



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the State Senate Elections Committee on the
September 14th Primary Election and Implementation of New Voting Machines
September 29, 2010

Good afternoon Chair Addabbo and members of the State Senate Elections Committee. My name is Dick Dadey, and I am the Executive Director of 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 public hearing on assessing the experience of voters on the September 14th Primary Election and giving Citizens Union the opportunity to present its views on this matter.

The administration of elections on the September 14th Primary Election was described as a “royal screw-up” by Mayor Bloomberg, and indeed, there are numerous accounts of problems at poll sites, ranging from the severe to easily-fixed annoyances. In assessing the experience of voters, Citizens Union has solicited comment from its members, examined press accounts, and spoken to key stakeholders. In providing our feedback, we also have a number of recommendations to improve election administration in the State of New York.

1. Evaluating the September 14th Primary Election

a. Anecdotal Problems

Citizens Union has obtained anecdotal information regarding voters’ experiences on September 14th, which together indicate that there were a variety of problems related to the implementation of voting machines and poll sites. Our analysis primarily focuses on the experience in New York City.

Polls Opening Late

Perhaps the most severe problem on Primary Day was the many poll sites that did not open on time or where unprepared to receive voters. Many voters’ time is precious, and they may not have had the opportunity to come back later in the day to cast their ballots. The reported reasons for delays ranged from scanners not arriving on time to police officers not arriving on time with keys to unlock doors to school officials not make polling places available before Tuesday to allow for timely delivery of voting machine. Whatever the reasons, these unacceptable delays likely resulted in even lower participation than was already expected for a typically low-turnout election.

Lack of Privacy

In spite of the reported increased 6-hour length of poll worker training, many of the problems voters experienced can be attributed to insufficient training. Many voters complained of a lack of privacy. A few examples of this are voters not being given privacy sleeves to place their ballots in, privacy booths being positioned in a way to allow others to watch ballots being filled out, poll workers collecting ballots from voters, voters not being informed that their ballots could be inserted into the scanner upside-down, and poll workers not standing a sufficient distance away from voters as they used the

ballot marking devices (BMDs) or as they inserted their ballots into the scanners. And when ballots were voided, they were not always properly handled, allowing others to see voters' choices. Many of these issues could have been avoided if poll workers had been trained to be sensitive to privacy, and if they were, they certainly didn't follow proscribed protocol, nor was anyone present to remind them to respect the privacy of voters' ballots. While assistance may have been necessary in some cases that could compromise privacy, such as where voters had trouble inserting their ballots in the scanners, or machines jammed, some of these issues could have also been avoided, such as by more cleanly ripping off ballots from the stack or removing remaining perforated edges.

Impartiality

Impartiality also appeared to be compromised at some poll sites. It was reported in one poll site that a poll worker shouted out "another one for Schneiderman!"¹ while in others, candidates alleged that flyers were being handed out by their competitors in the poll site. For example, Gustavo Rivera, the Democratic nominee for Senate District 33 in the Bronx criticized his competitor, Pedro Espada for handing out literature in poll sites and poll inspectors steering voters to vote for Espada.² One Citizens Union member even complained about being given a Democratic ballot when she was a registered Republican, and not realizing it until she started filling it out at the booth.

Overvotes

While we credit the Board of Elections in the City of New York (City Board) for its outreach to voters through voting machines demonstrations held throughout the City in partnership with local organizations – Citizens Union held such a demo with the City Board – there were still aspects of the voting process that may have confused voters. When ballots were filled out with an "overvote" in which more candidates were selected than allowed for a particular race, the scanners notified voters of this occurrence, but did not clearly offer a remedy. Rather than notifying voters that their vote in that particular race would not count if they continued without filling out a new ballot, the screen prompted voters to "cast ballot" with the green button, or "don't cast – return ballot" with the red button. Many voters may have found these prompts confusing. Citizens Union advocated that there be greater clarity when the process was being developed, but unfortunately no changes were made. Given the possibility for confusion, Citizens Union later recommended to voters that they use the ballot marking devices to fill out their ballots, as they help to prevent errors such as overvotes, and ensure that voters are notified when they do not vote in every contest.

