VOTE EARLY NY OCT 26–NOV 3

Testimony of VoteEarlyNY

at the

Public Hearing to Discuss Implementation of Early Voting Throughout New York State

Presented to the

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Good Afternoon Chairs Myrie and Lavine and to all members of the Senate Elections and Assembly Election Law Committees. Thank you for hosting this important hearing to assess the implementation of early voting throughout New York State.

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

It has become an annual ritual for the Legislature to conduct an on-the-record post-election review of election administration with an eye toward reform and modernization, and I want to recognize your leadership in that regard. The application of our election law in the field is subject to provincial variation and local political manipulation. It is a decentralized system wherein policy and resourcing decisions that impact our fundamental civil rights are often shrouded in secrecy and generally lack accountability. By shining a light on election administration you do the voters of this state a great service.

With my testimony today I hope to provide a topline snapshot of initial progress on implementation as well as to express several observations and a few voter access and suppression concerns. At the outset I want to commend Boards of Elections staff across the state for moving so quickly to stand up an early voting program in 2019. I am also grateful to our LetNYvote coalition partners for their impressive work this year. The coalition's early voting evaluation group is ready to conduct further analysis of early voting turnout and demographic data if and when that is made available.

VENY is excited about the statewide rollout of the first-ever NYS early voting program, which dramatically expands the timeframe voters have to cast a ballot through the creation of a nine-day early voting period including two weekends preceding Election Day. [1] In 2019, VoteEarlyNY.org mapped and tracked early voting implementation developments statewide while pushing counties to adopt the highest standard of pro-voter policies in the many areas where the law defers to local discretion and decision-making. By the end of Early Voting over 54,000 users had visited our website, thanks to our amazing coalition partners who spread the word about early voting and made available a robust library of multilingual public education materials that anyone—including community leaders and cash-strapped localities—may use to help raise awareness among residents about this historic expansion of our access to the ballot. We invite more localities to embrace these resources in 2020.[2]

We want to highlight that despite the provision of 2019-20 state funding for operations and capital upgrades, there were actually no funds allocated for public education or publicity, which must primarily be viewed as a BOE responsibility. This would be especially impactful during the first few cycles of the program, to help raise awareness among voters about their new access.

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[1] Ch. 6 of the Laws of 2019.

[2] NYS 2019 Early Voting Implementation Map, www.VoteEarlyNY.org; VENY-LNYV 2019 Early Voting Resources, https://www.VoteEarlyNY.org/Resources/.

As with any significant reform that involves modernization and adoption of new technology, this "first wave" overhaul ushers in improvements that streamlines voting, while also imposing a learning curve that may impact voters and administrators, with the potential to widen the digital divide—a near-term "growing pain" that may be overcome by more professionalized and uniform training for all levels of election staff and state-funded public education.

Exciting and Notable 2019 Early Voting Implementation Developments

In 2019, the NYS early voting lawrequired an aggregate minimum of **145** early voting locations statewide.[3] However, localities reportedly deployed a total of **249** early voting sites with **18 BOEs exceeding the minimum required sites**. While each locality must now provide voters with at least 60 additional hours of voting during the nine-day early voting period, **19 BOEs exceeded the minimum hours** (localities deployed a total of 3,604 early voting hours, NYC counting once). Also, when fully implemented, the NYS early voting law intends and requires local BOEs to offer "countywide votecenters" that any resident voter may access. In 2019, we are pleased to report that voters in **54 of 62 counties had countywide votecenter access** (this included all localities except NYC, Westchester, Albany, and Orange).

