>73</sup> Under New York State Election Law, voters must select from a short list of specifically enumerated reasons why an absentee ballot is necessary, including absence from the county or city in which the voter resides, or a permanent or temporary illness or disability.<sup>74</sup> This limited set of reasons excludes many individuals who would benefit from absentee voting, including individuals with childcare responsibilities or demanding work schedules, and voters in rural parts of the state who must travel great distances to cast their ballots or lack a means of transportation.

During the 2016 General Election, long lines at heavily-trafficked poll sites were especially difficult for voters for whom extended periods of standing was too strenuous. OAG received reports about long lines at sites in the Bronx, New York, Queens, and Suffolk Counties that created hardships for elderly voters who had difficulty standing for long periods of time, including those using walkers and canes. In some cases, attentive poll workers came to the aid of such individuals, allowing them to come to the front of the line as an accommodation. However, too many voters left long lines without voting when an accommodation was not available. Such voters would have greatly benefited from an easy, no-excuse absentee voting process.

States that have adopted no-excuse absentee voting, along with a longer early-voting period or relaxed registration deadlines, have seen increases in turnout of about three percentage points.<sup>75</sup> To date, more than half of the states have enacted the reform, and it has received broad, bi-partisan support.<sup>76</sup>

For these reasons, OAG's bill would amend New York State Election Law by repealing, in its entirety, the current requirement that absentee ballots can only be obtained and cast by otherwise qualified voters if they meet one of several statutorily-enumerated justifications for obtaining such ballots. The bill also would allow online submission of applications for absentee ballots. Currently, voters must either mail or personally deliver a completed application to the Board of Elections.

#### 3. Ensure Uniformity of Poll Site Hours Across the State

As mentioned in *Part II.B* of *A Report on Voter Access In The 2016 Presidential Primary*, with the exception of New York City, Nassau, Suffolk, Westchester, Rockland, Orange, Putnam, and Erie Counties, poll sites do

<sup>72</sup> See, e.g., S.4456//A.3874-B (2015-16); A.2644 (2015-16).

<sup>73</sup> Absentee and Early Voting, NATIONAL CONFERENCE OF STATE LEGISLATURES (October 25, 2016), http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx.

<sup>74</sup> N.Y. Elec. Law § 8-400.

<sup>75</sup> Jan E. Leighley and Jonathan Nagler. Same-Day Registration and Increased Absentee Voting Would Help, N.Y. TIMES, Oct. 18, 2016, available at http://www. nytimes.com/roomfordebate/2016/10/17/how-to-energize-demoralized-voters/same-day-registration-and-increased-absentee-voting-would-help.

<sup>76</sup> Press Release, New York State Assembly, Assembly Passes Major Overhaul of Election Process (June 22, 2016), http://assembly.state.ny.us/Press/20160622/.

not open until noon on primary days.<sup>77</sup> OAG found that the delayed opening of polling places in most counties throughout the state hindered participation in primaries. The current law disadvantaged voters in many large metropolitan and suburban counties throughout the State, including Monroe, Onondaga, Broome, Albany, Schenectady, Oneida, and Schoharie, among others. For example, during the 2016 Presidential Primary, one voter in Schoharie arranged for caretakers to tend to her mother, who is 91 years old and suffers from dementia, so that she could vote in the morning. However, when this voter arrived at her polling station she was informed that voting did not start until noon. Since many people throughout the state work regular business hours, it is only appropriate to open all polls in primary elections from 6:00 am to 9:00 pm, as they are during general elections. Uniform poll site hours amongst counties would increase fairness in the election system and, as a practical matter, decrease voter confusion about poll site hours.

OAG's bill proposes amending the New York State Election Law to require poll sites to open at 6:00 a.m. and close at 9:00 p.m. during all primary elections.

