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**THE COUNCIL**

**BRIEFING PAPER OF THE GOVERNMENTAL AFFAIRS DIVISION**

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**COMMITTEE ON GOVERNMENTAL OPERATIONS**

*Hon. Fernando Cabrera, Chair*

**November 25, 2019**

**Oversight:**

**New York City's Early Voting Rollout**

**I. INTRODUCTION**

On November 25, 2019, the Committee on Governmental Operations, chaired by Council Member Fernando Cabrera, will hold an oversight hearing on the Board of Elections in the City of New York ("NYCBOE") and its first administration of early voting during the 2019 general election. The Committee anticipates hearing testimony from the NYCBOE, the Mayor's DemocracyNYC office, and advocates and members of the public.

***b. New York State enacts early voting***

In January 2019, the New York State Legislature passed legislation to enact early voting statewide beginning with the November 2019 general election.<sup>12</sup> New York now joins 38 other states that already allow some form of early voting.<sup>13</sup>

Pursuant to the state Election Law, early voting must be held for nine days, beginning the tenth day prior to any general, primary, runoff primary or special election, and ending on and including the second day prior to such election.<sup>14</sup> At minimum, polling sites must be open at least eight hours between 7 a.m. and 8 p.m. on week days; at least one polling site must remain open until 8 p.m. on at least two week days each week; and poll sites must be open at least five hours between 9 a.m. and 6 p.m. on Saturday, Sunday, and on any legal holiday during the early voting period.<sup>15</sup>

Boards of elections must designate polling places for early voting, with at least one early voting polling place for every 50,000 registered voters in each county, provided however that no county is required to designate more than seven polling places, although they may establish additional early polling locations at their discretion.<sup>16</sup> Under this law, the NYCBOE must designate a minimum of 34 early voting locations across New York City, seven in each borough except for Staten Island, where only six locations are required based on its population of

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<sup>12</sup> See Chapter 6 of the laws of 2019 (Senate Bill No. 1102), New York Two Hundred Forty-Second Legislative Session (approved and effective January 24, 2019). See also Jesse McKinley and Vivian Wang, *With New Voting Laws, Democrats Flex Newfound Power in New York*, N.Y. TIMES (Jan. 14, 2019), <https://www.nytimes.com/2019/01/14/nyregion/democrat-ny-albany-control.html>.

<sup>13</sup> Jesse McKinley and Jeffery C. Mays, *'The State Kind of Dumped This On Us:' Early Voting Stirs Anxiety in N.Y.*, Oct. 24, 2019 (N.Y. TIMES), <https://www.nytimes.com/2019/10/24/nyregion/early-voting-ny-election.html>.

<sup>14</sup> N.Y. Elec. Law § 8-600(1).

<sup>15</sup> N.Y. Elec. Law § 8-600(4)(a)-(d).

<sup>16</sup> N.Y. Elec. Law § 8-600(2)(a)-(b). Counties with fewer than 50,000 voters only need have one early polling place. N.Y. Elec. Law § 8-600(2)(a).

within their county unless a board of elections decides to assign election districts to specific early voting sites because such board determines it is impractical to provide every election district ballot at each polling location or to ensure that voters do not vote both during early voting and on the election day.<sup>25</sup>

The form of ballots used in early voting must comply with current law applicable to voting by paper ballot on Election Day.<sup>26</sup> Ballots submitted during early voting are not to be canvassed or examined until Election Day.<sup>27</sup> At the end of each day of early voting, all voted and unvoted ballots must be secured pursuant to a plan approved by the State Board.<sup>28</sup>

Each board of elections must also create a communication plan to inform eligible voters of early voting, and polling site locations and hours of operations, among other information.<sup>29</sup> That plan was due to the State Board of Elections July 1 and must be resubmitted annually on or before June 1.<sup>30</sup>

The New York State Legislature's fiscal year 2020 budget authorized use of electronic poll books, which are digitized versions of existing paper poll books, or voter lists, used at poll sites for checking in voters.<sup>31</sup> Electronic poll books offer several advantages over paper poll books, for example: reducing human error; enabling poll workers to determine if someone has already voted, thus preventing over-voting during the early voting period; and allowing poll workers to look up a voters' registration more quickly and even direct voters to their proper poll

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<sup>25</sup> N.Y. Elec. Law § 8-600(3).