In light of the successful adoption and use of electronic poll books and ballot-on-demand printers by these localities in 2019, and the countywide votecenter access successfully demonstrated by 54 of their peers, it is submitted that these localities are all required to provide countywide votecenter access in 2020 in order to comply with the early voting law.[4]

In total, over 256,000 New Yorkers voted early in 2019. According to initial turnout data, "[t]he six counties with the highest early voting turnout percentages differ in size, but they had one thing in common: They opted to have more early voting centers than the law requires."[5]

Among counties with more than 100,000 registered voters, **Erie, Nassau, and Ulster initially stood out as implementation leaders going into the election**, insofar as they appear to have genuinely embraced the new law and the many administrative and due process benefits it has to offer, by implementing the reform fully in year one in both letter and spirit, and by utilizing the flexibility the law preserves for local tailoring to provide a robust program for residents. All three counties have gone beyond the barebones publicity requirements as well. **Erie**, required to have seven sites, deployed 37 votecenters (for 69 hours); **Nassau**, required to have 7 sites, deployed 15 votecenters (for 75 hours); **Ulster**, required to have 2 sites, deployed 7 votecenters (for 60 EV hours).

Erie, which offered far more votecenters than any county saw 4.17% early voting turnout—more than double the state average. Nassau, which offered countywide votecenters and more than double the required early voting sites had the largest raw early voting turnout in the state.

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[3] NYS Election Law § 8-600(2); *NYS Voter Enrollment By County, Party Affiliation and Status*, NYS BOARD OF ELECTIONS, Feb. 1, 2019, https://on.ny.gov/2JcH9iE. Statewide Registered Voter data was updated in November, 2019.

[4] NYS Election Law § 8-600(3).

[5] Robert Harding, *Five Takeaways from New York's First Early Voting Period*, AUBURN PUB, Nov. 13, 2019, https://bit.ly/2D3dDIS.

Monroe and **Onondaga** counties also offered countywide votecenters in 2019 (seven and six sites respectively as required by law, for 60 hours). For more-populous localities, countywide votecenter implementation is a more complicated undertaking. They should be recognized for doing so early on in the implementation process and for providing pro-voter information to help raise awareness among the public about the law changes soon after enactment of the 2019 voting reform package. However, each county should consider providing additional hours and sites for 2020, in anticipation of greater interest, and to provide greater access.

On the less-populous end of the county spectrum, **Cayuga, Chautauqua, Columbia, and Ontario counties**, required to have only one early voting site based on 2/2019 Registered Voter population, each deployed 3 early voting sites for 60 hours. While we are not ready to pronounce upon the *equity* of the siting plans in most counties, the decision to provide more countywide votecenters than required reduces travel time for residents and thereby increases access to the more far-flung regions of these counties, which should generally be viewed as a public good. Based on initial turnout data, "Columbia County reported 7.15% of voters cast ballots during early voting — the highest percentage in the state. Chautauqua was third-best with 4.71%. Cayuga ranked sixth with 3.91% turnout."[6]

And so it may be said that several counties large and small, blue, red, and purple successfully stood up an early voting program in year one that exceeded the minimum siting and hours requirements in the law. Although access is merely a prerequisite to turnout and does not guarantee increased voter participation, which is driven far more directly by competitive contests and similar factors, New York's initial early voting experience suggests what one may expect— that counties with more convenient programs (less barriers to access) actually performed better than similarly situated peers. That said, there is virtually no perfect apples-to-apples comparison cycle-to-cycle or county-to-county, given how much has changed in our politics since 2015.

However, we must temper any initial evaluation by highlighting the law's equity provision and regulations which require dynamic resource re-allocation to ensure wait times and travel times are kept reasonable and do not deprive voters of meaningful access to early voting. There is actually an ongoing statutory obligation that administrators continue to optimize and tailor these programs over time, including during an early voting period.[7] There is also a very real risk that the politics of early votecenter siting cycle-to-cycle will override the legislative intent of providing and maintaining fair and equitable access. For that reason, BOEs should be required to open up the siting process to include local stakeholders and conduct on-the-record, publicized meetings, especially when major decisions are to be taken.

