

Testimony to Assembly Committee on Election Law and Subcommittee on Election Day Operations and Voter Disenfranchisement

November 15, 2018

Good morning Chairs Lavine and Buchwald. My name is Alex Camarda, and I am the Senior Policy Advisor for Reinvent Albany. Reinvent Albany is a government watchdog organization which advocates for open and accountable government including strengthening the Freedom of Information Law, which we've worked on with Assemblymember Buchwald. Thank you Chair Buchwald. Until now, the only voting reforms we have actively worked on is online voter registration in New York City. But now there is a huge opportunity to make voting easier for New Yorkers because of the change of control of the state senate.

The Assembly has passed many good bills over the years to improve election administration and make it easier to register and vote. With the change in party leadership of the Senate, we urge the Assembly to seize the moment and pass voting reforms it has long championed and worked hard on.

This Election Day on November 6th once again revealed the many shortcomings in New York State Election Law and problems with election administration in New York City.

The many issues range from constitutional to operational, and responsibility for change lies across different levels of government. Reinvent Albany has organized and summarized many of these problems in the chart below, with proposed solutions for each.

Problem	Solution	Type of Solution
1) Broken/Inoperable Scanners	Conduct an oversight hearing of ES&S, the company providing scanners. The Board of Elections should review the contract with ES&S to improve scanner	Administrative

	<p>performance and hold ES&S accountable</p> <p>Enact early voting</p>	Statutory
2) Overcrowding, lack of ballot privacy and security, lack of backup scanners on site.	<p>Hire an operations/ management consultant to better design poll sites to accommodate crowds, move lines and deploy standby scanners. NYS DMV did something similar for its operations.</p> <p>Train poll workers to use the Emergency Ballot Box procedure when scanners malfunction. Protocol should be clarified to trigger procedure when large scanning lines occur because of malfunctioning scanners, not when every scanner is malfunctioning. (Page 66 of the Poll Worker Manual)</p>	<p>Administrative</p> <p>Administrative</p>
3) Two Page Ballot/Small Print	<p>Create more ballot types with fewer languages on each Ballot</p> <p>Pass the Voter Friendly Ballot Act</p>	<p>Administrative</p> <p>Statutory</p>
4) Workforce Shortcomings	<p>Establish a Municipal Poll Worker Program</p> <p>Digitize and automate procedures. Cut staff, professionalize HR and increase salaries dramatically.</p>	<p>Administrative</p> <p>Administrative</p>
5) Difficult to Register or Change Registration	<p>AVR</p> <p>Same Day Registration</p>	<p>Administrative/ Statutory</p> <p>Constitutional/ Statutory</p>

	Online Voter Registration Deadline for Party Affiliation Change	Statutory Constitutional/Statutory
6) Low Turnout (Historically)	Consolidating Primaries No-Excuse Absentee Voting	Statutory Constitutional/ Statutory

Problem #1: Malfunctioning Scanners

The root cause of the breakdown in election administration in NYC appeared to be malfunctioning scanners. The malfunction scanners caused voters to give up on voting altogether in some instances. NYC BOE Executive Director Michael Ryan told WNYC that only 56 of 4,064 scanners broke down but that appears to be inaccurate based on anecdotal reporting on Twitter and through other complaint lines. Ryan also said the machines are 9 years into their 10 year lifespan, and the technology is more than a decade old. He said the rain made ballots wet which contributed to scanner jams.

Reinvent Albany reviewed the ES&S DS200 Operator Guide, which says, “Operational humidity during operations should be between 10 - 50 percent” and “do not operate the scanner in an excessively wet environment.”¹ Regardless, the conversation and coverage since Election Day has not focused adequately on this fundamental question:

Why did the scanners malfunction?

Solution: Hold ES&S Accountable

The NYC BOE must answer this question, and we recommend the Assembly hold an oversight hearing of ES&S, the provider of the DS200 scanners, to determine if the problem truly lies with the hardware or software of the scanners. The State and Board should scrutinize this contract to identify solutions to malfunctioning scanners and holding ES&S accountable.

Solution: Early Voting

Early voting would have also mitigated the impact of broken scanners and its cascading effect of long lines, overcrowded poll sites, and compromised ballot security and privacy. By holding voting on days other than Election Day, voters are distributed across many

¹ Election Systems & Software (ES&S) Operator Guide, p. 10. Available at <https://drive.google.com/file/d/0B2TKmkSNAkCfZji0MnhEaktOWWs/view>

days and volume is reduced on Election Day. The Board can troubleshoot problems in advance before Election Day.

