

2019 Election Law Update

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I. Overview

- a. 2019 was a significant year for election reform in New York State.
 - i. The Assembly and the Senate passed 37 substantive changes to the Election Law touching all aspects of how elections and campaigns are conducted in New York. Out of that number, 14 bills have been signed by the Governor so far.
- b. New York State adopted reforms that brought the state more in line with the rest of the country. For example:
 - i. New York is now one of 39 states that allows for in-person early voting.ⁱ
 - ii. New York took steps to amend its constitution to allow voters to vote absentee without an excuse. If the amendment is approved, the New York would join the 28 other states that permit no-excuse absentee voting.ⁱⁱ
- c. According to a Brennan Center study, many of the reforms enacted in New York State have been linked to higher registration rates, greater voter roll accuracy, and savings in public dollars.ⁱⁱⁱ
- d. These reforms are in part a response to New York's recent history of consistently low voter turnout.^{iv}
 - i. In the 2018 General Election, New York State ranked 10th from the bottom, with 45.2% of eligible voters turning out.^v
 - ii. In the 2016 Presidential Election, New York State ranked 13th from the bottom, with 56.8% of eligible voters casting a ballot for President.^{vi}
- e. This outline will discuss the most significant election reforms passed in both houses of the Legislature and signed by the Governor, and breakdown which reforms will be effective for the 2020 general election. It will also provide a preview of legislation that will likely be considered in 2020.

II. Reforms in place for the 2020 General Election or earlier.

- a. **Early Voting**
 - i. A.780/S.1102 - Ch. 6 of the laws of 2019 (effective for 2019 general election).

- ii. *Early voting period.* Provides for nine days of in-person early voting starting on the second Saturday before Election Day and ending on the Sunday before Election Day. The early voting period for the 2019 general election will be October 26 – November 3. N.Y. ELEC. L. § 8-600.
- iii. *Elections.* Applies to all general, primary, and special elections starting with the general election in 2019, except for village elections held pursuant to title 2 of art. 6 or art. 15 of the Election Law. *Id.*
- iv. *Early voting sites.* Each board of elections shall at a minimum designate one polling place for every fifty thousand registered voters in each county, provided that no county will be required to have more than seven polling places, and that the number of polling places may be reduced by the local board of elections for primary and special elections based upon need.

Examples of designations as of September 13, 2019:

- 1. New York City: 57 sites. 11 in The Bronx, 18 in Brooklyn, 7 in Manhattan, 14 in Queens, and 7 in Staten Island.
 - 2. Suffolk County: 10 sites.
 - 3. Erie County: 37 sites.
 - 4. Saratoga County: 3 sites.
- v. *County-wide voting.* The early voting law creates a presumption that all qualified voters in a county will be able to vote at any early voting poll site in said county. However, a board of elections may assign voters to different poll sites within a county if: (i) it is impractical to provide all election district ballots at each site or (ii) it would be difficult to prevent double voting. N.Y. ELEC. L. § 8-600.

b. **State/Local and Federal Primary Consolidation**

- i. A.779/S.1103 - Ch. 5 of the laws of 2019 (effective for 2019 primary election).
- ii. *Primary election date.* As of 2019, the legislation requires that all local, state, and federal primary elections (except for the presidential primary and primaries for village offices) be held on the fourth Tuesday in June.

