



July 30, 2020

*Via Email*

Governor Andrew M. Cuomo  
New York State Board of Elections  
New York City Board of Elections

RE: Barriers to Voting in New York’s June 23, 2020 Primary Election

Dear Governor Cuomo and members of the New York State and New York City Boards of Elections:

The New York Voting Rights Consortium—a non-partisan coalition of civil rights organizations, including the NAACP Legal Defense and Educational Fund, Inc. (LDF), LatinoJustice PRLDEF, the Asian American Legal Defense and Education Fund (AALDEF), and the Center for Law and Social Justice at Medgar Evers College—writes to express our collective concerns with respect to the June 23, 2020, primary election in New York. While we understand the challenges of conducting an election during a public health crisis, the presence of widespread irregularities and vote-suppressive incidents on Election Day and in the counting of absentee ballots concern us. We request a response to the concerns outlined below by Friday, August 7, 2020.

New York State is home to millions of African Americans, approximately two million of whom live in New York City. In addition, Latinx<sup>1</sup> people are the fastest growing minority group in this country with increasing political power and participation. Latinxs ages 16 to 24 account for the highest plurality of United States citizens, the largest of any minority group<sup>7</sup>. In New York alone, Latinxs represent nearly 20 percent of the State’s population<sup>8</sup>. Based on problems [reported in the media](#) and by [voters](#), as we share in detail below,<sup>2</sup> what took place in the June 23 election is troubling both because many voters were effectively disenfranchised and because that voters of color may have been [disproportionately affected](#). Unfortunately, the problems reported for the June 23 election are not new to the state, and it is imperative that they be addressed in an effective manner prior to the November 2020 election.

***Absentee Ballots Were Not Mailed in Time***

*Tens of thousands of voters in New York City did not receive absentee ballots that they requested by the deadline, causing many voters to reluctantly vote in person and disenfranchising many voters who could not vote in person.*

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<sup>1</sup> A person of Hispanic or Latin American origin or descent (used as a gender-neutral or nonbinary alternative to Latino or Latina).

<sup>2</sup> This letter cites and quotes many social media posts to illustrate the range of reported voter experiences on June 23, 2020. It is generally difficult to verify the authenticity of posts on social media platforms, particularly those made by unverified accounts. The Consortium is not able to verify these social media posts or the accounts, but notes the number and consistency of the reports and encourages state officials to follow up where there are questions about any of the information provided.

Nearly [30,000 New York City voters](#) who requested absentee ballots by the request deadline did not receive them by Election Day. Some of these voters reluctantly went to vote in person—despite being eligible to vote remotely and taking the required steps to do so—while many others could not vote in person, due to [safety concerns](#), [disability](#), or because they were far from their assigned polling locations on Election Day. The tens of thousands of voters who successfully requested absentee ballots but did not receive them with enough time to mail them back by Election Day were functionally disenfranchised by this failure of election administration. For example, a Latinx voter reported that he requested an absentee ballot months in advance and did not receive his ballot until [two days after the election](#).

### ***Poll Workers Gave Incorrect Information or Instructions, and Did Not Allow Voters to Vote in All Elections for Which They Were Eligible***

*Voters at many polling sites in New York City were given only one page of the two-page ballot, limiting their right to vote in the presidential election or all the others, but not both.*

The most widely reported problem on Election Day was poll workers giving voters [only one page of the two-page ballot](#). The primary ballot featured the presidential election on one page and all other elections on the other page. At [some polling sites](#), [voters were given only the](#) page with the presidential election. At [others](#), [voters were given only the](#) page with the other elections. This problem was reported at dozens of polling sites and attracted the attention of [media organizations](#); [L. Joy Williams](#), the president of the Brooklyn NAACP; election lawyer [Sarah Steiner](#); and numerous local elected officials and candidates for office, including former New York City Council Speaker (and candidate for Congress) [Melissa Mark-Viverito](#), [Assembly Member Catalina Cruz](#); [Isiah James](#), a candidate for Congress; [Kristina Naplatarski](#), a candidate for district leader; and [Maria Kaufer](#), a candidate for district leader. While many polling sites fixed this problem in the morning, it persisted [into the mid-afternoon](#) at other sites.