<sup>26</sup> N.Y. Elec. Law § 8-600(6).

<sup>27</sup> N.Y. Elec. Law § 8-600(6).

<sup>28</sup> N.Y. Comp. Codes R. & Regs. tit. 9, § 6211.2(c).

<sup>29</sup> N.Y. Elec. Law § 8-600(5).

<sup>30</sup> N.Y. Comp. Codes R. & Regs. tit. 9, § 6211.7(c).

<sup>31</sup> Chapter 55 of the laws of 2019 (Senate Bill No. 1505-C), New York Two Hundred Forty-Second Legislative Session.

The state budget included \$10 million for implementing early voting.<sup>37</sup> These funds were available to reimburse local boards of elections for costs related to implementing early voting.<sup>38</sup> The state budget included an additional \$14.7 million for electronic poll books.<sup>39</sup> The State Board of Elections was required to develop a plan for the distribution of these funds to reimburse local boards of elections for electronic poll books and associated software.<sup>40</sup> In June, the State Board allocated \$8,503,572 to the NYCBOE for 57 early voting poll sites (the final number was 61 sites<sup>41</sup>): \$3,435,741 for operating expenses and \$5,067,831 for electronic poll books.<sup>42</sup>

*c. Preparation for the first implementation of early voting*

Early voting for the November 2019 general election began Saturday, October 26<sup>th</sup> and concluded Sunday, November 3<sup>rd</sup>. The general election was held November 5<sup>th</sup>.

As required by the Election Law, the NYCBOE designated potential polling places for the period of March 15, 2019 through March 14, 2020 at its March 15, 2019 commissioners meeting,<sup>43</sup> and designated specific early voting sites on April 30, 2019.<sup>44</sup> At that time, the

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<sup>37</sup> Press release, Governor Andrew Cuomo Announces Highlights of the FY 2020, April 1, 2019, <https://www.budget.ny.gov/pubs/press/2019/pr-enactfy20.html>.

<sup>38</sup> Chapter 53 of the laws of 2019 (Senate Bill No. 1503-D), New York Two Hundred Forty-Second Legislative Session.

<sup>39</sup> Press release, April 1, 2019, *supra* note 37.

<sup>40</sup> Chapter 54 of the laws of 2019 (Senate Bill No. 1504-D), New York Two Hundred Forty-Second Legislative Session.

<sup>41</sup> See discussion at notes 50-53, *infra*.

<sup>42</sup> Robert Harding, *How much will each NY county get for early voting?*, AUBURN CITIZEN (June 6, 2019), [https://auburnpub.com/blogs/eye\\_on\\_ny/how-much-will-each-ny-county-get-for-early-voting/article\\_7357daba-5181-5a14-b6f5-6bfa4d6fela8.html?utm\\_medium=social&utm\\_source=twitter&utm\\_campaign=user-share](https://auburnpub.com/blogs/eye_on_ny/how-much-will-each-ny-county-get-for-early-voting/article_7357daba-5181-5a14-b6f5-6bfa4d6fela8.html?utm_medium=social&utm_source=twitter&utm_campaign=user-share); Geringer-Sameth, *supra* note 32.

<sup>43</sup> Minutes of March 15, 2019 NYCBOE commissioners meeting at pages 2-4, available at <https://www.vote.nyc.ny.us/downloads/pdf/documents/boe/minutes/2019/031519meet.pdf>. See N.Y. Elec. Law § 4-104(1).

<sup>44</sup> Minutes of April 30, 2019 NYCBOE commissioners meeting, available at <https://www.vote.nyc.ny.us/downloads/pdf/documents/boe/minutes/2019/043019meet.pdf>; Brigid Bergin, *New York City Board of Elections Selects Only 38 Early Voting Sites*, WNYC (April 30, 2019), <https://www.wnyc.org/story/new-york-city-board-elections-selects-only-38-early-voting-sites/>.

