



**New York State Board of Elections  
Annual Report  
2018**



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Peter S. Kosinski  
Co-Chair

Gregory P. Peterson  
Commissioner

Todd D. Valentine  
Co-Executive Director



State of New York  
**STATE BOARD OF ELECTIONS**

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Douglas A. Kellner  
Co-Chair

Andrew J. Spano  
Commissioner

Robert A. Brehm  
Co-Executive Director

To: The Honorable Andrew M. Cuomo, Governor  
Members of the New York State Legislature

We are pleased to submit to you the New York State Board of Elections' 2018 Annual Report. This report provides a comprehensive review of Board programs and accomplishments during the calendar year 2018.

The Board's mission consists of the oversight of each county board of elections and the Board of Elections in the City of New York, as well as statewide compliance with the Help America Vote Act, the National Voter Registration Act, the Uniformed and Overseas Citizens Absentee Voting Act and the Military & Overseas Voter Empowerment Act. The Board, among other things, administers several critical programs, including the statewide voter registration list (NYSVoter), all agency-based registration, the voting system certification program and campaign finance disclosure filings for state-level and local candidates. In addition to ensuring fair and broad ballot access for hundreds of candidates from throughout the State, the Board is committed to the active oversight and compliance with campaign financial disclosure filing requirements.

In 2018 we saw 11 special elections take place on April 24<sup>th</sup> to fill vacancies in nine Assembly seats and two Senate seats. For the June 26<sup>th</sup> Congressional primaries there were 20 contests in 15 districts. For the State and Local Primary on September 13<sup>th</sup>, there were a record-breaking number of primaries statewide, including three for statewide office: Governor, Lt. Governor and Attorney General. In the General Election on November 6<sup>th</sup>, 295 federal and state offices were on the ballot. Despite some bad weather and a few hiccups in New York City, there was a significant uptick in turnout for a mid-term General Election seeing an approximate 10% increase over the 2014 mid-term.

The issue of election cyber security continued to be a concern for all levels of government in 2018. The Board continued to do everything in its power to ensure the accuracy and integrity of New York State's elections. We conducted six first-of-its-kind tabletop exercises for all county boards of elections and county Information Technology staff in coordination with the federal Department of Homeland Security and other state, local and federal partners.

The New York State Board of Elections has worked diligently in the past year and we remain steadfast in our commitment to providing open, accessible and accurate elections.

Respectfully submitted,

Douglas A. Kellner  
Co-Chair, Commissioner

Andrew J. Spano  
Commissioner

Peter S. Kosinski  
Co-Chair, Commissioner

Gregory P. Peterson  
Commissioner



2017 Members of the State Board. L to R, Co-Executive Director Robert A. Brehm, Commissioner Andrew J. Spano, Commissioner and Co-Chair Douglas A. Kellner, Commissioner and Co-Chair Peter S. Kosinski, Commissioner Gregory P. Peterson, Co-Executive Director Todd D. Valentine.

## Mission Statement

The New York State Board of Elections (NYSBOE) was established in the Executive Department, June 1, 1974 as a bipartisan agency vested with the responsibility for administration and enforcement of all laws relating to elections in New York State. The Board is also responsible for regulating campaign finance disclosures and limitations and a Fair Campaign Code intended to govern campaign practices. In conducting these wide-ranging responsibilities, the Board offers assistance to local election boards and investigates complaints of possible statutory violations. In addition to the regulatory and enforcement responsibilities, the Board is charged with the preservation of citizen confidence in the democratic process and enhancing voter participation in elections.



## PERSONNEL DIRECTORY

### Commissioners

**Douglas A. Kellner**  
*Co-Chair*

**Peter S. Kosinski**  
*Co-Chair*

**Andrew J. Spano**  
*Commissioner*

**Gregory P. Peterson**  
*Commissioner*

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**Robert A. Brehm**  
*Co-Executive Director*

**Donna Mullahey**  
*Secretary*

**Todd D. Valentine**  
*Co-Executive Director*

**Maryellen Reda**  
*Secretary*

### Office of the Counsel

Kimberly A. Galvin, *Co-Counsel*  
Brian Quail, *Co-Counsel*

### Election Operations & Services

Thomas E. Connolly, *Dir. of Election Operations*  
Brendan Lovullo, *Dep. Dir. of Election Operations*

### Public Information

John W. Conklin, *Dir. of Public Information*  
Cheryl Couser, *Dep. Dir. of Pub Information*

### Information Technology

William Cross, *Chief Information Officer*  
William Ryan, *Information Security Officer*

### Administrative Office

Thomas Jarose, *Administrative Officer*  
Jennifer Blanch, *Administrative Assistant*

### Compliance

Marie Woodward, *Compliance Specialist*  
Robert Eckels, *Compliance Specialist*

### Agency-Based Voter Registration

Michael Moschetti, *Coordinator, NVRA Operations*  
Patrick Campion, *Coordinator of Special Projects*

### Division of Election Law Enforcement

Risa S. Sugarman, *Chief Enforcement Counsel*

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Co-Counsels Kim Galvin and Brian Quail argue a presidential ballot access case in Supreme Court.

## **COUNSELS' OFFICE**

The four attorneys in this unit are responsible for handling all legal matters impacting the State Board, including litigation in state and federal courts by or against the State Board of Elections. The unit also drafts regulations, formal and advisory opinions and an annual Election Law Update on developments in election case law and statutes. The attorneys work with all other State Board units to prepare the State Board's legislative agenda and draft legislation for the commissioners to present to the legislature. The Counsels' Office provides oversight and guidance on contracts, compiles responses to subpoenas and certain Freedom of Information Law requests and prepares and presents continuing legal education courses on campaign finance laws throughout the state. The Counsels' Office also responds to a large volume of legal questions from county boards, candidates, constituents, committees and the State Board's Public Information Office regarding all aspects of the Election Law.



Deputy Counsel William McCann argues a case in N.Y. Supreme Court

## Litigation

***Upstate Jobs Party vs. State Board of Elections (NDNY)***: In this action, Plaintiffs seek to enjoin the New York State Board of Elections from enforcing certain campaign finance laws that restrict campaign contributions to and from “Independent Bodies” in ways that do not apply to political “Parties.” Specifically, Plaintiffs challenge: (1) N.Y. Elec. Law § 14-114(1) and 9 N.Y.C.R.R. § 6214.0, which prohibit individual contributions to Independent Bodies greater than \$44,000 as well as Plaintiff’s contributions to its own gubernatorial candidate greater than \$44,000, but which allow individual contributions to Parties up to \$109,600 and Party contributions to their own candidates in unlimited amounts; and (2) N.Y. Elec. Law § 14-124(3), which permits Parties, but not Independent Bodies, to establish “Housekeeping Accounts” for which Parties may raise funds in any amount for “ordinary activities . . . not for the express purpose of promoting the candidacy of specific candidates.” Both the District Court and the Second Circuit Court of Appeals denied a preliminary



injunction because Plaintiff failed to show that, absent an injunction, it will suffer irreparable harm. The case is currently in the discovery phase.

***League of Women Voters v. State Board of Elections (NY Supreme Court)***: Plaintiffs challenge the constitutionality of provisions of the Election Law that require a voter to register to vote at least 25 days before the election in which he or she seeks to vote. Plaintiffs allege that this registration deadline is unnecessarily arbitrary and infringes on their right to vote and right to equal protection in violation of the New York State Constitution. The State Board has moved to dismiss this action. The Court has yet to rule on the motion.

***DeRosier v. Czarny (NDNY)***: Plaintiff challenges portions of the Election Law that exclude electioneering activity in or around the polling place during an election. N.Y. Elec. Law §§8-104(1), 17-130(4) & (23). Specifically, Plaintiff claims that New York State's statutory prohibition on political banners, buttons, posters or placards inside or within 100 radial feet of a polling place constitutes an unconstitutional infringement of the First Amendment. The State Board has moved for summary judgment. The Court has yet to decide.

***Brennan Center for Justice v. New York State Board of Elections (Third Department)***: In this matter, Petitioners, comprised of both a not-for-profit, non-partisan public policy and law institute and several former, current and potential candidates who are New York residents representing multiple party lines, commenced a hybrid CPLR Article 78 proceeding/declaratory judgment action to challenge the Commissioners decision regarding the status of LLC's with regard to contribution limits. The trial court upheld the Board's retention of the 1996 LLC opinion, owing to a tie vote, on various grounds. Petitioners simultaneously appealed this decision along with a prior decision from a similar LLC action decided in 2015. The Third Department upheld the trial courts holding that the Petitioners lack standing, and the matter is a nonjusticiable political question. The Court of Appeals declined to hear further appeal.

***Common Cause/New York v. New York State Board of Elections(SDNY)***: Plaintiff, Common Cause of New York, allege that New York's procedure of not including "inactive" voters in poll books constitutes an unlawful removal in violation of section 8 of the National Voter Registration Act ("NVRA"). Specifically, Common Cause alleges New York's practice of not printing the names of "inactive" voters in poll books, in combination with alleged deficiencies in the voting process, constitutes and unlawful "de facto" removal of the "inactive" voter from the official voter registry in violation of section 8 of the NVRA. The State Board of Elections won partial Summary Judgment on the "de facto" claims in 2018. This matter is currently in discovery.

**Eason v. New York State Board of Elections (SDNY):** While this matter began in 2017 the case was very active through the entirety of 2018. This action claims the websites for NYSBOE, and DMV are in violation of Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. After extensive negotiations the parties ultimately reached a settlement in the matter. The settlement was finalized and so-ordered on February 15, 2019. Implementation of the agreement will be ongoing throughout 2019.

**Merced v. New York State Board of Elections (EDNY).** This action began in 2017 and was active throughout the entirety of 2018. This case challenges section 6-140(10)(b) of the Election Law which requires witnesses of Independent Nominating Petitions to be duly qualified voters in New York. On, 5/18/18 Motion for summary judgement was granted for plaintiff. the parties filed dueling proposed declaratory judgement papers with the Magistrate. In June the Court agreed to delay the effective date of the judgement until November 7, 2018. The matter is on appeal to the Second Circuit.

**Moody v. New York State Board of Elections (NY Supreme Court):** Plaintiff alleged New York's requirement that voters change their party affiliation at least twenty-five days prior to the preceding general election violates New York's Constitution. The trial court order in favor of the New York State Board of Elections was appealed, and on October 11, 2018 the Appellate Division held Election Law § 5-304 (3) did not violate either Article I § 1 nor Article II § 1 of the New York State Constitution.



Deputy Counsel Nick Cartagena makes a presentation at the 2017 ECA Summer Conference.

## HAVA Administrative Complaints

Section 402 of Help America Vote Act of 2002 ("HAVA") requires the State to create a state-based administrative complaint procedure for voters to lodge complaints concerning the voting process. Specifically, HAVA provides that any state receiving HAVA funds shall establish a procedure where "... any person who believes that there is a violation of any provision of title III (including a violation which has occurred, is occurring, or is about to occur) may file a complaint." Section 3-105 of the New York State Election Law outlines the Complaint procedure. A formal complaint shall be in writing, signed and notarized; the evidentiary standard shall be a preponderance of the evidence; the final determination shall be published; and appropriate action shall be taken by the state Board of Elections as necessary. Additionally, 9 NYCRR § 6216.2 further outlines the administrative complaint process.

In 2018, the State Board issued two HAVA determinations:

1. In *Waters v. Rensselaer County Board of Elections*, the Complainant alleged that the poll workers at her poll site were unfamiliar with the Ballot Marking Device ("BMD"), were unable to get the BMD to work, that the BMD was not positioned correctly, and that the BMD lacked privacy. The determination concluded that a violation of Title III of HAVA occurred, and directed the County Board to submit a report to the State Board detailing improvements to inspector training for future elections where: a) the "improvements" to inspector training include lessons learned from the issues raised by the Complaint; b) the "improvements" include requiring at least two inspectors per poll site, with each inspector being a designee of a different political party, practice setting up and operating voting equipment during trainings; and c) the "improvements" include reinforcing that inspectors call the Board of Elections immediately if voting equipment malfunctions.
2. In *Jackson v. Erie County Board of Elections*, the Complainant alleged that the BMD did not print out their ballot; that it would have taken an hour to fix the BMD; and that, as a result, an inspector assisted the voter in filling out a ballot, which violated the voter's privacy. The determination concluded that a violation of Title III of HAVA occurred and directed the County Board to investigate why the voter was told it would take an hour to fix the BMD. Additionally, the determination directed the County Board to submit a report detailing: a) the results of its investigation; b) any action the board plans on taking as a result of its investigation; c) improvements to inspector training for future elections. Further, the determination directed the County Board to submit a plan in its report related to ES&S's "Pre-Election Procedures for the Election Official," where the plan indicates how the County Board intends to comply with such procedures, including procedures related to replacing ink cartridges for the Auto Mark BMD and the training of technicians and appropriate staff for such purposes.

## Regulations

The unit drafted, and the Board adopted, amended regulations:

1. Amendments to Part 6219 (Special Federal Voters). The principle purpose of this amendment is to implement Article 11 Title 2 of the Election Law in a manner that comports with operative state and federal law, in particular providing to certain special federal voters the state and local portion of the ballot when such voters are duly entitled to same as a matter of state law.
2. Amendments to Part 6215 (Campaign Websites). This amendment establishing a process for the state board to publish the campaign website addresses of certain candidates on its website, as required by Chapter 307 of the Laws of 2017.
3. Amendments to Part 6203 (Subpoena Authority of the State Board of Elections). The New York State Election Law authorizes the State Board of Elections to issue subpoenas to compel the production of documents and to compel testimony. The Commissioners may vote to confer this authority upon the chief enforcement counsel. The amendments provide a standardized process of granting such authority. Further, the amendments provide certain due process procedures that mirror those found in federal regulations for Federal Election Commission enforcement matters. Lastly, the amendments require the chief enforcement counsel to report certain statistics related to the Enforcement Division's work quarterly and explicitly requires the chief enforcement counsel to comply with the Internal Controls Act, article 45 of the Executive Law.
4. Amendments to Part 6200 (Democracy Protection Act). These amendments implement the Democracy Protection Act. Specifically, the amendments increase transparency by requiring internet and digital political advertisements in the form of independent expenditures on online platforms to comply with certain disclosure requirements. The amendments also aim to prevent foreign influence in State and Local elections by prohibiting foreign entities from purchasing political advertisements. Further, the amendments require Independent Expenditure committees to disclose internet and digital political advertisements to the State Board in certain formats so the Board can create and maintain a database of internet and digital political advertisements on its website.

## Board Opinions

The Office of Counsel is responsible for preparing responses to requests for opinions from the New York State Board of Elections (NYSBOE). These opinions serve to further clarify certain sections of the Election Law. The Board issued four opinions for 2018.

Formal Opinion No. 1 of 2018 stated that Campaign expenditures for campaign materials that are otherwise required to be disclosed do not become exempt when an organization uses its membership as a conduit for distributing such materials to the broader public. In such a case, the exception found in the definition of “general public audience” in Election Law §14-100(13) would not apply.

Formal Opinion No. 2 of 2018 stated that that federal candidate committees filing with the FEC that make contributions to state or local committees in any amount, are not, on that basis alone, subject any registration and/or filing requirements under New York State Election law.

Advisory Opinion No. 1 of 2018 was redesignated Formal Opinion No. 2 of 2018.

Advisory Opinion No. 2 of 2018 opined that with certain conditions a political committee may disburse its remaining funds to a “Charitable Giving Fund” which is a separate legal entity from the political committee and organized as a charity, recognized as such under section 501(c)(3) of the Internal Revenue Code (IRC) and the Charities Bureau of the Office of the New York State Attorney General.

Advisory Opinion No. 3 of 2018 stated that campaign funds may be used to pay childcare expenses if the expenses are incurred as a direct result of the guardian’s participation in a campaign activity. To the extent they are appropriate they are only permissible at a fair market value rate at that time the expense is incurred.