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[6] *Id.*

[7] NYS Election Law § 8-600(2)(d) ("Polling places for early voting shall be located so that voters in the county have adequate and equitable access, taking into consideration population density, travel time to the polling place, proximity to other early voting poll sites, public transportation routes, commuter traffic patterns and such other factors the board of elections deems appropriate."); 9 CRR-NY 6211.1(c)(1) (requiring early voting "accessibility for voters with physical disabilities."); 9 CRR-NY 6210.19(c)(3) and (d)(1) ("County boards shall deploy sufficient voting equipment, election workers and other resources so that voter waiting time at a poll site does not exceed 30 minutes. . . . If the voter waiting time at an early voting site exceeds thirty minutes the Board of Elections shall deploy such additional voting equipment, election workers and other resources necessary to reduce the wait time to less than 30 minutes as soon as possible but no later than the beginning of the next day of early voting.")

Successful Public Engagement

With respect to public engagement, to cite a few encouraging examples **Erie, Nassau, NYC, Onondaga, and Ulster** have each taken noteworthy measures to help inform voters about their new early voting rights.[8] **Erie** and **Onondaga** produced useful public videos discussing the new technology and access reforms and have proactively engaged local media; **Nassau** produced and widely circulated a clear English/Spanish flyer, held press conferences, public demonstrations and forums, and engaged media proactively; **NYC** (through independent efforts by DemocracyNYC, NYC BOE, and NYC Votes) launched a new BOE website, public awareness campaign that includes subway and ferry ads, electronic billboard ads, radio spots, emails, etc., and a few public demonstrations. NYC BOE also utilized sandwich board signage and branded floor-stickers outside and in proximity to early voting sites and provided early voters with stickers and durable wristbands. This was by far the most impressive publicity campaign in the state. **Ulster** developed visually appealing graphics that mapped the county siting plan, hosted public demonstrations, conducted press events, and engaged local stakeholders to improve access when a stalemate arose.[9]

New Technology Provides Objective Election Oversight Capability and Rich Analytics

The authorization for localities to adopt electronic poll books [10] provides potentially transformative opportunities for objective oversight of New York elections. In 2019, at least 52 counties reported adopting electronic poll books for early voting. Many of them switched back to paper check in books for election day, while several jurisdictions used them on election day as well. The new capabilities have not been explored in detail during the implementation phase.

Unfortunately this task is initially more difficult due to our decentralized election structure, which makes this an area that is ripe for the legislature and State Board to help harmonize. The new e-poll book law merely authorized their use as an alternative to paper check-in books to reconcile voter check-ins in real time and left it to the State Board to approve acceptable vendors and products from a security, compatibility, and quality standpoint. From there, it appears that the three certified vendors KnowInk, Robis, and Tenex largely engage directly with counties for contracting, staff training, configuration, optimization, servicing, and troubleshooting.

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[8] Erie 2019 Early Voting Video, https://www.elections.erie.gov/early-voting; Nassau 2019 Early Voting Flyer, https://bit.ly/31Xedm1; Alyssa Seidman, *Nassau Names 15 Sites for Early Voting*, Jun. 13, 2019, LI Herald, https://bit.ly/2pSvYEV; Hofstra Votes, *10/16 Early Voting Seminar and Panel Discussion*, https://events.hofstra.edu/?eID=35227; NYC Early Voting Video and Digital Media Kit, https://early-voting-community-outreach.webflow.io/; Daily Freeman, *Early Voting Process to Be Explained by Ulster County Board of Elections*, Sept. 3, 2019, https://bit.ly/2M02UUJ; Onondaga County E-poll Book Demonstration Video, https://www.youtube.com/watch?v=nuUbMc26pDg&feature=youtu.be; Ashley M. Casey, *Onondaga County unveils electronic poll books*, Eagle News Online, Jul. 29, 2019, https://bit.ly/2Mrrehc.

[9] Patricia Doxsey, *Ulster County Election Commissioners Agree on Eight Sites for Early Voting*, Daily Freeman, May 22, 2019, https://bit.ly/2BA3X7F

[10] Ch. 55 of the Laws of 2019, Part XX; Robert Harding, *NY Elections Board OKs Three E-Poll Book Vendors to Help Counties With Early Voting*, Auburn Pub, Jun. 7, 2019, https://bit.ly/2MQRou1.

