

BRENNAN
CENTER
FOR JUSTICE

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

Regarding Board of Elections Oversight

December 5, 2012

The Brennan Center for Justice at NYU School of Law thanks the Committee on Governmental Operations for the opportunity to comment on the New York City Board of Elections. 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 evaluating the Board's performance in the 2012 General Election. Understanding what happened on Election Day is crucial to making improvements going forward. The disruptions of Hurricane Sandy were unforeseen and greatly complicated the Board's task on Election Day. The Board faced the enormous challenge of carrying out an election in the middle of a disaster, and its efforts were commendable.

On the other hand, many of the factors that caused long wait times and voter confusion were foreseeable and can be addressed through legislative or administrative reform. Long lines at the polls are at the very least an inconvenience, and at the worst they disenfranchise thousands of voters who cannot wait for hours because of obligations to work or family.¹ The Brennan Center supports the following reforms, which will all improve the usability and efficiency of voting systems and reduce voters' wait time at polling places.

¹ See Benjamin Highton, *Long Lines, Voting Machine Availability, and Turnout: The Case of Franklin County, Ohio in the 2004 Presidential Election*, 39 PS: Pol. Sci. & Pol. 65 (2006), available at <http://www.apsanet.org/imgtest/PSJan2006Highton.pdf> (estimating that long lines in Franklin County, Ohio, in 2004 prevented 22,000 citizens from voting).

I. The City Council Should Pass Bills Relating to Improvements in Election Administration

Already before the Council are six bills that would improve election administration to make it more efficient and increase the participation and knowledge of voters. The Council should pass these bills. Smooth election administration, increased Council oversight, and well-informed voters will help to keep lines moving quickly on Election Day. The bills would aid those goals in several ways, by:

- Providing email notifications to voter informing them of upcoming dates related to voting (Int. No. 613);
- Encouraging city workers to serve as poll workers to ensure more professional election administration (Int. No. 721);
- Providing voter registration forms to families with school enrollment forms (Int. No. 728);
- Requiring the City Board of Elections to include a description of its efforts to enhance voter registration in its annual report (Int. No. 760);
- Including information about federal, state, and county candidates in the voter guide (Int. No. 769); and
- Requiring additional reporting by the City Board regarding its actual performance (Int. No. 778).

II. The City Board of Elections Should Conduct a Study of What Happened on Election Day and Solicit Expert Advice Regarding How to Reduce the Length of Lines

The Board should conduct a detailed study of waiting lines on Election Day to determine how to allocate resources in the future. The Board should consult with experts who can provide insight into the causes of long lines and offer innovative solutions.

This strategy has benefitted election administration in the past. After long lines were a problem in Ohio in the 2004 election, Franklin County hired Ted Allen, a professor of industrial and systems engineering, to study the county's history of lines at polling places and offer recommendations about resource allocation.² Allen applied his expertise in queuing theory to study data about the county's wait times and conduct simulations. His study was able to take into account past voter behavior, the specific characteristics of the voting machines used, and the effect of the length and design of the ballot. The resulting report offered concrete recommendations about how to allocate resources to polling places within the county in order to keep wait times low. Allen's report provided a workable rule for allocating voting machines to polling locations, taking into account differences in ballots in different districts.

² Theodore T. Allen, Mikhail Bernshteyn & Chris Rockwell, Helping Franklin County Vote in 2008: Waiting Lines (2008), available at <http://vote.franklincountyohio.gov/assets/pdf/2008/general/gen2008-voting-machine-allocation.pdf>.

III. The City Council Should Call on the State Legislature to Pass Legislation That Would Require That Paper Ballots Be Designed in a More User-friendly Manner

Ballot design can lead to long lines by creating confusion and forcing each voter to spend more time understanding and marking his or her ballot. For this reason, the City Council should continue to call on the State Legislature to enact legislation that would make ballots easier to use by simplifying and shortening ballot instructions, leaving more space for larger type, and allowing for a more usable ballot design. These reforms were included in the proposed Voter Friendly Ballot Act of 2011.³

Legislation is needed to eliminate clutter from the ballot. The images of the “closed fist” and party emblems should be eliminated. With the elimination of lever machines and fading recognition of the party emblems, these images do not help voters cast their vote. New York State should employ the best practices recommended by the Election Assistance Commission's Ballot Design Guidelines.⁴ Voting ovals should be to the left of a candidate's name to avoid confusion and spatially convoluted ballots and words should not appear in all capital letters.

