

Reforming New York's Local & State Boards of Elections



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COMMON CAUSE NEW YORK

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New York's poorly run elections are a perennial issue across the state. While some counties perform better than others, the general consensus is that state and local boards of elections are in dire need of reform. And while there is near universal recognition that New York's elections are broken, there is little consensus on what legislative, operational and policy interventions are precisely needed at the state or local level.

COVID-19 presented new challenges for most aspects of election administration. Counties were quickly forced to dramatically expand absentee voting, adapt elections to public health guidelines which impacted anything from poll site layout to enhanced cleaning protocols, and revise absentee ballot counting procedures to account for the surge in volume while protecting election workers. Opportunities to register new voters, which requires an in-person interaction, disappeared overnight and registration rates plummeted. Overall, boards of elections met the challenge and executed the presidential election, which saw a bump in turnout and the widespread utilization of early voting, under incredible duress.

Increased turnout combined with the pandemic stress tested New York's election administration and, as a result, has renewed calls for reform. Ultimately, these changes will need to be a mix of short and long term legislative and policy solutions that reflect the input of stakeholders from around the state including local and state election officials, elected officials, election experts and voters. Fortunately the new two year state legislative session, which began January 2021, will grant New York ample time to deliberate any needed constitutional amendments and, in the near term, any legislation that will begin the process of structural reform to our elections. Common Cause New York (CCNY) has been a longtime champion of reforming New York's elections and reducing the influence of politics in election administration. The reform process must be deliberative and transparent, and not the product of piecemeal legislation hastily cobbled together in response to headlines.

Effective systemic reformation of New York's election administration must address two core issues that hobble the efficiency and efficacy of local boards and the execution of our elections. **The longstanding dysfunction at the state and local level are a function of two distinct issues:**

- **A governance and operational structure that is firmly under the control of political parties and lacks accountability to voters and taxpayers.**
 - » At the state level, political parties are responsible for nominating the State Board's Commissioners.
 - » At the local level, political parties are responsible for nominating the County Commissioners. Many full time employees and seasonal hires are appointed positions firmly in control of the political parties.
 - » Employees of local and state boards of elections are not subject to the rules and regulations of New York's civil service administration.
- **Lack of adequate financial resources to administer elections**
 - » New York's elections are predominantly funded by county or city funding. Counties are eligible for formula-based federal funding when available, however New York State does not provide funds for election administration beyond funding the New York State Board of Elections.

- » This is particularly pronounced in counties outside of New York City.
- » As New York modernizes its election administration, including the adoption of early voting and automatic voter registration (AVR), additional funding will be required to successfully implement these reforms. This is particularly important in light of the fiscal crisis many counties face as local revenue sources have dwindled because of the pandemic.

The funding issue will not be the focus of this memo as the solution is relatively straightforward despite a leaner state budget. Therefore this memo includes a brief discussion of election administration in other states, a snapshot of the current election administration landscape in New York, and the broad contours on both the process and substance of how New York moves forward.

ELECTION ADMINISTRATION IN OTHER STATES¹

The United States has a highly decentralized election administration system. States are responsible for making a large range of critical and mundane policy, legislative and administrative decisions that affect how elections are conducted, while counties interpret these policies in the day-to-day conduct of elections. This includes but is not limited to election administration and governance, voter registration, ballot counting and election security.²

Because actual elections are typically administered at the county level,³ the governance structure is bifurcated between a state-level governing body and a county-level governing body. The state-level governing body interprets and executes major policy based on federal and state law, establishes rules and regulations, runs statewide election and voter registration systems, and certifies state election results. The county-level governing bodies almost exclusively focus on administering elections⁴ and in varying degrees, depending on state law, voter registration systems.

In practice there are two management models for election administration at the state and county level in the US. States either centralize power at the state and county level through a singular chief election official or operate with a more diffuse power structure at the state and county level through a board or commission structure with multiple individuals.

For explanatory purposes, specific models/examples are highlighted from other states. Due to the size of New York's electorate, among the five largest in the nation, we focused on highlighting specific states that are comparable to or larger than New York.

Chief election officials at the state and local levels

At the state level, election administration is more centralized and follows one of two models:

Single official is responsible for election administration

Nearly 70% of US states have consolidated their chief election official at the state level into a single position. Of those 34 states, 70% of their chief election officials are elected officials themselves.

- Usually embodied by a secretary of state (SOS), a lieutenant governor or election commissioner.

1 This section heavily relies on the [existing summary research from the National Conference of State Legislatures](#).

2 For further reading on the decentralized nature of US election administration, the US Election Assistance Commission provides a thorough summary in the most recent edition of its biannual [Election Administration and Voting Survey Report](#).

