

THE GRAND JURY OF THE SUPREME COURT
OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

REPORT OF THE GRAND JURY
OF THE SUPREME COURT
STATE OF NEW YORK
SECOND JUDICIAL DISTRICT
ISSUED PURSUANT TO CRIMINAL
PROCEDURE LAW § 190.85(1)(C)

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AN INVESTIGATION INTO ACTS OF FORGERY IN THE SECOND DEGREE IN VIOLATION OF PENAL LAW § 170.10(2), OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE IN VIOLATION OF PENAL LAW § 175.35(1), AND RELATED OFFENSES IN RICHMOND COUNTY IN THE PRIMARY ELECTION FOR A LOCAL GOVERNMENT OFFICE IN 2021

INTRODUCTION

After considering the evidence before it and receiving legal instructions from the District Attorney of Richmond County, this Grand Jury hereby submits this Report, pursuant to Criminal Procedure Law § 190.85(1)(c), “[p]roposing recommendations for legislative, executive or administrative action in the public interest based upon stated findings.” The purpose of this Report’s recommendations is to enhance and improve in Richmond County, and across the State of New York, the fundamental pillar of American democracy: the integrity of our elections.

BACKGROUND

In the wake of the COVID-19 crisis, New York State has enacted laws, both legislatively and by executive order, that significantly expand opportunities to vote in elections without physically appearing at a poll site. While these new laws may help achieve the laudable goal of facilitating New Yorkers’ participation in their democratic process, they also open the door to the possibility of fraudulent activity by unscrupulous actors affiliated with political campaigns, or by others not associated with campaigns, but seeking to advance their own political goals. In particular, the automatic processing of absentee ballot applications without adequate safeguards to ensure that the purported applicants are, in fact, the registered voters whom they claim to be invites cheaters to tender fraudulent mail-in ballots to local boards of elections. There need to be adequate and sufficient safeguards to ensure that such fraudulent ballots are identified as such and, therefore, not counted.

Based on our factual findings as set forth below, this Grand Jury raises its collective voice and proposes a four-track reform.

First, better safeguards must be put in place to prevent campaigns from re-registering unwitting, or even deceased, voters in order to secure votes in their names.

Second, more stringent measures must be put in place with respect to absentee ballot applications to ensure that absentee ballots are provided only to registered voters with a legitimate need or desire to vote *in absentia*.

Third, the process by which absentee ballot envelopes are delivered to, and processed by, local boards of elections must be improved to ensure that only a valid ballot that is actually tendered by the voter whose name, pedigree information, and signature appear on the envelope is processed and counted.

Fourth, the use of “cure affirmations,” by which voters may cure facial defects on the absentee ballot envelopes bearing their names, must be changed.

We recognize that this Grand Jury is not the first entity to identify flaws in the practices of the New York City Board of Elections (hereafter, “the Board”) and, in particular, in the state laws and guidelines under which it operates. We also recognize that implementing our recommendations would impose some measure of inconvenience on legitimate voters with legitimate reasons for voting without physically appearing at a poll site. Nonetheless, we deem the potential upside in terms of election security to be worth the downside in terms of inconvenience. We are compelled to call for changes in the hope that legislators, regulators, and policymakers will consider this Grand Jury’s perspective and act swiftly to strengthen in New York the keystone of American democracy: the integrity of its electoral process.

EVIDENCE

This Grand Jury has received and duly considered testimony from multiple witnesses, both in person and by affidavit. These witnesses included senior-level staff from the Board's office on Staten Island, which is tasked with managing elections in Richmond County; law enforcement personnel assigned to the Richmond County District Attorney's Office, whose investigation revealed the facts described herein; an expert in forensic document examination; and registered voters in whose names paperwork was submitted to the Board by unidentified fraudsters bearing what purported to be those voters' signatures, but which the voters had never actually signed.

Additionally, this Grand Jury has reviewed hundreds of exhibits, consisting primarily of documentary evidence. These exhibits include, but are not limited to, fraudulent registration forms and absentee ballot applications submitted to and processed by the Board, fraudulent absentee ballot envelopes received by the Board, fraudulent cure affirmations received by the Board (though not generated by the Board), and the death certificate of a voter who ostensibly registered to vote after his death. The election to which these exhibits relate is a multiple-candidate primary race for a major-party nomination for a local government seat that was held in June of 2021.

FACTUAL FINDINGS

The New York City Board of Elections

The New York City Board of Elections is an administrative body whose leadership is appointed by the City Council. Pursuant to § 3-200 of the New York State Election Law, it is led by ten Commissioners: one Democrat and one Republican from each of New York City's five boroughs. Each commissioner, upon recommendation from his/her political party and

appointment by the City Council, serves for a four-year term. The Board's executive office is located in downtown Manhattan, and satellite offices exist in each of the five boroughs.

On Staten Island, the Board of Elections office is located at 1 Edgewater Plaza. The daily activities in the borough office are handled by a bipartisan staff. Under state law, the Board's duties include maintaining records of voter registrations, processing requests for absentee ballots, operating poll site locations on election day, maintaining election day equipment, canvassing ballots, and certifying election results. In the context of absentee ballots, "canvassing" means comparing the signature on an absentee ballot envelope submitted to the Board to an exemplar of the named voter's known signature.

Voter Registration (and Re-Registration) Forms

The source of that exemplar is the voter's registration form, or "buff card" (so named because, historically, buff-colored cardstock was used to print these forms). New York State Election Law § 5-210 provides that to register to vote in New York State, voters must verify their identities by providing their Department of Motor Vehicles ("DMV") numbers (either a driver's license number or a non-driver DMV number) or the last four digits of their Social Security numbers. Voters who do not have DMV or Social Security numbers may also use valid photo identifications, current utility bills, bank statements, paychecks, or other government documents showing their names and addresses as proof of their identities. Re-registering to vote (for instance, after moving from one address to another, replacing a birth last name with a married last name, changing party affiliation, etc.) requires the same information.

Voters' registration forms are available to the public for inspection, including to political candidates and their campaigns' staffs. Pedigree information such as the last four digits of a voter's Social Security number is not displayed at a public terminal, and such information should

be redacted whenever someone (other than law enforcement personnel) obtains a printed copy of a voter's registration form (although, since redaction is accomplished by a Board staffer with a black magic marker, there is room for human error). However, a voter's date of birth is displayed at a public terminal and is *not* redacted from a printed copy of the registration form. This is a critical security flaw. After someone registers to vote for the first time, the Board assumes that any documents subsequently submitted in that voter's name (new registration forms, absentee ballot applications, etc.) are legitimate as long they list the same date of birth as the voter's original buff card. That is true even if other information – the partial Social Security number, for instance – is different, or even left blank. Thus, anyone who possesses a particular voter's date of birth, whether it was obtained from a publicly-available buff card or some other way, can submit elections paperwork to the Board that will be presumed to be valid.

In the case of certain Board of Elections documents that are tested for authenticity using signature comparison, such as absentee ballot envelopes, voters' registration form signatures are presumed by the Board to be true exemplars. Board personnel assigned to canvass absentee ballot envelopes validate ballots when they deem that a "reasonable person" would judge their signatures to match the voters' buff card signatures. Board personnel receive no formal training on signature comparison.