#### 4. Consolidate Federal, State, and Local Primaries on a Single Day

New York State held four elections in 2016: the April 19th Presidential Primary, the June 28<sup>th</sup> Congressional Primary in select counties, the September 13th State and Local Primary and November 8th General Election. Holding primary elections on several different days throughout the year creates confusion for voters, drives down turnout, and drains the resources of local BOEs. In New York State, the estimated cost of holding a primary election in 2016 was \$25 million.<sup>78</sup> As a result, the State spent an estimated \$50 million dollars in 2016 on administering separate Federal Congressional and State and Local Primaries.<sup>79</sup>

Prior to 2012, New York held Federal Congressional, and State and Local Primaries on a single day in September. However, in that year, a federal court ruled that holding the Federal Congressional Primary in September did not comply with the federal Military and Overseas Voter Empowerment ("MOVE") Act.<sup>80</sup> The court held that the proximity of the September Primary to the November General Election disenfranchised military voters overseas because those voters would not receive General Election absentee ballots for federal contests in sufficient time to participate.<sup>81</sup> As a result, the court ordered the State to move its Federal Congressional Primary to June to ensure compliance with the MOVE Act. However, the Legislature did not change the date of its State and Local Primary. As a result, local BOEs have had to shoulder the additional cost of two separate primaries. Moreover, military personnel now receive two sets of absentee ballots prior to a General Election — one early ballot with Federal Congressional contests sent early enough to comply with the MOVE Act, and another ballot covering only State and Local contests sent after the results in the September primary are certified and after the MOVE Act's deadlines.<sup>82</sup>

Consolidating primary election days is a more efficient use of BOE resources and will save millions of dollars. It realigns the election calendar with voter expectations of the election cycle. Finally, it would streamline voting for overseas military personnel who would receive only one set of absentee ballots at least 45 days prior to the general election.

OAG's bill would amend the Election Law accordingly and hold all statewide primary elections on one day in early June.

<sup>77 &</sup>quot;Polls shall be open for voting during the following hours: a primary election from twelve o'clock noon until nine o'clock in the evening, except in the city of New York and the counties of Nassau, Suffolk, Westchester, Rockland, Orange, Putnam and Erie, and in such city or county from six o'clock in the morning until nine o'clock in the evening." N.Y. Elec. Law § 8-100(2).

<sup>78</sup> Libby Wetzler, *New York Primaries are Closed, Repetitive, and Costly*, GOTHAM GAZETTE, July 15, 2016, *available at* http://www.gothamgazette.com/index.php/ state/6438-new-york-primaries-are-closed-repetitive-and-costly.

<sup>79</sup> Id.

<sup>80</sup> United States v. State of New York, Civil Action No. 1:10-cv-1214 (N.D.N.Y. Jan. 27, 2012).

<sup>81</sup> *Id.* "New York's statutorily-prescribed non-presidential federal primary election date prevents it from complying with UOCAVA's ballot transmission deadline of forty-five (45) days prior to a federal general election."

<sup>82</sup> Jon Campbell, *Three Primaries Cost County Taxpayers*, DEMOCRAT AND CHRONICLE, February 6, 2016, *available at* http://www.democratandchronicle.com/story/news/local/2016/02/06/three-primaries-cost-county-taxpayers/79946146/.

#### 5. Enact Disaster Preparedness Protections<sup>83</sup>

New York State Election Law does not adequately prepare the State or local BOEs to respond to man-made or natural disasters that coincide with elections. Currently, the only relevant provision within New York State Election Law is § 3-108, which allows for an additional day of voting if the local BOE determines, subject to the approval of the State BOE, that less than 25% of the registered voters actually voted in a general election as the direct consequence of a natural or man-made disaster. The additional day of voting cannot be held more than 20 days after the original election date. The law also sets forth the notice, ballot, and registration procedures for the additional day of voting.

New York State recently experienced two disasters that significantly disrupted elections. New York's Primary in 2001 was scheduled for September 11, 2001. After the terrorist attacks that morning, the Governor cancelled the Primary, and subsequently, the Legislature rescheduled it.<sup>84</sup> In 2012, Hurricane Sandy hit New York one week before the General Election. With significant populations across New York City and State still displaced on the day of the election, the Governor issued an Executive Order allowing voters from federally declared "disaster" counties to vote by affidavit at any poll site in the state.<sup>85</sup>

To ensure that New York has a statutory framework to address a future crisis, the Legislature should look to the 22 states with statutes that delineate election procedures for emergencies such as natural disasters.<sup>86</sup> Most state emergency election laws focus on three categories of pre-election procedures: (1) election administration delays; (2) polling place relocation; and (3) emergency powers. With respect to rescheduling elections, most states give the Governor the authority to declare an emergency and delay an election.<sup>87</sup> Some states, such as Louisiana and North Carolina, also created procedures concerning when and how a polling place can be relocated after a disaster. Upon relocation, these laws provide for proper notice to both voters and candidates.<sup>88</sup> Other states, such as Hawaii, extend the absentee voting period.<sup>89</sup> Finally, many states give broad authority to the Secretary of State or the Chief Election Officers to create the rules and plans necessary to conduct an election during an emergency.<sup>90</sup> By adopting similar provisions, the Legislature can ensure elections in New York are not disrupted by such emergencies.