3 A handful of states in New England administer elections at the city or town level.

4 Examples of county-level election administration include maintaining election day voter rolls, ballot design and printing, selecting poll sites, poll worker training and staffing.

California: Elected Secretary of State

California has 25 million registered voters, by far the largest in the nation.⁵ California's Secretary of State is an elected position and is term limited to 2 four year terms. The Secretary of State manages a budget of \$252 million⁶ and oversees a 500+ person state agency with the following charge: manage state archives, election administration, Chief Election Officer, campaign finance and lobbying filings among other responsibilities.⁷

Texas: Appointed Secretary of State

Texas has nearly 17 million registered voters as of November 2020.⁸ Texas's Secretary of State is appointed by the Governor, confirmed by the State Senate and serves at the pleasure of the Governor. The Secretary of State manages a budget of \$70.7 million and oversees a 205 person state agency⁹ with the following charge: election administration, repository for business and public filings, liaison for border control issues with Mexico, and interacts with foreign dignitaries.¹⁰

Multiple individuals are responsible for election administration

This is achieved through a board or commission structure or through multiple entities like a secretary of state and a board or commission. Members of these boards or commissions are typically political appointments.

Illinois: State Board of Elections

Illinois, like New York, has a board structure that governs election administration at the state level. Illinois currently has 8.4 million registered voters as of December 2020.¹¹ The Board is composed of 8 members, all appointed by the Governor, half are from the Governor's political party and half are from the opposite political party. The Board is charged with election administration and campaign finance disclosure at the state level.

At the county level, election administration is more likely to be decentralized, the management structure is divided among multiple entities, and follows one of two models:

Single official is responsible for election administration.

- Nearly half of US states have consolidated their local election administration in this way. These are typically elected positions.

Florida: Miami-Dade County, Supervisor of Elections

Elections are administered at the county level and the Supervisor of Elections is appointed by the Mayor of Miami-Dade County.¹²

Multiple individuals or entities are responsible for election administration.

- This is done through a board or commission structure or election administration duties are housed in multiple government agencies like city or county clerk and an office for voter registration. Depending on the dual configuration it is usually a mix of elected and appointed leaders.

5 As of 10/19/2020. Data accessed through the [15 day voter registration report by county maintained by the state of California](#).

6 [Fiscal Year 2020-2021](#)

7 [California Secretary of State](#)

8 [Texas Secretary of State, November 2020](#)

9 [Texas Secretary of State Operating Budget for Fiscal Year 2020](#)

10 [Texas Secretary of State, Constitutional Duties](#)

11 [Illinois State Board of Elections](#)

12 Not to be conflated with the Mayor of Miami.

Texas: Harris County Election Officials¹³

Prior to county-level consolidation,¹⁴ the county clerk and the county tax assessor, both elected positions, were responsible for local election administration. The county clerk managed election administration and the county tax assessor managed voter registration. As of December 2020, election administration has been consolidated into a new office of election administration.

States with similar governance structures as New York

Since US states have wide latitude to design the bureaucracy of election administration, there are a number of permutations. While there is a clear preference to have a single titular figure running elections statewide, the management of election administration at the county level is more diffuse.

There are four other states that share characteristics with New York's election administration choices of a board or commission structure at the state and local levels: Maryland, North Carolina, Oklahoma and South Carolina.

State	State Nomination Process	Local Nomination Process
Maryland	Governor ¹⁵	Political parties subject to Governor's approval ¹⁶
New York	Political parties	Political parties
North Carolina	Political parties ¹⁷	Political parties nominate 3 of 5 ¹⁸
Oklahoma	Political parties ¹⁹	Political parties nominate 2 of 3 ²⁰
South Carolina	Governor ²¹	Local state legislators ²²

However, New York retains the dubious distinction as one of the few states that directly yokes its election administration to political parties. North Carolina and Oklahoma are the only other states that allow the political parties themselves to appoint state-level elections commissioners.

ELECTION ADMINISTRATION IN NEW YORK

There are two complimentary governing documents that dictate how local and state agencies administer New York's elections. The state's Constitution provides brief, broad guidelines on specific areas of voting in New York, while New York election law provides a detailed roadmap on election administration.

