

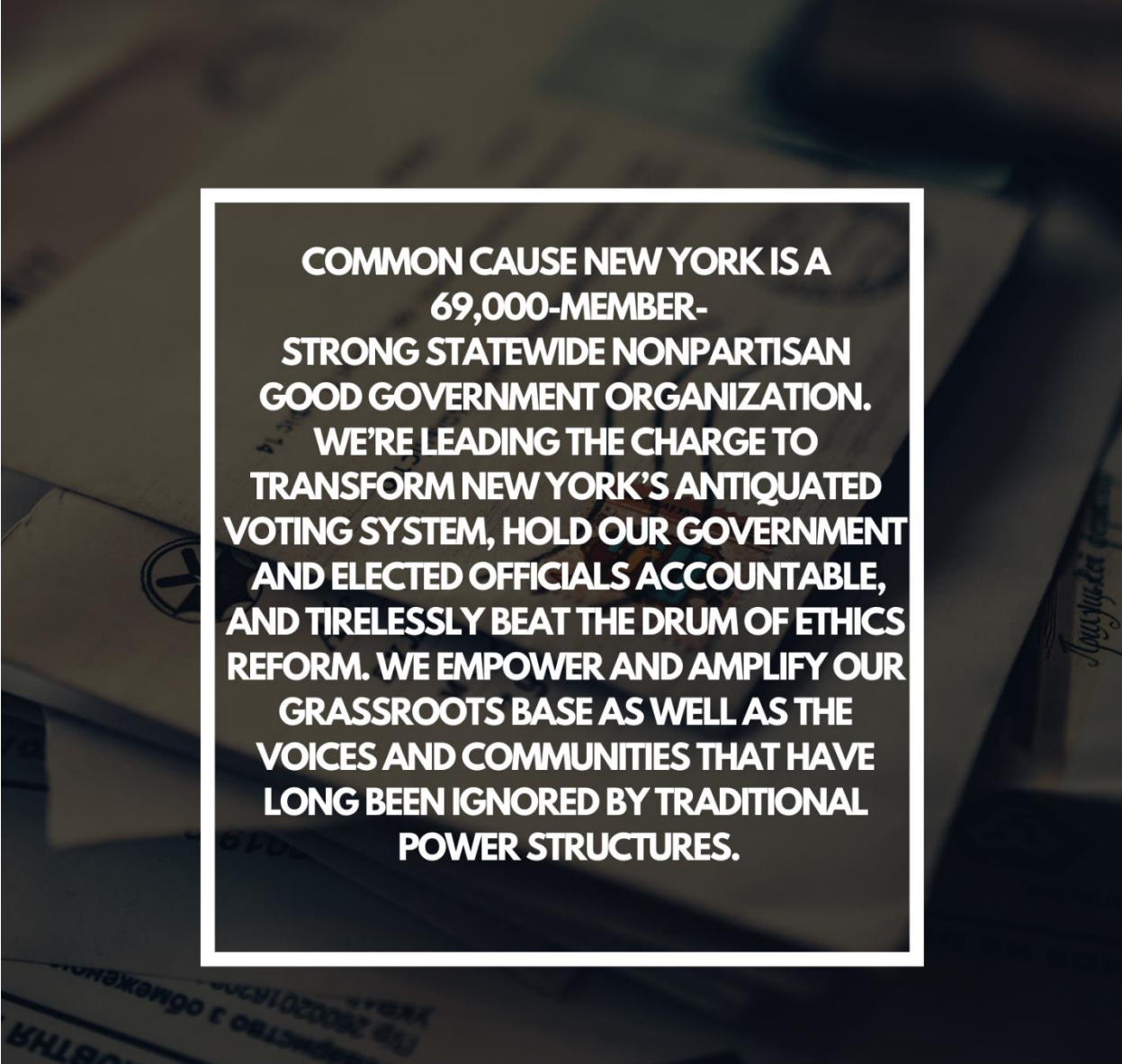
**NEW YORK'S DEMOCRACY
DOESN'T PAUSE:
HOW OUR ELECTIONS CAN
PROCEED DURING A
PANDEMIC**

March 2020



Common Cause

New York



**COMMON CAUSE NEW YORK IS A
69,000-MEMBER-
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GRASSROOTS BASE AS WELL AS THE
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INTRODUCTION

In the last ten days, there has been a huge surge in interest to adopt vote-by-mail as a means to safely administer the 2020 elections in New York. It is important to recognize any necessary adjustments to our elections must be realistic and made within the context of New York's existing election infrastructure and not based on the election administration in other states. Vote-by-mail differs greatly from absentee voting or no-excuse absentee voting and states that have adopted it took over a decade for full implementation.¹