Absentee Ballot Applications

The next document of concern to this Grand Jury is the absentee ballot application. As its name implies, this is the document by which voters who are unable to go physically to a poll site on election day may request that absentee ballots be provided to them. Historically, blank absentee ballot applications could be found online, downloaded, and printed, and then attested to by the requesting voter using a "wet signature" – a signature made by hand by that voter using an

ink pen. But this does not mean that Board personnel checked the signature against the ostensible voter's buff card before authorizing the requested ballot. To the contrary, pursuant to New York State Election Law § 8-402(1), before issuing an absentee ballot, the Board merely compares pedigree information (in particular, the date of birth) on the application to pedigree information on file from an existing registration form to verify that the person named on the application is actually a registered voter. The Board does nothing to verify that the registered voter is actually the person who submitted the application. Identifying applications whose signatures do not appear to match the corresponding voters' buff cards is left to rival candidates, but there is very little those candidates can do about apparent mismatches. As of 2021, they could (1) refer the matter to law enforcement and (2) be ready, when the absentee ballot envelopes were canvassed, to object to those submitted in the names of voters whose applications they had identified ahead of time as being suspect. Under the Election Law as amended in 2022, they cannot object to those absentee ballot envelopes anymore. In any case, nothing prevents an application with a bogus signature from being processed in the first place.

Moreover, in the midst of the COVID-19 pandemic, former New York State Governor Andrew Cuomo issued Executive Order 202.15, allowing absentee ballot applications to be submitted online, and without any signature required. This meant, of course, that *nobody* could identify a fraudulent application by comparing signatures because there *was* no signature to compare to the voter's buff card. This Executive Order, which was signed on April 9, 2020, applied only to elections held that summer, but subsequent legislation – specifically, New York State Election Law § 8-408, which authorizes using an electronic copy of an individual's manual signature already on file with the Board, the DMV, or another governmental agency – has codified the new policy into permanent New York State law. Therefore, it is no longer necessary

for a voter (or for someone pretending to be that voter) to provide any new signature on an absentee ballot application that could ever be compared to a buff card for authenticity. A simple electronic request without a signature requirement is all that is required to obtain an absentee ballot.

Executive Order 202.15 also widened the range of acceptable reasons for an absentee ballot to be issued to a requesting voter (or to someone pretending to be that voter). According to the application form itself, there are six acceptable grounds for requesting an absentee ballot. These are set forth in Section 1 of the application. The first is *absence from county or New York City on election day*. The second is *temporary illness or physical disability*. The third is *permanent illness or physical disability*. The fourth is *duties related to primary care of one or more individuals who are ill or physically disabled*. The fifth is *resident or patient of a Veterans Health Administration Hospital*. The sixth is *detention in jail/prison, awaiting trial, awaiting action by a grand jury, or in prison for a conviction of a crime or offense which was not a felony*.

The following instruction appears on the New York City Board's website: *If you are affected by COVID-19 and/or the potential of contracting the virus, please check the box for "Temporary Illness" on the application. The definition has been temporarily expanded to include "a risk of contracting or spreading a disease" such as COVID-19.*¹ Voters who check off one of these six boxes attest that they do so "in good faith," but no additional proof of the proffered basis for requesting an absentee ballot (e.g., a doctor's note corroborating a voter's illness or physical disability) is required for the Board to process the application for an absentee ballot.

¹ See <https://vote.nyc/page/absentee-voting-0>. This expanded definition of *temporary illness* has since been codified in New York Election Law § 8-400(1)(b).

Section 2 of the absentee ballot application form permits requestors to specify those elections for which they wish to receive absentee ballots. Sections 3, 4, and 5 are for the requestor's pedigree information, including name, date of birth, and residential address.

Section 6 is of particular concern to this Grand Jury. It provides a list of options by which voters (or people pretending to be those voters) may request to have their absentee ballots delivered to them. One option is to authorize anyone – including someone from a political campaign whose candidate will appear on the requested ballot – to pick the ballot up at the Board, theoretically to be delivered to the requesting voter, who can then vote for any candidate. A second option is to have the ballot mailed to any address at all. This can include an address outside of New York State, an address to which the named voter has no actual or apparent connection, or an address associated with one of the very candidates whose name appears on the requested ballot – even a candidate's residence.

The pedigree information needed to re-register a voter – namely, the voter's date of birth – is readily available to candidates, since registration forms are available for public examination and voters' date of birth are not redacted (and there exist many other ways for fraudsters to obtain victims' dates of birth too). This means that a candidate who wishes to cheat the system by, for instance, harvesting ballots for recently-deceased voters, has an uncomplicated way to do so. The candidate could submit fraudulent voter registration forms re-registering those voters² and then submit fraudulent absentee ballot applications in those voters' names authorizing campaign personnel to receive their ballots from the Board. Then, campaign personnel could

² There exist mechanisms to prevent the dead from voting, but they are far from foolproof. Local boards mainly rely on the New York State Department of Health to notify them when voters pass away, but there is always a lag between the death and the notice. Therefore, if someone tries to re-register a recently-deceased voter, the local board may have no way of knowing that the application should be flagged as invalid.

simply mark those ballots for their candidate, forge voters' signatures on the absentee ballot envelopes, and return them to the Board to be canvassed.

Furthermore, alarmingly, there exists no mechanism to ensure that one *and only one* absentee ballot is generated for a particular voter, whether recently re-registered to vote or not. To the contrary, as described in greater detail below, multiple requests for absentee ballots in a single voter's name can – and do – generate multiple absentee ballots that are disseminated by the Board. In fact, there exists no theoretical limit to how many times a particular voter (or someone pretending to be that voter) may request an absentee ballot and have an absentee ballot issued.

Indeed, a situation could occur in which someone pretending to be a particular voter requests that an absentee ballot be mailed to one address, and requests that a second absentee ballot be picked up at the Board by someone, and requests that a third absentee ballot be mailed to a different address, and requests that a fourth absentee ballot be picked up by someone else, and requests that a fifth absentee ballot be mailed to yet another address, and so on. Under the current system, *all* of those requested absentee ballots would be generated and dispersed as requested. The inadequate safeguards that exist for when multiple absentee ballots that were *issued* by the Board are then *returned* to the Board bearing different signatures, purportedly of the same voter, are examined next.

Absentee Ballot Envelopes

The next election-related document of particular relevance to this Grand Jury is the absentee ballot envelope. As its name implies, this is the Board-provided envelope in which absentee voters secure their marked ballots for delivery to the Board. Under current law, anyone (including campaign personnel) may deliver ballot envelopes back to the Board, and no

identification is required of those delivering the envelopes. An envelope is deemed valid if it appears to the Board that the purported voter's signature on the envelope matches the same voter's buff card signature. There is no requirement under current New York State law that the signature be witnessed, notarized, or otherwise authenticated beyond appearing, in the judgment of Board employees with no formal training in handwriting analysis, to match the buff card for the envelope to be validated.

To preserve the voter's anonymity, the ballot is removed from a validated envelope, and the two pieces of paper go in separate piles. The ballot itself contains no information with which it could be associated with the particular voter who purportedly marked it. Once the ballot and the absentee envelope are separated, it is impossible to tell which ballot came from which envelope.