Aside from the fact that a person has voted early, the recent voting reforms are silent on what data must be collected by the e-poll books during voting, how and when such data must be organized, stored, and shared (if at all), and with whom.

For example, the law and the regulations don't set a uniform statewide standard for ensuring that the affidavit ballot process, the challenge oath process, the assistance oaths and language access happen as part of the e-poll book check-in process in the 52 or more counties that have adopted them, or that they are compliant with New York law. Instead, the vendors are working directly with counties to meet local configuration preferences, with no known state oversight post-certification.

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

In **Nassau**, administrators should be credited for working with a vendor to ensure that the e-poll book workflow indicates to poll workers when a person should be issued an affidavit ballot, but this wasn't a standard feature—the vendor's default setting merely gives a voter-not-found message, presumably leaving it to the manual affidavit process, which historically in practice has wide variability across the state. By contrast, that same vendor's workflow streamlines the process for challenging a voter and includes as a default challenge basis that "voter has moved counties", which of course departs from New York's 2019 portability law.

One place where state guidance is desirable regards the capability of e-poll books to scan the bar codes on BOE-issued voter cards or documents like DMV-issued drivers licenses. This raises staff training and public messaging issues, but counties are pursuing very different policies here. **New York City** used this feature to scan the voter cards it mailed to voters. **Ulster** instructed poll workers not to ask for ID. According to the League of Women Voters' survey results, "in **Albany, Onondaga, Suffolk, Tompkins, and New York City**, voters reported being asked to present an ID at the sign in table. **Tompkins** county was reported to have signage at the poll site entrance urging voters to have their IDs ready upon entering." While it is believed that in most cases this was done to expedite the check-in process, for context, earlier this year **Wayne** county attempted to impose a photo ID requirement as part of its early voting security plan and publicized this on its website. The policy was removed after discovery by advocates.

To optimize early voting programs for the future, e-poll book check-in data can inform policymakers about which days and hours are the most popular among the public and which locations turn out to be the most convenient to the most voters. With the move to countywide votecenters, what proportion of voters actually tend to vote near work or during a lunch break? To gauge the actual performance of the new ballot printing equipment, this data may also shed light on how long it takes the average voter to check in and receive their ballot.

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

However, there is also the potential for whitewashing, withholding, or deleting this data, so it is actually critical that some uniform rules be laid down to ensure that as much of the voting process as possible is captured by e-poll book records and that transparency and accountability prevail. It is submitted that absent a compelling reason for specific redaction, policymakers, voting rights advocates, campaigns, and the public all have a legitimate interest in this data.

Troubling Implementation Issues; Voter Suppression and Access Concerns:

As with any overhaul of election policies and practices, most of which are implemented county-by-county, there is a wide spectrum of quality of implementation of the NYS early voting law and very little public visibility of the implementation process. This is largely by design and the legislature is uniquely placed to continue reforming New York's voting system.

State Board of Elections Lacks Meaningful Oversight Power

The new early voting law and regulations place various reporting requirements and deadlines on local BOEs to provide greater transparency and so the State BOE may satisfy its "responsibility for administration and enforcement of all laws relating to elections in New York State."[11] This includes deadlines for: designating early voting locations and hours, and indicating whether site access is countywide or assigned; submitting state funding reimbursement requests; producing a modern communications plan; developing a security plan when a new early voting plan is announced; complying with a cyber-security checklist for counties adopting new technologies, and an ongoing implicit requirement that local BOEs keep SBOE aware of subsequent adjustments to these plans.

Having monitored this internal agency-to-agency process as close as possible during 2019, it is readily apparent that the NYS Board of Elections lacks a combination of the resources and the necessary oversight tools to compel uniform or substantial county compliance with these mandates. For context, it has been publicly reported that **SBOE's "budget has been reduced by 30% from last year** and all of its reappropriations were vetoed from the state budget."[12]

However, particularly with respect to the security plan requirement, it appears that the SBOE perpetuated a legal interpretation divorced from the clear language of the regulation and persisted with at least two of these interpretations after it was brought to their attention.[13] As of this hearing, per repeated enquiry and an ongoing FOIL request, it appears that as many as ten counties ranging from the least populous to among the most populous have not had a 2019 early voting security plan approved by SBOE (possibly because they have not yet submitted a plan).

