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**Thomas P. DiNapoli  
COMPTROLLER**



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**OFFICE OF THE  
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE  
GOVERNMENT ACCOUNTABILITY**

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**NEW YORK STATE BOARD  
OF ELECTIONS**

**ABSENTEE VOTING**

**Report 2007-S-65**

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## AUDIT OBJECTIVES

The objectives of our audit were to determine whether the absentee voting process in New York State was adequately overseen by the State Board of Elections, and whether voting by absentee ballot was properly administered by selected local County Boards.

## AUDIT RESULTS - SUMMARY

The State Board of Elections (State Board) is responsible for administering and enforcing all election laws in New York State. The State Board oversees 62 County Boards of Elections (County Boards).

Voters who are unable to appear at their regular polling place on the day of an election may cast their vote by absentee ballot. To receive an absentee ballot, voters must complete a formal application and submit the application to their local County Board. If the application is accepted by the County Board, a ballot is provided to the voter. The completed ballot is then to be returned to the County Board within the time frame specified by law.

We found that the State Board of Elections has not provided adequate oversight for the absentee voting practices and procedures administered by County Boards. In particular, we noted that, while the State Board has conducted 15 reviews of the operations of County Boards and practices since 2001, those reviews were follow-up to reviews dating back to the 1990s; and neither the original reviews nor the follow-up reviews addressed absentee voting. Based on our on-site examinations of absentee voting practices and procedures at seven County Boards, we concluded that County Boards were not always adequately administering absentee voting. In addition, we noted that, though the State Board is required by law to report to the

Governor and the Legislature certain summary data about the results of absentee voting, the reporting is not always accurate and complete.

Our review of the controls over the absentee ballot process in seven selected counties (Albany, Bronx, Dutchess, Rensselaer, Richmond, Seneca, and Westchester) found that certain controls over timeliness, completeness, and accuracy of the absentee ballots need to be strengthened.

We found that six of the seven counties accepted applications that should have been rejected, either because they were incomplete or because the voter was not registered to vote in that county. In addition, the voter databases in five of seven counties were not always updated to reflect a change of address or a status change to inactive, as required.

Without proper controls, absentee ballots could be provided to individuals who do not qualify for the ballots. In a local election in 2005 in one of the counties we visited, several absentee ballots were voided in court because the ballot applications were not complete, and the outcome of the election was overturned as a result of this. It is thus important that the application process be properly administered by the County Boards and that the process be overseen and reviewed by the State Board.

Our report contains five recommendations directed toward improving the State Board Elections' oversight of the absentee voting process. State Board officials agree with our general findings with regards to them and several County Boards of Elections. They indicated they will continue to review our comments and recommendations, and as resources and opportunity permit, will explore ways those areas with which they agree, can be implemented, as appropriate.

This report, dated March 6, 2009, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236

## BACKGROUND

The New York State Board of Elections was established in the Executive Department on 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 State Board is also responsible for facilitating ballot access efforts and the oversight and support of the State's 62 County Boards of Elections.

The County Boards of Elections were mandated and established by Section 3-200 of the State Election Law. The operations of each County Board are supervised by two Commissioners, each representing one of the two major political parties in New York State.

The County Boards' responsibilities include, but are not limited to, the following:

- Support and oversee election operations for primary and general elections.
- Support school board, fire district, village, and special elections.
- Promote and oversee the registration of eligible voters within the county and provide registration assistance to eligible voters temporarily residing outside the county.

- Review registrations to ensure that voters' addresses reflect actual residency.
- Conduct annual seminars and examinations, as required by law, related to election procedures and technology for election inspectors and ballot clerks.

To afford all eligible voters the opportunity to vote, the State Election Law allows registered voters to cast their votes using an absentee ballot when they are unable to appear at their regular polling place for any of the reasons specified in the Law (e.g., occupational reasons, studies, vacation, illness, physical disability, and others). The voters must apply for an absentee ballot on a form that is filed with the local County Board of Elections.

