



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the NYC Council Governmental Operations Committee
on the Implementation of the New Voting Process on Election Day
December 6, 2010

Good afternoon Chair Brewer and members of the Council Governmental Operations Committee. My name is Alex Camarda, and I am the Director for Public Policy and Advocacy for Citizens Union of the City of New York. Citizens Union is an independent, non-partisan, civic organization of New Yorkers who promote good government and advance political reform in our city and state. For more than a century, Citizens Union has served as a watchdog for the public interest and an advocate for the common good.

We thank you for holding this hearing on issues related to the implementation of the new voting machines system on Election Day in New York City and giving Citizens Union the opportunity to present its views on this matter.

Citizens Union has, over the last several years, monitored the Board's efforts to implement the provisions of the federal Help America Vote Act (HAVA) of 2002, providing guidance and advice to the Voter Assistance Commission, the Council Governmental Operations Committee, and the Board itself. During that time, Citizens Union has suggested criteria for the selection of new voting machines, advocated for increased funding to implement HAVA, and issued opinions on the training of poll workers and educating the public about the new machines. Citizens Union Foundation, our sister organization, worked in 2001 and from 2004 to 2008 to recruit poll workers for the City and surveyed the experiences of applicants, in training or while working on Election Day. Our effort resulted in providing the City board of elections with 3,000 poll workers.

Evaluation of Election Day

The debut of the new voting machines on Primary Day revealed many problems in election administration in New York City. These problems included late poll site openings, polls sites unprepared to receive voters, malfunctioning voting machines, voters' privacy being compromised, difficult to read ballots, underutilized ballot marking devices, and inadequately trained poll workers. After Primary Day, it became apparent that the City Board of Elections (the Board) did not track data to adequately measure its performance so it could identify the extent of the problems, and how those problems compared in frequency with past elections.

Under great pressure and public scrutiny, the Board generally improved its performance on Election Day and deserves credit for doing so. Of the 1200 voters who responded to a Council survey of voters exiting polls that Citizens Union participated in designing and implementing, 28% said their experience was better than Primary Day while 13% said their experience was worse.

Among the positive findings in the survey were that poll sites were overwhelmingly open on time and operational, scanners and BMDs worked well, and more than 90 percent of the time, poll workers demonstrated the proper balance between assistance and restraint with regard to voters feeding their ballots into scanners. The Daily Politics blog, which took feedback from its readers regarding their voting experience, reported receiving “far fewer complaints than primary day.” News outlets also noted that Election Day generally went smoother than Primary Day.

Despite the general improvement, problems still persisted. 1 in 3 respondents to the Council survey found the ballot “difficult to read or confusing” largely due to the font size which is a matter that the state legislature must act on. 26.8% of voters replying to the Council survey were not offered use of the BMD when they experienced trouble reading or marking their ballot. Another 22.2% were not offered a privacy sleeve for their ballot. 311 received 729 complaints on Election Day, 185 of which were complaints about a poll worker and 674 about a poll site. The 729 complaints to 311 actually exceeds the amount on primary day of 215, probably because there are fewer voters on primary day. The number of 311 complaints in 2009 for the general election was 145. In 2008, it was 629.

None of the information above evaluating the performance of the Board on Election Day is conclusive or comprehensive, and it speaks to the need for more data to be tracked and made available by the Board as was emphasized at the last Council hearing related to elections on October 4th. The Board did provide raw data for the primary election at that time and indicated a commitment to provide more conclusive data in December, which we hope it will fulfill. The Board did make a good faith effort to provide some data at its meeting of its commissioners on November 9th, which indicated, among other things, that many fewer poll sites opened late as compared to the primary.

Beyond the need to report data to allow for comparisons of election-day operations from election to election, I'd like to take the opportunity to comment on the Board's choices with regard to following state law. The Board's position is they are often forced to act illogically at times to adhere to state law. The latest example is the mailing that went to voters who had a change of address or poll site that included state-required outdated instructions pertaining to voting on the old lever machines. Another example of illogical adherence to state law occurred on Election Day itself. The Board claimed it was mandated to print voting instructions that gave voters the wrong information as to where to fill in the ovals to cast a vote for a candidate. The reality is the Board blindly follows state law that makes no sense, and for which there would likely be few legal repercussions (it's hard to imagine anybody or entity suing for not receiving dated information about voting on machines no longer in existence), while not following laws that would improve operations. The Board, for instance, is required to include in its annual report a very detailed action plan related to voter registration, as laid out in Election Law 3-212 (4)(b). However, the Board's most recent annual report for 2009 simply describes registration efforts and information from that year rather than looking forward and putting forth a detailed plan as required by state law. Additionally, the Open Meetings Law section 106(3) that is part of the Public Officers Law requires that meeting minutes be made publicly available within two weeks of a meeting but the Board typically takes 2 ½ months to make minutes available. Citizens Union would like to see the Board follow these much more important components of state Election Law, but the point is if these are not being followed to the letter with seemingly little legal consequences, surely using common sense and not following outdated procedures or ones that serve only to confuse voters can be excused.

Next Steps

While the Board made improvements in administering the general election, there are additional reforms that can be made that would better election administration.

