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March 27, 2019

**Via Fax (518) 486-4068 and
USPS Delivery**

Hon. Peter S. Kosinski, Co- Chair
Hon. Douglas A. Kellner, Co-Chair
Hon. Andrew J. Spano, Commissioner
Hon. Gregory P. Peterson, Commissioner
NYS Board of Elections
40 North Pearl Street, Suite 5
Albany, New York 12207-2729

**Re: Early Voting – Request for
Authorization to Use Equipment
Pursuant to (NYSEL) § 7-201(4)**

Dear Co-Chairs Kosinski and Kellner and Commissioners Spano and Peterson:

Re the above captioned matter, please be advised that I am forwarding this letter upon the unanimous direction of the Commissioners of Elections in the City of New York. As you are aware the State of New York recently enacted NYSEL § 8-600 mandating that boards of election conduct a period of early voting in advance of each election commencing with the November 2019 General Election and each election thereafter.

The Board of Elections in the City of New York (the City Board), like other boards throughout New York State, is immersed in the process of planning for early voting and evaluating the operational implications associated therewith. Clearly, the City of New York (the City) presents unique challenges as it is the only jurisdiction in New York State that services voters in five (5) counties.

The individual counties comprising the City are diverse and unique; contributing further to the complexity of the planning process for early voting and requiring operational adjustments across the counties to ensure that voters are provided the opportunity to freely and independently exercise the voter franchise.

Depending upon the election event, there may be in excess of four thousand (4,000) ballot styles utilized throughout the City during a citywide election event. The City Board has concluded that utilizing traditional paper ballots is virtually impossible for early voting.

The challenges/deficiencies associated with utilizing paper ballots are numerous and include but are not limited to:

- Delivering over four thousand (4,000) ballot styles in pre-printed packages to the early voting locations
- Storage and security of both the “live” and “voted” ballots throughout the duration of the early voting period
- Requiring early voting poll site staff to “pick and pull” the ballot for a particular voter after check-in at a location with hundreds of individual ballot styles.
- The cost of printing paper ballots would likely double for each election as a redundant set of ballots would be required for early voting sites

The foregoing is a limited list of challenges provided as illustrative examples demonstrating the challenges confronted by the City Board.

I am confident that the State Board and the City Board share the same commitment to ensuring that the voters of the City are afforded the opportunity to vote as conveniently and efficiently as possible. The City Board is also mindful of the mandate of NYSEL § 8-600 which states: “[T]he board of elections shall assign staff and provide resources to ensure a voter’s wait time at an early voting site shall not exceed thirty minutes”

The City Board has evaluated the possibility of utilizing a ballot on demand (BOD) system for early voting. This process would solve many of the challenges associated with pre-printed paper ballots; however, the BOD is not the most efficient solution. The challenges/deficiencies associated with BOD are also numerous and include but are not limited to:

- The City Board would be required to purchase dozens of BOD systems
- Technology presently exists rendering the BOD a dated system – as such, the City Board would be purchasing dozens of an expensive system that is essentially obsolete upon delivery
- The City has a large volume of voters and the processing/printing speed of a BOD system is insufficient to adequately serve the voters of the City.
- Utilization of a BOD system will virtually ensure that a violations of NYSEL § 8-600 will occur with regularity and frequency.
- BOD systems cannot print a two-page center perforated ballot as currently required by NYSEL § 7-106(1) – in the event that the number of candidates and/or ballot questions require a two-page ballot.

The City Board is aware that the Village of Portchester utilized the Express Vote XL (XL) to conduct a village election on March 19, 2019. The City Board is also aware that such system was authorized by Order of the Hon. Paul G. Gardephe, District Judge in the United States District Court for the Southern District of New York dated January 29, 2019.

The City Board has been informed that the election was conducted successfully and without undue complications. Reportedly, the voters and the elections administrators have favorably reviewed the performance of such system.

The XL has the capacity to store up to 9,999 ballot styles, currently supports fourteen (14) separate language preferences. The languages in the most recent version are as follows: English, Spanish, Chinese, Korean, Japanese, Vietnamese, Tagalog, Creole, Russian, Bengali, French, Hindi, Gujarati and Punjabi. The system can be further expanded to additional languages and supports audio only languages. The system is fully compliant with the accessibility requirements of the Americans with Disabilities Act (ADA).

The City Board understands that the State Board is in the process of certifying the XL for use in New York State; however, a firm certification date has not been determined. The City Board further understands that the State Board is fully aware of the capabilities of the XL (including several letters from the Village of Portchester prior to the issuance of the Court Order on January 29, 2019). As such, the details of the XL's capabilities will not be set forth fully herein; however, should the State Board require additional information, the City Board will endeavor to provide same.

Attached for your collective information and review are the following documents:

1. Order of Hon. Paul G. Gardephe, USDJ in the Southern District of New York, dated January 29, 2019
2. Election Assistance Commission (EAC) Certification of Conformance for ES &S EVS 6.0.0.0 dated July 2, 2018
3. EAC Certification of Conformance for ES &S EVS 6.0.2.0 dated October 4, 2018
4. EAC Certification of Conformance for ES &S EVS 6.0.2.1 dated November 12, 2018

Given the foregoing, the City Board respectfully requests permission from the State Board to utilize the XL for the purposes of conducting early voting in the City commencing with the General Election conducted for 2019. This request is made pursuant to the State Board's authority set forth in NYSEL § 7-201(4). The City Board respectfully submits that such request is within the parameters set forth therein and the scope of the State Board's authority.

The XL has been successfully utilized in an actual election in New York State most recently. Further, the United States District Court for the Southern District of New York responsibly mandated such use as the Village of Portchester would have been

unable to conduct the village election otherwise. The City Board will be similarly situated for early voting absent such permission.

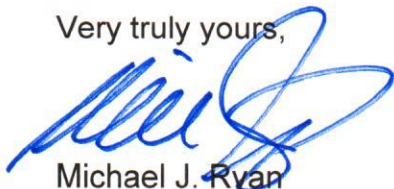
Before making a final determination with respect to the equipment used for early voting, the City Board respectfully requests a determination from the State Board regarding the availability of the XL for this process. In addition, there may be other systems brought to your attention should information regarding same become available.

The City Board respectfully submits this request with a view toward your favorable determination; however, all appropriate remedies are retained to ensure that the City Board will properly and effectively conduct early voting during the General Election for 2019. The City Board affirms that should the XL be approved and selected by the City Commissioners of Elections, it will be utilized pursuant to the provisions of NYSEL § 7-202(1)(t) which precludes eternally transmitting or receiving data.

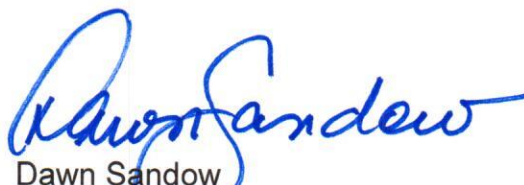
The City Board is aware that the next scheduled meeting of Commissioners of the State Board is scheduled for April 29, 2019. *Time is of the essence* with respect to the request herein. As such, the City Board seeks a favorable decision as soon as is practicable under the circumstances.

Thank you for your collective expeditious attention to this matter.

Very truly yours,



Michael J. Ryan
Executive Director



Dawn Sandow
Deputy Executive Director

MJR:ks
Encls.

C: Board of Commissioners
Executive Management
Legal Department