[Article II, Section 8 of the state constitution](#) contains the key provision that has led to the interpretation and practice of a mandatory bipartisan board of elections at the state and local level. Any amendment to New York's state constitution is a multi-year legislative process that ends in a statewide ballot referendum.²³ However, there

13 Harris County is home to Houston, Texas.

14 [Harris County Elections Administrator](#)

15 [Maryland State Board of Elections](#)

16 [Md. Election Law Code Ann. § 2-201](#)

17 [North Carolina State Board of Elections](#)

18 [North Carolina State Board of Elections](#)

19 [Oklahoma State Election Board](#)

20 [Tulsa County Election Board](#)

21 [South Carolina Election Commission](#)

22 [Charleston County Board of Elections](#)

23 Any changes to the state constitution must be approved as legislation by two consecutive legislative sessions and then sent to voters for approval via a statewide ballot referendum.

are many sections of state election law that deal with governance, operations and staffing that can be altered through legislation.

Governance & Operational Structure of the State Board of Elections

The State Board is governed by an even number of Commissioners evenly split between the two largest political parties. Commissioners who are appointed by political parties and approved by the governor. Staff at the State Board are a mix of political appointees and civil servants.

Governance & Operational Structure of Local Boards of Elections

The governing body of local boards of elections are the Commissioners of the boards of elections (BOEs). They are comprised of anywhere from two to ten bipartisan political appointees, evenly split between the two largest political parties. In New York City, the Commissioners serve in an advisory position and are not considered staff of the board. In counties outside New York City, Commissioners are salaried and supervise the day-to-day activities of their Board. Unfortunately, this process has yielded poor outcomes for New York voters. Because too few of the BOE heads have applicable and prior experience administering elections, the cornerstone of our democracy is left at the mercy of political appointees with varying degrees of interest and expertise in running elections that serve the interest of voters, not political parties.

Local Boards of Elections Staff

Because New York's boards of elections are tethered to political parties, their staffing and hiring processes reflect this peculiarity. BOE staff:

- **Are frequently appointed positions**
 - » BOE employees are not uniformly subject to the typical civil service hiring practices. BOE appointed positions include but are not limited to: election inspectors and poll clerks,²⁴ election coordinators,²⁵ voting machine technicians²⁶ and custodians,²⁷ and other employees.²⁸
- **Have maximum flexibility for their roles & responsibilities**
 - » Staff levels, duties, titles and salaries are under the sole purview of the BOEs and not the civil service commission.²⁹
- **Wasteful & inefficient staffing models due to a mandatory bipartisan counterpart for many positions.³⁰**
- **Political parties decide hiring for various positions.³¹**

Political parties are directly responsible for hiring election inspectors, poll clerks, election coordinators, and poll workers.

 - » In New York City, during the 2019 general election, 41% of poll workers were appointed by a political party.
 - 23% of Manhattan poll workers were appointed by a political party.
 - 62% of Bronx poll workers were appointed by a political party.
 - 54% of Brooklyn poll workers were appointed by a political party.
 - 36% of Queens poll workers were appointed by a political party.

24 [New York State Election Law Section 3-400](#)

25 [New York State Election Law Section 3-401](#)

26 [NYC's FY 2021 Adopted Budget indicates there are 178 full time voting machine technicians. This comprises 34% of the BOE's full time workforce.](#)

27 [New York State Election Law Section 3-302](#)

28 [New York State Election Law Section 3-300](#)

29 [New York State Election Law Section 3-300](#)

30 [New York State Election Law Section 3-300](#)

31 [New York State Election Law Section 3-400](#)

- 18% of Staten Island poll workers were appointed by a political party.
- **Court decisions have interpreted statutory provisions in ways that make the BOEs unaccountable and their actions practically unreviewable by county or other authorities.**³²

THE ROAD TO REFORM

There is no question that boards of elections are ripe for reform. The wholesale overhaul of a state and local government agency is no simple task and requires a methodical approach in both content and process.

Guiding principles on the *process* of reforming election administration

Free, fair and accurate elections are sacrosanct and the foundation of a healthy democracy. For too long, New York’s election law and administration has not reflected these very basic principles. Any reform effort must center these principles. Regardless of outcomes, it is vital that the reform process is transparent and inclusive:

- **Lawmakers should not go it alone.** A working group made up of election administrators, advocates and others with relevant expertise (for instance, those with experience in optimizing the physical design of space and systems to move large numbers of people through efficiently) should be convened to assist lawmakers in drafting proposed changes in the structure and details of election administration.
- **Sufficient opportunity for public comment and public hearings throughout the reform process, not just at the beginning or the end.** Hearings should be accessible and open to all interested parties. Opportunities to testify and to submit written testimony or comment should be open to every New York resident sixteen years and older.
- **New York has a number of tools at its disposal to achieve reform including rules changes, legislation and altering New York’s constitution.** More than likely, a combination of these will be required to modernize election administration.
- **Reflect an understanding that any substantive change affects the livelihoods of thousands of New Yorkers.** State and local boards employ thousands of New Yorkers in temporary, part-time and full-time work. Substantive alterations must be sensitive to this undeniable reality and be implemented on timelines that do not abruptly displace employees particularly in the middle of a global pandemic and economic recession.