## **Legislative Activities**

Counsel’s Office, in consultation with the executive staff, regularly monitors all legislative action which could impact the Board and the election process in New York. Such activities include attending legislative committee meetings, responding to inquiries regarding legislation, and responding to requests for comments on legislation. In addition, Counsel’s Office is responsible for drafting all legislative proposals of the Board. In addition to any New York State legislative initiatives, the office has worked extensively with other members of the staff in reviewing any federal legislative proposals that may influence elections in New York.

The following is a brief summary of legislation proposed by the Board enacted or passed by at least one house of the legislature in 2018:



Executive Staff testified before New York State Assembly Standing Committee on Election Law, November 18, 2016.

Thirteen proposals passed one house:

1. Passed Assembly. A.7043 (SBOE 18-03) -- Amends the Election Law to remove provisions related to LIPA trustees, as those positions are no longer elected.
2. Passed Assembly. A.6732-A (SBOE 18-06) – Relieves boards of elections from receiving campaign finance filings for certain local committees.
3. Passed Assembly. A.5576 (SBOE 18-07) – Authorizing Election District increase to two thousand voters and permits parties to apportion committee persons in any manner.
4. Passed Assembly A.7518 (SBOE 18-08) Eliminates duplicate electronic filings when filing requirements at a campaign finance board may be deemed to meet the state reporting requirements.
5. Passed Assembly. A. 5381-A (SBOE 18-10) – Provides when an office is on the ballot to fill both a vacancy for the remainder of the current year and a new term, the office will appear only once upon the ballot.
6. Passed Assembly. A. 7404 (SBOE 18-011) – Provides that new parties must file certificate setting out the name of the party no later than the last day of February after the election at which the party obtains ballot status.

7. Passed Assembly. A.7383 (SBOE 18-12) – Permits boards of elections to adopt alternative poll site staffing plans to more efficiently administer elections.
8. Passed Assembly. A.10538 (SBOE 18-15) – Provides that boards of elections whenever possible shall make voting equipment available to municipalities conducting elections and empowers the boards to charge actual expenses against such municipalities.
9. Passed Assembly. A.9984 (18-20) – Clarifies that a committee to receive notices named in an opportunity to ballot petition has capacity to seek judicial relief in the same manner as a candidate named by a designating petition.
10. Passed Assembly. A.9921-A (18-21) – Clarifies that a court may receive testimony from a voter to authenticate the voter's signature.
11. Passed Assembly. A.9922 (18-23) – Requires boards of elections to publish contribution limits applicable in the county on the website of the board of elections.
12. Passed Assembly. A.9923 (18-27) – Ensures clear instruction to voters when the ballot is two-sided that the ballot is two-sided.
13. Passed Assembly. A.79 (18-29) – Permits special ballots to be delivered to election workers no earlier than when absentee ballots are made available to the public.





Board of Commissioners meeting

## COMPLIANCE UNIT

The Compliance Unit falls under the supervision of the Counsels’ Office. This unit is comprised of three sub-units: Intake and Processing, Education Outreach and Training, and Audit & Review. These sub-units are managed on a day-to-day basis by two Compliance Specialists.

The CFU/Intake and Processing sub-unit is primarily responsible for registrations and terminations of committees, receiving and processing campaign financial disclosure reports, and for operating the call center, where inquiries about the Election Law and filing mandates are handled. At the end of 2018, there were 16,548 active filers with the Board. A total of 32,854 itemized financial disclosure statements were received by the Board in 2018. All filings are available for public viewing on the Board’s website.

The number of active filers with the Board continues to increase, as is indicated below:

	2010	2011	2012	2013	2014	2015	2016	2017	2018
State Filers	2,549	2,212	2,695	2,244	2,365	3,017	2,996	2,860	2,975
County Filers	8,458	10,198	9,990	11,817	13,534	13,270	13,347	13,602	13,573
<b>TOTAL</b>	<b>11,007</b>	<b>12,319</b>	<b>12,595</b>	<b>14,061</b>	<b>15,899</b>	<b>16,287</b>	<b>16,343</b>	<b>16,462</b>	<b>16,548</b>



Filers include both committees and candidates without a committee who are making their own filings. In 2018, 2,127 new committees registered with the Board. With each new registration, the Compliance Unit sent a confirmation to the treasurer, providing the committee identification number - a personal identification number that acts as an electronic signature when making filings - and other information relating to filing requirements and obligations. There were 1,794 committee/candidate terminations processed in 2018.

Other duties of this sub-unit which they accomplished in 2018 include:

- Creation and publication of the campaign financial disclosure filing calendar.
- Calculation of the contribution limits as set forth in Election Law Article 14.
- Providing the public, as well as all filers with the State Board or County Boards of Elections, information regarding campaign finance
- Staff also assisted people who visited our public view area.



The Education Outreach and Training sub-unit is staffed by three employees. The primary activities of the sub-unit are the preparation and dissemination of information and training materials relative to the financial disclosure mandates of Article 14 of New York Election Law. During 2018, the sub-unit went through a significant transition as two trainers who have been with the sub-unit since its creation retired mid-year and two Compliance Unit staff members were promoted to fill their

positions.

Overall in 2018, staff conducted 17 seminars and 9 webinars throughout the State to provide information as to the requirements of campaign financial disclosure and applicable Election Law provisions. Current training topics include e: the traditional campaign finance seminars focused on registration, Compliance-specialized trainings, Continuing Legal Education (CLE) credits for attorneys, Continuing Professional Educational (CPE) credits for accountants, and “Winding Down the Campaign” training for post-election filers requesting resignation or termination. A total of 413 people attended our seminars. Staff continues to offer a “train-the-trainer” program for county boards of elections so that the staffs at the boards can better assist filers.

In addition to conducting seminars and working with county boards, there was substantial focus within the sub-unit in 2018 on updating materials with recent law changes and ensuring website documents became fully accessible and secured.

The Audit & Review sub-unit tracks the most common deficiencies in filed financial reports and revises and updates its training materials to address the most common errors treasurers make. The compliance review process, in and of itself, is educational for treasurers and their candidates. The “Frequently Asked Questions” section of the Board’s “Campaign Finance” Webpage is updated to include additional instructions for common questions and modifications have been made to our training seminars and webinars to reflect compliance issues. It is hoped that these ongoing efforts will enable a greater number of treasurers to file correctly in the first instance.

In 2018, 21,586 itemized reports were reviewed. Of the 21,586 reviewed, 1,060 were deficient, 16,822 were compliant and 3,704 had training issues. In November 2018, the unit passed the 100,000 mark for compliance reviews completed since the Unit was established in 2014.

The Compliance Unit also worked on the following projects in 2018:

In response to 2018 legislation, the Compliance Unit worked with the State Board of Elections Information Technology Unit to develop and deploy website capability for Independent Expenditure committees to disclose paid internet digital advertisements. In addition, 24-hour notice reporting was expanded for Independent Expenditure committees and website specifications and requirements were modified to enable reporting of these new requirements. (See Election Law §14-107(2) and (9 NYCRR §6200.10 (b)(1))

All Compliance Unit staff received training on document accessibility, with several staff receiving in-depth training. The Compliance Unit has edited or re-created many documents in order to make them accessible and subsequently posted to the SBOE website.

The Compliance Unit continued in 2018 to work with the Information Technology Unit to redesign the State Board’s Electronic Filing Software (EFS) from a desktop software to a web-based application. The web application is on track to be deployed in 2019 so that all candidates and committees filing campaign finance disclosure reports can create and file reports on any web enabled device.

## Referrals

In 2018, the Compliance Unit referred non-filer and deficient-filer items to Enforcement for review and action. This consisted of 5,668 referrals for non-filing. Of these, 4,686, or 83%, continue to owe reports that have yet to be filed (Feb. 25, 2019).

For deficient filings in 2018, a total of 353 referrals of candidates/committees for failure to come into compliance after being served with a deficiency notice were made. For filings due between 2014 and 2018, 2,578<sup>1</sup> filings were referred to Enforcement as deficient. Of that number, 384 reports were amended to successfully address deficiencies, one filing has been deleted and 1,245 deficiencies remained unresolved.

The Board of Elections provides a civil enforcement administrative hearing process through which violations of the Election Law deemed not criminal may be addressed, followed by civil proceeding in court. The Board appointed a total of five hearing officers to manage these proceedings. In 2018, six matters were referred by Enforcement to a hearing officer.

Additionally, the Enforcement Counsel tendered zero subpoena requests in 2018, and requested zero criminal referrals to prosecutorial agencies.



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1. Approximately 814 of the referred reports were eventually reclassified as training.



## **Voter Registration Unit**

### **Agency-Based Voter Registration**

Since 1995, the New York State Board of Elections has been assisting and guiding participating state agencies in understanding and executing their voter registration responsibilities mandated by the National Voter Registration Act of 1993 (NVRA) and its corresponding state laws. The intent of the program is to offer individuals the opportunity to register to vote, when they apply for or renew a driver's license, or when they apply for services at any of the approximately 785 offices that participate in the program.

Agencies designated to provide voter registration include the Department of Motor Vehicles, as well as public assistance, disability, and other state-designated agencies. Designated as state agencies which provide public assistance are the Office of Temporary and Disability Assistance and the Department of Health. Designated as state agencies that provide programs primarily engaged in providing services to people with disabilities are the Department of Labor, Office for the Aging, Division of Veterans' Affairs, Office of Mental Health, Office of Vocational and Educational Services for Individuals with Disabilities, Commission on Quality of Care and Advocacy for Persons with Disabilities, Office for People With Developmental Disabilities, Commission for the Blind and Visually Handicapped, Office of Alcoholism and Substance Abuse Services, State University of New York Disability Offices, City University of New York Disability Offices, and certain offices which administer programs established or funded by such agencies. Additional state agencies designated as voter registration sites are the Department of State and the Division of Workers' Compensation.

## Registration Statistics

During 2018, there were 890,934 voter registration applications or transactions received by county boards of elections which resulted from the efforts of state agencies. The Department of Motor Vehicles yielded the highest volume of registration applications among the various agencies mandated by the NVRA, accounting for 94.75% (844,180) of the total number of voter registration applications or transactions in the state. The remaining agencies participating in the program accounted for 5.25% (46,754).

### Sources of Voter Registration

Motor Vehicles	844,180
Public Assistance Agencies	39,897
Disability Agencies	4,701
State Designated Agencies	1,382
<u>By Mail</u>	<u>774</u>
Total	890,934

### Agency-Based Voter Registration Statistics

<u>Year</u>	<u>New Registrations</u>	<u>Address Changes</u>	<u>Enrollment Changes</u>	<u>Name Changes</u>
2012	201,401	87,057	33,479	11,089
2013	135,773	56,912	19,312	8,618
2014	127,726	56,966	17,126	8,126
2015	132,230	63,883	20,596	8,653
2016	246,762	99,701	50,214	12,511
2017	144,730	88,644	36,200	11,502
2018	257,977	176,530	81,395	17,380

## Training

The State Board of Elections is responsible for the development of training materials and presentation of training programs on the requirements and implementation of the agency-based voter registration program. Regional agency-based voter registration training offerings were presented to the participating NVRA sites in New York State. State Board staff continues to provide updated training and reference materials as well as on-going telephone guidance and support to agency program liaisons, site personnel in all offices offering agency-based voter registration, as well as to county boards of election.



## Agency Oversight

The success of the agency-based registration program relies on cooperation among the participating state agencies, county boards of elections, and the New York State Board of Elections. Due to the numerous and unique differences in clientele and services provided by each of the agencies, the administrative policies at each agency's participating offices and programs are conducted at the discretion of each individual state agency, under the guidance, input, approval and support of the State Board of Elections. Also, staff responds to all inquiries, and acts to assist agency program coordinators, site personnel, and county board staff in resolving administrative and procedural issues to ensure effective and efficient operation of the agency-based registration program in New York State.

In addition, statistical reports containing data on voter registration activity for all agency-based sites are mailed to agency commissioners and program coordinators each month. Review of these reports enables program coordinators to monitor voter registration activity and program compliance, as well as identify inconsistencies at each participating office. This information also assists the State Board of Elections in evaluating the workload placed on county boards of elections offices by NVRA program requirements.

## **Distribution of NVRA Program Supplies**

Supplies for the agency-based registration program are shipped weekly by NVRA staff as requested by participating sites. Constant tracking of supply orders and shipping dates is made possible by a supply order and inventory system specifically developed for monitoring distribution of NVRA program materials. The system also provides staff with current inventory balances to ensure that supplies, including forms in multiple languages as required by the Voting Rights Act, are reordered as needed. The State Board also distributed voter registration forms to institutions of the State University of New York. The New York State Board of Elections processed 516 individual supply shipments to participating NVRA sites during 2018.

In addition, the State Board of Elections provides large print copies of the NYS voter registration form as well as a poster-sized version of the agency-based voter registration form are provided to agencies and programs participating in the NVRA program that serve people with disabilities upon request.

## **Voter Registration Cancellations**

When New York State residents relocate to another state or when out-of-state residents move into New York State and subsequently register to vote, a notice of registration cancellation is returned either to a county board of elections or the New York State Board of Elections so that voter registration rolls may be updated. In 2018, staff at the State Board of Elections processed 31,835 New York State and 17,256 out-of-state registration cancellations and forwarded them to the appropriate county board of elections or state election official.

## **DMV Address Change Requests**

The New York State Board of Elections assists the Department of Motor Vehicles with the distribution of customer address change requests resulting from licensing or driver I.D. transactions by counting, sorting and forwarding them monthly to county boards of elections. Also received from the Department of Motor Vehicles and processed by state board staff, are the DMV internet change of address request forms which have been downloaded by customers, completed, and forwarded to DMV. The state board distributed 15,465 address change requests received from the Department of Motor Vehicles to county boards during 2018.

## **County HAVA Funds Program**

The Help America Vote Act (HAVA) has provided funds to the State of New York for poll worker training, voter education, and poll site accessibility. Since June 2006, the State Board has been overseeing the grant application process, as well as the disbursement of federal and state funds, to further the HAVA and State program objectives. The Poll Site Access Improvement Program provides funds to county boards of elections to assist them in ensuring that all New York

polling places are accessible and provide the same opportunity for all voters to participate in the election process. The Voter Education and Poll Worker Training Program provides funds to county boards of elections to implement programs to educate poll workers and the general public on the proper use of new voting systems.

### **Poll Site Access Program**

The New York State Board of Elections has received funding from State appropriations and from the Department of Health and Human Services to establish, expand, and improve access to and participation by individuals with a full range of disabilities in the elections process. The polling place access improvement funds will assist county boards in undertaking minor temporary improvement or renovation projects, and the purchase of proper signage, materials, and low-tech devices to help assist persons with disabilities on election days and to assure voter privacy and independence. The funds may be used to make polling places, including parking, the path of travel, door hardware, entrances, exits, and voting areas of each polling facility, accessible to individuals with the full range of disabilities (e.g. impairments involving vision, hearing, mobility, dexterity, emotional, or intellectual) through the use of varied accessibility tools (e.g. ramps, handrails, and signage).

