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STATE BOARD OF ELECTIONS

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September 4, 2020

L. Marc Zell, Esq.
Zell & Associates International Advocates LLC
14 Penn Plaza 225 West 34th Street 9th Floor
New York, NY 10122

Re: Overseas Voters and "Federal Post Card Applications"

Dear L. Marc Zell:

The State Board of Elections is in receipt of your letter, dated August 26, 2020, demanding that the State Board direct county boards of elections to accept "Federal Post Card Applications" via e-mail, including applications from persons who are not registered to vote; hence permitting such applicants to register via e-mail. Notably, there are no mechanisms under New York Law for a voter to register via e-mail.

Initially, I will note that the State Board does not agree with your interpretation of 52 U.S.C. § 20302(a)(6)(A) as requiring that boards of elections must accept Federal Post Card Applications via e-mail. The statute clearly reads that a voter may "*request* by mail and electronically voter registration applications and absentee ballot applications(.)" In other words, a voter may request an application electronically, and the board of elections must provide the application electronically; however, the board may require that the application be mailed back. If Congress wanted to require that states accept registration materials electronically, it would have mandated it by statute. Here, however, the statute gives the states flexibility.

Regardless, given Chapter 91 of the Laws of 2020 removing the requirement that an absentee application be returned by a Special Federal Voter, the State Board of Elections will reiterate guidance to boards of elections to apply existing state and federal law, as follows:

- If a military or overseas voter requests a federal ballot electronically (e.g. e-mail or fax) via a "Federal Post Card Application," and such voter is registered to vote and is otherwise eligible to receive a federal ballot, then the county board of elections shall issue a federal ballot to the voter.
- If a military or overseas voter requests a federal ballot electronically (e.g. e-mail or fax) via the "Federal Post Card Application," and such voter is **not** previously registered to vote, and is otherwise eligible to receive a federal ballot, then the county board of

elections shall issue a federal ballot along with a new FPCA voter registration application with instructions stating that the voter must fill out, sign, and mail the application with the absentee ballot in order for the ballot to be counted. The voter shall not be considered registered until the application is mailed and received by the board of elections. *See* Election Law §§ 11-203 (2); 7-124 (5).

Voters who are already registered will receive a ballot when it is requested electronically, already the ordinary practice. Special federal voters who are not registered will still receive a ballot when they requested one using the FPCA electronically, but will have to mail a signed application for registration signature purposes along with their ballot in order for the ballot to count. As overseas voters already must mail their ballot to the board of elections, so there is no additional burden.

Please let us know if you have any additional questions or concerns regarding this matter.

Sincerely,

Brian L. Quail

Kimberly A. Galvin