

Peter S. Kosinski
Co-Chair



Douglas A. Kellner
Co-Chair

Anthony J. Casale
Commissioner

40 NORTH PEARL STREET, SUITE 5
ALBANY, N.Y. 12207-2109

Andrew J. Spano
Commissioner

Todd D. Valentine
Co-Executive Director

Phone: 518/474-8100 Fax: 518/486-4068
<http://www.elections.ny.gov>

Kristen Zebrowski Stavisky
Co-Executive Director

GUIDANCE FOR THE AUGUST 23, 2022 PRIMARY

I. Introduction

On April 27, 2022, the Court of Appeals ruled the Congressional and State Senate redistricting maps to be unconstitutional and directed the Supreme Court to have an independent master develop new Congressional and State Senate maps. On April 29, 2022, Justice McAllister issued a preliminary order as follows:

- That the new 2022 Congressional and State Senate maps will be available by May 20, 2022;
- The 2022 Primary Election for Members of Congress and State Senate will be held on Tuesday, August 23, 2022; and
- The deadline for military and overseas ballots to be mailed will be July 8, 2022.

Justice McAllister's order does not impact statewide, Assembly, and other local and party positions. The primary for those offices remains on June 28, 2022. On May 5, 2022, Justice McAllister issued an Advisory Opinion confirming the independent nominating petition period for statewide, Assembly, and local offices, which commenced on April 19, 2022, should proceed and petitions would be filed as planned May 24-31, 2022.

The Court of Appeals directed the record of the proceedings of the Court of Appeals be remitted to Steuben County. The Court of appeals provided, "[w]e are confident that, in consultation with the Board of Elections, Supreme Court can swiftly develop a schedule to facilitate an August primary election, allowing time for the adoption of new congressional maps, the dissemination of correct information to voters, the completion of the petitioning process, and compliance with federal voting laws, including the Uniformed and Overseas Citizen Absentee Voting Act..." On May 10, 2022, the United States Federal District Court for the Northern District of New York (Judge Gary Sharpe) ordered an August 23, 2022 primary for Member of the United States House of Representatives from New York "to accommodate New York's congressional redistricting process" provided that such election and the subsequent General Election shall be fully compliant with federal laws, in particular those related to military and overseas voters.

On May 11, 2022, Justice McAllister issued an order setting a calendar for the August 23, 2022 Congressional and State Senate Primary Election and determining the methods of ballot access.

II. Ballot Access

- a) Ballot Access Method One: Candidates who previously qualified for ballot access for the June 28, 2022 primary:

State Senate Districts. A person duly designated for nomination at the June 28, 2022 primary for the office of New York State Senator, whose petition was valid at the board of elections or by determination of a court of competent jurisdiction, shall be deemed to have been likewise duly designated by the same party for the office of State Senator at the August 23, 2022 primary election in any Senate District for which they are constitutionally and legally eligible to run, to be specified by such candidate in a signed writing¹ filed with the appropriate board of elections no later than May 31, 2022. No new acceptance or authorization shall be required.

Congressional Districts. A person duly designated for nomination at the June 28, 2022 primary for the office of Member of Congress, in any district, whose petition was valid at the board of elections or by determination of a court of competent jurisdiction, shall be deemed to have been likewise duly designated by the same party for the office of Member of Congress at the August 23, 2022 primary election in any one Congressional District, to be specified by such candidate in a signed writing² filed with the appropriate board of elections no later than May 31, 2022. No new acceptance or authorization shall be required.

- b) Ballot Access Method Two: Party Designating petitioning (and opportunity to ballot petitioning) for any candidate eligible to seek the aforesaid offices or positions, shall occur in accordance with law such that the maximum number of signatures required on any such designating petition for a State Senate District shall be 850 and for a Congressional District shall be 1,062, or 4.25% of the number of enrolled members of the party in such district, whichever is less. The requirements of valid acceptances and authorizations shall apply.

III. Calendar for the August 23, 2022 Primary

DATE	EVENT
5/20/22	Date of SD and CD Lines issued by Court
8/23/22	Date of Primary Election
8/13-8/21/22	Dates of Early Voting
PRIOR CANDIDATE BALLOT ACCESS (applies to State Senate, House of Representative and Party Positions Elected By Congressional Districts)	
5/23-5/31/22	Filing period for Certificate to use Prior Petition specifying district.

¹ On Friday, May 13, 2022, the State Board posted a Certificate of Designation for the August 23, 2022 Primary Election Ballot. The form is available [here](#). It is also attached as Appendix A.