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[11] *About the New York State Board of Elections*, https://www.elections.ny.gov/AboutSBOE.html.

[12] Robert Harding, *NY Budget Director: State Board of Elections 'Spread Fear' over Early Voting Funding*, AUBURN PUB, Aug. 27, 2019, https://bit.ly/342iB45.

[13] 9 CRR-NY 6211.2(a), *Canvass of Ballots Cast During Early Voting*, https://bit.ly/2ohKLJ6; Meeting of the State Board of Elections, Oct. 2, 2019, https://bit.ly/2N5apsR (Commissioner and Staff discussion of compliance begins at 00:33:50; interpretation of who must comply: 00:50:00 and Testimony of Jarret Berg begins at 1:35:00); Reuven Blau, *City Board of Elections Lags in Submitting Early-Vote Security Plan*, The City, Sept. 26, 2019, https://bit.ly/2lFoYtx.

It is believed that two-thirds of counties missed the 2019 deadline for site designation; that several missed the communications plan deadline; that NYC still has not complied with the requirement that they publicize which election districts have been assigned to which early voting sites;[14] and that nearly all CBOEs failed to comply with the actual deadline for submitting security plans for approval, which makes oversight and accountability more difficult.

It would not be unreasonable to conclude that without additional tools and resources, SBOE is unable to effectively carry out it's oversight mission. That state of affairs was lamented in bipartisan fashion during the October, 2019 State BOE meeting.[15] A cruel irony that those who prioritize voting rights will immediately recognize is that when a voter or candidate misses a procedural election-related deadline, that defect is fatal even as it undermines the fundamental right at stake, whereas it appears that New York's local BOEs are too often permitted to run roughshod over election law deadlines, with complete impunity.

Local Board of Elections Implementation Concerns

The quality of 2019 implementation of the NYS early voting law spans a wide spectrum. As anticipated, locality variation has primarily manifested within the discretionary aspects of the law, which were necessary because in a large, diverse, and populous state like New York, one principle pro-voter advocates noted as early as 2013 was "one size does not fit all counties."[16]

As such, the new early voting law sets minimum standards of siting access (by providing due process floors for the quantity of locations and hours) and safeguards the discretionary elements of the law through an equity provision with objective, good-faith siting factors that must collectively be taken into account when developing an early voting plan.[17]

The law's arbitrary cap of seven required sites for counties with large registered-voter populations continues to place the residents of these counties at risk of being underserved. Even as many counties went above the requirements, in most cases the statutory ratios are still not balanced. One option for the legislature is to adjust this cap.

Across the board, localities are reliant on state funding to administer early voting operations. With respect to future funding levels for operations beyond the minimum required by law, the state funding formula should be designed in a way that incentivizes innovation and quality siting.

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[14] 9 CRR-NY 6211.7(a)(4) and 6211.7(c) (requiring local BOEs to provide assignment information to State BOE and local media: "If early voting sites are specific to particular cities, towns or other political subdivisions, a statement describing the area served by each early voting site.")

[15] Meeting of the State Board of Elections, Oct. 2, 2019, *supra* note 14.

[16] NYDLC, *Bringing Early Vote to the State of New York: Recommendations for Amendment of Early Vote Bills* (Apr. 2014), https://bit.ly/2jtqdqW; Common Cause/NY, *PEOPLE LOVE IT: Experience with Early Voting in Selected U.S. Counties* 37-38 (2013), https://bit.ly/33bXxHN; *see generally* Sean Young, ACLU, For Early Voting, One Size Doesn't Fit All, May 2, 2014, https://bit.ly/2Owe8Sp.

[17] NYS Election Law § 8-600(2)(d), quoted in full, *supra* note 7.