- iii. *Relationship with federal law.* As recently as 2010, state/local and federal primaries in New York occurred on the same date in September. In 2012, a federal district court ordered New York to move its federal (non-presidential) primary to the fourth Tuesday in June because the state was in violation of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) as amended by the Military and Overseas Voter Empowerment Act (MOVE), which requires that absentee ballots for military and overseas voters be transmitted 45 days in advance of federal elections.^{vii}
 - iv. *Military and overseas ballots.* To further comply with federal law, the legislation increased the number of days prior to a primary or general election that a military ballot or overseas ballot must be transmitted to a voter from 32 days to 46 days in advance of such elections. ELEC. L. §§ 10-108(a); 11-204(4).
 - v. Other notable changes:
 - 1. *Vacancies.* The legislation extended the period before which an occurring vacancy in certain elective offices must be filled at a general election in the same year (if not previously filled by an election). This has the effect of potentially postponing more vacancy elections to the following year. PUB. OFF. L. §42(1).
 - 2. *Local Referenda.* The legislation moved up the deadline by which the board of elections must receive a local referendum proposal from the municipal clerk for it to appear on a general election ballot. ELEC. L. § 4-108(1)(b). Confusingly, related deadlines in other statutes, such as MUN. HOME RULE L. § 36 on city charter revision commissions, were not conformed to this change.
- c. **Statewide Registration Transfer**
- i. A.775/ S.1099 - Ch. 3 of the laws of 2019 (effective March 25, 2019).
 - ii. *Statewide transfers.* Allows for voter registration records to be transferred from one county or city to another and updated if a registered voter submits a notice of a change of address or for any voter who submits an

affidavit ballot with a new address. Prior to the legislation’s effective date, a voter would have to re-register to vote if he or she moved in or out of New York City or from one county to another outside of New York City.

- iii. *Effect on registration deadlines.* The legislation will make fewer voters subject to the deadline for new registrations.
 - 1. New registrations must be postmarked on or before the 25th day before the next ensuing primary, general or special election, and received no later than the 20th day before such election (e.g. Oct. 11 – Oct. 16 for the 2019 general). *See* N.Y. ELEC. L. § 5-210(3).
 - 2. Registration transfers must be received 20 days before the ensuing primary, general or special election (e.g. Oct. 16 for the 2019 general). *See* N.Y. ELEC. L. § 5-208(3), but affidavit ballots can be used at the election in the case of transfers within the state even if transfers were not received.

d. **Pre-Registration for 16 and 17 year-olds**

- i. A.774/ S.1100 - Ch. 2 of the laws of 2019 (effective January 1, 2020).
- ii. Allows eligible voters who are at least sixteen years of age to submit a voter registration application which will become automatically effective when the applicant turns eighteen years of age. Pre-registration records will be stored alongside other registration records in the central file and marked “pending.”
- iii. *Rationale.* In New York registration of persons 18 to 29 years of age has traditionally lagged registration for all other age groups.^{viii} Moreover, the state is in a better position to collect pre-registration data at sixteen and seventeen years of age because school attendance is mandatory and young people tend to first apply for their driver’s licenses at such ages.

e. **E-Poll Books**

- i. Part XX, Ch. 55 laws of 2019 (effective April 12, 2019).
- ii. Updates the Election Law to clarify that counties may use computer generated lists of eligible voters, also known as “e-poll books,” to verify

voter eligibility at poll sites rather than using printed paper lists. E-poll books are used in some jurisdictions in New York but have not explicitly been authorized by statute until now. *See* ELEC. L. § 1-104.

- iii. *Security*. State Board of Elections will promulgate minimum security standards for e-poll books and will approve any e-poll book technology before it can be used. *Id.*
- iv. *Relationship with early voting*. The State Board of Elections has indicated that e-poll books will be necessary to implement early voting and has approved a vendor to provide e-poll book technology.^{ix}

f. **Paid Voting Leave**

- i. Part YY, Ch. 55 of the laws of 2019 (effective April 12, 2019).
- ii. Requires all public and private employers in the state to permit their employees at the beginning or end of a work shift to take up to three hours of compensated time off from work as needed to vote at any election. Employees must notify their employers at least two days before the election prior to taking the time off.
- iii. Previously, the law would only permit an employee compensated time off to vote if the employee did not have “sufficient time” outside their working hours to vote. An employee was deemed to have sufficient time if he or she had four consecutive hours either between the opening of the polls and the start of the work shift or between the end of the work shift and the closing of the polls. Such a voter needed to notify the employer at least ten days in advance, and was only allotted up to two hours of leave.