² On Friday, May 13, 2022, the State Board posted a Certificate of Designation for the August 23, 2022 Primary Election Ballot. The form is available [here](#). It is also attached as Appendix A.

6/3/22	Last day to decline designation
6/6/22	Last day to file substitution to fill vacancy created by a declination
6/10/22	Last day to authorize substitution
	All dates are received by dates on the last day to file. No filing by mail, but anything received by the receipt deadline by mail is acceptable.
DESIGNATING AND OPPORTUNITY TO BALLOT PETITION FILLING (applies to State Senate, House of Representative and Party Positions Elected By Congressional Districts)	
5/21/22	First day to sign
6/8/22 -6/10/22	Filing Period
6/13/22	Last day to accept or decline nomination
6/13/22	Last day to authorize
6/15/22	Last day to file substitution to fill vacancy created by a declination
Rolling, three days from filing.	General Objection Due
6/15/22	All Specific Objections Due (fixed date)
	Designating petitions require signatures of 4.25% of enrolled voters in the district, or for State Senate Districts: 850 valid signatures or for Congressional Districts: 1,062 valid signatures, whichever is less.
	All dates are received by dates on the last day to file. No filing by mail, but anything received by the receipt deadline by mail is acceptable.
CERTIFICATION OF PRIMARY BALLOT	
6/29/22	Last day for state board to certify ballot
6/30/22	Last day for county boards to certify ballot
INDEPENDENT NOMINATING PETITIONS (applies to State Senate, House of Representatives)	
5/21/22	First day to sign
6/27/22-7/5/22	Filing Period

7/11/22	Last day to accept or decline nomination
7/12/22	Last day to file substitution to fill vacancy created by a declination.
Rolling, three days from filing.	General Objection Due
7/11/22	All Specific Objections Due (fixed date)
	All dates are received by dates on the last day to file. No filing by mail, but anything received by the receipt deadline by mail is acceptable.
MILITARY VOTING – PRIMARY ELECTION	
7/8/22	Last day to transmit ballot to Military/Special Federal voter.
7/29/22	Last day for a BOE to receive application for ballot if not previously registered.
8/16/22	Last day for a BOE to receive application if previously registered.
8/22/22	Last day to apply personally if previously registered.
8/23/22 8/30/22	Last day to postmark Military/Special Federal ballot and date it must be received by the board of elections.
VOTING BY ABSENTEE BALLOT – PRIMARY ELECTION	
8/8/22	Last day for receipt application or letter of application for ballot sent by mail.
8/22/22	Last day to apply in person for a ballot.
8/23/22 8/30/22	Last day to postmark ballot and date it must be received by the board of elections.
8/23/22	Last day to deliver ballot in person to the county board.
VOTER REGISTRATION DATES	
7/29/22 – 8/3/22	MAIL REGISTRATION: Last day to postmark application, last day it must be received by BOE.
7/29/22	IN PERSON REGISTRATION: Last day application must be received by BOE to be eligible to vote in primary election.
8/3/22	CHANGE OF ADDRESS

FINANCIAL DISCLOSURE DATES	
7/22/22	32 Day Pre-Primary
8/9-8/22/22	24-hour notice period
7/24-8/22/22	24-hour notice for IE committees
8/12/22	11 Day Pre-Primary
9/2/22	10 Day Post Primary
GENERAL ELECTION DATES	
9/14/22	Last Date for SBOE to Certify General Election Ballot
9/23/22	Date to send out military ballots.

IV. FAQs

The additional primary date impacts many board processes, including absentee ballot applications, notice to candidates, notice to voters, and securing poll sites and election inspectors for an additional primary election day and the early voting period associated with that primary. We have developed a list of questions to help guide you and are available by phone or email if you have additional questions.

Redistricting

1. When should county boards redistrict congressional and senate lines?

Answer: Once the maps are finalized on May 20, 2022, counties need to immediately begin the redistricting process. As there are overlapping election activities, counties may consider off-line data sources for backups. For example: you will have absentees to check in from the June Primary after you have changed the lines for the August Primary.

