

New York's Election Administration Accountability Vacuum - Part II: Partisanship, Patronage & Potential Fixes

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(photo: Michael Appleton/Mayoral Photography Office)

This is part two of a two-part series. Read part one: [New York's Election Administration Accountability Vacuum: 'Bad Choices at Every Step'](#)

New York City's Board of Elections, the maligned ten-member commission responsible for overseeing the administration of voting in the five boroughs, has been the subject of criticism for decades owing to inefficiency and ineffectiveness that often characterize its operations. At the root of the many problems the Board of Elections has in managing voter rolls, poll sites, and other aspects of its domain, are partisanship, patronage, and, as some put it, collusion between the two major parties in order to protect the politically powerful at the expense of regular voters.

The commissioners of the board are appointed by the City Council, but only from selections made by Democratic and Republican party leaders in each borough, giving the major parties ultimate control over election administration and limiting public accountability.

Michael Ryan, the board's executive director since 2013, receives the harshest censure from elected officials and voters who are frustrated by recurring election failures, but he is accountable almost exclusively to the commissioners who hired and alone can fire him. Nevertheless, he answers questions before the City Council and State Legislature in oversight hearings following each election cycle, where he alternately apologizes for unforeseen circumstances or asserts the limits of his authority to address them.

Reform advocates say the board's accountability problems stem from its bipartisan structure and a lack of professionalized staff and management. State law requires an even number of commissioners from each of the two parties earning the most votes serve on the board, each checking the actions of the other. In New York City, the board is balanced with a Democrat and Republican from each borough.

While the bipartisanship was intended as a reform to keep election administration fair over a century ago, many say it has led to the entrenchment of political parties and allows the board to operate as a patronage mill, awarding party loyalty over competence, with little concern for achieving the most inclusive and effective democracy possible. The results are administrative blunders -- failing ballot scanners, purged voter rolls, a lack of interpreters and signage at poll sites -- that can deter and even disenfranchise voters.

When Ryan attends oversight hearings at City Hall and in state hearing rooms he has the opportunity to explain these failures but is not otherwise compelled to fix them.

Partisan, or Non-Partisan, Election Administration

The idea of partisan representation in voting administration as a safeguard to the democratic process is highly disputed. One of the biggest criticisms is that power is concentrated in the hands of too few, and leaves unaffiliated voters, so-called third parties, and even rank-and-file major-party voters without a voice in election administration.

Over one million registered voters in New York City -- about one in five -- are not affiliated with either the Republican or Democratic parties. Statewide, nearly 3.5 million registered voters, roughly a third of the total, are not affiliated with either major party.

"If you're going to have partisans run elections, then you should account for the actual partisanship of the electorate, which is not limited to the two major parties," Benjamin noted, adding that he is opposed partisan election administration.

Jessica Thurston, communications director of New Kings Democrats, a reform-focused Democratic club in Brooklyn, believes the problem has less to do with partisanship and more to do with county party leaders controlling appointments. The process, she told Gotham Gazette, should be more inclusive of rank-and-file members with the goal of being "representative of the [Democratic] electorate, in as great a proxy as we can summon."

There are alternative forms of election administration, but they carry their own risks. Thirty-four states have a single administrator -- often called the secretary of state -- who is either elected, appointed by the governor, or selected by the legislature to run elections, according to the National Conference of State Legislatures [website](#).

"I have never been persuaded that there's an easy solution to this because...there

have been multiple instances of politicized secretary of states' offices around election administration," said Alex Camarda, senior policy advisor at the good government group Reinvent Albany.

"In 2000, during the controversial Bush v. Gore election, Katherine Harris was the secretary of state in Florida and her name became infamous with politicization of the recount process," he added. More recently, then-secretary of state for Georgia, Republican Brian Kemp, was accused of suppressing minority voters leading up to his 2018 election as governor over Democrat Stacey Abrams, who has still refused to formally concede the race.