As of 2021, an exception to this was when one campaign objected to validating a particular ballot, arguing that the envelope signature did not match the buff card, but the Board overruled that objection. In that case, pursuant to King v. Smith (a New York State Appellate Division court decision that bound Richmond County and other New York State counties within the state's Second Judicial Department), the envelope would be opened and the ballot counted, but then re-sealed inside the same envelope and set aside. The objecting campaign then had three days to appeal the Board's ruling to a judge. A judge who agreed with the objecting candidate that the envelope's signature mismatched the named voter's buff card signature would order that the ballot be invalidated. Since the Board had already counted the ballot, it would retroactively un-count it by subtracting one vote from the tally of any candidate for whom the ballot was marked. However, a 2022 change in the New York State Election Law eliminated this procedure for post-election review of a counted ballot based on a candidate's objection. Now,

New York State Election Law § 9-209(5) expressly provides that campaign personnel may observe a local board’s review of ballot envelopes, but they may not make objections. How this will affect future elections remains to be seen.

What happens when two absentee ballot envelopes³ arrive at the Board with different signatures purportedly belonging to the same voter (hereafter, “double-submitted” envelopes)? One might expect the Board to compare both signatures to the known exemplar provided on the buff card and then validate the absentee envelope whose signature matched and reject the one that did not.⁴ Indeed, this Grand Jury has reviewed twenty pairs of double-submitted envelopes, and found multiple pairs where one signature plainly matched the buff card and one plainly did not (as well as other pairs where we could not tell whether one signature or the other looked more like that voter’s buff card signature).

However, starting with a signature comparison to choose between double-submitted envelopes is not the Board’s policy. Instead, just before absentee ballot canvassing was to commence for the local primary race that concerns this Grand Jury, the Board replaced one flawed system with another. At first, there existed a first-in-time / first-in-right policy. Under this system, for any given voter, only the first envelope bearing that voter’s name to be received and timestamped by the Board was considered potentially valid. During canvassing, its signature would be compared to the voter’s buff card, and the Board would then decide whether to validate

³ This Grand Jury heard evidence of multiple instances where two envelopes bearing the same voter’s name were received by the Board, but it did not hear of any instances where three or more did in this particular election. As examined above, however, under the current policies and procedures, there is no limit to how many requested absentee ballots will be issued, and, therefore, no limit to how many absentee ballots could be returned for a single voter. It is no stretch to imagine future elections where three or four or more ballots arrive bearing a single voter’s name. In that case, the inadequacy of the current safeguards would only be magnified.

⁴ If neither envelope’s signature matched the corresponding voter’s buff card, both absentee ballots would presumably be rejected.

it. Any other envelope that arrived and was timestamped by the Board after the first one, *no matter how clearly its signature matched the buff card*, would be automatically marked invalid and set aside, to be discarded in two years unless seized by a law enforcement agency during that period. A consequence of this is that legitimate voters submitting valid absentee ballots would have their votes not counted if fraudulent absentee ballots bearing their names arrived first.

However, just before absentee ballot canvassing was scheduled to begin for the local race that concerns this Grand Jury, the New York State Board of Elections instructed the New York City Board to replace the first-in-time / first-in-right policy with a *last-in-time / first-in-right* policy. The proffered rationale was consistency with in-person voting at poll site: if an election day vote at the polls automatically invalidates any previously-submitted absentee votes in that voter's name, then the most recent absentee ballot envelope bearing a particular voter's name should likewise invalidate any previously-submitted ballots ostensibly submitted by the same voter.

This Grand Jury is not certain that reasoning makes sense, but that is not the real problem. The real problem is that this policy, like the one it replaced, allows legitimate ballots to be automatically invalidated in favor of fraudulent ones if the latter happen to arrive with what the Board pronounces to be better timing, and without anyone looking at any signatures first. Only after being selected in this arbitrary way is the favored envelope subjected to handwriting-based scrutiny. Even if the fraudulent signature is identified as mismatched to the purported voter's buff card, the fraudulent ballot inside might still be counted, depending on what happens with the cure letter. This is examined next. But whatever happens with the fraudulent but well-timed ballot, the *legitimate* ballot that happened to arrive in the wrong order will *not* be counted. In other words, the best-case scenario is that the legitimate ballot goes uncounted, and so does

the fraudulent one. The worst-case scenario is that the legitimate ballot *is not* counted but the fraudulent one *is*, based on a fraudulent cure affirmation.

Cure Letters and Affirmations

Cure letters are a recent development in New York State elections procedures. Historically, if an absentee ballot envelope's signature mismatched the corresponding voter's buff card, the ballot was simply invalidated and that was that. New York State Election Law § 9-209(3), which took effect in 2020, changed this policy. Now, mismatched signatures result in a cure letter being sent to the named voter. The letter explains that the absentee ballot envelope was deemed defective due to the signature mismatch, and it invites the voter to sign an affirmation⁵ attesting to (1) having submitted an absentee ballot and (2) being the person whose name appears thereon. Voters then have seven business days to return their cure affirmations⁶ for the Board to canvass them. If a cure affirmation is received in time, and if the Board deems its signature valid based on comparison to the corresponding voter's buff card, then the ballot will be reinstated and counted.

There is something troublingly contradictory about this process. A cure letter will only issue in the first place if the signature on an absentee ballot envelope is mismatched to the signature on the corresponding voter's buff card. For the cure affirmation to be accepted, the voter's signature on it must match the voter's buff card signature. If these two signatures *do*

⁵ Since the affirmation *to* the Board for the voter to sign appears on the same sheet of paper as the letter *from* the Board advising the voter of the signature defect, the terms "cure letter" and "cure affirmation" may be used interchangeably in this Report. The terms refer to the same piece of paper.

⁶ Acceptable means of transmitting cure affirmations to the Board depend on how the absentee ballot was requested. Voters who applied by printed form with a wet signature are permitted to submit cure affirmations by email, fax, regular mail, or in-person delivery to the Board. Voters who applied online for their absentee ballots without inked signatures are not permitted to tender their cures by email or by fax. It is unclear to this Grand Jury what this distinction accomplishes.

match, then it necessarily follows that the signature on the cure affirmation does *not* match the signature on the absentee ballot envelope. Put another way, a cure affirmation can only achieve its stated purpose by being *mismatched* to the very thing that it exists to cure. Surely, this is not a desirable state of affairs.

A cure affirmation is particularly ill-suited to the task of excluding fraudulent votes while counting legitimate ones in the case of double-submitted absentee ballot envelopes. Under the current last-in-time / first-in-right policy, a legitimate absentee ballot that happens to arrive at the Board first is automatically superseded by a fraudulent absentee ballot that comes after, unless the legitimate one has already been examined and deemed valid in the interim (this is discussed in greater detail below in the section addressing changes to the law that took effect in 2022). Otherwise, when the fraudulent ballot is canvassed, presumably its signature will not match the named voter's buff card, and a cure letter will be sent to the voter. But the boilerplate cure letter provides no information to the voter about the double-submitted envelopes in his/her name. It merely states that "the signature on the ballot/affirmation envelope does not appear to match your signature on file" at the Board. The same form invites the voter to cure that defect by affirming that "I submitted the ballot envelope with the defect described above, and I am the voter described on the envelope."

The problem is that voters have no way of knowing that the absentee ballot envelopes to which the cure letters refer are *not the ones that they submitted*. They have no way of knowing that these fraudulent but better-timed envelopes bearing their names even *exist*. Should they sign and return the cure affirmations, then their unwitting cures of the wrong ballots compound the injustice of their legitimate ballots *not being counted* with the further injustice of fraudulent ballots submitted in their names *being counted*.