This problem seems to have stemmed from poor training, as reported by several members of the media and voters:

- A [PIX11 News reporter](#): “Poll workers at this location say[] there was some initial confusion about the Democratic Ballot having multiple separated sheets... they say[] the training and communication was not ideal but things were sorted out. Everyone did in fact get a ballot with local races.”
- A [New York Post Editorial Board member](#): “Some poll workers didn't realize that there are two separately packaged ballots: state/federal office & Democratic presidential primary ballots. Told that they got a text alert.”
- A [voter](#): “The same happened at an UES polling place. Voter in front of me only got local ballot. She kept asking for presidential. Several staff said no, there's no presidential ballot. They were so confused but eventually found one at another table[.] Poll workers should receive training!”
- A [voter](#): “I saw the problem: the ballots are labeled and packaged separately. No indication they are a set. A frazzled worker would assume they fully completed the ballot w/ a single sheet.”

- [A voter](#): “Sure enough, they looked in the ballot locker and there was a 2nd ballot page for congressional seat and state senate. I will also note that when I called @BOENYC the person that I spoke with was not aware that the New York State Senate also had a primary race going on....”
- [A voter](#): “Poll workers didn’t know there were 2 ballot sheets. 30 min of relent[less] arguing & discussion to convince them to look and find it. Oversight not deliberate rather disorganized.”

The New York City Board of Elections (BOE) [stated](#) in the afternoon, “Yes, we have heard this and immediately sent out teams to address the poll workers and blasted out messaging citywide to all poll workers reiterating the training provided,” [and](#), “A message was sent to poll workers reiterating their training to ensure that they give both pages.” Nonetheless, the BOE [confirmed](#) to nonpartisan voter protection agencies that voters who were not given one of the ballot would have no recourse to vindicate their right to vote in all elections for which they were eligible to vote.

**Other problems caused by poll workers included:**

- Some poll workers gave voters ballots for the [wrong district](#), [couldn’t find ballots](#), did not give voters [any ballots](#), and told some voters in line at 9 p.m. that they would [not be allowed to vote](#).
- Though the BOE announced that voters could drop absentee ballots off at any polling site, some poll workers [rejected absentee ballots](#).
- Some poll workers asked [voters to present identification](#).
- Some [registered voters were told to vote by affidavit ballot](#).
- [Assembly Member Ron Kim](#) reported that a specific poll worker, whom he named, acted inappropriately toward voters.

***Late Site Openings and Long Waits on Election Day***

*Numerous polling sites opened late, and at least one closed early.*

All polling sites were scheduled to be open from 6 a.m. to 9 p.m. But late openings were reported by [Assembly Member Yuh-Line Niou](#), Assembly candidate [Emily Gallagher](#), and many [voters](#), who reported sites finally opening [at 7](#), [at 7:45](#), [at 8](#), [after 8:15](#), [after 8:20](#), [around 8:30](#), and [at 8:50 a.m.](#) At least one site closed [at 7 p.m.](#)

*Long waits were reported at various sites, in New York City early in the day and in Westchester in the evening. These waits appear to have been seen disproportionately at polling sites in majority-minority neighborhoods.*

In New York City, many polling sites [saw long waits in the morning](#), [caused](#) by late openings, [many locked scanners](#), poor poll worker training, insufficient [equipment](#), and other problems. Former City Council Speaker (and candidate for Congress) Melissa Mark-Viverito highlighted that this problem was [acute in the Bronx](#). In Westchester, the problem of long waits seems to have materialized in the evening, with [many reports from Yonkers](#) and [Mamaroneck](#). Jamaal Bowman, a candidate for Congress, also [documented](#) this problem. According to one report, many voters [left](#) a polling site without casting ballots, due to the burdensome wait times.