The Assembly to its credit has passed early voting legislation multiple times. Reinvent Albany generally supports Chair Lavine's bill [A.9608-B](#) as a significant improvement over the status quo, but favors [Governor Cuomo's early voting proposal](#) in the last Executive Budget for its two weeks of early voting.²

Problem #2: Overcrowded Poll Sites, Compromised Privacy and Security of Cast Ballots, and Poorly Implemented Emergency Procedures

Malfunctioning scanners created long lines and overcrowded poll sites that were called a "mosh pit" by a City Councilmember, causing voters to cast their votes outside privacy booths and, in some instances, deposit cast ballots in plastic bags that compromised ballot security. At many poll sites, supervisors and poll workers appeared unaware of the Emergency Ballot Procedure for when scanners malfunction ([page 66, Poll Worker Basic Manual](#)).³

Solution: Hire an operations consultant as offered by Mayor de Blasio

Even if ES&S scanners were entirely to blame for malfunctions, the City Board of Elections should have had additional scanners at poll sites at the ready to serve as replacements even with required poll sites surveys needed for disability compliance. It must also design poll sites to mitigate crowding and handle long lines better. The Board should hire a management/operations consultant to address these issues, as was offered by Mayor de Blasio in 2016 among other changes with the carrot of an additional \$20 million.

Solution: BOE Poll Workers Needs Specific Training in Emergency Ballot Procedures

The emergency procedure calls for putting marked, but unscanned, ballots in the secure ballot storage part of the voting machine using a slot in the back, and scanning them later at a central location. BOE should clarify that the emergency procedure should be used when there are long lines for scanning, not just when every machine is broken. This would mitigate lines for scanning.

² One amendment we recommend to the Lavine bill is, in addition to the August mailing before state and legislative primaries, another mailing be sent prior to congressional June primaries (albeit we favor consolidation of the primaries even more).

³ See:

http://vote.nyc.ny.us/downloads/pdf/documents/boe/pollworkers/Poll_Worker_Basic_Manual_2017_2018_r18_WEB.pdf

Problem #3: Ballot Design

In every borough but Staten Island in NYC, New Yorkers experienced for the first time a two-page, four-sided ballot that was unwieldy because it had to be torn along a perforated edge and fed into the scanner to cast one's vote. Executive Director Ryan told WNYC the two-page ballot and increased turnout resulted in 1 million more pieces of paper being scanned for a total of 4 million. Improperly torn ballots with jagged edges, wet from the rain, coupled with increased volume caused scanner jams.

The ballot was a two-page, four-sided 17" ballot because the Board chooses to put all required languages on every ballot in a particular borough, and state law mandates ballot questions be on a separate page from candidates.⁴ This makes the ballot harder to read because of reduced font size and the content flow being interrupted by different languages. Ballot questions on one of the four pages were very tiny and difficult to read. WNYC reported 25 percent of voters did not even vote on the ballot questions.

Solutions: Pass the Voter Friendly Ballot Act and Create Multiple Ballot Types with Fewer Languages

The Assembly passed in 2015 and 2016 the Voter Friendly Ballot Act ([A.3389-B](#) (Kavanagh)), which would increase font size and make the ballot more readable and pleasing to the eye. It should do so again this coming legislative session, as this bill was very heavily vetted five years ago.

While Reinvent Albany supports the Voter Friendly Ballot Act, there is nothing in law that prevents the Board from creating ballots with fewer pages. This can be achieved by creating more ballot types that have 2-3 languages on the ballot rather than every required language on every ballot.

The Board has been reluctant to do this in years past because more ballot types creates complexity in distribution and for poll workers interacting with voters. This reveals a lack of confidence of the Board in its poll workers, yet another problem with Board administration.

Problem #4: Workforce Shortcomings

The Board has a very challenging job because it must hire 35,556 temporary workers, paying them a few hundred dollars, to implement a massive operation across 1,231 poll sites. Many of its regular employees, despite being patronage employees in many

⁴ Hogan, Gwynne, "Election Day Chaos Triggered by Lack of Preparation For NYC's Two-Page ballot," *Gothamist*, Available at: http://gothamist.com/2018/11/08/midterm_election_ballot_boe.php

instances, are actually paid quite poorly relative to city and state agencies. Then we unfairly expect this poorly paid and temporary workforce to mitigate breakdowns like the scanner failures and its cascading effects with a few hours of training.

