

**2021-2022 LWVNYS Study
Election Administration Structure**

Response Form (separate document)

Instructions & Proposed Position Statements

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New State League Study Process and Committee Charge

Using the new study process adopted by the LWVNYS Board in 2019, the Election Administration Structure Committee has prepared a set of Position Statements that, if approved by members, will be used to determine new state League Positions on how to improve the structure of election administration in New York.

Our current advocacy on improving state election administration through statutory changes, see **Summary of Current LWVNYS Election Administration Advocacy** below, will not be impacted by the results of the approval process for the new Positions. This Committee was charged with considering whether there were more sweeping reforms that the state League should support even if they would require amending the Constitution and fundamentally changing the way elections are administered in New York State.

The results of the study have been divided into three separate Position Statements approved by the State Board.

- I. State Election Administration
- II. Local Election Administration
- III. Local and State Boards.

If approved by members, the Position Statements will be used by the Board to finalize new state League Positions on election administration. The wording of the final Positions will not differ substantively from the wording of the Position Statements, but flexibility in wording will allow for us to make necessary editorial changes for clarity. Each Position Statement consists of two or more bullet points. For concurrence with a Position Statement, you must approve all the bullet points within that Position Statement.

League and Member Response Process

We are asking you to make three separate decisions on three Position Statements. You may concur with one, two, or all three.

- *Do you concur with the Position Statement on State Election Administration?*
- *Do you concur with the Position Statement on Local Election Administration?*
- *Do you concur with the Position Statement on Local and State Boards?*

The concurrence process will be conducted in the same manner as the recent Healthcare update. We are urging all local Leagues to have member meetings to discuss the materials and the Position Statements and the state League will give greater weight to member input as part of a local League response. For members who cannot attend their local League discussions, or who are members of a local League not participating in the study, LWVNYS will organize virtual discussions and Q&A sessions. Individuals may complete an individual response form if they participate in these sessions.

The summary of current advocacy below is for informational purposes only and not part of the concurrence process.

Summary of Current LWVNYS Election Administration Advocacy

- Any constitutional bipartisan requirement for equal representation of the two major political parties should be restricted under state law to the constitutional minimum of qualifying voters, ballot distribution and processing votes. Any election administration staff representing parties should have fixed terms and limits on party involvement.
- The state should establish uniform statewide rules on voter registration, election administration and ballot access under state election law and require local boards of election to comply with them.
- The state should require transparency and accountability in state and local election operations that includes regularly scheduled open meetings, transparency in election results reporting, and a directive to maintain accurate and up-to-date public information on state and local election office websites and social media.
- Appointment of Commissioners to local boards should be done in a transparent and public process. Commissioners should not simultaneously serve as party or elected officials.
- There should be staffing and salary standards for employees of local boards of election. Adequate state funding should be provided to counties to hire and train professional staff. All vacancies at the state board and local boards should be publicly advertised and hiring should be merit based. All election administration staff including Commissioners should have standardized annual training requirements.

Proposed Position Statements

The League of Women Voters of New York State believes that a more accountable, transparent, and professional state election administration would improve voter access and confidence in our elections. We believe that achieving these goals will require changes to the state constitution.

I. State Election Administration

- The League believes that New York State should create the position of chief election official in charge of election administration. This position could be combined with that of the Secretary of State or be a new statewide elected position with a fixed term. Any candidate for this office should not have been an elected official or a party official for some time prior to their election and could not run for any other elected office or party position during the term of office or for some time after the term ends. Ideally, the position should be nonpartisan.
- The chief election official should establish uniform statewide rules on voter registration, election administration and ballot access under state election law, and serve as an oversight authority to safeguard compliance of local election officials with these rules. The office should administer the statewide voter registration database, assist local election officials by providing training, and oversee the process of testing and certifying voting equipment.
- The chief election official should ensure accountability and transparency in state and local election operations by holding scheduled open meetings, maintaining accuracy and timeliness in election results reporting, and directing local election officials to hold public meetings and maintain correct and up-to-date public information on local election office websites and social media.

II. Local Election Administration

- The League believes that local elections should be administered by a local election official appointed by the local elected governing body with a fixed term of office and removable for cause by either the appointing body or the chief state election official. This local election official should not have been a state or local elected official or party official for some time prior to their appointment. Appointment of the local election official should be done through a public merit-based process and the position should have standardized annual training requirements.
- There should be staffing and salary standards for employees of the local election office which include the local election official as a full-time employee. Adequate state funding should be provided to counties to hire and train professional staff. All vacancies should

be publicly advertised and hiring should be merit based. All election administration staff should have standardized annual training requirements.

