



**NEW YORK CITY COUNCIL
COMMITTEE ON GOVERNMENTAL OPERATIONS AND
COMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

**TESTIMONY OF MARK G. PETERS
COMMISSIONER, NEW YORK CITY DEPARTMENT OF INVESTIGATION**

**CONCERNING DOI'S DECEMBER 2013 REPORT ON THE
NEW YORK CITY BOARD OF ELECTIONS**

FEBRUARY 28, 2014

Good afternoon Chair Gentile, Chair Kallos, and members of the Committee on Governmental Operations and Committee on Oversight and Investigations. I am Mark Peters, Commissioner for the New York City Department of Investigation. Thank you for the opportunity to testify here today regarding the Department's December 2013 Report about serious problems within the New York City Board of Elections (the "Board of Elections" or "Board"). Joining me is Andrew Brunsten, Inspector General for our Board of Elections Inspector General Unit.

Our investigation of the Board of Elections uncovered many disturbing and illegal activities that require swift action.

We found gross nepotism in hiring, promoting and supervising family members, substantiating four cases of nepotism in violation of the Conflicts of Interest Law, including a Board of Elections Commissioner who admitted hiring his wife to obtain health benefits he was not entitled to receive on his own. Board of Elections managers and employees reported that most jobs are not publicly posted, but are filled based simply upon the recommendations of the county political committees. Such a process has no place in City government.

We documented reports by Board of Elections employees who believed that staff are pressured to engage in political activities such as petitioning for a candidate or paying to attend political fundraisers as a condition of keeping their jobs.

During the 2013 elections, our investigators went undercover as poll workers and ineligible voters to observe Board of Elections operations firsthand. What they found was troubling: deficient voter rolls and poorly trained poll workers who improperly instructed voters to "vote down the line" for a single party and ignored voter's privacy rights by looking at votes cast. These problems undermine the voting process and confidence in our election system.

Further, the investigation revealed the Board of Elections' use of inadequate, outdated procedures that increase cost and decrease efficiency. This included Board employees, days before the 2013 Mayoral election, manually updating voter registration cards that are already available for updating on a computer.

The illegalities, misconduct, and antiquated operations detailed in the Report are deeply corrosive and must end.

These significant problems can be overcome if the Board of Elections is open to change. Despite our attempts to work with the Board of Elections at the most senior level, we have met more resistance than reform. Indeed, we have made more than 40 recommendations for strengthening operations at the Board. Just last week I sent a letter to the Board of Elections calling for a corrective action plan by February 25, a copy of which I have provided with my testimony. I still await a response.

Much is at stake here. Elections are the core of a robust democracy. The integrity of the process relies on the Board of Elections' good governance. New Yorkers are counting on the Board to get it right.

I am happy to take your questions.



The City of New York
Department of Investigation

80 Maiden Lane
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212-825-5900

February 19, 2014

By Electronic Mail and United States Mail

Michael J. Ryan
Executive Director
Board of Elections in the City of New York
32-42 Broadway, 7th Floor
New York, New York 10004

Re: Implementation of the Recommendations Made in DOI's December 30, 2013 Report

Dear Mr. Ryan:

I write concerning the recommendations made by this office in our December 30, 2013 public report ("Report") regarding the New York City Board of Elections (the "BOE"). As you know, the Report contained findings from our investigation of the employment practices, operations, and election administration of the BOE. Based on the findings from this investigation, we made more than 40 recommendations for changes to policies and procedures at the BOE. See Report at 46-55 (discussing those recommendations). We understand that BOE Commissioners and members of BOE Executive Management have stated that the BOE has addressed or is in the process of addressing the issues identified in the Report.

When we identify operational issues at an agency and make recommendations to remedy those issues, we expect the agency to inform us concerning the steps that the agency has taken or plans to take to address the issues and to implement the recommendations. Moreover, given that both we and the BOE are in agreement about the need for various operational corrections at the BOE, BOE should provide us in writing, broken down by individual recommendations, a description of the actions that the BOE already has taken in this matter and actions it plans to take to correct the issues identified in the Report and to implement DOI's recommendations. With respect to actions not yet taken, BOE should provide in writing, again broken down by recommendation, a timeline for addressing outstanding issues and recommendations. Please provide this to us by February 25, 2014.

If you have any questions, please do not hesitate to contact Andrew Brunsden, Inspector General for the Board of Elections Inspector General Unit, directly at 212-825-2870.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark G. Peters". The signature is fluid and cursive, with the first name "Mark" being more prominent.

Mark G. Peters
Commissioner



TESTIMONY OF SUSAN LERNER
EXECUTIVE DIRECTOR, COMMON CAUSE/NY
BEFORE THE COMMITTEE ON GOVERNMENTAL OPERATIONS & COMMITTEE ON OVERSIGHT AND
INVESTIGATIONS
OF THE NEW YORK CITY COUNCIL
February 28, 2014

Thanks for the opportunity to address you today. I am Susan Lerner, Executive Director of Common Cause/New York. First, I want to thank Chairs Kallos and Gentile for scheduling today's hearing. There is much of importance in the Department of Investigations' Report on the Board of Elections that bears discussion and Common Cause/NY is very pleased to see the Report and its recommendations getting the public scrutiny that we believe it deserves.

Common Cause is a national nonpartisan, nonprofit public advocacy organization founded in New York in 1970 by John Gardner as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest. With nearly 400,000 members and supporters and 36 state organizations, Common Cause is committed to honest, open and accountable government and to encourage citizen participation in democracy. Since its inception, the New York chapter has always been and continues to be one of the most active state organizations in the country, representing tens of thousands of New Yorkers throughout the state.

Consistent with our overall mission we have consistently advocated for election reform, working to improve accessibility, accuracy, transparency, and verifiability in our democratic process at the city, state and national level. For a number of years, our research arm, Common Cause Education Fund, has conducted comprehensive studies of how we conduct elections, which studies look at voting issues across the country and also examine different reforms as actually implemented in various states as well as in other countries. Here in New York, Common Cause is a co-facilitator, along with NYPIRG, of the state coalition of groups that monitor election activities, now called the New York State Voters' Coalition. We also have partnered with NYPIRG for more than 20 years in running a voter telephone helpline in New York City during elections. In 2013, the helpline, staffed by volunteers, operated during the primary and general elections.

Common Cause nationally is part of the Election Protection effort, fielding volunteer poll monitors in numerous states. Here in New York City, Common Cause/NY has placed volunteer poll monitors at polling places in the boroughs of Manhattan, Brooklyn and Queens in the last two election cycles. We also receive reports of problems at the polling places through our crowd-sourcing mobile website, PollWatchUSA. We also monitor the hearings and activities of the NYC Board of Elections along with our colleagues at the League of Women Voters and are particularly appreciative of the reporting provided by Katherine Doran of the League. In short, we are familiar with the Board of Elections and its operations.

As a consequence, we welcomed the Department of Investigations' investigation into the Board and its operations. In major part, we find that the report jibes with our observations and the recommendations we and other good government groups in the New York Voters Coalition have made and continue to make, particularly pertaining to voter privacy. We did, however, find some aspects surprising, particularly the information that teams of workers are assigned to alphabetize the redundant buff cards in the weeks before an election. We hope that the attention garnered by the report and this hearing will put an end to such featherbedding at the Board. We are also desirous of seeing the employee time reporting system of the Board upgraded and the hiring practices brought up to the requisite Citywide standards that require relevant experience and expertise and prohibit nepotism. I do want to note that recent actions by the Board of Elections may well alleviate the problem of miniscule print on our ballots. In that regard, we hope that the Board will avail itself of the services of useability and design experts in laying out its ballots in the future.



**New York City Department of Investigation
Report on the New York City Board of Elections'
Employment Practices, Operations, and Election Administration**

**Rose Gill Hearn
Commissioner**

December 2013

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Executive Summary

DOI's Board of Elections IG Unit

In April 2013, the New York City Department of Investigation ("DOI") issued a report documenting that the New York City Board of Elections ("BOE") wasted at least \$2.4 million in City funds by failing to consolidate election districts during the November 2011 off-year elections. Following the issuance of that report, the Commissioner of DOI requested and obtained funding from Mayor Bloomberg to create a Board of Elections Inspector General Unit ("BOE IG Unit") within DOI to have additional dedicated resources for investigation of fraud, corruption, waste, mismanagement, and conflicts of interest relating to BOE.

Between June and November 2013, DOI hired staff for the BOE IG Unit, which is now fully constituted. During that same time period, DOI began a set of investigative initiatives using investigative personnel from multiple DOI units and the members of the BOE IG Unit. These comprehensive initiatives included investigating, among other areas, BOE's employment practices, the role of the county political committees in hiring and promotions, nepotism, employee participation in political activities, election administration issues, including the presence of ineligible voters on BOE's voter rolls, poll worker training and performance, ballot design, and how BOE tallies election results.

In the past six months, DOI has conducted more than 40 interviews and meetings with BOE Commissioners, Executive Office managers, Chief and Deputy Chief Clerks of the borough offices ("Borough Managers"), current and former BOE employees, poll workers, and members of good government groups, visited each borough office, and reviewed various BOE records. In addition, approximately 60 DOI investigators conducted Citywide operations during the 2013 primary, runoff, and general elections, visiting 437 of the approximately 1200 poll sites in New York City.

The 60 investigators, among other investigative activities, conducted quality assurance surveys of voters at poll sites throughout the five Boroughs, logging complaints from 596 of 1,438 voters relating to subjects such as ballot readability, poll workers, and poll site locations. DOI's operations also revealed that there are names of ineligible voters (e.g. felons and people no longer City residents), and deceased voters, on the BOE voter rolls, some for periods of up to four years. Accordingly, DOI investigators posing as a number of those ineligible or deceased individuals, were permitted to obtain, mark, and submit ballots in the scanners or in the lever voting booths in 61 cases, with no challenge or question by BOE poll workers. Investigators were turned away in 2 other cases. No votes were cast for any actual candidate or on any proposal during the course of the DOI operation.

Based on the findings from this investigation, DOI makes more than 40 recommendations for changes to policies and procedures at BOE that can be addressed without a change in the law. DOI's findings also support a recommendation for change similar to those made publicly and by good government groups, which could only be

accomplished with amendments to the law: namely the elimination of the requirement for the bipartisan composition of boards of elections, which requires equal representation of the two major political parties throughout BOE, replaced by professional boards designed to conduct election administration in a non-partisan manner.¹

Problematic Employment Practices

The New York State Constitution generally and the Election Law more specifically require equal representation of the two major political parties among the Commissioners and, as to the Election Law, the staff of BOE. The BOE consists of ten Commissioners, one Republican and one Democrat, for each Borough. The BOE Commissioners appoint BOE's Executive Director and Deputy Executive Director, Borough Managers, and permanent and temporary employees. These positions also are divided evenly between the two major political parties. While the Election Law establishes an express role for county political committees to recommend Commissioners to the City Council, it does not establish any direct role for those committees in hiring BOE staff. BOE Commissioners are responsible for hiring.

- **Hiring Practices.** DOI interviewed Executive Office staff, several Borough Managers, and BOE employees who described a hiring system where the county political committees do have a significant role in the hiring of individuals for employment throughout BOE, notwithstanding the absence of any statutory provision for the committees' involvement in hiring BOE staff. The degree to which BOE is controlled by the county committees was confirmed by a report to DOI that one of the Commissioners, when discussing hiring decisions, said that he had to "have a talk with my Garcias," meaning the county committee. Vacant positions at BOE generally are not disseminated through public postings. Instead, according to numerous BOE managers and employees, the county committees typically recommend people active with the committees for employment at BOE. While several Borough Managers reported requesting resumes and conducting interviews of candidates the committees recommend for employment, the various BOE managers and employees described processes that varied from borough to borough, indicating that BOE has no standard recruitment and screening process. Further, BOE does not conduct background investigations of prospective employees.
- **Nepotism.** Nepotism is prohibited under New York City's Conflicts of Interest Law. The BOE IG Unit investigated several complaints about nepotism in the hiring, promotion, and supervision of the family members of BOE personnel. DOI substantiated four cases of nepotism, including two cases involving BOE Commissioners, and will refer these matters to the Conflicts of Interest Board.
- **Political Activities.** The New York City Charter and Election Law prohibit making political activities a condition for public employment and place a number of restrictions on political activities by public servants and supervisors. Yet

¹ For example, see Daily News Editorial dated Apr. 2, 2013; and Citizens Union Report *New York Needs Election Reform Now: Industrial Age Patronage to Information Age Accountability*, dated May 2009.

current and former BOE employees told DOI that participation in political activities is sometimes necessary for an employee to retain employment at BOE or, in the case of temporary workers, to be re-hired for future election cycles. An experienced BOE manager confirmed that BOE employees are expected to participate in political activities.

- **Time and Attendance.** DOI has received complaints about time abuse at BOE. DOI learned that BOE still uses punch-cards and paper leave slips rather than an automated system to track employees' time and leave. DOI determined that not all punch-card areas are equipped with video surveillance cameras. These circumstances lead to time/leave abuse vulnerabilities and audit challenges.

Election Administration and Efficiency Concerns

- **Voter Roll Deficiencies.** After receiving an allegation from a former BOE employee that ineligible voters remained on the voter rolls, DOI checked multiple databases at random to generate a list of approximately 175 individuals who had either died, become a convicted felon, or had moved outside the City. Using that list, DOI ascertained that they had each at one time been registered voters in the City. During DOI's Citywide 2013 Election Day investigative operations, DOI sought to determine whether any of them remained in BOE's registration books and to test whether investigators using the names of those ineligible individuals would be permitted to vote. DOI found that 63 of the ineligible individuals (or 36%) were still listed as eligible voters in the registration books at poll sites. The majority of those 63 ineligible individuals remained on the rolls nearly two years or longer since a death, felony conviction, or move outside of the City.

DOI investigators posed as the 63 ineligible individuals still on the voter rolls and were permitted to obtain, mark, and submit ballots in the scanners or the lever booths in 61 instances (or approximately 97%).² In five instances, DOI investigators in their twenties and thirties posed as individuals whose ages, as recorded in the registration books, ranged from 82 to 94, and despite the obvious disparity, the investigators were given ballots or access to lever booths without question by the BOE poll workers.

BOE personnel explained that ineligible individuals might remain on the rolls pending receipt and verification of various notifications that BOE receives from the New York State Board of Elections ("State BOE") and other sources, including, for example, verbal reports from voters of changes in residence or from family members about the death of a voter.

² In relation to the approximately 2.1 million votes cast in the three elections combined, the 61 votes cast by investigators in the three elections is not statistically significant, although it indicates vulnerability in the system. No votes were cast for any actual candidate or on any proposal, instead, investigators either wrote in the fictional candidate, "John Test," or left the poll site after gaining access to the ballot. See A recent article about write-in ballots that commented on why votes had been cast for "John Test." See New York Magazine article by Dan Amira dated Dec. 4, 2013.

- **Poll Worker Training and Performance.** Various concerns were raised about the hiring of poll workers, including how they were selected and trained. Thus, last summer 15 investigators applied for the job of poll worker with the BOE.³ Six of the 15 were not hired for reasons that are unclear and will now be analyzed following the publication of this Report. Nine of the 15 investigators were hired, attended the BOE training, and worked as poll workers during the elections.⁴ During poll worker training, 4 of the 9 investigators observed instances of trainees cheating on the test provided to prospective poll workers, and trainers effectively providing answers to the trainees. While working on Election Day, the investigators made and documented observations about poll site operations including:
 - **Lack of Voter Privacy.** DOI found more than a dozen violations of voter privacy rules by poll workers during the 2013 general election, including poll inspectors at scanners taking ballots from voters, looking at the votes they cast, and, in some instances, commenting on those votes. Additionally, during the primary election, DOI observed instances of people entering the voting booth with voters, including a woman at a Manhattan poll site who entered the voting booth with three successive voters.
 - **Incorrect Voting Instructions by Poll Workers.** DOI found more than 15 instances during the 2013 general election where poll workers instructed voters to “vote down the line” on the ballot for candidates on a particular party line, including at a Manhattan poll site where the poll site coordinator directed workers to give this instruction to voters.
- **Ballot Design: Issues Not Resolved in Advance of Elections.**
 - **Small Font-Size.** The ballot for the 2013 general election was printed in 6-point font, a small size font that was difficult to read. Indeed, 145 of the 698 voters surveyed by DOI during that election complained that the ballot text was too small or difficult to read. More than a year earlier, BOE was aware of the font size issue and considered various options for addressing it but did not resolve it.
 - **Voters Unaware of Ballot Proposals.** A number of voters also complained that they were unaware of the proposals on the back of the ballot and therefore did not vote on the proposals. BOE was asked by good government groups well in advance of the 2013 general election to include instructions on the front of the ballot directing voters to turn over the ballot for such proposals. However, the front of the ballot did not include such instructions.

³ The 15 investigators indicated accurately that they were City employees, but did not reference DOI.

⁴ There were over thirty thousand poll workers hired for the general election.