### ***Other Issues Reported in New York City***

- Voters, elected [officials](#), [and candidates](#) at many polling sites reported broken technology, including [scanners](#), [tablets](#), and [internet](#). At several locations, these technology problems forced voters to [leave before](#) they could cast [their](#) ballots—and some voters were [turned away](#).
- An intimidating law enforcement presence was reported [in Harlem](#).
- The New York City BOE website gave some voters [incorrect information](#).
- Many polling sites [had poor social distancing and other safety protocols](#).
- Some polling sites were located in [inadequate](#) and [unsafe](#) facilities.
- Some polling sites [ran out of ballots](#) in one or more languages.
- Some polling sites [did not have the required interpreters](#), including a [predominantly Latinx voting bloc in Manhattan’s Lower East Side/ East Village that did not have any Spanish interpreters in the majority of its 13 voting sites](#), as reported by John M. Blasco, District Leader, 74<sup>th</sup> AD Part A.
- Some polling site were [moved](#) with little [notice](#) given to voters.
- An observer in the Bronx reported to us many of the issues above, as well as that some polling sites had inadequate signage, had entrances at hard-to-find parts of the buildings, and opened without ballots. This observer recounted to LDF: “With my poll watcher certificate in hand, I was denied the right to collect counts from machines, witnessed electioneering and [voters] denied the right to vote without explanation. . . .”
- A volunteer with the AAALDEF observed numerous issues at Thomas Edison High School in Jamaica, Queens, including: delayed opening, severe shortage in poll workers resulting in a single poll worker covering three election districts, missing interpreters, voters given only one page of the ballot, broken scanner machines and many other problems. The poll site coordinator pleaded with the volunteer to contact the BOE, after attempting numerous times to contact the BOE, to no avail. This poll site serves primarily South Asian voters, many of whom are limited English proficient.

These reports raise a serious concern that the [numerous problems](#) at polling sites in New York City caused many voters to leave polling sites without voting, to be [discouraged](#) from voting, or otherwise not have their votes [counted](#).

### ***Additional Voting Access Problems Were Reported Upstate***

Chenango County’s [only polling site](#) was located in a sheriff’s office, and sheriffs [administered temperature checks](#) and asked voters questions before they entered. Placing polling sites in law enforcement facilities has a long-recognized vote-suppressive effect,<sup>3</sup> and we fear that telling voters they will subject even non-invasive medical procedures, such as temperature checks, could have the same.

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<sup>3</sup> See, e.g., U.S. COMM’N ON CIVIL RIGHTS, AN ASSESSMENT OF MINORITY VOTING RIGHTS IN THE UNITED STATES: 2018 STATUTORY ENFORCEMENT REPORT 175 (“Using the Sheriff’s office as a polling place can be intimidating, especially considering the history of violence by local law enforcement at the polls during the Jim Crow era.”).

## ***Concerns About Absentee Ballots Being Counted***

According to media reports, some valid absentee ballots will not be counted due to United States Postal Service's [failure to or choice not to postmark ballots](#), not due to any error by voters.

We recognize that conducting an election during a pandemic presents unique challenges. But the circumstances we describe above are nonetheless deeply concerning—and they are not new. Problems like these were documented in 2013, 2016, and earlier this year, and the root causes of these problems have been previously identified.

In 2013, the New York City Department of Investigation (DOI) released [a report](#) on the New York City BOE's employment practices, operations, and election administration. In that report, the DOI identified deficiencies with hiring practices, nepotism, political activities, time and attendance, voter roll deficiencies, poll worker training and performance, ballot design, voter cards, delays in repairing broken voter machines, failing to secure and count affidavit ballots in the Manhattan BOE office, maintenance of “buff cards,” counting of write-in votes, and runoff elections.