III. Local and State Boards

- The League of Women Voters believes that a bipartisan or multi-party state Board could provide certification of state election results and possibly other functions. Appointments to the Board could be made by the Governor alone or in combination with the legislative leaders, and/or the legislature, in a transparent and public process. The chief state election official could remove members of the Board for cause.
- The League believes that a bipartisan or multi-party local Board could be established to provide certification of local election results and possibly other functions such as qualifying voters. Appointments to the Board could be made by the local election official in a transparent and public process, subject to approval of local elected governing body. The local election official could remove members of the Board for cause. Members could also be removed by the state chief election official for cause.

Explanation and Rationale for the Position Statements

Accountability - Electing a statewide chief election official and having local elected governments appoint local election officials will increase public accountability.

Election administration in New York has proven inadequate for the challenge of running modern elections. The current bipartisan system was considered a progressive reform when it was added to the constitution more than 100 years ago. However, the resulting lack of accountability at all levels of government has stymied reform.

Who makes decisions and sets policy on state election administration? Who runs our elections? Under the current bipartisan system, the two major political parties in the state control both the state board of elections and the local county boards. Therefore, only appointed party insiders can answer those questions. That is unacceptable. Voters are entitled to know whom to hold responsible for how well or poorly elections are run. Greater accountability will help to restore confidence in our election administration and help increase voter turnout.

Putting one person in charge of the electoral process on the state and each local level will increase administrative accountability. The state chief election official will be the focal point for all election administration policies and actions, will ensure that local election officials comply with all state elections laws. An elected official will ultimately be responsible for state and local Boards in their role of qualifying voters and counting votes since he or she will be able to remove Board members for cause. The local chief election officials will be the focal point for all local election policies and actions, will ensure that local rules and regulations are followed and will have removal power over local Board members for cause.

Professionalization - Eliminating Domination of the Two Major Parties Is Critical.

Eliminating the current bipartisan system of state and local Boards of Elections running elections will require the extended process of amending the state Constitution. We believe this step is necessary because election administration controlled by the two major parties is secretive, unprofessional, inconsistent, and often incompetent. Abolishing the bipartisan boards currently administer elections would also treat voters with no party affiliation just like voters who register as Democrats or Republicans. Currently there are several minor parties in NY State, and 23% of New Yorkers are not registered with any party.

Our current advocacy already supports a change in state law to restrict representation of the two major parties in election administration to the constitutional minimum of qualifying voters, ballot distribution and processing votes. The new League Position would extend the nonpartisan requirement to all staff. Hiring could then be based on professional knowledge, technical expertise, and relevant experience.

Precedents - All Three Proposed Positions Follow Most Common Model of Other States.**I. State Election Administration**

Thirty-four of the fifty states have a single appointed or elected official in charge of state election administration.

II. Local Election Administration

Every state relies on local election officials to conduct local elections. Election administration policymaking in this model would continue to be done at the state level.

III. Local and State Boards

In addition, every state has mechanisms for qualifying voters and certifying election results. Typically, these involve representatives of different political parties as a means of reassuring members of the party not in power by allowing them to oversee elections in the limited role of qualifying voters and/or counting votes. However, other states do not give authority to party-appointed boards to run the entire election system as New York currently does. Legal standards and procedures should be in place to ensure that the boards doing the qualifying and certifying of election results act fairly under the election law. This is not the same as allowing elected officials to overturn the results of fair elections.

Opposing Arguments

Against an Elected State Chief Election Officer

Investing authority in one elected person may encourage that person to make decisions based largely on political considerations and to use the office to further personal political objectives.

The proposed additional responsibilities of statewide election administration could be an added burden to the Secretary of State position if combined with that position.

Qualities needed to win an election are not the same qualifications needed to manage statewide election administration. While politically astute, the candidate may not always possess the necessary management experience and training, especially regarding statewide election administration.

Against a Local Election Officer Appointed by the Local Governing Body

If selected from outside the community, the official may not know the community and its voters.

State election law could leave too much decision making to the local official who, if appointed, is not directly accountable to the public.

A local election official appointed by the local elected governing body could be politicized if one party controls the process. Because of that appointment, an election official may face increasing pressure to prioritize partisan interests over a fair, democratic process.

The job of an election administrator has evolved as it has become more complex. With more technology involved in the election process, an election official will be required to have advanced technical election administration knowledge which may limit the pool of qualified candidates.

Violent threats against election workers reached an alarming level in 2020 and continue in 2021. In this environment, it may pose a challenge to procure a pool of interested candidates to consider for a local election official role.

Against Local and State Boards to certify election results and/or qualify voters

A Local or State Board consisting of representatives of different political parties could re-create some of the same problems of the current system.

Appendix A

Brief History of New York Election Administration System

New York's system of election administration has evolved since the establishment of our state with reforms enacted to address perceived shortcomings. Unlike some other jurisdictions, local elections officials in New York have been appointed, not elected, since the founding of our country. New York's election administration system is unique in that it is the only state in which political parties themselves, not elected or appointed officials, have the sole responsibility for nominating state and local election administrators. This system is premised under the assumption that a truly nonpartisan election administration system is impossible and that the counterweight of competing political parties acts as a needed check and balance on the election administration system.