15 in the Bronx, 21 in Manhattan, 24 in Queens and 30 in Brooklyn.<sup>54</sup> Advocacy groups Common Cause New York and Citizens Union recommended putting one early voting site in each of the 65 Assembly districts in the City,<sup>55</sup> which would have resulted in four sites in Staten Island, 11 in the Bronx, 12 in Manhattan, 18 in Queens and 21 in Brooklyn.<sup>56</sup>

Critics also feared that the final sites did not provide adequate and equitable access for voters.<sup>57</sup> The nonprofit New York Public Interest Research Group noted inequity in the number of voters each poll site serves; for instance while both Staten Island and Manhattan had nine early voting sites, the Staten Island sites would serve roughly 32,000 voters each, compared to more than 110,000 voters per site in Manhattan.<sup>58</sup> Perry Grossman, senior staff attorney at the New York City Civil Liberties Union (“NYCLU”) told *Gothamist* he also saw significant gaps in poll sites serving communities of color and new immigrant neighborhoods.<sup>59</sup> NYCLU and other good government groups made a freedom of information request for internal NYCBOE documents to determine how it compiled its final list of poll sites.<sup>60</sup>

Though empowered to do so,<sup>61</sup> NYCBOE opted not to allow voters to vote at any poll site within their borough, instead assigning voters to specific early voting sites that may differ

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<sup>54</sup> Testimony of Brooklyn Voter Alliance at *id.*

<sup>55</sup> *Id.*; Bergin, *supra* note 44.

<sup>56</sup> See NYC District Maps, NYC Board of Elections, <https://vote.nyc.ny.us/html/voters/maps.shtml> (last accessed Nov. 8, 2019).

<sup>57</sup> See e.g. Blau, *supra* note 49 (reporting concerns by Vote Early NY and the New York Civil Liberties Union).

<sup>58</sup> Brigid Bergin, *The 2019 Election Was A Snoozer That Will Change NYC's Political Future*, GOTHAMIST (Nov. 7, 2019), <https://gothamist.com/news/2019-election-was-snoozer-will-change-nycs-political-future>.

<sup>59</sup> Brigid Bergin, *As NYC Expands Early Voting Locations, Critics Say Plan Discriminates Against Poor, Minority Voters*, GOTHAMIST (May 30, 2019), <https://gothamist.com/news/as-nyc-expands-early-voting-locations-critics-say-plan-discriminates-against-poor-minority-voters>.

<sup>60</sup> Geringer-Sameth, *supra* note 62.

<sup>61</sup> See N.Y. Elec. Law § 8-600(3).

and Friday.<sup>69</sup> While these hours comply with state law,<sup>70</sup> they are contrary to advocates' recommendation that poll sites facilitate voting in early morning, evening and at other peak times to accommodate voters.<sup>71</sup>

In addition to funds provided by the state,<sup>72</sup> the New York City budget for Fiscal Year 2020 included \$75 million to cover costs associated with early voting, which would mainly support the salaries of NYCBOE workers and poll site costs for the nine days of early voting.<sup>73</sup> An additional \$21 million was included for the purchase of electronic poll books.<sup>74</sup> The NYCBOE commissioners adopted a \$19.1 million four-year contract with KNOWiNK, one of three vendors approved by the State Board of Elections, to purchase 10,000 electronic poll books.<sup>75</sup> Commissioners also approved spending \$5.64 million to purchase BOD printers from KNOWiNK.<sup>76</sup>

The NYCBOE created new positions to coordinate early voting operations in each of the

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<sup>69</sup> Information on Early Voting, *supra* note 51. See N.Y. Elec. Law § 8-600(4)(a)-(d).

<sup>70</sup> See N.Y. Elec. Law § 8-600(4)(a)-(d).

<sup>71</sup> See e.g. April 30, 2019 testimony of Brooklyn Voter Alliance, Common Cause, and Citizens Union, at note 53, *supra*.

<sup>72</sup> See discussion at notes 37-42, *supra*.

<sup>73</sup> Minutes of June 26, 2019 NYCBOE commissioners meeting at page 2, available at <https://www.vote.nyc.ny.us/downloads/pdf/documents/boe/minutes/2019/062619meet.pdf>; Report to the Committee on Finance and the Committee on Governmental Operations on the Fiscal 2020 Executive Budget for Board of Elections, May 17, 2019, available at <https://nyc.legistar.com/MeetingDetail.aspx?ID=690267&GUID=26D2B77C-A0E0-4139-A589-741A75F7A246&Options=info&Search>.

