

Testimony to the City Council Governmental Operations and Oversight and Investigations Committees on the 2018 Elections

November 20, 2018

Good morning Chairs Cabrera and Torres. 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.

With the change in party leadership of the Senate, the likelihood of achieving reforms in Albany has significantly increased which should make election administration better in New York City. [Reinvent Albany delivered testimony to the Assembly at its hearing last week on changes to state law and election administration the legislature can act on.](#)¹ However, contrary to conventional wisdom, there are measures the City and the Board of Elections in the City of New York can take without state action to address election administration problems in New York City revealed during the last election.

The chart below summarizes some of the problems with NYC elections and provides solutions the City can implement without a change to state law. These are discussed in further detail in our testimony.

Problem	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 performance and hold ES&S accountable.
2) Overcrowding, lack of ballot privacy and security, lack of backup scanners on site.	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.

¹ See: <https://reinventalbany.org/2018/11/reinvent-albany-calls-on-assembly-to-think-big-pass-comprehensive-voting-reforms-at-election-hearing/>

	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)
3) Two Page Ballot/Small Print	Create more ballot types with fewer languages on each ballot.
4) Workforce Shortcomings	Establish a Municipal Poll Worker Program Digitize and automate procedures. Cut staff, professionalize HR and increase salaries dramatically.
5) Inactive Voters Unaware of How to Participate	City Board of Elections, NYC Votes, and the City Board of Election should coordinate in sending any communications to New Yorkers about voting or registration. The August mailer should be sent to inactive voters so they are alerted to vote which will make them active voters again.

Problem #1: Malfunctioning Scanners

The root cause of the breakdown in election administration in NYC on November 6th appeared to be malfunctioning scanners. The malfunctioning scanners caused voters to give up on voting altogether in some instances. In the days after the election, NYC BOE Executive Director Michael Ryan told WNYC that only 56 of 4,064 scanners broke down. At the Assembly hearing, Ryan clarified that the Board’s definition of a broken scanner is when the scanner is taken out of service. This does not include scanners which were temporarily out of service but service was restored. Ryan said at the Assembly hearing that preliminarily data indicated there were 2,631 incidents with scanners malfunctioning. This is a much higher figure than the 56 scanners taken out of service and indicative of a much larger problem.

The scanners malfunctioned for several reasons according to the City Board.

Ryan said in the days after the election 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, and the humidity and wetness caused the paper ballots to swell which contributed to scanner jams. The ES&S DS200 Operator Guide for the scanners says, “operational humidity during operations should be between 10 - 50 percent” and “do not operate the scanner in an excessively wet environment.”² Yet, according to a *NYP* investigation, ES&S stated humidity and wetness did not affect operational performance in their bid when the city purchased the machines, contradicting their own Operator Guide.

Solution: Hold ES&S Accountable

The City Council NYC BOE needs to find out precisely why the scanners failed. 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. ES&S was scheduled to testify at the Assembly hearing and did not.

Problem #2: Ballot Design

At the Assembly hearing, Ryan also said voter error caused scanner jams, including voters failing to rip along the perforated edge to separate the two pages of their ballot. The jagged edged ripped pages caused scanner jams. Voters also failed to wait until the first page of the ballot was read by the scanner before feeding in the second page, which also contributed to scanner jams.

In every borough but Staten Island in NYC, New Yorkers experienced for the first time a two-page, four-sided 17” 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.

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.³ This makes the ballot harder to read because of reduced font size and the content flow being interrupted by different

² Election Systems & Software (ES&S) Operator Guide, p. 10. Available at <https://drive.google.com/file/d/0B2TKmkSNAkCfZji0MnhEaktOWWs/view>

³ 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

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.

Solution: Create Multiple Ballot Types with Fewer Languages

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. Staten Island had a one page ballot with 12-point font and did not experience the problems other boroughs did on Election Day.

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 #3: 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](#)).⁴

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

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

⁴ See:

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

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.

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 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 human resources techniques, including online public job postings, and rigorous interview and selection processes.

Problem #5: Inactive Voters Unaware of How to Participate

Every August before the election, the City Board of Elections sends a mailer to registered active voters to provide information about the upcoming state and local primaries and

general election. However, state law does not require this mailer be sent to inactive voters.⁵

The Chief Democracy Officer in the de Blasio Administration made a mistake in sending a mailing to inactive voters to change their inactive status. This mailing was more confusing than clarifying.

Solution: Mail Inactive Voters Information the City Board Mails in August

We encourage the City Board of Elections, NYC Votes, and the City Board of Election to coordinate in sending any communications to New Yorkers about voting or registration. The August mailer should be sent to inactive voters so they are alerted to vote which will make them active voters again. There is no need to identify voters as inactive or to tell them to update their status.

There are many problems that plague our elections in New York City. Some need to be addressed in state law. As our testimony indicates, however, many can be addressed by the City itself without the state needing to act.

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

⁵ See Election Law section 4-117: § 4-117. Check of registrants and information notice by mail. 1. The board of elections, between August first and August fifth of each year, shall send by mail on which is endorsed such language designated by the state board of elections to ensure postal authorities do not forward such mail but return it to the board of elections with forwarding information, when it cannot be delivered as addressed and which contains a request that any such mail received for persons not residing at the address be dropped back in the mail, a communication, in a form approved by the state board of elections, to every registered voter who has been registered without a change of address since the beginning of such year, except that the board of elections shall not be required to send such communications to voters in inactive status.