Common Cause/New York strongly supports no-excuse absentee voting and successfully advocated for the first step towards no-excuse absentee voting in New York. This process is a multi-step, multi-year legislative process that requires a constitutional amendment which must be approved by voters.² **However, even in the eventuality that New York adopts no-excuse absentee voting, it would still not be the equivalent of a vote-by-mail program.** The differences are outlined below:

- **Current absentee voting in New York: Voters need a specific reason to vote absentee as outlined by law.** The Governor has already loosened the requirements for absentee voting as it pertains to COVID-19 at least through April 1.³
- **No-excuse absentee voting:** Any voter who would like to request an absentee ballot and vote absentee can do so for any reason.
- **Vote by mail:** All active registered voters automatically⁴ receive a ballot in the mail and can choose to vote by mail if desired.

EXECUTIVE SUMMARY

The COVID-19 pandemic has created a unique set of circumstances that presents a range of challenges for the safe and secure administration of New York's upcoming primary and general elections. New York is currently slated to have at least three more elections in 2020: the April 28th presidential primary, the June 23rd congressional and state legislative primary, and the November general election. Protecting our elections in a context that is

¹ In Washington, voters have been able to vote no-excuse absentee since 1991 while in Colorado voters adopted this measure in 2000. Conducting elections exclusively by mail became a reality in Washington in 2011 and Colorado adopted all vote-by-mail in 2013. It has taken Washington and Colorado years to optimize the vote-by-mail process.

² New York State Senate, [No-excuse Absentee Constitutional Amendment Passes Senate](#), January, 15th, 2019.

³ Governor Cuomo signed [Executive Order 202.2](#) on March 7th, 2020.

⁴ Automatic in this context means voters do not have to request a ballot in order to vote by mail. Election administrators send out ballots to all active registered voters in the voter file.

shifting dramatically by the hour is an unequivocal challenge, but we remain confident New York is up to the task and that elections can be held safely in 2020.

However, it is vital that any change in how New York votes balances:

- **the new public health reality,**
- **ensures the integrity of our elections, and**
- **acknowledges the very real and decades-long reality- New York is notorious for poorly run elections.**

Boards of elections (BOEs) will need time and resources to meet these challenges. We urge the Governor, the State Legislature, local elected officials, and local boards of elections to move quickly but deliberately.

RECOMMENDATIONS BY COMMON CAUSE/NY

New York currently has 12.9 million registered voters of which 11.7 million are considered active registered voters and 1.2 million are considered inactive voters.^{5 6} New York has one of the most stringent set of requirements in the country to vote absentee, so much so that less than 5% of the electorate have voted absentee in each election cycle since 2014.⁷

Therefore, local boards of elections have not had a reason to develop the necessary infrastructure to support widespread absentee voting much less a vote-by-mail program. New York is, unfortunately, ill-prepared for a rapid transition to a true vote-by-mail program which would require time and millions of dollars.⁸

As the recent primary election debacle in Ohio showed, when the primary was suspended two and a half hours before the polls opened,⁹ 11th hour decisions can throw elections into chaos. **Fortunately, New York has the strategic advantage of time to adjust our upcoming elections.** Given the increased need to limit public interactions and practice social distancing, and building on our call to consolidate the primaries last week,¹⁰ as of

⁵ New York State Board of Elections, [2/21/2020 Voter Enrollment by County](#).

⁶ [New York State Board of Elections Codes, Rules & Regulations \(9 CRR-NY 6217.9- Voter Registration Status\)](#) defines an active registered voter as a voter who is “properly registered and is eligible to vote in elections”. An inactive registered voter is defined as “the voter is still eligible to vote in elections, but is not included in the poll book. NYSVoter shall allow a county election official to designate a voter as inactive, noting the reason for the designation, such as “election material mailed to registrant returned as undeliverable” or “moved with an out of county forwarding address”, “affidavit ballots”.”

⁷ U.S. Census, [Behind the 2018 U.S. Midterm Election Turnout](#), April 23rd, 2019.

⁸ See the cautions from Onondaga County Elections Commissioner Dustin Czarny, <https://twitter.com/DustinCzarny/status/1241743655670513664>.

⁹ The Columbus Dispatch, [Coronavirus: Ohio Supreme Court Allows Delay to Primary Election](#), March 16th, 2020.