<sup>74</sup> *Id.* Samar Khurshid, *City Council Examines Board of Elections' Readiness to Implement Early Voting, Poll-Site Interpretation*, GOTHAM GAZETTE (May 1, 2019), <https://www.gothamgazette.com/city/8491-city-council-examines-board-of-elections-readiness-to-implement-early-voting>.

<sup>75</sup> Minutes of June 11, 2019 NYCBOE commissioners meeting at pages 6-8, available at <https://www.vote.nyc.ny.us/downloads/pdf/documents/boe/minutes/2019/061119meet.pdf>; Minutes of July 16, 2019 NYCBOE commissioners meeting at pages 11-13, available at <https://www.vote.nyc.ny.us/downloads/pdf/documents/boe/minutes/2019/071619meet.pdf>; Geringer-Sameth, *supra* notes 32 and 62.

<sup>76</sup> July 16 minutes, *supra* note 75 at pages 14-15.

measures to prevent tampering.<sup>85</sup> NYPD police officers transported voted paper ballots to NYCBOE's borough offices each night after the polls closed.<sup>86</sup> Voting machines and USB memory sticks with voting information remained sealed in ballot scanners for the entire early voting period.<sup>87</sup> A police officer was to be assigned to each poll site around the clock.<sup>88</sup>

Per the Election Law, the NYCBOE created a communication plan to inform eligible voters of early voting.<sup>89</sup> This included mailers sent to voters informing them about early voting and their polling locations, and a "Vote NYC"-branded public education program in print, television, radio and online, including social media, in addition to LinkNYC kiosks.<sup>90</sup> Good government groups, including Common Cause, also advertised the importance of early voting.<sup>91</sup>

Due to the fact that it featured no hotly contested races, low turnout was expected for the November election,<sup>92</sup> and thus arguably a good opportunity to test run implementation of early voting in advance of a 2020 presidential election cycle, which is expected to see high turnout.<sup>93</sup> In response to critics of NYCBOE's early voting rollout, Executive Director Ryan reported that the board had taken the advice of other early voting jurisdictions to implement early voting incrementally, and that attempting to do too much in early voting's initial implementation would

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<sup>85</sup> *Id.*

<sup>86</sup> Reuven Blau, *City Board of Elections Lags in Submitting Early-Vote Security Plan*, THE CITY (Sept. 26, 2019), <https://thecity.nyc/2019/09/nyc-board-of-elections-lags-on-early-vote-security-plan.html>.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> See N.Y. Elec. Law § 8-600(5).

<sup>90</sup> See Minutes of May 21, 2019 NYCBOE commissioners meeting at pages 8-9, available at <https://www.vote.nyc.ny.us/downloads/pdf/documents/boe/minutes/2019/052119meet.pdf>; June 26 minutes, *supra* note 73 at pages 3-5

<sup>91</sup> McKinley & Mays, *supra* note 13.

<sup>92</sup> See e.g. Blau, *supra* note 49; Geringer-Sameth, *supra* notes 32 and 62 (reporting same).

<sup>93</sup> See e.g. *id.*; McKinley & Mays, *supra* note 13.



around ballot marking devices, at 64 percent of the sites.<sup>101</sup> The Center also noted instances of inadequate signage, locked doors at accessible entryways and ramps that were too narrow or steep.<sup>102</sup> Negative media reports were few, however, and generally suggest that voters had a positive experience voting early.<sup>103</sup>

These media reports are consistent with the experience of New York City Council staff. For the early voting period beginning Saturday, October 26 through Sunday, November 3, 2019, 53 volunteers from the central staff of the City Council participated in a poll site observation program, through which they observed a total of 48 early voting poll sites across all five boroughs at different times and dates during the nine-day early voting period.<sup>104</sup> Many poll sites were observed by Council staff more than once during the early voting period.