The voter must obtain and return a formal application to receive an absentee ballot. The application is reviewed by the County Board and, if accepted, the voter receives an absentee ballot. The applications must be postmarked no later than seven days prior to the election, if mailed, and the day prior to the election, if delivered in person. The ballot may not be mailed to the applicant more than 30 days prior to the election. The returned ballot must be postmarked up to the day prior to the election, if returned by mail or, if hand delivered, up to the day of the election.

On November 1, 2006, there was a total of 11,669,573 registered voters in New York State. According to the State Annual Statistical Information Report, during the 2006 general election (the last election involving Statewide or federal candidates), 169,584 voters used absentee ballots to cast their votes.

We selected for further review seven representative counties: Bronx and Richmond in New York City; Westchester and Dutchess in the Hudson Valley; Albany and Rensselaer in the Capitol District; and Seneca in the Finger Lakes area. During the 2006 general election, these seven counties represented about 18 percent of the State's voting population with 2,089,085 registered voters, and 17 percent of the absentee ballot users with 28,920.

## **AUDIT FINDINGS AND RECOMMENDATIONS**

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### *State Board Oversight*

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We found that the State Board of Elections needs to strengthen its oversight of the absentee voting process in New York State.

#### Periodic Oversight Reviews

The State Board of Elections is authorized by the State Election Law to visit the County Boards of Elections, examine their procedures and records, and direct that any such procedures be modified in any manner consistent with the provisions of the Election Law.

We found that the State Board does visit County Boards to review their operations, and issues reports summarizing the results of these reviews. However, the State Board of Elections does not have any specific procedures for conducting their reviews. In addition, staff share potential topics for the reviews with the State Board and the State Board decides which topics are to be covered. The only topic that is common to each review is an update of general information such as County Board location, key personnel, and budget information.

Since 2001 the State Board had performed only follow-up reviews related to original reviews done in the early 1990s. In total, 15 follow-up reviews were completed. No full-scope reviews have been done since 2001. None of those reviews addressed absentee voting procedures or practices because none of original reviews addressed this topic. All 15 follow-up reviews addressed topics such as written procedures, document imaging, voter list maintenance, voting machine maintenance, internet sites, inspector training, and implementation of the Help America Vote Act. None of the reviews pertained to any of the counties we visited, and the officials at those counties were not aware of any State Board reviews that had been done at their counties in recent years.

In the absence of State Board reviews addressing absentee voting procedures in individual counties, there is an increased risk the procedures in some counties may not fully comply with requirements. As is described later in this report, an election's results were recently overturned in one of the counties we visited (Dutchess) because of flaws in that county's absentee voting process. Moreover, our audit has identified similar flaws in other counties. It is thus clear there is a need for the State Board to periodically perform Statewide reviews that include the absentee voting process.

Moreover, according to the State Board's Annual Report to the Governor and Legislature, the oversight and support of the County Boards is one of its two primary areas of responsibility (the other being the facilitation of ballot access efforts).

#### Annual Statistical Information Report

The County Boards are required by law to report certain statistical information about elections and registered voters to the State

Board. The information is reported on a standardized reporting form and is compiled by the State Board to produce its Annual Statistical Information Report (Statistical Report). The Statistical Report itself is required by the Election Law.

We reviewed the segment of the Statistical Report dealing with absentee voting. This segment contains information about various aspects of the absentee voting process (e.g., ballot applications, ballot returns, ballot invalidations, etc.) on a county-by-county basis.

We identified anomalies and apparent discrepancies which seemed to indicate that the information was not being reported consistently from county to county, and may not have been reported accurately by some of the counties. For example, one county reported that 50 percent more absentee ballots were returned by voters than had been distributed to the voters.

To determine whether the County Boards shared the same understanding of what was to be counted and reported for the Statistical Report, we discussed the reporting process with officials from the seven counties we visited. In addition, at some of these counties, we verified certain reported statistics against supporting documentation.