### **Poll Worker Training and Voter Education Program**

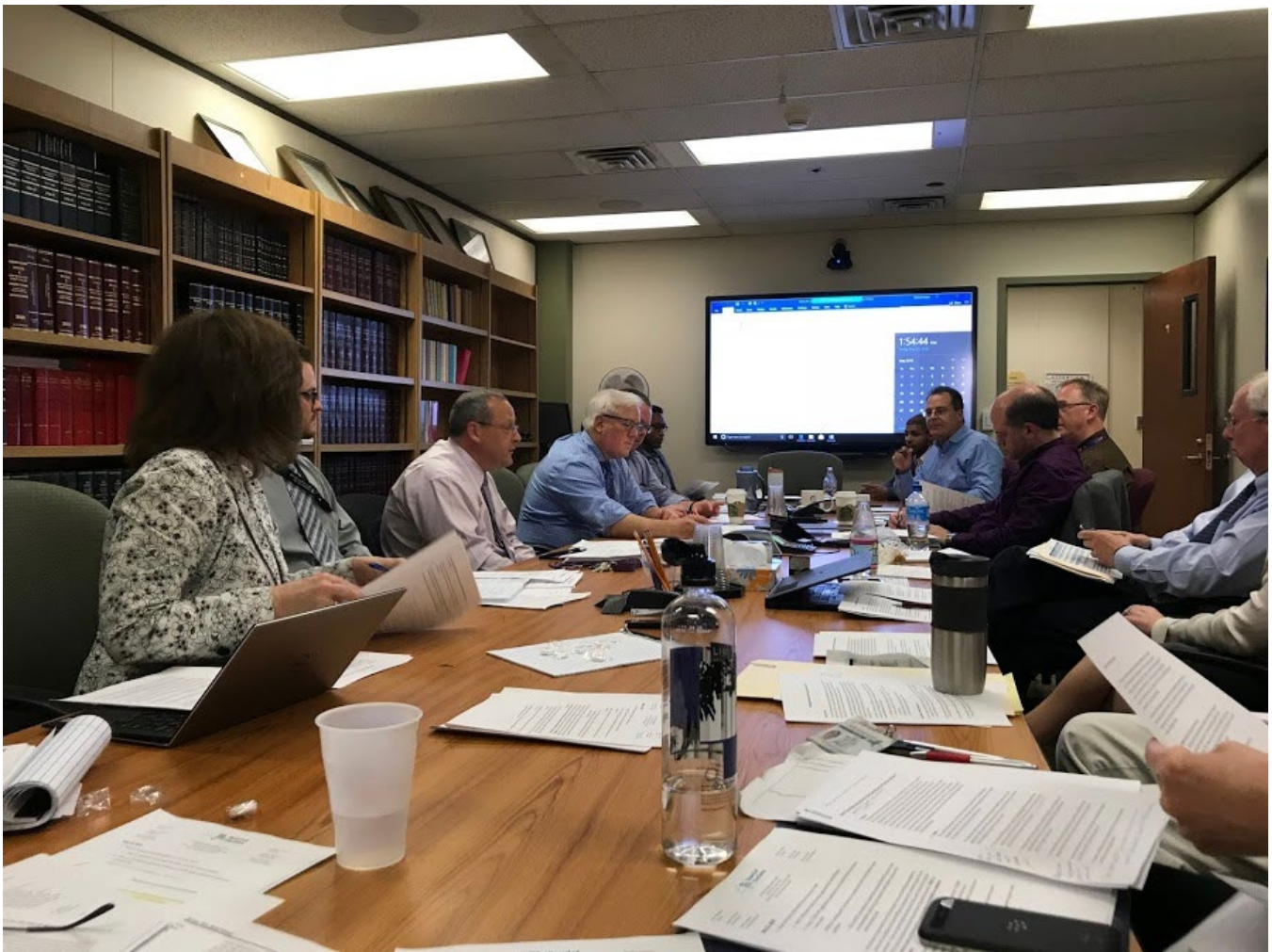
The New York State Board of Elections has received HAVA funds to be dispersed and used by county boards for the specific and limited purpose of advancing Voter Education and Poll Worker Training. County Boards have implemented programs to educate individuals on the proper use of new voting systems, including ballot marking devices. These efforts are intended to help bolster public confidence in the election process by providing information to election administrators on methods for keeping the process secure while ensuring that every eligible voter can cast a vote and have that vote counted. Training and education must extend to all voters, including those with a full range of disabilities, as well as those with language barriers.





## NYSVoter County Reviews

In 2007, the State Board of Elections implemented “NYSVoter” (pronounced nice voter), the statewide voter registration database to comply with the Help America Vote Act (HAVA) and subsequent amendments to New York Election Law. NYSVoter was built by integrating a centralized database system with the county voter registration/election management systems (VR/EMS), giving the State Board administrative control over the centralized database and the responsibility for auditing the system to assure that the local election officials are conducting the business of voter registration in a compliant manner. State Board personnel visit the county boards to perform periodic reviews of their NYSVoter procedures, and in 2018, 27 counties were reviewed and found to be in substantial or better compliance with state regulations.



Agency staff confers with other state partners on cybersecurity protocols



## **ELECTION OPERATIONS UNIT**

The major responsibilities of the Election Operations Unit of the New York State Board of Elections include the oversight and support of New York State’s 62 county Boards of Elections, the facilitation of ballot access efforts by candidates for a variety of public offices and party positions, and oversight and technical assistance of the statewide deployment of voting systems. The Election Operations Unit actively engages in ongoing daily communications with county Boards of Elections and the general public on a multitude of topics.

### **Candidate Ballot Access**

The Federal Primary was held on June 26, 2018. The State primary was held on September 13, 2018. The general election was held on November 6, 2018.

In 2018 ballot access efforts were significantly heightened, due to increased activity relating to races for the offices of Governor, Lieutenant Governor, Comptroller, and Attorney General.



Races appearing in each even-numbered year include Member of Assembly, State Senator, and Member of the House of Representatives. The State Board is also the repository for the filing of petitions relating to the selection of delegates and alternate delegates to Judicial District Conventions. These delegates and alternate delegates nominate candidates for the office of Justice of the Supreme Court from each of the thirteen judicial districts in the State. Additionally, petitions for those seeking to become State Party Committee Members, representing certain Assembly and Congressional districts, are also filed with the State Board.

For the June Federal primary, the following petitions and related documents were filed:

116	Petitions for Representative in Congress
7	Nominations for United States Senate
2	Petitions for United States Senate
81	Acceptances
78	Authorizations
8	Declinations
5	Substitutions
76	General objections
29	Specifications

From May 15 through June 5, 2018, the New York State Committees held meetings to nominate candidates for statewide office. The nominations filed were as follows:

Governor: 8 nominations  
Lt. Governor: 8 nominations  
Comptroller: 8 nominations  
Attorney General: 8 nominations

Ballot access activity relating to the public, party, and judicial offices described above, is extensive, and involves not only data entry of all petition and certificate information, but also the creation and dissemination of corresponding acknowledgements and other related documents. Staff also responds to information requests to view original documents or purchase copies of same. In 2014, Unit staff fully-implemented a document access program whereby all ballot access documents were scanned, and the response to requests for copies of documents on file can now be met by providing scanned 'copies' at no cost to the requestor.

In 2018, the State ballot access filing season consisted of the following:

548 Petitions for Public Offices, of which:

- 7 Petitions were filed for Statewide Office -
- 182 Petitions were filed for State Senate offices -
- 245 Petitions were filed for State Assembly offices, with -
- 32 Petitions filed for State Committee positions, in addition to -
- 82 Petitions for Judicial Delegate and Alternate Delegate positions. -

Additional filing related to petitions were received, posted, and acknowledged, consisting of:

- 20 Certificates of Declination
- 23 Certificates of Substitution
- 436 Acceptances (certificates required to be filed by candidates designated or nominated by parties other than their own)
- 343 Authorizations (certificates required to be filed by party officials, relating to the nomination or designation of candidates who are not members of the party).

Independent petitions may be filed for public office, and they also require acceptance by the candidate being nominated, as well as posting and acknowledgement. The 2018 Independent filing season saw the submission of:

- 10 Statewide Petitions
- 7 Petitions for Representative in Congress
- 2 Petitions for State Senate offices
- 2 Petitions for State Assembly offices

Some State Senate, Assembly and Congressional districts are wholly contained by county boundaries. In these cases, candidate filings are made in those counties; however, the County

Boards of Elections must notify the State Board of any such activity. This is the method used to prepare and certify a complete list of candidates for any primary elections as well as for all offices to be elected at the November General election.

Ballot access filings are not validated by the State Board of Elections. However, the validity of a filing may be challenged by persons choosing to do so. Challenges require the filing of an initial notice, indicating that a detailed list of specific objections to the filing will be submitted to the Board. Once received, staff then reviews each specific, itemized objection, notes their research findings on a reporting form, and submits it to a hearing officer for review. Determinations are then made by the Commissioners of the State Board and notice of those determinations is made to all participants. Objections to party petitions and corresponding specifications received, posted, and researched, were as follows in 2018:

29 Specifications of objections for Federal Office  
103 Specifications of objections for State Office

A total of 24 Supreme Court nominations were filed from twelve Judicial Districts that had vacancies. A total of 85 candidates were nominated, in addition to 19 declinations and 1 substitution. All information was entered into the candidate management system and all candidates were sent acknowledgement letters.

In 2018, Governor Andrew Cuomo called for special elections to be held on April 24, at which a record number of Assembly and Senate seats were filled. Those special elections were held as follows:

Senate District 32, due to the resignation of Ruben Diaz, Sr.  
Senate District 37, due to the resignation of George Latimer  
Assembly District 5, due to the resignation of Al Graf  
Assembly District 10, due to the resignation of Chad Lupinacci  
Assembly District 17, due to the resignation of Tom McKeivitt  
Assembly District 39, due to the resignation of Francisco Moya  
Assembly District 74, due to the resignation of Brian Kavanagh  
Assembly District 80, due to the resignation of Mark Gjonaj  
Assembly District 102, due to the resignation of Peter Lopez  
Assembly District 107, due to the resignation of Steven McLaughlin  
Assembly District 142, due to the resignation of Mickey Kearns

The Unit was responsible for addressing a considerable volume of post-election activity, which included the collection, recording, and validating of all election results corresponding to the offices noted above. Certificates were prepared for signature by the State Board's Commissioners in their capacity as the State Board of Canvassers. Once certified, appropriate certificates are prepared for candidates, and delivered to the appropriate legislative clerks and secretaries in Albany and Washington, D.C.



## Public Election Services

In 2017 the Unit responded to inquiries from the public for data and/or information from the public and the distribution of related documentation. Additionally, a sizeable amount of associated information was distributed, including copies of the 2017 *New York State Election Law*, general information such as election results (current and previous), political calendars, candidate lists, the State Board of Elections' *Running for Office* booklet, as well as other data and information relating to elections and the election process. Further, the Election Operations Unit manages the State Board of Elections' toll-free voter registration application request number (1-800-FOR-VOTE), and fulfills requests submitted via the agency website. In 2018, 2,237 requests for registration forms were processed by the Unit, resulting in the mailing of a total of 7,673 forms.

## Statewide County Boards of Elections Operational Support

In addition to election assistance, support to county Boards of Elections in the area of daily operations remains a key focus of the Unit.

County Boards of Elections are provided with oversight and support in innumerable ways, including phone calls, conference calls, e-mails, customized workshops and site visits tailored to individual counties, informative conference presentations, participation in and appearances at Election Commissioners Association regional meetings, topical memorandums, and the provision of extensive procedural documents and forms for implementation at the local level. As new regulations emerge or previous topics become heightened areas of interest, the Unit strives to communicate timely and appropriate guidance to county Boards of Elections personnel.

The State Board of Elections also provides National Change of Address (NCOA) information to all of New York State's county Boards of Elections. NCOA services are a required component of New York State's statutory voter registration list maintenance procedures and help to ensure that voter addresses are synchronized with information on file with the U.S. Postal Service. This process is further enhanced as data is processed via the statewide database. In 2017, data concerning over 773,120 such changes were provided to county Boards of Elections for their use in updating registration records, voter notifications, and other routine maintenance tasks to reflect voter's change of address information.

## **Cybersecurity of Elections**

The Election Operations Unit continues to work collaboratively with other units within the agency toward improving the cybersecurity of the election infrastructure at both the state and county levels. This work has included staff involvement in conversations and activities with various state, federal and relevant partners, such as the US Department of Homeland Security, the Center for Internet Security, the Governor's Cybersecurity Advisory Board and others.

The Unit has participated in the agency's efforts in developing and implementing a plan for improving the cybersecurity posture at both the state and local levels, enhancing incident response planning and coordinating local, state and federal resources and communications. Staff has presented at conferences for both Election Commissioners as well as County Information Technology Directors to ensure that election administrators and the IT staff who support them are properly communicating and coordinating their actions toward improving the cybersecurity around the election infrastructure.

As part of the standing up of the agency's Secure Election Center, the Election Operations Unit added three positions later this year to focus on cybersecurity matters and develop resources for County Boards. This new staff began its work focusing on preparing guidance for County Boards on the secure usage of removable media, began review of existing procedures for updating and participated in other agency efforts around cybersecurity. The Unit continues to educate and position itself to best serve the county boards of elections on the topics of cybersecurity and incident response.

## **The SHOEBOX Program**

As New York's HAVA fund distribution program does not provide for the direct release of federal funds to counties, in the overall scope of compliance with HAVA, a separate program was created to enable the reimbursement of county funds that were expended in the name of either implementing HAVA, or furthering the goals and objectives of HAVA. For the purchase of products and services related to the overall HAVA project which were not part of the vendor contracts themselves, this program was created and came to be known as the SHOEBOX Program (Submission of HAVA Operations Expenses by Boards of Elections).

County Boards of Elections may make application, after the purchase of such products and services with county funds, for reimbursement of either some or all of those costs, provided that the purchases were reasonable, allowable, and allocable. Substantial evidence must be included with each application, and prior to the award of any reimbursement, all applications are reviewed for the products' and/or services' compliance with the EAC's guidelines and formal opinions for allowable expenses. Reimbursement will be made for 100% of the allowable costs submitted, not to exceed the unspent balance of funds allocated to each county.

To receive reimbursement, County Boards of elections must have contracts in place, and submit an application packet to the Election Operations Unit. In 2018, twenty-one counties submitted 53 vouchers for SHOEBOX fund reimbursement, amounting in total to \$529,935.66.

### **Voting System Certification and Support Activities**

The rapid pace and high volume of activity relative to supporting and guiding county Boards of Elections in the use of optical scanning devices continued into 2017. Due to the complexity and technical nature of these systems, the provision of ongoing support is essential throughout the year. Key initiatives and services included, but were not limited to, the following:

- Help Desk technical support was provided before, during, and after each Primary and the General Election, with dedicated staff assigned to assist county Boards of Elections personnel in building ballots, running test decks, conducting 3% post-election audits, defining ballot layout, and related tasks.
- Election Operations staff continued refining all policies and procedures. Feedback from county Boards of Elections, as well as input received from security vendor NYSTEC, support the goal of sculpting all the policies and procedures.
- Staff continues to collect and review ballots generated by county Boards of Elections in order to assess the potential for improved usability for voters. Areas of focus were font size, layout, placement of instructions, and overall ballot design.
- Election Operations staff continue to visit county Boards of Elections to conduct voting machine audits and election monitoring activities. Election monitoring includes gathering and reviewing procedures and processes at the local level to ensure that county boards are creating and executing test desks as prescribed by NYSBOE; look for aberrations in the functioning of voting equipment; and, review operational procedures used by county boards, to ensure consistent delivery of all Board of Elections services.
- Staff continues to monitor the usage of the asset management system.
- The Unit continues to conduct onsite and in-house training sessions related to the use of certified voting systems to county personnel as refresher training.
- ClearBallot submitted an upgrade for the ClearCount Central Count Voting System and staff began evaluation of the submission along with the start of testing.
- Dominion Voting submitted an upgrade (ImageCast Evolution) to their certified suite and staff began an evaluation of the submission along with the start of testing.



- Staff completed certification testing of Engineering Change Controls (ECO's) submitted by Dominion related to end-of-life issues.
- Staff continued working with the Information Technology Unit to provide support of the statewide election night reporting database. This effort included continued training of county Boards of Elections staff, along with assisting boards before and on election night in the reporting of their results.

## **Additional Unit Activities**

In addition to ongoing operational and technical support to county Boards of Elections, public election services, ballot access assistance, and voting system certification and technical support, Election Operations personnel assist other Units in the agency through active participation in workgroups and projects, support of other Agency missions affected by staffing shortages, and contributing to the various priorities identified by the Agency.



Commissioner Spano makes a point during a board meeting



CIO Bill Cross testifies before the State Assembly Standing Committee on Election Law.

## **INFORMATION TECHNOLOGY UNIT**

The New York State Board of Elections relies heavily on technology to support its mission and the Information Technology (IT) Unit is responsible for providing the most efficient, cost-effective and secure technology solutions to meet this need.

