

## **Summary of the Settlement Agreement in Hernandez et al v. New York State Board of Elections et al**

The term of this settlement agreement begins on the date a “so ordered” settlement agreement is docketed on the Court’s Electronic Filing System and ends on May 31, 2025. It applies to elections on or after June 1, 2022, conducted by County Boards of Election (CBOE). However, in the event it becomes impossible or impracticable for the State Board of Elections (SBOE) to implement a RAVBM system on or before June 1, 2022, CBOEs shall continue to provide PDF or HTML ballots as provided for in the settlement agreement until such time as the RAVBM system is implemented. If SBOE cannot meet the June 1, 2022 deadline for implementation provided for in Paragraph 3 of the settlement agreement, SBOE shall provide Plaintiffs, by and through their respective counsel, a detailed explanation for such delay and shall state the date by which the rollout of RAVBM is expected to be accomplished, which date shall be the earliest date possible. At least 60 days prior to each CBOE-run primary or general election, SBOE shall communicate with each CBOE to obtain written certification from the CBOE that it is aware of and in compliance with the settlement agreement.

SBOE shall, by June 1, 2022, develop, test, and implement an accessible, electronic method by which voters with a print disability across New York State may request, receive, and mark an accessible absentee ballot electronically via an RAVBM system. SBOE shall ensure that the RAVBM system is fully accessible and in compliance with applicable standards outlined in the settlement agreement. SBOE will share a description, forms and processes related to the RAVBM process with Plaintiffs for comment prior to implementation and will consider any comments or modifications suggested by Plaintiffs.

By May 15, 2022, SBOE shall identify and publicize on its website the name and contact information of a SBOE staff member(s) to provide technical assistance to CBOEs and to voters attempting to request, mark, or return accessible absentee ballots. Within the timeframes provided for in the settlement agreement SBOE will also publish the settlement agreement and a summary of its terms and announcement of the RAVBM accessible absentee ballot program SBOE implements state-wide. Announcements of updates that create substantial changes to the RAVBM system shall also be timely published.

SBOE shall ensure that educational ballot information generated from ballot data information will be provided on the SBOE website in an accessible format outlined in the settlement agreement. In addition, SBOE shall educate all CBOEs on the RAVBM system and the process by which voters with a print disability may request, receive, mark, and return accessible absentee ballots including providing the CBOEs with the settlement agreement and instructions on implementation. SBOE will also provide mandatory training on accessible absentee ballots for CBOEs each year the settlement agreement is in effect.

SBOE shall create and implement, for use by June of 2022, a centralized, uniform statewide process for voters to request an accessible absentee ballot through the SBOE website. SBOE agrees, by May 1, 2022, to make available a statewide portal request system through which a voter with a print disability can make a request via accessible HTML fillable form that will be transmitted promptly to the voter’s CBOE for processing. This provision shall not apply to any jurisdiction that provided its own portal in 2020 if the jurisdiction continues to do so. SBOE shall issue a directive requiring CBOEs to link to this centralized request process on their websites in an accessible public-facing location on either the CBOE home page or its absentee ballot subpage.

Accessible absentee ballot request form can be submitted to each respective CBOE by United States mail, web portal, fax, or email, to the extent these methods are available to all absentee voters pursuant to New York State law.

Voters may submit an electronic request for an accessible absentee ballot at any time up until fifteen (15) days prior to a primary election or general election, or within the time frame established by New York State or federal law for the submission of absentee ballot requests by methods other than in person unless the deadlines or the method for submission is changed pursuant to New York State Law.

For all elections held in 2022, CBOEs will provide eligible voters who request an accessible absentee ballot a postage-paid ballot return envelope and oath envelope by mail at least fifteen days (15) prior to a primary election or general election. Postage paid envelopes thereafter, as applicable, will be provided at any election where postage paid envelopes are provided to all absentee voters. For elections held in June 2022 and after oath envelopes must include tactile markers designating where the voter should sign, however, signatures will be accepted anywhere on the envelope.

CBOEs will provide an accessible electronic version of the oath envelope, accessible instructions on how to return the ballot, and a return envelope template that can be printed by the voter to all eligible voters who request an accessible absentee ballot. The versions of these envelopes provided by the SBOE for the 2020 elections met the accessibility requirements. The attestation on the accessible absentee ballot oath envelope will be the same as the attestation on the paper ballot oath envelope for all voters.

Upon completion of the ballot, the voter may return the printed accessible absentee ballot using the United States Postal Service, hand delivery to their CBOE, or by any other method the CBOE provides for the return of absentee ballots pursuant to applicable state law. Submission and postmark deadlines for accessible absentee ballots shall be the same as for other absentee ballots.

SBOE shall, to the extent practicable, provide on the SBOE website, and shall instruct the CBOEs to provide on their respective websites, information for voters who are utilizing the accessible absentee ballot system on where they can access printers to print their ballots, and instructions for accessing county-based resources for printing. SBOE and CBOEs shall also provide the information that voters with a disability will still be able to vote in-person using an accessible Ballot Marking Device (“BMD”), either during early voting or on Election Day.

SBOE shall, for all state and local elections run by CBOEs occurring prior to June 1, 2022, continue at minimum to provide via email an accessible fillable PDF absentee ballot (“accessible PDF ballot”) or accessible HTML ballot, to eligible voters who have a print disability and request an accessible absentee ballot.

SBOE will implement these accessible ballots according to the processes set forth in Paragraph 11 of the June 2, 2020, Stipulation of Settlement and Paragraph 1 of the August 18, 2020, Order.

Upon receipt of a voter’s request for an accessible absentee ballot, CBOEs or their agents will, pursuant to mandatory directive of the SBOE, generate a ballot that is screen readable using common assistive technology, which shall include insertion of tags and fillable objects so that it can be completed independently and privately by the requesting individual using a screen-reader program. The accessible absentee ballot shall meet applicable standards for a PDF as outlined in the settlement agreement.

An accessible absentee ballot may also include, for a CBOE that provided an accessible ballot in a web-based format (such as a fillable HTML) for the June 23, 2020, or November 3, 2020 election, the use of the same such accessible ballot in a web-based format for elections taking place after the implementation of this agreement but prior to June 1, 2022. This is subject to consultation with the SBOE Technology and Election Operations staff and upon resolution of any issues with such accessible ballot in a web-based format.

Plaintiffs agree not to file litigation challenging any alleged failure by SBOE to permit Plaintiffs or their members to return accessible absentee ballots electronically during the term of the settlement agreement. The settlement agreement does not preclude the SBOE and CBOEs from implementing an electronic ballot return system during the term of the settlement agreement.

SBOE shall, within 45 days after each election certification for the term of the settlement agreement, provide Plaintiffs with a report for the preceding election containing the information detailed in the settlement agreement.

The settlement agreement also contains technical information on attorney fees, costs and liens, state approval of payments, accrual of interest, liability for taxes, responsibility for liens, a release in favor of the defendants, plaintiff's acknowledgement that there no other actions commenced, settlement agreement authority, the status of the agreement, the governing law, dispute resolution, and provides for the severability of the agreement.