New York's earliest elections were conducted by voice vote and there was very little in the way of formal election administration. The use of ballots for elections was not explicitly permitted in New York until 1821 when New York's second Constitution was adopted. Voter registration arrived in New York in 1859 and the state was one of the first in the nation to enact a voter registration law. The initial voter registration law imposed no voter registration requirements upon voters but instead directed local registrars to prepare lists of eligible voters based on who had voted in the previous election. In its initial construction, voter registration was very simple, and voters could be easily added to the rolls without much effort.

Within a few years, in reaction to allegations of fraud, voter registration became more difficult requiring annual, personal registration. In-person registration during designated days and hours in October of every year were required for a voter to be included in the state's list of registered voters for the November election. Importantly, this requirement only applied to the cities of New York and Brooklyn and was later extended to apply to all cities in the state. Rural areas continued to use a more lenient registration system where there was no annual requirement to register, and voters were permanently registered so long as they continued to vote. The discrepancy between urban and rural voting registration requirements remained in place until 1954 when all counties were permitted to offer permanent voter registration. Not surprisingly, urban counties had much lower voter registration rates than more rural counties in which voters were considered permanently registered. By 1967, all counties were required to offer permanent voter registration.

Until 1872, New York City elections were conducted by a bureau within the Police Department which at that time was controlled by the Democratic party. In 1872, the New York State Legislature passed a law requiring the New York City Police Department to appoint both Democratic and Republican election inspectors in each election district. Thus, was born the bipartisan election administration system that has endured to this day. The appointment of election inspectors from both parties was less an effort to ensure checks and balances in election administration and was enacted more by a desire to share patronage jobs at taxpayer expense. The state continued to build out the bipartisan election administration structure and by the late 1880s political party chairs had the right to recommend candidates for appointment as elections commissioners.

The first Board of Elections separate from the Police Department was created in 1894 in response to an investigation that revealed widespread police intimidation of voters. Constitutional amendments that year also established a role for the two major parties in recruiting election administrators. The bipartisan structure and the accompanying patronage system still generally governs the operation of state and local boards of elections today.

The creation of a state authority to oversee elections was not created until 1898. In 1898, the Office of the State Superintendent of Elections was created to identify election fraud and prosecute offenders, but the scope of oversight was limited to election fraud in New York City. In 1911, the office was expanded to include the oversight of the entire state, but it was abolished in 1921 because of the Tammany Hall scandal. From 1921 until 1974, New York State election administration was principally the responsibility of the county boards of elections with limited statewide oversight provided by the Secretary of State and Attorney General. In 1974, New York State adopted the Campaigns, Election and Procedures Law which reestablished a permanent, bipartisan New York State Board of Elections “with overall administration and enforcement authority.”

Election administration in New York is highly decentralized and shared between the New York State Board of Elections and county boards of elections. The State Board of Elections is governed by four commissioners - two selected by each major political party - with management of the day-to-day operations of the agency conducted by a bipartisan pair of executive directors.

The State Board of Elections has a limited purview. It coordinates voter registry data between the local boards of elections, collects certain information from them, performs statewide regulatory functions, certifies voting machines, sets the state political calendar, maintains the state campaign finance database and filings, and can set statewide regulation on certain issues. The State Board of Elections also handles core administrative functions for certain state-wide offices, Supreme Court judgeships, state legislative districts, and many congressional districts that cross the jurisdictional boundaries of local boards of elections. Critically, the State Board of Elections does not exert supervisory power over the management decisions of local boards of elections and does not investigate the activities of local boards.

Local county boards of elections perform the vast bulk of election related duties. Core activities covered by the local county boards include maintenance of voter registration lists, receiving and reviewing nominating petitions, poll site planning and staffing, voting technology procurement, absentee and affidavit ballots, and post-election canvassing. County boards of elections are generally governed by a bipartisan pair of commissioners - one each appointed by local Democratic and local Republican party leadership. In smaller counties, many election commissioners serve part-time and with limited staff throughout the year. In New York City, the county boards of election are joined into a citywide board. The New York City Board of Elections has 10 commissioners, 2 from each county with management of the agency led by a single Executive Director chosen by the board with a deputy commissioner from the other political party.

Appendix B

Election Administration Structures in Other States

In 2020, the National Conference of State Legislators (NCSL) created a report entitled “Election Administration at State and Local Levels.” <https://www.ncsl.org/research/elections-and-campaigns/election-administration-at-state-and-local-levels.aspx>

As the title suggests, the report summarized how election administration is structured across the United States. The researchers found that the United States has a highly decentralized election administration system with the local level in most states doing the actual running of elections. No state administers elections in the same way as other states and there is variation in local administration within states. Each state’s administration was built on changes over time as the tasks comprising an election system became more complex. The following is a summary of the report’s description of the state and local structure across the fifty states.

