



A PATH FORWARD: TAKE POLITICS OUT OF THE NYC BOARD OF ELECTIONS

October 2020

The New York City Board of Elections (BOE) is charged with administering elections in New York City: it maintains the voter rolls, oversees candidate petitioning, and runs Election Day operations.

Recent elections and investigations by independent bodies indicate that the BOE fails to carry out these functions competently and impartially, resulting in dysfunction in our democratic process. This dysfunction manifests itself through disenfranchisement - either directly through voter purges and ballot disqualifications or indirectly through engendering a lack of faith in our election process. This lack of faith in the process has led New York to be among the worst states in terms of voter turnout.¹

The root cause of this dysfunction is the BOE's inherently political nature. Ultimately, this politicization must be addressed through amendment to the New York State Constitution, but County parties have the power to make incremental reforms.

In this document, New Kings Democrats will explain more about the BOE's politicization and dysfunction, as well as potential paths for its reform.

Dysfunction in the electoral process

The BOE is responsible for:

- Overseeing voter registration, outreach, and processing;
- Maintaining and updating voter records
- Recruiting, training, and assigning Election Day officers to conduct elections;
- Operating poll site locations;
- Maintaining, repairing, setting up, and deploying Election Day operation equipment; and
- Assuring each voter's right to vote at the polls or by absentee ballot.²

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<https://www.politifact.com/factchecks/2018/feb/01/andrea-stewart-cousins/new-york-consistently-ranks-low-voter-turnout/>

² <https://vote.nyc/page/about-nyc-board-elections>



Over the past 20 years, audits by the New York City Comptroller's Office, the New York City Department of Investigation (DOI), and non-governmental organizations and advocacy groups have raised questions about the BOE's competency in carrying out these functions.

In 2016, the BOE wrongly purged 117,000 voters from its rolls, leading to a lawsuit from then-Attorney General Eric Schneiderman.³ Following the lawsuit, the New York City Comptroller's office evaluated the BOE's ability to maintain adequate voter records and to operate polls effectively in the primary elections.⁴ **The Comptroller's audit found the BOE had failed to ensure the polls operated effectively and efficiently, and that there were numerous deficiencies at polling sites due to poor training of poll workers.** This trend has continued. In the 2019 Queens District Attorney special election, voters were given incorrect or insufficient instructions in filling out affidavit ballots⁵.

In May 2020, the New York City Comptroller's Office published a report on the handling of the 2019 general election.⁶ The report found that during that election the BOE did not staff and equip sampled poll sites properly; it failed to provide required bilingual interpreters in multiple poll locations; failed to document receipt of election materials including scanned ballots and affidavit ballots from 79% of poll locations; and failed to make the majority of sampled poll sites accessible to New Yorkers with disabilities.

The chaos continued into the 2020 elections. Changes in election law due to the COVID-19 pandemic led New York City voters to request a record number of absentee ballots ahead of the June primary; in total 778,000 were distributed across New York State.⁷ However, many voters complained of never receiving their ballots in the mail, while others wondered if their votes were counted.⁸ Testimony in a related lawsuit revealed that over 30,000 absentee ballots were sent to voters the day before they had to be sent back to the BOE.⁹ **Only 52 percent of the ballots**

³<https://www.nbcnews.com/news/asian-america/departments-justice-files-join-lawsuit-over-brooklyn-voter-purge-n706666>

⁴ The City of New York Office of the Comptroller (2017). Audit Report on the New York City Board of Elections' Controls Over The Maintenance Of Voters' Records And Poll Access (Report No. MG16-107A).

⁵ <https://www.nytimes.com/2019/07/29/nyregion/melinda-katz-caban-queens-da.html>

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<https://comptroller.nyc.gov/reports/special-report-on-the-election-day-operations-of-the-new-york-city-board-of-elections/>

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<https://gothamist.com/news/cuomo-board-elections-sued-disenfranchising-thousands-voters-over-postmark-problems-absentee-ballots>

⁸ <https://gothamist.com/news/voters-left-with-little-recourse-when-absentee-ballots-dont-arrive>

⁹ <https://www.wsj.com/articles/the-postal-services-good-election-advice-11597606836>



sent to voters actually made it back to the BOE, compared to a return rate of 75 - 90 percent in other states.¹⁰

Then the BOE rejected more than 84,000 of the ballots it did receive from voters, about 22 percent of the total received.¹¹ The BOE claimed various bases for the rejections, including failure to sign and date the inner envelope in which voters were instructed to seal their ballots, or failure to return the inner envelope at all.¹² And the burden was not shared equally among New Yorkers -- voters were disenfranchised along race and class lines.