The IT Unit maintains a highly complex technology infrastructure of systems and networks to facilitate elections within the state, as well as the business operations of the agency. IT is responsible for all infrastructure management, applications development, systems support, cybersecurity, and end-user support. IT management is also responsible for developing an IT budget and working with various internal and external units to process procurements in accordance with agency and NYS requirements.

As director of the IT Unit, the Chief Information Officer (CIO) participates in strategic planning for the agency and provides recommendations regarding emerging technologies and best-fit solutions to support business functions. Additionally, the CIO is the primary liaison for the Board of Elections to the NYS Office of Information Technology Services.

## Computing Environment and Infrastructure

The New York State Board of Elections operates a complex network environment, connecting BOE offices with its primary and backup datacenters, as well as secure connections to local county systems. The IT Unit is responsible for the design, installation, maintenance and security of this network infrastructure, providing a stable and secure platform for BOE applications. The Board also maintains an Internet-accessible network, hosting the Agency’s website and public applications such as Voter Lookup and Election Night Reporting.



IT Unit develops, maintains and supports several in-house applications, described below, and ensures that all design and coding are performed with attention to best industry standards and practices. All new applications are designed to meet accessibility standards and utilize responsive design to ensure a consistent user experience across multiple device types including desktop computers, tablets, and mobile phones.

### **Financial Disclosure Administration System (FIDAS).**

The Financial Disclosure Administration System is a database system used by auditing and enforcement staff for the management of the financial disclosure reports for committees and candidates for statewide and local office. The Information Technology Unit develops and maintains the databases and applications associated with the administration of campaign finances. The Agency’s Electronic Filing Software, which is used by candidates and political committees for filing their reports, was developed by and is maintained by the Agency’s IT staff. In 2018, IT continued the reengineering of FIDAS as part of the CAPAS/FIDAS Redesign Project.

IT is responsible for receiving and processing electronic filings from over 16,000 filers and loading them into FIDAS. There were eight major filing periods in 2018. A small, but efficient Help Desk staff performs this work, in addition to delivering telephone support to the financial report filers, county Boards of Elections and Agency staff.

## **National Change of Address (NCOA) Processing**

NCOA processing was coordinated by the State Board as required by the National Voter Registration Act. A file with all the names and addresses is produced and forwarded electronically to an NCOA vendor for matching against the U.S. Post Office's Change-of-Address database. The file resulting from the processing is retrieved electronically by the State Board where it is parsed and redistributed to the individual counties of origin. The NCOA processing for 2018 included over 12 million voter records from 62 counties. Centralizing this NCOA processing through the State Board, as opposed to the processing by individual counties, provides the counties with a substantial savings in expenditures due to the economy of scale that the State Board leverages.

## **Election Operation Support**

The Information Technology Unit provides support to the Election Operations Unit in the form of the Candidate Petition Administration System (CAPAS), which is used to administer the candidate petition process as well as create correspondence, ballots and reports pertaining to elections. In 2018, IT continued the reengineering of CAPAS as part of the CAPAS/FIDAS Redesign Project.

## **Agency-based Voter Registration / Public Information**

The Information Technology Unit supports the database applications used by the Voter Registration Unit to manage the registration sites and transactions. There is also a Supplies Inventory System created and maintained by the Agency's IT staff.

The Public Information Officer has oversight of the content on the Agency's website. The Agency has adopted a policy of making as much information as possible available electronically thus cutting the cost of printing and reproduction through the FOIL process. The IT staff works closely with the Public Information Office to oversee the technology, design and application development associated with the Agency's website, and is responsible for ensuring that the website meets all NYS branding and accessibility guidelines.

## **NYSVoter Statewide Voter Registration Database**

As part of the Federal Help America Vote Act (HAVA), legislation that was passed in 2002, as well as New York State Election Law changes, the State Board of Elections created a statewide voter registration database. The database, known as NYSVoter, was developed and implemented in 2007. During 2018, the IT Unit largely completed its refresh of the NYSVoter environment, a major

effort undertaken to ensure that the complex network of servers and connections to county systems remains secure, fault tolerant, and supportable on up-to-date hardware and software.

The Information Technology Unit has begun a development project to further integrate the Military & Overseas Voter Empowerment Act (MOVE) application with the existing NYSVoter system. The existing MOVE system was implemented in 2012 to assist military and civilian voters who live overseas to vote absentee ballots.



The Binghamton tabletop exercise was conducted at the Floyd Maines Veterans Memorial Arena with state, local and federal partners.

## SECURE ELECTIONS CENTER

In response to reports of possible foreign interference in US elections, the designation of Elections as Critical Infrastructure by the US Department of Homeland Security (DHS), and an overall heightened awareness of election security issues, the Board adopted a comprehensive plan to improve the security of elections within the state.

An integral part of this plan was the formation of the Secure Elections Center (SEC). The

Center is comprised of dedicated staff from Information Technology, Election Operations and Public Information, and is led by the newly established Chief Information Security Officer (CISO).

The Center has also established numerous state, local, federal, private, educational, and non-profit partnerships to facilitate its efforts and promote information exchange. The State Board is also a member of the Multi-State Information Sharing and Analysis Center (MS-ISAC) and Elections Infrastructure Information Sharing and Analysis Center (EI-ISAC).

# New York State Elections Cyber Incident Reporting Procedure


### What to Report?

The State and County Board of Elections must report all cyber incidents affecting or potentially affecting elections systems to the New York State Division of Homeland Security and Emergency Services (DHSES) and to the New York State Board of Elections (NYSBOE).

Cyber incidents that require notification:

- There is a cyber incident or threat that impacts, or has the potential to impact, personally identifiable information (PII).
- There is a cyber incident or threat that impacts, or has the potential to impact, election systems, infrastructure or election administration.
- A cyber incident that receives significant media attention.


Examples Include: Unusual system behavior, unauthorized access attempts, web page compromise, credential compromise, unauthorized use of systems, denial of service, unauthorized or malicious software (malware).



**First call:** NYS Division of Homeland Security and Emergency Services Cyber Incident Response Team (CIRT):  
**1 (844) OCT-CIRT or 1 (844) 628-2478.**  
Staffed 24x7.

**Second call:** NYSBOE Secure Elections Center at:  
**1 (833) CYBERNY or 1 (833) 292-3769.**

DHSES and the NYSBOE Secure Elections Center will coordinate State resources for election-related cyber incidents in New York State.

**If You See Something Say Something**  
Be Observant and Report Suspicious Cyber Activity

## Incident Response

The SEC has established an Incident Response procedure for all County Boards of Elections that requires a two-part notification to the NYS Division of Homeland Security and Emergency Services (DHSES) and the State Board, through a new toll-free number and email address established for this purpose.

During its first year of existence, the SEC has worked with several NYS counties on malware incidents that have had a direct or indirect effect on County BOE systems or operations. SEC,

working with DHSES Critical Incident Response Team (CIRT), has provided guidance to counties on improving their information security posture and, in some cases, required improvements to protect state election infrastructure.

## **Education and Outreach**

The State Board has mandated basic Cyber Security Awareness Training for all State and County Board of Elections staff and made this training available free of charge to counties through a purchase of online end-user training from an industry-standard provider.

The Board, along with partner DHS, presented six regional Elections-based Tabletop Exercises across the state. These sessions were widely attended by County Board, IT, Executive, Public Information, and Law Enforcement staff.

In its outreach efforts, the Board has provided presentations to several groups on our cyber security initiatives and offerings, as well as sharing general cyber and election security guidance. Some of these groups include New York State Local Government Information Technology Directors' Association (NYSLGITDA), New York State Association of Counties (NYSAC), New York State Election Commissioners Association (NYECA), and others.

## **Risk Assessments**

The State Board has initiated a comprehensive uniform Risk Assessment of all NYS County Boards of Elections. This on-site assessment is based on the 88 Best Practices as defined in the Center for Internet Security (CIS) "A Handbook for Elections Infrastructure Security" and covers both technology and governance. On-site visits and assessment reports are expected to be complete during the first half of 2019.

## **Intrusion Detection and Managed Security Services**

The Board has purchased Intrusion Detection Services (IDS) for all NYS County Boards of Elections for three years, ensuring protection through the 2020 General Election and beyond. Devices are being installed for all CBOE's that currently do not have an IDS capability and will provide a centralized monitoring and alerting capability directly to the counties.

A contract has also been issued for optional Managed Security Services (MSS), enabling counties to enhance existing log monitoring and security event alerting. These services will be rolled out beginning in early 2019.

## **NYSVoter Data Integrity**

The State Board has initiated a project with the State University of New York, Center for Technology in Government (CTG), to detect potential abnormalities in voter registration data. Through this project we will perform a full analysis of historical voter registration transactions to

establish baselines and create a system to review current and future streams of data from the County BOE systems for variances.

## **State Board Security Enhancements**

During the past year, we have also made significant improvements to increase our overall cybersecurity posture and bolster the security of key election systems and end-to-end infrastructure. These actions include adding additional layers of protection for public-facing systems and tightening existing security between State BOE and the counties. Various technologies have been utilized to implement multiple layers of firewalls, intrusion detection and prevention systems (IDS/IPS), malware protection and system log monitoring. BOE has also engaged multiple third parties, including the federal DHS, to scan, monitor and assess agency networks for emerging security threats.





Schenectady Commissioner Amy Hild discusses the Albany Regional Tabletop Exercise with a local television station arranged by the PIO.

## **PUBLIC INFORMATION OFFICE**

### **Media and Public Relations**

The Public Information Officer serves as the board's spokesperson and is responsible for handling all press inquiries. In 2018, the Public Information Office received over 5,200 requests from reporters, interested parties and the general public seeking information on election results, voter registration and enrollment data, petition filings, campaign finance filings, enforcement matters, N.Y. Election Law, implementation of the Help America Vote Act, the National Voter Registration Act, absentee voting, the Military & Overseas Voter Empowerment Act, voting machines, cybersecurity and board policies. The Public Information Officer also produced press releases and advisories throughout the year which provided information on these topics to the state and national press corps and the public. This information was also made available via the Internet primarily through the Board's website ([www.elections.ny.gov](http://www.elections.ny.gov)), but also our Twitter account (@NYSBOE) and YouTube channel ([www.youtube.com/user/NYSBOE](http://www.youtube.com/user/NYSBOE)) along with a wide range of election-related data of interest to New York State voters all over the world.

### **Election Night Results Reporting**

As a result of legislation passed in 2013, the Board now provides unofficial Election results as part of an Election Night Reporting System. In 2018, The State Board reported results for 11 special elections that took place on April 24, 2018. The following Assembly Districts: 5<sup>th</sup>, 10<sup>th</sup>, 17<sup>th</sup>, 39<sup>th</sup>, 74<sup>th</sup>, 80<sup>th</sup>, 102<sup>nd</sup>, 107<sup>th</sup> and the 142<sup>nd</sup>; and the following Senate Districts: 32<sup>nd</sup> and 37<sup>th</sup> all had special elections to fill vacancies created as the incumbents won election to local offices.

We also reported on results for the Congressional Primary on June 26, 2018. There were 20 primaries in 15 Congressional Districts. The State & Local Primary was held on Thursday, September 13<sup>th</sup>. There were a record-breaking number of primaries statewide. There were 29 State Senate primaries and 73 State Assembly primaries in addition to a Democratic Primaries for Governor, Lt. Governor and Attorney General, and lastly a Reform Party Primary for Attorney General.

For the General Election, the State Board posted results for all 295 federal and state offices that were on the ballot.

## **Freedom of Information Law**

The Public Information Officer also serves as the Board's Records Access Officer. He is responsible for processing all FOIL requests (excluding petition copies) received by the Agency. In 2018, 1,263 requests were received by the Records Access Officer. This number represents an 34.8% increase from 2017. Most requests were for data and records from NYSBOE's statewide database of registered voters (NYSVoter). Most requests were for voter registration data and records from NYSBOE's statewide database of registered voters (NYSVoter). Of the requests received, 1,137 were fulfilled, 37 were denied in accordance with the provisions of Section 87 of the Public Officers Law, and in 89 instances no records were found.

## **Registration Hotlines**

The Board's automated hotline (1-800-FOR-VOTE) and the Board's webpage on-line voter registration form ([www.elections.ny.gov](http://www.elections.ny.gov)) provide a dependable, efficient and convenient way in which citizens may request voter registration application forms. The hotline remains a positive component of the board's outreach program and the webpage continues to capture a larger share of the program.

## **Legal Notices**

Pursuant to Section 4-116 of the Election Law the State Board is required to publish, once in the week preceding any election at which proposed Constitutional Amendments or other propositions or questions are to be submitted to the voters of the state, an abstract prepared by the Attorney General explaining the amendment or question. The amendment, abstract and question are published in at least one general circulation newspaper in every county of the state and comply with the language requirements of the Voting Rights Act. There were no proposals on the 2018 General Election ballot.

## **Website ([www.elections.ny.gov](http://www.elections.ny.gov))**

Lastly, the Public Information Office works in close concert with the Information Technology Unit to operate and maintain the Agency's website. Our website is an integral part of the Board's effort to provide information for the public.

The website received 5,189,028 total pageviews during 2018. The voter lookup page received 5,718,046 pageviews for the year. Our top five pages include the homepage, 966,978 pageviews; the Voting Information page, 370,745 pageviews; the Voting Absentee page, 323,690 pageviews; the Elected Officials page, 236,615 pageviews; and the County Boards page, 231,620 pageviews. The Election Night Reporting page, where election results are reported, had 858,142 pageviews.

## Cybersecurity

During the 2016 General Election the security of election operations from cyber threats became a prominent national issue and continued through the 2018 mid-term elections. New York State took a proactive role in protecting elections and the State Board partnered with the US Department of Homeland Security and hosted a first-of-its-kind series of six regional tabletop exercises focusing on protecting the integrity of our electoral systems against cyber-attacks.



A representative of Homeland Security conducts the Albany Regional Tabletop Exercise

As part of the six tabletop exercises, we visited the Times Union Center in Albany, Syracuse University College of Law, the Morrelly Homeland Security Center in Nassau County, the Monroe County Board of Elections, the County Department of Emergency Services in Orange County and the Floyd Maines Veterans Memorial Arena in Binghamton.

Tabletop exercises utilize scenarios that mirror real-world conditions in which participants, with assigned roles and corresponding responsibilities have to respond as the situation evolves.

The exercise requires participants to absorb information, make decisions and develop strategies and execute plans on an accelerated timeline, providing additional stress enabling the organizers to cover a broad range of topics. Overall, the experience is designed to assess trainee readiness, evaluate existing policy effectiveness and provide actionable lessons learned enabling organizations to perform better in the future.

Over the course of all six tabletop exercises, we achieved 100% participation from county boards of elections and almost every county IT department. Based on feedback from county personnel the exercises were a ringing success. The scenarios were well received and state, local and federal officials were given an opportunity to interact in a way unseen before. All three levels of government were able to learn new things about the services available by each and how they could access those services. The New York State Elections Cyber Incident Reporting Procedure was discussed in detail.



Tom Connolly, Cheryl Couser and John Conklin attend a Tabletop Exercise in Boston at the Belfer Center at Harvard University's Kennedy School.



## **AGENCY ADMINISTRATION**

The Board's Administrative Office consists of two staff members. The duties of this unit include all personnel administration, purchasing, banking, mail and warehouse operations and all general agency administrative tasks relating to day-to-day operations. The Board has a “Host Agency” agreement with the Office of General Services for activities related to budgeting, contracts, purchasing, voucher payments and transactional Human Resource functions.

### **Fiscal Operations**

The State Board of Elections received fiscal year 2018-19 appropriations of \$13,559,000 in the General Fund, \$23,000,000 in Federal Funds and \$4 million in Special Revenue Funds.