The instructions can be made simpler and clearer by eliminating legalese and technical election terms that voters don't understand. The instructions should be placed where voters will find them, in the upper left corner and immediately before the action to which they refer, and they should be shaded to differentiate them from the voting choices. Illustrations should be used to show how to properly mark a paper ballot with a filled-in oval and not a check or X.

The implementation of these reforms would be aided with the use of by a master template published and distributed by the State Board of Elections, as is the practice of the City Board. This would make it easier for local boards to ensure they adopt the best design practices.

IV. The City Council Should Call on the State Legislature to Pass the Voter Empowerment Act of New York

New York's voter registration system needs to be modernized to make it more accurate and more efficient, and to bring more voters into the system. Registration issues can add to wait times at the polls because voters might not realize they must update their address when they move or might not know whether and where they are registered.

The Voter Empowerment Act of New York⁵ would make the state a national leader in voter registration modernization by doing the following:

- Automatically register eligible consenting citizens at designated government agencies;
- Permit pre-registration of 16- and 17- year-olds;
- Automatically transfer registrations of New Yorkers who move within the state;

³ A7492-A, available at http://assembly.state.ny.us/leg/?default_fld=&bn=A07492&term=2011&Memo=Y.

⁴ 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.

⁵ Voter Empowerment Act of New York, A1712-C, <http://open.nysenate.gov/legislation/bill/A1712C-2011>.

- Provide access to voter registration records and registration of eligible citizens online and;
- Allow people to register or change their party later in the election cycle.

Updating New York's registration system will remove unnecessary burdens on New Yorkers, ease election administration burdens for the state and county boards of elections, improve the accuracy of the voter rolls, and ultimately increase the number of eligible voters who are registered in the state. The legislation would reduce the number of duplicate or outdated registration records and ensure that fewer eligible voters are left off the voter rolls. It will reduce lines on Election Day by making it easier for voters to register and know where they are registered *before* Election Day.

The provision amending voters' ability to enroll in a party or change their party affiliation is particularly impactful. Currently, when a registered voter seeks to change his or her party enrollment, enroll in a party for the first time, or terminate his or her party enrollment that change does not go into effect until the first Tuesday following a general election. As a result, voters wishing to make such enrollment changes may have to wait more than a year for the changes to be implemented. Under the proposed legislation, changes to party enrollment would take effect ten days after the date on which the changes were applied, coinciding with the deadlines for voter registration and simplifying the process for both voters and election administrators.

V. The City Council Should Call on the State Legislature to Enact Early Voting

Early In Person Voting ("EIPV") is already available in the majority of states (32), and hugely successful.⁶ In recent years, early voting has grown enormously in popularity. In 2000, less than 4% of Americans voted at early voting sites, and 10% voted by mail. In 2008, over a third of Americans voted early: 18% at early voting sites and 19% by mail.⁷ The primary benefit of early voting in either form is convenience. Voters are provided more options and days during which they can vote. There is strong anecdotal evidence that early voting makes election administration easier, reducing the crush of voters at the polling place on a single day.⁸ Clearly, every voter who takes advantage of early voting opportunities helps to make the lines shorter on Election Day.

A robust EIPV period should include at least 10 weekdays, and at least two weekends, of EIPV. Eleven states provide for 20 or more days of EIPV, and another 17 states provide for 11 or more days. At least 12 states require at least one Saturday or one Sunday of EIPV.

The number of voters taking advantage of EIPV increases closer to Election Day. Thus, New York should offer EIPV through at least the last weekend before Election Day. Currently, 12

⁶ National Conference of State Legislatures, Absentee and Early Voting, Sept. 4, 2012, *available at* <http://www.ncsl.org/legislatures-elections/elections/absentee-and-early-voting.aspx>.

⁷ R. Michael Alvarez et al., 2008 Survey of the Performance of American Elections (2009), *available at* <http://www.vote.caltech.edu/drupal/files/report/Final%20report20090218.pdf>.

⁸ Tony Barboza, *In O.C., It's a Lot Easier to Vote*, L.A. Times, Nov. 2, 2008, *available at* <http://articles.latimes.com/2008/nov/02/local/me-ocregistrar2>.

states end EIPV the Monday before Election Day and 5 states EIPV ends the Saturday before Election Day. EIPV days should also include a minimum number of weekday hours outside of regular working hours. This is necessary for families and individuals with inflexible work or dependent care schedules, and with limited access to private and public transportation.

There should be a standard by which each county sets a minimum number of EIPV locations adequate to serve its voting population, and to identify polling locations that are reasonably and equally accessible to all voters in the county. Early voting locations may be at election officials' offices or other locations such as schools, libraries, or shopping centers.