g. **Uniform Polling Hours during Primary Elections**

- i. Part BBB, Ch. 55 of the laws of 2019 (effective January 2020).
- ii. Creates uniform polling hours for primary elections in the state. In such elections, polling places are to be open from 6:00am to 9:00pm.
- iii. Previously, only polling places for primary elections held in the city of New York and the counties of Nassau, Suffolk, Westchester, Rockland, Orange, Putnam, Dutchess and Erie were required to be open from 6:00am

to 9:00pm. All other counties were required to be open from 12:00pm to 9:00pm.

III. Awaiting Governor's signature

As of September 13, 2019, the following bills have passed both the Assembly and the Senate but have not yet been presented to the Governor for signature.

a. **Change of Enrollment Deadline**

- i. A.8228B/S.6532A (effective immediately upon signature).
- ii. This bill would allow an already registered voter change his or her party enrollment or newly enroll in a party up until February 14 in a calendar year. Any change of enrollment received after February 14 would be effective seven days after the Primary election that year.
- iii. Under current law, if a voter with an existing registration record wishes to change his or her party enrollment or newly enroll in a party to be eligible to vote in a primary election, he or she must submit a change of enrollment at least 25 days prior to the general election in the year prior to that primary. *See* ELEC. L. § 5-304(3).

b. **Voter Friendly Ballot Act**

- i. A.2682A/S.2300A (effective July 2020 if signed this year).
- ii. This makes several technical changes to ballot design, such as placing voting ovals to the left of a candidate's name, ensuring no more than three languages appear on a single ballot, streamlining ballot instructions, requiring multiple envelopes for absentee ballots returnable by mail, and minimum standards for font size, as well as removing unnecessary symbols and outdated terminology.

c. **Affidavit Ballot Canvassing**

- i. A.1320A/S.3045B (effective immediately upon signature).
- ii. This bill is intended to prevent a voter's affidavit ballot from being disqualified simply due to minor technical errors such as failing to indicate a previous voting address. Affidavit ballots cast by a person entitled to

vote are to be counted if the ballot “substantially complies” with the requirements in the Election Law.

IV. Effective after the 2020 General Election

a. **Online Voter Registration**

- i. Part CCC, Chapter 55 of the laws of 2019 - Voter Enfranchisement Modernization Act of 2019 (“VEMA”) (effective April 2021 or date of State Board certification of online platform).
- ii. *Online platform.* By April 2021, the State Board of Elections will create an online platform that will allow all eligible voters to complete a voter registration application online. Such applications are then electronically transmitted to the relevant local board of elections for processing and eligibility verification.
- iii. *Signatures.* The legislation permits applicants to sign the online application with an electronic or manual signature, or with a signature used with a DMV application. Signatures are used in New York State for voter identification purposes. *See* N.Y. CONST. ART. II, § 7; ELEC. L. § 8-304. VEMA expressly permits use of electronic signatures for voter registration purposes, but only in compliance with the State’s Electronic Signature and Records Act (ST. TECH. L. Art. 3) and State Board of Elections regulations.
- iv. *MyDMV.* Since 2012, the State has had an online registration platform for persons who have a driver’s license or non-driver ID through the Department of Motor Vehicles—known as MyDMV. The New York State Bar Association Special Committee on Voter Participation found that 64 percent of New York City residents lack DMV IDs.^x VEMA would allow these residents and other non-DMV customers to register to vote online.
- v. *Affidavit ballots.* Voters that cast affidavit ballots and submitted an application via the State Board’s online platform will have their ballots counted.