In 2016, New York City Comptroller Scott Stringer wrote [a letter](#) to the executive director of the New York City BOE to express concerns about issues nearly identical to the ones reported in the June 23, 2020, primary election: “I am writing to express my deep concern over widespread reports of poll site problems and irregularities as New Yorkers headed to the polls on Primary Day, ranging from faulty ballot scanners and polling locations that opened late (or not at all) to poorly staffed polling sites and voters whose registrations were seemingly purged from the rolls without any effective notification.” Comptroller Stringer's office then conducted [a full audit](#) of the management and operations of the BOE, which found that “the BOE failed to ensure that the polls operated effectively and efficiently and in accordance with applicable law, rules and guidelines, which ultimately could have impacted the ability of individuals to vote. We visited a total of 156 sites (out of as many as 1,205 sites operated by BOE throughout the City) during three elections between June 28, 2016 and November 8, 2016 and identified one or more deficiencies at 141 (90 percent) of those sites. Among the deficiencies found were problems with the assistance provided to voters, including those who require language interpreters and those with disabilities; problems with the information provided to voters; and problems with the accessibility of the poll sites themselves for disabled voters. We also found issues with the quality and amount of training BOE provides for Election Day workers.”

In May 2020, the office of New York City Comptroller Scott Stringer released [an audit](#) of the New York City BOE's handling of the 2019 elections. That audit found: “Based on our review of BOE's records and our observations for the 2019 General Election, BOE generally did not comply with federal and New York State Election Law and its own procedures for Election Day operations. Among other things, we found that BOE failed to document that it accounted for poll site election materials, including scanned ballots and affidavit ballots. In addition, we found deficiencies in BOE's poll site staffing (including interpreters), equipment, accessibility, and the suitability of poll site locations.”

With these problems persisting year after year, observers in government, media, and the legal profession have made recommendations for how New York can improve its inadequate election

administration. These recommendations include [depoliticizing the Board of Elections by creating a new governing body to administer elections](#) and enacting [statutory reforms](#) to make voting [more accessible](#). Since New York State law governs all election law in the state, including the responsibilities and operations of county boards of elections, and since the New York State BOE's commissioner is appointed by the Governor, meaningful reform requires action by the Governor and the legislature. Additionally, already this year a federal court has held that New York's election practices violate voters' constitutional rights. In January, the U.S. District Court for the Southern District of New York held in [Common Cause New York v. Brehm](#) that New York's failure to include inactive voters in published poll books violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution. The court found that state practices, inadequate training, and understaffing cause tens of thousands of New York voters to be improperly registered to vote as inactive, and that this error unjustifiably burdened the fundamental right to vote. Because this problem is exacerbated by United States Postal Service operations, which are outside the control of New York State officials, New York [has also been urged](#) to dedicate appropriate resources, use failsafe technological tools that promote transparency and serve as a stopgap, and, where necessary, relax absentee ballot return deadlines.

We urge you to use the time between now and when early voting begins for this year's general election in November to address the issues outlined above and ensure that every voter has the opportunity to safely vote in person both during early voting and on election day, and that each voter who chooses to vote by mail has an equal opportunity to have their vote counted. We request that you respond by August 7, 2020, with your plan for addressing these concerns and ensuring a safe, secure, and fair election in November that avoids the problems seen in the recent primary election, as well as those seen in previous elections held in New York. We look forward to hearing from you.

Regards,

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Cc: New York State Senate Majority Leader Andrea Stewart-Cousins  
New York State Assembly Speaker Carl E. Heastie  
New York City Mayor Bill de Blasio  
New York City Council Speaker Corey Johnson

## **Members of the New York Voting Rights Consortium**

Since its founding in 1940, the *NAACP Legal Defense and Educational Fund, Inc.* (LDF) has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote policies that deter racial discrimination<sup>4</sup> and increase access to the electoral process.<sup>5</sup> We are committed to fighting voter intimidation and suppression, particularly in jurisdictions with large Black populations.