Furthermore, cure affirmations need not even be signed on the barcoded forms provided to voters for that purpose by the Board. Rather, campaigns may print their *own* cure affirmations, submit them with what purport to be the named voters' signatures, and have those affirmations canvassed. The potential for abusing this system is self-evident. In the case of the particular election that concerns this Grand Jury, this policy *was* abused again and again, and we turn to that election next.

The Primary Election Concerning This Grand Jury

Pursuant to Criminal Procedure Law § 190.85(2)(b)'s requirement that a Report such as this one "not [be] critical of an identified or identifiable person," the specifics of the election that set this investigation into motion must be omitted from this Report. Suffice to say that it was a 2021 race for a major-party nomination for a local government seat, and that it featured much about which to be critical.

Multiple candidates ran for this nomination. The eventual winner, CANDIDATE 1, defeated his closest opponent, CANDIDATE 2, by several dozen votes out of several thousand cast after less-popular candidates for the same nomination were removed in successive rounds of ranked-choice voting elimination.⁷

⁷ Ranked-choice voting is a new system whereby voters may vote for multiple candidates in a single race in preferential order. The idea is to elect officials who are broadly acceptable to a wide cross-section of the electorate. Candidates with the fewest votes are eliminated one at a time in successive rounds, with an eliminated candidate's votes being redistributed to whichever remaining candidates come next in voters' orders of preference. Imagine, for example, a three-candidate race in which 100 eligible voters cast ballots. After the first round, Candidate A might be in the lead with 45 first-choice votes over Candidate B, who received only 40, and Candidate C, who received the remaining 15. But if all of the voters who listed C as their first choice also listed B as their second choice, C's 15 votes will be redistributed to B after C's elimination. The result is that B will win over A by a final tally of 55 to 45. Thus, the eventual winner is the first- or second- choice candidate for the majority of voters.

Election-related misconduct in this race started long before election day. This Grand Jury finds that an absentee ballot application bearing the forged signature of a deceased individual was submitted to the Board, naming a CANDIDATE 2 campaign staffer, STAFFER 1, as the authorized collector of his absentee ballot. The deceased individual was a man who passed away in mid-2020. However, in May 2021, the Board processed a voter registration form purportedly signed by him with his pedigree information, including his date of birth and the last four digits of his Social Security number, but identifying his gender as female. The next month, in June 2021, that absentee ballot application was received by the Board, again purportedly signed by the deceased individual, and purportedly authorizing STAFFER 1 to collect his absentee ballot from the Board and deliver to him.

These documents are forged. The deceased man did not sign any documents either to re-register to vote or to vote by absentee ballot – let alone to vote using an absentee ballot handled by STAFFER 1 from CANDIDATE 2’s campaign – a year after his death. It follows that for both of these documents, the individual or individuals responsible have committed criminal offenses including Forgery in the Second Degree in violation of Penal Law § 170.10(2), Offering a False Instrument for Filing in the First Degree in violation of Penal Law § 175.35(1), and Identity Theft in the First Degree in violation of Penal Law § 190.80(3).

Investigators from the Richmond County District Attorney’s Office interviewed STAFFER 1 in early July of 2021. No new information was learned from STAFFER 1 as to how a deceased male voter came to be registered as a female voter a year after his death or as to how his supposed signature ended up on an absentee ballot application that purportedly authorized STAFFER 1 to pick up his ballot on his behalf. Additionally, STAFFER 1 refused to provide the names of any CANDIDATE 2 campaign volunteers. Ultimately, no charges were filed against

STAFFER 1 or other CANDIDATE 2 personnel by the Richmond County District Attorney's Office since it could not be determined who was responsible for any particular forged signature.

Many more suspicious documents were tendered to the Board by the CANDIDATE 2 campaign. This Grand Jury has examined a great number of absentee ballot applications that were submitted to the Board in the months before the primary election naming STAFFER 1, STAFFER 2, or STAFFER 3 from CANDIDATE 2's campaign as the authorized ballot collector, and we have compared those applications to the corresponding voters' buff cards. We find that there exist approximately two hundred pairings where we deem the signatures to be mismatched. Moreover, this Grand Jury received testimony from multiple registered voters⁸ explaining that the purported signatures on absentee ballot requests bearing their names were not, in fact, their signatures. Nor had they authorized anyone to sign their names for them. Thus, for every forged signature on an absentee ballot application, the person responsible is guilty of crimes including Forgery in the Second Degree in violation of Penal Law § 170.10(2), Offering a False Instrument for Filing in the First Degree in violation of Penal Law § 175.35(1), and Identity Theft in the First Degree in violation of Penal Law § 190.80(3).

Furthermore, we find that one particular signature appeared again and again, both on absentee ballot applications and on buff cards, that were supposedly signed by multiple different people. This Grand Jury heard and duly considered (1) the testimony of, and (2) the written report prepared by, an expert in forensic document examination. This expert examined dozens of documents that consist of absentee ballot applications purportedly naming STAFFER 1, STAFFER 2, or STAFFER 3 as the authorized collector of the voters' absentee ballots, each supposedly signed by a different voter, and the corresponding voters' buff cards. His

⁸ These individuals testified by affidavit pursuant to Criminal Procedure Law § 190.30(3)(f).

examination indicated, and this Grand Jury finds, that more than two dozen of these documents (including both absentee ballot applications and registration forms) were signed by a common author. That author, by signing – that is, forging – different voters’ signatures again and again has committed multiple counts of criminal offenses including Forgery in the Second Degree in violation of Penal Law § 170.10(2), Offering a False Instrument for Filing in the First Degree in violation of Penal Law § 175.35(1), and Identity Theft in the First Degree in violation of Penal Law § 190.80(3).

When the actual voting for this particular election began, the irregularities continued. This Grand Jury received testimony by affidavit from multiple registered voters stating that they never signed, or authorized anyone else to sign, the absentee ballot envelopes that were tendered to the Board bearing their purported signatures. For each of *these* forged signatures, the person responsible is guilty not only of Forgery in the Second Degree in violation of Penal Law § 170.10(2), Offering a False Instrument for Filing in the First Degree in violation of Penal Law § 175.35(1), and Identity Theft in the First Degree in violation of Penal Law § 190.80(3), but is also guilty of Illegal Voting in violation of Election Law § 17-132(8).

This Grand Jury finds that in total, over 1,500 absentee ballot envelopes were received in the names of voters from the relevant local government district, including over a thousand that were dropped off in a large batch by CANDIDATE 2 campaign personnel.⁹ Approximately ten

⁹ This process, whereby political campaigns themselves control the physical delivery of ballots to boards of elections, is often referred to as “ballot harvesting.” It is not illegal under current New York State law, but its inherent conflicts of interest are self-evident. This Grand Jury notes that the Supreme Court of the United States recently upheld as constitutional an Arizona law curtailing this practice.

percent of all of the absentee ballot envelopes were initially rejected by the Board,¹⁰ generally because they bore no signature at all or because the named voter had voted in person at a poll site on election day.¹¹ After canvassing the remaining absentee ballot envelopes while hearing objections to particular envelopes by the campaigns (before which, under state Board of Elections guidelines, the local Board should have, but did not, perform its own initial envelope-to-buff card signature comparison for each absentee ballot envelope), the Board sent out several hundred cure letters. Another several hundred absentee ballots were counted with objection preserved under King v. Smith (i.e., these ballots were counted over CANDIDATE 1's objection but then re-sealed in the same absentee ballot envelopes from which they came, thus preserving CANDIDATE 1's opportunity to petition a judge for an order retroactively invalidating those ballots).¹² Twenty pairs of double-submitted envelopes were also received by the Board, for which eighteen of the last-in-time / first-in-right signatures were accepted by the Board staff. The remaining two pairs of double-submitted envelopes resulted in cure letters to which the voters never responded.