Solutions: Municipal Poll Worker Program, Digitization/Automation, Modern Human Capital/Resources Management

Good government groups have long advocated for a municipal poll worker in which salaried employees of the city who are non-emergency personnel would work the polls filling the gaps in the workforce provided by district leaders. This would save the city the cost of hiring temporary workers and provide a more civic-minded, qualified and skilled workforce familiar with serving the public.

More generally, the Board is an outdated archaic agency that relies heavily on paper-based processes that ignore technological advances in digitization and automation.

These processes desperately need to be modernized.

Duplicative staff in the name of party balance at every level of administration in the Board, which is a legal misinterpretation of the state constitution, needs to be eliminated. The savings ought to be plowed back into much higher salaries for the a professional staff that is hired through a modern HR techniques, including online public job postings, and rigorous interview and selection processes.

Problem #5: Difficult to Register or Change Registration

New York State has some of the worst voter registration laws in the country.

- New Yorkers cannot register to vote on Election Day and have their ballot count in that election, nor can they for the 25 days prior to Election Day (the constitutional restriction is 10 days).
- New Yorkers who want to register must print out a form from the Board of Elections website, sign it and mail or hand deliver it to the Board.
- Registered voters who want to change their party affiliation must do so 13 months in advance of the next general election (October of the preceding year), the longest in the nation.

The Assembly can act to pass bills that will make it easier to register to vote.

Solution: Pass Same-Day Registration

Reinvent Albany believes same-day registration, which now has the force of law in 19 states, provides the most bang for buck in added voter turnout, as indicated by the research. There are two bills carried by former Assemblymember [A.10420](#) (Lavine)/S.2478 (Gianaris), which amends the constitution, and [A.8612](#) (Kavanagh)/S.3235 (Gianaris) which amends statute. Reinvent Albany urges the Assembly to pass [A.10420](#) along with no-excuse absentee voting, which the Speaker has publicly supported, this session to start the process of making same-day registration a reality in New York.

Solution: Online Voter Registration

Reinvent Albany cares deeply about online voter registration, and has been instrumental in getting legislation passed in NYC requiring the NYC Campaign Finance Board to create an online voter registration portal ([Local Law 238 of 2017](#)), which is currently being developed. Governor Cuomo administratively created online voter registration via the Department of Motor Vehicles (DMV) and a whopping 1 million people have registered through it since 2012. Imagine the possibilities with an online portal that is not tied to the process of getting a driver's license or non-driver's identification.

[A.5382-A](#) (Cusick)/S. 5115-A (Avella) establishes online voter registration and was passed by the Assembly in 2018. Reinvent Albany supports the bill in concept, but recommends amendments based on our experience in the NYC:

- Require the Board (in addition to the portal) create a mobile application (app) to enable persons to register through mobile devices like a smartphone or tablet;
- Allow persons registering to provide a signature via a stylus or touch interface (in addition to uploading a signature as the bill currently provides) provided it has a quality and likeness comparable to the person's wet signature;
- Require the Board to make available to state agencies under Election Law 5-211 (agency based registration) and the public a web application program interface (API) that permits programs approved by such board to directly transmit voter registration application form information to such board in a manner equivalent to the requirements in the bill. This will enable state agencies, third parties and campaigns to register persons to vote by replicating the portal electronically.
- Require the portal and mobile application notify registrants that they can confirm their registration was processed by looking it up on the [NYS Public Information Portal](#)⁵ which should also be part of the mobile application for the registration portal.

⁵ See: <https://voterlookup.elections.ny.gov/>

- Require the Board to report publicly number of registrations received digitally annually, disaggregate by the portal and mobile application, and by state agencies and third parties through the API.

We do not believe the State Board needs the passage of legislation to create an online portal, but in order to get the bipartisan Board to do so politically, it will require the Assembly to act because the Republicans on the board in 2017 wrote a legal memo to the Board of Elections in NYC challenging the legality of administrative implementation.