- **Voter Cards.** BOE poll workers fill out and provide voters with Voter Cards containing the election date, voter's name, and ballot stub number, despite the State BOE's repeated requests that BOE discontinue their use because they create delays at the polls and unnecessary expense. BOE is the *only* remaining board in New York State that uses the cards. Before the 2013 general election, BOE management decided not to use Voter Cards, but the BOE Commissioners reversed this decision, citing a desire to limit the number of changes in poll site operations. BOE printed nearly 3 million Voter Cards for the election at an approximate cost of \$40,000.⁵
- **Delays in Repairing Broken Voting Machines.** DOI confirmed a number of instances where broken voting machines during the 2013 primary and general elections created voting delays at poll sites, including one poll site in Queens that had no operational lever machine for seven hours and 21 poll sites in Brooklyn with no operable scanners for five hours.
- **Failure to Secure and Count Affidavit Ballots in Manhattan BOE Office.** After the September 10, 2013 primary election, the Manhattan BOE office continued to have issues following BOE procedures for counting and tracking paper affidavit ballots. Some issues were recurring in the Manhattan BOE office, according to witnesses, who said that, previously, the BOE twice had to recertify the results for the 2012 presidential election.
- **Buff Cards.** Under the Election Law, BOE is not required as a general practice to retain "buff cards," which are hard-copy voter registration applications, beyond two years, because they are maintained electronically in its computerized registration database. However, in two borough offices, DOI observed large groups of employees engaged in the unnecessary manual updating and filing of older hard-copy buff cards during the week before the 2013 general election when there were many other priorities. These cards also occupy an extensive amount of space in the borough offices.
- **Counting Write-In Votes.** Voters who want to vote for a candidate who is not on the ballot, may write that person's name on the paper ballot and insert it into the scanner. BOE has software, which has been available since 2012, capable of identifying the relatively small number of ballots containing write-in votes, but BOE is not using it. Instead, for the 2013 general election, BOE had its employees in every borough conduct a full-scale visual review of the scanned images of *all* ballots looking for and tallying write-in votes. There were approximately 1,800 write-in votes in the November 5, 2013 general election out of approximately 1.1 million ballots cast.
- **Runoff Elections.** The estimated cost of the October 2013 runoff election for Public Advocate was \$13 million. Proposals to eliminate a separate runoff

⁵ BOE also ordered paper ballots for the scanner machines for the 2013 general election, based on a 90% turnout figure. Voter turnout was 24%. A BOE manager told DOI that the printing costs charged by the BOE vendor, ES&S, for ballots for every 10% of the electorate ranges from \$150,000 to \$200,000. Thus, hundreds of thousands of dollars of paper ballots that were printed were unused.

election, including one implementing instant runoff voting ("IRV") during primaries, have been introduced before the City Council as a cost savings measure. At a recent City Council Committee hearing, BOE took "no position" with respect to these proposals or IRV.

Recommendations

DOI recommends a number of measures to address the issues identified in the investigation, which are detailed in the body of the report. The recommendations include measures to standardize BOE's hiring process, curtail the influence of county political committees in employment matters, implement a specific anti-nepotism policy, professionalize poll worker training, protect voter privacy, resolve font size and ballot design issues, reduce the presence of ineligible voters on the rolls, and eliminate outdated and wasteful processes, such as the use of Voter Cards, the indefinite retention and updating of "buff cards," and the assignment of staff, rather than the use of technology, to identify write-in votes.

The New York City Board of Elections' Employment Practices, Operations, and Election Administration

I. Introduction and Background

The New York City Board of Elections (hereinafter the "BOE" or "Board") administers elections in the City of New York.⁶ The BOE was created pursuant to the Election Law, which mandates "a board of elections in each county of the state and in the city of New York." *Id.* at § 3-200(1). However, the BOE is a local rather than a State agency. *See* 1989 N.Y. Op. (Inf.) Att'y Gen. 117. The BOE is funded by New York City (*see* Election Law § 4-136),⁷ and its employees are City employees. The New York City Department of Investigation has jurisdiction to investigate the BOE's activities because the BOE receives City funds and its employees are City employees. *See* New York City Charter (hereinafter "City Charter") § 803(d).

In April 2013, DOI issued a report documenting that the BOE had overspent more than \$2.4 million of City funds as a result of its decision not to consolidate election districts in the November 2011 off-year election.⁸ Following the issuance of that report, the Commissioner of DOI requested funding to create a Board of Elections Inspector General Unit ("BOE IG Unit") within DOI to have additional dedicated resources for investigation of fraud, corruption, waste, mismanagement, and conflicts of interest relating to the BOE.

Between June and November 2013, DOI hired staff for the BOE IG Unit, which is now fully constituted, and began a first set of investigative initiatives using investigative personnel from multiple DOI units and the members of the BOE IG Unit. DOI

⁶ The principal responsibilities of the BOE are to process, maintain, and update voter registration records; design and order Election Day ballots; conduct elections which involves the recruitment and training of poll workers, the maintenance, repair, and delivery of election voting equipment, and operating the poll sites on Election Day; and count the votes and certify the election results. *See* Election Law § 3-100 *et seq.* *See also* BOE, About NYC Board of Elections, <http://vote.nyc.ny.us/html/about/about.shtml>. The Appendix to this Report provides additional background information on the responsibilities of the BOE.

⁷ The Adopted Budget for the BOE is passed before the start of New York City's fiscal year. The BOE's Adopted Budget for current Fiscal Year ("FY") 2014 was \$135 million. *See* Adopted Budget, Fiscal Year 2014, at 12E (2013). However, the BOE's Final Budget by the end of a fiscal year is usually higher than its Adopted Budget. In FY 2013, for example, the BOE's Adopted Budget was \$84 million, but its Final Budget was \$119 million. *See id.* According to a Finance Division briefing paper, the higher Final Budget is the result of "budget modifications" made during the year as "[the Office of Management and Budget] has funded the BOE below its projections over the past few years" and "funding for any deficits are added to the Board's budget by the fiscal year's end." Briefing Paper of the Finance Division, Hearing on the Mayor's Fiscal 2013 Preliminary Budget 2 (Mar. 29, 2012).

⁸ DOI, Report on the Board of Elections' Staffing Levels and Costs for the November 8, 2011 "Off-Year" General Election (Apr. 1, 2013), http://www.nyc.gov/html/doi/downloads/pdf/2013/apr13/pr12boerpt_40113.pdf.

investigated, among other areas, the BOE's employment practices, including the role of the county political committees in hiring and promotions, nepotism, and employees' participation in political activities, and election administration issues, including the presence of ineligible voters on the BOE's voter rolls, poll worker training and performance, ballot design, and how the BOE tallies election results.

As part of the BOE IG Unit's initial investigatory work, DOI conducted more than 40 interviews and meetings relating to the BOE, including with BOE Executive Director Michael Ryan and Deputy Executive Director Dawn Sandow; two BOE Commissioners; the managers of several departments in the BOE's Executive Office, including Electronic Voting Systems Department head John Naudus, Personnel Director Dorothy Delayo, Voter Registration Department head Beth Fossella, Management Information Systems head Steve Ferguson, Ballot Management Department head Thomas Sattie, Finance Officer John Ward, and Facilities Manager Nicholas Squicciarini; Deputy General Counsel Raphael Savino; Borough Managers including Chief Clerk of the Manhattan BOE office Gregory Lehman, Deputy Chief Clerk of the Manhattan BOE office Timothy Gay, Chief Clerk of the Brooklyn BOE office Diane Rudiano, Chief Clerk of the Queens BOE office Barbara Connachio, Deputy Chief Clerk of the Queens BOE office Gisela Mengler, and Deputy Chief Clerk of the Bronx BOE office Anthony Ribustello; several current and former BOE employees; poll site coordinators and poll workers; and members of good government groups.⁹ DOI visited each of the five BOE Borough offices and attended nearly all of the public BOE Commissioners' meetings held at the Executive Office since the creation of the BOE IG Unit in April 2013. Further, DOI reviewed various BOE records.¹⁰

DOI also conducted Citywide Election Day investigative operations during the September 10, 2013 primary election, the October 1, 2013 runoff election, and the November 5, 2013 general election. Approximately 60 DOI investigators participated in the investigative operations. In total, DOI investigators visited 437 of the approximately 1200 poll sites in New York City during the 2013 election cycle, where they documented

⁹ Various civic and good government groups have spoken with DOI since the creation of the BOE IG Unit, including Citizens Union, Common Cause New York, and the League of Women Voters of the City of New York. These groups, and other organizations, have extensively researched and written on election issues relating to the BOE. *See, e.g.*, Jennifer Clark, Brennan Center for Justice, Election 2013: Voting Issues Continue to Haunt New York (Nov. 8, 2013), <http://www.brennancenter.org/blog/election-2013-poll-problems-continue-haunt-new-york>; Citizens Union, New York Needs Election Reform Now: Industrial Age Patronage to Information Age Accountability (May 2009); Common Cause New York, Common Sense Steps to Better Elections in New York City: Fifteen Ideas the City and City Board of Elections Can Institute Without State Action, <http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4848819>; League of Women Voters of New York State, 2010 Election Survey Report (Dec. 13, 2010).

¹⁰ The records reviewed by DOI include the BOE Personnel Guidelines; Section 3 (Voter Registration) of the Policies and Procedures of the BOE; AVID3 Registration Procedures; Section 4 (Canvass Procedures) of the Policies and Procedures of the BOE; the Poll Worker's Manual (2012 version and Lever Machine Edition); the BOE 2010 Procedures for New Poll Site Voting System; the BOE Re-Canvass of Mechanical Voting Machines Procedures; the 2013 Lever Machine Procedures; Minutes from several meetings of the BOE Commissioners; a January 11, 2013 memo and emails regarding the Manhattan BOE office's counting of paper affidavit ballots after the 2012 presidential election..

their observations and gathered information about election administration. As discussed further below, the investigators, among other activities, served as poll workers to observe poll site operations, went undercover as voters to test the New York City election system for voter roll deficiencies, and conducted quality assurance surveys of voters at poll sites throughout the five Boroughs, logging complaints from 596 of 1,438 voters relating to subjects such as ballot readability, poll workers, and poll site locations.

II. BOE Employment Practices

A. Hiring

1. The Bipartisan Structure of the BOE

The New York State Constitution generally and New York State Election Law more specifically require bipartisan boards of elections with equal representation of the two major political parties among the Commissioners. N.Y. Const. Art. II, § 8; Election Law §§ 3-200(2)-(3). The BOE consists of ten Commissioners with two Commissioners, one Republican and one Democrat, representing each of the five Boroughs. The Commissioners typically are recommended by the county committee of both political parties, and then are appointed by the City Council for a term of four years. *See* Election Law §§ 3-200(3), 3-202(1), 3-204(2, 4). The Board takes action upon a majority vote of the Commissioners. *See id.* § 3-212(2).

The Election Law also requires equal representation of the two major political parties among the BOE's management and staff. *See id.* § 3-300. The Commissioners appoint from different political parties an Executive Director and a Deputy Executive Director who are based in the BOE Executive Office and supervise the operations of the BOE. *Id.* § 3-300. On August 6, 2013, the BOE Commissioners voted to hire Michael Ryan as the Executive Director of the BOE, a position that had been vacant for three years since the removal of the previous Executive Director in 2010. *See* Minutes, Meeting of the Commissioners of Elections in the City of New York (hereinafter "Minutes, BOE Commissioners' Meeting"), at 2 (Aug. 6, 2013).¹¹ The Commissioners appoint a Chief Clerk and Deputy Chief Clerk from different political parties ("Borough Managers") for each of its five Borough offices. *See* Election Law § 3-300.

The Commissioners also appoint permanent and temporary employees – an equal representation of Republicans and Democrats – to staff the BOE's Executive Office and its Borough offices. *See id.* DOI reviewed an employee list indicating that the BOE had approximately 891 employees as of October 2013. The BOE has roughly 346 permanent employees. *See* Office of Mgmt. & Budget, City of New York, The City of New York

¹¹ Commissioners meet in public session every Tuesday at the Executive Office. Minutes for the Commissioners' public meetings are available on the BOE website, <http://vote.nyc.ny.us/html/about/minutes.shtml>.

Adopted Budget, Fiscal Year 2014, Expense Revenue Contract (hereinafter "Adopted Budget, Fiscal Year 2014"), at 12E (2013). The remaining employees are temporary.¹²

2. The Role of the County Political Committees and Lack of Standardized Hiring Practices

The Election Law provides the BOE Commissioners with the authority to hire employees. See Election Law § 3-300. While the Election Law establishes an express role for county political committees to recommend Commissioners to the City Council, it does not establish any direct role for those committees in hiring BOE staff. Nonetheless, DOI interviewed Executive Office and Borough office managers and employees who described a hiring system at the BOE where the county political committees have a significant role in the selection of BOE personnel, despite the absence of any statutory provision for the committees' involvement in hiring BOE staff. BOE managers and employees explained to DOI that vacant positions often are filled based upon the recommendations of the committees. To illustrate the point that Commissioners, who themselves typically are recommended for appointment by the county committees, often defer to such hiring recommendations, one BOE employee stated that a BOE Commissioner said of filling vacant positions at the BOE that he had to "have a talk with my Garcias," meaning seek approval from the county committee, according to the employee.

The Personnel Director, Borough Managers, and other employees stated that vacant permanent and temporary positions generally are not disseminated to the public through competitive job postings.¹³ Instead, BOE personnel told DOI that a large share of the people hired to work at the BOE have been active in the county committees or on political campaigns. With respect to temporary positions, the Republican and Democratic county organizations typically provide names to the BOE Borough offices of people to fill those positions. Five Borough Managers and employees stated that the committees generally recommend individuals who have gathered petition signatures, attended fundraisers, or engaged in other political work for the committees. Several Borough Managers also stated that permanent employees are typically hired from the pool of temporary employees, and that the county committees are consulted about the hiring of permanent employees.

DOI learned from interviews with managers and employees that unlike other local agencies in New York City, the BOE does not have a uniform screening process for hiring most of its employees, giving rise to a lack of transparency. City agencies generally post vacancies to the public with a job description and qualifications, request resumes and other application materials, conduct interviews of selected candidates, and

¹² BOE personnel explained to DOI that the number of temporary employees working at the BOE varies throughout the year and in different years based on the election cycle.

¹³ The one exception cited by the Personnel Director is that technical positions such as those requiring advanced computer skills have been the subject of public job postings.

complete forms summarizing the reasons for extending or declining an offer for a position. *See* Department of Citywide Administrative Services, Guide to Recruiting for City Agencies (2013); Department of Citywide Administrative Services, Personnel Rules and Regulations of the City of New York (2013). At the BOE, by contrast, in addition to the absence of public job postings, managers and employees described the lack of a standardized agency-wide screening process. The Personnel Director stated that the Executive Office requests resumes when it processes the hiring of an employee, but that she was not familiar with the screening practices of each of the Borough offices. While the DOI spoke with several Borough Managers who generally stated that they each personally requested resumes and conducted interviews of prospective employees, they indicated that screening practices could vary from Borough to Borough and, in fact, could vary as between the two different parties within each Borough office, indicating that the BOE has no standard screening process. Additionally, DOI spoke with employees who stated that the BOE does not uniformly interview candidates for temporary positions. One of those employees said that when the BOE conducts employment interviews, the interviews do not involve a meaningful evaluation of the individual's qualifications or ability to perform the job functions because hiring decisions are primarily based upon the recommendation of the county committees.¹⁴

DOI interviewed the Personnel Director who described the approval process for hiring an employee. While the Commissioners approve the number of temporary positions for each Borough office, the hiring of temporary employees to fill those positions is not presented for approval to the full Board. Rather, the Personnel Director stated that Borough Commissioners ultimately approve the hiring of temporary employees in their respective Boroughs. The Personnel Director stated that the elevation of a temporary employee to a permanent position also requires the approval only of the Borough Commissioners.¹⁵ A BOE Commissioner explained to DOI that the full Board approves hiring of permanent employees to work in the Executive Office. Upon approval, a new hire is referred to the BOE's Personnel Department to complete paperwork. A temporary employee completes, among other things, a one-page form that asks three questions, namely whether the individual is a citizen of the United States, is registered to vote, and has been convicted of a felony offense and if so, to provide the offense, date, and court of conviction. A permanent employee completes a 20-page City of New York "Comprehensive Personnel Document" ("CPD"), which asks questions regarding whether the individual has any convictions or pending charges, has any terminations or discipline in connection with past employment, and background information about education, past residential addresses, and military history. However, two Executive Office managers explained to DOI that BOE employees do not undergo a background check, and that the BOE does not conduct further inquiry as to the truth of the answers provided by prospective employees on these forms.¹⁶

¹⁴ A Commissioner and a BOE Executive Office manager informed DOI that the BOE is drafting a "Job Descriptions Manual" that will include a list of qualifications for positions at the BOE.

¹⁵ DOI spoke with several Borough Managers who stated that they are involved in discussions about hiring decisions with their respective Borough Commissioners and county committees.

¹⁶ DOI conducts background investigations of new City employees or those promoted to managerial positions. BOE employees are not currently subject to background investigations by DOI. When

B. Nepotism

Nepotism poses a conflict of interest and threatens to undermine the fairness of personnel decisions insofar as determinations about employment, promotions, assignments, or discipline are made, in however small a measure, based upon family connection rather than merit. Nepotism is therefore prohibited under New York City's Conflicts of Interest Law. *See* City Charter § 2604(b)(2)-(3).

The New York City Conflicts of Interest Law applies both to the BOE Commissioners and to BOE employees who are "public servants" under Chapter 68. *See* City Charter § 2601(02), (19). Moreover, the BOE recognizes in its Personnel Guidelines that Section 2604 of the City Charter applies to all BOE employees. *See* BOE Personnel Guidelines, at F-30. Section 2604(b)(2) of Chapter 68 prohibits a public servant from engaging in "any business, transaction or private employment, or hav[ing] any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her duties." City Charter § 2604(b)(2). Section 2604(b)(3) of Chapter 68 provides that "no public servant shall use or attempt to use his position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant." *Id.* § 2604(b)(3). A person "associated with the public servant" includes a spouse, domestic partner, child, parent, or sibling. *Id.* § 2601(5).