Of the cure affirmations that did get returned to the Board, however, a number of them were fraudulent. This Grand Jury has received testimony by affidavit from multiple voters

¹⁰ Board records do not indicate how many of these rejected envelopes came from the batch that was delivered to the Board by CANDIDATE 2 campaign staff, nor do we know whether the particular absentee ballot envelopes about which this Grand Jury received affidavit testimony from the voters themselves were in that batch.

¹¹ This Grand Jury learned that it is neither uncommon nor unlawful for a particular voter both to mail in an absentee ballot and to vote in person at a poll site. As of 2021, it resulted in the automatic invalidation of the absentee ballot. Thus, assuming adequate poll site security measures to ensure that the individual voting in person was in fact the named voter, no extra vote was counted.

¹² Since CANDIDATE 1 won the election even with those ballots counted, his objection ended up being moot.

stating that they neither signed nor authorized the cure affirmations that the Board of Elections received bearing their names and purported signatures. That includes voters who further stated that the absentee ballot applications tendered in their names, purportedly authorizing CANDIDATE 2 staffers as collectors of their ballots, also bear signatures of their names that they neither made nor authorized. Once again, each forged signature implicates crimes including Forgery in the Second Degree in violation of Penal Law § 170.10(2), Offering a False Instrument for Filing in the First Degree in violation of Penal Law § 175.35(1), and Identity Theft in the First Degree in violation of Penal Law § 190.80(3).

Furthermore, the CANDIDATE 2 campaign delivered to the Board hundreds of cure affirmations apparently *printed by the CANDIDATE 2 campaign*. That is, rather than the Board receiving cure affirmations from those voters on the same barcoded forms that it had sent to those voters, CANDIDATE 2 personnel printed their own affirmations and delivered them *en masse* to the Board, supposedly each signed by the corresponding voter. The state Board directed the New York City Board to accept and canvass these submissions provided that they contained language substantially similar to that promulgated on the state Board's website, which these affirmations did.

However, more than half of those affirmations were rejected by the Board during canvassing because, once again, the purported voter's signature did not match the signature on that voter's buff card in Board personnel's judgment. These rejected cure affirmations were later reviewed by an expert in forensic document examination who compared them to the corresponding voters' absentee ballot envelopes and buff cards. This Grand Jury received this expert's written report into evidence and heard and considered his testimony. The handwriting expert determined, and this Grand Jury finds, that the Board was essentially correct. Of the

approximately 150 registered voters whose supposed signatures were reviewed, there is only *one voter* for whom the cure affirmation signature, absentee ballot envelope signature, and registration form signature appear to match, indicating that the signatures were authentic. In contrast, no fewer than one hundred of the absentee ballot envelope signatures – each of which was purportedly signed by a different voter – appeared to share common authorship with one or more of the other absentee ballot envelope signatures, clearly indicating forgery.¹³

While directly comparing signatures across voters – i.e., comparing purported signatures of two different voters to see if they have a common author – was not possible since many signatures are illegible and the remainder included too many differently-spelled names to make letter-to-letter comparisons, it was nevertheless possible to compare the handwriting and formatting of the *dates* next to each signature. This revealed twelve different authors who signed – that is, forged – multiple voters’ names (based on the reasonable inference that for any given absentee ballot envelope, the person who signed it and the person who dated it are the same person). The greatest number of absentee ballot envelopes with a common author was twenty-six. Two more authors forged twelve signatures apiece, another author forged eleven, and the remaining eight authors signed a single-digit number of envelopes each. In other words, this Grand Jury finds approximately one hundred instances where CANDIDATE 2’s campaign tendered a cure affirmation on a form not printed and barcoded by the Board, whose signature the Board rejected, supposedly from a voter in whose name a fraudulent absentee ballot envelope was also submitted, according to forensic examination of that absentee ballot envelope. For every forged signature, the person responsible committed crimes including Forgery in the

¹³ This does not mean that the remaining approximately fifty absentee ballot envelope signatures that the expert reviewed were *not* forged. Rather, handwriting examination placed them in an “unknown author” group. To repeat the point, these absentee ballot envelope signatures did *not* appear to match the corresponding voters’ buff cards.

Second Degree in violation of Penal Law § 170.10(2), Offering a False Instrument for Filing in the First Degree in violation of Penal Law § 175.35(1), Identity Theft in the First Degree in violation of Penal Law § 190.80(3), and, with respect to the absentee ballot envelopes, Illegal Voting in violation of Election Law § 17-132(8).

In summary, this Grand Jury finds that the recent expansion in ways to vote by absentee ballot allowed false paperwork bearing forged signatures – including all four of the types of Board of Elections documents this Grand Jury has reviewed, which are (1) registration forms / buff cards, (2) absentee ballot applications, (3) absentee ballot envelopes, and (4) cure affirmations – to be submitted to and processed by the Board of Elections, apparently to the intended benefit of the CANDIDATE 2 campaign, time and time again.

Changes to New York State Election Law in 2022

Since the 2021 election described above, various changes to the New York State Election Law have issued from the state capital in Albany. This Grand Jury fears that these new laws will prove minimally helpful at best and harmful at worst.

We find that one change concerns a new time limit for local boards of elections to examine absentee ballot envelopes after they are received. Under the new New York State Election Law § 9-209(2), the last-in-time / first-in-right policy still remains in effect, but, for absentee ballot envelopes that are received before election day, local boards now have only four days to compare an absentee ballot envelope's signature to the named voter's buff card. If the signatures are deemed matched, any subsequent absentee envelopes bearing the same voter's name must be set aside. In other words, the last envelope to arrive still automatically invalidates an earlier envelope unless the earlier envelope has *already* been examined – which need not happen until four days are up – and it has been deemed valid.

That is a modest improvement over the 2021 law, since a valid envelope that arrives first is now protected from a fraudulent envelope that arrives later, but only if the valid one has been examined before the fraudulent one arrives. The risk still remains for a legitimate envelope to arrive first, a fraudulent envelope to arrive less than four days later (and before the legitimate one is examined), and the legitimate one then to be set aside because of the last-in-time / first-in-right policy. In that case, the problem still remains that only the fraudulent signature is subjected to handwriting-based comparison to the buff card. Therefore, the related problem also remains that voters might receive cure letters that they believe refer to their legitimate signatures, but which actually refer to the fraudulent ballots that they have no way of knowing even exist. In that case, they may unwittingly endorse cure affirmations that result in fraudulent votes being counted. That remains the worst-case scenario. The best-case scenario is still that the legitimate ballot goes uncounted, and so does the fraudulent one. That result is less outrageous, but still unacceptable.