In light of the general absence of public consultation or open meetings where siting options could be discussed, the law's equity provision would be strengthened and made more objective if the discretionary language was removed or tightened (the law permits consideration of "such other factors the board of elections deems appropriate" when choosing sites).

New York City BOE—required by law to provide 34 early voting sites Citywide—deployed 61 assigned sites (for 74 hours). NYC BOE declined to provide countywide votecenter access for the five boroughs for 2019, apparently invoking the temporary "ballot style impracticality exception" in the law.[18] This represents the most significant and material programmatic restriction and runs counter the law's intended early voting access. In light of NYC BOE's adoption and successful use of ballot-on-demand printers during early voting, *we do not read the law to permit the City BOE to rely on this exception in 2020* and are of the view that the current siting plan (with disproportionate site-per-voter ratios in four of five boroughs) when coupled with the single-assigned-site restriction, significantly underserves City residents.

As we continue to push NYC BOE to open up the siting process to include stakeholders in government, potential site hosts, and the public, we want to recognize the unique challenge inherent in implementing this law in the densely populated urban setting. Aligning ideal siting factors like ADA accessibility, 24/7 secure facilities, cost-conscious spacious real estate located near public transportation, and doing this equitably as the law requires across NYC's very diverse communities, transit system, and geography is an extremely difficult needle to thread.

To the NYC BOE's credit, the bulk of feedback from voters and poll workers regarding NYC's initial early voting rollout presented an overwhelmingly positive civic engagement experience. Moreover, NYC BOE leadership has publicly committed to revisiting the countywide votecenters decision and expanding the siting plan ahead of the upcoming election events.

In **Rensselaer**, the BOE was required to deploy two early voting sites and deployed two sites for the 60 hour minimum. BOE selected the towns of Brunswick (2016 resident pop. est. 12,778) and Schodack (2016 resident pop. est. 13,151), but omitted the major population center and county seat of Troy where the BOE is located (2018 resident pop. est. 49,374), and where over 30% of Rensselaer's population resides. A reported 30% of Rensselaer County residents do not own cars and 70% of them live in Troy.[19] Demographically Troy also has more than double the percent of African American residents (16.4%) than the county as a whole (7.9%).

To properly gauge convenience we should also look at operating hours. Weekend hours in Rensselaer were uniform over the two weekends with limited afternoon hours (9AM-2PM) and on 3 weekdays early voting was not available before or after the typical work day (9AM-5PM). On two weekdays the sites operated until 8PM as required by law, but they opened at noon,

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[18] NYS Election Law § 8-600(3) ("Any voter may vote at any polling place for early voting . . . in the county where such voter is registered to vote; provided, however, *if it is impractical to provide each polling place for early voting all of the election district ballots* or if early voting at any such polling place makes ensuring that no voter has not previously voted early during such election, the board of elections may assign election districts to a particular early voting poll site.") (emphasis added).

[19] Jacquie Slater, Challenges With Early Voting in Troy, NewsChannel 13, Nov. 4, 2019, https://bit.ly/2QLwLmP.

limiting the work week access further temporally. Countywide turnout was double on the final Sunday of early voting compared to the Sunday prior, yet the hours remained the same.

Commissioners noted that some early voters had traveled 40 or 50 minutes to their site.[20] The BOE was unmoved by public outcry over the plan ahead of the election from non-partisan advocates who proactively offered up a ready, willing, and able ADA accessible site in Troy called Unity House. Respondents to the League Survey pointed to the inconvenient siting and lack of a public transportation option as a reason they didn't vote early. The lack of a central Troy early voting site resulted in an inconvenient option for the largest concentration of county voters, especially residents without ready car access and nearly 8,000 Troy-based students.

This siting dispute and the lack of a revision to the plan after the deficiency was brought to the attention of county administrators led one state legislator to introduce a bill to prohibit the underserving of a county population center in this manner in the future.[21] This may be necessary as the core issue being disputed in Rensselaer is one that is capable of repetition elsewhere. While the equity provision lists "population density" first among a set of siting factors, some administrators are prioritizing other factors or believe this is not applicable to their county.