*LatinoJustice PRLDEF* (formerly the Puerto Rican Legal Defense and Education Fund) is a national civil rights and public interest law organization that represents the Latinx community throughout the country in litigation and advocacy, and works to increase their entry into the legal profession. Since our inception in 1972, we have actively litigated voting rights cases nationally and throughout New York State to secure protections for Latinx voters that are guaranteed under both the National Voter Registration Act (NVRA) and the Voting Rights Act (VRA). Most recently, LatinoJustice along with its civil rights partners successfully litigated [\*Common Cause New York v. Brehm\*](#). Voting rights and political participation of the Latinx community have been touchstones of LatinoJustice’s mission from our organization’s nascence. Now more than ever it is imperative that all eligible Latinx voters can cast a ballot without barriers, and that New York State take immediate steps to ensure that what occurred during the June presidential primary election does not repeat itself this November.

The *Asian American Legal Defense and Education Fund* (AALDEF), founded in 1974, is a New York-based national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. AALDEF has monitored elections through annual multilingual exit poll surveys since 1988. Consequently, AALDEF has documented both the use of, and the continued need for, protection under the Voting Rights Act of 1965 (“VRA”). AALDEF has litigated cases around the country under the language access provisions of the VRA, and seeks to protect the voting rights of language minority, limited English proficient (“LEP”), and Asian American voters. AALDEF has litigated cases that implicate the ability of Asian American communities of interest to elect candidates of their choice, including lawsuits involving equal protection and constitutional challenges to discriminatory redistricting plans.<sup>6</sup>

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<sup>4</sup> See *Northwest Austin Municipal Utility District No. 1 v. Holder*, 557 U.S. 193 (2009) (LDF ensuring that minority voters would still have the safeguards provided by Section 5 preclearance process prescribed by the Voting Rights Act of 1965).

<sup>5</sup> See, e.g., *Smith v. Allwright*, 321 U.S. 649 (1944) (LDF litigating to enjoin racially discriminatory barriers to voting); *People First of Ala. v. Sec’y of State*, No. 20-12184, 2020 WL 3478093 (11th Cir. June 25, 2020) (same); *Jones v. Governor of Fla.*, 950 F.3d 795 (11th Cir. 2020) (same); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc) (same); *Thomas v. Andino*, No. 3:20-CV-01552, 2020 WL 2617329 (D.S.C. May 25, 2020) (same).

<sup>6</sup> See, e.g., *Favors v. Cuomo*, 881 F. Supp. 2d 356 (E.D.N.Y. 2012); *Diaz v. Silver*, 978 F. Supp. 96 (E.D.N.Y. 1997); *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017); Complaint, *All. of South Asian Am. Labor v. The Bd. of Elections in the City of New York*, No. 1:13cv-03732 (E.D.N.Y. July 2, 2013), ECF No. 1; Complaint, *Chinatown Voter Education All. v. Ravitz*, No. 1:06-cv-0913 (S.D.N.Y. Feb. 6, 2006), ECF No. 1.; Complaint, *Chinese Progressive Association v. City of Boston*, No. 1:06-cv-11598 (D. Mass. 2005).

The *Center for Law and Social Justice* (CLSJ) is a unit in the School of Professional and Community Development at Medgar Evers College of the City University of New York. Founded in 1985 by means of a New York State legislative grant, CLSJ's mission is to address racial justice issues by providing quality legal advocacy, conducting community education campaigns, facilitating research and building organizing capacity on behalf of New Yorkers of African descent and the disenfranchised. CLSJ seeks to accomplish its mission by conducting research, and initiating advocacy projects and litigation on behalf of community organizations and groups that promote human, national, and international understanding. Because of its unique combination of research, public policy advocacy and litigation from a community-based perspective, CLSJ is a focal point for progressive activity. From its initial days, CLSJ has consistently worked to defend the voting rights New Yorkers of African descent and other racial "minority" New Yorkers.