An analysis by New Kings Democrats found that in Brooklyn, there were three Assembly Districts where over 30 percent of received ballots were rejected: the 55th, 58th and 60th. These districts also have the borough's lowest median income and the highest percentage of Black residents.¹³

The City's overall rejection rate of 22 percent is astronomical compared to Pennsylvania, which had less time to prepare for a mostly absentee primary but rejected only 1.4 percent of received ballots (3.9 percent in Philadelphia).¹⁴ A better designed and explained ballot would have ensured voters' ability to cast their votes correctly; the BOE could have followed the lead of Florida, which uses clear cues to indicate to voters necessary fields.¹⁵ Unfortunately, the BOE did not make changes to better facilitate the return of ballots until September 2020, after the primaries, when it added a red "x" to absentee ballots¹⁶ and implemented a ballot tracking system (which had been approved by the New York City Council in 2016).¹⁷

¹⁰ Return rate of 76 percent in Pennsylvania and 90 percent in Wisconsin. PA: <https://www.inquirer.com/politics/election/pa-mail-ballot-deadlines-disenfranchisement-20200730.html>. WI: <https://twitter.com/PollsAndVotes/status/1282364726387843073>

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<https://www.nbcnews.com/politics/elections/one-five-mail-ballots-rejected-botched-nyc-primary-n1236143>

¹² <https://www.nytimes.com/interactive/2020/09/23/upshot/mail-ballots-states-disqualification.html>

¹³ U.S. Census Bureau (2018). American Community Survey 5-year estimates. Retrieved from <https://www.censusreporter.org>.

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<https://www.tampabay.com/florida-politics/buzz/2020/09/08/in-swing-states-like-florida-mail-ballot-rejection-rates-could-triple/>

¹⁵ Using this system, Florida has reported a ballot rejection rate of just 1.5 percent.

<https://www.tampabay.com/florida-politics/buzz/2018/11/05/forgot-to-sign-your-mail-ballot-theres-still-time-to-fix-it/>

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<https://www.gothamgazette.com/state/9787-sign-red-x-new-york-election-officials-unveil-new-envelope-20-absentee-votes-counted>

¹⁷<https://www.gothamgazette.com/city/9614-new-york-city-mandated-absentee-ballot-tracking-board-of-elections-never-implemented>



And dysfunction continued into the general election. In September 2020, with the COVID-19 pandemic still raging, the BOE mailed out 500,000 absentee ballots to New York City voters who had applied to vote by mail.¹⁸ But of the 140,000 ballots sent to Brooklyn voters, 100,000 were accompanied with an inner envelope addressed to the wrong recipients. This error rendered the ballots unusable, as voters are required to sign the inner envelope and return their ballot in it. A mismatch between the signatures and the names on the envelopes would lead to these ballots being voided by the BOE.

Shortly after the ballot mishap, reports emerged that Phoenix Graphics, the company the BOE hired to print the ballots, had gotten the job through a no-bid contract.¹⁹ This was despite the fact that an audit by the New York State Comptroller's office in 2015 found that the BOE's previous no-bid contracts with the company had led New York City to spend an extra 2.4 million dollars on ballots, as Phoenix charges significantly more than some of its competitors. Reports also emerged that Phoenix has a history of making political contributions to candidates.²⁰

The persistent dysfunction at the BOE is, at its core, due to the body's politicized nature, which results in non-merit based appointments and shields the Board from public accountability.

Political and Not Accountable

The BOE is a municipal arm of the New York State Board of Elections, which was established in its current iteration in 1974 as a bipartisan government agency.²¹ Per State Election Law, the New York State Board of Elections is composed of four commissioners, two Republicans and two Democrats, who are appointed by the Governor based on recommendations from the chairs of the State Democratic and Republican Parties and State Assembly and Senate leadership.²² The New York State Board oversees local boards of election in each county in New York State.

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<https://gothamist.com/news/brooklyn-voters-receive-absentee-ballot-envelopes-wrong-voter-names-and-addresses>

¹⁹ <https://www.thecity.nyc/2020/10/8/21508584/brooklyn-ballot-snafu-firm-sweetheart-deals>

²⁰ <https://www.thecity.nyc/2020/9/29/21494655/wrong-absentee-ballot-brooklyn-no-bid-contract-election>

²¹ <https://www.elections.ny.gov/AboutSBOE.html>

²² Sec. 3-100. New York state board of elections; membership; organization.

<https://www.nysenate.gov/legislation/laws/ELN/3-100> State Commissioners are appointed to two-year terms, are prohibited from holding other public employment, and receive \$30,000 in annual compensation.