¹⁰ [Common Cause New York Press Release March 16th, 2020](#).

today we advise:

- **The April 28th presidential primary, and all other elections scheduled for that date, should be consolidated to the June 23rd primary given the escalating spread of the virus around the State.** This will give local boards of elections much needed time to adjust their plans for early voting and election day.
- **A uniform and measured expansion of the requirements to vote absentee in lieu of a wholesale transition to vote-by-mail by extending the provisions of the Governor's Executive Order 202.2 through November 2020.**
- **Local boards of elections must immediately prepare to scale up for the expansion of absentee voting.**
- **Maintain accommodations for in-person early voting and election day voting.** For some voters, absentee voting is not feasible. This is particularly true for voters with disabilities who require the use of ballot marking devices¹¹ and those who need access to translation services. **Even '100% vote-by-mail states' like Washington State still have in-person voting as an option during early voting and on election day.**
- **Any in-person voting must be conducted in such a manner that voters, poll workers, and election administrators are kept safe and healthy by following the most recent CDC sanitary and mass gathering protocols.** We recognize there may come a point when in-person voting must be severely modified due to COVID-19.

Given the complexities of implementing a well-executed vote-by-mail program, Common Cause New York has serious concerns as to whether or not our elections infrastructure is able to accommodate a substantive policy shift in such a short time frame and without a massive infusion of financial resources.¹²

As such, the remainder of this memo is focused on the basic policy considerations for New York as we contemplate the rapid expansion of absentee voting. Whatever is accomplished

¹¹ [The New York State Board of Elections](#) makes ballot marking devices available for voters “who are blind, vision-impaired, or have a disability or condition that would make it difficult or impossible to mark a ballot. In addition, it provides language assistance to voters who are more comfortable speaking an alternative language or who have reading difficulties. The AutoMark ballot marking device is also equipped for Sip-N-Puff and paddle devices to assist voters with hand dexterity challenges.”

¹² See, e.g., footnote 6.

in the next few months will serve to lay the foundation for a broader expansion of absentee voting and the state's eventual adoption of no-excuse absentee voting.

A note on Common Cause/New York's current position on safe election administration for New York's 2020 elections

The foremost consideration for Common Cause/NY is developing a thoughtful and balanced set of recommendations that reflect our core democratic values in a time of uncertainty. We obviously must also consider any potential additional costs that local boards of elections are likely to incur as a result of any changes. In light of federal, state, and local revenue shortfalls, and the need to funnel money into the health and social service systems, we are sensitive to the fact that we are operating in a severely resource constrained environment. In addition, any modifications to our elections must reflect the following guiding principles:

- **Any changes to election administration must be made through an expansive equity lens so as not to disenfranchise any New York voter.** Any change must account for the impact on the elderly and immuno-compromised, the homeless, disabled voters, limited language proficiency voters, indigenous populations, people of color, and non-English speakers.
- **Decisions are made in advance, as much as possible, so as to give the public adequate notice and be accompanied by a robust voter outreach program to ensure New Yorkers are informed.**

Our current analysis must be contextualized in a nimble and responsive framework that evolves in lockstep with the current public health landscape. Therefore, we are preemptively issuing the caveat that we recognize our thinking may need to evolve in the upcoming weeks.

WHY NEW YORK IS ILL-PREPARED FOR A WHOLESALE TRANSITION TO VOTE-BY-MAIL OR AN AUTOMATIC ABSENTEE VOTING PROCESS

A successful vote-by-mail program is 100% dependent on the accuracy of the voter file. Common Cause/NY has little faith that the 58 BOEs have maintained their voter rolls to the extent that addresses on file are completely up-to-date and that voters are not improperly removed to inactive status.¹³ If New York did undergo such a transition, **there is no**

¹³ Common Cause/NY filed suit against both the NYC Board of Elections (2017) and the NY State Board of Elections (2018) regarding improper purges of voters from the voter rolls. Our concern regarding the accuracy of the voter rolls is based on evidence introduced at trial of the latter case, indicating the various ways in which the boards of election receive faulty information regarding voters' possible changed

question that hundreds of thousands of New York voters would never receive their ballots and be disenfranchised in the upcoming election cycle.

It is this concern which underlies our reluctance to support implementing a so-called automatic absentee voting process where every New Yorker would receive a ballot without requesting one - in effect, a de-facto vote-by-mail system. Additionally, the 1.2 million voters currently listed as inactive would be disenfranchised as they are generally removed from any such mailings.

While it is an additional step, the process of requesting an absentee ballot **requires voters to provide a mailing address where the ballot should be sent.** This would dramatically increase the likelihood of a voter receiving their requested ballot. This would also provide BOEs an opportunity to update their voter file with the correct address.