The State Board of Elections was granted the following re-appropriations for 2018-19:

- \$465,000 by the laws of 2017, for the purchase of software and/or development of technology related to compliance and enforcement.
- \$634,000 by the laws of 2016, for the purchase of software and/or development of technology related to compliance and enforcement.
- \$4,280,000 by the laws of 2011, for services and expenses related to the implementation of federal election requirements including the Help America Vote Act of 2002 and the military and overseas voter empowerment act of 2009.
- \$1,820,000 by the laws of 2010, for services and expenses related to the implementation of the Military and Overseas Voter Empowerment (MOVE) Act of 2009.
- \$1,160,000 by the laws of 2009, for HAVA related expenditures.
- \$799,000 by the laws of 2005, for services and expenses (prior to April 1, 2005) related to the Help America Vote Act of 2002.
- \$799,000 by the laws of 2005, for services and expenses (on or after April 1, 2005) related to the Help America Vote Act of 2002.
- \$928,000 by the laws of 2009, for expenses related to satisfying the matching funds

requirements of Section 253 (b) (5) of the Help America Vote Act of 2002.

- \$3,000,000 by the laws of 2017, for Voting Machine Examinations related expenditures.
- \$3,000,000 by the laws of 2016, for Voting Machine Examinations related expenditures.
- \$2,625,000 by the laws of 2014, for Voting Machine Examinations related expenditures.
- \$1,838,000 by the laws of 2006 amended in 2008, for the general fund local assistance services and expenses related to the alteration of poll sites to provide accessibility for disabled voters.
- \$1,000,000 by the laws of 2012, for services and expenses in the federal Health and Human Services account, including prior year liabilities, related to Poll Site Accessibility improvements.
- \$591,000 by the laws of 2011, for services and expenses in the federal Health and Human Services account, including prior year liabilities, related to Poll Site Accessibility improvements.
- \$434,000 by the laws of 2010, for services and expenses in the federal Health and Human Services account, including prior year liabilities, related to Poll Site Accessibility improvements.
- \$480,000 by the laws of 2009, for services and expenses related to the implementation of the Help America Vote Act of 2002, including the purchase of new voting machines and disability accessible ballot marking devices for use by the local boards of elections.
- \$1,500,000 by the laws of 2009 amended in 2011, for services and expenses related to the implementation of the Help America Vote Act of 2002, including the purchase of new voting machines and disability accessible ballot marking devices for use by the local boards of elections.
- \$9,300,000 by the laws of 2008 amended in 2011, for services and expenses related to the implementation of the Help America Vote Act of 2002, including the purchase of new voting machines and disability accessible ballot marking devices for use by the local boards of elections.
- \$2,532,000 by the laws of 2005, for services and expenses incurred for the poll worker training and voter education efforts.
- \$7,155,000 by the laws of 2005 amended in 2006, for services and expenses related to the purchase of new voting machines and voting systems.

## **Personnel Administration**

The agency was authorized at a staffing level of 80 full time positions for the 2017/18 Fiscal Year.

Chapter 165 of the Laws of 2017, which implemented the 2016-2021 Agreement between the State of New York and CSEA, provided for a salary increase of two percent (2.00%) for fiscal year 2018-19.

Chapter 8 of the Laws of 2017, which implemented the 2016-2019 Agreement between the State of New York and PEF, provided for a salary increase of two percent (2.00%) for fiscal year 2018-19.

Chapter 8 of the Laws of 2017 provided for a Management/Confidential salary increase of two percent (2.00%) for fiscal year 2018-2019

Chapter 55 of the Laws of 2015 and Chapter 8 of the Laws of 2017 provided for a Management/Confidential parity salary increase of one percent (1.00%) for 2018.

### **Revenue Calendar Year 2018**

Judgments	\$78,085.07
Photocopies	\$603.00
Voting Machine Certification	\$37,500.00

Division of Election Law Enforcement  
New York State Board of Elections  
Annual Report  
2018

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**DIVISION OF ELECTION LAW ENFORCEMENT  
STATE BOARD OF ELECTIONS**

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ALBANY, NEW YORK 12207-2729  
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To: The Honorable Andrew M. Cuomo, Governor  
Members of the New York State Legislature  
Commissioners of the State Board of Elections

I am pleased to submit to you the following report of the Chief Enforcement Counsel of the State Board of Elections, to be included in the 2018 Annual Report of the Board pursuant to Election Law § 3-104 (7), summarizing the activities of the Division of Election Law Enforcement during the 2018 calendar year.

Respectfully Submitted,

Risa S. Sugarman

Chief Enforcement Counsel

## **DIVISION OF ELECTION LAW ENFORCEMENT**

On March 31, 2014, Governor Andrew Cuomo signed into law the Public Trust Act. The Public Trust Act amended the Election Law to create an independent law enforcement unit within the New York State Board of Elections (SBOE) known as the division of election law enforcement (Division). Pursuant to the new law, the Governor chose Risa S. Sugarman as the first chief enforcement counsel to head the Division. Both the Assembly and Senate unanimously confirmed the choice, and chief enforcement counsel Sugarman took office on September 1, 2014.

The law confers upon the chief enforcement counsel the power and duty to conduct all investigations necessary to enforce provisions of the Election Law and other statutes governing campaigns, elections and related procedures. The chief enforcement counsel has sole authority within the SBOE to investigate alleged violations of such statutes. The chief enforcement counsel oversees the entire Division, including all staff activities, with an operating budget of \$1,450,000.

### **Division Structure and Staffing**

The Division, headed by the chief enforcement counsel, created a structure for independent enforcement activities. The chief enforcement counsel employs an investigative team of experienced attorneys, support staff, investigators and auditors. In total, the staff of the Division in 2018 included five additional attorneys, an investigator, three investigative auditors, and one support staff.

Division attorneys are experienced in investigation and litigation as well as both the prosecution and defense of criminal and civil matters. Investigative and audit staff have extensive investigatory backgrounds within and outside of law enforcement and have been members of state and local police departments and state investigative agencies. A member of the audit staff, with internal audit experience and certification, is designated as the internal controls officer and is responsible for providing the Division with financial, records, and performance auditing. The Division conducts staff training activities and implements technology advances with investigative tools and data analytics systems.

### **Division Activities**

The Division receives complaints about a variety of issues affecting elections and campaign finance in New York State and also generates investigations on its own initiative. Generally speaking, when the Division receives a complaint, the chief enforcement counsel reviews the complaint to determine whether it will be assigned to an attorney, an investigator, an auditor, or an investigative team. A letter is sent to the complainant (if identified) acknowledging receipt of the complaint, and an initial review of the complaint is undertaken. The nature of the complaint determines the nature and extent of the investigation. If necessary, the Division may request additional information from the complainant or other sources.

If the chief enforcement counsel determines that the allegations, if true, would not constitute a violation of the Election Law or that the allegations are not supported by credible evidence, a letter is issued to the complainant dismissing the complaint and notice is given to the SBOE.

The chief enforcement counsel must determine whether to proceed civilly or criminally on complaints that are supported by credible evidence. Division staff, working as a team, investigate the

allegations and gather evidence necessary to decide as to the proper disposition of the case. In some instances, the chief enforcement counsel may request that the SBOE delegate to the chief enforcement counsel its authority to administer oaths and affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation, and require the production of any documents or other evidence relevant or material to the investigation. Based on the evidence obtained, the chief enforcement counsel decides whether the Division should close the matter, proceed with civil enforcement action, or seek criminal prosecution.

Decisions to proceed with civil enforcement actions are guided by the evidence and the law. The election law gives the chief enforcement counsel discretion whether to initiate civil enforcement matters before a hearing officer upon her own initiative or based upon the referral from the SBOE compliance unit. All referrals from the compliance unit are reviewed to determine whether they meet the statutory requirements for the filing of a hearing officer proceeding. The chief enforcement counsel must be able to allege in a written report that substantial reason exists to believe that a violation of the election law exists. In addition, to avoid dismissal of the proceeding, the Division must prove that the violation is not de minimis, that the subject of the complaint did not make a good faith effort to correct the violation, and any previous violations by the subject of the complaint.

### **Enforcement Email Address ([enforcement@elections.ny.gov](mailto:enforcement@elections.ny.gov))**

The Division maintains a dedicated email address – [enforcement@elections.ny.gov](mailto:enforcement@elections.ny.gov) – to enable citizens to file complaints easily. Members of the public have utilized the Division’s email address for the purpose of contacting not only the Division but also the SBOE. Emails that ask questions dealing with SBOE functions, such as counsel, operations, registration, and elections calendars, are referred to SBOE Executive Directors for disposition. Remaining complaints are addressed by the Division.

### **Complaints from the Public**

Complaints are received and reviewed by the Division continuously. Complaints are received by email, regular mail, and telephone and are self-generated. All complaints received by the Division are confidential. The identities of complainants and the existence of particular investigations are held in the strictest confidence by the Division. Complaints received by the Division are sometimes unique but more often fall into familiar and repeating categories. A few of the categories include –

- *Failure to File:* Complaints typically received within days of filing deadlines which point to the failures of particular candidates or committees to file required financial disclosure reports in a timely manner. Although some of these complaints expose serial non-filers whose continual nonfeasance may require further legal action by the Division, most complaints point out isolated incidents of a particular candidate or committee missing a filing deadline. Typically, these issues resolve themselves when the candidate or committee files the required report shortly thereafter.
- *Campaigning or Election Day conduct:* Complaints received by the Division about elections include allegations that candidates have used false or misleading information on their campaign materials, electioneered at polling places on Election Day, or improperly expended committee or candidate campaign monies. These complaints are assigned to Division staff for investigation.

### **Division Investigations**

In 2018 The Division continued its enforcement efforts against evasion of contribution limits and disclosure requirements established by the Legislature to prevent political corruption. Notable cases included those summarized below.

- ***Sugarman v New York State Committee of the Independence Party et al.* (Sup Ct, Albany County, June 5, 2018, O'Connor, J., Index No. 05176-17)** (Improper Use of Political Party Committees by Political Caucus Without Party Status)

The Election Law affords unique benefits to political party committees that are not available to independent bodies, legislative conferences, or other special interest groups. Among those benefits are the exemption of certain contributions, including those expended as so-called “housekeeping,” or non-candidate, expenditures, from limits imposed by Article 14 of the Election Law. When such exemptions are improperly claimed by non-party committees or by party committees for other than non-candidate expenditures, such committees may evade the contribution limits and disclosure requirements imposed by the Legislature to prevent corruption.

The Division is seeking to ensure that the unique benefits the Legislature chose to extend only to political parties are properly utilized: (a) only by committees that are truly committees of political parties; and (b) in the case of “housekeeping” benefits, only for the intended purpose of making non-candidate expenditures.

In furtherance of this effort, the chief enforcement counsel commenced enforcement proceedings in 2017 against the New York State Committee of the Independence Party (the “Independence Party”), the Independent Democratic Conference (the “IDC”), and principals of those groups, after the Independence Party purported to create a party committee controlled by members of the IDC and utilized solely for their benefit. The IDC used the newly created purported party committee to expend in excess of \$500,000 for a single 2016 Senate candidate and large amounts for others – amounts that exceeded candidate contribution limits – and claimed party exemptions for those expenditures. In addition, the IDC created a housekeeping account and claimed exemptions from all Article 14 limits for that account.

The chief enforcement counsel sought a declaration in Supreme Court that members of the IDC could not be officers of and operate for their benefit a party committee, or party “housekeeping” committee, of the Independence Party. In a decision dated June 5, 2018, the Court agreed with the chief enforcement counsel. The Court found that the Independence Party could not turn operation of a party committee over to members of the IDC, who were all enrolled Democrats. To do so, the Court said, would open the door to allowing special interest groups to access benefits the Legislature reserved only to political parties and would render contribution limits meaningless.

- ***New York State Senate Republican Campaign Committee et al. v Sugarman* (165 AD3d 1536 [3d Dept. 2018])** (Improper Use of Housekeeping Committee Funds for Non-Housekeeping Purposes)

As noted above, the Election Law affords unique benefits to political party committees, including the ability to maintain housekeeping committees - contributions to which are exempted from the contribution receipt limitations of Article 14 of the Election Law as long as the expenditures of the housekeeping committees are not being made “for the express purpose of promoting the candidacy of specific candidates.” See Election Law section 14-124(3). When such exemptions are improperly claimed, such housekeeping committees may evade the contribution limits and disclosure

requirements imposed by the Legislature to prevent corruption.

The New York State Senate Republican Campaign Committee is registered with the SBOE as a Type 6 Party State Committee. The New York State Senate Republican Campaign Housekeeping Committee (the “Housekeeping Committee”) is registered with the SBOE as a Type 6H Party State Housekeeping Committee. In early 2017, the chief enforcement counsel commenced a (then) confidential investigation to determine whether the Housekeeping Committee had violated various provisions of Article 14 of the Election Law.

A review of the Housekeeping Committee’s financial disclosure reports revealed that, for the periods covered by its 2015 January Periodic and 2017 January Periodic financial disclosure reports, it reported expending substantial amounts of money for purported “issue advocacy” and “polling.” The periods covered by these reports include, respectively, the general election dates in 2014 and 2016 thus raising the issue of whether these expenditures were unlawful expenditures made for the express purpose of promoting the candidacy of specific candidates in these elections. The Housekeeping Committee’s growing and substantial expenditures for Facebook advertising during the period covered by its 2015 January Periodic and continuing through the period covered by its 2017 January Periodic financial disclosure report similarly raise the issue of whether these expenditures were unlawful expenditures for the express purpose of promoting the candidacy of specific candidates in the 2016 elections.

To the extent that the contributions to and expenditures by the Housekeeping Committee do not qualify for the exception in Election Law § 14-124(3), the contribution and receipt limitations of Election Law § 14-114 are applicable, thus implicating potential contributions in excess of receipt limitations to both the New York State Senate Republican Campaign Committee and to candidates.

On March 23, 2017, the chief enforcement counsel served subpoenas duces tecum on the above-referenced committees demanding documents relative to the investigation. On or about May 26, 2017, the Committees filed a petition in Albany County Supreme Court, requesting that the Court quash the subpoenas and grant a protective order. The Committees challenged the chief enforcement counsel’s statutory authority to issue subpoenas, as well as the propriety of the subpoenas themselves.<sup>2</sup> On June 13, 2017, the chief enforcement counsel moved to dismiss the Committees’ petition, and to compel compliance with the subpoenas. Oral argument was held on July 6, 2017, and on August 21, 2017 Albany County Supreme Court (Hon. Roger D. McDonough) issued a decision granting the chief enforcement counsel’s motion to dismiss the Committees’ petition, and to compel compliance with the subpoenas.

The Committees timely took and perfected an appeal of the trial court decision to the Appellate Division. The Office of the Attorney General joined the case as an Intervenor pursuant to Executive Law § 71 for the purpose of defending the constitutionality of the statutory scheme creating the office of the chief enforcement counsel. The Parties vigorously briefed the issues, and oral argument was held before the Appellate Division, Third Department, on September 13, 2018.

On October 25, 2018, the Third Department issued a Memorandum and Order rejecting the Committees’ argument that the statutory scheme creating the office of the chief enforcement counsel violates Art. II, § 8 of the NYS Constitution. Further, the Court held that: the chief enforcement

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<sup>2</sup> The Committees’ decision to litigate this matter resulted in details of the previously confidential investigation described above becoming public.

counsel had authority to issue the subpoenas in question; the subpoenas were supported by an adequate factual basis; and, the evidence sought by the subpoenas was reasonably related to the chief enforcement counsel's investigation of potential violations of the Election Law's contribution receipt limitations. The Third Department did, however, modify the trial court's order by quashing thirteen (13) of the subpoenas' thirty-eight (38) specific demands for documentary evidence. The Committees have now produced a large portion of the demanded documents.

The Division is continuing its vigilance of potential evasion of contribution limits and disclosure requirements established by the Legislature to prevent political corruption and is committed to ensuring transparency by party committees and enforcement of such limits.

- ***Sugarman v New Yorkers For a Brighter Future; Fund for Great Public Schools; Andrew Pallotta; Melinda Person*** (SBOE Hearing Officer Case No. H-18-004) (Improper Contribution from Political Action Committee to Independent Expenditure Committee with Common Operational Control)

A political action committee (PAC) is a political committee that makes no expenditures to aid or take part in an election except in the form of contributions. The Election Law does not limit the amount of contributions a PAC may receive or its communications or coordination with candidates. However, to prevent quid pro quo corruption, a PAC is limited in the amounts it may give to candidates and political committees to the amount of the recipient's contribution receipt limit.