Mechanical Failures

Citizens Union recognizes that certain glitches are to be expected when implementing a new voting system – especially one that represents such a dramatic change in the process of voting. There were reports of scanners not effectively taking in ballots, in part because perforations were not removed. Scanners also produced error messages in some instances even when ballots were received, creating confusion among those voters as to whether their vote actually counted. These errors can be accounted as purely mechanical – rather than human – error. Even mechanical errors, however, can be more quickly resolved with proper training.

¹ Editorial. "Board of Incompetence: Elections hacks botch introduction of new voting machines." New York Daily News. September 15, 2010. Available at: http://www.nydailynews.com/opinions/2010/09/15/2010-09-15_board_of_incompetence.html

² King, David. "Espada Using Security Guards and Roadblocks to Sway Voters?" Gotham Gazette. September 14, 2010. Available at: <http://www.gothamgazette.com/blogs/wonkster/2010/09/14/rivera-campaign-claims-espada-camp-up-to-election-tricks/>

Citizens Union's Director of Public Policy, Alex Camarda, had a voting experience on September 4th that highlights many of the various problems experienced across the state. He went to his regular pollsite at an elementary school in Astoria on 34th street and 35th avenue at 6:00 am, and nothing was setup. Poll workers were outside putting up signs indicating the school was a poll site. The inside was complete chaos with workers here and there unpacking things. Not a single machine or privacy booth was set up, nor were the poll workers able to direct him to his correct AD/ED because the book could not be located. Eventually they found it and identified by AD/ED but it was no longer at that poll site, but thought that it might be at another location, the Frank Sinatra High School. He called 311 on the way to the subway and was transferred to the City Board's voter hotline, but they were unable to identify the correct poll site. Later that morning at 8:00 am, he went back to Astoria to the Frank Sinatra High School. This was the correct site, but when he used the BMD, it jammed, making screeching noise that drew attention. Two of the poll workers removed his ballot from the machine, and were helpful, though his votes were exposed. He then voted again and it went smoothly, though poll workers took his ballot and scanned it, without them telling him how to do so himself.

Several dozen members of Citizens Union reported problems at poll site locations. Typical of the problems was this CU member who emailed – "Eager to vote early, I arrived at our new polling place at St Ann's Warehouse at 7:30am only to find that the voting equipment had just arrived. There were no tables with privacy booths set up and there was no official to unlock the voting machines and ballots. The BOE folks and poll watchers were equally embarrassed at the situation and had to turn away voters. They finally attempted to unlock the equipment and, after a few tries, successfully got the first voting machine to work, but the keys to the second voting machine did not fit. This was almost immaterial as there were no keys to unlock the ballot boxes (the roll-around containers that contained the official voter ballots), nor were there alternative ballots to use. I left by 8:00 and wrote off the experience as start up problems that accompany most new systems, and resigned to return this evening." He then wrote, "Went by at 6:30 and everything went smoothly."

b. Lack of Data

What concerns Citizens Union at this juncture is whether lessons can be learned from September 14th to improve that process going forward, and key to this is having the proper information. In order to fully evaluate the Primary Election, Citizens Union and other good government groups have asked that the City Board of Elections release data regarding the problems experienced on Election Day, and the number of votes cast via emergency ballot, affidavit ballot, and other metrics. Executive Director George Gonzalez has stated that the City Board is finishing up a report summarizing the Primary Day problems and would have it available to the public a couple weeks before the November election. Statewide information would also be helpful to allow Citizens Union, other interested groups and the State Senate Elections Committee to determine the cause of the problems and to propose appropriate remedies. The City Council has put forward a request under the threat of subpoena to the City Board, and the Senate could consider similar measures if needed at the state level.