Solution: Change the Deadline for Change in Party Affiliation

Reinvent Albany believes the deadline for changing party affiliation should be a reasonable period before any primary election. According to 2016 data from 538.com, there are only 12 states (including New York) and the District of Columbia which do not have open party primaries and have party affiliation change deadlines before registration deadlines.⁶ Four of the 12 states have party affiliation change deadlines that are significantly less than 50 days. Reinvent Albany therefore recommends party affiliation change deadlines be no more than 50 days prior to an election. It is recommended registration deadlines and party affiliation deadlines not be too close together to avoid confusion albeit we believe same-day registration should be passed and effectively eliminate voter registration deadlines altogether. A 50-day deadline would mitigate concerns about party raiding, when voters deliberately change party affiliation to influence another party's primary election, which has occurred and influenced elections amongst the minor parties.

Solution: Automatic Voter Registration

Thirteen states offer or will offer automatic voter registration (AVR) following the passage of ballot initiatives on Election Day establishing it in Michigan and Nevada. Most of these states offer automatic voter registration through the DMV, with voters opting out if they do not want to be registered to vote. Governor Cuomo introduced a bill like this in Part B of his [Good Government and Ethics Bill in the FY 2019 Executive Budget](#). Reinvent Albany thinks the Governor's proposal should be expanded to include state agencies beyond the DMV that are currently required to offer voter registration forms under section 5-212 of the NYS Election Law, as is done in [A.6283 \(Walker\)/S.5114\(Avella\)](#), which the Assembly passed in 2017. This bill has a number of components lacking in the governor's bill including provisions for beginning to process a registration without a signature.

⁶ See:

<https://fivethirtyeight.com/features/its-far-harder-to-change-parties-in-new-york-than-in-any-other-state/>

Problem #5: Low Voter Turnout

NYS has seen a dramatic rise in turnout this year. This is a welcome development seen across the country as Americans view the elections as higher stakes than in years past.

However, while national predicted turnout was 47.5 percent during the general election - the highest in 50 years - New York's predicted turnout was 41 percent ranking it 33rd of 50 states and the District of Columbia.⁷

The longer term trend is New York has been one of the lowest ranking states for voter turnout. This is due to multiple factors, one of which is the state's restrictive voting laws which do not encourage turnout and conversely, laws that require too many elections.

New York State's separation of the congressional and state primary elections, the only state in the nation to do so, may be the most significant law reducing voter turnout. New Yorkers in a presidential year are called on to vote in as many as 5 separate elections (presidential primary, school board, congressional primary, state primary, and the general election). Making matters worse, New Yorkers must vote in-person at the polls for each of these elections unless they have one of the few excuses enabling them to get an absentee ballot.

Solution: Consolidate Primaries

The Assembly in 2017 passed [A.3052](#) (Cusick)/S.3562 (Stewart Cousins), which sets a June primary date for both state and local elections in order to comply with the the federal Military and Overseas Voter Empowerment (MOVE) Act.

Reinvent Albany strongly supports this legislation and believes it should be a top priority. The bill will give military and overseas voters sufficient time to vote, increase overall turnout for all voters by merging two separate primaries, and will save the state \$25 million, which could easily fund a robust early voting program.

We recommend this bill be amended so the August "mail check" mailing which goes to active voters (pursuant to Election Law 4-117) also be sent to inactive voters so they are alerted to vote which will make them active voters again. We think this is a preferable solution to the well intended but confusing efforts of the de Blasio Administration to engage inactive voters in recent months.

⁷ 2018 November General Election Turnout Rates. United States Election Project. Available at: <http://www.electproject.org/2018g>

The Assembly should pass this bill again and adjust the legislative session accordingly as needed so elected officials are not disadvantaged by being absent from their districts, as we've been told is a concern by Senate leadership.

Solution: Establish No-Excuse Absentee Voting

Reinvent Albany supports the Assembly passing [A.7623](#) (Vanel)/S.840 (Comrie), as it did in 2018, which amends section 2 of Article 2 of the state constitution to remove the constitutional reasons needed to receive and cast an absentee ballot. We support the Assembly passing a constitutional voting reform package that would establish no-excuse absentee voting, in addition to same-day registration.

We believe the research shows these are the most impactful reforms backed by the Assembly that can be taken to improve turnout, second only to consolidating the primary election.

Thank you for the opportunity to testify today. I welcome any questions you may have.