We found that county officials did not share the same understanding of what was to be reported. For example, there were varying explanations of what was to be included for the report category “new applications.” Officials in one county indicated that an application for more than one election (primary and general) should be counted as new for both elections, while another county counted it only as new for one application. The officials also had different understandings of what was meant by “ballots

returned.” For example, it could mean ballots returned as undeliverable by the post office or ballots returned by the Board because they were not signed or were received late. Therefore, we conclude that the State Board needs to provide the County Boards with a clearer explanation of what is required for the Statistical Report.

In addition, when we verified certain information that had been reported to the State Board, we found inaccuracies. Specifically, we counted the returned absentee ballots at two counties to verify that

County	Applications Counted	Applications Reported	Difference
Bronx	2,489	2,435	54
Richmond	1,515	1,473	42
Westchester	1,143	1,338	(195)

the numbers reported as returned were accurate. Also, we counted ballot applications at three counties to verify that these numbers were reported correctly.

For the returned ballots, one county reported 215 but we found only 194 on file. At the other county, the number reported agreed with the number on hand. For the applications, at all three counties, the number reported disagreed with the number on hand, as follows:

We also noted that certain statistics for two of the seven counties were not included in the Statistical Report. This occurred because one county was late in reporting the information and the other county did not report statistics for one category listed.

We recommend the State Board clarify its reporting expectations for the information relating to absentee voting. We also recommend the State Board validate the accuracy of the reported numbers on a test

basis, when performing on-site reviews of County Board operations.

Officials at the State Board told us that the statistics are not used for any particular purposes. They also stated that the statistics do not affect the outcomes of elections. Therefore, officials indicate that statistics reported by counties need not be validated.

However, the State Board should ensure that that statistics reported are as complete and accurate as possible. Complete and accurate information about elections enhances the public's confidence in the electoral process.

### **Recommendations**

To the State Board of Elections:

1. Review the County Boards' absentee voting procedures, either in conjunction with oversight reviews of County Board operations or in reviews of more limited scope.
2. Define for the County Boards what should be counted and reported for each category relating to absentee voting on the Annual Statistical Information Report.
3. Validate, on a test basis, the accuracy of the information reported about absentee voting in the Annual Statistical Information Report when visiting the County Boards.
4. Remind County Boards that all information requested concerning absentee voting must be reported in time to be included in the Annual Statistical Information Report.

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### *Absentee Voting*

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We found that the seven counties we visited need to strengthen certain controls over absentee voting. For example, incomplete applications for absentee ballots were not always rejected, as required, and information about voters was not always updated when absentee ballots that had been mailed to the voters were returned by the post office as undeliverable.

#### Applications for Absentee Ballots

A voter must complete a formal application to receive an absentee ballot. The application must be submitted to the voter's County Board of Elections, where it is to be reviewed for completeness and accepted or rejected.

To be accepted, an application must be complete and it must be submitted within the required time frame. In addition, the voter must reside in that county and be unable to vote in person for one of the reasons specified in the Election Law.

To determine whether applications for absentee ballots were accepted and rejected in accordance with requirements, we reviewed a sample of accepted and rejected applications at each of the seven counties we visited. In total, we reviewed 350 accepted applications (50 from each county) and 172 rejected applications (50 from Westchester; 25 from Albany, Bronx, Dutchess, and Rensselaer; 20 from Richmond; and two from Seneca). Our samples were judgmentally selected from the 2005 and 2006 primary and general elections.

We found that all 172 rejected applications were rejected appropriately based on the State Election Law's absentee ballot application requirements.

However, we found that 27 of the 350 accepted applications should not have been accepted. Rather, these applications should have been rejected, either because they were incomplete (24 applications) or because the voter was not registered to vote in that county (3 applications). In addition, we were unable to determine whether two of the applications were submitted within the required time frame, because the applications were not time/date stamped when they were received by the county.

One of the seven counties (Dutchess) properly accepted all the applications we reviewed. The other six counties made the following errors:

- Albany accepted nine incomplete applications and did not time/date stamp one application.
- Bronx accepted six incomplete applications and did not time/date stamp one application.
- Rensselaer accepted two incomplete applications.
- Richmond accepted five applications that were incomplete and three applications from individuals who were not registered to vote in Richmond.
- Seneca accepted one incomplete application.
- Westchester accepted one incomplete application.