V. Pending Constitutional Amendments

These pieces of legislation are concurrent resolutions of the Senate and Assembly approved by both chambers this legislative session. The resolutions must be passed again in the 2020-21 session before they can go before the voters for approval.

a. **Authorizing Same-Day Voter Registration**

- i. A.777/S.1048 (2019-20). Eliminates the state constitutional requirement that voter registration be completed at least ten days prior to any election (N.Y. CONST. ART. II, § 5), authorizing the legislature to enact a statute for same-day voter registration.

b. **Authorizing No-Excuse Absentee Ballots**

- ii. A.778/S.1049 (2019-20). Under current law, a voter may only cast an absentee ballot if he or she expects to be absent from the county in which they live, or the City of New York, or because of illness for physical disability. This constitutional amendment would eliminate those preconditions on absentee voting, and allow the Legislature to enact a statute permitting voting by mail.

VI. Looking Ahead to the 2020 Legislative Session

a. **Automatic Voter Registration (AVR)**

- i. (A. 8280/S. 6457 (2019-20))
- ii. This bill would register or update registration information of eligible citizens who interact with government agencies unless they affirmatively decline. The bill would also direct the Board of Elections to implement a system where registration information is transferred electronically between government agencies and election officials.
- iii. The bill would implement automatic voter registration at the Department of Motor Vehicles, the Office of Children and Family Services, the Office of Temporary and Disability Assistance, and the Department of Health. Furthermore, the Board of Elections would be allowed to designate other government agencies as AVR agencies.

- iv. A Brennan Center study of states that have adopted AVR found that AVR markedly increases the number of voters being registered.^{xi}

b. **Voting Rights Restoration**

- i. (A.4987/S.1931 (2019-20)).
- ii. This bill would restore voting rights to people on parole. Under current law, persons convicted of a felony are denied the right to vote for the term of their incarceration and parole. The bill would also require courts to notify individuals about the loss of voting rights prior to accepting a guilty plea for a felony, and would require correctional facilities to register persons to vote upon release from incarceration.
- iii. *Governor Cuomo's Executive Order*. A.4987/S.1931 would codify a voting rights restoration process that began with an executive order from the Governor. On April 18, 2018 Governor Cuomo announced that he would use his executive authority to restore voting rights to New Yorkers under supervision by the New York State Department of Corrections and Community Supervision following release from a New York State prison.^{xii} In May 2018, the Governor announced that 24,000 New Yorkers have had their voting rights restored, and more would be restored on a rolling basis.^{xiii}
- iv. *Jim Crow in New York*. The history of criminal disenfranchisement in New York State is linked to a nearly two-centuries-old effort to deprive African Americans the right to vote.^{xiv}

VII. Campaign Finance

a. **The Public Campaign Financing and Election Commission**

- i. Part XXX, Ch. 59 of the laws of 2019.
- ii. The Legislature and the Governor, as part of the budget, created a commission tasked with recommending a new voluntary public financing system for statewide and state legislative offices.
- iii. *Jurisdiction*. The Commission may consider all aspects and components reasonably related to the administration of a public financing system

including the ratio of matching funds, contribution limits, eligible uses of matching funds, and candidate eligibility.

- iv. *Members.* The Commission has nine members: two appointed by the Governor; two appointed by the Senate Majority Leader; two appointed by the Assembly Speaker; one at large seat jointly selected by the Governor, the Assembly Speaker and the Majority Leader; and one appointee each for the two minority leaders.^{xv}
- v. *Final Recommendations.* The Commission is required to hold a public hearing on its findings and recommendations and to produce a public report by December 1, 2019. The Commission’s recommendations “shall have the force of law” unless they are modified or abrogated by statute enacted before December 22, 2019.
- vi. *The Fair Elections Act.* In crafting its final recommendations, the Commission may consider past public financing proposals introduced in the Assembly and the Senate. The Fair Elections Act (S.7593 (2017-18)), for example, would provide a \$6-to-\$1 match on each private contribution of up to \$250, and is similar to the match rate seen in New York City’s public financing program.
- vii. *Pending Legal challenges.* In July, the Working Families Party^{xvi} and the Conservative Party,^{xvii} alongside voters and candidates, brought suits against the Commission. Both suits were filed in Niagara County Supreme Court and both seek a declaratory judgment finding the Commission’s enabling statute unconstitutional to the extent it empowers the Commission to interfere with plaintiffs’ state constitutional right to “fusion voting.” Plaintiffs also assert that the statute unconstitutionally delegates legislative authority to the Commission.
 1. *Right to Fusion Voting.*
 - a. The Commission is empowered to make recommendations concerning “multiple party candidate nominations and/or designations” i.e. “fusion voting.”