Under Section 2604(b)(2) and (b)(3), a public servant may not misuse his or her position to benefit a relative. This means, among other things, that a public servant cannot recommend a family member for appointment as a City employee or otherwise use his or her position to facilitate the hiring or promotion of a family member. *See* COIB Case No. 98-169 (2000) (City employee fined for recommending her husband for a position, requesting an interview for him, and attempting to obtain a promotion for him); COIB Case No. 2007-723 (2007) (DOE employee fined for giving his brother's name to a colleague in order for his brother to be interviewed for a vacancy); COIB Case No. 2011-860 (2012) (City employee fined for requesting that subordinates create a budget line for a position, staff his wife in that position, and ask his wife for her resume for that position). A public servant also should not supervise a family member or participate in discussions or decisions regarding the family member's work for the agency. COIB Case No. 2008-246 (2010) (City employee fined for directly supervising her daughter); COIB Case No. 2011-480 (2012) (manager fined for intervening with her relative's supervisor concerning supervisory and performance issues). The New York City Conflicts of Interest Board ("COIB") has advised that a public servant be recused from all matters that might benefit his relative. *See, e.g.,* COIB Op. 2004-3 (2004) ("[T]o avoid a violation of

employees at other agencies undergo a DOI background investigation, they complete a "Background Investigation Questionnaire" that not only seeks more detailed information about criminal, investigatory, and disciplinary history than is requested in the CPD, but also asks for information about business affiliations, financial history, conflicts of interest, employment of family members with the City, and political party positions.

Charter Section 2604(b)(3), a public servant must be able to effectively recuse himself of herself from any issues involving 'associated' persons."').¹⁷

DOI investigated several complaints regarding nepotism at the BOE. DOI interviewed current and former employees who said that relatives of BOE employees have been hired, promoted, or received preferential treatment in job assignments based on their family relationships. For example, a former employee stated that a supervisor obtained her position because her mother is a high-level employee at the BOE. Similarly, a current employee stated that a supervisor in another office was hired and promoted by the supervisor's mother who is a high-level BOE employee. In light of these statements, DOI conducted an initial review of family relationships among employees at the BOE. DOI generated a list in October 2013 of then-current BOE employees and reviewed the list for employees with the same surnames. DOI then selected a subset of those employees and reviewed various databases to determine how many of the employees with the same surnames were relatives. DOI identified at least 69 BOE employees who appear to have a relative working at the BOE.¹⁸ Additionally, DOI confirmed that at least two Commissioners have a relative working for the BOE.

DOI proceeded to interview two BOE Commissioners and two Borough Managers with family members working at the BOE to determine their roles in the hiring, promotion, or supervision of their relatives. As discussed below, DOI substantiated that the two Commissioners and two Borough Managers each engaged in nepotism with respect to the hiring, promotion, and/or supervision of their relatives. All of these matters will be referred to the COIB.

DOI interviewed one Borough Commissioner who stated that his wife used to work as a BOE temporary employee and that his sister-in-law currently works at the BOE. First, with respect to his wife's former BOE employment, the Commissioner stated that BOE Commissioners are not entitled to health benefits, and that hiring his wife as a temporary BOE employee was a way for he and his wife both to receive health benefits. The Commissioner also stated that the BOE's former Executive Director had told him that other Commissioners had family members working at the BOE. When concerns were raised about his wife's employment while he served as a Commissioner in connection with his reappointment to the Board, the Commissioner said that he then terminated his wife's employment. Second, with respect to his sister-in-law, the Commissioner stated that after his sister-in-law approached him seeking work, he spoke

¹⁷ The COIB also has determined that circumstances exist when a public servant "cannot effectively be recused" from matters involving a relative. COIB OP. 2004-3 (concluding that a community board member, who has the power to hire and fire staff and to allocate the budget, cannot be recused from matters involving relatives). Under those circumstances, a public servant "will inevitably take action that affects the relative's employment" in violation of the Conflicts of Interest Law. *Id.*

¹⁸ This number likely understates the number of employees with relatives working at the BOE insofar as DOI's review was limited to a subset of employees with the same surnames and did not cover employees who are relatives but have different last names. For example, DOI spoke with a BOE employee who stated that she had a daughter working as temporary employee for the BOE. The employee and her daughter had different last names.

with the county political committee and recommended that the committee consider her for a temporary position. The sister-in-law was hired to work in the office for the Borough served by the Commissioner. Within three months of her hiring as a temporary employee, the sister-in-law was given a permanent position. Four months later, she was promoted to a supervisor position. The Commissioner stated that the Borough Manager and other employees recommended his sister-in-law for the supervisor position, but he initially hired someone else for the position. After that employee did not perform well, however, the Commissioner stated that the Borough Manager and other employees again recommended the Commissioner's sister-in-law. The Commissioner stated that he discussed the recommendation of his sister-in-law for the supervisor position with the county committee, and that she was promoted to supervisor.

DOI interviewed another BOE Commissioner who confirmed that her sister is a permanent employee at the Executive Office. The Commissioner explained that when a position in the Executive Office becomes vacant, the position goes to a person who comes from the same Borough and belongs to the same political party as the individual who previously held the position. The Commissioner stated that she provides a resume for a candidate to the other BOE Commissioners when an Executive Office position assigned to her Borough and party is vacant. She also confirmed that she gave her sister's resume to the BOE Commissioners for a permanent position in the Executive Office. According to the minutes of the Commissioners' meeting, the decision by the Commissioners to hire the Commissioner's sister was "unanimous." *See Minutes, BOE Commissioners' Meeting, at 6 (Sept. 4, 2008).* The Commissioner nonetheless said that she recalls recusing herself from the vote to approve her sister's hiring. The Commissioner said that when her sister was hired, other Commissioners had family members working at the BOE.

DOI interviewed a Borough Manager about her daughter's employment in the same Borough office. The Borough Manager stated that she originally put forth her daughter's name for a temporary position with the BOE. While the Borough Manager denied that she is solely responsible for supervising the work of her daughter, who is now a permanent employee, she acknowledged that her daughter ultimately reports on a bipartisan basis to both herself and the manager from the other political party.

DOI interviewed another Borough Manager at a different Borough office regarding the hiring of his brother initially to a temporary position and later to a permanent supervisor position. This Borough Manager said that he did not recommend his brother for the supervisor position. However, the Borough Manager stated that he had discussions with a Borough Commissioner and the county committee regarding the brother's promotion. He also stated that supervisors of all departments in the Borough office, including the department where his brother is a supervisor, report to him and attend weekly meetings with him and the other Borough Manager.

C. Political Activities

The City Charter and New York State Election Law prohibit making political activities a condition of public employment and place a number of restrictions on political activities by public servants and supervisors. For example, Section 2604(b)(2) of the City Charter restricts a public servant from engaging in any activity which conflicts with the proper discharge of his or her official duties. City Charter § 2604(b)(2). City employees thus may not engage in political activities when "required to perform services for the City" or use City resources, such as computers, equipment, personnel, and letterhead for purposes unrelated to their city employment, for political activities. COIB Rule 1-13. Section 2604(b)(9) prohibits a public servant from coercing another public servant to engage in political activities. It also prohibits a public servant from requesting that a subordinate participate in a political campaign, which includes requests to aid in the management of a campaign, solicit votes or canvass voters for a candidate, or perform similar acts unrelated to the subordinate's duties or responsibilities. City Charter § 2604(b)(9). Section 2604(b)(11) prohibits public servants from (a) compelling any person to contribute towards a political campaign by threat or promise, or (b) compelling or requesting a subordinate employee to contribute towards a political campaign. *Id.* § 2604(b)(11). *See also* Election Law § 17-156 (a government employee who uses his or her authority to compel or induce another government employee to contribute towards a political party or campaign is guilty of a misdemeanor). More broadly, the Election Law prohibits any person from directly or indirectly promising, depriving, or threatening to deprive another person's "employment, position, work, compensation, or other benefit" on account of that person's political activity. Election Law § 17-154(2), (3).

DOI interviewed three current or former BOE employees who reported that participation in political activities is sometimes necessary to retain employment at the BOE or, in the case of certain temporary workers, to be re-hired for future election cycles. A current BOE employee stated that BOE employees are expected to gather petition signatures, to attend – or at least pay for – fundraisers, and to attend county committee meetings if the employee is on the committee. The employee also said that the failure to engage in political activities could result in adverse action including termination. The employee cited a Staten Island temporary employee who was subject to disciplinary action after she refused to gather petitions. The employee also said that many temporary employees who face adverse action for not engaging in political activities do not complain because they recognize that they might be re-hired if they do sufficient political work for the next election cycle. A former BOE employee stated that she paid to attend an event sponsored by a county political committee. She also said that employees understand that attendance at such events is in their best interest because the committees got them hired, and that employees might be penalized if they fail to attend such events or fail to engage in continued campaign work for the committees. Another current temporary employee stated that he felt that he needed to gather petition signatures in order to keep his job. DOI also spoke with an Executive Office manager who expressed concern that "part of the fabric" of the BOE is to pressure employees to participate in political activities, and noted that stories about employees' experiences with such pressure are circulating at the BOE. The manager gave the example of temporary

employees expected to attend \$100 per person fundraisers, despite the fact that a temporary employee earns around \$11.40 per hour.

D. Performance Evaluations

The BOE Personnel Guidelines require that managers and supervisors conduct employee performance evaluations on an annual basis. BOE Personnel Guidelines, at H-1.¹⁹ However, several BOE managers and employees confirmed that performance evaluations have not been conducted in recent years. The BOE Personnel Director recalled that the BOE last conducted performance evaluations two years ago and had done evaluations only twice in the past five years. A current BOE employee stated that her most recent performance evaluation was five years ago. Two Borough Managers stated that they last conducted performance evaluations two years ago, while another Borough Manager said that he had not done performance evaluations since 2006.

E. Employee Discipline, Time and Leave, and Whistleblower Protection

The BOE Personnel Guidelines set forth employee standards of conduct. *See* BOE Personnel Guidelines, Section F. The Collective Bargaining Agreement ("CBA") between the City of New York, the BOE, and the Communications Workers of America, which represents most BOE employees, sets forth disciplinary procedures. CBA, at VI.9. As described to DOI by the BOE's Personnel Director, the initial recommendation to institute disciplinary charges typically comes from a Borough Commissioner or Borough Managers. An employee receives written charges ten days before any disciplinary hearing. The two Commissioners from the Borough office where an employee works hold the hearing. The Personnel Director explained that the Commissioner from the employee's political party typically makes an initial discipline recommendation. The two Borough Commissioners then discuss the matter and reach a decision. Their decision is submitted to the full Board, which meets in "executive session" after the public BOE Commissioners' meeting held every Tuesday, for a disciplinary ruling. A current BOE employee explained to DOI that whereas permanent employees are entitled to a disciplinary hearing under the CBA, temporary employees may be terminated without a hearing.

DOI interviewed four BOE employees, including a Borough Manager, who discussed their views of the fairness of the disciplinary process and whether there has been selective enforcement of disciplinary rules at the BOE. One of the employees stated that the disciplinary process is sometimes used as a means to remove employees once they are no longer politically favored at the BOE, citing the termination of two employees in a Borough office and one employee in the Executive Office following the appointment of a new Commissioner in 2013. The three other employees said that disciplinary standards are not applied equally to all employees. For example, a Borough Manager stated that "write-ups" of employees for disciplinary misconduct do not always

¹⁹ A Borough Manager told DOI that written evaluations should be done. According to the BOE Personnel Guidelines, supervisors also should meet with employees in an "Appraisal Conference" to discuss work performance during the prior year and expectations for the next year. BOE Personnel Guidelines, at H-2.

accurately reflect what the employee has done, and that some employees get disciplined when they should not be disciplined, while other employees who should be disciplined are not. One of the employees also stated that the Borough Commissioner from an employee's party effectively makes the disciplinary decision, because the Borough Commissioner from the opposite party of the employee tends to defer to the party Commissioner's initial recommendation and the full Board tends to defer to the ruling of the Borough Commissioners.

DOI interviewed five BOE managers who said that time abuse is the most common disciplinary issue at the BOE. Time abuse issues cited to DOI include lateness, extended unapproved breaks, and, on occasion, employees clocking in and out for other employees. DOI learned that the BOE still uses punch-cards and paper leave slips to track employees' time and leave. Employees are required to clock in and out at the start of the day, during lunch, and at the end of the day. Commissioners, some Executive Office managers, and Borough Managers do not use the punch-card system, but rather, complete written time sheets. DOI inquired of the Personnel Director and Finance Officer whether the BOE considered use of CityTime, the automated timekeeping system used at other City agencies,²⁰ and they stated that the Commissioners considered but decided against using the system.

DOI has received allegations of time abuse. DOI learned that most Borough offices, except for the Manhattan BOE office, have surveillance cameras and that the BOE contracts with vendors for the cameras.²¹ BOE personnel in two Borough offices also told DOI that the footage from the cameras is reviewed only if a specific allegation of time abuse is made. In October 2013, when DOI received an anonymous complaint of time abuse in the Brooklyn BOE office, it requested approximately one month of surveillance footage and time records. The Facilities Manager explained that the vendor was only able to recover approximately two weeks of footage because the surveillance camera had been set to record at all times, rather than set to record only when the camera sensed motion, which records approximately one month of footage. The Facilities Manager told DOI that the Brooklyn BOE office camera had been re-set to record motion. He also informed DOI that while he believed all other Borough offices with cameras were set to record motion, he planned to seek confirmation from the Borough offices.²²

²⁰ Employees using CityTime at other agencies generally "punch-in" by using a data collection device such as a hand scanner or an internal web clock, which automatically record attendance times pending the input of a personalized code and/or password.

²¹ The Facilities Manager stated that he plans to install a camera in the Manhattan BOE office. Given that DOI interviewed BOE employees who reported allegations of time abuse in the Manhattan BOE office, DOI intends to review surveillance footage of the Manhattan BOE office's punch-card area upon the installation of a camera.

²² DOI has made a request for additional surveillance footage from other Borough offices.

DOI also found that the BOE's Personnel Guidelines do not advise employees about their whistleblower protection rights. The New York City Whistleblower Law protects employees of City agencies, including the BOE, from retaliation for reporting to DOI or to a member of the City Council, the Public Advocate or the Comptroller, each of whom must refer the complaints to DOI, conduct that employees reasonably believe involve corruption, criminal activity, conflicts of interest, gross mismanagement or abuse of authority. *See* N.Y.C. Admin. Code § 12-113(b)(1).

III. Election Administration Issues

A. Voter Roll Deficiencies

1. Investigation of the Accuracy of the Voter Rolls During the 2013 New York City Primary, Runoff, and General Elections

DOI interviewed a former BOE employee who reported that the BOE maintains active voter registrations for people who are not eligible to vote, including deceased individuals, felons, and nonresidents of New York City, and duplicate registrations for some voters. The former employee also stated that people easily could vote as ineligible voters remaining on the rolls because those individuals would appear in the registration books²³ on Election Day and poll workers do not scrutinize the signatures of voters to determine that they that are similar to the pre-printed digitized signatures in the poll book. In light of these statements, DOI sought to test whether ineligible individuals are present on the voter rolls.

Thus, using various database searches, DOI identified 176 individuals who at one time were registered voters in New York City: 86 deceased persons, 42 incarcerated felons, and 48 former City residents. During DOI's Citywide 2013 Election Day investigative operations, DOI sought to determine whether any of them remained in BOE's registration books and to test whether investigators using the names of those ineligible individuals would be permitted to vote. In sum, DOI investigators found that 63 out of 176 (36%) of the ineligible individuals were still listed as eligible voters in the registration books at poll sites. The majority of those 63 ineligible individuals remained on the rolls nearly two years, and some as long as four years, since a death, felony conviction, or move outside of New York City.

In total, DOI investigators were able to "cast a vote" as 61 of the 63 (97%) ineligible voters who were listed in the registration books – 39 deceased persons, 14

²³ Registration books, also called voter registration lists or poll books, are generated from the BOE's computerized registration records. Registration books are created for each election district within a poll site and identify the registered voters who reside within a particular election district. Registered voters appear in the book in alphabetical order by name. In addition to name, the book includes a voter's address, date of birth, sex, voter registration number, political party enrollment, and a pre-printed copy of the voter's signature. *See* Election Law § 5-506(3)(c).

felons, and 8 nonresidents – although no vote was cast for any actual candidate.²⁴ In lieu of voting for any actual candidate, investigators cast a vote for a fictitious candidate named “John Test.” During the September 2013 primary and October 2013 runoff elections using lever voting machines, investigators signed the registration book as the ineligible individuals, entered the lever voting machine, and cast a vote either by doing a write-in vote for “John Test” or gaining access to the lever machine without doing a write-in vote. During the November 2013 general election using electronic scanner machines, investigators signed the registration books as the ineligible individuals and then cast a vote by doing a write-in vote for “John Test” in the Mayor’s race and scanning the paper ballot through the scanner.

In the 61 out of 63 instances when the ineligible individuals were in the registration books, DOI investigators reported that poll workers did not meaningfully review the signatures provided by investigators for similarity with the pre-printed signatures in the registration books. DOI investigators also found that poll workers did not check the dates of birth listed in the registration books as they were required to do. *See* Election Law § 8-304(1). As discussed further below, DOI investigators were permitted to vote despite significant disparities between the ages of the investigators and the ages of the ineligible individuals apparent from the dates of birth recorded in the registration books. In five instances, DOI investigators in their twenties and thirties posed as individuals whose ages as recorded in the registration books, ranged from 82 to 92, and despite the obvious disparity, the investigators were given ballots or access to lever booths without question by the BOE poll workers.