An independent expenditure committee (IEC) is a political committee that makes only independent expenditures and does not coordinate with a candidate, candidate's committee, or agent of the candidate (including party and constituted committees acting on the candidate's behalf). The Election Law does not limit the amount of contributions an IEC may receive or the amounts an IEC may spend in connection with an election because those expenditures are made completely independent of any candidate.

In order to prevent evasion of contribution limits, Election Law § 14-107-a permits a PAC (which may closely coordinate its operations with candidates) to make contributions to an IEC (which can make unlimited expenditures supporting candidates) only if there is no common operational control between the PAC and the IEC. Common operational control occurs when (i) the same individual or individuals exercise actual and strategic control over the day-to-day affairs of both committees, or (ii) the employees of both committees engage in communications related to the strategic operations of either committee.

The Division is seeking to ensure that the contribution limits imposed by the Legislature to prevent corruption are not evaded by coordinated movement of monies between PACs and IECs with common operational control.

In furtherance of this effort, the chief enforcement counsel commenced a civil enforcement proceeding in November 2018 against two political committees formed by the New York State United Teachers (NYSUT), a federation of unions representing education and healthcare professionals,<sup>3</sup> and two NYSUT officers. Named as respondents in the proceeding were the political committees New Yorkers for a Brighter Future (NYBF) and Fund for Great Public Schools (FGPS), and NYSUT officers Melinda Person and Andrew Pallotta. The chief enforcement counsel alleged that NYBF and

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<sup>3</sup> <https://www.nysut.org/about>

FGPS had common operational control through the activities of Person and Pallotta in 2016 and that NYBF – a PAC – unlawfully contributed \$700,000.00 to FGPS – an IEC – on November 2, 2016, thereby evading contribution limits. The chief enforcement counsel sought \$700,000.00 in civil penalties as a result of the unlawful action. The proceeding remains active.

The Division is continuing its vigilance of potential evasion of contribution limits established by the Legislature to prevent political corruption.

## **Division Statistics**

Between January 1 and December 31, 2018, the Division received 456 email questions and/or complaints. <sup>4</sup> The Division conducted the initial review process described above which allowed referral of 44 of the questions and/or complaints to the SBOE for matters under its jurisdiction. Some of the complaints were resolved as filers voluntarily completed missing filings, as noted above. The Division conducted a review of the referrals from the compliance unit as required by the statute. Referrals described as records were reduced to the number of actual committees reviewed and evaluated based upon the number of violations, the prior history of violations and the good faith effort to correct the violations.

The Division formally opened 48 cases for investigation. The Division filed six (6) matters before hearing officers pursuant to Election Law section 3-104 (5) (a). Division investigations and litigation resulted in collection of penalties totaling \$22,500.00 in 2018. The Division also collected \$59,473.69 in judgments obtained by the former SBOE Enforcement Unit.

The Division encourages the public to continue to report violations of the Election Law. All allegations are treated as serious matters.

## **Adverse Effects of Amendment of 9 NYCRR Part 6203 on Division Operations**

On August 8, 2018, the Board adopted amendments to Part 6203 of the Rules and Regulations of the State Board of Elections (*see* 9 NYCRR § 6203.1 [as amended] and §§ 6203.2, 6203.3, 6203.4, 6203.5, 6203.6, 6203.7 and 6203.8 [newly adopted] annexed hereto as Appendix A). The newly adopted sections of the rules and regulations serve to upend the operations of the chief enforcement counsel and the Division. The purpose of this report is to inform the Governor, the Legislature, and the public of the depth of the intrusion into the work of the Division that the Board's new regulations will cause.

Under the Board's new rules, instead of simply delegating its authority to the chief enforcement counsel as the Election Law permits, the Board can now limit and control what evidence the chief enforcement counsel may subpoena during the course of an investigation, what persons the chief enforcement counsel may subpoena, at what times the chief enforcement counsel may issue subpoenas, and whether the chief enforcement counsel's subpoenas issued after Board approval will subsequently be rescinded, quashed, or modified for any reason or no reason upon request of the subpoenaed party. The new rules also impose new requirements for the chief enforcement counsel to make frequent and detailed reports to the Board on enforcement operations and take other actions not required by law or contemplated by the Legislature when it designed the current enforcement

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<sup>4</sup> Some correspondents contacted the Division multiple times about the same issue. Inquiries about the same issue were counted as one (1) email for the purpose of this report.

mechanism at the State Board of Elections.

The office of chief enforcement counsel and the Division were created in 2014 for the purpose of establishing an effective and fair enforcement process at the State Board of Elections. In the wake of 2013 hearings and 2014 findings by the Commission to Investigate Public Corruption (hereinafter, "Moreland Commission") that the State Board of Elections failed to conduct any meaningful enforcement of the Election Law, the Legislature was forced to recognize the unfairness and ineffectiveness of the Board's previous enforcement processes.

In response to the published criticisms, the Legislature passed the Public Trust Act of 2014, which completely re-designed the enforcement machinery at the State Board of Elections. In a compromise bill, the Legislature carefully balanced the need for effective enforcement with the need for the Board to be informed about enforcement activities. In so doing, the Legislature created an independent office of the chief enforcement counsel to head a separate Division of Election Law Enforcement. The chief enforcement counsel was given sole authority to conduct investigations and sole authority over personnel decisions, with a mandate that all hiring decisions be non-partisan. The Legislature retained control over the appointment of the chief enforcement counsel, who was given a fixed five-year term, by requiring confirmation by both houses of the Legislature.

At the same time, the Legislature insulated the Division from political influence of the bipartisan Board by placing strict limits on the Board's involvement in investigations. The Public Trust Act required and continues to require only that the chief enforcement counsel seek delegation of the Board's subpoena authority when a given case requires use of subpoenas and seek referrals for prosecution from the Board when warranted. The Public Trust Act also limited the Board's ability to micro-manage the activities of the Division by limiting requirements for the chief enforcement counsel to report activities of the Division. The law required and continues to require the chief enforcement counsel only to notice the Board when certain types of complaints are dismissed, and to submit an annual report to the Board, the Governor, and the legislature summarizing the activities of the unit during the previous year. The Public Trust Act thus balanced the need for effective enforcement by putting a law enforcement professional in charge of investigations, giving the chief enforcement counsel sole authority over investigations and non-partisan personnel of the Division, and limiting the Board's partisan influence over enforcement.

Under this carefully crafted statutory scheme designed by the Legislature to ensure effective enforcement at the State Board of Elections, the Governor chose and both houses of the Legislature confirmed the first chief enforcement counsel in 2014. The chief enforcement counsel duly chosen and confirmed is a law enforcement professional with more than 40 years' experience. The chief enforcement counsel hired experienced legal, investigative and audit staff within the Division. The Division's audit and investigative staff have a combined experience of 33 years. The legal staff has a combined, criminal investigative prosecutorial, defense, appellate and civil experience of 50 years. Adding the chief enforcement counsel's 40 years of criminal justice experience, the Division has a combined 90 years of legal experience.

Since 2014, the chief enforcement counsel's investigations and enforcement actions reached both major and minor political parties, party committees, candidates, and various political interest groups, thereby exposing numerous illegal and unethical practices never before investigated by the State Board of Elections. Many of those investigations have played integral roles in state and federal prosecutions. The enforcement activities of chief enforcement counsel and the Division of Election



Law Enforcement have earned the confidence and trust of law enforcement professionals and the public for the first time in many years.

Adoption of the Board's new regulations was widely opposed and criticized by members of law enforcement familiar with the matter and by members of the public. Prior to adoption of the new regulations, during the public comment period, the chief enforcement counsel submitted extensive commentary dated June 29, 2018 opposing passage of the regulations. The chief enforcement counsel spoke in opposition to passage of the regulations at the August 8, 2018 meeting of the Board. Also, during the public comment period, several other persons and groups filed comments opposing the rules. Seven citizens living in New York, the Good Government organization Reinvent Albany, the Office of the Attorney General of New York, former Syracuse Mayor and then gubernatorial candidate Stephanie Miner, and five former members of the Commission to Investigate Public Corruption (hereinafter, the "Moreland Commission") – Moreland Co-Chair District Attorney and now Congresswoman Kathleen Rice, Moreland Co-Chair District Attorney William Fitzpatrick, Moreland Co-Chair Milton L. Williams, District Attorney Kristy Sprague, and District Attorney Thomas Zugibe all submitted written comments to the Board in addition to those submitted by the chief enforcement counsel opposing passage of the new rules. Copies of public comments submitted to the Board concerning the new regulations and quoted below are annexed hereto as Appendix B.

In summary, the Attorney General's Public Integrity Bureau Chief, Daniel Cort, "urge[d] the Board of Elections to reject Sections 6203.2(e)(1), (4), & (5) and 6203.3, which would weaken the Chief Enforcement Counsel's efforts to hold individuals accountable for violating the Election Law." Citing his experience as a public corruption prosecutor, Bureau Chief Cort observed that while passage of the Public Trust Act of 2014 "strengthened enforcement of the Election Law in New York State," the Board's new rules would "lead to a serious diminution of the Chief Enforcement Counsel's ability to investigate Election Law crimes, making it more difficult to fight corruption across New York State." Bureau Chief Cort noted that in the context of prosecuting corruption cases within a statute of limitations, "[p]utting an expiration date on these subpoenas would require more layers of approval for lengthy investigations and could incentivize strategic delays in the production of documents from subpoena recipients." "[L]imiting the scope of the subpoenas," in his opinion, would "undermine the [Chief Enforcement] Counsel's ability to uncover a violation of the Election Law." Finally, Bureau Chief Cort objected to the new rule allowing the Board to reverse its own previous approval of subpoenas issued by the chief enforcement counsel upon request of a subpoenaed party for any reason or no reason, opining that such a process "would undermine the authority and independence of the Chief Enforcement Counsel to investigate Election Law violations in New York."

Former members of the Moreland Commission submitted a letter opposing the Board's new rules. According to the letter, the Moreland Commission "exposed so many shortcomings in the investigative and enforcement capabilities of the Board that the New York State Legislature was forced to act." As a result of the Moreland Commission's findings, the Legislature created the position of the chief enforcement counsel to hold elected officials responsible for violations of the law. The Moreland Commission's former members objected to new rules that would "require the CEC to seek permission to issue subpoenas, to outline the scope of her investigations and even more absurdly, to allow people or entities to appeal the issuance of a subpoena, [which] would take the Board back to its pre-Moreland emasculated state." The authors of the letter requested that the new rules "be rejected and that the [chief enforcement counsel] be allowed to continue her critical work in a fair, even handed and independent manner." "New Yorkers," they said, "deserve nothing less."

Reinvent Albany specifically opposed rules 6203.2 and 6203.3 – the new rules governing subpoenas. Reinvent Albany is a charitable organization whose mission is to “advocate[] for transparent and accountable New York State government” and “support the work of New Yorkers who work to increase public integrity and public trust.” In its letter to the Board, Reinvent Albany observed that the new rules will “make it more difficult for the chief enforcement counsel to issue subpoenas,” “slow or terminate important investigations of alleged violations of the Election Law,” needlessly require “that the name, entity and person being subpoenaed be made known to the Board,” and create conflicts of interest by giving the Board’s partisan Democratic and Republican Party commissioners the ability to quash or modify the chief enforcement counsel’s subpoenas. Reinvent Albany opposed the Board “undercut[ing] the independence of the chief enforcement counsel, who has investigated types of cases not previously taken on by the [previous] Election Law enforcement unit of the Board.”

Gubernatorial candidate Stephanie A. Miner, the former mayor of Syracuse, also opposed the Board’s new rules. Mayor Miner asserted, “New York State has a culture of corruption. We’ve experienced countless convictions of public servants, which have shaken the trust of citizens in government . . . . We need more tools – not less – to restore integrity and rebuild faith with voters . . . . It’s imperative that the Chief Enforcement Counsel is fully empowered to monitor how [campaign funds are] raised and spent.” Mayor Miner “urge[d] the board to reconsider this proposal, which would deal a blow to democracy if enacted.”

Several concerned citizens, who wrote to the Board individually opposing the new rules, raised similar concerns. Sylvia A. Wendell stated, “the new rules reek[] of a desire to pull the teeth of what has been – and desperately needs to be – an independent investigative unit in the Board of Elections.” Stephen H. Muller stated, “[i]t is clear that the intent of these changes is to weaken the independence of the Board’s chief enforcement [counsel]. The chief enforcement [counsel] must continue to have full independence to pursue electoral law violations. The proposed changes weaken this independence and interpose partisan politics into the chief enforcement [counsel’s] investigations.” Brigitte Arduini demanded that the Board “[s]top hampering [the chief enforcement counsel’s] investigations.” Amy McCabe was “astonished” that the Board would promulgate these changes and demanded that the Board “[l]et the Enforcement Counsel do the job they are charged to do without regard to politics.” Wilma Jozwiak was “disgust[ed] with the transparent attempt on the part of [the Board] to gut the one element that actually MIGHT result in some improvement in NYS’s pathetically lame enforcement of the [Election Law].” Jean Heyer “oppose[d] the proposed changes to part 6203 which would discourage investigation and encourage abuse and corruption in our elections.” Finally, Christine Hearst urged the Board to “NOT approve these changes that would handcuff the chief enforcement counsel . . . leaving the fox to guard the hen house . . . . Stop this despicable nonsense and show some loyalty to the good citizens of New York.”

The Board ignored all these concerns and adopted the regulations without changes and without addressing concerns expressed by law enforcement, government watchdogs, the public, or the chief enforcement counsel. Instead, the Board adopted the new rules designed to regain Board control over the enforcement process and perpetuate the Board’s pre-Moreland Commission enforcement practices. Those previous enforcement practices relied on unthinking and automatic lawsuits for minor filing violations, each violation carrying a minimum \$1,000 fine, and included no meaningful investigation or enforcement around major violations committed by recidivist offenders, as demonstrated in public hearings held by the Moreland Commission in 2013. The Board’s new rules reinstate old unsuccessful enforcement practices, and mandate statistical reporting of those practices

to the Board. The new rules also inject partisan political influence where there must be closely guarded independence.

However, the Legislature and the public should recognize that enforcement work is not so neat and simple; and, it is not readily reducible to numbers on a spreadsheet or in columns on a quarterly report, as the new rules connote. Meaningful enforcement is not reflected by auto-pilot litigation wherein every minor filing violation results in a minimum \$1,000 fine or a system wherein major investigations fit into a pre-determined six-month time period. Effective enforcement does not include requiring state enforcement lawyers to send threatening letters to every local candidate and treasurer of every small committee based on an outdated Board database that does not accurately reflect who is required to file.

To the contrary, a fair approach to enforcement requires review of all facts and circumstances of a case in light of statutory criteria established by the Legislature for State Board of Elections hearing officer and court proceedings. Only by evaluating a person's legal obligations over multiple accounts and years of possible violations is it possible to make reasoned and fair decisions about which cases warrant further enforcement action and which are legally sufficient to proceed.

Investigations must be conducted in a nonpartisan, impartial, detailed manner without regard to who the subject of the investigation may be, to which political party the subject belongs, or what political ramifications may result from the course and conduct of the investigation. Each complaint, each case, and each investigation are different. The course of each investigation must be determined by the specific nature and circumstances of the case itself, and the evidence must be followed as the case develops without interruption. The investigation must be conducted by experienced attorneys, and investigative and audit staff, without interference by outside political influence, including the Board. Decisions as to who will be the subject of an investigation and who will be the recipient of a subpoena must be determined only by the facts of the case and only by those with knowledge and investigative experience to make those decisions without regard to political or partisan influence.