b. It is unclear if the Commission or the Legislature may end fusion voting by statute, in light of past skepticism by the Court of Appeals of statutory limitations in this area. *See Devane v. Touhey*, 33 N.Y.2d 48, 53 (1973); *see also In re Callahan*, 200 N.Y. 59, 63 (1910).

2. *Delegating Legislative Authority.*

- a. If the Legislature takes no action after December 1, the Commission’s recommendations will have “the force of law, and shall supersede . . . inconsistent provisions of the election law.”
- b. It is reasonable to anticipate a possible broader challenge to the delegation of legislative authority that has been made to the Commission.
- c. Other Commissions with arguably similar delegations of authority have been challenged, such as the “Commission on Prosecutorial Conduct” (Ch. 202 of the laws of 2018 and Chapter 23 of the Laws of 2019)^{xviii} or the “Committee on Legislative and Executive Compensation” (Part HHH of Ch. 59 of the laws of 2018).^{xix} Litigation concerning both of these commissions is pending.

b. **Closing the “LLC Loophole”**

- i. Ch. 4 of the laws of 2019 (effective January 31, 2019).
- ii. This legislation makes political contributions made by Limited Liability Companies (LLCs) or other corporate entities subject to the aggregate contribution limits for corporations. Such entities will only be able to donate up to \$5,000 in the aggregate in any calendar year. ELEC. L. § 14-116.
 1. Prior to this enactment, LLCs were instead treated as individuals under the Election Law and allowed to donate up to \$65,100 to every statewide candidate per election cycle.

- iii. LLCs that make political contributions will have to report all direct and indirect owners and the proportion of each owner's interest in the LLC. The LLC's contribution will then be attributed to such owners in proportion to the member's ownership interest.

VIII. New York City 2019 Charter Revision Commission

- a. 2019 New York City Charter Revision Commission was created by Local Law 91 of 2018, and is the first charter revision commission in New York City's history that was not either entirely appointed by the Mayor or appointed under special state legislation.
- b. The Commission consists of 15 members appointed by nine separately elected officials: four members were appointed by the Mayor, four by the Speaker of the Council, and one apiece by the Public Advocate, the Comptroller, and each Borough President.
- c. The Commission conducted multiple hearings in all five boroughs and took public comment for over a year before voting to approve its proposed revisions to the City Charter on July 24, 2019.^{xx}
- d. Every eligible New York City voter will be able to vote on the proposals on November 5, 2019. The revisions are enacted into law with a simple majority of the votes cast on Election Day.
- e. Elections Proposals -- Ballot Question 1:
 - i. **Ranked Choice Voting**: The Charter Revision Commission proposed instituting ranked choice voting, also known as instant runoff voting, for all primary and special elections for Mayor, Public Advocate, Comptroller, Borough President, and City Council Member. General elections would remain unchanged and use the traditional plurality method of "first past the post."
 - 1. *How it works*. Voters would be able to rank in order of preference up to five candidates, including a write-in candidate. If no candidate receives a majority of first-choice votes, the candidate with the least number of first choice votes would

be eliminated and the voters who chose that candidate would have their votes transferred to their selected second-choice candidate. This process would repeat until two candidates remain, and the candidate with the most votes at that point would win the election.