A Note on Nonpartisan and Professionalized Election Administration

Calls for election reform are frequently coupled with dual calls for nonpartisan and professionalized elections administration. After an analysis of other states’ election administration, the goal of truly nonpartisan election administration, while lofty, is unrealistic.

At the state level, Secretaries of State are frequently either appointed by elected officials or are elected officials themselves. Similarly at the county level, city or county clerks are either appointed by elected officials or are elected officials themselves. The appointers of these election officials are elected officials³³ and therefore not fully removed from the political apparatus. In most states, political affiliation is required to be a poll worker, setting public expectations of some degree of political involvement.

It is far more realistic to frame any potential changes as reducing the influence political parties have in a branch of state and local government as is standard, and codified by law, in all other areas of state and local government. Due to state law, staff at local and state boards of elections are almost entirely excluded from the rules and regulations of the state and local civil service commissions.³⁴

32 *Matter of the County of Nassau v. State of New York*, 100 A.D.3d 1052(3rd Dept. 2012); *County of Erie v. CSEA Local 815*, 19 NY3d 1070 (2012)

33 Typically governors or the leaders of state legislatures.

34 [New York Civil Service Law, Article 3 Title A Section 35](#)

Considerations as New York grapples with the *substance* of reforming election administration

As previously outlined, election administration is a dual function of state and local government agencies. A few guiding principles should inform this work:

- **There are no sacred cows.** If New York is to meaningfully engage in this long overdue process, every aspect of election administration must be under consideration for reform.
- The future role of political parties in our election administration must be honestly and openly addressed.
- **There is no perfect solution.** As seen in other states, there are a series of tradeoffs to be made in each model. Key considerations should weigh the merits of:
 - » **Centralized or decentralized management at the state level**
Most states prefer a singular election official as the titular head of election administration. Frequently, these agency heads are elected officials themselves. There are significant advantages and disadvantages to this system which should be publicly examined and discussed.
 - » **Centralized or decentralized management at the city/county level**
Most states prefer a diffuse management structure at the local level as previously noted.
 - » **Elected or appointed figureheads of state and local election agencies**
Limited and mixed research does not clearly demonstrate elected policymakers are more effective than appointed policymakers or civil service election professionals.³⁵
- **The duplicative bipartisan staffing at every level of the state and local boards must be eliminated as this model is firmly rooted in an outmoded and discredited political patronage system and is costly.**
- **The complexity of today's election and election technology, to say nothing of the size of some New York jurisdictions, demand a fully professionalized staff.** Board of elections staff must, in large part, join the hundreds of thousands of New York government employees as classified employees³⁶ as an initial first step to professionalize the agency.
- **A multi-tiered and robust accountability and oversight structure must be built into whatever changes are ultimately adopted.**³⁷ The current system where the BOEs are completely unaccountable to local and state governments cannot be allowed to continue.
 - » As per state law, and a subsequent advisory ruling from New York's Committee on Open Government as far back as 1996,³⁸ all local boards of elections are subject to the requirements of the open meetings law. Most boards do not, and have not, comply with the most basic provisions of the open meetings law.
 - » Boards must publish an annual report that is available for public inspection and prominently displayed on their website which details and evaluates agency performance.³⁹ The New York City Board of Elections is an exemplar with their annual publication.⁴⁰

35 Research has focused on specific offices like city treasurer, judges, and school superintendents. Measures of effectiveness vary.

36 This change in designation from unclassified employee to classified employee would allow for the Department of Civil Service to standardize roles and responsibilities, establish salary grades, and is the umbrella category for exempt, non-competitive, labor and competitive class employees. Further details can be found in the New York Department of Civil Service's [Summary of New York State Civil Service Law](#).

37 Regardless of whether a new model is ultimately adopted or if the current system is retained in modified form.

38 State of New York, Department of State, [Committee on Open Government, Advisory Opinion](#).

39 Like the number of poll workers or working ballot scanners for a specific election.

40 New York City Board of Elections, [Annual Report 2020](#).

- » Fiscal controls must be imposed on local boards of elections like any local or state agency. County and city governments must have some form of approval process for large contracts and purchases. Agency spending must be transparent and clear, not hidden behind obtuse accounting codes that shield disclosure.

CONCLUSION

New York has a genuine opportunity to dismantle one of the most calcified state institutions and one of the last vestiges of the political party patronage mill. It is incumbent on the State Legislature to deliberately chart a path forward that is inclusive and transparent which results in a roadmap and timeline for meaningful and practical reform.