This Grand Jury finds that a more troubling change in the law concerns voters who go in person to poll sites after absentee ballots have been issued – fraudulently or not – in their names. Now, under New York State Election Law § 8-302(2-a), if Board records indicate that a voter has been issued an absentee ballot – whether or not that ballot was ever returned – that voter is automatically precluded from voting on a voting machine at a poll site. A legitimate in-person voter’s only remedy is to fill out an affidavit ballot¹⁴ in the hope that the local board will approve

¹⁴ Affidavit ballots are used by in-person voters at poll sites when something goes wrong. A common example is when a voter shows up to vote in a primary election, only to be informed that he or she is not currently registered with the applicable political party. This voter’s remedy is to write out an affidavit ballot explaining that he or she *did* register with that party, perhaps shortly before the election, and that any Board records indicating otherwise are erroneous. This *may* result in that person’s vote being counted, but only if Board personnel, upon post-election

it. This is not a sufficient solution. The affidavit ballot may still be rejected after review by the local board. Worse, under New York State Election Law § 9-209(7)(a) as amended in 2022, if one or more absentee ballots bearing that voter's name were received by the Board, the voter's affidavit ballot is automatically set aside unopened. Only then is an absentee ballot supposedly submitted by that voter scrutinized for a handwriting match to the voter's buff card. In other words, any absentee ballot, *even one that is subsequently rejected as fraudulent*, precludes a legitimate affidavit ballot from even being *considered*. Thus, once again, the best-case scenario for legitimate voters in whose names fraudulent absentee ballots were submitted is that their legitimate votes are simply not counted, and neither are the fraudulent votes. The worst-case scenario is that not only are their legitimate votes *not* counted, but the fraudulent absentee ballots submitted in their names *are* counted.

Time will tell how much damage this new law will do to future elections. Since it is presumably easier, faster, and safer to forge a voter's signature and cast a fraudulent ballot by mail than it is to send an impersonator physically to a polling site to pretend to be a particular registered voter and to cast a fraudulent ballot in the voting booth, it is especially unwise to have absentee ballots, which are more likely to be fraudulent, automatically supersede conflicting affidavit ballots, which are less likely to be fraudulent.

Problems With Verifying Identities Through Signature Comparison

This Grand Jury finds that the current practice of trying to verify voters' identities by comparing what purport to be their present signatures to their buff card exemplars is troubling. Our finding is based (1) on testimony that we have heard and duly considered from an expert in forensic document examination and (2) on our own review of the hundreds of signatures in day review of the voter's affidavit, are satisfied that the voter's representations are right and the Board's own records are wrong.

evidence before us. To begin with, we note that the assumption that buff card signatures are always valid exemplars against which all subsequent signatures may be usefully compared is simply wrong. In evidence before this Grand Jury are multiple registration forms bearing signatures that we know to be forged. Sometimes, we know this because the purported signer passed away before the buff card was created. In other cases, the purported signer has testified by affidavit that the registration form bearing his/her name and purported signature is fake. In still other cases, multiple buff card signatures for different people, each purportedly signed by a different hand, actually share a common author, indicating forgery.

Moreover, even if all buff card signatures really *were* valid exemplars of the named voters' handwriting, it would not follow that comparing signatures on subsequent documents would guarantee that valid signatures were accepted or that forged signatures were rejected. This Grand Jury finds that in some cases, forged signatures can look very close to real signatures, and they can easily escape detection as such. That is especially true when signature comparison is done by someone with no training in handwriting analysis. That includes, of course, the Board of Elections personnel who staff poll sites and who canvass signed documents that were submitted on paper.¹⁵ And even that assumes that Board personnel diligently perform signature comparisons in the first place. As we saw in the very election that concerns this Grand Jury (in which we find that absentee ballot envelopes were prematurely delivered to canvassing tables to be reviewed in front of campaign staffers without Board members performing signature comparisons beforehand, as per state Board of Elections guidelines), that may not always happen.

¹⁵ Those documents that are submitted online with no signature requirement at all are, of course, not even subjected to the safeguards, however insufficient they may be, that signature authentication affords.

Conversely, this Grand Jury also finds that two signatures that *were* actually authored by the same hand can look very different. It may be that a voter's signature by ink pen on paper and the same voter's electronic keypad signature look nothing alike. It may be that if a voter's signature on present-day paperwork is compared to a buff card that the voter signed years or even decades ago, the signatures might appear to be mismatched. In that case, what appears to be forgery might just be the result of age (or illness, disability, etc.). While this Grand Jury did not learn of any instance in this election where a valid signature was rejected based on its apparent mismatch to an old registration form, the mere fact such a possibility exists underscores how flawed signature comparison is as a method for verifying identity. We find that a better practice is needed for ensuring that a registered voter, and nobody but that registered voter, can vote in his or her name.

One option is requiring some form of government-issued identification to be presented before a ballot can be cast. We discuss this possibility below in the section of this Report devoted to our legislative recommendations. Our factual findings on the matter are these: first, acquiring such identification does not present an undue burden to would-be voters in our jurisdiction. Some forms of identification, like New York City's IDNYC cards, can be obtained using dozens of types of supporting documentation as proof of identity and/or of residency, from a handgun license to a Medicare card to a letter from a homeless shelter. Other kinds of government-issued documents, such as the barcoded Fast Pass tags that bear voters' names and addresses and that are issued by the Board of Elections itself, impose no burden *at all* on registered voters to obtain, since they are sent to voters' registered addresses automatically. Second, this Grand Jury finds that since Fast Pass tags are only sent to voters' registered addresses – as opposed to, for example, absentee ballots, which can be sent anywhere – a Fast

Pass tag is less likely to end up in the hands of anyone but the voter whose name it bears. We find, therefore, that requiring someone seeking to cast a vote in a particular voter's name – John Smith, for example – to produce John Smith's Fast Pass tag (or other government-issued identification) would do much to ensure that the would-be voter is actually John Smith, but it would impose minimal, if any, burden on the real John Smith.

With all of our factual findings in mind, we turn now to the overarching purpose of this Report: to make our legislative recommendations for improving election security.

LEGISLATIVE RECOMMENDATIONS

Introduction

This Grand Jury acknowledges at the outset that we have not determined that any particular fraudulent ballot was actually counted in the 2021 local race that concerns this Grand Jury. Put another way, this Grand Jury has not found that any specific fraudulent registration, fraudulent application for an absentee ballot, ballot submitted in a fraudulent absentee ballot envelope, or fraudulent cure affirmation escaped identification as such and, therefore, resulted in an actual fraudulent vote. In that sense, the election system's existing safeguards may have proved adequate to their task. But we do not know what we do not know. It is possible that for all of the poorly-executed forgeries that were flagged as such during this election, there were other well-executed forgeries that were not challenged and that escaped detection by the Board and by law enforcement and, therefore, by this Grand Jury.

With that in mind, this Grand Jury finds that the abundant opportunities for unscrupulous candidates (or those acting at their direction or on their behalf) to abuse the system without probable detection or criminal sanction cry out for remedy. This Grand Jury, therefore, makes the following legislative recommendations with respect to voter re-registrations, absentee ballot

applications, absentee ballot envelopes, and cure letters, which we address in turn. We are mindful that each of these recommendations would impose some difficulties on legitimate voters with good reasons for voting by absentee ballot. As in so many contexts, the challenge is to find an appropriate balance between valid but competing interests. In our judgment, the upsides to these recommendations in terms of election integrity outweigh, and therefore justify, their downsides in terms of inconvenience to legitimate voters.