²³ <https://www.elections.ny.gov/CountyBoards.html>

In New York City, a single New York City Board of Elections oversees elections for all five boroughs.²⁴ The New York City Board is led by ten Commissioners, one Republican and one Democrat from each borough. The Republican and Democratic County Committees in each borough recommend their County Party's choice to the City Council.²⁵ The City Council then appoints the Commissioner; it does not have to appoint the one recommended to it by the County Committee, but typically does.²⁶

The bipartisan staffing of the BOE does not stop at the Commissioner level. Managerial and non-managerial staff members, including poll workers, must be evenly split between the two major parties (although, given the dearth of Republicans in some parts of the City, some poll workers are deemed "Republican for the day".)²⁷ **This requirement, as well as each County party's close relationship with at least one BOE Commissioner, has meant that hiring decisions are frequently made based on the recommendation of party officials rather than the merit-based Civil Service system that governs most other public sector hiring.**²⁸

This reliance on appointments by recommendation has led to numerous cases of nepotism, where relatives of BOE employees get a leg up in the employment process.²⁹ Perhaps more jarring are the political expectations that sometimes come with being an NYC BOE employee. A 2013 DOI report found that a job at the BOE comes with the expectation that an employee will gather petition signatures and fundraise for candidates, as well as attend meetings of their borough's Democratic County Committee if they are members.³⁰

New Kings Democrats reviewed political contributions by Brooklyn BOE employees to the Brooklyn Democratic Party and the campaign accounts of its last three Party Bosses (Clarence Norman, Vito Lopez, and Frank Seddio). **We found that employees who had previously not given to the Party or its leader began making donations once they started working for the BOE.** While it is not illegal for BOE employees to make political donations, if they felt compelled to donate money and labor to party bosses upon employment, it suggests heavy influence by outside political forces.

²⁴ <https://vote.nyc/page/about-nyc-board-elections>

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<https://www.politico.com/states/new-york/albany/story/2020/10/14/with-boe-in-spotlight-council-set-to-approve-political-leadership-picks-1324948>

²⁶ Each Commissioner serves a four-year term and is paid a maximum salary of \$30,000 per year.

²⁷ <https://queenseagle.com/all/election-boards-partisan-make-up-is-grounded-in-state-constitution>

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<https://www.cityandstateny.com/articles/politics/campaigns-elections/can-new-york-city-board-elections-be-reformed.html>

²⁹ https://www1.nyc.gov/assets/doi/reports/pdf/2013/2013-12-30-BOE_Unit_Report.pdf

³⁰ DOI, p.9

The political nature of the BOE is furthered by the body’s insulation from City Council oversight and Mayoral direction; there is no direct mechanism by which the public can hold the Board accountable other than the Courts.³¹ In 2016, Mayor de Blasio offered the BOE 20 million dollars to implement reforms that would update its operations, increase the number of registered voters, and improve the quality of poll workers. The BOE rejected the money and the suggested reforms.³² Similarly, the BOE sued to block a mayoral initiative meant to increase translation services at poll sites.³³ In July 2020, City Council Member Antonio Reynoso attempted to bring more accountability to the BOE hiring process by proposing a vote to postpone the appointment of a new Brooklyn Democratic BOE commissioner until the Council’s Brooklyn delegation had an opportunity to question the Brooklyn Democratic Party’s proposed appointee.³⁴ While the Council did vote to postpone the appointment, the Party’s choice was ultimately approved after private questioning from Council Members.³⁵

What should be done

If the BOE is to carry out fair and inclusive elections, then it must operate as a fair and inclusive body. Taking politics out of the BOE is the first step in ensuring that every resident of New York City has access to the franchise.

In pursuit of electoral justice, New Kings Democrats endorses the following key reforms for New York State and New York City.

- The New York State Constitution should be amended to make the State and county Boards of Elections nonpartisan, rather than bipartisan, and include safeguards against partisan favoritism at all levels.
- Like employees of other government agencies, the professional staff of the Board Of Elections, across all levels, should be hired based on merit, through a competitive process, without consideration of their political party membership, political activities, or personal relationships.

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<https://www.gothamgazette.com/city/8947-calls-for-new-board-of-elections-head-continue-council-member-ulrich-pursues>

³² <https://citylimits.org/2019/04/25/nyc-polling-place-shortage-inequality/>

³³ <https://patch.com/new-york/new-york-city/judge-questions-effort-block-translators-nyc-polls>

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<http://www.nydailynews.com/news/politics/ny-board-of-elections-antonio-reynoso-rodney-pepe-souvenir-20200723-js4r5yow5vgzjpaythznbz73q-story.html>

³⁵ <https://gothamist.com/news/politics-usual-city-council-democrats-approve-elections-commissioners>



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- Poll workers should be hired without consideration of their political party membership; poll worker training standards should be improved.
 - The New York State Legislature should adequately fund the execution of elections.
 - Barring changes to the State Constitution, County Parties should arrive at their recommendations for BOE Commissioner positions through a competitive, transparent process that includes the entire County Committee and not just its senior leadership. The City Council should use its power of appointment to extract promises of reform from potential Commissioners.