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Testimony of
Michael J. Ryan
Executive Director
Board of Elections in the City of New York
before the
Committee on Governmental Operations
Council of the City of New York regarding
Oversight of the Primary Election conducted on
September 12, 2017 and the General Election conducted
on November 7, 2017
in the City of New York
December 13, 2017

Chair Kallos and members of the Council's Committee on Governmental Operations, thank you for providing the opportunity to appear before you on behalf of the Board of Elections in the City of New York (the Board). My name is Michael Ryan and I am the Executive Director of the Board.

I will provide an overview regarding the September 12, 2017 Primary Election and the November 7, 2017 General Election. After providing formal remarks, I am prepared to answer questions from committee members.

Joining me here today are the Board's:

-   Deputy Executive Director Dawn Sandow
-   Administrative Manager Pamela Perkins
-   Operations Manager Georgea Kontzamanis
-   General Counsel Steven H. Richman
-   Deputy General Counsel Raphael Savino

Primary Election – September 12, 2017

The Primary Election conducted on September 12, 2017 was a citywide election event; however, given the ballot contests not all voters in the City of New York were eligible to participate in this election event. There were 3,884,415 eligible voters for the primary election (85% of the total number of registered voters).

The Board provides the following information as a summary of the efforts undertaken to conduct the Primary Election:

Poll Sites

- 1,213 poll sites were utilized across the five (5) boroughs
- 2,973 DS-200 scanners were deployed to the poll sites to service 5,901 Election Districts (ED's) from September 5, 2017 through September 11, 2017
- 1,286 Ballot Marking Devices (BMD's) (a minimum of one (1) per poll site) were deployed to ensure that members of the accessibility community have the opportunity to freely and independently exercise the voter franchise. BMD's are designed to provide assistance to individuals across a spectrum of accessibility related difficulties, including, but not limited to manual dexterity, vision and hearing.
- 5,602 supply carts were deployed containing the necessary supplies for each election district
- 14,297 privacy booths were deployed for use by voters
- A total of 42,798 individual equipment items were deployed (including tables, chairs, auxiliary lighting and environmental aids) over a period of 14 days
- The Board utilized 8 trucking vendors to deliver the equipment necessary to this election event

Poll Workers, Assembly District Monitors and Technical Support

- The Board engaged in an aggressive poll worker recruitment program commencing April 1, 2017 and running through August 31, 2017. The recruitment program included 6,000 MTA subway/train advertisements, 10,000 and MTA bus advertisements throughout the five (5) boroughs. The Board leveraged an available contract through Department of Health and Mental Hygeine at a cost of $1.1 Million
- The Board also engaged in a separate poll worker recruitment advertising campaign strategically placing advertisements in various media outlets, including __ newspapers in the languages required by the Language Assistance Program to recruit interpreters. The advertisements ran in advance of the 2017 Primary and General Elections (at a cost of $84,000).

- A total of 35,836 poll workers received training between July 15, 2017 and September 11, 2017
- 34,522 individuals passed the examination and were thus eligible to serve as poll workers
- 30,460 were assigned to work a poll site for the Primary Election
- 1,475 potential poll workers were assigned to the standby pool
- A total of 26,196 poll workers reported as assigned to poll sites for the Primary Election (leaving a "no show" rate of 14%)
- The Board deployed 198 bipartisan Assembly District (AD) Monitoring teams to assist in Primary Election Day field operations
- The Board deployed 124 teams of field technicians to 62 zones throughout the city to remediate any equipment issues that may arise during an election event.
- The Board supplemented technical staff with 32 additional vendor technical support staff to ensure that any issues are resolved in an expeditious manner and to mitigate voter inconvenience caused by equipment failure
- The Board deployed 2 ADA coordinator teams and 18 AD monitoring teams with targeted training in ADA issues to remediate any accessibility issues
- The Board completed processing poll worker payroll for 26,196 poll workers post-election on October 6, 2017.

Americans with Disabilities Act (ADA) Compliance

The Board is firmly committed to ensuring that all voters are provided with the opportunity to freely and independently exercise the voter franchise. The Board is keenly aware of its responsibilities to all voters and is especially cognizant of its responsibilities to voters who are members of the accessibility community. To ensure compliance with the ADA and the Order of the United States District Court in the United Spinal case, the Board determined that successful compliance requires year round planning and effort.

Over the past several years, the Board has been hosting regular ADA compliance/planning meetings. Such meetings are attended by representatives from various government partner agencies including representatives from the Mayor's Office of Operations. The Board is pleased to report that these meetings are a vibrant and meaningful exchange of information and result in the implementation of site specific solutions to ensure removal/remediation of barriers to the voting process.

Department of Education (DOE) sites comprise the largest number of government partner locations and the DOE staff has been particularly cooperative in working toward solutions (and in the conducting of elections on Election Day).

The Board also meets regularly with counsel for the plaintiffs in the United Spinal case to comply with the "meet and confer" directive of the Federal Court. This process has

also resulted in the meaningful exchange of information and further improvement of the process.

While full remediation of all accessibility impediments remains a work in progress, the collective efforts of the Board and its government partner has resulted in an improved voting experience for many voters in the accessibility community.

The process of surveying all of the locations utilized as poll sites, in compliance with a Federal Court Order, remains ongoing. As this process has unfolded the Board determined that its previous resources were insufficient to meet the needs of ADA compliance.

Prior to the 2016 General Election, the Board hired two (2) full-time ADA coordinators to serve the Board as an agency and as the entity responsible for administering elections.

For Election Day operations, the Board contracted with 18 ramp installation vendors to meet the temporary accessibility needs for election events. Ramp installations commenced 4 days in advance of Election Day and continued through the early morning hours of Election Day.
The Primary Election day ADA equipment installation/deployment is as follows:

- 353 vendor installed temporary ramps (Bronx – 79, Brooklyn – 110, Manhattan - 65, Queens – 76 and Staten Island – 23)
- 100 Board installed temporary ramps (Bronx – 20, Brooklyn – 29, Manhattan – 29, Queens – 23 and Staten Island – 5)
- 1127 cones deployed to provide cane detectable elements for any identified impediments
- Accessibility Entrance Identification signage distributed to all poll sites.

Tablets

In 2014 the Board began a pilot project to expand the use of tablets to assist in Election Day operations and expedite the reporting of Election Night Results.

The Board worked collaboratively with the Mayor's Administration and the NYC Council to secure the necessary funding in the amount of $2,600,000 to implement the tablet pilot citywide.