Recommendations Concerning Voter Registration (and Re-Registration) Forms

The case of the deceased voter's re-registration a year after his death using the same pedigree information – in particular, his date of birth – as shown on his original buff card illustrates how easily unscrupulous actors can re-register unwitting (or deceased) people to vote, which lays the groundwork and provides the opportunity for fraudulently obtaining and using absentee ballots in those individuals' names. It is unacceptable that the only pedigree information that needs to be correct on a new registration form for that form to be processed is the voter's date of birth when this information is available to anyone who inspects the voter's existing registration form. This Grand Jury recommends both (1) that dates of birth be redacted along with other pedigree information when voters' buff cards are made publicly available and (2) that the New York State Election Law be modified to require that other pedigree information besides just a date of birth be required, and must be correct for a new registration form to be processed.

Moreover, given the less-than-foolproof way that pedigree information is redacted when buff cards are made publicly available, this Grand Jury recommends that New York State Election Law §5-210, which governs registration and enrollment, be modified such that *additional* pedigree information that was not used to register initially be required to re-register.

This would impose few burdens on legitimate voters. For example, on the one hand, a voter who registered using the last four digits of his/her Social Security number who now wishes to re-register (e.g., with a different political party affiliation) should not feel hard-pressed to provide his/her DMV number or utility bill or some other form of identification. On the other hand, unscrupulous campaigns that managed to obtain the last four digits of that voter's Social Security number, perhaps through a poorly-redacted copy of the buff card, presumably would lack access to DMV records or utility bills. Therefore, requiring the use of a DMV number (or other, different source of identity verification, such as utility bills, bank statements, etc.) would help prevent the would-be cheater from successfully completing a re-registration in that voter's name.

Recommendations Concerning Absentee Ballot Applications

This Grand Jury recommends modifying New York State Election Law § 8-402, which governs review of absentee ballot applications, such that, in the case of printed applications bearing wet signatures, the Board must compare an absentee ballot application's signature to the corresponding voter's registration form to help ensure that the individual requesting the absentee ballot is actually the named voter. Signature comparison is a weak method of identity verification, but it is better than nothing, and absentee ballots should only be issued to voters whose signatures do match. New York's current practice under New York State Election Law § 8-402(1) of simply comparing pedigree information (really, only the date of birth) on the application to pedigree information on the buff card merely confirms that the named individual is a registered voter, but it does nothing to confirm that the ostensible applicant and the named voter are actually the same person. Leaving it to competing candidates to identify mismatched signatures is inefficient and ineffective. Until recently, all they could do when they found a fraudulent application was to be prepared to object to any envelope bearing that voter's name

when the Board began canvassing the absentee ballot envelopes; now they cannot even do that. Even when they could, it did nothing to prevent the absentee ballot from being issued in the first place, no matter how flagrant the signature mismatch.

This Grand Jury further recommends repealing New York State Election Law § 8-408, which authorizes electronic applications for absentee ballots. We believe that only printed applications bearing wet signatures should be processed. Allowing applicants to request absentee ballots online using readily-accessible pedigree information without having to sign anything makes it far too easy for anyone pretending to be a particular voter to generate an absentee ballot in that voter's name.

Alternatively, this Grand Jury recommends that New York State Election Law § 8-400, which sets forth the information that voters must provide on absentee ballot applications, be modified so that online applications require additional authentication beyond the information listed on the named voters' registration cards. As with voter re-registrations, requiring applicants to provide some proof of identity beyond what is already recorded on their buff cards (such as DMV numbers, utility bills, bank statements, etc.) would impose minimal additional costs on legitimate voters, but it would make it harder for unscrupulous campaigns to generate absentee ballots in unwitting or deceased voters' names.

This Grand Jury further recommends that New York State Election Law § 8-400 be modified to require that applicants provide some proof of their reasons for needing absentee ballots. The application form directs applicants to check one of six enumerated justifications. Among these, for example, are *permanent illness or physical disability* and *resident or patient of a Veterans Health Administration Hospital*. Requiring, for example, a doctor's note confirming that disability or a letter on facility letterhead verifying residence at a Veterans Administration

hospital would make it significantly harder for identity thieves posing as disabled voters to obtain absentee ballots in their names.

This Grand Jury further recommends modifying New York State Election Law § 8-406, which governs delivery of absentee ballots to voters, such that an absentee ballot may be mailed only to the purportedly requesting voter's home address, or to an address closely associated with that voter (such as the home of a close friend or family member). At a minimum, absentee ballots should not be mailed to addresses associated with candidates or their campaigns. Even assuming that the ostensible requestor of a particular absentee ballot is, in fact, the registered voter named on it, entrusting a candidate vying for office to convey that ballot to the named voter and leave the voter to mark the ballot as he/she chooses presents an obvious conflict of interest.

For the same reason, this Grand Jury further recommends modifying New York State Election Law § 8-406 such that only family members, friends, or caregivers be authorized collectors of a given voter's ballot. At a minimum, campaign staffers should be ineligible as collectors. Both the apparent and the actual integrity of the election system is undermined by allowing candidates to have physical control of the ballots bearing their names.

Recommendations Concerning Absentee Ballot Envelopes

This Grand Jury recommends that New York State Election Law § 8-412, which concerns delivering absentee ballots to a polling place, be modified to forbid campaign personnel from delivering absentee ballot envelopes to the Board. We reiterate that the Supreme Court of the United States recently upheld as constitutional an Arizona statute that curtailed such ballot harvesting. We agree with the Arizona legislature in this matter.

Alternatively, this Grand Jury recommends modifying New York State Election Law § 8-412 such that campaign staffers delivering ballots to the Board be required to produce

photographic identification. As it stands now, if a campaign staffer were to deliver to the Board a large stack of absentee ballot envelopes, and if subsequent investigation were to determine with certainty that every one of them were fraudulent, it might still be impossible to prosecute the responsible criminal because there would be no record of who delivered those forged instruments, thus complicating any investigation. Requiring possible fraudsters to identify themselves when bringing ballot envelopes to the Board might make them think twice about bringing fraudulent ones.

This Grand Jury further recommends modifying New York State Election Law § 9-209(2), which governs the canvassing of absentee ballots, so that, in the case of multiple absentee ballot envelopes being submitted to the Board in the same voter's name (referred to above as "double-submitted"), the Board start by comparing the envelope signatures to the voter's buff card and mark as invalid any envelopes whose signatures do not appear to match the buff card signature. Again, signature comparison is a flawed means of identity verification, but it is better than nothing. The current practice of automatically discarding certain envelopes (no matter how closely matched their signatures) in favor of other envelopes (no matter how blatantly mismatched their signatures) arbitrarily based on their order of receipt makes no sense, and it runs the risk of an unintended consequence: invalidating legitimately cast ballots.

This Grand Jury further recommends modifying New York State Election Law § 8-410, which governs methods of absentee voting, such that absentee ballot envelopes require photocopies of the voter's government-issued identification be enclosed with their ballots. A copy of the Fast Pass tag that is automatically issued to every eligible voter could be used for this purpose. This would dramatically help ensure that a ballot actually came from the voter whose name and purported signature appear on the absentee ballot envelope. To preserve the voter's

anonymity, the photocopied identification could be set aside along with the envelope, separated from the ballot, once Board personnel confirmed that the identification and the envelope belonged to the same voter.