These findings demonstrate that some ineligible individuals remain on the voter rolls. In relation to the approximately 2.1 million votes cast in the three elections, the 61 votes cast by investigators and the sample of ineligible individuals identified by DOI is not statistically significant, although it indicates vulnerability in the system. This information is not a finding of actual voter fraud, but rather, consists of snapshots of deficiencies in the voter rolls.²⁵

²⁴ For purposes of its inquiry regarding ineligible individuals on the voter rolls, DOI considered any occasion when an investigator had the ability to cast a vote on a lever machine or electronic scanner as a “cast vote.” DOI did not consider the ability to cast an affidavit ballot, which is offered when a person’s name is not in the registration book, as a cast vote for purposes of this analysis, and investigators were instructed not to cast affidavit ballots.

²⁵ Several studies have concluded that voter fraud is “rare.” *See, e.g.,* Lorraine C. Minnite, Demos, *An Analysis of Voter Fraud in the United States: Adapted from the 2003 Report, Securing the Vote*, Demos, at 6 (Dec. 19, 2007) (concluding that voter fraud “appears to be very rare” in the 12 states studied in the report); Justin Levitt, Brennan Center for Justice, *The Truth About Voter Fraud*, at 7 (Nov. 9, 2007) (concluding that while “there have been a handful of substantiated cases of individual ineligible voters attempting to defraud the election system,” voter fraud is “extraordinarily rare”); Eric Lipton and Ian Urbina, *In 5-Year Effort, Scant Evidence of Voter Fraud*, N.Y. Times, Apr. 12, 2007 (quoting Richard L. Hasen, an election law expert and professor, as saying “[i]f they found a single case of a conspiracy to affect the outcome of a Congressional election or a statewide election, that would be significant. But what we see is isolated, small-scale activities that often have not shown any kind of criminal intent.”). With respect to the “impersonation of voters” in particular, a United States Election Assistance Commission study found that it “is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of

a. Deceased Persons

DOI identified 86 deceased individuals who at one time were registered voters. During DOI's Citywide Election Day investigative operations, DOI investigators went to poll sites where the deceased individuals would have voted based on their previous home addresses. DOI investigators found that 39 of the 86 deceased individuals were listed in the registration books. The majority of the 39 deceased individuals who were listed in the registration books died before January 2012.²⁶ In all 39 instances, DOI investigators were able to cast a vote as the deceased persons who were listed in the registration books. DOI investigators cast those 39 votes as deceased individuals in all five Boroughs including 11 votes in Manhattan, 7 votes in Brooklyn, 7 votes in Queens, 9 votes in the Bronx, and 5 votes in Staten Island. Table I lists the number of deceased persons identified by DOI, the number of deceased voters who were listed in the registration books, and the number of votes cast by investigators as those individuals during the primary, runoff, and general elections.

TABLE I – DECEASED PERSONS

Election	Deceased Persons	Deceased Persons in Poll Book	Cast Votes
Primary	21	8	8
Runoff	14	7	7
General	51	24	24
<i>Total</i>	86	39	39

The following are examples of instances when investigators were able to sign the registration book and cast a vote as a deceased person:

- A 24 year-old female investigator cast a write-in vote for "John Test" at a Manhattan poll site during the general election as a deceased female who was born in 1923, died on April 25, 2012, and would have been 89 years old on the

influencing an election." U.S. Election Assistance Commission, Election Crimes: An Initial Review and Recommendations for Future Study, at 9 (Dec. 2006).

²⁶ Two of the deceased persons died in 2009, 9 died in 2010, 16 died in 2011, 10 died in 2012, and 2 died in January 2013.

date of the general election. When the investigator said her name was "Marion," the name of the deceased person, another voter commented in front of the poll workers that the investigator "did not look like a Marion." The investigator reported that the poll workers did not review the date of birth listed in the registration book and provided her with a paper ballot. The same investigator cast two additional votes at Manhattan poll sites for deceased females who would have been 82 years old and 67 years old on the date of the general election.

- A 33 year-old male investigator cast a write-in vote for "John Test" at a Manhattan poll site during the general election as a deceased male who was born in 1919, died on May 3, 2012, and would have been 94 years old on the date of the general election. The same investigator also cast a vote at another Manhattan poll site for a deceased male who would have been 67 years old on the date of general election.
- A 42 year-old male investigator cast a write-in vote for "John Test" at a Manhattan poll site during the general election as a deceased male voter who was born in 1927, died on March 1, 2010, and would have been 85 years old on primary election day. The same investigator cast a vote at a Queens poll site during the general election as a deceased male who would have been 76 years old on the date of the general election.
- A 30 year-old male investigator cast a write-vote for "John Test" at a Bronx poll site during the general election as a deceased male who was born in 1930, died on April 4, 2011, and would have been 83 years old on the date of the general election. The same investigator cast votes at other Bronx poll sites for deceased males who would have been 72 years old and 54 years old on the date of the general election.
- A 40 year-old female investigator cast a vote at a Queens poll site during the primary election as a deceased female who was born in 1947, died on January 13, 2011, and would have been 65 years old on primary election day. The investigator entered the voting booth and attempted to cast a write-in vote, but no paper or pencil was available in the voting booth. When the investigator requested assistance to cast a write-in ballot, a poll worker who the investigator believed to be the poll site coordinator told the investigator that she could not cast a write-in vote and should vote for one of the candidates listed on the ballot or vote for none of them. The investigator exited the poll site. The same investigator voted at another Queens poll site as a deceased female who would have been 66 years old on the date of the general election.
- A 25 year-old male investigator cast a write-in vote for "John Test" at a Brooklyn poll site during the primary election as a deceased male who was born in 1955, died on January 8, 2012, and would have been 57 years old on primary election day. The information clerk at the poll site incorrectly directed the investigator to a different poll site that did not serve the deceased person's election district.

After exiting the poll site and determining that he was at the correct poll site, the investigator reentered the poll site, signed the registration book as the deceased male, and cast a vote.

- A 52 year-old female investigator cast a write-in vote for "John Test" at a Brooklyn poll site during the general election as a deceased female who was born in 1968, died on October 30, 2010, and would have been 45 years old on the date of the general election. When the investigator provided the name of the deceased female, one of the poll inspectors said, "you do not look like a Gonzales." The investigator responded that she assumed her husband's name when she got married. The investigator signed the book and was given a ballot to cast a vote. The same investigator also cast a vote at another Brooklyn poll site as a deceased female who would have been 73 years old on the date of the general election.
- A 26 year-old male investigator cast a write-in vote for "John Test" at a Staten Island poll site during the primary election as a deceased male who was born in 1970, died on January 4, 2011, and would have been 43 years old on primary election day. Before signing the registration book, the investigator told the inspector that his signature might not match the one printed in the registration list, to which the inspector replied, "I am not going to challenge you."

As discussed above, DOI investigators worked as poll workers at poll sites during the 2013 elections. A DOI investigator working at a Manhattan poll site during the primary election heard a voter tell poll workers that his brother was in the registration book even though his brother died in 1994 and the voter previously contacted the BOE about removing his brother from the rolls. The same DOI investigator heard one voter tell poll workers during the general election that her deceased husband was still in the registration book, although she had requested that the BOE remove her husband from the rolls, and another voter state that her deceased son was in the registration book.

b. Felons

DOI also identified 42 felons from New York City who at one time were registered voters and are currently incarcerated in state prison facilities. DOI determined the assigned poll sites of these individuals based on their previous home addresses. During the runoff and general elections, DOI investigators went to the assigned poll sites posing as these incarcerated felons. DOI investigators found that 15 of the 42 felons were listed in the poll books. The majority of the 15 felon voters listed in the registration books were incarcerated following conviction before 2012.²⁷ DOI investigators were able to vote for 14 of the 15 felons who were listed in the registration books. DOI investigators cast votes as felons in all five Boroughs including 3 votes in Manhattan, 2 votes in Brooklyn, 4 votes in Queens, 2 votes in Bronx, and 3 votes in Staten Island. Table II provides additional data regarding the number of felons identified by DOI, the

²⁷ The 15 felon voters in the registration books were incarcerated after conviction in the following years: 3 in 2009, 2 in 2010, 4 in 2011, 5 in 2012, and 1 in February 2013.

number of felons who were listed in the registration books, and the number of cast votes cast by investigators as those individuals during the runoff and general elections.

TABLE II – INCARCERATED FELONS

Election	Felons	Felons in Poll Book	Cast Votes
Primary	N/A	N/A	N/A
Runoff	13	2	2
General	29	13	12
<i>Total</i>	42	15	14

The following are examples of instances during the general election when investigators were able to sign the registration book and cast votes as an incarcerated felon:

- A 57 year-old male investigator cast a write-in vote for “John Test” at a Staten Island poll site as a 36 year-old male felon who has been incarcerated following conviction since November 2012.
- A 51 year-old male investigator cast a write-in vote for “John Test” at a Queens poll site as a 60 year-old male felon who has been incarcerated following conviction since January 2009.
- A 30 year-old male investigator cast a write-in vote for “John Test” at a Bronx poll site as a 32 year-old male felon who has been incarcerated following conviction since August 2010.
- A 41 year-old male investigator cast a write-in vote for “John Test” at a Manhattan poll site as a 44 year-old male felon who has been incarcerated following conviction since April 2011.
- A 42 year-old male investigator cast a write-in vote for “John Test” at a Brooklyn poll site as a 50 year-old male felon who has been incarcerated following conviction since May 2012.

In the one instance where an investigator failed to vote as a felon listed in the registration book, the investigator was unable to vote because the poll inspector at the election district

table stated that she was the mother of the felon voter for whom the investigator was attempting to vote. After indicating that he had the same name as the poll inspector's son, the investigator exited the poll site.

c. Nonresidents

DOI identified 48 former New York City residents who at one time were registered voters. DOI determined the assigned poll sites of the nonresidents based on their previous home addresses. On the dates of the runoff and general elections, DOI investigators went to the assigned poll sites posing as the nonresidents. DOI found that 9 of the 48 nonresidents were in the registration books.²⁸ With respect to the 9 nonresidents whose names were listed in the poll books, investigators took one of two steps: they either (1) proceeded to sign the names of the nonresidents in the poll book and attempted to vote or (2) revealed to the poll workers that they had moved outside New York City and still attempted to vote as the nonresidents. DOI investigators were able to cast a vote in all 6 instances when the nonresidents were listed in the registration books and the investigators did not tell poll workers about having moved outside of New York City. DOI investigators were able to cast a vote in 2 out of 3 instances when the nonresidents were listed in the registration books and the investigators told poll workers about having moved outside of New York City. DOI investigators cast votes as nonresidents in four of the five Boroughs including 2 votes in Manhattan, 3 votes in Brooklyn, 2 votes in Queens, and 1 vote in the Bronx. Table III provides additional data regarding the number of nonresidents identified by DOI, the number of nonresidents who were listed in the registration books, and the number of votes cast by investigators as those individuals during the runoff and general elections.

TABLE III – NONRESIDENTS

Election	Nonresidents	Nonresidents in Poll Books	Cast Votes / Did Not Reveal Nonresident	Cast Votes / Revealed Nonresident
Primary	N/A	N/A	N/A	N/A
Runoff	6	3	2 / 2	0 / 1
General	42	6	4 / 4	2 / 2
<i>Total</i>	48	9	6 / 6	2 / 3

²⁸ One of the 9 nonresidents in the books moved in 2010, 2 moved in 2011, 1 moved in 2012, and 2 moved in early 2013. DOI confirmed that the other three individuals were nonresidents, but was unable to confirm the date that those individuals moved outside of New York City.

The following are examples of instances during the runoff and general elections when investigators were able to sign the registration books and cast votes as nonresidents:

- A 26 year-old female investigator cast a write-in vote for "John Test" at a Manhattan poll site during the general election as a female who moved outside New York City and was 76 years old as of the date of the general election.
- A 43 year-old male investigator cast a write-in vote for "John Test" at a Bronx poll site during the general election as a 48 year-old male who moved outside of New York City to Florida in or around April 2011. After the poll inspectors located the name of the nonresident, the investigator informed the inspectors that he had recently moved to Florida. In response, one of the poll inspectors replied that so long as the name was in the registration book, the investigator was permitted to vote in the election.
- A 40 year-old female investigator cast a write-in vote as "John Test" at a Queens poll site during the general election as a 66 year-old female who moved outside of New York City in or around October 2012. The investigator signed the registration book, and then told the poll inspectors that she was thankful to be able to vote because she had recently moved. The poll inspectors ignored the investigator's comment and gave her a ballot.
- A 48 year-old male investigator cast a write-in vote for "John Test" at a Brooklyn poll site during the runoff election as a 50 year-old male who moved outside of New York City. The investigator told the poll workers, "I want to make sure that [a particular candidate] gets my vote." After the investigator exited the lever machine, two poll workers who signed him in at the election district table told the investigator "to bring back friends," indicating to him that they favored the same candidate for Public Advocate and that he should encourage others to vote for that candidate.

In one instance during the runoff, an investigator was not permitted to vote after she revealed that although the nonresident's name was still listed in the registration book, she had moved from New York City to Connecticut. While the poll worker responded that the investigator could not vote, the poll worker stated that she "wished she [the investigator] had not told her" about moving to Connecticut because the poll worker would have allowed the investigator to vote if she did not know about the move.

In addition to the nonresidents who appeared in the registration books, DOI investigators also entered poll sites 67 times during the primary and general elections to ask whether they could vote even though they were not a resident of New York City. Investigators told poll workers that they wanted to vote in the election because they used to live in New York City, currently work in New York City, or had an interest in voting for a particular candidate. None of the investigators was offered the opportunity to vote

by lever machine or electronic scanner. However, eight investigators who said they used to live in New York City were told directly or impliedly by poll workers that they should go to the poll site associated with their previous address to see whether their names were still in the registration books, in which case they might be able to sign the book and vote. For example, a poll worker at a Staten Island poll site walked with the investigator outside the poll site after the investigator had been told that he could not vote at the site. Once outside, the poll worker told the investigator that he should go to the poll site where he used to vote while living in Staten Island and if his name was still in the registration book, "play dumb" and vote.

d. Voting on Behalf of Relatives and Significant Others

During DOI's Election Day investigative operations, DOI investigators also asked poll workers whether they could vote on behalf of a spouse, sibling, or significant other. On some occasions, investigators asked whether they could vote for a relative who was listed in the registration book. On other occasions, investigators simply approached poll workers to ask whether they could vote for a relative or significant other who was not listed in the book. In most instances, investigators told poll workers that their relative or significant other was unable to vote due to some extenuating circumstance, including illness, hospitalization following the birth of a child, or overseas military deployment. In each of the 15 instances, poll workers told the investigators that they were not allowed to vote for a relative or significant other.

e. Alleged Voter Fraud at IS 71 in Brooklyn

On September 11, 2013, following the 2013 primary election, the Gothamist reported that people had attempted to vote for other registered voters at IS 71, a poll site in Williamsburg, Brooklyn. Max Rivlin-Nadler et al., *Brazen Voter Fraud Alleged Among Ultra-Orthodox in Williamsburg*, Sept. 11, 2013, http://gothamist.com/2013/09/11/voter_fraud_attempts.php. DOI spoke with two poll site coordinators and two poll inspectors four poll workers assigned to IS 71 who cited multiple instances of young men they believed were attempting to vote for other registered voters at IS 71 during the 2013 primary and additional instances during the 2013 runoff election. Two of the poll workers recalled instances where young men who appeared to be 19 or 20 years old sought to vote as registered voters who were in their thirties or sixties based on the dates of birth recorded in the registration books. One of the poll inspectors stated that she asked some individuals to confirm their dates of birth, after which they typically walked away without voting. Poll workers informed DOI that these incidents during the primary election were reported to a BOE employee assigned to monitor certain poll sites, including IS 71, during the primary. DOI spoke with this employee who stated that she reported the incidents to Mary Rose Sattie, Deputy Chief Clerk of the Brooklyn BOE office, who requested that she return to the site throughout the day to monitor the site. She also stated that the BOE Legal Department, including General Counsel Steven Richman and Deputy General Counsel Raphael Savino, went to IS 71 at the end of primary day. DOI spoke with Savino who confirmed that he went

with Richman to IS 71 at the close of the polls due to the voter fraud complaints, electioneering, and other reported issues including large crowds at the site.

2. Analysis of the BOE's Cancellation Procedures

As discussed above, DOI found during its Citywide Election Day investigative operations that some deceased persons, felons, and nonresidents remain on the voter rolls even though they are no longer eligible to vote in New York City. DOI investigators were routinely able to cast votes as these ineligible individuals because their names were listed in the registration books and poll workers did not challenge the investigators. Given the deficiency of the voter rolls created by the presence of deceased persons, felons, and nonresidents on the rolls, DOI spoke with Beth Fossella, head of the Voter Registration Department in the Executive Office, Steve Ferguson, head of Management Information Systems Department in the Executive Office, and six Borough office registration and cancellation supervisors regarding the BOE's procedures for removing ineligible individuals from the voter rolls.