The Board utilizes tablets to check-in poll workers at the poll sites. Poll worker check-in is utilized at poll sites in all five (5) boroughs with a high rate of compliance. In addition, the Board has the ability to send "push notifications" to poll workers on Election Day.

A pilot project is underway in Manhattan using an automated queue to assign poll workers from the standby pool. The longer term vision is to integrate the poll worker check-in with the standby queue and drastically reduce the number of telephone calls necessary to complete the standby deployment process.

The Board plans to expand the "push notification" ability to include fully interactive messaging capability between field operations and the poll sites.

The tablet equipment deployment is as follows:

- 2 tablets and 1 MiFi at each poll site
- 2 tablets at each police precinct
- Each field technician team utilizes a tablet
- A total of 2,926 tablets were deployed for the Primary Election (Bronx – 460, Brooklyn – 922, Manhattan – 632, Queens – 648, Staten Island – 192 and General Office teams – 92)

Election Night Reporting

Since the full implementation of utilizing tablets to report the unofficial election night results the process has been improved and modified. Prior to the tablet implementation, processing of election night results peaked just prior to 11:00 p.m. In 2015 that was reduced to approximately 9:45. For the September 2017 the processing of results peaked at approximately 9:10 p.m.

The Board utilized 2,990 portable memory devices (PMD's) and results were successfully transmitted from 2934 PMD's a 98.13% success rate.

The breakdown of the processing times is as follows:

9:10	38.38%
9:20	67.14%
9:30	77.33%
10:00	84.70%
11:00	96.56%

The Board utilizes a server and a back-up server for each borough to ensure that the processing of the results continues uninterrupted and that there is sufficient alternate processing capability in the event that hardware and/or connectivity issues arise.

The reliance on the processing of the results has been increasing since implementation. The unofficial results are available on the Board's website on election night and refreshed every five (5) minutes. Persons accessing the Board's website

may customize the results they wish to access. This process has greatly reduced the volume of external inquiries to the Board on election night.

The "hits" to the Board's website has increased since 2015 as demonstrated by the following:

- 2015 September Primary – 288,963
- 2016 September Primary – 503,164
- 2017 September Primary – 665,871

General Election – November 7, 2017

The General Election conducted on November 7, 2017 was a citywide election event and all voters in the City of New York were eligible to participate in this election event. There were 4,473,245 eligible voters for the General Election.

The Board provides the following information as a summary of the efforts undertaken to conduct the General Election:

Poll Sites

- 1,216 poll sites were utilized across the five (5) boroughs
- 3,968 DS-200 scanners were deployed to the poll sites to service 5,901 Election Districts (ED's)
- 1,288 Ballot Marking Devices (BMD's) (a minimum of one (1) per poll site) were deployed to ensure that members of the accessibility community have the opportunity to freely and independently exercise the voter franchise. BMD's are designed to provide assistance to individuals across a spectrum of accessibility related difficulties, including, but not limited to manual dexterity, vision and hearing.
- 5,616 supply carts were deployed containing the necessary supplies for each election district
- 15,732 privacy booths were deployed for use by voters
- A total of 40,884 individual equipment items were deployed (including tables, chairs, auxiliary lighting and environmental aids) over a period of 14 days
- The Board utilized 8 trucking vendors to deliver the equipment necessary to this election event

Poll Workers, Assembly District Monitors and Technical Support

- A total of 41,753 poll workers received training between July 15, 2017 and October 31, 2017

- 40,175 passed the examination and were thus eligible to serve as poll workers
- 34,030 were assigned to work a poll site for the General Election
- 1,722 potential poll workers were assigned to the standby pool
- A total of 28,586 poll workers reported as assigned to poll sites for the General Election (leaving a "no show" rate of 16%)
- The Board deployed 198 bipartisan Assembly District (AD) Monitoring teams to assist in General Election Day field operations
- The Board deployed 124 teams of field technicians to 62 zones throughout the city to remediate any equipment issues that may arise during an election event.
- The Board supplemented technical staff with 32 additional vendor technical support staff to ensure that any issues are resolved in an expeditious manner and to mitigate voter inconvenience caused by equipment failure
- The Board deployed 2 ADA coordinator teams and18 AD monitoring teams with targeted training in ADA issues to remediate any accessibility issues
- The Board completed processing poll worker payroll for 28,586 poll workers post-election on December 3, 2017.

Americans with Disabilities Act (ADA) Compliance

The General Election day ADA equipment installation/deployment is as follows:

- 356 vendor installed temporary ramps (Bronx – 81, Brooklyn – 110, Manhattan - 68, Queens – 74 and Staten Island – 23)
- 129 Board installed temporary ramps (Bronx – 23, Brooklyn – 42, Manhattan – 31, Queens – 27 and Staten Island – 6)
- 1,323 cones deployed to provide cane detectable elements for any identified impediments
- Accessibility Entrance Identification signage distributed to all poll sites.

Tablets

The tablet equipment deployment is as follows:

- 2 tablets and 1 MiFi at each poll site
- 2 tablets at each police precinct
- Each field technician team utilizes a tablet
- A total of 2,945 tablets were deployed for the General Election (Bronx – 458, Brooklyn – 922, Manhattan – 636, Queens – 648, Staten Island – 192 and General Office teams – 89)

Election Night Reporting

For the November 8, 2017 General Election the processing of results peaked at approximately 9:20 p.m.

The Board utilized 3,988 portable memory devices (PMD's) and results were successfully transmitted from 3,920 PMD's a 98.29% success rate.

The breakdown of the processing times is as follows:

9:10	19.73%
9:20	54.79%
9:30	73.71%
10:00	84.70%
11:00	95.14%

There were 777,389 "hits" to the Board's website. In contrast, there were 191,018 website hits to the Board's website for the 2016 Presidential General Election.

Conclusion

Again, on behalf of the Board, I thank you for the opportunity to inform this Committee regarding the 2017 Primary and General Elections.

The Board looks forward to working with this Committee and others toward the continued improvement of the voting process.

FOR THE RECORD

Testimony of Amy Loprest
Executive Director
New York City Campaign Finance Board

City Council Committee on Governmental Operations
December 13, 2017

Good afternoon to the chair, Council Member Kallos, and to the members of the committee. I am Amy Loprest, Executive Director of the New York City Campaign Finance Board.

