

**Written Testimony of
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**Before the New York State Senate Standing Committee on Elections
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On behalf of the Brennan Center for Justice at New York University School of Law, I thank the Senate Standing Committee on Elections for holding this hearing and for providing the opportunity to submit testimony regarding steps the Senate can take to improve the administration of elections in New York.

The Brennan Center for Justice at New York University School of Law is a nonpartisan public policy and legal advocacy organization that focuses on the fundamental issues of democracy and justice. The Center's Democracy Program promotes reforms that foster full and equal political participation and responsive and responsible governance. While our work to eliminate barriers to effective voter participation occurs nationwide, we are based in New York, and have been deeply involved in efforts to improve election administration here.

My testimony today will focus on recommendations to the Senate for improving New York's election administration with respect to voting machines and voter registration. The Senate's power to influence election administration can take the form of legislation and/or oversight and the Senate should robustly employ both. Moreover, the Senate should use the present time to address proactively some predictable problems before the major elections that will occur in 2010.

Voting Machines

Much has been said before this body and others about New York's voting machines. At this time, the Brennan Center is satisfied with the certification efforts undertaken thus far for the new machines and believes that emphasis can and should shift to retooling existing procedures and protocols to ensure that the transition to the new machines is smooth and appropriately protective of voters.

There are three specific things the State Board of Elections should be doing now, in advance of the 2010 election in connection with the roll-out of the new machines. One is to improve the design of New York's ballots. As demonstrated in the Brennan Center publication entitled "Better Ballots," poor ballot design frustrates voters, undermines confidence in the electoral process, and contributes to related Election Day problems.

Tens or hundreds of thousands of votes are lost or miscast in every election year as a result of poorly designed ballots. New York ballots violate a number of basic principles of ballot usability, for example:

- Crowding the ballot by including the party name and emblem in the box with the candidate name;
- Over and improper use of capital letters, and
- Complicated instructions.

The State Board of Elections should work with usability and design experts to develop better and more usable ballots.ⁱ

The State Board of Elections should also develop plans to conduct post-election audits to evaluate the new machines' performance. The Board must take advantage of the opportunities that arise in connection with the pilot use of these new machines to analyze and review the performance results and to make the necessary changes before the 2010 election.

Finally, the State Board must provide uniform training to election officials and pollworkers alike on how to use the new machines, specifically how to use all features of the machines, especially the accessibility systems. Our understanding is that the State Board of Elections has prepared new training materials. We have not reviewed this material, but hope that it explains what election workers must do if a machine breaks down, how to comply with sound practices for chain-of-custody, where to find or safeguard needed materials, and how to assist voters with language barriers or disabilities. We know from past experiences in other states that if pollworkers do not adequately understand the accessibility features of new machines, they are likely to discourage their use, depriving voters with disabilities or language barriers the accommodations and/or assistance they are entitled by law.

The Senate should ensure that the State Board of Elections adequately carries out these three tasks.

Voter Registration

New York has experienced a number of problems with its voter registration system. Some of these reported problems include:

- 60-70 thousand applications were not processed in time for the 2008 election;ⁱⁱ
- Applications sent to the State Board of Elections were not turned around to the counties with sufficient time to register the applicants,ⁱⁱⁱ and
- Approximately 34,000 records were improperly purged in New York City alone.

These problems and others need to be resolved because they disenfranchise voters.

There are better ways to operate a voter registration system, as states like Delaware and Ohio have learned and countries like Canada have known for a long time.^{iv} That better way is a system of automatic registration. Under an automatic registration system, the voter registration information of any eligible citizen who interacts with a designated government agency, like the department of motor vehicles, social service agencies, and schools and universities, is automatically forwarded to election officials for inclusion on the voter rolls, unless the individual elects not to be registered.

New York has the infrastructure to implement automatic registration. There is a new centralized voter registration system that can link to the counties. New York's social service agencies also have a centralized database. New address and name updates from the New York Department of Motor Vehicles are electronically transmitted to election officials to ensure that registration records are up to date. While the DMV system does not currently retain electronic signatures, it does have the capacity to scan the signatures and the modifications and modernizations to transmit that information are not far off.

Automatic registration would be beneficial for New York for a number of reasons. It would substantially increase the voter registration rates of eligible citizens. It would also avoid the crush of registration applications right before the book closing deadline because the volume of people added to the voting rolls would be largely consistent throughout the year. When coupled with other modern election practices, like an Election Day correction and the ability to check voter registration status online, automatic registration provides numerous protections against erroneous purges. Furthermore, the agencies providing the registration information have already confirmed or verified eligibility of the voter, which means automatic registration reduces the risks of voters being improperly subjected to identification checks on account of mistakes made in the verification process, the typos and errors riddling the existing voter rolls, and pollworkers demanding identification.

Finally automatic registration is more cost-effective than our existing voter registration system. It eliminates duplicative paperwork, which substantially reduces election administration costs, reducing burdens on voters and election officials, and substantially reducing errors in the registration system. Automatic registration allows election officials to shift money from processing registration applications to other much-needed activities. Automatic registration also allows advocacy organizations to divert efforts from registration drives to voter engagement and mobilization.

This type of reform enjoys bipartisan support. On a national level, the chief counsels of both the Obama and McCain campaign have endorsed automatic registration.^v Locally, public officials in both major political parties have also endorsed implementation of automatic registration. This reform is not going to be completed by 2010, but in the meantime, election officials should be given adequate resources both to conduct their elections, but also to take full advantage of New York's statewide centralized voter database, the expertise of its election advocates, and the lessons from other states, and explore how automatic registration could work in New York.

The Brennan Center is eager to work with the Senate on these issues and others. Thank you for your continued oversight of and concern for effective election administration and for this opportunity to testify.

ⁱ For more information, see Lawrence Norden et. al, *Better Ballots* 62 (Brennan Center for Justice ed., 2008), available at <http://www.brennancenter.org/page/-/Democracy/Better%20Ballots.pdf>.

ⁱⁱ Sewell Chan, *Elections Board Expects High Turnout and Long Lines, and Asks for Patience*, N.Y. Times, Oct. 28, 2008, available at <http://www.nytimes.com/2008/10/29/nyregion/29ballots.html>.

ⁱⁱⁱ Election Protection, *Election Protection 2008: Helping Voters Today, Modernizing the System for Tomorrow* 25-26 (2009), available at <http://www.866ourvote.org/tools/documents/files/0077.pdf>.

^{iv} Delaware recently implemented automatic registration from its motor vehicles agency; the state's elections and motor vehicles officials alike have been "ecstatic" about the program, enthusiastically declaring it "The Greatest Innovation Since Sliced Bread." It has, in their own words, "evolved into a significant money and manpower savings initiative that far exceeded [their] initial expectations." Ohio has introduced legislation to implement automatic registration. For more information about the Canadian system, see Jennifer Rosenberg & Margaret Chen, *Expanding Democracy: Voter Registration Around the World* (Brennan Center for Justice ed., 2009) available at http://www.brennancenter.org/content/resource/expanding_democracy_voter_registration_around_the_world/.

^v Robert Bauer & Trevor Potter, *A New Page for Voting: It's Time to Ditch Paper-Based Registration*, Wash. Post., June 25, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/06/24/AR2009062403095.html>.