In **Suffolk**, the BOE deployed a siting plan of one per town, or 10 early voting sites for 1,046,712 million registered voters (ratio of 1 site per 104,672 registered voters, more than double the statutorily prescribed ratio). The town-based siting scheme objectively violates the "adequate and equitable access" requirement in the law because it results in dramatic disparities in access from town to town. For example, there is one early voting site each in Shelter Island (2017 pop. est. 2,421, 96.32% White), East Hampton (2010 pop. Est. 21,457, 84.81% White) Brookhaven (2017 pop. est. 486,170, 68.43% White), and Islip (2017 pop. est. 335,543; 77.25% White). Put another way, ~83% of the population resides in four towns (each with one site) while 17% of the population resides in six towns (each with one site). The four most populous towns include disproportionately more low-income voters than elsewhere in the county, with Town of Islip home to the greatest disparity. Moreover, given the one-per-town plan, the unique geographic shape of Suffolk reduces the potential beneficial impact of offering countywide votecenters.

At **SUNY Stony Brook** (student population 26,814), students documented an "early voting journey" from campus to their nearest early voting site in Brookhaven using public transportation. The three-hour one-way trip required two buses and a 1.5 mile walk, rendering early voting effectively of reach for the campus community.[22]
The underserving of college campus voting populations across the state is a legacy New York voting rights issue that is already manifesting itself around the state through 2019 early voting policy. In **Ulster**, a deadlock between commissioners over the proposal to deploy an early voting site in a more populous area of the county accessible to students at **SUNY New Paltz** led to

[20] Matt Hunter, *Capital Region Residents Take Advantage of Early Voting*, SPECTRUM NEWS, Oct. 28, 2019, https://bit.ly/2KEBcM4.

[21] Michael Gwizdala, *Sen. Breslin Introduces Legislation to Improve Access to Early Voting*, TROY RECORD, Oct. 22, 2019, https://bit.ly/2odsDQx

[22] Center for Civic Justice at Stony Brook University, *Our Early Voting Journey*, Oct. 26, 2019, https://bit.ly/2XwJn2d.

county legislative hearings. Without a New Paltz location, the closest site would be in Gardiner, which is much less accessible by foot, bike, or bus. The university was ready, willing, and able to host a site on campus but the deadlock persisted. After public pressure, a compromise was reached where a site was located in the town of New Paltz, but not on campus as proposed.[23]

To safeguard meaningful and equitable student access to early voting, the legislature could prescribe that counties with campuses above a certain population threshold must place a site on on campus or within easy reach of public transportation. The legislature can also strengthen the county or college publicity requirements so that students are proactively made aware of early voting options, and how to access them via public transportation.

As noted, the new law includes a careful balancing of statewide minimum safeguards while preserving the ability of local officials to tailor early voting so it is responsive to the needs of local residents. Implementation in **Rensselaer** and **Suffolk** may provide cautionary examples as to how that discretion and the equity factors in the law can be abused, without meaningful oversight and enforcement.

In **Nassau**, there is an unfortunate history of voter intimidation targeting specific minority and new-immigrant communities.[24] The adoption of new technologies like e-poll books gave rise to general concerns that there could be an increase in bad-faith voter challenges. Notably, Nassau does not use a written "challenge oath" process (as NYC does), which increases the potential for a coercive (oral, subjective, discretionary) challenge environment. Given the context of a wave of recent political resignations and prosecutions, the highly charged partisan climate, and a series of very competitive state and local contests (2017-2020), the potential risk of an organized suppression effort may be more tangible in Nassau than elsewhere.

The adoption of e-poll books, where signature check-ins occur using a stylus instead of a pen may give rise to a new wave of "signature challenges". However, challenging a voter's signature is actually a challenge to that voter's identity. Poll worker training should emphasize that voters be told to sign legibly as they would a document, and if anything, signature scrutiny should be *more* lenient, given that all voters are adapting to signing in on a new medium.