OAG's bill would amend New York State Election Law to address disaster preparedness. The amendments would vest authority in the Governor to delay elections; create procedures for relocating poll sites and extended absentee voting periods after a disaster; and provide broad authority to the State BOE to create the rules and plans necessary to conduct an election during an emergency.

<sup>83</sup> See, e.g., S.4947//A.1325 (2015-16); A.10277 (2016).

<sup>84</sup> Stephanie Saul, 9/11/01: Primary Elections Called to a Halt, NEWSDAY, September 11, 2001, available at http://www.newsday.com/911-anniversary/9-11-01primary-elections-called-to-a-halt-1.790670; See also 2001-12: Effect of New York State Legislature Decision to Reschedule New York State Primary and Runoff Elections, NEW YORK CITY CAMPAIGN FINANCE BOARD (Sep. 20, 2011), http://www.nyccfb.info/law/advisory-opinions/2001-12-effect-new-york-state-legislature-decisionreschedule-new-york-state#six.

<sup>85</sup> Press Release, Governor Andrew M. Cuomo Pressroom, *Governor Cuomo Signs Executive Order to Facilitate Voting for New Yorkers Who Were Affected by Hurricane Sandy* (November 5, 2012), *available at* https://www.governor.ny.gov/news/governor-cuomo-signs-executive-order-facilitate-voting-new-yorkers-who-wereaffected-hurricane.

<sup>86</sup> Edward B. Foley, Director of Election Law, Moritz College of Law, Ohio State University, *Election Emergency Statutes for 25 Critical States in the November Election*, http://moritzlaw.osu.edu/electionlaw/ebook/part7/elections\_pres06.html; *See also: State Laws and Practices for the Emergency Management of Elections*, National Association for Secretaries of State (Feb. 2014), *available at* http://www.nass.org/component/docman/?task=doc\_download&gid=1512&Itemid=.

<sup>87</sup> State Laws and Practices for the Emergency Management of Elections, NATIONAL ASSOCIATION FOR SECRETARIES OF STATE, http://www.nass.org/component/docman/?task=doc\_download&gid=1512&Itemid.

<sup>88</sup> La. R.S. § 18:401.2, N.C. Gen. Stat. § 163-27.1.

<sup>89</sup> HRS § 11-92.3.

<sup>90</sup> Kay Stimson, director of communications and special projects for the National Association of Secretaries of State, *Preventing Disasters from Disrupting Voting: National Task Force Urges States To Plan for Election Emergencies*, THE COUNCIL OF STATE GOVERNMENTS, (2014), *available at* http://knowledgecenter.csg.org/kc/ system/files/Preventing%20Disasters%20from%20Disrupting%20Voting\_0.pdf.

#### **B.** Enhance Access to the Ballot

#### 1. Increase Language Access

According to 2010 Census data, approximately 5.5 million New Yorkers do not speak English as their primary language. New York's current system for providing assistance and written election materials in languages other than English does not meet the needs of voters from such significant language minority groups. Currently, under federal law, counties need to provide assistance and written materials in an alternative language if more than 10,000 voting-age citizens, or 5% of the total population, speak that alternative language, have depressed literacy rates, and do not speak English very well.<sup>91</sup> As a result, Bronx, Kings, Nassau, Manhattan, Queens, Suffolk, and Westchester BOEs must all provide election materials in Spanish and interpreters who speak Spanish. Kings, New York, and Queens BOEs additionally must provide materials and interpreters to serve its Chinese population, and Queens BOEs in Montgomery, Putnam, Dutchess, Schenectady, Ulster, Rockland, Sullivan, and Chautauqua Counties to implement language access programs for Spanish-speaking voters.<sup>93</sup> Nevertheless, significant populations of language minorities across the state remain underserved. For instance, Orange, Onondaga, and Richmond counties have significant populations of Spanish-speakers who would benefit from translated materials and interpreters.<sup>94</sup>