A voter's registration should be cancelled when, among other reasons, the voter has moved residence outside of New York City, been convicted of a felony, or died. *See* Election Law § 5-400. Additionally, when a duplicate registration for a voter exists, the prior registration should be cancelled. *See id.* § 5-614(12)(b)(3); N.Y. Comp. Codes R. & Regs. Title 9 (hereinafter "State BOE Rules and Regulations") § 6217.10(a)(2)(iii). Fossella, Ferguson, and the registration supervisors explained that the New York State Board of Elections ("State BOE") provides the BOE with notices regarding deaths, felony convictions, and potential duplicate registrations of voters. The State BOE receives death records from the New York City Department of Health and New York State Department of Health (*see* Election Law § 5-614(5)), and then provides death notices to the BOE that list, among other things, the death certificate number of the voter. The State BOE receives lists of convicted felons from the courts or the Office of Court Administration (*see id.*), and provides the BOE with felony conviction notices that list, among other things, the date of conviction and length of the sentence.²⁹ The State BOE also forwards potential duplicate registration notices as when, for example, it receives information that an individual registered to vote in New York City has registered to vote in a New York State county outside of New York City.

The BOE maintains a centralized list of registered voters from all five Boroughs in a computerized database called the Archival Voter Information Database ("AVID"). New York City voters also are included in the computerized statewide list of registered voters maintained by the State BOE, which is called NYSVoter. The statewide list "combin[es] the existing voter registration list maintained by each local board of

²⁹ The New York City Department of Health and New York State Department of Health are required to provide death records to the State BOE on at least a monthly basis. The Office of Court Administration is required to provide the State BOE with the names of felons subject to forfeiture of the right to vote on at least a quarterly basis. Election Law § 5-708 (1), (2). Under the Election Law, the BOE is obligated to update its registration lists within 25 days of receipt of death or felony conviction notices. *See id.* § 5-614(6). *See also* State BOE Rules and Regulations § 6217.10(d).

elections into a single integrated list.” *Id.* § 5-614(2). BOE personnel informed DOI that in January 2013, the State BOE began to transmit these notices regarding potential cancellations directly from its NYSVoter system into AVID. Before January 2013, the State BOE emailed files containing these notices to the BOE.³⁰ During site visits to the Borough offices, DOI observed BOE personnel use the AVID system to process State BOE notices. In particular, DOI was shown that State BOE notices are accessed in AVID by selecting from a drop-down menu the categories of death notices, felony conviction notices, or potential duplicate notices. BOE personnel explained that the notices appear as “queues” within each category. For example, if an employee clicks on the link for death notices, then the employee will see a death notice from the State BOE. After the employee makes a determination based on the notice as to whether the voter’s registration should be cancelled, another death notice will appear on the screen, unless no additional death notices are in the queue at that time.

Registration supervisors explained that cancellation determinations are made on a bipartisan basis, such that two employees must agree upon cancellation of a voter’s registration.³¹ Registration supervisors also told DOI that BOE employees determine whether to cancel a registration by comparing the information from the State BOE notices with the information contained in the voter registration records on AVID, including the voter’s name, date of birth, address, signature, driver’s license number, or HAVA ID. Registration supervisors in one Borough office stated that employees must verify correspondence between at least three pieces of information before deciding to cancel a registration. BOE personnel explained that the BOE automatically cancels a voter’s registration when employees determine based on information in a State notice and in AVID that a voter has died or been convicted of a felony.³² When employees determine that a voter has a duplicate registration, the BOE sends an “intent to cancel” notice to the voter and cancels the registration unless the voter responds to the notice within 14 days.³³

³⁰ BOE personnel explained that each Borough office of the BOE receives directly from the State BOE those notices that concern voters registered in the particular Borough. Prior to January 2013, the State BOE emailed notices to the Executive Office, which, in turn, distributed those notices to the Borough offices.

³¹ First, a BOE employee from one of the two major parties reviews the State BOE notice and makes an initial determination whether to cancel the voter’s registration. Second, a BOE employee from the other major political party reviews the same information and clicks “match” or “no match” to indicate agreement or disagreement with the first employee’s determination. When the first BOE employee determines that a voter’s registration should be cancelled and the second BOE employee selects “match” with respect to the other employee’s determination, then the BOE proceeds with cancellation. When the second employee selects “no match,” the employee is prompted by AVID to provide an explanation, and the record is escalated to supervisors for further review.

³² According to the Election Law, the BOE is required to send a voter an intent to cancel notice before a cancellation due to a felony conviction. *See* Election Law § 5-402(2).

³³ Fossella stated that the BOE also receives boxes of paper documents from some counties in other states regarding former New York City residents who have moved and registered to vote in those states. However, according to Fossella, counties in other states are not legally required to share information about duplicate registrations with the BOE, such that the BOE does not always receive notice when an individual has moved out of New York State and registered to vote out of state. Fossella also stated that the

In addition to the State notices, BOE personnel explained that the agency receives information relating to the continued eligibility of registered voters from other sources. The United States Postal Service provides the BOE with information regarding changes of address including voters who have moved outside of New York City. BOE personnel explained that a voter's registration may be cancelled when it receives notice from the United States Postal Service that the voter has moved outside New York City. The BOE also learns about possible changes in residence when mail sent to voters comes back to the BOE as undeliverable. Beth Fossella stated that a number of the information notices providing poll site locations to voters before an election come back to the BOE marked "return to sender." In the case of returned mail, Fossella and other BOE personnel stated that the BOE marks the voter "inactive" in AVID and sends a confirmation notice to the voter at the same address.³⁴ Fossella and other BOE personnel said that if the voter responds to the confirmation notice, then the voter's registration is marked "active" in AVID. DOI was told that a voter who fails to respond to such a notice is eventually cancelled, but did not receive a definitive explanation as to when the voter would be cancelled.³⁵

Moreover, BOE personnel stated that voters sometimes contact the BOE to request a cancellation of registration. Fossella informed DOI that the BOE does not cancel a voter's registration based solely on a verbal communication of a voter's death, change in residence, or other event establishing a basis for cancellation. Rather, the BOE will cancel a voter's registration only if it receives sufficient documentary evidence to support cancellation such as a death certificate or proof of a change in address.³⁶ Fossella stated that individuals who verbally report a death or change in address to the BOE are told that documentation is required to cancel a registration.

DOI asked BOE personnel to explain why ineligible individuals might remain on the voter rolls and the procedures for cancelling their registrations. Fossella, head of the Voter Registration Department in the Executive Office, said that the State does not

documents received by the BOE from other states do not necessarily provide sufficient information for the BOE to cancel a voter's New York City registration. Fossella said that if the information in the document sent from another state is insufficient, the BOE sends a confirmation notice to the voter rather than cancel the voter's registration.

³⁴ Once a voter's registration is "inactive," that voter's name is not included in registration books in subsequent elections. *See* Election Law § 5-213(2).

³⁵ According to the Election Law, the BOE must send a confirmation notice to a voter when the BOE receives returned mail without a forwarding address or a change of address notice filed with the United States Postal Service without a forwarding address. *See* Election Law § 5-712(1), (2)(a). A confirmation notice must state that the voter's registration may be cancelled if the voter "do[es] not vote in any election up to and including the second federal election after such notice." *Id.* § 5-712(3).

³⁶ Section 5-400 of the Election Law defines a voter's "personal request to be removed from the list of registered voters" to be a signed notice from the registrant, a board of elections, or other agency. *Id.* § 5-400(2).

always provide death notices for voters who died. Fossella was aware of a voter who died two years ago and remains on the voter rolls in New York City. Fossella said that she viewed the case of this particular voter as a test of the State BOE notice system, and that she has been waiting to see whether the BOE receives a death notice for the voter. Fossella also told DOI that the BOE relies on the State to provide death notices, and does not utilize other sources such as the Social Security Death Master File Index to identify deceased individuals. Additionally, registration supervisors in one Borough office said that the State provides the BOE with a death certificate number, but that the State does not generally provide the actual death certificate. They stated that access to the actual death certificates might provide BOE staff with additional information to verify that a voter has died and should thus be cancelled. These registration supervisors also said that a time lag commonly exists between events rendering a person ineligible to vote such as a death and the BOE's receipt of State notice. For example, while meeting with these registration supervisors, DOI reviewed a State notice regarding a person who had died approximately one year earlier in 2012. The registration supervisors stated that direct access to the underlying information used by the State to generate notices might expedite the BOE's cancellation process.

B. Ballots

1. Ballot Design: Issues Not Resolved in Advance of Elections

The ballot for the November 5, 2013 general election was printed in a 6-point font. At the BOE Commissioners meeting on October 8, 2013, the BOE Commissioners reviewed a sample ballot. *See Minutes, BOE Commissioners' Meeting*, at 9 (Oct. 8, 2013). BOE Executive Office staff explained that use of a 6-point font on the one-page ballot was necessary because the Voting Rights Act required the BOE to include five languages on some ballots in Queens.³⁷ The BOE Commissioners directed staff to work on creating a ballot that would be easier to read. They also asked that staff inquire of the New York City Law Department whether providing ballots with varying font sizes in different Boroughs would give rise to an Equal Protection challenge under the Fourteenth Amendment to the United States Constitution. *See id.* at 13.³⁸ At the BOE Commissioners meeting on October 15, 2013, the BOE reported that it consulted with the Law Department, and decided to use a 6-point font on ballots in all five Boroughs. *See Minutes, BOE Commissioners' Meeting*, at 8-9 (Oct. 15, 2013). Commissioners and Executive Director Ryan acknowledged the small font size. Ryan stated that voters should be encouraged to use the Ballot Marking Devices ("BMDs"), which enlarge

³⁷ On October 13, 2011, the U.S. Census Bureau determined that parts of Queens County must have ballots translated into an Asian Indian language, in addition to the four languages already required to be available under the Voting Rights Act—English, Spanish, Chinese, and Korean. *See Voting Rights Act Amendments of 2006, Determination Under Section 203*, 76 Fed. Reg. 63602, 63605 (Oct. 13, 2011).

³⁸ Whereas a 6-point font was deemed necessary in some areas of Queens due to the language requirements, BOE staff explained that the ballot in Staten Island could be printed in 9-point font because only English and Spanish appear on ballots in Staten Island. *See Minutes, BOE Commissioners' Meeting*, at 10 (Oct. 8, 2013).

ballots to a 22-point font size, and noted that large sample ballots would be posted in poll sites at each ED/AD table. *See id.*

Ballot readability was one of the most frequent complaints encountered by DOI staff who participated in DOI's Election Day investigative operation during the 2013 general election:

- DOI investigators conducted quality assurance surveys of voters at poll sites. DOI found that 145 of the 698 voters surveyed by DOI during the general election made complaints that the print on the ballot was too small or difficult to read. Another 36 surveyed voters complained that the ballot format was confusing or made the ballot difficult to read. DOI investigators serving as poll workers similarly reported that voters complained that they had trouble reading the small print on the ballots.
- While DOI staff working at poll sites and investigators entering sites to vote generally found that large sample ballots were posted at the ED/AD tables in poll sites, they also reported that poll workers often did not offer voters use of the BMDs and that some BMDs were not clearly indicated by signage. Of the 42 investigators who entered poll sites to cast votes as ineligible individuals during the general election, only 10 were offered the use of a BMD machine. Fourteen surveyed voters also complained that they were not told about the BMDs or offered the opportunity to use the machine. An investigator casting a vote at a Manhattan poll site asked to use the BMD machine, but was discouraged by poll workers who told him that voting by paper ballot was the quicker option.
- A number of voters complained that they were unaware that proposals to amend the New York State Constitution were on the back of the ballot and they therefore did not vote on the proposals. Fourteen surveyed voters made this complaint to DOI, and investigators serving as poll workers also heard several voters make this complaint. The 2013 general election ballot did not have any instruction on the front of the ballot directing voters to turn over the ballot for the proposals on the back of the ballot. DOI investigators reported that poll workers at some poll sites were reminding voters to turn over the ballot for the proposals, but this was not a uniform practice of poll workers on Election Day.

While discussing the font size issue during public meetings prior to the 2013 general election, BOE Commissioners noted the existence of possible alternatives to address the font size issue, including the use of bilingual ballots³⁹ or a 2-page ballot.⁴⁰

³⁹ Whereas the BOE currently prints a single ballot in the requisite languages, including five languages on the ballot in some areas of Queens, bilingual ballots would have no more than two languages on each ballot, and the BOE would print ballots in different languages. The BOE also has discussed trilingual ballots with three languages on each ballot.

The Commissioners also indicated that the BOE would be proactive in improving the ballot design for elections in 2014. *See Minutes, BOE Commissioners' Meeting*, at 9 (Oct. 15, 2013).⁴¹ Despite these stated plans to improve the ballot for 2014, the BOE was aware of the font size and ballot design issues well in advance of the 2013 election, and considered various options to address these issues, but did not resolve it.

As early as November 2010, the font size issue was raised by voters and discussed by the BOE. *See Message from the President of the Board of Elections in the City of New York Regarding Voter Concerns about Font Size in Ballots* (undated) (referring to the font size and design of ballot used during November 2, 2010 general election). In October 2011, the BOE learned that a fifth language needed to be used in areas of Queens. A sample ballot with five languages in both a one-page and a two-page design was provided to the Commissioners as early as April 2012. *See Minutes, BOE Commissioners' Meeting*, at 8-9 (Apr. 17, 2012). Also in April 2012, the Commissioners discussed the additional cost and time needed to use a two-page ballot. *See Minutes, BOE Commissioners' Meeting*, at 7-8 (Apr. 26, 2012). In June 2012, the BOE Commissioners received a report from Thomas Sattie regarding the feasibility and costs of using bilingual ballots. *See Minutes, BOE Commissioners' Meeting*, at 12 (June 5, 2012). DOI obtained a copy of the report in which Sattie stated that bilingual ballots could be created on a single-page with a "reasonable font size" and that scanner machines could be programmed to read bilingual ballots. Sattie estimated that printing bilingual ballots would cost between \$500,000 and \$1 million more than printing ballots with all languages on them. He also recommended that the BOE contact the State BOE to discuss the requirements for testing bilingual ballots on the scanner and BMD machines. *See Thomas D. Sattie, Report to the BOE Commissioners Regarding Bilingual Ballots* (June 1, 2012).

In addition, the BOE met with elected officials and good government groups about ballot design and readability issues before the 2013 general election. *See, e.g., Minutes, BOE Commissioners' Meeting*, at 11 (Mar. 12, 2013). A member of one good government group informed DOI that the BOE was asked, among other considerations, to add a message on the front of the ballot reminding voters to turn over the ballot for proposals on the back so that voters would not inadvertently fail to vote on the proposals. Other ballot design changes proposed to the BOE by good government groups have

⁴⁰ While the minutes of the October 15, 2013 provide that Umame said the BOE "is currently researching multiple page ballots for possible implementation in the future" (*see Minutes, BOE Commissioners' Meeting*, at 9 (Oct. 15, 2013)), DOI staff present at the meeting heard Umame state that the BOE has been wary of using two-page ballots due to concerns about candidates and races on the second page receiving less attention.

⁴¹ Commissioner Araujo proposed the formation of a BOE subcommittee to address ballot design issues, and Commissioner Michel urged addressing ballot issues in advance of the 2014 election cycle. *See Minutes, BOE Commissioners' Meeting*, at 9 (Oct. 15, 2013). DOI interviewed Thomas Sattie, head of Ballot Management at the BOE, who stated that he and his staff have been asked to research options for improving the 2014 ballot.

included changing the ballot layout from portrait to a landscape orientation,⁴² placing picture instructions on the front of the ballot with full instructions on the back, and using light shading and thick lines to distinguish different parts of the ballot.⁴³

2. Printing the Ballots

The BOE Commissioners decided to order paper ballots for the 2013 general election based on a 90% voter turnout figure. *See Minutes, BOE Commissioners' Meeting*, at 7-9 (Oct. 8, 2013).⁴⁴ At the October 8, 2013 BOE Commissioners meeting, Alex Camarda, Director of Public Policy for Citizens Union, recommended that the BOE print fewer ballots, noting, among other things, that voter turnout for Mayoral elections since 1940 has not exceeded 60% and has been no more than 40% since 1997. The BOE Commissioners responded that different ballots are printed for each election district, and that the number of ballots printed should not be determined by the City-wide turnout rate, but rather by considering the high turnout rates in certain election districts. The BOE also stated that additional ballots should be printed to account for voided ballots as voters may use up to three ballots if they make an error on a ballot.

The turnout for the 2013 Mayoral election was approximately 24% of registered voters. *See Sam Roberts, New York: Voter Turnout Appears to Be Record Low*, N.Y. Times, Nov. 6, 2013, <http://www.nytimes.com/news/election-2013/2013/11/06/new-york-turnout-appears-headed-for-record-low>. DOI investigators serving as poll workers reported large numbers of unused ballots at their election district tables during the general election. For example, three investigators reported approximately 550 unused ballots, 400 unused ballots, and 200 unused ballots for their assigned election districts at their respective poll sites. Moreover, during a site visit to the Queens Voting Machine Facility after the general election, DOI personnel spoke with a supervisor at the facility who

⁴² Currently, New York City creates ballots using a portrait orientation. A ballot with a portrait orientation shows the parties and candidates across the top of the ballot with the offices down the left side of the ballot. Ballots with a landscape orientation show the offices across the top of the ballot with the parties and candidates down the left side of the ballot.