Alternatively, this Grand Jury recommends modifying New York State Election Law § 8-410 such that voters' signatures on absentee ballot envelopes must be witnessed by someone who must also affix his or her signature to the absentee ballot envelope. This would afford some measure of assurance that the person purportedly signing an absentee ballot envelope is actually the voter whose name is signed.

Finally, this Grand Jury recommends that the local Boards of Elections for each county in New York State retain the services of qualified experts in the field of forensic document examination to review absentee ballot envelopes for potential fraud.

Recommendations Concerning Cure Letters and Affirmations

This Grand Jury recommends that New York State Election Law § 9-209(3), which authorizes cure letters, be repealed and cure letters stopped. New York State has managed to conduct elections for centuries without cure letters. That is with good reason. There exists an intrinsic illogic in the methodology of using an instrument (the cure letter) whose very issuance depends on a mismatch between two other instruments (the absentee ballot envelope and the voter registration form), which, for the ballot to be counted, must match the registration form and, therefore, *mismatch* the ballot envelope – the very instrument that it exists to fix. Furthermore, as long as the Board's current practice for double-submitted absentee envelopes remains in place, there is an unacceptable risk that unwitting voters will use cure affirmations to

validate fraudulent ballots that the Board took to supersede their legitimate ballots for the arbitrary reason that they arrived later in time.¹⁶

Alternatively, this Grand Jury recommends modifying New York State Election Law § 9-209(3) such that campaign personnel are prohibited from harvesting cure affirmations. That over half of the cure affirmations delivered to the Board by CANDIDATE 2 campaign personnel were deemed invalid when the Board canvassed them, and that forensic document examination of the corresponding voter's absentee ballot envelope signature dates revealed a hundred instances of common authorship where none should exist, illustrates the high risk of fraudulent cure affirmations being tendered when the very candidates relying on them for election physically control their collections and submissions.

Alternatively, this Grand Jury recommends modifying New York State Election Law § 9-209(3) such that only the Board-issued and barcoded cure affirmations be used to cure defective absentee ballot envelopes. Accepting only the forms that the Board mailed to voters affords some assurance that the cure affirmation was received by, and, it follows, likelier endorsed by, the actual voter (and not by someone wishing to cure a fraudulent ballot). It is noteworthy that the vast majority of the cure affirmations that were rejected by the Board were printed by the CANDIDATE 2 campaign, not by the Board.

Alternatively, this Grand Jury recommends modifying New York State Election Law § 9-209(3) such that cure affirmations require that photocopies of the voter's identification be submitted in order for the affirmation to be accepted. This would help ensure that the individual

¹⁶ This Grand Jury recognizes that, in this particular election, no harm of this type actually occurred. As described above, only two cure letters resulted from the twenty pairs of double-submitted absentee ballot envelopes, and no cure affirmations were returned by the voters. But while no harm occurred in *this* race, we still deem the risk of harm in future elections under the current rules to be unacceptable.

endorsing a cure affirmation is actually the person whose name and purported signature appear on it.

Recommendations Concerning Voter Identification Generally

This Grand Jury recommends modifying the New York State Election Law to require that voters verify their identities using some form of government-issued identification before casting any ballot, whether that ballot is cast at a poll site or otherwise. While the crimes committed in the particular election that concerns this Grand Jury were committed in the context of absentee voting, this Grand Jury has learned enough about identification by signature comparison generally to recognize its inadequacy. Indeed, it is inadequate in both directions, potentially inviting both false negatives *and* false positives. On the one hand, since one's handwriting can change over one's lifetime, a voter's legitimate signature today might not look like the same voter's buff card signature from decades ago. In that case, the two signatures might appear to have been signed by different people (implying that at least one of them is forged), when in fact the same voter signed both.

On the other hand, forged signatures might look enough like buff card exemplars – particularly to Board of Elections staffers with no training in handwriting analysis – to escape detection (and even that assumes that the staffers diligently make the comparisons in the first place). Some of the double-submitted absentee ballot envelopes that this Grand Jury examined illustrate that point. While there are some pairs of double-submitted envelopes where one signature clearly matches the corresponding voter's buff card and one signature clearly does not, there are other pairs where this Grand Jury cannot tell which signature (if either) is genuine, since both look substantially like one another and like the named voter's buff card exemplar. Thus, we deem signature comparison – particularly signature comparison by untrained eyes – a

deeply flawed means of verifying voters' identities both (1) when two signatures were actually signed by the same hand and (2) when they were not. And since campaigns are now prohibited from lodging their own objections to absentee ballot envelope signatures during canvassing by Board personnel, those signatures are subject to even less scrutiny now than before, increasing the odds of forged signatures slipping through.

With that in mind, we urge our legislators to consider a stronger method for ensuring that anyone submitting a ballot in a particular voter's name is actually that voter: government-issued identification. We recognize that this is a controversial issue. We recognize that there may be jurisdictions in this country where obtaining government identification is unduly difficult, and where requiring it to vote might disenfranchise some voters. But we do not believe that our jurisdiction is one of them.

In New York State, and especially in New York City, there are many kinds of identification available and many available routes to securing them. Obtaining a state-issued driver's licenses or non-driver identification through the DMV is one way. Obtaining a city-issued IDNYC card is another way, and a wide variety of supporting documents showing identity and residency can be used to do that. In a practice that we recommend be adopted statewide, the New York City Board of Elections already sends barcoded Fast Pass cards to all registered voters *automatically*, which bear voters' names and addresses and which function as identifications when voters choose to present them at poll sites, even though keypad signatures are still required. In short, we believe that obtaining a government-issued identification for use when voting, however difficult it may be elsewhere, is not an undue burden here.

To the contrary, we note that producing government-issued identification is required for any number of daily activities that are not related to voting, and we perceive no problem with

that. Checking in at a hotel is one example. Purchasing alcohol or tobacco products is (at least in theory) another. Signing in at a doctor's office is third. Boarding an airplane is a fourth. We think that a similar requirement for voting makes sense, particularly given how poorly signature comparison by untrained Board of Elections employees is suited to ensuring that anyone voting in a particular person's name is actually that person. We recommend that the New York State Election Law be modified accordingly.

CONCLUSION

We reiterate that this Grand Jury recognizes that the recommendations that we make in this Report could not be instituted without imposing some measure of inconvenience on legitimate voters, including voters with valid reasons for casting their votes by absentee ballot. However, the issues raised by the 2021 local election that we have examined make painfully clear that the current system needs to be reformed. We believe these recommendations merit serious consideration. What our borough, and the other sixty-one counties of New York State, might lose in terms of voting ease and convenience would be more than made up for by gains in terms of election security.

The integrity of our elections has, of course, been the keystone of American democracy since the beginning of our republic. The importance of protecting election integrity, particularly in such troubled times as these, cannot be overstated. Even *perceived* flaws in election security, let alone *actual* flaws, weaken confidence in elections. Therefore, we urge our elected representatives, Board of Elections policymakers, and other stakeholders to review, consider, and

act upon these recommendations without delay. Preserving the very fabric of democracy in the State of New York demands no less.



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