

**BRENNAN  
CENTER  
FOR JUSTICE**

**Testimony of  
The Brennan Center for Justice at NYU School of Law**

**Before the  
New York City Council Committee on Governmental Operations**

**Regarding Resolution No. 671-A calling on the New York State Legislature to pass  
and the New York State Governor to sign into law legislation that would require  
that paper ballots be designed in a more user-friendly manner**

**September 22, 2011**

The Brennan Center for Justice at NYU School of Law thanks the Committee on Governmental Operations for the opportunity to comment on Resolution No. 671-A. The Brennan Center is a nonpartisan think tank and advocacy organization that focuses on democracy and justice. For the last several years, in collaboration with the nation's leading technologists, security professionals, usability and accessibility experts and election officials, the Brennan Center has worked to make the country's voting systems as secure, reliable and accurate as possible.

We are pleased that the Committee is seeking public comment to address current ballot design problems in New York, with an eye toward identifying the election laws that make it impossible for local election officials to design the most user-friendly ballots. As members of this committee surely know, a survey conducted by the New York City Council following the 2010 general election found that ballot design and font size were among the most frequent subjects of complaints from New York voters, and more than 30 percent of respondents said "yes" when asked if the ballot was confusing or difficult to read.<sup>1</sup> A statewide poll by the League of Women Voters found that up to 20 percent of voters had problems completing the paper ballot.<sup>2</sup>

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<sup>1</sup> Press Release, City Council's Online Voter Survey Shows Ballot Design as Prevailing Complaint at the Polls, OFFICE OF COMMUNICATIONS, THE COUNCIL OF THE CITY OF NEW YORK, Nov. 9, 2010, [http://council.nyc.gov/html/releases/eday\\_voter\\_survey\\_11\\_9\\_10.shtml](http://council.nyc.gov/html/releases/eday_voter_survey_11_9_10.shtml).

<sup>2</sup> AIMEE ALLAUD ET AL., 2010 ELECTION SURVEY REPORT, LEAGUE OF WOMEN VOTERS OF NEW YORK STATE, Dec. 13, 2010, [http://lwvny.org/advocacy/ElectionSurveyReport\\_121310.pdf](http://lwvny.org/advocacy/ElectionSurveyReport_121310.pdf).

We are grateful for the chance to show our support of Resolution No. 671-A, calling for the enactment of legislation to require a more user-friendly paper ballot. In particular, we join the Committee in calling for the passage of the Voter Friendly Ballot Act of 2011 (A7492-A). This bill, introduced by Assemblymembers Brian Kavanagh and Andrew Hevesi, would simplify and shorten ballot instructions, leave more space for larger type, and allow for a more usable ballot design.

## **Designing Better Ballots**

The Voter Friendly Ballot Act of 2011 would address a variety of problems that are created by outdated requirements in the current election law:

### **1) Eliminating Clutter from the Ballot**

- ***End Requirement for the “Closed Fist”:*** The Voter Friendly Ballot Act would remove the requirement that the black-ink “image of a closed fist with an index finger” be printed to point towards a party row. While these images may have been relevant to the mechanics of the old lever machines, they have no place on the paper ballot and, instead, take up a lot of space, create clutter, and make it more difficult to read the party names. The current law makes it mandatory that these antiquated images appear on the ballot, and below them a party emblem – some of which are unrecognizable and indicate nothing to the voter about how to cast their vote.
- ***Eliminate Requirements for All Caps:*** In its Ballot Design Guidelines the federal Election Assistance Commission recommends that localities follow best practices by employing mixed case for all words that appear on the ballot, as all capital letters are hard to see and difficult to read.<sup>3</sup> All capital letters also take up more space. Mixed-case lettering makes it easier to distinguish characters and identify letters and words. The Voter Friendly Ballot Act eliminates the requirement that candidate names appear in all-capitals letters.
- ***Move Ovals to the Left of Candidate’s Names:*** To the extent practicable, voting ovals should be to the left of a candidate’s name to avoid confusion and spatially convoluted ballots. This is consistent with best practices, as recommended by the Election Assistance Commission’s Ballot Design Guidelines, among others.<sup>4</sup>

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<sup>3</sup> U.S. Election Assistance Commission, *Effective Design for the Administration of Federal Elections*, June 2007, available at [http://www.eac.gov/assets/1/Page/EAC\\_Effective\\_Election\\_Design.pdf](http://www.eac.gov/assets/1/Page/EAC_Effective_Election_Design.pdf).

<sup>4</sup> *Id.*

- ***Eliminate Requirements for Party Emblems:*** Party emblems, which are no longer immediately recognizable as party symbols, add clutter to the ballot and make it more difficult to read the ballot in its entirety.

## 2) Mandating Simpler, Clearer Instructions

- ***Eliminate Legalese in Instructions:*** The currently mandated eight part instructions are unnecessarily lengthy and full of legalese and technical election terms that most New Yorkers don't understand. The Voter Friendly Ballot Act would replace these with four (4) straightforward instructions that are simple and easy for voters to understand and follow.
- ***Place Instructions Where Voters Will Find Them:*** Instructions placed on the upper left hand corner are more likely to be read. Situated immediately before the action to which they refer, these instructions provide more support to the voter.
- ***Allow Useful Illustrations:*** The Voter Friendly Ballot Act proposes guidelines to provide, at a minimum, an illustration to show how to properly mark a paper ballot. This amendment is aimed to cure the problem of voters misinterpreting the instructions and marking their choice with an "X" or a "√", instead of the proper practice (a completely filled-in oval).
- ***Allow Shading:*** Local election boards like the City Board should be able to use shading to differentiate instructions from voting choices when their systems allow them to do so.

## 3) Giving Local Boards Guidance

- ***Require A Master Template:*** The bill would require the State Board of Elections to publish and distribute a master template for local boards, like the New York City Board of Elections. This would make it easier for local boards to ensure they adopt the best ballot design practices. This is a common practice in other states.

The amendments proposed by the Voter Friendly Ballot Act were developed in consultation with election officials around the state, as well as with experts in voting technology, usability, and design from the Brennan Center, the Usability Professionals Association (UPA), and AIGA, the professional association for design. Incorporating best practices, the bill would amend requirements originally written for the old, mechanical voting machines to ensure that New York prints ballots that are easier for New Yorkers to read. We urge the City Council to call on the State Legislature and Governor to pass it as soon as possible.