Thank you for this invitation to discuss the 2017 elections. Many observers have characterized this year's elections as non-competitive. Much of the commentary and news coverage has focused on low voter turnout. However, the number of voters who cast a ballot in the November general election increased by more than 60,000, or 5.6 percent, compared to the 2013 elections—which featured open, competitive races for all three citywide offices and 20 Council seats. In fact, this was the first city election since 2001 in which the number of voters who participated increased from the previous cycle.

While there is still much to be done to further improve voter turnout, we have learned from our engagement efforts that voters care about local issues and want more information about their city elections so they can cast an informed ballot at the polls.

Every election cycle, we work to provide voters with that information. As part of this effort, we undertook a major redesign of our print Voter Guide to simplify the presentation of candidate information. We asked candidates to provide the top three issues they would focus on if elected. We heard positive feedback about this new feature. We had 234 candidates submit a profile, and 213 candidates film a statement that we included in the Video Voter Guide. These video profiles were included in the online Guide, streamed on YouTube, and broadcast on NYC Media and local cable access channels. We mailed a printed Guide to just over 3 million voters in the primary election, and 4.5 million voters in the general.

1

We launched a citywide ad campaign, "Vote for the City You Want," directing voters to read the Voter Guide at voting.nyc. The campaign ran on social media, on TV, and in the transit system. We were quite pleased with the results. More than 225,000 unique viewers visited the online Guide before the primary, and more than 300,000 unique viewers used the Guide prior to the general election. In both cases, those results represent more than a threefold increase in traffic to the Guide compared to 2013. Another encouraging note: of those who visited voting.nyc, 27 percent were between 18-24 years old, and in total, nearly 60 percent were under the age of 35, two age groups that traditionally have lower turnout rates in local elections.

We also began a new e-mail and text message campaign to alert voters to upcoming dates and deadlines and point them to additional resources, such as our contribution maps or elected offices explainers.

In addition to these platforms, we expanded our in-person outreach to voters this year. We brought volunteers to register voters at city shelters in partnership with the Department of Homeless Services, and we knocked on doors in NYCHA developments to get out the vote. Volunteers helped us make over 13,000 phone calls urging new voters to get to the polls before the primary and general elections. We also worked with the Mayor's Office to post signs at locations that were used as poll sites in the 2016 presidential election but had been moved before November 2017, directing voters to call 311 or use voting.nyc to find their new poll site location. We will conduct a comprehensive analysis of voter participation and the impact of our efforts in the coming months.

As part of increasing voter participation, it is one of our Charter-mandated goals to make voting information accessible to underrepresented groups, including those with limited English proficiency. We commend the City Council for working with the Mayor's Office of Immigrant Affairs to provide translators in additional languages at some poll sites in November.

We translate all of our voter education materials into Spanish, Chinese, Korean, and Bengali to comply with the language assistance requirements under the Voting Rights Act. After each

2

election, we hear from voters about the need for additional language assistance, and we know there are thousands of voters in New York City with limited English proficiency. The Mayor's Office for Immigrant Affairs and the Center for Economic Opportunity analyzed Census Bureau data and estimate that there are as many as 216,000 voters of limited English proficiency who speak a language not covered by the VRA.

We believe the VRA should provide a floor, rather than a ceiling, when it comes to providing voter assistance. For example, last year we worked with MOIA to translate and print voter registration forms into 11 additional languages. Other cities provide language assistance beyond what is required by the VRA, and we would like to conduct further analysis to assess these needs and seek a way to meet them in a thoughtful, uniform, and nonpartisan manner.

Lastly, we strive to put together robust and informative debates for each citywide election in order to help voters make distinctions between the candidates. We also look for ways to expand our reach. This year, that included a requirement that all debates be streamed for free from the broadcast sponsor's website and from the sponsor's Facebook page. CBS and NY1 sponsored the four debates required under the program this year, all in the mayoral race. More than 900,000 viewers tuned into live televised broadcasts of these debates, with an additional 175,000 watching the online streams.

We support Int. No. 1779, which would require the CFB debates for participants in the public matching funds program to be broadcast on a city-owned or operated television channel. We believe Int. No. 1779 supports our aim of helping all New Yorkers view the debates and learn more about the candidates who hope to represent them in elected office.

I thank you for the opportunity to testify today, and I am happy to answer any questions that you have.

Testimony of the NYC Mayor's Office of Media and Entertainment to the Committee on Governmental Operations
December 13, 2017

Good afternoon, Chairman Kallos, Council Member Borelli and other distinguished members of the City Council Committee on Governmental Operations. My name is Ken Ebie, and I am Deputy General Counsel and Director of External Affairs at the Mayor's Office of Media and Entertainment. Thank you for the opportunity to testify before you today on Intro 1779. My testimony aims to briefly outline the mission and activity of NYC Media that aligns with the intent of this legislation and also to provide additional context on the process of broadcasting mandatory debates on our network.

As you may know, in addition to serving as a one-stop shop for all television and film production in New York City, our agency also runs NYC Media, the City's municipal television and radio network, which includes WNYE-TV and WNYE FM with a combined reach of approximately 18 million people.

Per Chapter 48, Section 1072 of the City Charter, a core objective of programming on WNYE is to connect residents to important information about City government and its services. Intro. 1779 is fully aligned with our efforts to educate New Yorkers on the how government works, including sharing information on our local elections. Most notably, for the last four election periods, WNYE-TV has aired the Campaign Finance Board's "Video Voter Guides." The "Video Voter Guides" provide five full hours of programming for the primaries and an additional 4-5 hours for the general election, with a spotlight on each of the five boroughs, including the issues and candidates involved in our local elections.

Additionally, WNYE programs feature Government processes, events and initiatives that impact the daily lives of New York City residents. In fact, as of today, we have covered 509 City Council events (including this hearing) during the 2017 calendar year.

As you can see, the City is fully aligned with the intent of Intro. 1779 to provide New Yorkers with greater access to mandatory debates. However, in consideration of this legislation, we have identified various elements – among them legal, regulatory, budgetary and technical – that must be addressed in order to fulfill this mandate.

Let me start with a brief overview of the contractual and regulatory framework in which mandatory debates are currently televised. Per Section 3-709.5 of the New York City Administrative Code, the Campaign Finance Board (or "CFB") must select a sponsoring media organization to broadcast the mandatory debates during election years. The terms of the broadcast – including any matters of exclusivity and broadcast rights – are outlined in an agreement between the CFB and the sponsoring media organization.