To the Board's credit, they have already shown efforts to improve their administration beyond Election Day. At the Commissioner's meeting on November 30th, the Board's commissioners unanimously approved the policy to put a sample ballot online in advance of Election Day so that voters will be better prepared to accurately cast their votes. This should help to address the concern about ballot design and font seen as evidenced in the survey the Council conducted with Citizens Union's participation. The Board is also taking on the challenge of linking the sample ballot to the poll site locator on its site so that the sample ballot reflects to the greatest extent possible the actual ballot a voter will see for their election and assembly district on Election Day. We commend the Board for this action and are greatly appreciate of their making this a "high priority" for 2011. We also offer our assistance in any way they need to help make this operational. The Board also indicated at its November 30th meeting they will begin a voter registration and poll worker recruitment effort at colleges and high schools in 2011 utilizing the best practices learned from their successful outreach campaign during 2010 to inform voters of the new voting process. We look forward to working with the Board on this initiative and are very pleased to hear of this development.

These recent actions by the Board demonstrate one of the ways in which reforms can be achieved- by the Board through action of its own. This is not the only method change can occur. Depending on the proposal, different avenues may be needed or required. The Council can use its leverage over the Board's budget, approval of appointments, and its oversight capacity to persuade the Board to make some reforms. Reforms can also be made by changes to state law. The Council can also pass local laws to achieve particular changes to elections.

I mentioned the Council's authority to pass local laws to achieve election reform last, but I suggest the Council consider it first in whatever changes it desires of the City Board. The City, and by extension the Council, has great authority through Article IX of the Constitution and the Municipal Home Rule Law to pass laws related to the "mode of selection of its officers and employees" and relating to its "property, affairs and government." It is through these powers that the City has limited the terms of elected officials, established a public campaign finance system, reduced the number of signatures for candidates to get on the ballot for municipal offices, and considered the establishment of nonpartisan elections. We respectfully encourage the Council to take a long, hard look at these powers, case precedents related to them and preemption, and state law to determine whether the Council can pass laws to achieve needed reforms in particular areas. Citizens Union is glad to provide any assistance in this regard that the Council may request.

With that context in mind, Citizens Union suggests the following reforms:

1. Improve Poll Worker & Staff Performance

Require the Board to:

- a. **improve poll worker recruitment by mandating increased outreach through different modes to diverse sources.** For example:
 - Require recruitment through not-for-profit and civic organizations, city agencies and CUNY institutions to encourage a greater involvement of the more civically-minded professionals; and
 - Recruit language interpreters through ethnic and local media.An alternative to a mandate would be to require a report to the Council detailing efforts to recruit poll workers.
- b. **create a dynamic online application form for the public to apply to become poll workers,** instead of the static pdf download, thereby reducing the obstacles to applying to work at the polls and the time and effort needed to process hand-written requests.
- c. **mandate coordinators contact poll site personnel prior to Election Day to ensure near 100% attendance.**
- d. **enforce the requirement in state law that poll worker trainees pass a poll worker test in order to serve at the polls that year.** They are commonly rehired after failing the test from the emergency borough-wide pool on Election Day. This should be done in conjunction with new and improved recruitment of poll workers.
- e. **conduct a nationwide search when an executive staff vacancy occurs.** This would ensure patronage is not the driving force behind filling vacancies and that merit is the major criterion despite the bipartisan structure. An alternative to a mandate would be to require a report to the Council detailing efforts to fill executive staff vacancies.

Require the Campaign Finance Board (CFB) to:

- f. **charge the Voter Assistance Advisory Commission within the Campaign Finance Board with running its own poll worker recruitment program,** reaching out to non-traditional sources and compiling data on the experiences of those workers in preparation for and on election day. Citizens Union ran a poll worker recruitment program itself from 2001-2008, and in 2006 was able to recruit 3,000 poll workers, or 10 percent of the total utilized by the Board that year, with a small staff of 2 employees.

2. Track and Report Data to Enhance the Performance of the City Board

Require the Board to:

- a. **report to the Mayor's Preliminary and Final Management Report.** The Board should go beyond what is included in its annual report which highlights voter registration totals, and also provide information on the number of affidavit ballots cast, the number of those deemed invalid, the traffic received by the Board website, the number of calls received by the voter hotline, comprehensive poll worker

- statistics and other information that would help the public understand how the Board operates.
- b. provide to the Council in its annual report the number of coded registration forms received from (and not just provided to) each city agency and entity subject to the City's Pro-Voter Law.**
 - c. conduct surveys of poll sites to collect data regarding poll site operations on election day.**

3. Better Communications with Voters & the Public

Require the Board to:

- a. send email notifications of election dates, deadlines for absentee ballots and other pertinent information to New Yorkers who sign up for such updates or who provide email addresses when they register to to those vote.**
- b. provide additional public disclosure of City Board meetings, including webcasting of city board meetings and timely online posting of minutes of Board meetings.**
- c. require the City Board to allow voters to choose their primary language on their voter registration application form.**

Require the Campaign Finance Board (CFB) to:

- d. expand New York City's popular Voters Guide to include state and federal elections**

Thank you again for providing the opportunity for Citizens Union to provide its thoughts on Election Day.

I am happy to answer any questions you might have.