By lowering the population threshold that triggers translation and interpretation requirements described above, the State can improve ballot access for and participation by these communities. Other states have already done so. For example, Colorado and California lowered the threshold to 3% of the voting-age population, and provide services when organizations submit information demonstrating a need for assistance within a particular community.<sup>95</sup>

OAG proposes that whenever any local BOE finds that 3% of the voting-age residents of an election precinct have Limited English Proficiency, according to the U.S. Census Bureau, it shall provide ballots as well as registration or voting notices, forms, instructions, assistance, and other materials or information relating to the electoral process in the primary language of the population in question, in a manner that provides the same opportunity for access and participation as voters whose primary language is English.

# 2. Protect Voters from Improper Challenges<sup>96</sup>

Challenges to voter eligibility on an election day not only disrupt the electoral process but can also intimidate voters. Historically, challengers have targeted marginalized and vulnerable populations, including voters of color, student voters, and voters with disabilities.

In the lead up to the 2015 State and Local Primary, OAG received complaints about voter discrimination and intimidation against Chinese-American voters in Orange County, most of whom were college students. The challenger questioned both the citizenship and place of residence of the voters without supplying the legally required reason to question the students' citizenship.<sup>97</sup> After the County Sheriff's Office erroneously reported that two of the students were not citizens, the Orange County Board of Elections cancelled their registrations. Only after OAG intervened were the registrations reinstated and the students permitted to vote.<sup>98</sup>

<sup>91 42</sup> U.S.C. § 1973aa-1a.

<sup>92</sup> Id.

<sup>93</sup> Press Release, New York Attorney General Eric T. Schneiderman, A.G. Schneiderman Announces Completion of Major Voting Rights Language Access Initiative (April 17, 2013), available at http://www.ag.ny.gov/press-release/ag-schneiderman-announces-completion-major-voting-rights-language-access-initiative.

<sup>94</sup> American Factfinder, U.S. CENSUS BUREAU, http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml.

<sup>95</sup> J. Mijin Cha and Liz Kennedy, *Millions to the Polls: Language & Disability Access*, DEMOS (February 14, 2014), *available at http://www.demos.org/publication/millions-polls-language-disability-access*.

<sup>96</sup> See, e.g., A.8770//S.6620 (OAG Program Bill #8 [2014]); S.2436-A//A.5922-A (2015-16).

<sup>97</sup> N.Y. Elec. Law § 8-502.

<sup>98</sup> In October 2015, OAG entered into an agreement with the Orange County Board of Elections requiring the Board to: 1) comply with federal and state laws that prohibit voting discrimination on the basis of race or national origin; 2) reject the challenges as defective and issue confirmation to the students that they are eligible to vote; 3) adopt new policies and procedures for addressing voter challenges to ensure compliance with state and federal voting laws; and 4) train poll workers to identify voter intimidation and harassment at the polls.

Challenges to voter eligibility are frequently based on allegations that voters fail to meet residency or citizenship requirements. While New York State Election Law § 8-502 provides protections for voters against such challenges in the lead up to an election, it does not adequately protect such voters on Election Day. Under § 8-504 of New York State Election Law, individuals who challenge a voter's eligibility on an election day must only indicate whether the reasons for the challenge are based on personal knowledge or information provided by another person. As a result, the proof and documentation required to challenge voters prior to an election day are not required of challenges on an election day. This leaves voters vulnerable to improper challenges.

To ensure that all voters may freely exercise their right, OAG proposes that §§ 8-502 and 8-504 of the Election Law be revised to require a good faith basis and supporting documentation for anyone challenging voter eligibility on Election Day, as well as penalties for those who abuse this provision of the law.

### 3. Restore Voting Rights to Citizens on Parole<sup>99</sup>

Under current New York law, citizens are disenfranchised while they are incarcerated or on parole for felony convictions, but citizens convicted of felonies who are on probation are eligible to vote.<sup>100</sup> New York's different voting eligibility rules for those on parole versus those on probation can lead to confusion among former offenders who wish to regain the right to vote, as well as election officials responsible for implementing the laws. This confusion can exacerbate disenfranchisement if eligible citizens incorrectly believe they cannot vote.