As a general matter, content providers, such as debate sponsors in the case of this legislation, typically charge a licensing fee to support the cost of production. Licensing fees can range from a few hundred dollars to millions, depending on the program. As a matter of public interest, the City would look to the debate sponsors to provide the City with simultaneous access to the broadcast free of charge.

From a regulatory standpoint, WNYE operates under a noncommercial license from the Federal Communications Commission which prohibits our station from broadcasting commercials and other promotional announcements on behalf of for-profit entities. In the event that the debate sponsor is a commercial broadcaster, we would need to work them to modify any sponsorship acknowledgments or promotional announcements they would run during the simulcast to comply with our obligations under the FCC.

In short, NYC Media's ability to broadcast the mandatory debates on WNYE would depend upon the Campaign Finance Board and debate sponsors making these mandatory debate broadcasts available for free to NYC Media. We would then work with the CFB and debate sponsor to ensure that the simulcast is structured in a manner consistent with our obligations under the City Charter and federal law.

NYC Media views Intro. 1799 as providing an opportunity to extend our mission of providing high quality services and information on the workings of City government to New Yorkers. We agree with the intent of this bill to ensure as many New Yorkers as possible hear candidates for citywide local office in mandatory candidate debates and look forward to continued discussions with you, the CFB, and the sponsoring broadcasters on how best to achieve this. Thank you.

STATEMENT FOR THE NEW YORK CITY COUNCIL COMMITTEE ON GOVERNMENTAL OPERATIONS

DOUGLAS A. KELLNER
Co-Chair, New York State Board of Elections
December 13, 2017

The New York City Board of Elections has accomplished a great deal since the last time I appeared before your committee. The City Board has significantly improved and simplified the election night canvass procedures. The City Board accepted the recommendation of the State Board to eliminate the use of the anachronistic voter cards. The City Board has improved poll site layouts throughout the system. The City Board has also acknowledged that the single largest source of election day problems is inadequate training of the vast pool of election day workers and has taken some positive steps to improve poll worker training.

While I acknowledge that the City Board of Elections has made significant improvements, I still have a few recommendations where additional efforts are needed.

Eliminate the Runoff Primary Election

First, I address a matter that should be a high priority for the City Council. We election officials have been complaining about the difficulty of conducting the runoff primary for mayor, comptroller and public advocate since it was enacted. We have all acknowledged that the current provision for a runoff primary election creates a significant—and perhaps unworkable—burden on the City Board, as well as substantial potential expenses. The short interval between the primary and the runoff makes it virtually impossible to send out absentee ballots in time for them to be returned. The short interval is also inadequate to allow for completion of all of the steps necessary to do a proper canvass, audit of the primary and to set-up and test the runoff in a timely manner.

New York City should make its decision concerning the runoff primary election this year for two key reasons. (1) The Board of Elections should be given

sufficient lead time to prepare for the new voting procedures and to educate the voters; and (2) as the election approaches, a change in procedures, no matter how well-intentioned, is perceived as favoring some candidates over other candidates. It is better to act now when the effects of the change are not perceived as designed to help or hurt any particular candidate.

I still recommend that the runoff primary should be replaced with ranked choice voting or eliminated altogether.

The current voting equipment used by the New York City Board of Elections is capable of handling ranked choice voting. Only a few minor software applications are required to implement ranked choice voting.

I believe that ranked choice voting is the best way to determine that the winning candidate has the widest support of the members of the party voting in the primary, without adding the cost and administrative stress of a runoff primary.

The New York City Board of Elections can administer ranked choice voting. We use the ES&S DS-200 optical scanners to count ballots cast at poll sites. The DS-200 machines use the Unity 5.0.0.2 software. Both the hardware and the software are capable of formatting and recording ballots that use rank choice voting. The New York City Board of Elections would only need to develop a program to apply the statutory algorithm to determine the final results—not a particularly difficult or expensive process.

The Minneapolis use of rank choice voting is particularly relevant because Minneapolis uses the same ES&S DS-200 ballot scanners as New York City. Minneapolis is just one of many cities that have successfully implemented rank choice voting for municipal elections.

Compliance with the "30 Minute Rule" for waiting to vote for the November 2020 presidential general election

The voting systems regulations include a mandate on the counties that they have adequate staffing at each poll site. 9 NYCRR § 6210.19(c)(1) provides: "County boards shall deploy sufficient voting equipment, election workers and other resources so that voter waiting time at a poll site does not exceed thirty minutes."

New York City has not complied with this regulation in its presidential general elections, and I see no meaningful efforts for New York City to come into compliance in 2020. A starting point is to recognize that the presidential election is not like other elections. The turnout is many times greater and imposes maximum stress on our system for administering elections. Therefore, the planning for administering a presidential election should be significantly greater than for other elections.

For example, approximately 2.5 million New York City residents vote in person at the presidential election. This is usually double the number of people who vote in the general elections for governor or mayor and many, many times the number of people who vote in primaries. (See attached chart). The lessons from these statistics is that successfully running these elections with substantially smaller turnouts is not necessarily a prediction for success in administering a presidential election.

New York City has many more poll workers than needed for primary and special elections and is understaffed in many locations for the presidential election. It cannot be stressed enough—the turnout in a presidential election is seven times the turnout in a typical primary election.

The fundamental problem is that the most crowded poll sites that have lines hours long in presidential elections need more sign-in tables with multiple teams of inspectors to distribute ballots. This requires more space, which requires advance planning that needs to take place now.

Staffing of the Polls Needs to be More Efficient

The use of ballot scanning technology for the casting of votes affords much greater flexibility for the organization of poll sites. The city can do more to take advantage of that flexibility.

A lever voting machine could only show a single ballot style. Therefore, all voters who used that machine needed to live within the same geographical district for each of the contests appearing on the machine. That was the basis for the organization of election districts still found in Election Law § 4-100.

Ballot scanners can receive multiple ballot styles. Therefore, it is no longer necessary that all of the voters who use a particular scanner have the same ballot form. The "election district" as the unit for election administration is now an anachronism. I enlist your support to have the Legislature revise the Election Law to change the unit of election administration from the election district to the poll site. There should be a single set of two or four bi-partisan "inspectors" for each poll site who have the legal responsibility for operating the poll site. Obviously most poll sites will require many additional personnel, but these can consist of many different job titles with varying functions as needed by that particular poll site for that particular election.