In adopting these new rules and regulations, the Board unilaterally circumvented the legislative process and created new law contrary to the words and intent of the Public Trust Act that created the office of chief enforcement counsel. Specifically, the Board granted itself authority that the enabling statute specifically reserves to the chief enforcement counsel. In so doing, it is the position of the chief enforcement counsel that the Board has overstepped its authority. The new rules shift the investigative authority solely vested in the chief enforcement counsel by statute to the Board and return partisan control over investigations to the very Board from which such authority was removed in 2014 after very public hearings and criticism of the Board. In addition, the rules violate statutory reporting requirements the Legislature carefully crafted to keep the Board sufficiently informed of enforcement activities while ensuring the chief enforcement counsel's independence from the Board's partisan influence. While the Board has the authority to create rules that are consistent with the law, it does not have the power to create entirely new law.

The reasons for the Board's adoption of the challenged regulations over the objections of all interested parties is unsupported by any explanation offered. Although the Board sought to couch its actions in terms of "transparency" and "accountability," its true intent was apparent. The regulations passed on August 8, 2018 are wide ranging and comprehensive and seek oversight on every aspect of the work of the Division, removing any semblance of independence envisioned by the enabling legislation. From reporting requirements, to personnel issues, to subpoena oversight, the rules impose

control over the internal and confidential workings of the Division. There can be no meaningful dispute that the chief enforcement counsel and the Division, with their deep investigative experience, are best equipped to determine the course of investigations as mandated by the Legislature.

However, review of the chief enforcement counsel's enforcement activities since 2014 may provide some insight into the Board's motivation. While such enforcement activities serve the public interest and increase public trust and confidence in our elections system, such enforcement activities are also politically inconvenient for the parties themselves. The Board, composed as it is of two members of the Republican Party and two members of the Democratic Party, is inherently conflicted in its ability to enforce the Election Law in any independent manner. The Board is well-equipped, however, to join together to further the major parties' political goals.

The Public Trust Act of 2014 sought to restore the public's trust in elected officials by creating the office of chief enforcement counsel and insulating that office and its workings from political influence by the Board. The Board's new rules will severely impair the Division's investigations and allow politically partisan intrusion into the investigatory process while major Election Law violations go unchecked. In passing these rules, the Board sent a message loud and clear – a vote for political interference in any previously independent investigation by the Division of Election Law Enforcement, a vote for partisan politics, and a vote for stepping into the shoes of the Legislature when it suited the Board's politically partisan purposes.

**DIVISION OF ELECTION LAW ENFORCEMENT**  
**APPENDIX A**

## **9 NYCRR 6203.2**

### **Section 6203.2. Provisions related to granting the chief enforcement counsel authority to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of this the Election Law**

When granting authority to the chief enforcement counsel to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of this the Election Law, the following provisions shall apply:

(a) Vote within twenty days. The board shall vote on whether to grant or refuse to grant such authority no later than twenty days after the chief enforcement counsel makes a request for such authority. A request shall be deemed made when the memorandum and proposed subpoena(s) required by paragraph (d) of this section are received by the commissioners.

(b) Participation in determinations. For purposes of considering and voting on such request, the chief enforcement counsel shall be entitled to participate in all matters related thereto and shall vote on the board's granting or refusal to grant such request only when there is a tie vote.

(c) No vote within twenty days or granting of authority. Should the board not vote on such request within twenty days of its submission, or grant the chief enforcement counsel's request, the chief enforcement counsel shall be so empowered to act pursuant to subdivisions five and six of section 3-102 of the Election Law. Any such action by the Chief Enforcement Counsel shall comply with the requirements of this section.

(d) Request for subpoena authority. An application by the chief enforcement counsel seeking authority from the board to issue a subpoena, shall be sent to the commissioners and co-executive directors whenever possible at least one week prior to a vote and shall include:

(1) a memorandum explaining the circumstances surrounding the investigation, reciting the section(s) of the Election Law that have allegedly been violated, and how any documents, testimony or other materials returned pursuant to a subpoena issued in the matter would be relevant and material to the investigation;

(2) the name(s) of the person(s) and/ or entity(ies) that will be served the proposed subpoena(s); and

(3) a copy of the proposed subpoena(s) to be issued should the authority to issue be granted. Nothing in this subsection shall limit the chief enforcement counsel's ability to limit the scope of an issued subpoena or extend the response date of an issued subpoena at the request of a person or entity named therein.

(e) Scope of Authority.

(1) A request for subpoena authority shall be directly related to a particular investigation. A grant of subpoena authority shall not include authority to issue subpoenas other than to those persons or entities identified in the application for such subpoena unless the board specifically grants such blanket authority.

(2) When the chief enforcement counsel applies for authority to issue a subpoena, the Board may authorize the chief enforcement counsel to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with and reasonably related to a lawful investigation.

(3) As a condition of granting subpoena authority to the chief enforcement counsel, the board reserves the right, upon the motion of any one Commissioner, to rescind or further condition subpoenas or

subpoenas duces tecum, by a majority vote of the board. When the board considers whether to rescind or further condition a subpoena or subpoena duces tecum, the chief enforcement counsel shall be entitled to participate in any discussion and may vote only if there is a tie vote.

(4) As a condition of granting authority to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of the Election Law to the chief enforcement counsel, such authority to so act shall expire six months after the date authority is granted by the board unless the resolution approving such authority provides for a longer duration, and any subpoenas or subpoenas duces tecum shall be deemed expired six months after authority is granted by the board unless the resolution approving such subpoenas provides for a longer duration; provided, further, that if the board did not vote within twenty days of its submission, then the chief enforcement counsel's initial authority to act without a vote, shall expire ninety days after the chief enforcement counsel was empowered to exercise such authority, and any subsequent subpoenas or subpoenas duces tecum involved in that matter shall be brought to the Board for action pursuant to the above provisions after the expiration of the ninety day period.

(5) For any authority to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of this the Election Law granted to the chief enforcement counsel prior to the effective date of this section, such authority and any subpoenas issued pursuant to such authority shall expire six months after the effective date of this regulation.

(6) Nothing in this section shall prohibit the chief enforcement counsel from making an application to renew authority to exercise powers with respect to any ongoing matter, which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of this the Election Law.

## **9 NYCRR 6203.3**

### **Section 6203.3. Provisions related to subpoena authority oversight**

(a) Any person to whom a subpoena is directed pursuant to section 6203.1 of this part, may, prior to the time specified therein for compliance, but in no event more than seven business days after the date of receipt of such subpoena, apply to the state board to quash or modify such subpoena authority delegated to the chief enforcement counsel, accompanying such application with a brief statement of the reasons therefor. Applications to quash shall be filed with the State Board of Elections, Counsel's Office, 40 North Pearl Street, Suite 5, Albany, NY 12207 or by email sent to the co-executive directors. Any such application shall be deemed sufficiently stated for consideration if it reasonably sets forth in general terms the grounds the application is based upon and a copy of the subpoena itself.

(b) Upon receiving an application to quash or modify, Counsel's Office shall send notice, by mail and e-mail whenever possible, to the movant and the chief enforcement counsel. Such notice shall specify when and where a hearing shall be held. Such hearing shall be conducted by a hearing officer of the State Board of Elections appointed pursuant to part 6218. A report with the hearing officer's recommendation shall be delivered to the office of counsel, and counsel shall provide such report to the board. The board shall render a final determination, where the board may: (i) deny the application, or (ii) rescind, amend or modify the subpoena. All steps in this process shall be completed as soon as possible. The Board shall be presented with such findings within forty-eight hours of the hearing officer delivering such report to the co-counsels of the Board. Until a decision is issued with regard to any application made under this section, all requirements to comply with the subpoena shall be stayed and the expiration of the subpoena shall be likewise tolled. A decision by the board shall be issued within thirty days after an application is made unless such time period is extended by a majority vote of the commissioners.

## **9 NYCRR 6203.4**

### **Section 6203.4. Enforcement reporting**

The chief enforcement counsel shall provide a written report to the commissioners and co-executive directors at least once in each calendar quarter that shall include the following information with respect to the preceding calendar quarter:

- (a) Total number of complaints received by the Enforcement Division by mail, email, phone, fax or any other means, and the number of such complaints:
  - (1) examined and found on their face to not warrant any further investigation;
  - (2) still pending review;
  - (3) under active investigation;
  - (4) closed; and
  - (5) referred to the commissioners for further action.
  
- (b) Total number of hearing officer proceedings initiated, and the number of such proceedings:
  - (1) for failure to file reports;
  - (2) for failure to cure a deficiency; and
  - (3) involving other matters.
  
- (c) Total number of settlements entered into and the number of such settlements entered into:
  - (1) before any hearing officer proceeding is initiated;
  - (2) after a hearing officer proceeding but before a hearing officer's determination is made; and
  - (3) after a hearing officer determination.
  
- (d) Total number of special proceedings commenced in pursuant to article sixteen of the election law, and the number of such proceedings:
  - (1) related to failure to file;
  - (2) failure to cure deficiency; and
  - (3) other matters.
  
- (e) Total sum of money collected, and with respect to such sum, the amount derived from:
  - (1) judgments entered before creation of the division of election law enforcement; and
  - (2) judgments entered after creation of the division of election law enforcement settlements.
  
- (f) Total number of deficiency referrals from the Compliance Unit received, and with respect to such referrals the number:
  - (1) referred to a hearing officer;
  - (2) chief enforcement counsel determined not to refer to hearing officer;
  - (3) pending review; and
  - (4) a decision has been made that no further action will be taken and the reasons therefor.
  
- (g) For failure to file required disclosures under article fourteen of the election law, the number of such:
  - (1) referred to hearing officer;
  - (2) chief enforcement counsel determined not to refer to hearing officer;
  - (3) pending review; and
  - (4) a decision has been made that no further action will be taken and the reason therefor.

## **9 NYCRR 6203.5**

### **Section 6203.5. Closed enforcement matters**

- (a) When the chief enforcement counsel determines no further action will be taken on a complaint or matter and the matter was not referred for possible prosecution or to a hearing officer, the matter is thereby deemed closed, and the chief enforcement counsel shall provide notice to the commissioners and co-executive directors.



(b) If no action is taken on a complaint within two years after it was received, it shall be deemed closed for purposes of providing notice to the commissioners; provided, however, if the chief enforcement counsel determines any such matters should not be deemed closed because future action is reasonably anticipated, the chief enforcement counsel shall report the number of such continued matters to the commissioners.

(c) Notice to the board of closed matters may be satisfied by a written report or by the chief enforcement counsel providing copies of complaints and any correspondence to complainants indicating a matter is closed.

(d) A copy of any settlement agreement entered into in which the chief enforcement counsel or the division of election law enforcement is a party or signatory, shall be provided to the commissioners and co-executive directors within five days of execution.

#### **9 NYCRR 6203.6**

##### **Section 6203.6. Notification of failure to file**

The division of election law enforcement shall send the letters required to be sent by Election Law § 14-108(5).

#### **9 NYCRR 6203.7**

##### **Section 6203.7. Special investigators and peace officer status reporting**

(a) A request to the commissioners to appoint a special investigator shall set forth in detail the reason such appointment is needed.

(b) At no time shall any firearm be possessed in the offices of the State Board of Elections other than the space designated for the Division of Election Law Enforcement.

(c) For each person designated by the board as a special investigator having peace officer status, the chief enforcement counsel shall provide notice to the commissioners and co-executive directors in January and June of each year as to the status of each peace officer's certifications and training compliance required by section 2.30 of the criminal procedure law.

#### **9 NYCRR 6203.8**

##### **Section 6203.8. Enforcement internal controls**

The division of election law enforcement shall annually complete the required internal controls report by the first day of April and shall provide same to the co-executive directors. Such report shall be filed by the co-executive directors with the Division of Budget and/or the Office of the State Comptroller as required by law with such reports from all other units or divisions comprising the state board of elections.

**NYSVoter Enrollment by County, Party Affiliation and Status  
Voters Registered as of November 1, 2018**

REGION	COUNTY	STATUS	DEM	REP	CON	GRE	WOR	IND	WEP	REF	OTH	BLANK	TOTAL
Outside NYC	Albany	Active	91,147	34,580	2,939	554	578	9,396	89	59	161	41,614	181,117
Outside NYC	Albany	Inactive	11,059	3,178	286	111	120	1,182	14	2	57	5,527	21,536
Outside NYC	Albany	Total	102,206	37,758	3,225	665	698	10,578	103	61	218	47,141	202,653
Outside NYC	Allegany	Active	5,696	12,441	446	92	134	1,260	10	4	25	4,895	25,003
Outside NYC	Allegany	Inactive	435	563	22	10	13	90	0	1	2	440	1,576
Outside NYC	Allegany	Total	6,131	13,004	468	102	147	1,350	10	5	27	5,335	26,579
Outside NYC	Broome	Active	42,935	40,987	1,570	371	620	6,000	59	38	89	22,768	115,437
Outside NYC	Broome	Inactive	5,428	3,405	144	69	109	835	19	5	22	3,736	13,772
Outside NYC	Broome	Total	48,363	44,392	1,714	440	729	6,835	78	43	111	26,504	129,209
Outside NYC	Cattaraugus	Active	13,925	17,463	1,095	141	253	2,258	17	9	14	9,208	44,383
Outside NYC	Cattaraugus	Inactive	1,230	1,335	107	18	32	245	3	3	1	1,112	4,086
Outside NYC	Cattaraugus	Total	15,155	18,798	1,202	159	285	2,503	20	12	15	10,320	48,469
Outside NYC	Cayuga	Active	14,747	16,615	1,207	158	216	2,483	12	7	23	9,940	45,408
Outside NYC	Cayuga	Inactive	1,125	1,081	88	20	41	242	1	0	1	1,094	3,693
Outside NYC	Cayuga	Total	15,872	17,696	1,295	178	257	2,725	13	7	24	11,034	49,101
Outside NYC	Chautauqua	Active	24,895	25,565	1,891	174	454	4,619	37	30	109	18,072	75,846
Outside NYC	Chautauqua	Inactive	2,511	1,946	182	35	54	542	5	4	16	2,465	7,760
Outside NYC	Chautauqua	Total	27,406	27,511	2,073	209	508	5,161	42	34	125	20,537	83,606
Outside NYC	Chemung	Active	15,523	20,417	826	130	266	3,117	22	17	15	10,619	50,952
Outside NYC	Chemung	Inactive	1,316	1,357	57	16	31	317	0	1	0	1,206	4,301
Outside NYC	Chemung	Total	16,839	21,774	883	146	297	3,434	22	18	15	11,825	55,253
Outside NYC	Chenango	Active	6,945	12,213	484	130	165	1,663	8	2	19	6,310	27,939
Outside NYC	Chenango	Inactive	645	877	42	15	27	168	3	1	2	812	2,592
Outside NYC	Chenango	Total	7,590	13,090	526	145	192	1,831	11	3	21	7,122	30,531
Outside NYC	Clinton	Active	17,300	14,341	487	118	249	3,326	16	6	0	10,866	46,709
Outside NYC	Clinton	Inactive	1,323	891	48	16	26	305	2	3	0	1,144	3,758
Outside NYC	Clinton	Total	18,623	15,232	535	134	275	3,631	18	9	0	12,010	50,467
Outside NYC	Columbia	Active	16,222	12,136	1,094	198	234	2,807	22	5	22	11,446	44,186
Outside NYC	Columbia	Inactive	686	449	31	6	14	184	0	0	2	579	1,951
Outside NYC	Columbia	Total	16,908	12,585	1,125	204	248	2,991	22	5	24	12,025	46,137
Outside NYC	Cortland	Active	9,114	9,944	446	110	134	1,572	12	3	11	6,896	28,242
Outside NYC	Cortland	Inactive	819	743	36	13	20	175	2	1	1	911	2,721
Outside NYC	Cortland	Total	9,933	10,687	482	123	154	1,747	14	4	12	7,807	30,963
Outside NYC	Delaware	Active	7,514	11,588	487	111	108	1,573	7	2	23	5,388	26,801
Outside NYC	Delaware	Inactive	706	787	39	13	19	191	2	1	3	729	2,490
Outside NYC	Delaware	Total	8,220	12,375	526	124	127	1,764	9	3	26	6,117	29,291
Outside NYC	Dutchess	Active	64,491	52,218	3,572	509	745	10,280	99	41	181	48,608	180,744
Outside NYC	Dutchess	Inactive	6,455	4,263	274	85	93	1,044	9	4	20	4,852	17,099
Outside NYC	Dutchess	Total	70,946	56,481	3,846	594	838	11,324	108	45	201	53,460	197,843