We eagerly await the City Board of Elections report and hope that it issued in time for corrections to be made to the voting process so that mistakes, some of which are understandable considering that this was the first time using the new system for both voters and the board, are not repeated in November.

Elected officials should be prepared to press the Board of Elections on providing a transparent accounting of what went wrong and what improvements are being undertaken to remedy the problems and prevent future ones.

2. Recommendations for Reform

a. Before November 2nd

In the short term, we believe it is incumbent upon the boards of election throughout the state to conduct additional trainings to ensure that polls workers are able to better provide for privacy and the smooth running of elections on November 2nd. If training is not possible for all poll workers, this could be conducted with a smaller group of poll inspectors or other supervisors, who would then provide directives to all on-site poll workers. Citizens Union recommends that there be additional training and new requirements to address issues stemming from the Primary Election, such as:

- i. earlier arrival times for poll workers on site before polls open to address any deficiencies such as broken machines or insufficient numbers of scanners;
- ii. establishing protocols so school custodians, police officers, and poll workers are called the day before election day to prevent lateness;
- iii. informing voters of their ability to place ballots upside down in the scanner;
- iv. training poll workers so they do not take voters' ballots unless a voter requests assistance;
- v. requiring poll workers to place privacy booths in locations that do not face public areas;
- vi. requiring poll workers to pre-void ballots that have been ripped or are unlikely to be scanned correctly; and
- vii. instituting greater training regarding fixing broken voting machines.

b. Long-Term Solutions

Citizens Union ultimately believes that there needs to be greater reform to the election administration process beyond what can be accomplished through directives or regulation at the State Board of Elections and local boards. We released a comprehensive list of needed reforms in May 2009, and will highlight a few of the proposed reforms below that relate to the local administration of elections, as well as the need for certain state-wide standards. We recommend that the Senate work toward the following goals:

- i. Dismantle the current structure of the boards of elections and create a less political party dependent operation and more independent based structure that has greater accountability and transparency built in.
- ii. End patronage hiring and implement merit-based hiring for most administrative and poll worker positions;
- iii. Improve public education and access to information through system modernization and better use of improved technology so voters can see sample ballots on the board websites prior to Election Day and receive email notifications of election dates, deadlines and other useful information;
- iv. Improve poll worker recruitment by mandating increased outreach and allowing non-party workers to serve in their own neighborhood poll sites;
- v. Improve poll worker training through uniform standardization, required testing and stronger management;

- vi. Create greater accountability by requiring that the local boards provide information, on performance, similar to how it is tracked as part of the preliminary and final Mayor's Management Report in New York City;
- vii. Examine state and local agencies' compliance with the National Voter Registration Act (NVRA) and New York City's Pro-Voter Law in order to determine whether stronger mandates are necessary;
- viii. Close schools by state law on Election Day to increase availability of accessible poll sites; and
- ix. Remove the full face ballot requirement by clarifying state law to ensure that only candidates for a particular office are required to appear together.

Regarding the full face ballot requirement, ballot questions – such as those that will be on the ballot in November in New York City from the Mayor's Charter Commission – particularly highlight the limitations of a full-face ballot requirement. The manner of the questions' presentation, which will be bundled into two questions, is likely a result of the full-face ballot requirement. This treatment forces voters to make a judgment on questions as a package, rather than evaluate their merits individually, and makes the manner of presentation a more difficult endeavor for Charter Commissions.

In closing, we urge the Senate in 2011 to consider reforms to the election administration process in New York, as well as broad reforms to increase voter participation, such as Election Day Registration, early voting, and no-excuse absentee voting. Increasing avenues to how voters may cast their ballots will also remove the strain on Election Day operations and improve ease of access to voters exercising their civic duty. Citizens Union is happy to follow up with the Committee to go through these reforms in greater detail at a later date, or I am available to answer any questions you might have.