Many county boards of elections have already adopted the state board's recommendation that the same set of four inspectors be appointed for each election district at a poll site. Admittedly this falls into a gray area of the Election Law, which should be amended to explicitly provide for this. Similarly the Election Law should explicitly provide for organizing the registration books to allow for division of the books at a poll site by alphabet rather than by election district. This can be accomplished without changing the requirement that the scanners continue to report results by election district

Even without changes in the Election Law, many boards of elections, including the New York City, have begun to differentiate job functions at the poll site to be more efficient. By differentiating job functions, newly recruited poll workers can be trained only for specific functions, making the training less cumbersome. The NYC board has already adopted more innovative training by abandoning the effort to train all poll workers on all procedures. Instead, quite properly, the NYC board has concentrating training of new poll workers on the particular functions that they would be expected to handle on election day. As poll workers gain seniority, they are trained on additional functions.

Poll workers should be paid for successfully completing training, but the fee needs to be increased to reflect the time needed for proper training.

The Legislature has amended the Election Law to explicitly authorize split shifts of poll workers as long as there is at least one Democrat and one Republican who work the entire day (see EL § 3-400(7)). While it is true that using split shifts will increase the number of poll workers and the attendant problems in recruitment, training and payroll, it will vastly increase the pool of persons who would consider serving as a poll worker. The current workday of 17 hours is too long for many potential poll workers. The New York City Board needs to be more flexible in order to recruit qualified poll workers.

The Mayor sets the rate of compensation for poll workers. When Mayor Giuliani increased the compensation to the current level, there was a substantial increase in the number of persons seeking to serve as a poll worker. An increase to account for inflation would have a similar beneficial effect. As a way to improve training there could be intermediate titles such as "senior clerk" for those who have been able to master specialized skills, such as the complex procedures for opening and closing the polls or to unjam scanners.

Similarly, there should be stated financial penalties for not performing all of the required functions. For example, many election districts fail to fill out the list of affidavit ballots with their returns, or fail to complete the canvass sheet properly. If modest financial penalties were assessed for failure to carry out assigned tasks, poll workers would learn that there are consequences for poor performance.

We have all observed that the bottleneck for almost all lines at poll sites is at the table processing the registration books. Many election district tables are very efficient in handling the tasks at the registration book table, while other districts are much slower. Part of this is training and organization, and part of this results from poll workers who have difficulty finding names in alphabetical order. Having an adequate number of people working the registration table is not complicated or mystical. It is simply a matter of arithmetic. The best teams of poll workers can process approximately two voters per minute or approximately 100 voters per hour. On the other hand, there are poll workers who take much longer. Perhaps the Board should have a test to qualify poll workers that include a hands-on performance of the registration table functions and that the poll workers be rated and assigned accordingly.

If the workers assigned can only process 30 voters in an hour and 150 voters per hour are anticipated during the morning rush, then there needs to be five sets of poll workers to process those voters in a timely manner. If the poll workers can process 100 voters in an hour, then there only needs to be two sets of poll workers.

In New York City there has been a shift in voting patterns over the last several decades so that a very high proportion of voters cast their ballot on their way to work in the morning. The NYC board should assign additional clerks for the morning rush. It has been very disappointing that the City Board has resisting implementing variable hours for poll workers, notwithstanding the passage of authorizing legislation.

Conclusion

I have limited my remarks to just a few issues which the City Council may be able to influence improvement in election administration. Of course, I strongly support legislation that would provide for early voting, to make it easier to register to vote and to cast an absentee ballot with assurance that it will be counted. I support the bills passed by the Assembly to combine the federal and local primary elections, to authorize electronic poll books and to improve the layout of election ballots.