Patronage

The city Board of Elections is one of a few places where "old style political party control of appointments and resources" -- the type used by party machines to influence voting in the era of Tammany Hall -- still thrives in New York, according to Ester Fuchs of Columbia University, a former Bloomberg administration official. "It's sort of ironic that it's concentrated in the Board of Elections, where you want 'nonpartisanship' and 'professionalism' to be the bywords, not 'party control.'"

'Professionalism' is a common refrain for modern reformers who are wary of a patronage system that rewards party loyalty and connections over qualifications.

"Why is it because you're a political leader that you can't pick somebody very competent," asked Frank Seddio, the leader of the Brooklyn Democratic Party. "Who would decide who those nonpartisan people should be that get hired?"

"What method would he choose?," he asked of a hypothetical nonpartisan appointment authority.

One solution reformers have proposed is for commissioners and the staff they hire to be professional civil servants like at other city agencies -- subject to competitive hiring and screening by the city -- with the hiring entity also held responsible by other parts of government and the public.

"A lot of times the county election commissioners are the county party chairs, or their wives, or their cousins. So it turns out it's used as a way for giving financial support to a person who spends most of their time on partisan activities," according to Gerald Benjamin of SUNY New Paltz.

Some feel the bigger problem is the patronage concentrated in the lower ranks of the elections bureaucracy, like the coordinators and part-time employees needed to certify the voter rolls and manage polling locations in the lead-up to and on election days.

"It's a patronage mill particularly for the people at the bottom who are probably getting minimum wage or very slightly above," said Esmeralda Simmons, a veteran election lawyer and founder of the Center for Law and Social Justice at Medgar Evers College in Brooklyn.

State law gives Ryan the discretion to hire the staff of the city Board of Elections under the supervision of the commissioners, with deference to the two-party split, which the board interprets as extending throughout the agency's ranks. The lack of accountability "arises out of a particular portion of the law that gives the board absolute, unreviewable discretion regarding who to hire," according to Lerner. "Now

that's clearly designed to protect patronage.”

Ryan told Gotham Gazette in 2017 that the BOE, according to state law, cannot question the credentials of workers forwarded by district leaders. “It’s up to the local party’s discretion who they want to designate and it’s not for us to question,” [he said](#).

The hiring procedures based on party affiliation and the low pay means the board is often hiring under-qualified candidates who have limited employment options. “They only got the job because a district leader or the county leader asked for them to be hired, otherwise they never would be there,” according to Simmons.

“It has nothing to do with intelligence, but it does have a lot to do with where you can get a job,” she added.

Experts say the patronage leads to inefficiencies and limits the capacity of the city Board of Elections. “These are not professional civil servants that can be easily removed...[nor is there] any kind of broad based accountability to somebody who is elected, like a mayor or even a member of the City Council,” said Fuchs.

The outcome is a system that is antiquated and resistant to change, she said, and inefficiencies contribute to mishaps in election processes, especially at the polls.

Inefficiencies

At the city Board of Elections operations are largely paper-based, a surprise to many observers who have seen government agencies across the board embrace digital technologies. While acknowledging the importance of paper ballots to protect the integrity of elections against cybersecurity threats, reform advocates have pushed for a process of [fully online voter registration](#).

The State Legislature passed a law earlier this year to allow the use of electronic poll books, rather than cumbersome and limited paper books, which many view as essential to implementing the new early voting process that was also approved.

Another commonly cited problem is that poll workers are [overworked and under-trained](#) leading to disorganization and misinformation on election days. Poll workers navigating large poll books by hand is often cited as a contributor to long lines and confusion at poll sites. But there are new concerns about whether poll workers will be trained well enough in the use of electronic books for the new technology to be as effective as intended.

Ryan has asked for, and Council Speaker Johnson and Mayor de Blasio have expressed openness toward, a municipal poll worker program to help recruit the tens of thousands of vetted employees needed to staff poll sites on election days. The program would require a partnership with city agencies and raises collective bargaining questions, which it appears the city has not tackled.