To curb bad-faith voter challenges, the legislature should consider modernizing and streamlining the challenge process, curtailing its use during actual elections, requiring that it be done writing on the record in the e-poll book, and requiring that the challenger provide their name and address and swear (as the challenged voter is required to do) that any challenge is made in good faith upon specific information that a voter is not qualified.

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[23] Ben Nandy, *Polling Location Dispute Could Cost Taxpayers Upwards of $200,000*, SPECTRUM NEWS, May 15, 2019, https://bit.ly/343yUxH.; Ben Nandy, *Legislative Committee Sides with Democratic Elections Commissioner in Early Voting Dispute*, SPECTRUM NEWS, May 20, 2019, https://bit.ly/2OsKOe6.

[24] Sid Cassese, *Democratic Legislator Challenges GOP to Provide More Voting Tools for Minorities in Valley Stream*, NEWSDAY, Mar. 12, 2015, https://nwsdy.li/2BEqWyx; Michael Schwirtz, *In Nassau County, an Influx of Democrats Threatens a G.O.P. Stronghold*, N.Y. TIMES, Jul. 7, 2013, https://nyti.ms/2WayZN5; Eden Laikin, *Democratic Candidates Call for Election Monitors*, NEWSDAY, Oct. 20, 2009, https://nwsdy.li/2N99aIZ; *see generally* Timothy Denton, *Segregation Is Alive and Well in Nassau County*, LI HERALD, Feb. 28, 2019, https://bit.ly/32I3xIv.

As noted earlier, in **Wayne**, the BOE attempted to impose a photo ID check-in policy under the auspices of an early voting security plan. When the policy was discovered, it was overturned, but the League Survey indicate voters in several localities were asked to present ID at check in.

In **Westchester**, the lack of transparency and publicity about the early voting program led to unnecessary confusion and a general lack of awareness of the plan, particularly the single assigned-site restriction. The decision to restrict early voting access to a single site was not taken on the record, nor was the statutory basis for invoking the exception identified. It is unclear what the basis for that restriction is. In the run-up to early voting, BOE staff reportedly made inconsistent public statements at events that confused voters about whether they were limited to a single site. Despite taking this decision at some point in late Spring/early Summer, the BOE represented to the BOL that such a decision had not been made (after statutory deadlines had passed).

The Westchester BOE website is an example of a "worst practice" from a public information perspective. In particular, the need for Greenburgh and Yonkers residents to consult multiple spreadsheets to discern their assignment causes, rather than reduces confusion. A March, 2019 standoff between BOE and BOL regarding procurement of Dominion ICE scanners appears to have led BOE to delay procurement of unrelated early voting technology until very late in the implementation process.[25] Moreover, the lack of a modern outreach plan meant that voters primarily depended on candidates, social media, and word of mouth to learn about the program.

It is submitted that county BOEs are already required to comply with the state Open Meetings Law and should be compelled to do so, as NYC BOE and SBOE already do. If counties are not already so required, they should do so voluntarily as a transparency and public trust best practice, or the legislature can specifically include BOEs.

BOEs could also be required to conduct more robust publicity and civic engagement, and employ modern tools like social media that are more likely to reach the public. Toward this end, despite the provision of 2019-20 state funding, there were actually no funds allocated for public education or publicity, which is primarily a BOE responsibility. This is especially needed during the first few cycles of the program, to help raise awareness among voters about the new program.

Thank you for the opportunity to testify today. We appreciate the Legislature's continued leadership and interest in improving New York's voting experience in 2020 and beyond.

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[25] 9 CRR-NY 6211.1(a), 6211.7(a)(4), (c); Westchester Board of Legislators, Committee on Public Works, Jul. 29, 2019, https://bit.ly/2PgfVLO (discussion starts at -01:23:00); Westchester Board of Elections, Early Voting, https://citizenparticipation.westchestergov.com; Mark Lungariello, *Hacking concerns may delay Westchester's $6.1M plan to buy new voting machines*, LoHud, Mar. 8, 2019, https://bit.ly/2oZncVT.