New York's felony disenfranchisement law has a disproportionate impact on people of color. According to the Brennan Center for Justice, as of 2015, nearly three-quarters of disenfranchised New Yorkers on parole are African American or Latino.<sup>101</sup> According to the New York State Department of Corrections and Community Supervision ("DOCCS"), there are currently 35,500 parolees in New York State.<sup>102</sup> Amending the law would aid citizens in their reentry to their communities and, thus, potentially enhance public safety.

OAG proposes restoring voting rights to parolees with felony convictions. Restoration would not be contingent upon payment of fees, fines, restitution, or other legal financial obligations. Citizens released from prison would not be released from liability for payment of any such financial obligations, but the debt would not preclude exercise of the franchise. Further, the bill provides that DOCCS would act as a voter registration agency and transmit to the State names of people as they become eligible to vote upon release from incarceration. *See also Part. I.A.1 above discussing automatic voter registration*.

# 4. Enhance Poll Worker Training and Recruitment

Trained poll workers are critical to ensuring that voters have access to the ballot. More than 5% of the voter complaints OAG received during the 2016 General Election concerned poll workers providing incorrect information about completing and casting a ballot. These complaints included reports that poll workers provided misinformation regarding registration statuses, inconsistent issuance of affidavit ballots, and, in some instances, inaccurate instructions that voters had to vote "down the party line," meaning they could not split their votes among parties, for their vote to count. Similarly, during the 2016 Presidential Primary, many poll workers were unaware of their legal obligations to provide affidavit ballots because they had not received clear and consistent written guidance on affidavit ballots. As a result, during the 2016 Presidential Primary some voters were denied

<sup>99</sup> See, e.g., S.2023-A// A.7634 (2015-16);S.1210//A.6320 (2015-16).

<sup>100</sup> *Probation* is a sentence or disposition imposed by a criminal court or family court. In general, probationers are released in the community without serving a period of local incarceration. *Parole* is a portion of a correctional sentence served in the community *following a term of incarceration in state prison. General Frequently Asked Questions*, Probation and Correctional Alternatives, New York STATE DIVISION OF CRIMINAL JUSTICE SERVICES, http://www.criminaljustice.ny.gov/opca/general\_faq. htm#1.

<sup>101</sup> Voting Rights Restoration Efforts in New York, BRENNAN CENTER FOR JUSTICE (October 6, 2016), https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-new-york.

<sup>102</sup> DOCCS Fact Sheet, New York STATE CORRECTIONS AND COMMUNITY SUPERVISION (November 1, 2016), available at http://www.doccs.ny.gov/FactSheets/PDF/ currentfactsheet.pdf.

their right to vote by affidavit ballot, a potential violation of New York State Election Law and HAVA. Further, the inconsistencies in policies and practices regarding affidavit ballots among local BOEs resulted in drastically different voter experiences depending on the county in which the voter resided — in one county a voter may have been found eligible to cast an affidavit ballot upon request, whereas in another county a similarly situated voter may have denied such a ballot.

OAG's proposed bill mandates that all poll workers in the state complete training approved by the State BOE. This bill also calls for grants to local BOEs to strengthen existing training programs. Such training programs would entail the development and distribution of education materials and focus on topics including, but not limited to, the following:

- proper operation of the voting systems used in the election;
- prevention, detection, and remediation of problems with voting systems used in the election;
- expeditious directions to voters about their assigned election district;
- accommodations for individuals with disabilities or other specific needs and ensuring polling sites are accessible;
- assistance to individuals with limited English proficiency;
- assistance to individuals who are illiterate;
- requirements for conducting signature verification of voters;
- appropriate use of affidavit ballots and the process for casting such ballots;
- requirements of individuals seeking to challenge voter eligibility and the process for handling any such challenges; and
- security procedures.

In addition, BOEs are required to develop and implement procedures to recruit poll workers by focusing on:

- high school graduation ceremonies;
- orientation meetings at state and public colleges and universities; and
- naturalization proceedings.