Council staff described poll workers at most early voting sites as being well versed with the new electronic poll books and BOD printers, and the ballot scanners. Though Council staff noted issues with individual devices, most were reportedly resolved in minutes by available NYCBOE staff and, in some cases, vendor technicians. There were several issues concerning power supply, with some sites experiencing short power outages during early voting hours. Multiple Council staff described there being an excess of poll workers available to deal with these issues and to direct voters. Similar to Sen. Myrie's experience, Council staff documented

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<sup>101</sup> Brigid Begin, *Lessons From NYC's First Ever Early Voting: Don't Use Schools, Make Sure Sites Are Accessible*, Gothamist (Nov. 19, 2019), <https://gothamist.com/news/lessons-from-nycs-first-ever-early-voting-dont-use-schools-make-sure-sites-are-accessible?to=comments>.

<sup>102</sup> *Id.*

<sup>103</sup> See e.g. *id.*; Mahoney, *supra* note 99; Hogan, *supra* note 96; Melissa Klein, *Thousands show up to NYC schools, churches for early voting*, N.Y. POST (Oct. 26, 2019), <https://nypost.com/2019/10/26/thousands-show-up-to-nyc-schools-churches-for-early-voting>; Michelle Bocanegra, *Despite low turnout, early voting brought 'relaxed' tone, officials say*, POLITICOPRO (Nov. 6, 2019), <https://subscriber.politicopro.com/article/2019/11/06/despite-low-turnout-early-voting-brought-relaxed-tone-officials-say-1226462>; Bergin, *supra* note 58.

<sup>104</sup> Bronx: 6 out of 11, Brooklyn: 12 out of 18; Manhattan: 9 out of 9; Queens: 14 out of 14; and Staten Island: 7 out of 9.



notwithstanding police officers being assigned to each polling site.<sup>108</sup> Early voting may also obstruct school testing periods. Early voting for the April presidential primary coincides with state mathematics testing for elementary and middle school students, and the June state and federal primary coincides with the state Regents exams for high school students.<sup>109</sup>

The City's Department of Education ("DOE") notified principals on Saturday, October 5, 2019 that their schools would be polling sites, just three weeks before early voting started on October 26.<sup>110</sup> NYCBOE Executive Director Ryan said it began communicating with DOE about early voting as far back as January and that 23 of the 33 sites were known to DOE since the spring.<sup>111</sup> According to Mark Cannizzaro, president of the Council of School Supervisors and Administrators, a union representing school principals, DOE did not consult his members.<sup>112</sup> In response to complaints, DOE reportedly toured all 33 schools and met with principals to discuss ways to mitigate disruption, added NYPD and custodial staff, and drafted a letter to be sent to families to inform them of steps being taken to increase security during early voting.<sup>113</sup>

Parents and the principals' union argue that the NYCBOE should avoid using schools as early voting sites altogether.<sup>114</sup> Council Members Keith Powers and Carlina Rivera wrote a letter to the NYCBOE also asking that it reconsider the use of schools for early voting.<sup>115</sup> According to *Gothamist*, of the 248 early voting sites statewide, only one other locality used a school for early

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<sup>108</sup> *Id.*; McKinley & Mays, *supra* note 13; Blau, *supra* note 86; Georgett Roberts & Selim Algar, *DOE tells outraged parents closing school gyms for voting is 'civics lesson'*, N.Y. POST (Oct. 24, 2019), <https://nypost.com/2019/10/24/doe-tells-outraged-parents-closing-school-gyms-for-voting-is-civics-lesson>.

<sup>109</sup> Bergin, *supra* note 101.

<sup>110</sup> Bergin & Woo, *supra* note 105.

<sup>111</sup> Brigid Bergin, *New York City Faces Scrutiny of Early Voting Sites, Calls for Changes in 2020*, GOTHAMIST (Oct. 24, 2019), <https://gothamist.com/news/new-york-city-faces-scrutiny-early-voting-sites-calls-changes-2020>.

<sup>112</sup> Bergin & Woo, *supra* note 105.

<sup>113</sup> Bergin, *supra* note 111.

<sup>114</sup> Brigid Bergin and Erin Woo, *supra* note 105.

<sup>115</sup> McKinley & Mays, *supra* note 13.