Vote 2000-2017
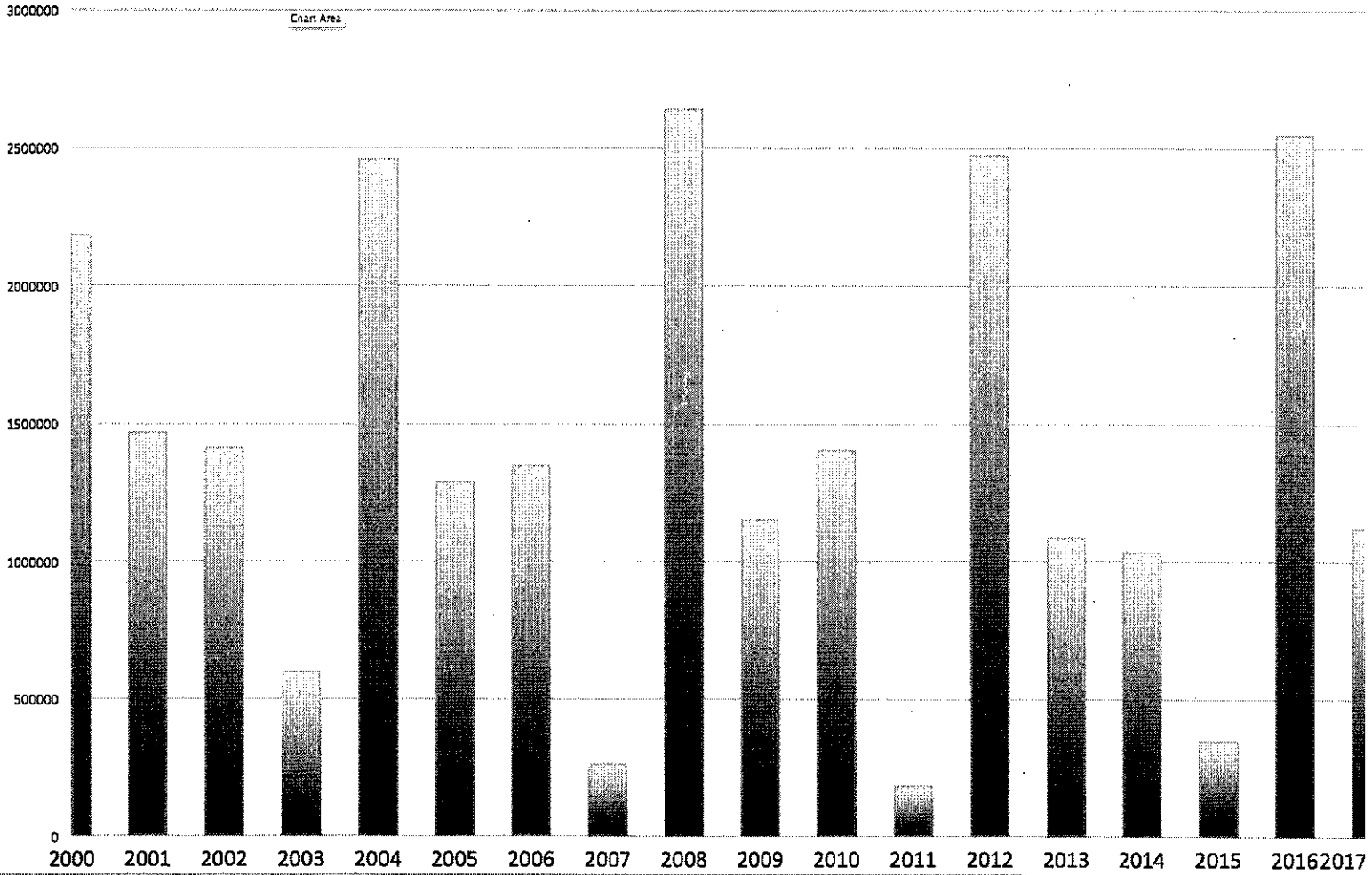
Testimony of

New York Democratic Lawyers Council (NYDLC)

Hearing on 2017 Elections and Voting

Presented to the New York City Council Committee on Government Operations

December 13, 2017

Contact:
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Thank you Chairman Kallos and members of the Government Operations Committee for holding this important hearing on the 2017 election which provides an opportunity to identify ways to continue improving election administration in New York City. My name is Jarret Berg, Executive Director and 2016-2017 Voter Protection Director of the New York Democratic Lawyers Council (NYDLC). NYDLC has been monitoring elections in New York and battleground states since 2005. In this testimony we will offer insights from our 2017 Voter Protection program and offer solutions for improving the administration of New York City elections.

In 2017, NYDLC recorded data points from monitors at more than 50 poll sites across New York City, with over 200 people in the field on Election Day statewide. Today, we will share our observations and offer solutions to the most prevalent problems that arise before, on, and after Election Day.

Poll Worker Staffing and Training

Ensuring adequate polling place staffing of inspectors and interpreters and reducing Election-Day flake rates is a logistical challenge common across election administration, which requires recruiting, training, and coordinating thousands of people in a concerted manner, on a single Election Day, which begins at 5:00 AM for NYC poll workers.

In 2017, there continued to be several instances of understaffed poll sites, especially during the critical timeframe when polls need to be set up ahead of the opening of polls and morning rush. At many polling places, monitors reported several missing staffers. To prevent late openings, long lines, and other administrative problems that lead to infringed rights and poor civic experience, all poll sites need to be properly staffed for the opening of the polls. This is absolutely necessary *if* we are to continue having only one Election Day.

Inadequate staffing during poll site setup and poll opening has a magnified negative impact, insofar as the "morning rush" (6:00-8:00 AM) is consistently the busiest time of day for voting in most New York localities. This is a "deadline driven" timeframe when strong cooperation and staff camaraderie is needed to get each election district and all machines up and running. This timeframe "sets the tone" and impacts morale for the entire day.

One source of problems is that the early hour (5:00 AM) is not a typical start time for most employees, who may be groggy or delayed due to irregular commuting schedules. Also, the single Election Day means that poll workers are not in a daily routine, so the lack of familiarity (ie, lack of "muscle memory") makes the likelihood of mistakes or rustiness at that time more common. As with any system reliant upon multiple actors, it is natural that with everything working, it may take fifteen minutes of voters going through the process to "get the kinks out", and get all staffers up to speed and familiar with the balloting routine.

Notably, the absence of a "soft opening" for voting, which several Early Voting days may help provide, means that all poll sites, many suffering understaffing or tired and irregular staff, must come "on line" at 6AM sharp, right into the heaviest volume of voters for the day.

To address this, each borough should better anticipate and counteract the personnel flake rate. The Board of Elections could supplement existing staff with a layer of part-time setup/opening staff, who could help cover and alleviate the drop off, by serving from 5-8AM.

Missing interpreters is another common shortfall. The BOE should expand its partnership/contracting with local community groups to proactively help ensure that, whether a language is mandated or not, there are staff or volunteers at high ESL-population polling places, to ensure that all eligible voters have access to the language assistance needed to cast a ballot.

Affidavit Ballots

The proper use, distribution, and completion of Affidavit Ballots (known elsewhere as "provisional ballots") on Election Day is a recurring issue nationwide that continues to serve as a major source of administrative difficulty in New York, resulting in poor civic experience and frustrated voter intent. In theory, the Affidavit Ballot is a rights-preserving mechanism that substitutes for a regular (instantly comingled) ballot, where a registration irregularity exists, so it can be resolved later one way or the other, without prejudicing the voter or the election.

In parts of New York and in years past in New York City, voters who claim they are registered and who turn out to their *correct* (assigned) poll site on Election Day to find their name missing from the poll book are not always proactively offered an affidavit ballot as required by law.

NYDLC's 2017 incident reporting suggests that New York City's training on this safeguard has improved. However, there appears to be some resulting confusion over the narrow circumstances when an affidavit ballot will *count* under New York law, which is why, in the first instance, we must all work to ensure that voters are turning out at their *correct* (assigned) polling place:

- In 2017 in Kew Gardens, multiple voters turned out to a polling place other than the one assigned and were aware of or made aware of that fact. At least one did so for convenience purposes. The Coordinator reportedly told the voter it was fine to vote an affidavit ballot, and did not inform the voter of the consequences of casting a ballot in an *incorrect* (unassigned) site—that the entire ballot is discounted without any effort to "save" even citywide races. NYDLC reporting at 8PM indicates that at the same location (PS 99), affidavit ballots were distributed to those who "said it would be easier to vote here all day long."

Many voters, if given the option, would prefer to vote at a different location than the one assigned by residence, because it better fits their busy schedule. With polling places all over the city, it is understandable that even polling place staff—with modern commercial expectations of everyday convenience—would believe this to be an option. And it should be an option.

Unfortunately, this illustrates the limits of the usefulness of the Affidavit ballot rights-preserving regime, which will never have the intended effect of preserving and saving as many eligible votes as possible, without our modernizing our voting system. New York's stringent and increasingly arbitrary balloting laws continue to result in the discounting of thousands of cast ballots, while also suppressing turnout among those unable to meet draconian formalities.