2. What about election district splits?

Answer: Draft maps were released on May 16, 2022. Our preliminary review of those maps indicates 118 split EDs for the congressional maps and over 800 for the state senate maps. As of now, twenty counties will have to deal with split election districts:

County	Split Type	County	Split Type
<i>Bronx</i>	Both	<i>Orleans</i>	CD
<i>Broome</i>	SD	<i>Oswego</i>	CD
<i>Dutchess</i>	Both	<i>Otsego</i>	CD
<i>Erie</i>	Both	<i>Queens</i>	Both
<i>Jefferson</i>	CD	<i>Richmond</i>	SD
<i>Kings</i>	Both	<i>Saratoga</i>	CD
<i>Monroe</i>	SD	<i>Suffolk</i>	Both
<i>Nassau</i>	Both	<i>Ulster</i>	CD
<i>New York</i>	Both	<i>Washington</i>	SD
<i>Oneida</i>	SD	<i>Westchester</i>	Both

Counties should be in touch with the VR vendors now to plan for the redistricting process. Election Operations has been working directly with VR vendors as well.

Primary Absentee Applications

Voters who submitted absentee applications prior to the Court of Appeals decision and Justice McAllister’s subsequent order setting a primary on August 23, 2022, could not have been requesting ballots for both the June and August primaries. As such, those applications must be handled differently, and follow-up is required.

1. What do we do about applications where the voter checked primary only?

Answer: For absentee PAPER applications received *prior to* May 12, 2022 that are marked “primary election only” these applicants should be deemed to have applied for the June Primary election only.

- a. **Why? The reason for this is the holding in *Gross v Hoblock*, 3 NY3d 251, 260 (2004) in which the Court of Appeals invalidated absentees sent to voters for a subsequent remedial election based only on applications for a prior and different election date.**

2. If voters checked primary only prior to May 12, 2022 and are eligible to vote in the August Primary, do we have to notify them?

Answer: Yes. County Boards must send a letter to these voters if eligible for the August 23, 2022 Primary. The letter should include the absentee application and explain that a new primary application is required. We have attached a sample letter as Appendix B.

3. What happens after May 12, 2022?

Answer: For absentee PAPER applications received *on or after* May 12, 2022 that are marked for primary only, the voters should be deemed to be applying for both primaries unless the form provides information to the contrary.

- a. **Why? This is in keeping with what we did between 2012 and 2018 when we had a federal and state and local primary, AND it is what we did for applications for the presidential primary and June primary in 2020 (i.e., the form did not differentiate, albeit they ended up merging). It appears we never had an absentee application that listed multiple primary dates and the county practice was to put a primary absentee applicant in for all primary dates as of the date of application unless the applicant somehow specified otherwise.**

4. What about applications with a range of dates?

Answer: Applications with a date range encompassing both primaries do not require an additional application.

5. What about applications through the online Absentee Ballot Portal?

Answer: The online absentee portal has the June primary date next to the primary option. We will be amending this. Once the portal is changed, we will notify the counties. All electronic applications received from SBOE prior to the change will be valid for June only and will require a letter follow-up.

Ballot Access Questions

1. What if a candidate petitioned for Senate and Congress and filed April 7-10, 2022?

Answer: Candidates with a valid petition for Congress or State Senate can use that prior ballot access for the same or a new district for the August 23, 2022 Primary. The candidate must meet the residence eligibility requirements for the new district.

2. How would a candidate file the previous petitions?

Answer: Candidates who previously qualified via petition must specify how that designation will be applied to the appropriate board. This must be filed in writing between May 23-31, 2022. Candidates can use the Designation form promulgated by the State Board or submit a writing containing the following elements:

- a. Candidate's name and address

- b. The office and district number of the previous designation.
- c. The new office and district number.
- d. The signature of the candidate.
- e. An affirmation as follows: I certify that I am the above-named candidate and that the information on this form is true and correct and that this form will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

3. What if a candidate does not file a Certificate of Designation?

Answer: If a candidate does not file the Certificate, the previous petition remains invalid and cannot be used for August ballot access.

4. Can another candidate utilize those petitions to run?

Answer: A candidate can file the Certificate Designation and subsequently decline. The Committee on Vacancies from the previous petition would then be able to substitute a candidate. There is a very tight timetable. Declinations are due (received) June 3, 2022 and substitutions must be received by June 10, 2022.

5. How would a board verify the prior valid petition if it was filed in another county?

Answer: The SBOE will comply a spreadsheet of valid Senate and Congressional petitions.

6. Can a candidate take credit for petitions for one office and apply it to another office?

Answer: No. Valid petitions for Congress must be applied to the same or another congressional district. Valid petitions for State Senate must be applied to the same or another senate district.

7. Do candidates file where they filed in April?

Answer: It depends. Shifting lines may have altered where an office files. The Where to File List for August Primary will be finalized as soon as the lines are set. We will forward a Where the File List next week. The Designation Form or Writing MUST be submitted to the proper board and may have changed. You will submit where a new petition for the office would be submitted.