⁴³ To address the issues with ballot layout and design, state legislators have proposed the Voter Friendly Ballot Act, which would amend the Election Law to require, among other things, that sans serif fonts be used on ballots, candidates' names be printed in 12-point font, and updated instructions be included on ballots. *See Assem. 204A*, 2013-2014 Reg. Sess., 236th Leg. Sess. (N.Y. 2013). The New York City Council Committee on Governmental Operations passed a resolution in support of the Act, and the Campaign Finance Board has expressed support for the Act. *See New York City Council Comm. On Gov. Operations Res. 0671A*, 2010-2013 Council Sess. (Nov. 29, 2011); New York City Campaign Finance Board, 2012-2013 Voter Assistance Annual Report, at 23-24 (Apr. 2013), *available at* http://www.nycclf.info/PDF/var/2012-2013_VoterAssistanceAnnualReport.pdf. While the BOE has made recommendations to the State legislature to change certain provisions of the Election Law regarding ballot layout and design, the BOE has not endorsed the Voter Friendly Ballot Act. Thomas Sattie stated to DOI that the BOE's proposals are similar to those in the Act, but he did not believe that the BOE supported a 12-point font for candidates' names.

⁴⁴ For the 2012 presidential election, by contrast, the BOE approved printing of ballots for 120% of registered voters plus an additional 50 ballots per ED. *See Minutes, BOE Commissioners' Meeting* (Sept. 25, 2012).

showed them hundreds of boxes of unused ballots from the general election that the supervisor said would be shredded.

DOI interviewed Thomas Sattie, head of the Ballot Management Department, who stated that determining how many ballots to print involves “more art than science.” Sattie explained that the BOE considers voter turnout in prior elections as a factor in determining how many ballots to print for an election, but that the turnout in particular election districts is a more important factor than overall turnout rates in determining how many ballots to print. He also confirmed that the BOE maintains data by election district on the historical turnout rates of voters for particular districts. With respect to printing ballots for the 2013 Mayoral election, Sattie said that some election districts in past Mayoral elections had turnout around 60%, while other election districts had turnout in the teens. Sattie stated that the BOE also consulted overall turnout rates in past Mayoral elections to inform its decision, noting that the turnout in the 2001 Mayoral election when no incumbent Mayor was on the ballot was in the low thirtieth percentile, and that the turnout for the 2009 Mayoral election was approximately 30%.

DOI then asked Sattie the basis for ordering ballots based on a 90% turnout figure. Sattie stated that the 90% figure was primarily based on the high turnout in certain election districts, as well as the need to account for void ballots in an electronic scanner election. DOI then asked Sattie whether the BOE has considered analyzing the historical turnout data by election district and ordering a different number of ballots for election districts based on the historical turnout of those districts. Sattie acknowledged that the BOE has discussed the possibility of determining the amount of ballots to order for election districts based upon past election district turnout data, but noted that concerns were raised about running out of ballots and disenfranchising voters.

With respect to the cost of printing the ballots, Sattie explained that under the BOE’s printing contract with ES&S, a ballot 14 inches or 17 inches long costs 39 cents per ballot and a ballot 19 inches long costs 45 cents per ballot. See *id.* at 8. Sattie also stated that the cost of printing paper ballots for every 10% of registered voters ranges from approximately \$150,000 to \$200,000. See *id.* According to Sattie, a reduction in the ballot order for the 2013 general election by 10% from an order based on a 90% turnout rate to an 80% turnout rate would have resulted in a cost savings of \$150,000 to \$200,000. Extrapolating Sattie’s cost-savings estimate further, a ballot order based on a 50% turnout rate would have resulted in a savings of \$600,000 to \$800,000 in printing costs.

C. Poll Worker Recruitment, Training, and Performance

The BOE has a difficult administrative challenge in its recruitment, training, and assignment of more than 30,000 poll workers for a typical election in New York City.⁴⁵

⁴⁵ Currently, poll workers work approximately 17 hours on Election Day and are paid \$200. Poll workers also are paid \$100 for training as long as they actually work on Election Day. Various proposals have been suggested to broaden the pool of qualified poll workers, including the use of split shifts for poll workers on Election Day. Split shifts are permissible (*see* Election Law § 3-400(7)), and were discussed at a recent BOE Commissioners’ meeting. Minutes, BOE Commissioners’ Meeting, at 4 (Dec. 10, 2013). Additional

DOI investigators observed several issues with the adequacy of poll worker training and the integrity of the poll worker exam. DOI also found a number of instances of voter privacy violations, improper voting instructions, and other incorrect or incompetent action by poll workers.

1. Application Process

Fifteen DOI investigators applied to work as poll workers during the 2013 election cycle. They submitted their applications in August 2013. Twelve of the 15 investigators submitted applications directly to their respective Borough offices. Three investigators submitted applications through county political committees or political clubs. Seven of the 12 investigators who applied to the BOE were hired as poll workers: 5 investigators were hired to work poll beginning with the 2013 primary and 2 additional investigators were hired only for the 2013 general election. Two of the 3 investigators who applied through county committees were hired to work as poll workers. In total, 9 of the 15 investigators who applied were hired to work as poll workers. The reason why several investigators were not hired is unclear.

BOE staff at the Manhattan, Queens, and Staten Island Borough offices informed several investigators that because they are City employees, their applications were subject to a different process than others applying to be poll workers. Investigators received different answers about the process from BOE staff. Staff in the Manhattan office stated that City employees applying to be poll workers had to be processed by the Department of Finance. Staff in the Staten Island office said that the Office of Payroll Administration was processing the investigator's information. Meanwhile, a BOE employee in Queens informed an investigator that his application had to go through NYCERs. BOE staff in Queens also told investigators that they were unlikely to be hired to work the upcoming elections due to the City employee clearance process. None of the four investigators who applied to the Queens BOE was hired to work during the 2013 primary. Investigators were hired to work during the 2013 primary in each of the other four Boroughs. One investigator ultimately was hired to work in Queens during the 2013 general election.

As noted above, three investigators applied to be poll workers through county political committees or clubs. One investigator applied at a Democratic Party club in Brooklyn. At the office of the Democratic club, the investigator completed a poll worker application different from the one used by the BOE and an additional form, and was told by a member of the club that the club would submit her application and she would receive notice of her training session in one week. The investigator was hired as a poll worker for the 2013 primary, runoff, and general elections. Another investigator applied through the New York County Republican committee office in Manhattan. The committee's administrator informed the investigator that she would fax his application to the BOE and that he should hear from the BOE in one week. The investigator was hired to work as a poll worker for the 2013 primary, runoff, and general elections. A third

proposals have included waiving jury duty service in exchange for working the polls or offering attorneys CLE credit for serving as poll workers. *See id.*

investigator applied through the Bronx County Democratic committee office. The investigator was informed that the Bronx Democratic committee ordinarily does not submit BOE poll worker applications, but that the committee could fax the application to the Bronx BOE due to its close relationship with the Bronx BOE. This investigator was not hired to work as a poll worker.

2. Training Classes

Nine DOI investigators attended the BOE's six-hour poll worker training. Training classes attended by investigators covered a range of topics, including proper work attire for Election Day, how to help voters locate their correct poll site with the BOE Street Finder, Voter Cards, voter privacy, how to challenge a voter's qualifications, when to offer a voter an affidavit ballot, and the use of the electronic scanner, BMD, and lever voting machines. With respect to the voting machines, the majority of DOI investigators received some hands-on instruction with the machines. Those investigators who received this hands-on instruction generally found it to be thorough and useful. At one training class in Brooklyn, the trainees did not receive any hands-on instruction. Instead, trainees remained in their seats while an assistant trainer demonstrated use of the machines. At another training in Brooklyn, the trainees received hands-on instruction in the electronic scanner and lever machines, but not with the BMD. When trainees asked an assistant trainer to provide further demonstration on use of the scanner machine and instruction on use of the BMD, the assistant trainer did not provide further instruction, stating that other workers at the poll site would understand how to use the scanner machines and that voters seeking to use the BMD would know how to use it.

Trainees are required to take an open-book 25-question exam consisting of multiple choice and true-false questions at the conclusion of the training. Four of the 9 DOI investigators who attended trainings observed trainers telling trainees the specific subjects to be covered on the exam before trainees took the exam, trainers effectively giving answers to trainees during the exam, or trainees cheating on the exam:

- An investigator attended a training session in Brooklyn where the trainer told trainees that she would highlight areas to be covered on the exam by repeating the information twice. The trainer stated several times during the class, "If I say it twice, it's nice," to indicate specific information that would be covered on the exam. At the same training, after the exam was distributed to the trainees, a female trainee handed the investigator a sheet of loose-leaf containing a list of answers. After the investigator completed the exam using the loose-leaf sheet, one of the women at his table read off the answers in a soft voice to confirm that everyone at the table had the same answers. The female trainee then handed the loose-leaf sheet to a woman at another table. The investigator observed people at other tables openly conferring with one another and did not see trainers take any action to address the conspicuous discussions occurring during the exam.

- Similar to the Brooklyn training session discussed above, an investigator attended a training session in Staten Island where the trainer repeated information twice to highlight subjects to be covered on the exam.
- At a training session in Manhattan attended by an investigator, the trainer told trainees prior to the exam that the trainers “can’t give you the answers, but can help make you right.” During the exam, the investigator heard the trainer tell a trainee, “I can’t tell you what the right answer is, but that one is wrong.”
- An investigator who attended a Queens training session observed trainees openly discussing the questions on the exam and providing answers to one another. The investigator found that the cheating was visible to the trainers, but they did not intervene.

3. Voter Privacy

New York State Election Law protects voter privacy. The law provides that only a voter is permitted into the voting area and that the act of voting should be private, unless the voter requires assistance due to a visual impairment, disability, or inability to read or write. Election Law §§ 8-300(2), 8-306(2), (3). When the voter requires such assistance, the voter may receive assistance from a poll site inspector or other person, but only if the inspector or other person takes an oath before entering the voting booth that he or she will not seek to persuade the voter to vote for a particular candidate, will not keep any record of the vote, or reveal anything that occurred inside the booth. *See id.* § 8-306(5); Poll Worker’s Manual, at 84. The Election Law also contains specific requirements relating to electronic scanners to ensure that voter privacy is protected. Unlike voting by lever voting machine where voters cast their votes behind an enclosed curtain, voting by electronic scanner involves a voter first completing a ballot at a privacy booth and then inserting it into a scanner machine. Voters themselves are to insert ballots into the scanners. *See* Election Law § 8-312(2); Poll Worker’s Manual, at 126-27. The electronic scanners must remain in plain view so that poll inspectors and poll watchers can observe the use of the scanners. *See* Election Law §§ 8-202(1), (2). However, the scanners are required to be within a “guard-rail” that “delineat[es] and mark[s] the voting area by a suitable means.” *Id.* §§ 8-102(d), 8-202(2). When a voter is inserting a ballot into the scanner machine, no other person including a poll inspector is permitted to be within three feet of the machine or in a position to see how someone voted. *See id.* §§ 8-202(2), 8-300(2).

DOI investigators observed more than a dozen violations of voter privacy rules by poll workers during the 2014 general election, including poll inspectors at scanners taking ballots from voters, looking at the votes they cast, and, in some instances, commenting on those votes. Investigators casting votes reported seven instances where poll inspectors took their ballots as they approached the scanners to insert them into the scanners. Three investigators reported poll inspectors commenting on their ballots:

- When an investigator went to scan a ballot at a Brooklyn poll site, the poll inspector looked at the investigator's ballot and asked the investigator whether he voted "Yes" on the proposal regarding civil service credit for veterans. The investigator responded that his vote was private, and the poll inspector apologized for her question.
- A poll inspector assigned to the scanners at a Bronx poll site took an investigator's ballot out of his hand, looked at the ballot, and asked, "Who is John Test?" The investigator replied, "John Test is my candidate." The poll inspector proceeded to scan the ballot herself.
- A poll inspector in Brooklyn told an investigator that he left the ballot proposals blank. The investigator responded that he was only voting for Mayor.

Three DOI investigators serving as poll workers also observed poll inspectors at their sites handling voters' completed ballots at the scanners:

- An investigator at a Queens poll site stated that a scanner inspector at his site was scanning ballots for each voter who came to the scanner.
- An investigator at a Brooklyn poll site observed approximately six instances where a scanner inspector scanned ballots for voters.
- An investigator at another Brooklyn poll site stated that scanner inspectors were scanning ballots for voters. The investigator noticed that some instances where the inspectors scanned ballots were at the request of voters.

Various voters surveyed by DOI during the general election also complained about a lack of voter privacy.⁴⁶

Moreover, during the primary election, DOI investigators serving as poll workers observed a few instances where an individual entered the lever machine with a voter in apparent violation of voter privacy rules.⁴⁷ For example, at a Manhattan poll site, a DOI investigator serving as a poll worker observed a female enter a lever voting machine booth with three successive voters. The investigator observed a woman at an ED/AD table speaking with a group of female voters who she appeared to know. The woman then accompanied each voter into the voting booth. None of the voters appeared to the investigator to require the types of assistance allowing another person to accompany the

⁴⁶ At a recent BOE Commissioners meeting, which DOI attended, Executive Director Ryan mentioned problems with poll workers at scanner machines taking ballots from voters. He noted that the BOE is considering the creation of a buffer zone such as a barrier, tape, or curtain to address this issue. See Minutes, BOE Commissioners' Meeting, at 6-7 (Dec. 10, 2013).

⁴⁷ The voter privacy rules regarding who may enter the voting area were the same in the 2013 primary and runoff elections which used lever machines as in elections using electronic scanners. See BOE, 2013 Lever Machine Procedures §§ 203-204.

voter into the voting booth. Further, even if the voters required assistance, the investigator did not see the woman take the requisite oath set forth in the Election Law before entering the voting booth with the voters. Soon after the woman and the voters departed the poll site, the site coordinator told the investigator that the woman should not have been allowed into the voting booth because she is “politically connected” and may have influenced the voters’ choice of candidates.

4. Incorrect Voting Instructions by Poll Workers

DOI found more than 15 instances during the 2013 general election where poll workers instructed voters to “vote down the line” on the ballots for candidates on a particular party line. At a Manhattan poll site, the poll site coordinator directed a DOI investigator serving as a poll inspector and the other inspector assigned to his election district table to inform voters to vote “down the line” for a political party. The investigator asked the coordinator to explain the rationale for providing this advice to voters. The coordinator responded that a failure to vote down the line could “mess up the [scanner] machines.” The investigator then heard the coordinator give the same instruction to poll inspectors at a nearby election district table. The investigator observed at least 15 instances in which a poll worker gave a voter the instruction to “vote down the line,” and found that voters generally did not say anything in response to the instruction. The investigator encountered one voter at his table who objected when he was told by the other inspector to “vote down the line,” as the voter said that the advice would preclude him from voting for candidates from different parties. Later in the day, the investigator approached the coordinator to clarify the basis for the “vote down the line” instruction, and the coordinator stated that while voters could vote for candidates from different political parties, “it’s easier” if they vote down the line. In addition to the multiple instances at this Manhattan poll site, an investigator casting a vote at a Bronx poll site during the general election heard a coordinator tell a voter that since she was a Democrat, the voter should “vote down the line” for Democrats.⁴⁸

5. Incorrect Action and Competency Concerns

Voters surveyed by DOI during the general and primary elections made 80 complaints about the actions or competence of poll workers. A number of DOI investigators serving as poll workers and casting votes observed poll workers who struggled to locate voters’ names in the registration books. DOI spoke with an experienced poll site coordinator who stated that many poll workers lack sufficient reading or English language ability to locate the names of voters arranged in alphabetical order in the registration books. The coordinator also said that workers commonly fail to properly address common situations that arise at the polls. The coordinator cited, for example, a poll worker who allowed a voter to vote on a lever machine during the

⁴⁸ At a BOE Commissioners meeting on November 19, 2013, Susan Lerner, Executive Director of Common Cause New York, reported to the Commissioners that her organization received five complaints from voters about instances during the general election where poll workers told voters that they should “vote down the line.” See Minutes, BOE Commissioners’ Meeting, at 2 (Nov. 19, 2013).

primary when the voter's pre-printed signature did not appear in the registration book. The coordinator stated that the proper response to this situation is to offer the voter an affidavit ballot. During the primary election, DOI conducted a test of another common situation: voters at the wrong poll site. DOI investigators entered poll sites 46 times and provided poll workers with an address located in an election district assigned to a different poll site. In such a circumstance, poll workers are supposed to direct the voter to the appropriate poll site and complete a referral form providing the voter with the address of the proper poll site. See Poll Worker's Manual, at 77; Lever Machine Edition, at 29. Poll workers directed investigators to the correct poll site 45 out of 46 times, and gave investigators a referral slip 33 times.⁴⁹

Following the 2013 primary election, DOI investigated an allegation that the mother of a candidate in the 86th Assembly District of the Bronx was a poll worker in the 86th AD during the primary.⁵⁰ The Election Law forbids a person from being "certified [to] act as an election inspector or poll clerk . . . who is . . . the spouse, parent or child of . . . a candidate [for any public office to be voted for by the voters of the district in which the candidate is to serve]." Election Law § 3-400(6). DOI interviewed a poll site coordinator at PS 33 who confirmed that Luisa Duran, the mother of candidate Victor Pichardo, worked as a poll inspector at the 22nd election district table in the 86th Assembly District ("ED 22/AD 86"). After poll watchers made her aware that Duran was the mother of a candidate in the 86th Assembly District, the coordinator stated that she spoke with the Bronx Borough office, which told her to move Duran from an election district table in AD 86 to an election district table for AD 78.⁵¹ DOI spoke with Marricka Scott-McFadden, a Bronx Deputy Chief Clerk, who said that she went to PS 33 and instructed the coordinator to move Duran to an AD 78 election district table and that Duran was moved. DOI then interviewed Duran who confirmed her assignment to an AD 86 election district table, but stated contrary to Scott-McFadden and the coordinator that she did not serve voters at the AD 86 election district table during the primary.⁵²

⁴⁹ In the one instance when a poll worker did not refer an investigator to the correct poll site location, the worker offered the investigator an affidavit ballot.

