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## **GUIDANCE ON CHANGE OF ENROLLMENT FOR THE AUGUST 23, 2022 PRIMARY ELECTION**

As you know, the State Legislature did not act to extend the restricted period delaying change of enrollment to after the August 23, 2022 Primary. As of July 5, 2022, all enrollment changes take place immediately and will continue, as per statute until the next restricted period begins on February 14, 2023.

The court ordered August primary creates a situation unique for this year, allowing voters to change their enrollment when voting via affidavit ballot at the primary election.

For the August 2022 primary only:

- If a voter is in the poll book for a primary – they vote for the party they are listed under. (Unless they wish to change their party).
- If a voter is not in the poll book, after the inspectors ascertain that they are in the correct poll site, the voter has the standard options – seek a court order or vote by affidavit.
- If the voter is issued a court order – then they cast the ballot pursuant to the court order.
- If they complete an affidavit ballot, then under Election Law § 5-304(3) that application for enrollment change in the affidavit is effective immediately allowing the voter to cast an affidavit ballot based on that change.

The relevant statutory language is below (emphasis added);

§ 5–304. Enrollment; change of enrollment or new enrollment by previously registered voters

1. A registered voter may change his enrollment in the manner prescribed by this section.
2. The term “change of enrollment” shall apply to applications by a registered voter already enrolled in one party to enroll in a different party, or to delete his

enrollment in any party, or an application by a registered voter not enrolled in any party to enroll in a particular party.

3. **A change of enrollment received by the board of elections will take effect immediately**, provided however, any change of enrollment received by the board of elections after February fourteenth and before or on seven days after the June primary shall take effect on the seventh day after the June primary.
4. Registered voters may apply for change of enrollment personally by mail to or by appearing before a county board of elections or **by appearing before a board of inspectors**. If the applicant has appeared in person and if the board finds that he or she is properly registered, it shall provide the applicant with an application form for voter registration by mail which shall be treated as an application for change of enrollment filed pursuant to this section. If the voter has applied personally by mail, the county board of elections shall mail him or her an application form for voter registration by mail as provided by this chapter. If a registered voter submits an application form for registration or enrollment as provided by this chapter, from the residence address from which he or she is then registered, and such form reflects a change of enrollment, the county board of elections shall treat such form as an application for change of enrollment filed pursuant to this section. If such application form also sets forth a new address within the same city or county, the board of elections shall also treat such form as an application for transfer of registration pursuant to section 5–208 of this article. **If a voter has cast a ballot in an affidavit ballot envelope on which such voter claims a party enrollment different from the enrollment in the records of the board of elections, such affidavit shall be treated as an application for change of enrollment.**

## **FAQs**

To help you navigate the August Primary, use the FAQs below.

### ***Is there a cut-off date?***

No. Change of enrollment may be effectuated up through the day of the Primary Election on August 23, 2022. At the poll site, if the change is in the poll book, the voter should be given the ballot for the new party and vote on the scanner or if the change of enrollment is not reflected in the poll book, the voter should vote via affidavit ballot).

### ***Will the enrollment changes be in the poll book?***

It depends. If you can process the application for a change of enrollment and if you can push out those updates to the poll books during early voting and on primary day, you

should do so. If that is not practical due to connectivity or other issues, the voters may vote via affidavit ballot or seek a court order.

***If the voter is in the poll book under one party, but wishes to change to another party, which ballot does the voter get?***

Then the voter is not in the poll book for the “new” party they want to enroll in and the voter would receive the new party ballot and vote via affidavit, which will serve as the change of enrollment.

***What if the voter gets a court order?***

If a voter seeks and is granted an order by the judge on duty, then the court order would allow the voter to cast the new party ballot on the scanner.

***Will the affidavit ballot be valid?***

Yes, barring any other defect, under 5-104(3) that application for change of enrollment in the affidavit is effective immediately and the affidavit ballot will be valid and counted.

***Can defects on the affidavit be cured post-election?***

There are two elements on an affidavit ballot envelope which may be cured:

1. The affidavit ballot envelope was unsigned.
2. The signature on the affidavit ballot envelope does not appear to match the signature on file with the board of elections.

As to validity of affidavit ballots generally, Election Law § 9-209 (7) (f) provides “the board shall cast and canvass such affidavit ballot if such board finds that the voter substantially complied with the requirements of this chapter. For purposes of this paragraph, ‘substantially complied’ shall mean the board can determine the voter’s eligibility based on the statement of the affiant or records of the board.”

***Doesn’t the affidavit ballot envelope change of enrollment have to be approved by the board?***

The affidavit ballot will be provided at the poll site by a bipartisan team of inspectors. This satisfies the statutory language in § 5-304 (4), which allows the voters to apply for a change of enrollment by appearing before a board of inspectors.

*What if a voter changes enrollment during the early voting period or on primary day and previously submitted an absentee ballot that was canvassed or previously voted during the early voting period?*

Voters cannot vote in two party primaries for the same election. In those cases, the affidavit ballot would be invalid as the voter has already cast a ballot for this election. The change of enrollment on the affidavit ballot envelope would be processed for future elections.

Guidance as of July 26, 2022