8. What if a voter signed or witnessed a previous petition?

Answer: Since these are different districts, a voter who signed a designating petition filed during April 4-7, 2022, may sign a designating petition filed during June 8-10, 2022. Similarly, a voter who signed a designating petition April 4-7, 2022, may witness a petition filed during June 8-10, 2022.

9. When is the filing period for new petitions?

Answer: Filing for the August Primary will be three days, not four and starts on a Wednesday, not a Monday.

10. Can a candidate postmark the new petition?

Answer: Yes and no. These are RECEIVE deadlines. Petitions cannot be postmarked on June 10, 2022, they must be received by the proper board on June 10, 2022. It is permissible to mail petitions overnight on June 8, 2022 to effectuate timely receipt at the board.

11. What about Party Positions?

Answer: State Committee Party Positions for the Conservative and Working Families Parties. Candidates for these party offices may also utilize the same process for the public offices of Congress and State Senate for ballot access for the August 23, 2022 Primary.

12. Where can we find signature requirements for the minor parties?

Answer: Signature requirements for minor parties will be available after the districts are finalized. We are working on obtaining the data and will forward as soon as possible.

13. May a candidate already on the ballot for the June Primary Election seek ballot access for a second office for the August Primary Election?

Answer: Yes. If a candidate currently designated for office for the June Primary is then subsequently designated for a second office for the August Primary, he or she would be able to decline the first office after they become the nominated candidate for the second office after the August primary. *D'Angelo v Maloney* 2018. Certificates of Declination for the first office would be due 3 days after the nomination for the second office. EL 6-146(5). Substitutions to fill the vacancy created by such declination for the first office would be due 10 days after the declination is filed. EL 6-158(8).

Notice Requirements

1. Do we have to notify voters eligible for the August 23, 2022 Primary?

Answer: Yes. Voters eligible to vote in the August 23, 2022 must be notified of the primary with a letter or postcard indicating the poll site.

2. What about absentee applicants?

Answer: As mentioned above, any voter who applied for a primary absentee prior to May 12, 2022 and checked primary only, must be notified if he or she is eligible to vote in the August 23, 2022 primary.

3. What do we have to mail to candidates?

Answer: Boards must update their Notices to Candidates to include dates for the canvassing the August 23, 2022 Primary, testing, and all other required dates.

4. What about poll sites?

Answer: Early voting poll sites and election day poll sites for the August 23, 2022 Primary must be uploaded to NYS Voter and posted on board websites.

Change of Enrollment

We are currently working on a legislative fix for the change of enrollment dates to extend the lag until seven days after the August 23, 2022 Primary Election. We will update you on our progress.

Appendix A: Certificate of Designation for August 23, 2022 Primary



Certificate of Designation for the August 23, 2022 Primary Election Ballot

1. Candidate Information

Candidate Name

Address

City

State

NY

Zip Code

Filing Instructions:

This form must be filed between May 23-31, 2022. This form must be received by the board of elections responsible for ballot access for the district you are seeking designation for at the August 23, 2022 primary by the May 31, 2022 deadline.

2. Original Petition Information as Filed for the June 28, 2022 Primary Election

Party (list all) of previously filed valid designating petition(s) for which you were either the candidate or the duly substituted candidate

Office and District of previously filed designating petition(s)

3. New Designation Information for the August 23, 2022 Primary Election

I do hereby direct that my designation by the above named parties be for the following Office and District

4. Affirmation

I certify that I am the above named candidate and that the information on this form is true and correct and that this form will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Signature of Candidate _____

Date Signed _____

Revised 5.20.2022

Appendix B: Sample Letter for Absentee Voters Who Checked “Primary Only”

Dear Voter,

Earlier this year, you applied to be a primary absentee voter either by mail, in person, or through the electronic absentee ballot portal. At the time you applied, there was one scheduled primary set for June 28, 2022 and your application indicated you wished to receive a ballot for “primary only”.

Subsequently, the Congressional and State Senate primaries were moved to August 23, 2022 by court order. To receive a ballot for the August 23, 2022 Primary Election, you must complete an additional absentee application and return it by mail prior to August 8, 2022 or in person by August 22, 2022. You may also apply through the electronic absentee ballot portal at <https://absenteeballot.elections.ny.gov> through August 8, 2022. Please note that August 8, 2022 is a receive date deadline. Your mail application must be received by the Board by August 8, 2022.

If you are eligible for the August Primary and do not complete a new application, you will not receive an absentee ballot by mail.

Please feel free to contact us by phone at _____ or via email at _____, if you have questions or need more information.