At the state level, states either have a chief election official, or a board or commission, or a combination of the two, with ultimate authority over elections in the state. The most common model is a single chief election officer.

- Twenty-four states have an elected secretary of state as the chief election official.
- Two states have an elected lieutenant governor as the chief election official.
- Three states have a chief election official selected by the legislature.
- Five states have a chief election official appointed by the governor. In four of the states, the position is the Secretary of State; in the other, the position is the Commissioner of Elections.
- Nine states have a board or a commission that oversees elections. Appointments to these commissions are usually made by the governor and confirmed by the Senate. They are most often structured to be bipartisan, with a certain number of members from each of the major political parties.
- Seven states use a combination of a chief election official and a board or commission.

Duties of the chief election official or election board/commission vary. Secretaries of State have other duties in addition to the management of elections; they may administer business filings and licensing in the state, and act as the keeper of the state seal. Enforcing campaign finance regulations may fall to a secretary of state or state elections board in some cases, and in others would fall to a separate ethics commission.

When there is both an elected individual and a board or commission charged with elections, the division of duties varies. Rhode Island is one example of shared responsibilities. There, the secretary of state’s office oversees ballot design, layout, and coding; sending out mail ballots; certifying candidates; and overseeing procurement for voting equipment. The state board of elections packages equipment supplies and precinct tabulators and delivers them to each city/town before the election; troubleshoots technical issues on Election Day; and receives and tabulates statewide results.

Regardless of who the chief election official is, there are some duties that fall to the state office of elections. These include ensuring that election laws are followed by local officials

statewide; administration of a statewide voter registration database required by HAVA; assisting local election officials by providing training courses or materials on running elections in the state; and providing a process for testing and certifying voting equipment for use in the state. Some state offices provide certification programs for local election officials on election procedures and may also help pay for certain types of elections, or a portion of expenses.

Locally, elections are usually administered at the county level, although in some New England and Midwestern states it falls to cities or townships to run elections. In all, there are more than 10,000 election administration jurisdictions in the U.S. The size of these jurisdictions varies dramatically, with the smallest towns having only a few hundred registered voters and the largest jurisdiction in the country, Los Angeles County, with more than 4.7 million.

At the local level, elections can be run by a single individual, a board or commission of elections, or a combination of two or more entities.

- Twenty-two states have a single individual who administers elections at the local level. The individual is usually elected, but this can vary within the state. Some states have an individual who administers elections in most jurisdictions, but an election board that administers elections in the larger cities. In larger jurisdictions, there may be an election administrator or supervisor whose sole responsibility is the administration of elections, whereas in most smaller and medium counties the county clerk, recorder, registrar, assessor, auditor, or controller may serve as the election official in addition to conducting other county duties.
- Ten states use a board of elections for the primary responsibilities of local election administration. These are typically bipartisan in nature, with appointments made either at the state level, at the local level, or a combination of the two, and with input from political parties.
- Eighteen states divide election administration duties between two or more offices.

When election duties are divided between one or more offices on the local level, the most common division is between voter registration and the actual administration of elections. The division of duties between different entities varies greatly and is not detailed in the report.

As an example of what this division looks like, in Arkansas an elected county clerk runs the day-to-day operation of registration and voting, including absentee and early voting. There is a three-member county board which deals with Election Day procedures, including appointing election officials, delivering supplies to the polls, counting ballots and canvassing returns.

Appendix C

Additional Resources

- Testimony from other good government groups regarding BOE reform, see https://drive.google.com/drive/folders/1C-UzD2GRYL_rXVLo4SaTyHmlztldLWN1
- National Conference of State Legislatures, Election Administration at State and Local Levels, June 15, 2016, at <http://www.ncsl.org/research/elections-and-campaigns/election-administration-at-state-and-local-levels.aspx>
- National Association of Election Officials (NASED) Election Center: <https://www.electioncenter.org/election-consulting.html>
- US Election Assistance Commission – Election Management Guidelines https://www.eac.gov/election_management_resources/election_management_guidelines.aspx
- The State and Local Role in Election Administration: Duties and Structures, Congressional Research Service <https://sgp.fas.org/crs/misc/R45549.pdf>
- American Voting Experience, PCEA Final Report Jan 2014 <http://electionlawblog.org/wp-content/uploads/pcea-final-report.pdf>
- The time has come for nonpartisan state election leadership <https://www.msn.com/en-us/news/politics/the-time-has-come-for-nonpartisan-state-election-leadership/ar-BB1fir2V>
- NYS Senate Election Committee final report on BOE Structure – November 15, 2021 https://nysenate.gov/sites/default/files/press-release/attachment/elex1115_vfinal.pdf