The 24 incomplete applications were incomplete for the following reasons (some were incomplete for more than one reason):

- 13 did not indicate the dates when the voter would be absent;
- 10 requested absentee ballots on account of illness, but did not describe the nature of the applicant's illness or provide the name of the facility (or doctor) where the applicant would be confined; and
- 3 had incomplete sections to describe the duties or occupation requiring voters to be elsewhere on Election Day and how the ballot should be delivered.

It should be noted that, time permitting, the County Board of Elections could have returned the applications to the applicants to resubmit with complete information.

If applications are not reviewed for completeness and are accepted even though they are incomplete, absentee ballots could be provided to individuals who do not qualify for the ballots. This could also happen if the applicants' registration status is not properly verified.

An official from one of the counties indicated that, in their opinion, it would be inappropriate to reject an application because it did not disclose the dates of a temporary illness. However, in a local election in 2005 in one of the other counties we visited, several absentee ballots were voided in court because the nature of the voters' illnesses was not fully described in their ballot applications, and the outcome of the election was overturned as a result of this.

Specifically, the court voided seven absentee ballots from nursing home residents because their ballot applications failed to disclose the

reason for their confined status. The applications had been approved by the County Board of Elections, but the court upheld an objection that the voters' illnesses were not properly described. If the applications had been rejected and returned to the voters, they could have been resubmitted with complete information. Had these seven ballots counted, the election may have had a different outcome because the winner was elected with only a five vote margin.

Requests for absentee ballot applications can be made by phone, in writing, in person, or online. We reviewed how such requests were handled in each of the seven counties.

We found that none of the counties either logs in requests that are made in writing or by phone, or enters the requests on local systems that are used to track the status of pending applications and unreturned ballots. As a result, there is an increased risk such requests may inadvertently be overlooked (requests that are made in person or online are immediately satisfied). While the County Boards are not required by law to record pending application requests, it would provide additional assurance that the applications were provided when requested.

#### Undeliverable Ballots

If an application for an absentee ballot is accepted, the ballot is mailed to the voter (unless the application is made in person, in which case the ballot can be given directly to the voter). If a mailed ballot is returned by the post office as "undeliverable," the county should update its database of registered voters to reflect this correction. It is important that such updates be made, because the databases are used by the counties to ensure that only eligible persons can vote.

To determine whether voter databases were being updated when absentee ballots were returned as undeliverable, we reviewed a sample of undeliverable ballots at each of the seven counties. We reviewed between 24 and 35 ballots at each county, and 184 in total. Our samples were judgmentally selected from the 2005 and 2006 primary and general elections.

Our samples included ballots returned for various reasons such as "incorrect address," "deceased," or "moved." We traced each ballot to the county's voter database to determine whether the appropriate changes had been made based on the information provided by the post office.

For example, in some cases, a voter's address had changed, but the voter still resided in the county. Such a voter would still be eligible to vote in the county, but might have to vote at a different polling location and might be voting for different candidates in a different election district. In such cases, the voter's address (and possibly polling location and election district) should be updated.

In other cases, the voter was deceased or had moved out of the county. The records for such voters should be updated on the database.

In other cases, the voter's address had changed, but there was no indication of a forwarding address. In such cases, the county may be required to change the voter's registration status to inactive. The voter's registration would then be cancelled if he or she failed to vote within the next two federal election cycles.

We found that two of the seven counties (Dutchess and Westchester) updated their voter databases for the changes indicated by the undeliverable ballots. However, the other

five counties did not make all the required changes in their voter databases. As is shown in the following table, these counties did not update the addresses of some of the voters with undeliverable ballots and did not change certain voters' registration status to inactive, as required.