Outside NYC	Erie	Active	284,207	151,062	13,198	1,727	2,844	28,581	245	107	674	110,285	592,930
Outside NYC	Erie	Inactive	20,162	8,325	602	169	255	2,048	19	6	64	9,629	41,279
Outside NYC	Erie	Total	304,369	159,387	13,800	1,896	3,099	30,629	264	113	738	119,914	634,209
Outside NYC	Essex	Active	6,721	10,420	208	84	62	1,751	6	1	14	4,541	23,808
Outside NYC	Essex	Inactive	1,000	1,255	34	20	18	307	1	0	7	913	3,555
Outside NYC	Essex	Total	7,721	11,675	242	104	80	2,058	7	1	21	5,454	27,363
Outside NYC	Franklin	Active	9,732	8,479	334	79	96	1,615	2	3	2	4,725	25,067
Outside NYC	Franklin	Inactive	772	605	22	15	16	195	0	0	2	680	2,307
Outside NYC	Franklin	Total	10,504	9,084	356	94	112	1,810	2	3	4	5,405	27,374
Outside NYC	Fulton	Active	7,282	15,090	558	78	157	1,693	15	4	35	5,790	30,702
Outside NYC	Fulton	Inactive	950	1,334	50	17	35	209	1	1	1	1,008	3,606
Outside NYC	Fulton	Total	8,232	16,424	608	95	192	1,902	16	5	36	6,798	34,308
Outside NYC	Genesee	Active	9,085	15,938	933	112	184	1,940	15	3	105	8,536	36,851
Outside NYC	Genesee	Inactive	415	627	42	7	14	85	0	0	4	447	1,641
Outside NYC	Genesee	Total	9,500	16,565	975	119	198	2,025	15	3	109	8,983	38,492
Outside NYC	Greene	Active	7,568	11,675	790	135	133	1,909	9	1	3	7,514	29,737
Outside NYC	Greene	Inactive	826	986	75	49	20	249	1	0	0	952	3,158
Outside NYC	Greene	Total	8,394	12,661	865	184	153	2,158	10	1	3	8,466	32,895
Outside NYC	Hamilton	Active	892	2,455	61	8	5	226	1	0	4	565	4,217
Outside NYC	Hamilton	Inactive	90	183	16	3	0	31	0	0	0	73	396
Outside NYC	Hamilton	Total	982	2,638	77	11	5	257	1	0	4	638	4,613
Outside NYC	Herkimer	Active	9,628	17,681	682	117	114	2,431	10	27	36	6,599	37,325
Outside NYC	Herkimer	Inactive	859	1,160	57	15	25	263	1	5	3	760	3,148
Outside NYC	Herkimer	Total	10,487	18,841	739	132	139	2,694	11	32	39	7,359	40,473
Outside NYC	Jefferson	Active	15,753	23,568	880	160	199	3,241	24	11	31	12,676	56,543
Outside NYC	Jefferson	Inactive	1,844	1,942	102	18	35	406	0	2	4	2,417	6,770
Outside NYC	Jefferson	Total	17,597	25,510	982	178	234	3,647	24	13	35	15,093	63,313
Outside NYC	Lewis	Active	4,002	8,498	289	32	43	841	2	1	3	2,840	16,551
Outside NYC	Lewis	Inactive	477	749	24	5	6	114	0	0	0	425	1,800
Outside NYC	Lewis	Total	4,479	9,247	313	37	49	955	2	1	3	3,265	18,351
Outside NYC	Livingston	Active	10,547	16,834	914	149	136	1,924	11	8	73	8,867	39,463
Outside NYC	Livingston	Inactive	809	831	48	24	23	166	4	0	10	833	2,748
Outside NYC	Livingston	Total	11,356	17,665	962	173	159	2,090	15	8	83	9,700	42,211
Outside NYC	Madison	Active	11,450	15,905	874	140	214	2,624	8	4	71	9,728	41,018
Outside NYC	Madison	Inactive	996	1,038	58	14	31	214	0	0	7	986	3,344
Outside NYC	Madison	Total	12,446	16,943	932	154	245	2,838	8	4	78	10,714	44,362
Outside NYC	Monroe	Active	189,681	129,043	7,906	1,290	1,524	20,933	221	50	717	111,977	463,342
Outside NYC	Monroe	Inactive	14,401	6,989	413	153	137	1,500	14	2	64	8,142	31,815
Outside NYC	Monroe	Total	204,082	136,032	8,319	1,443	1,661	22,433	235	52	781	120,119	495,157
Outside NYC	Montgomery	Active	8,964	9,362	661	72	113	1,538	14	8	22	6,341	27,095

Outside NYC	Montgomery	Inactive	784	655	72	4	20	155	2	1	4	813	2,510
Outside NYC	Montgomery	Total	9,748	10,017	733	76	133	1,693	16	9	26	7,154	29,605
Outside NYC	Nassau	Active	365,982	304,217	9,506	1,644	2,172	33,815	306	337	450	224,930	943,359
Outside NYC	Nassau	Inactive	35,214	27,214	843	204	226	3,216	16	9	32	21,934	88,908
Outside NYC	Nassau	Total	401,196	331,431	10,349	1,848	2,398	37,031	322	346	482	246,864	1,032,267
Outside NYC	Niagara	Active	50,584	43,737	3,086	494	1,151	6,937	65	45	145	24,389	130,633
Outside NYC	Niagara	Inactive	4,109	2,801	190	45	119	551	15	2	9	2,642	10,483
Outside NYC	Niagara	Total	54,693	46,538	3,276	539	1,270	7,488	80	47	154	27,031	141,116
Outside NYC	Oneida	Active	43,776	48,501	2,046	309	474	7,656	64	24	165	25,362	128,377
Outside NYC	Oneida	Inactive	3,507	2,773	129	32	70	681	3	1	16	2,389	9,601
Outside NYC	Oneida	Total	47,283	51,274	2,175	341	544	8,337	67	25	181	27,751	137,978
Outside NYC	Onondaga	Active	108,079	82,592	4,740	1,044	1,194	14,781	147	46	418	74,220	287,261
Outside NYC	Onondaga	Inactive	11,958	5,966	381	160	198	1,633	13	9	49	8,406	28,773
Outside NYC	Onondaga	Total	120,037	88,558	5,121	1,204	1,392	16,414	160	55	467	82,626	316,034
Outside NYC	Ontario	Active	21,237	27,198	1,392	237	227	3,983	28	20	49	17,526	71,897
Outside NYC	Ontario	Inactive	895	1,117	67	15	11	222	3	1	2	973	3,306
Outside NYC	Ontario	Total	22,132	28,315	1,459	252	238	4,205	31	21	51	18,499	75,203
Outside NYC	Orange	Active	81,129	69,943	4,204	656	1,077	11,597	116	56	199	51,330	220,307
Outside NYC	Orange	Inactive	7,380	5,611	334	65	125	1,186	8	4	25	5,173	19,911
Outside NYC	Orange	Total	88,509	75,554	4,538	721	1,202	12,783	124	60	224	56,503	240,218
Outside NYC	Orleans	Active	5,275	10,681	541	67	135	1,108	9	3	41	5,055	22,915
Outside NYC	Orleans	Inactive	384	591	41	9	21	92	0	0	3	458	1,599
Outside NYC	Orleans	Total	5,659	11,272	582	76	156	1,200	9	3	44	5,513	24,514
Outside NYC	Oswego	Active	16,908	31,207	1,637	160	317	3,724	21	8	61	14,867	68,910
Outside NYC	Oswego	Inactive	2,602	3,325	191	21	79	651	2	0	13	2,638	9,522
Outside NYC	Oswego	Total	19,510	34,532	1,828	181	396	4,375	23	8	74	17,505	78,432
Outside NYC	Otsego	Active	10,632	12,874	533	153	129	2,116	15	5	40	7,208	33,705
Outside NYC	Otsego	Inactive	1,026	969	43	16	22	225	1	0	6	910	3,218
Outside NYC	Otsego	Total	11,658	13,843	576	169	151	2,341	16	5	46	8,118	36,923
Outside NYC	Putnam	Active	18,934	22,028	1,801	163	203	3,743	26	17	63	16,306	63,284
Outside NYC	Putnam	Inactive	1,638	1,828	154	16	13	365	0	1	7	1,544	5,566
Outside NYC	Putnam	Total	20,572	23,856	1,955	179	216	4,108	26	18	70	17,850	68,850
Outside NYC	Rensselaer	Active	29,782	24,173	4,121	435	964	7,755	63	45	34	29,077	96,449
Outside NYC	Rensselaer	Inactive	3,721	2,045	319	59	192	932	2	3	7	3,326	10,606
Outside NYC	Rensselaer	Total	33,503	26,218	4,440	494	1,156	8,687	65	48	41	32,403	107,055
Outside NYC	Rockland	Active	89,611	44,996	4,286	404	864	7,852	73	167	6	44,735	192,994
Outside NYC	Rockland	Inactive	7,298	3,648	259	45	77	731	4	4	0	4,277	16,343
Outside NYC	Rockland	Total	96,909	48,644	4,545	449	941	8,583	77	171	6	49,012	209,337
Outside NYC	Saratoga	Active	42,175	60,152	2,428	413	412	9,147	45	17	45	38,491	153,325
Outside NYC	Saratoga	Inactive	3,960	4,328	232	52	58	939	4	2	9	3,982	13,566

Outside NYC	Saratoga	Total	46,135	64,480	2,660	465	470	10,086	49	19	54	42,473	166,891
Outside NYC	Schenectady	Active	36,214	22,999	3,157	317	633	5,426	85	17	61	23,561	92,470
Outside NYC	Schenectady	Inactive	3,357	1,671	176	43	82	542	6	0	12	2,394	8,283
Outside NYC	Schenectady	Total	39,571	24,670	3,333	360	715	5,968	91	17	73	25,955	100,753
Outside NYC	Schoharie	Active	4,799	7,295	525	71	85	1,168	12	14	28	4,260	18,257
Outside NYC	Schoharie	Inactive	552	680	61	8	15	184	1	3	3	668	2,175
Outside NYC	Schoharie	Total	5,351	7,975	586	79	100	1,352	13	17	31	4,928	20,432
Outside NYC	Schuyler	Active	3,286	4,693	254	67	68	716	2	1	0	2,614	11,701
Outside NYC	Schuyler	Inactive	278	404	20	7	16	98	1	0	0	325	1,149
Outside NYC	Schuyler	Total	3,564	5,097	274	74	84	814	3	1	0	2,939	12,850
Outside NYC	Seneca	Active	5,923	7,482	411	70	107	1,008	7	8	1	4,207	19,224
Outside NYC	Seneca	Inactive	478	483	45	5	14	129	0	0	0	502	1,656
Outside NYC	Seneca	Total	6,401	7,965	456	75	121	1,137	7	8	1	4,709	20,880
Outside NYC	St.Lawrence	Active	21,692	20,140	921	175	260	3,346	23	5	68	12,447	59,077
Outside NYC	St.Lawrence	Inactive	2,147	1,627	71	39	45	403	2	0	5	1,824	6,163
Outside NYC	St.Lawrence	Total	23,839	21,767	992	214	305	3,749	25	5	73	14,271	65,240
Outside NYC	Steuben	Active	14,067	28,029	957	166	247	3,029	23	4	88	10,451	57,061
Outside NYC	Steuben	Inactive	1,366	2,023	94	24	37	378	2	0	11	1,486	5,421
Outside NYC	Steuben	Total	15,433	30,052	1,051	190	284	3,407	25	4	99	11,937	62,482
Outside NYC	Suffolk	Active	325,329	308,613	20,835	2,011	4,039	43,157	389	168	796	259,874	965,211
Outside NYC	Suffolk	Inactive	26,294	20,048	1,352	201	343	3,481	30	14	75	20,448	72,286
Outside NYC	Suffolk	Total	351,623	328,661	22,187	2,212	4,382	46,638	419	182	871	280,322	1,037,497
Outside NYC	Sullivan	Active	17,628	13,416	1,021	151	234	2,428	22	5	38	11,700	46,643
Outside NYC	Sullivan	Inactive	2,275	1,281	90	23	49	302	1	1	4	1,507	5,533
Outside NYC	Sullivan	Total	19,903	14,697	1,111	174	283	2,730	23	6	42	13,207	52,176
Outside NYC	Tioga	Active	8,010	13,649	460	97	104	1,706	6	1	58	6,445	30,536
Outside NYC	Tioga	Inactive	699	970	36	10	14	174	2	0	2	759	2,666
Outside NYC	Tioga	Total	8,709	14,619	496	107	118	1,880	8	1	60	7,204	33,202
Outside NYC	Tompkins	Active	28,718	11,178	407	405	229	2,218	20	3	74	11,732	54,984
Outside NYC	Tompkins	Inactive	4,180	1,307	41	93	41	320	5	1	14	2,222	8,224
Outside NYC	Tompkins	Total	32,898	12,485	448	498	270	2,538	25	4	88	13,954	63,208
Outside NYC	Ulster	Active	45,453	28,098	2,468	693	601	5,914	68	16	99	33,867	117,277
Outside NYC	Ulster	Inactive	4,019	1,969	193	75	66	579	7	1	17	3,394	10,320
Outside NYC	Ulster	Total	49,472	30,067	2,661	768	667	6,493	75	17	116	37,261	127,597
Outside NYC	Warren	Active	10,820	18,483	628	233	129	2,594	18	29	33	8,682	41,649
Outside NYC	Warren	Inactive	1,072	1,437	62	32	17	317	1	3	2	1,093	4,036
Outside NYC	Warren	Total	11,892	19,920	690	265	146	2,911	19	32	35	9,775	45,685
Outside NYC	Washington	Active	8,917	14,580	664	145	173	2,203	9	5	2	7,891	34,589
Outside NYC	Washington	Inactive	758	902	52	14	25	233	1	0	0	810	2,795
Outside NYC	Washington	Total	9,675	15,482	716	159	198	2,436	10	5	2	8,701	37,384

Outside NYC	Wayne	Active	13,386	22,207	1,481	164	262	2,906	12	8	105	14,158	54,689
Outside NYC	Wayne	Inactive	994	1,234	89	17	40	240	0	0	14	1,247	3,875
Outside NYC	Wayne	Total	14,380	23,441	1,570	181	302	3,146	12	8	119	15,405	58,564
Outside NYC	Westchester	Active	287,817	128,719	7,624	988	1,427	22,174	260	140	203	140,626	589,978
Outside NYC	Westchester	Inactive	25,719	10,927	584	115	167	2,056	2	0	25	13,599	53,194
Outside NYC	Westchester	Total	313,536	139,646	8,208	1,103	1,594	24,230	262	140	228	154,225	643,172
Outside NYC	Wyoming	Active	5,215	10,994	540	40	92	1,160	0	1	30	5,235	23,307
Outside NYC	Wyoming	Inactive	396	554	37	2	13	95	0	0	1	489	1,587
Outside NYC	Wyoming	Total	5,611	11,548	577	42	105	1,255	0	1	31	5,724	24,894
Outside NYC	Yates	Active	3,225	6,378	235	59	54	678	13	20	11	2,744	13,417
Outside NYC	Yates	Inactive	222	386	21	3	6	55	1	1	5	323	1,023
Outside NYC	Yates	Total	3,447	6,764	256	62	60	733	14	21	16	3,067	14,440
Outside NYC Grand Tot		Active	2,630,569	2,165,770	127,741	19,010	28,043	337,646	2,940	1,686	5,893	1,641,604	6,960,902
Outside NYC Grand Tot		Inactive	236,621	157,673	9,178	2,390	3,435	32,472	236	103	665	164,427	607,200
Outside NYC Grand Tot		Total	2,867,190	2,323,443	136,919	21,400	31,478	370,118	3,176	1,789	6,558	1,806,031	7,568,102