A "pro-voter" election system (i.e., designed with fundamental rights prioritized to protect and maximize eligible votes cast), would be one designed to "save" as many votes and contests as possible. Our present system does just the opposite—A vote cast for mayor anywhere in New York City that originates outside a voter's one assigned poll site is thrown out entirely; Similarly and more absurdly, despite the fact that a U.S. Senator represents the entirety of New York State, a 2018 vote for Senate cast anywhere outside a resident's assigned poll site will be discounted.

In principle, there is no reason why our voting process cannot be reformed to save as many votes as possible, either by moving to a system of vote centers and ballot printers, where voters could turn out to any of several convenient locations, or by saving as many contests on an "out of residence" voter's ballot as possible. The most local contest may need to be voided, but all NYC voters are eligible to vote for city- or statewide office, so the rest of the ballot should be saved

Although it was not prevalent in NYC in 2017, another common affidavit ballot issue is poll worker confusion over when to use "Affidavit Ballots" as opposed to "Emergency Ballots". Because of the importance of this distinction we will continue to highlight it and appreciate the opportunity to do so here. As NYDLC has suggested in the past, poll worker training should emphasize the following "bright line rule" where a voter turns out to their assigned polling place:

- If there is an alleged problem with the voter's registration (name not in book; refusal to take challenge oath), voter must be proactively offered an ***affidavit*** ballot;

- If there is a problem with the ballot scanner (hardware or software malfunction or jam), voter must be given an ***emergency*** ballot.

A voter's use of an affidavit ballot is typically an indicator of some earlier issue

A)   Inadequate Notice of Polling Place Changes

Based on NYDLC Election Day reporting, there is an unacceptable frequency of voters negatively impacted by polling place changes or polling place confusion. The fact is these voters are *receiving* insufficient prior notice of the change, even if the Board is *sending* notice. This may affect frequent voters who "have been voting there for years", or less frequent voters. The scale of polling-place changes—affecting several hundreds or thousands of voters in each case, warrants prioritization, since each may give rise to a large amount of "lost votes".

The modern volume of junk mail and marketing material we receive, some of which is intentionally designed to look official, as well as the litany of (mis)information on the internet is a modern challenge. The Board needs to be doing more to raise awareness among the public about polling place changes.

The Board of Elections, civic groups, NYCvotes and others should design digital PSAs and materials that inform voters that polling places change from time to time, even if a voter voted recently. More must be done to encourage voters to confirm their registration and polling place ahead of every election. Where sites are moved due to "last minute" circumstances, additional notice strategies should be implemented commensurate with the scale of the change and the amount of confusion anticipated.

B) Voters Being Misdirected to Other Polling Places

NYDLC reports suggest that hundreds of NYC voters are "misdirected" each Election Day, leading to a multitude of affidavit ballots and/or lost votes. A voter whose address cannot be located in the poll book may be told that they vote at a different polling place. In many cases, it is initially unclear whether a poll worker is just mistaken, the voter's poll site has changed, or whether the site listed in the digital or paper site lookup resource is inaccurate. Regardless, confused and frustrated voters often wait in line before being sent to a second or third location, which may or may not actually be the correct location for that voter. Exasperated and out of time, too many voters fail to ballot or cast a void affidavit ballot.

As suggested above the Board should find new ways to engage voters ahead of Election Day to confirm their polling place. The Board should continue to integrate smartphone and tablet technology and welcome volunteer support, like our poll watchers, who can assist with basic registration/polling place lookup functions. Before redirecting voters, poll workers must be certain that 1) the voter is presently in the incorrect polling place; and, 2) the voter is being directed to the correct polling place for their address. There must be a system to confirm in real time that the voter's correct ED table is located at the site they are being directed to. In the longer term, an overhaul of our election system is needed so that it no longer limits participation to a single day, and on that day, to a single physical location.

C) Voter Roll Accuracy and Purges

It is a matter of public record that the City Board of Elections has recently conceded fault and entered into a settlement regarding the wrongful process used to "clean up" the voter rolls ahead of the 2016 Elections. Putting aside the methods and motives behind that practice, 2017 reporting indicates a frequency of incidents, wherein far too many eligible voters are reporting that their name has been omitted from the Election Day poll book.

Many voters claimed to have voted in 2016 or to have registered ahead of the 2017 deadline. Certainly, some may have moved in the interim, and some paper just gets lost in the mail. However, voter-, post office-, or assisting-agency mistake can only explain so much. In one noteworthy case in Queens, all of the last names beginning with the letter "O" were omitted from a paper poll book. The problem was reported by a voter at 8:25 AM and was resolved when replacement poll books arrived hours later. This incident was unusual in its concentrated scale, but the recurring issue of voter file or registration book omissions, typos, printing errors, and missing paper or records is a major contributing factor to the volume of registration-related incidents that arise each Election Day.

Scanner Breakdowns

NYDLC consistently observes poll sites with scanner jams and malfunctions. In some cases, the Ballot Marking Device equipment has not been well maintained. Not surprisingly, many of these incidents are reported during setup and the opening of polls as they are identified. In some cases, it appears that inspectors still lack a working familiarity with the machines, though more basic

errors now occur with less frequency than in the past. In other cases, the proper tools (such as codes and keys) are reportedly missing or misplaced. Scanners that fail later in the day are often due to jams. During peak hours, this can take significant time to resolve.

The impact of a given scanner breakdown on election administration is determined by resource allocation, contingencies and preparedness among BOE technicians, and training of the on-site inspectors. Scanner breakdowns that are not quickly remedied can lead to cascading problems: Lines develop as staff identifies and troubleshoots a malfunction; staff may be reluctant to use other scanners in the poll site; In some cases, staff takes the (erroneous) position that they are not permitted to switch to emergency procedures unless all machines have gone down; Sometimes, voters are less cooperative if they hear that their ballot will be "stored" instead of scanned, leading to abandoned ballots. In the past, affidavit ballots have been (erroneously) distributed or voters at overwhelmed polling places have been told to "come back later".

To help remedy these issues, pre-Election Day scanner testing should be reviewed so there are fewer surprises at 5:30 AM. The existing DS200 troubleshooting materials should be reviewed for usability by poll workers. One inspector assigned to each site should receive enhanced training and be designated to address the majority of scanner issues. The Board should continue to optimize the pool of technicians. Finally, the Board should improve the rigor of the final pre-election inspection checklist for preparation of scanners, seals verification, and accessories.

Disability Access

NYDLC reports several 2017 disability access incidents. Doors intended to be accessible may be inadvertently locked, blocked, poorly marked, or difficult to get to or through. In a few cases, it appears that BMD machines and accessories need to be better maintained.