County	Sample Size	No Change Made to Database	
		Address	Inactive Status
Rensselaer	24	1	1
Albany	25	6	6
Seneca	25	0	13
Richmond	25	15	17
Bronx	35	32	17

If incorrect addresses are not verified and updated, ineligible voters could be allowed to vote and some individuals might be able to vote more than once in the same election. If a voter's registration is not changed to inactive when required, the cancellation of the voter's registration may be delayed and, as a result, the risk of voter fraud may increase.

#### Returned Ballots

Completed absentee ballots are to be returned to the appropriate County Boards of Elections within the time frames specified by law. The votes are to be tabulated and included in the election results.

To verify that the absentee ballots returned to the counties were, in fact, submitted by the persons who had requested the ballots, we selected samples of returned ballot envelopes at four of the counties we visited and traced the envelopes to the counties' applications for absentee ballots. We judgmentally selected a total of 50 returned ballot envelopes as follows: Albany (15), Rensselaer (15), Bronx (10), and Richmond (10).

We found the corresponding applications for 49 of the 50 returned ballot envelopes. No application could be found for the remaining ballot (at Bronx), but we were able to confirm that the voter was registered to vote there and we determined that the signature on the envelope appeared to match the signature on file.

It thus appears that the missing application had either been lost or disposed of. We note that the State Archives records retention schedule requires that such applications be retained for 22 months while the State Election Law requires that other voting records, be retained for a period of two years after the election.

In addition, we visited a nursing home facility with Albany County Board of Elections staff to observe the staff bringing ballots to nine permanently-confined voters who were on file as being approved absentee voters. We observed the staff giving the ballots to eight of the voters. The ninth voter was with a doctor, and thus was not available to receive the ballot. The County Board of Elections staff left the ballot and its envelope with a social services staff member to give to the voter later.

According to the Election Law, the Board of Inspectors shall deliver each absentee ballot addressed to a resident of each facility to such resident. According to the Albany County Board of Elections Procedure Manual, depending on the nursing home, such team will either visit the patients in their rooms or the patients will be brought to a common room to obtain their ballots. Then, the Board staff are to assist the voters and witness the signature on the back of the oath envelope. Therefore, voters must be present to receive their ballots. If the Board staff could not wait for the voter to be present, they should have

tried again at another time to deliver the ballot.

When absentee voting procedures are not followed, the integrity of the process has increased risk.

### **Recommendation**

5. Improve the administration of absentee voting process by the County Boards of Elections by instructing them to:

- Reject applications for absentee ballots if they do not provide all the information required by law.
- Verify that applicants for absentee ballots are registered to vote in that jurisdiction.
- Time/date stamp all applications for absentee ballots.
- Create a log or use the existing tracking system to record requests for absentee ballot applications that are received by mail or phone.
- Update voter databases promptly to reflect any changes indicated by undeliverable absentee ballots.
- Maintain all election materials associated with absentee ballots for the period required by the State Election Law. If any election materials are disposed of prematurely (for cause), maintain a record of the disposal.
- Ensure that unused absentee ballots are given only to the voters who are authorized to receive the ballots.

### **AUDIT SCOPE AND METHODOLOGY**

We audited the State Board of Elections' oversight of the absentee voting process, and seven selected County Boards of Elections' administration of that process, for the period January 1, 2005, through December 31, 2006. To accomplish our objectives, we reviewed the State Election Law and examined records maintained by the State Board and the seven selected County Boards. We also interviewed officials and staff at the State Board and the seven County Boards.

We judgmentally selected the seven counties to include a range of population from small to large from different areas of the State. Our judgmental samples of records were systematically selected using random starts.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational

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independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

### **AUTHORITY**

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1, of the State Constitution and Article II, Section 8, of the State Finance Law.

### **REPORTING REQUIREMENTS**

A draft copy of this report was provided to State Board of Elections officials for their review and comment. We considered their comments in preparing this final audit report, and they are included as Appendix A.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Co-Chairman of the Board of Elections shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

### **CONTRIBUTORS TO THE REPORT**

Major contributors to this report include Carmen Maldonado, Gerald Tysiak, Tony Carbonelli, Peter Schmidt, Dana Bitterman, Jeffrey Dormond, Michele Turmel, Joe Smith, and Dana Newhouse.