⁵⁰ On September 12, 2013, the New York Daily News published an article describing allegations of irregularities in the Bronx 86th Assembly District special election, including that the mother of Victor Pichardo had been a poll worker in the 86th AD during the primary despite that Pichardo was a candidate in the 86th AD. Jennifer Cunningham, *Machine politics! Special Assembly election in Bronx riven by fraud, losers claim*, Daily News, Sept. 12, 2013. DOI also received a complaint regarding the same allegations.

⁵¹ PS 33 had election districts within both AD 86 and AD 78.

⁵² Before the 2013 general election, DOI interviewed Anthony Ribustello, Deputy Chief Clerk of the Bronx Borough office, who determined upon DOI's inquiry that Duran again had been assigned to work at ED 22/AD 86 for the general election. Ribustello explained that poll workers typically are re-assigned to the same poll site in subsequent elections. He also stated that Duran would not work the general election in the 86th AD. Investigators visited PS 33 during the general election and confirmed that Duran did not work at the poll site during that election.

D. Election Day Issues

1. Poll Sites

Poll sites are designated by the BOE. Election Law § 4-104(1), (3). Public schools, public libraries, and community centers are often designated as poll sites. Although the poll site does not open to voters until 6:00 AM, poll workers are required to report to their assigned poll sites at 5:00 AM on Election Day so that workers can prepare the site for the election. During the 2013 election cycle, most of the poll sites where DOI investigators worked opened for poll workers by 5:00 AM. Some did not open on time, however. A Bronx poll site at a school did not open on primary day until 5:49 AM when the custodian arrived to unlock the building. Also on primary day, a Brooklyn poll site did not open until 5:40 AM when the custodian arrived. Consequently, according to investigators, these sites were not ready to receive voters until after 6:00 AM when the polls were supposed to open. According to the Poll Worker's Manual, one of the duties of a poll site coordinator is to communicate with the custodian or contact person at the poll site to ensure that the building will be open for poll workers no later than 5:00 AM. See Poll Worker's Manual, at 48.

A number of voters surveyed by DOI investigators complained that they did not receive notice that their poll site location had changed or that they went to the incorrect poll site. During the primary election, 16 voters told DOI investigators that the BOE did not notify them of a change in their poll site location. More than one hundred voters during the primary and general elections told DOI investigators that poll workers informed them that they were at the wrong poll site.⁵³ Poll workers told a DOI investigator that some voters went to the wrong poll site because their poll site locations had changed as a result of redistricting following the U.S. Census. See New York City Districting Commission, The United States Department of Justice Approves the Districting Commission's Finally Citywide Redistricting Plan (May 21, 2013). According to media reports, a number of voters complained that they received no warning of the change in their poll site locations, and that they attempted to vote at their former poll sites. See *Polling Place Changes Confuse Uptown Voters on Primary Day*, DNAinfo New York, Sept. 10, 2013, <http://www.dnainfo.com/new-york/20130910/hudson-heights/polling-place-changes-confuse-uptown-voters-on-primary-day>. Additionally, prior to the general election, the BOE posted an "urgent message" on its website announcing to voters that it changed the site of 145 election districts for the general election, including 125 districts in Brooklyn, in order to meet accessibility standards. See *NYC Election Board Defends Poll-Site Notifications*, City Limits (Brooklyn Daily Eagle), November 19, 2013, <http://www.brooklyneagle.com/articles/nyc-election-board-defends-poll-site-notifications-2013-11-19-203000>.

⁵³ Additionally, DOI obtained data from 311 showing that the majority of election-related calls to the 311 system – 72.3% (3,550) on primary day and 73.8% (3,215) on general election day – concerned requests for information about the voter's poll site location.

The BOE generally provides voters with information about poll site locations. In August, the BOE sends notices to voters informing them of the dates and times of the primary and general elections, as well as the location of voters' assigned poll sites. See Election Law § 4-117(1). Additionally, on its website, the BOE maintains a Poll Site Locator, which provides voters with the ability to obtain their poll site location by entering their address, as well as a copy of the ballot specific to that voter's election district. See BOE, Poll Site Locator, <http://nyc.pollsitelocator.com/Search.aspx>. The BOE also supplies poll sites with Street Finder manuals allowing poll workers to direct voters to their correct poll sites based on the voters' addresses. See Poll Worker's Manual, at 17.

2. Voter Waiting Time and the Use of Voter Cards

New York State regulations provide that "[c]ounty 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." State BOE Rules and Regulations § 6210.19(c)(1). Noncompliance with this requirement was a concern during the 2012 presidential election as long lines at the polls and people waiting hours to cast a vote was widely reported. See, e.g., Jen Carlson, *Happy Election Day: How Was Your Voting Experience?*, Gothamist, Nov. 6, 2012, http://gothamist.com/2012/11/06/happy_election_day_how_was_your_vot.php.⁵⁴ DOI surveyed voters during the 2013 primary and general elections about their wait-times to vote. While a number of voters complained about waiting to vote at the polls, the majority of those voters reported waiting less than thirty minutes to vote. Ten surveyed voters reported wait-times exceeding thirty minutes.⁵⁵

DOI also investigated a complaint alleging that Voter Cards create delays at the polls and are an unnecessary expense. After a voter signs the registration book at an ED/AD table, BOE poll workers fill out a Voter Card, which contains the voter's name, the date of the election, and the voter's ED/AD. In an electronic scanner election, the card also includes the stub number listed on the paper ballot given to the voter. According to BOE employees and members of good government groups, the Voter Card was "a ticket" that during lever machine elections showed poll workers that the voter signed the registration book and was permitted to enter the machine to vote. In an electronic scanner election, by contrast, the voter receives a paper ballot and a privacy

⁵⁴ Thirty-six states across the country have implemented early voting to give voters the convenience of voting in advance of Election Day. Early voting also has been credited with mitigating the potential for long lines on Election Day. While an early voting bill was introduced in New York and passed in the State Assembly, the State Senate did not pass the bill. See, e.g., Susan Lerner et al., Common Cause New York and Common Cause Election Project, *People Love It: Experience with Early Voting in Selected U.S. Counties*, at 3, 10, 36-39 (2013).

⁵⁵ Voter turnout in the 2012 presidential election was 2.46 million people, a much higher turnout than the approximately 1.1 million people who voted in the 2013 Mayoral election, which suggests voter turnout has an impact on voter wait-times. See BOE, Statement and Return Report for Certification (Dec. 3, 2013; Nov. 6, 2012). The Statement and Return Reports for Certification cited in this report are available on the BOE website, <http://vote.nyc.ny.us/html/results/results.shtml>.

sleeve after signing in at the ED/AD table. A member of one good government group explained to DOI that the paper ballot and privacy sleeve now signify to poll workers that the voter has signed the registration book and is permitted to vote.

During testimony before the New York City Council following the 2012 presidential election, Douglas Kellner, Co-Chair of the State BOE, called the use of Voter Cards “an anachronism” and recommended their elimination. He recognized that New York City is the *only* remaining board of elections in New York State to use them. *See* Douglas Kellner, Co-Chair of the State BOE, Prepared Testimony to the City Council Committee on Governmental Operations, at 7 (Dec. 5, 2012). Further, in a June 27, 2013 letter to the BOE, Anna Svizzero, Director of Election Operations for the State BOE, wrote regarding the BOE’s planned use of Voter Cards in connection with the 2013 election cycle, and reiterated the State BOE’s request that the BOE discontinue use of the cards to save on printing costs and time processing voters at the polls. *See* Letter of Anna Svizzero, Director of Election Operations for the State BOE, to Dawn Sandow (June 27, 2013).

In September 2013, a BOE Executive Office manager informed DOI that the BOE had decided not to use Voter Cards in the 2013 general election when the BOE would return to using electronic scanner machines after using the lever machines in the 2013 primary and runoff elections. DOI later spoke with two Executive Office employees who stated that the BOE Commissioners reversed that decision in mid-October 2013. According to one of those employees, the Commissioners cited a desire to limit the number of changes in poll site operations given that the BOE already had used two different voting systems during the 2013 election cycle. DOI spoke with a BOE Executive Office employee who stated that the BOE printed a total of nearly 3 million Voter Cards for the 2013 general election: 1.5 million cards were printed by an outside vendor and 1.44 million were printed in-house. The employee stated that the cost to have the outside vendor print 1.5 million cards was \$32,490 and the cost of the paper used for in-house printing of the 1.44 million cards was \$ 6,746.18.

3. Voting Machines

a. Lever Machines

The BOE sought and received legislative approval to use the lever voting machines for the 2013 primary and runoff elections.⁵⁶ During the primary election, lever voting machines experienced breakdowns or operational problems. Public interest groups monitoring the election reported problems with broken machines. *See, e.g.,* Corey Hamilton & Aidan Gardiner, *Voting Headaches Greet Mayoral Candidates and Primary Day Voters*, DNAinfo.com, Sept. 10, 2013, <http://www.dnainfo.com/new-york/20130910/bed-stuy/broken-voting-machines-greet-primary-day-voters-mayoral-candidates> (noting that the New York Public Interest Research Group reported 39 broken machines by 2:00 PM, and that the Asian American Legal Defense and Education

⁵⁶ See Part II.B of the Appendix for background on the legislation approving the BOE’s use of the lever voting machines in the 2013 primary and runoff elections.

Fund reported at least 15 voters at poll sites with broken machines who left without voting leaving poll sites without voting).

Thirty-three voters surveyed by DOI during the 2013 primary stated that a machine at their poll site had broken down or was not working properly. Several poll sites where DOI investigators served as poll workers also had broken or malfunctioning machines. For example, an investigator working at a Bronx poll site found that two lever machines at his site were broken for four hours before BOE technicians repaired them. Another investigator at a Brooklyn poll site reported a stuck lever on the machine for his assigned election district. When a team of two BOE technicians came to repair the stuck lever at 1:00 PM on primary day, they showed the investigator paperwork documenting that they already had visited between 10 and 15 poll sites to repair machines.

While monitoring BOE's public Twitter account on the date of the primary, DOI identified 27 complaints concerning lever machines at poll sites. On several occasions, teams of DOI investigators were deployed to poll sites in response to those complaints. In many of those instances, DOI investigators confirmed that the machines had broken down, and found that BOE technicians had responded to repair the machines or were en route to do so. Further, in connection with the machine breakdowns they investigated, DOI investigators typically found that voters were offered emergency ballots to cast their votes when the machines broke down. However, DOI also found some instances of long delays in repairing broken machines. For example, at PS 131 in Queens, poll workers discovered at 6:15 AM that the sole machine at the poll site was inoperable. Poll workers told DOI investigators that they called the Queens BOE office several times throughout the day for assistance. However, technicians did not arrive until approximately 1:30 PM, and ordered a new machine, which arrived at the location at 2:45 PM. In the meantime, poll workers provided voters with emergency ballots until they ran out of those ballots at approximately 11:15 AM. Poll workers were then instructed to tell voters to wait or to return later.

Following the primary election, DOI received a complaint that the lever machine for Election District 17 ("ED 17") in Bronx Assembly District 86 was missing levers for many of the candidates for the 86th Assembly District seat, but not for Victor Pichardo, the candidate who ultimately won the primary election. The New York Daily News also published an article about the special election in Bronx Assembly District 86, and included a photograph of the missing levers on the Election District 17 machine. See Jennifer Cunningham, *Machine politics! Special Assembly election in Bronx riven by fraud, losers claim*, Daily News, Sept. 12, 2013, available at <http://www.nydailynews.com/new-york/bronx/machine-politics-fraud-filled-bronx-race-article-1.1454279>. DOI spoke with the poll workers assigned to ED 17 who confirmed that the machine was missing levers as documented by the photograph in the media reports. Poll workers stated that the machine was broken for two or three hours before BOE technicians repaired it. They also said that emergency ballots were made available to voters until the machine was repaired.

b. Electronic Scanner Machines

DOI also gathered information concerning breakdowns of the electronic scanner machines that were used in the 2013 general election. Twenty-two voters surveyed during the general election reported that they had experienced issues with the scanner machines: fifteen voters said that they had experienced scanner errors, six voters stated that a machine at the poll site was broken, and one voter reported a long wait to vote resulting from the number of broken electronic machines at the poll site. Furthermore, several DOI investigators working at poll sites reported machine breakdowns at their sites. DOI investigators casting votes also reported broken machines at four poll sites.

DOI monitored BOE's public Twitter account during the general election, and found that 20 poll sites were reported to have one or more broken machines. On several occasions, teams of DOI investigators were deployed to poll sites experiencing problems as a result of broken machines. For example, at PS 29 in Brooklyn's 52nd Assembly District, DOI investigators spoke with poll workers who confirmed that all of the scanner machines were broken from 6:00 AM until 9:30 AM. Similarly, at PS 32 in Brooklyn's 52nd Assembly District, DOI investigators spoke with poll workers who stated that four of the scanner machines were broken from 7:00 AM until 11:30 AM, causing long lines to vote. DOI later learned that 21 poll sites in Brooklyn's 52nd Assembly District had no operable scanners for five hours.⁵⁷

E. Election Results

1. Write-in Votes

Voters who want to vote for a candidate who is not on the ballot, may write that person's name on the paper ballot and insert it into the scanner. A vote for a write-in candidate is considered valid when a voter fills in the oval on the ballot for a write-in vote and when a voter leaves the oval blank. See State BOE Rules and Regulations § 6210.15(a)(5). Because the poll site scanners record write-in votes only when the write-in oval is filled in, however, the BOE is required to conduct a review of ballots to account for write-in votes when the oval is not filled in. The BOE's postelection procedures currently provide that "[a]ll ballots will be reviewed electronically" for write-in votes. BOE, 2010 Procedures for New Poll Site Voting System § 10.1 (revised Aug. 1, 2012). On November 29, 2013, the Daily News published an editorial stating that BOE employees conducted a full-scale visual review of the scanned images of *all* ballots cast in the 2013 general election for write-in votes, even though scanning software exists that can identify for employees the relatively small number of ballots containing write-in votes and allow them to review only the ballots with write-in votes. Opinion, *Have*

⁵⁷ See Greg B. Smith, *NYC Elections 2013: Broken voting machines, mistranslated ballot measures plague low-turnout election*, Daily News, Nov. 5, 2013, available at <http://www.nydailynews.com/news/election/broken-machines-mistranslated-ballots-plague-voters-article-1.1508003> (reporting that the scanners in Brooklyn's 52nd Assembly District were inoperable until 11:00 AM during the 2013 general election, as well as that the N.Y. Public Interest Research Group found that 19 of 31 poll sites had one or more broken machines).

money, will waste, N.Y. Daily News, Nov. 29, 2013, available at <http://www.nydailynews.com/opinion/money-waste-article-1.1531508>.

DOI spoke with John Naudus, Manager of the Electronic Voting Systems Department, who stated that the poll site scanners capture the images of ballots cast at poll sites on Election Day and that employees review all ballot images for write-in votes after the election. DOI inquired whether the BOE has technology allowing employees to search only for ballot images with marks in the write-in vote space. Naudus confirmed that this technology exists. When asked why the BOE reviews all ballots rather than run a search for only ballots with marks in the write-in space, Naudus explained that the BOE Legal Department made the decision to review all ballot images for write-in votes. DOI then spoke with Raphael Savino, Deputy General Counsel, who confirmed the BOE's past decision to review all ballot images for write-in votes. Savino stated that when this decision was made, the software did not allow for searches filtering ballots with write-in votes. He also stated that the filtering software became available in 2012, and that the BOE has the software in its possession, but the BOE is not using it.⁵⁸ Had such technology been used to review write-in votes cast in the 2013 general election, BOE staff would have reviewed the few thousand ballots containing write-in votes, rather than all 1.1 million cast ballots.⁵⁹

2. Problems with Counting Affidavit Ballots in the Manhattan BOE Office

During investigative interviews, several BOE employees informed DOI that the Manhattan BOE office twice had to recertify the results of the 2012 presidential election after discovering valid affidavit ballots that had not been counted.⁶⁰ BOE's own Electronic Voting Systems ("EVS") Department sent staff to that office to assist after the 2012 election and found disorganization and ineffective supervision, which EVS and other witnesses told DOI, led to affidavit ballots having been misplaced and not properly accounted for.

Following the September 2013 primary, after learning that the Manhattan office again did not properly account for affidavit ballots, the BOE Executive Office sent 22 employees from the Executive Office and other Borough offices there to complete an accurate count of the affidavit ballots. Nevertheless, a recertification of the 2013 primary results was required in Manhattan.

⁵⁸ Savino indicated that the BOE likely would test the filtering technology before having its employees use the technology.

⁵⁹ DOI reviewed the Citywide results from the 2013 general election for Mayor and calculated a total of 1,792 write-in votes for Mayor. See Statement and Return Report for Certification (Dec. 3, 2013).

⁶⁰ See Part II.B.1 of the Appendix for additional background on the 2012 presidential election and the Manhattan BOE office's recertification of results.