Since the State Legislature passed a series of voting reforms this year, like [early voting and voter registration transfers](#), reformers and administrators alike have been concerned about the board’s capacity to roll these out effectively.

“I don’t think [the Board of Elections is] really trying to adversely impact elections,” said Fuchs. “They can’t roll out the whole thing more efficiently than they are proposing because they don’t have the capacity and they don’t want to let go of control,” she said referring to the BOE’s plan to open just 38 early voting sites despite

the city's [offer](#) to fund 100 locations.

For Simmons, it comes down to a “basic question: If the operations don’t work, how are the elections working? They are not...Let’s see how they do with all of these great good government improvements still within the same system.”

There is a feeling among reformers that, if the board is not required to act by law, it will not implement changes to improve the voter experience. Attempts have been made to encourage the city Board of Elections to improve poll worker staffing, increase accessibility, and conduct more comprehensive voter outreach. Mayor de Blasio and the City Council have offered the board [significant additional city funding](#) to implement some of these, which it has turned down.

A major issue for advocates is language access. Simmons’ center, along with other groups, has been pushing the Board of Elections to provide non-English materials at poll sites. “The only time the Board of Elections would translate materials is when the Justice Department required them to do it -- this is real, this is still happening -- even if they knew there was a large population that did not speak English,” she said, referring to events within the last decade.

An Agency of the City?

What makes failed attempts for accountability and improvement so frustrating to reformers is that the city Board of Elections appears to be a city agency in many senses, yet it operates largely beyond the influence of the mayor and City Council.

The city funds the board’s budget almost entirely, according to Bernard O’Brien, a senior budget analyst at the Independent Budget Office; and the City Council technically appoints its commissioners (though it doesn’t ‘select’ them). An informal opinion issued by the state attorney general in 1989 determined “the Board is a local agency.”

But boards of elections are ultimately given their authority by state law. “Any powers the city enjoys are really delegated powers,” said Joseph Viteritti, chair of the Urban Policy and Planning Department at Hunter College.

While state law outlines its general format and obligations, it gives considerable authority to localities. The election law is structured so that local laws still apply unless they are explicitly prohibited by the state. There are also provisions of the municipal home rule law that give the city authority to deal with aspects of voting and elections.

For example, lower and appellate courts have upheld the city’s campaign finance law as a valid exercise of the city’s home rule powers, according to Rick Schaffer, chair of the city Campaign Finance Board, which is nonpartisan. (The city campaign finance system is more robust and extensive than the state’s regulations, which were established in the same provision that created the State Board of Elections as an oversight body in [1974](#).)

The same process that established the city’s campaign finance system -- a charter revision commission -- will place a new voting system known as ranked-choice voting on the ballot this November. If voters approve it, the city charter will be amended and the Board of Elections will have to implement the changes.

Yet, despite the city’s enormous political and fiduciary interest in election

administration, many argue city elected officials have limited tools with which to compel action. Short of offering funding in exchange for certain obligations, deputizing the (new) chief democracy officer to work with the board, or empanelling a charter revision commission, the city has few options. "This mayor and this Council I think have done a lot, particularly the mayor, to try to encourage the board [of elections] to perform better," Camarda of Reinvent Albany told Gotham Gazette.

Not everyone agrees. Some advocates feel that one of those tools -- the city's budget authority, and the use of binding terms and conditions -- is not being employed effectively to direct the actions of the board. "Other counties use the budget to rein in or prohibit the board from doing unacceptable things. Our city does not," according to Lerner. "And I think again it's because of the political nature of the body."

Ryan's arrival in City Hall after the general election provided reformers a tiny foothold on which to seek accountability, even from the Council. "If there is a problem, if the Council has passed a law that the Board of Elections is not following, and the Board of Elections refuses to follow it after negotiations and various requests, frankly, the city is going to have to sue because otherwise the law is useless," Lerner told the Council members assembled.

"What we have is a showgame," she said in an interview with Gotham Gazette, "where elected officials are more than happy to criticize the board publicly, but are not doing anything effective to rein it in."

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