Unless there is a significant change to the elections operating environment that deals with this fundamental underlying issue our concerns remain unabated.

CONSIDERATIONS AS WE EXPAND ABSENTEE VOTING IN NEW YORK

A review of best practices in Washington, Colorado and California, states that have transitioned to vote-by-mail or greatly increased their capacity for absentee voting, can serve as guideposts for New York. Meeting increased voter demand for absentee voting will require local Boards of Elections to:

- **Ensure New Yorkers receive their ballots and can send them back.**
 - **Develop a more robust ballot tracking process:** Many states use barcodes on ballot envelopes to easily identify the voter and track the ballot processing status in real time. Voters can sign up to receive updates on the status of their ballots.
 - **Provide pre-paid postage for return envelopes:** California has implemented measures ensuring that ballots come with prepaid postage return envelopes.¹⁴

addresses. That case was tried in October, 2019, which resulted in a decision of the federal court ordering that all inactive voters' names must be included on lists maintained at every New York polling place.

¹⁴ California Secretary of State, 2/25/2019, ['No Stamp, No Problem' - All Vote-by-Mail Ballots Now Come with Prepaid Postage Return Envelopes](#)

- **Designate an abundance of secure drop box locations:** In Washington, Oregon and Colorado, voters routinely prefer to drop their ballots in a secure drop box rather than mail them.¹⁵
- **Make sure ballots are counted during the election.**
 - **Develop clear and uniform guidelines on what markings count as a vote:**¹⁶ Since ballots will no longer be checked and verified in real time by poll workers in a polling location, New York will need to develop guidance if voters mark their ballot differently than the standard instructions. This will also require increased training for workers.
 - **Develop clear and uniform policies on voter signature requirements:** States with vote-by-mail employ and adequately train signature verification judges to determine accuracy.¹⁷ If voters forget to sign the return envelopes or election administrators have concerns regarding the authenticity of the signature, they should be notified and given ample time to correct these issues.
 - **Modify procedures for ballot processing and counting:** Unfortunately, there will not be a reduced reliance on in-person support staff for election administration. Washington State relies on temporary hires to work in cramped quarters who are demographically similar to poll workers to count ballots. However, the need for temporary staff may provide employment opportunities for individuals who are unemployed due to the public health emergency.¹⁸
 - **Extend timelines to receive postmarked ballots:** Ballots postmarked on Election Day and received no later than 3 days after Election Day should be counted as is customary in California.¹⁹

¹⁵ U.S. Election Assistance Commission, 10/17/2017, [EAVs Deep Dive: Early, Absentee and Mail Voting](#). The 2016 Survey of the Performance of American Elections revealed that 73% of Colorado voters, 59% of Oregon voters and 65% of Washington voters dropped off their ballots rather than mailed them.

¹⁶ Washington Secretary of State, [Voter Intent- Statewide Standard on What Is a Vote](#), 2018.

¹⁷ Colorado Secretary of State, [Signature Verification Guide](#), 2018.

¹⁸ The patronage-driven requirements on BOE employees make utilizing unemployed individuals with requisite skills more challenging, but could be addressed by executive order or through aggressive recruiting by the political parties targeting those out of work.

¹⁹ California Secretary of State, [Vote by Mail](#).

- **Let New Yorkers know about their new options.** New Yorkers are already cautious when casting ballots due to New York's poor track record. In order to instill faith among the electorate, the state would have to conduct a robust education and outreach program for both voters and BOEs.
- **Prepare for additional costs.** While vote-by-mail can, over time, decrease overall election costs, under current circumstances, local Boards of Elections have to prepare for additional costs associated with printing, instituting new infrastructure, voter outreach and education, equipment maintenance, translation services, and staff training.²⁰
- **Provide clear guidance to postal services:** In states with efficient vote-by-mail systems, election administrators rely heavily on cooperation and competency of the postal service. Postal service management and workers would need to work closely with election administrators to optimize the vote-by-mail protocols, ensuring active voters are not mislabeled as inactive and all eligible voters are able to cast their ballots.

Achieving efficient, secure and accurate elections is challenging at any time, but especially under the current uncertain and difficult circumstances. But protecting our democracy during this crisis must take its important place in the priorities that are addressed, as all agree that the upcoming November election is among the most important our country has conducted. Common Cause/NY remains committed to helping our elected officials, election administrators and voters rise to the challenge of ensuring that our democracy continues to function effectively, as it did following the emergencies presented by 9/11 and Superstorm Sandy.

²⁰ National Conference of State Legislators, 3/18/2020, [All-Mail Elections \(aka Vote-By-Mail\)](#).