As in so many areas of public life, when designing layouts and processes for our elections we must be extremely cognizant of the particular needs of persons with disabilities and the effects that our policy decisions have on these voters. In some cases, the BOE moves polling places to better comply with the ADA. These decisions may improve access for some while reducing access for others. To maximize access, NYDLC recommends the following:

- The evaluation process for poll site fitness and accessibility must include increased emphasis on real-time conditions and facility security, maintenance, equipment, and janitorial practices to reduce unanticipated hindrances. Too often, a location that may seem appropriate on paper may be far less accessible in practice than anticipated.

- The BOE should work closely with disability advocates and advocates for the elderly to better inform their constituents that they may have the option to vote absentee.

- Policymakers should reform the law and state Constitution to provide all eligible voters with the option to vote by mail. This can drastically reduce the volume of voters in need of the most assistance, along with reducing overall in-person volume while increasing capacity. Voting by mail will produce shorter in-person lines. Those least able to wait in lines will be able to avoid them entirely.

Bipartisan Contingencies for Grappling with New Technology

As the Board of Elections has implemented tablets to facilitate Election Day tasks, NYDLC 2017 reporting reveals a host of novel but resolvable administrative issues. For example, poll workers would benefit from having more guidance on how to deal in a consistent, transparent, and bipartisan manner when the WiFi does not work in the polling place itself, but may work nearby. Doing so would set a baseline for appropriate troubleshooting of routine issues and, even if every circumstance could not be provided for, could enunciate a set of values and considerations that would avoid the need for ad hoc solutions.

Improving Poll Worker Recruitment and Quality

Revitalizing the poll worker recruitment process would enable the Board of Election to select from a larger and more diverse pool of applicants, improving poll worker quality and attendance.

- **Attorneys as Poll Workers:** In 2013 the BOE implemented a program to recruit attorneys as poll workers. Participants proved to be excellent poll workers and we recommend that this program be expanded and continued.

- **College and Law Students as Poll Workers:** The Board may explore partnering with CUNY and other colleges, including law schools to establish credit programs for students serving as poll workers. Since *pro bono* hours are now required for New York Bar admission, the BOE should consider ways that Election-related voluntarism can qualify.

- **High School Students as Poll Workers:** Current law allows 16- and 17-year-olds to serve as poll workers. Tapping into this population by working with the Department of Education to develop responsible programming would help foster a culture of youth civic engagement. Students approaching voting age would experience the exercise of civil rights up close. Such a program would help forge community bonds and normalize a sense of shared civic responsibility for the successful administration of our democratic process.

- **Half-Day Shifts:** NYDLC supports the implementation of half-day poll worker shifts that are already permitted by law, because a shift of 17 hours is a major barrier to participation among potential applicants. Moreover, in so many "public trust" contexts, our society has determined that lengthy shifts are undesirable because they lead to fatigue-related mistakes. Working so many hours lead to reduced attention to detail, patience, and overall quality, which is why they are prohibited in public health and safety occupations. Further, we know that with such important civil rights and outcomes at stake, hours of tension and stress can build up among a small group of people leading to hostility, which undermines professionalism, accountability, timely issue-resolution, and team morale.

Comprehensive Modernization and Voter Access Reforms

Many of the cascading problems noted above are exacerbated by squeezing our election into one day for millions of people to vote. By doing so, we continue to invite small issues to have magnified negative impact on the process. Pulling together the aforementioned issues, along with others that have been raised in past years, there is no getting around the urgent need for New

York to comprehensively overhaul our voter registration and election processes. The path forward on improving voter access should include the following proposals:

- To adequately protect fundamental rights, lawmakers must provide reasonable opportunities for voters to access and cast a ballot. By arbitrarily and prematurely cutting off registration 25 days—over three weeks—in advance of Election Day, New York rigidly "freezes" the electorate before many busy and otherwise eligible New Yorkers have an opportunity to get involved. These potential voters are boxed out of participating in our democracy just when they may be most interested in tuning in. New Yorkers who move counties must manually re-register, instead of having their registration transferred by the respective local Boards. Narrow opportunities to ballot at a single location on our single weekday Election Day result in thousands of lost votes.

- The rigid registration rules make it impossible to submit basic clerical changes discovered during the final weeks before an election, like updating addresses or names. To compound this, our registration system is still largely paper-based, so typos and transcription errors cannot be cured. In the aggregate, these rules exacerbate already long lines on Election Day and result in an increased reliance on affidavit ballots.

- There are many steps we can take, like enacting online and automatic voter registration, registration portability, youth pre-registration, and moving away from paper-based registration. For balloting, we should offer all voters the option to vote by mail, and must provide a reasonable election period that includes weekends, so voters have a multi-day window in which to vote. Election Day should be reframed as the last opportunity to vote, and not the first and only day. Early voting should be welcome by every Board because it alleviates systemic pressure while providing voters with convenient options. This would improve nearly every issue discussed above.

- We should ultimately enact one-stop voting (same-day registration and voting), but in the interim, adopting a "Golden Week" model—where the end of the registration period overlaps with early voting—would be a major improvement. In sum, to modernize our laws and adequately protect fundamental civic rights, New York needs to comprehensively overhaul its voter registration and election administration system.

Conclusion

Because fair and credible elections and positive civic engagement are bedrocks of our democracy, we want to thank the City Council for taking a proactive posture toward improving election administration in our city. We urgently need Albany to do the same. NYDLC offers our expertise and assistance to the City Council and Board of Elections to improve our elections.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1779 Res. No. _____

☐ in favor ☐ in opposition

Date: 12/13/17

(PLEASE PRINT)

Name: Kenneth Elie

Address: 1697 Broadway

I represent: MOME

Address: _____

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Name: Anne del Castillo

Address: 1697 Bwy

I represent: MOME

Address: _____

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Date: 12-13-2017

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Name: DOUGLAS KELLNER

Address: dak@khgelaw.com

I represent: New York State Board of Elections

Address: _____

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Name: Amy Loprest

Address: 100 Church St

I represent: Campaign Finance Board

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Name: MICHAEL J. RYAN

Address: Executive Director

I represent: NYC Bd of Elections

Address: _____

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Date: 12/13/17

(PLEASE PRINT)

Name: Dawn Sandow

Address: 42 Broadway NY NY

I represent: NYC Bd of Elections

Address: 42 Broadway NY NY

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