2. *Home Rule*

a. Article IX of the State Constitution and section 10 of the Municipal Home Rule Law authorize the City to adopt local laws relating to its government and the mode of selection of its officers, provided that these laws are consistent with the State Constitution and general State laws.

b. The Court of Appeals, in *Bareham v. City of Rochester*, 246 N.Y. 140 (1927), interpreted the power to adopt local laws related to the mode of selection of officers as meaning that “a municipality may define the precise method by which either an election or appointment shall be effected.” Although that decision invalidated the relevant local law concerning nonpartisan elections for its failure to specify its relationship to state law, it also preserved considerable flexibility for municipalities in experimenting with local democracy.

ii. **City Council Redistricting**: The Charter Revision Commission proposed changes to the City’s redistricting process in order to compensate for changes in the election calendar caused by the consolidation of the state/local and federal primaries.

1. *Background*. New York City Council redistricting is carried out by a Districting Commission appointed by the Mayor and the City Council. The redistricting process following the 2020 Census will begin in 2022 after a new City Council and Mayor assume office. *See* N.Y.C. Charter § 50.

2. *Proposal.* The proposed new redistricting timeline is more accelerated so that the redistricting process can conclude three months before the start of petition gathering for the June 2023 primary ballot. Newly elected officials will need to appoint commissioners to the City’s Districting Commission in the first few months after taking office.
- iii. **City Special Elections**: The Charter Revision Commission proposed changes to the City’s special election calendar (N.Y.C. Charter §§ 10, 24, 25, 81, 95), to ensure there is enough time for the Board of Elections to transmit military and overseas ballots to voters.

ENDNOTES

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- ⁱⁱ *Id.*
- ⁱⁱⁱ *Voter Registration in a Digital Age: 2015 Update*, BRENNAN CTR. FOR JUSTICE (Oct. 27, 2015), <https://www.brennancenter.org/publication/voter-registration-digital-age-2015-update>.
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- ^{vi} *2016 November General Election Turnout Rates*, U.S. ELECTIONS PROJECT, <http://www.electproject.org/2016g> (last visited Sept. 12, 2019).
- ^{vii} *Fact Sheet: MOVE Act*, U.S. DEP'T OF JUSTICE (Oct. 27, 2010), <https://www.justice.gov/opa/pr/fact-sheet-move-act>.
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- ^{ix} *NY elections board Oks three e-poll book vendors to help counties with early voting*, AUBURNPUB.COM (June 7, 2019), https://auburnpub.com/blogs/eye_on_ny/ny-elections-board-oks-three-e-poll-book-vendors-to/article_05d98742-aca2-5d2b-9571-32b92f0c5cbb.html; see also *E-poll books on their way to Erie County for early voting*, 2WGRZ (Aug. 30, 2019), <https://www.wgrz.com/article/news/e-poll-books-on-their-way-to-erie-county-for-early-voting/71-1c39a0eb-9269-4a43-933a-09e18c8bdc3f>.
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- ^{xi} *AVR Impact on State Voter Registration*, BRENNAN CTR. FOR JUSTICE (April 11, 2019), <https://www.brennancenter.org/publication/avr-impact-state-voter-registration>.

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- ^{xii} Exec. Order No. 181, Office of the Governor (April 18, 2018),
<https://www.governor.ny.gov/news/no-181-restoring-right-vote-new-yorkers-parole>.
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<https://www.governor.ny.gov/news/governor-cuomo-issues-first-group-conditional-pardons-restoring-right-vote-new-yorkers-parole>.
- ^{xiv} Jim Crow in New York, BRENNAN CTR. FOR JUSTICE (Feb. 12, 2010),
https://www.brennancenter.org/sites/default/files/legacy/publications/JIMCROW_NY_2010.pdf
- ^{xv} Press Release, State of N.Y., Governor Cuomo & Legislative Leaders Announce Members of the Public Campaign Financing Commission (July 3, 2019),
<https://www.governor.ny.gov/news/governor-cuomo-legislative-leaders-announce-members-public-campaign-financing-commission>.
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