## APPENDIX A - AUDITEE RESPONSE



### STATE BOARD OF ELECTIONS

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November 7, 2008

Ms. Carmen Maldonado  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
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Dear Ms. Moldonado:

Thank you for the opportunity to comment on the draft report you have prepared entitled "REPORT 2007-S-65: ABSENTEE VOTING".

We appreciate your comments concerning the absentee process in New York, and your general findings with regard to both the State Board and several County Boards of Elections. It is important for the State Board to note several items that will enable the readers of your report to more fully understand our mission and our process, as well as that of our County Boards of Elections.

The State Board surveys boards on a variety of topics, and contacts those boards which report either data or a process which is unclear or problematic. Any trend we detect in operational aspects of County Board operations become topics for discussion at the several state-wide conferences in which we participate.

Additionally, board reviews have always been conducted with a focus on several particular aspects of County Board operations, as defined by our own Commissioners. This phased approach for reviews permits an examination of emerging issues across a wide variety of demographic qualifiers.

County Board reviews have been conducted more frequently in the past, however with the State Board's statutory requirement to certify all new voting systems, currently compounded by our need to comply with a federal court order ensuring New York's compliance with the Help America Vote Act, our limited resources have been focused on these significant and pressing efforts.

The statistics we collect from our County Boards are informative and are shared across the state. They quantify for all County Board Commissioners, the work being conducted at each Board, thus providing a background for comparing budgets, resources, salaries, and other such areas of significant and universal interest. These county-based statistics are not required to be reported to the Governor and the

\*  
Comment

\* State Comptroller's Comment

We have revised our report to reflect information in the State Board's response.

Legislature. The State Board is required to report annually to the Governor and the Legislature, on its own activities, projects and other appropriate areas of interest. The State Board does provide its own annual report to the Governor and the Legislature and to any and all who have an interest in same, making its report globally available by posting it to our website.

The County Boards' obligation to file an annual report with the State Board, as provided for in Election Law Section 3-212 (4)(a), is met by the filing with us of a copy of the report County Boards are required by this section to file with their own local legislative bodies. Over the years we have constantly enhanced that local reporting effort, which began as a brief narrative and the recitation of how county funds had been expended. The changes we brought to the report include statistical reviews of the massive and ever-changing workload embraced and facilitated by each County Board.

With regard to the Comptroller's report findings at the county level, we note that although the State Board provides significant direction and advice on the interpretation of Election Law, the State Constitution vests the ability and authority to interpret same with the County Boards, as they actually conduct elections in New York. We have spoken with five of the six Boards which were audited by the Comptroller's Office, and the Commissioners we spoke with are confident that they have accounted for the issues identified in the Comptroller's Report. It was clear in these discussions, that if the County Commissioners erred in their interpretation of the Election Law, as it relates to absentee voting, they did so in order to enfranchise voters.

Voters have contacted County Boards and our own Board, expressing concern for what they deem a 'personally intrusive' nature of New York's absentee requirements and the ballot application that is driven by those corresponding statutory requirements. County Commissioners continue to review absentee ballot applications with an eye towards fully serving the voters of their community to the best of their ability.

We will continue to review your comments and recommendations, and as resources and opportunity permit, will explore ways those areas with which we agree, can be implemented, as appropriate. We will also take steps to help ensure our County Boards better understand the context of the questions posed in our statistical reports, and will continue to serve them with advice and support as needed and/or requested.

With limited resources and the critical nature of several of our current projects (described earlier), it is imperative that the State Board prioritize the numerous election administration initiatives which require attention. We will continue to make the most of our time together with County Board commissioners, to ensure our directives, best practices, and regulations are understood. We will continue to reinforce those messages in our conference calls with them, and via e-mail, fax and other avenues for information-sharing which we have available to us.

Sincerely,



Stanley L. Zelen

SLZ/TDV/dsm



Todd D. Valentine