3. The BOE's Reporting of Unofficial Results

The BOE used a new procedure for reporting unofficial results after the close of the polls in the 2013 general election. Election Night Reporting ("ENR") teams at the police precincts now take portable memory devices ("PMDs"), which contain a tally of the votes cast on scanner machines, and upload the results onto tablet computers. They then transmit the results to the BOE Executive Office, which shares the results with the Associated Press for release to the public. In recent prior years, by contrast, NYPD employees at the precincts manually entered results from the paper return of canvass forms filled out by poll workers into the NYPD computer system and then transmitted the results to the Associated Press for release to the public. With respect to this previous procedure, BOE Executive Office staff explained to DOI that when a vote tally for a particular candidate or proposal on a return of canvass form was illegible or left blank, NYPD employees entered the tally as a zero, despite that the tally usually was not zero. At the BOE Commissioners meeting on November 12, 2013, Executive Director Michael Ryan stated that the new procedure improved the accuracy of unofficial results. Ryan nonetheless noted that the delivery of the PMDs to the police precincts creates a delay in the reporting of unofficial results. He said that the BOE plans to continue evaluating its procedures for reporting unofficial results. *See Minutes, BOE Commissioners Meeting, at 4-5 (Nov. 12, 2013).*

Meanwhile, at a City Council hearing on March 14, 2013, the BOE presented a proposal to transform unused lever voting machine booths into electronic information kiosks that could be used to check in poll workers upon arrival at their poll sites, look up voters' election districts or poll sites, and more quickly transmit election results from the kiosks at the poll sites directly to the BOE. *See Eric Durkin, Board of Elections fears poll workers would steal iPads, Daily News, Mar. 14, 2013.* During the hearing, City Council members raised questions about the estimated \$15 million cost for the kiosks. They also inquired about using iPads to which the BOE expressed concern about the theft of iPads by poll workers. *See id.* DOI interviewed John Naudus of the EVS Department who stated that the BOE considered the use of tablet computers, but said that the tablet computers do not have adequate cameras to read the barcodes on the work notices of poll workers in order to check them in at poll sites. Naudus also explained that BOE staff has continued to develop the kiosks, and estimated that they could be developed at a reduced total cost of between \$4 and \$5 million. In addition to use of the kiosks or tablet computers, DOI asked Naudus whether poll site scanners have the capability to directly transmit unofficial results from the poll site. Naudus stated that the Election Law prohibits the use of poll site scanners that directly transmit election results. *See Election Law § 7-202(1)(t)* (proscribing the use of "any device or functionality potentially capable of externally transmitting or receiving data [from voting machines] via the internet or via radio waves or via other wireless means").

F. Buff Cards

The BOE is not required as a general practice to retain and update “buff cards,” the hard-copy voter registration cards, beyond two years, as long as those cards are maintained electronically in its computerized registration database. New York State Election Law and State BOE regulations provide that local boards of elections may discontinue retention of buff cards as long as the local board maintains complete computer records for registered voters and the State BOE approves the discontinuation of retaining buff cards. *See* Election Law §§ 5-504, 5-506. *See also* State BOE Rules and Regulations § 6212.11(b). If the local board maintains a computer record of the buff card, then it is generally required to retain the original buff cards for only two years. Election Law § 5-506(3)(d). Although the BOE maintains computerized voter registration records in its AVID system, and has scanned electronic copies of buff cards into AVID,⁶¹ the BOE nonetheless retains buff cards beyond the required two years and has employees routinely update them.

During site visits to Borough offices, DOI observed not only the retention of buff cards beyond two years in numerous long file cabinets occupying an inordinate amount of space, but also, large groups of employees at two Borough offices engaged in the unnecessary manual updating and filing of the cards during the week before the November 5, 2013 general election when there were many other priorities. During a site visit to the Queens Borough office on October 29, 2013, DOI observed eight employees working at tables in a room with several long file cabinets containing buff cards. As explained to DOI by Scott Jordan, a supervisor in the Cancellation Department, the employees were stapling notices to buff cards for voters with recently cancelled registrations.⁶² Jordan stated that once employees staple the notices to the buff cards, the buff cards are filed in a separate file for cancelled registrations. Jordan also stated that the BOE employees update and file buff cards on a daily basis. Similarly, during a site visit to the Bronx Borough office on October 30, 2013, DOI observed ten to twelve employees working with stacks of buff cards and updating the cards to reflect cancellations of registrations. The employees were working at tables to the side of the room where the AVID Department is located, as well as in an adjoining room with several long file cabinets containing buff cards.

DOI spoke with the Voter Registration Department Manager Beth Fossella, Deputy General Counsel Raphael Savino, two Borough Managers, and two Borough office supervisors about whether retaining, alphabetizing, and updating the buff cards is necessary. Anthony Ribustello, Deputy Chief Clerk of the Bronx BOE office, stated that the BOE “has not got up to speed” with the fact that the BOE does not need to retain the buff cards because it maintains a computerized record of the voter’s registration.

⁶¹ BOE employees showed DOI during site visits that the buff cards have been scanned and can be viewed on AVID. Further, a BOE employee told DOI that an outside vendor scanned buff cards for the BOE in the early-1990’s, and the BOE continues to scan buff cards into AVID.

⁶² Jordan further explained that the notices included mail sent by the BOE to voters that came back to the BOE “return to sender” and “intent to cancel” notices sent by the BOE to voters notifying them that the BOE intended to cancel their registrations.

Although he noted that the BOE has engaged in some discussions regarding whether to continue retention of buff cards, Ribustello said that no determination had been made to eliminate their retention. Gregory Lehman, Chief Clerk of the Manhattan BOE office, similarly stated that retention of the buff cards is unnecessary beyond two years because the BOE has scanned images of the voter registration cards into the AVID system. Raphael Savino, Deputy General Counsel, confirmed that retention of the buff cards is not required.

Fossella stated that each Borough office follows the same procedures in having employees update buff cards. With respect to the filing of the cards, Beth Fossella stated that Borough offices have discretion as to how they organize the filing of the cards. Three BOE employees stated, however, that the current BOE policy is to alphabetize the buff cards. Ribustello told DOI that while the Borough offices used to file buff cards by batch number, the Executive Office directed the Borough offices approximately seven years ago to alphabetize them. James Howley, a Brooklyn BOE registration supervisor, said that he believed the direction to alphabetize buff cards came from the BOE's former Executive Director. Howley also explained that while the Brooklyn BOE office had alphabetized the buff cards for voters registered before 2001, it had not yet alphabetized cards for voters registered after 2001. Lehman stated that while the Manhattan office has alphabetized some of the buff cards, it no longer is alphabetizing the buff cards. Lehman noted that locating particular cards might be difficult due to the different filing methods used over time. He also pointed toward rows of cabinets containing buff cards that he said contribute to the lack of space in the Manhattan office.

DOI asked Fossella, Savino, and the Borough Managers to explain the rationale for retaining and updating the buff cards. Fossella believed that the cards were kept to ensure that the BOE does not lose voter registration information. Lehman believed that the BOE Legal Department directed retention of the buff cards on the ground that no guarantee exists that AVID has all of the information on the cards. Savino, the Deputy General Counsel, said after consulting with General Counsel Steven Richman, that the only time a buff card is needed is for their possible use in court challenges to petition signatures. However, Savino acknowledged that courts have accepted scanned electronic copies of buff cards. He also recalled only one instance in the past two and a half years when an original buff card was used by the BOE in connection with a petition challenge in court.

G. Runoff Elections

Under the Election Law, when a candidate for the position of Mayor, Public Advocate, or Comptroller fails to capture a minimum of 40 percent of votes cast in a primary election, requires the BOE must conduct a runoff election between the two candidates who received the most votes in the primary. *See* Election Law § 6-162(1). On October 1, 2013, because no candidate in the September 10, 2013 Democratic primary election for Public Advocate captured at least 40 percent of the votes, the BOE was required to conduct a runoff election for Public Advocate. Before the scheduled runoff, the New York Times published an article noting that voter turnout in the runoff was expected to be "startlingly low." *See* Kate Taylor, *High-Cost Runoff for Public*

Advocate's Post Prompts Calls for Reform, N.Y. Times, Sept. 29, 2013, available at <http://www.nytimes.com/2013/09/30/nyregion/high-cost-runoff-for-public-advocates-post-prompts-calls-for-reform.html>. The estimated cost of the runoff election was \$13 million. *See id.*

A proposal was introduced before the New York City Council seeking a referendum on amendments to the New York City Charter that would eliminate separate runoff elections and implement "instant runoff voting" during primary elections in New York City. *See generally* Briefing Paper of the Governmental Affairs Division, Committee on Governmental Operations, at 1-2 (Nov. 21, 2013).⁶³ Instant runoff voting ("IRV") permits voters to rank each candidate for an office in order of preference. *See id.* at 4. If no candidate wins the primary election outright by capturing at least 40 percent of the first choice votes, the votes are re-tabulated as follows: the candidate who received the fewest first choice votes for that office is "eliminated," and the second-choice candidates of voters who made the eliminated candidate their first-choice receive the votes from those voters. The process of eliminating candidates and transferring votes continues until one candidate receives a majority of the votes. Other cities such as San Francisco, Minneapolis, and Oakland have IRV. *See id.*

On November 21, 2013, the New York City Council Committee on Governmental Operations (hereinafter "Committee") heard testimony regarding the runoff election proposals. *See id.* BOE Executive Director Michael Ryan testified at the hearing on behalf of the Commissioners, stating that the BOE takes "no position" with respect to the proposed legislation and discussing "several technical, operational and cost implications related to the implementation and conduct of IRV elections." Michael Ryan, Exec. Dir. of the BOE, Prepared Testimony to the New York City Council Committee on Governmental Operations, at 3 (Nov. 21, 2013) (hereinafter "Ryan City Council Testimony"). Ryan's testimony focused on three main concerns: (1) that the process of procuring additional voting machine software to accommodate IRV would be time-consuming, noting that the time to develop, test, and obtain certification for past software modifications has "exceed[ed] one year"; (2) that IRV would require an "enhanced and extended training curriculum" for poll workers, which would cost between \$2 and \$4 million; and (3) that IRV would result in use of a multi-page ballot, leading to issues such as "ballot jams, additional equipment, increased complexity of ballot management, accountability and additional ballot costs." *Id.* at 4-5. Ryan also testified that any IRV legislation should "build in an appropriate time frame to allow for the implementation of IRV." *Id.* at 4.

Several speakers at the Committee hearing took issue with the BOE's characterization of the nature and extent of the challenges involved in implementing IRV.

⁶³ The proposal (Int. No. 1066-2013) calls for instant runoff voting for all citywide offices. Another proposal (Int. No. 1108-2013) calls for instant runoff voting for military and absentee voters only. A third proposal introduced to the City Council (Int. No. 1192-2013) calls for the elimination of runoffs for the offices of Public Advocate and Comptroller. In addition, there is an instant runoff voting proposal before the State Legislature. *See* Assem. Bill 7013, 2013 Leg., 2013-2014 Sess. (N.Y. 2013) (referred to Comm. on Election Law, Apr. 29, 2013).

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Douglas Kellner, Co-Chair of the New York State Board of Elections, stated that, contrary to the BOE's testimony, only a few minor software modifications are required to implement IRV on the current voting machines. *See* Douglas Kellner, Co-Chair of the State BOE, Prepared Testimony to the New York City Council Committee on Governmental Operations, at 1 (Nov. 21, 2013). In response to the BOE's concern as to the time needed for implementing IRV, Kellner testified that the approximate three-year time frame for the BOE's implementation of IRV is realistic and feasible. Kellner explained that if the referendum to amend the City Charter appeared on the November 2014 ballot, as is contemplated by the IRV proposals, then the BOE would have until the 2017 Citywide election to prepare for IRV. Additionally, good government groups noted that voters in other municipalities have adapted well to using IRV ballots. *See, e.g.,* Prepared Testimony of Susan Lerner, Executive Director of Common Cause New York, to the New York City Council Committee on Governmental Operations (Nov. 21, 2013). As to the BOE's statement that a multi-page ballot is "inevitable" under the IRV system, both State Assemblyman Brian Kavanagh and Kellner testified that a one-page IRV ballot is possible by adjusting the ballot layout and design.

Proponents of IRV emphasized the \$13 million cost of the 2013 runoff election for Public Advocate as a major factor weighing in favor of IRV. In fact, Ryan concluded his testimony for the BOE with an acknowledgment that the costs of implementing IRV would be less than the \$13 million that would be saved by eliminating separate runoff elections. *See* Ryan City Council Testimony, at 6. In addition to the cost-savings, proponents of IRV presented several other reasons for their support of IRV, including the following: (1) IRV promotes more positive campaigning centered on substantive political issues; (2) IRV eliminates the "spoiler problem" of ideologically similar candidates splitting votes; and (3) IRV results in greater overall turnout from a broader pool of voters.⁶⁴

IV. Conclusions and Recommendations

The BOE's responsibility for administering elections in New York City is an enormous task. For a typical election, the BOE must, among other things, organize over 30,000 poll workers, arrange for more than 12,000 poll sites, and update the registrations of millions of voters, including the thousands of voter registrations received prior to an election. The Election Law places detailed and complex requirements on the BOE with which it must comply in administering elections. During the course of its investigations, DOI spoke with various committed BOE employees who take seriously the responsibility of administering elections. DOI also found several areas where the BOE performed well, including in its recent changes to closing procedures at the polls to streamline reporting of unofficial results and poll workers' handling of investigators' requests to vote on behalf of a relative or at the wrong poll site.

⁶⁴ Representatives of the New York City Campaign Finance Board and several good government groups, including Citizens Union, Common Cause NY, and Fair Vote, testified before the Committee on Governmental Operations regarding the benefits of IRV.

Many of the findings in this report, however, highlight systemic problems with accountability, transparency, and dysfunction at the BOE. The New York State Constitution and Election Law created a bipartisan structure for boards of elections to provide equal representation of the major political parties. The purpose of this bipartisan structure was to provide a check against abuse of the electoral process by either of the major political parties. The reality is that this bipartisan ideal has devolved at the BOE into an opaque system of patronage hiring that is based on connections rather than merit and lacks the accountability and transparency typical of other local agencies in New York City. The report that a BOE Commissioner said he needed to "have a talk with my Garcias," a reference to discussing hiring decisions with the county party organization, exemplifies the role of political connections and recommendations in the appointment of BOE employees. The practice of nepotism in the hiring, promotion, and supervision of family members, substantiated in several cases during this investigation, and which reaches as high as some Commissioners and Borough Managers, also demonstrates the undue influence of connections in the selection of BOE personnel. The lack of accountability and transparency is further evident from the absence of public job postings or standardized hiring practices. Even within the existing bipartisan system required by law, much can and should be done to reform the BOE's employment practices.

The litany of problems and errors identified in this report including myriad election administration issues at the BOE, such as defects in the voter rolls, the persistent failure to address ballot design issues, inadequate poll worker training and performance, cheating during tests for prospective poll workers, improper instructions that voters should "vote down the line," and the outdated and wasteful use of Voter Cards, indefinite retention and updating of buff cards, and the assignment of staff, rather than the use of technology, to identify write-in votes, also warrant attention and action.

Based on the foregoing, DOI recommends a number of measures to address the issues identified in the investigation, which do not require changes in current law:

A. DOI Recommends Changes to the BOE's Policies and Procedures

BOE Employment Practices

- **Cease the Practice of Hiring Individuals Based Primarily on County Committee Recommendations and Open BOE Employment to the Public.** The fairness and integrity of the election process is major public concern that should be transparent for public scrutiny. BOE Executive Office staff, Borough Managers, and employees disclosed in interviews with DOI that the hiring process is not transparent. Rather, through a closed process, Commissioners hire employees who are politically active individuals and who have been selected or endorsed by the county party committees. DOI recommends that the BOE implement a policy that bars hiring employees based primarily upon the recommendations of the county committees. At the same time, the BOE should open the hiring process beyond individuals with political connections by

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disseminating notice of all vacant permanent and temporary positions at the BOE through public job postings.

- **Create a Standardized Hiring and Screening Process.** DOI learned from interviews with BOE managers and employees that the hiring and screening process at the BOE varies from Borough to Borough and even within Borough offices as between the two major political parties. DOI recommends that the BOE establish a standardized hiring and screening process to ensure that the Executive Office and Borough Offices uniformly follow a set of steps when considering applicants for job vacancies. These standards should include, at a minimum, that an applicant submit a resume, that BOE staff conduct an interview of all applicants under consideration, and that the interviewer(s) complete a written evaluation form following the interview.
- **Conduct Background Checks.** DOI found that the BOE does not conduct background checks on prospective employees. The BOE should arrange to have DOI conduct background investigations on prospective BOE employees. DOI performs background investigations of new City employees and those promoted to management positions at City agencies, including several non-Mayoral agencies. Background investigations are conducted for individuals who will fill managerial positions, earn more than \$80,000 annually, be directly involved with City contracts, or work on the City's sensitive computer programs. Many BOE employees meet DOI's criteria for individuals requiring a background investigation, including those employees who have access to computer databases containing personal information about registered voters in New York City or otherwise work with City computer programs.
- **Implement an Anti-Nepotism Policy and Require Employees to Disclose Family Members Working for City Government.** The New York City Conflicts of Interest Law prohibits nepotism. The BOE recognizes in its Personnel Guidelines that its employees are subject to the Conflicts of Interest Law. DOI confirmed four cases where Commissioners and Borough Managers engaged in nepotism with respect to the hiring, promotion, or supervision of a relative. As stated above, these four cases will be referred to the COIB. DOI recommends that the BOE adopt an anti-nepotism policy consistent with the Conflicts of Interest Law that will (1) prohibit a BOE employee from any involvement in the hiring or promotion of a family member and (2) require recusal of BOE employees from employment decisions, supervision, or discussions about the work of family members. DOI also recommends that the BOE require prospective employees to disclose any relatives working for the City of New York and current employees to update this disclosure on a regular basis.
- **Adhere to City Personnel and Contracting Rules.** Akin to the BOE's recognition in its Personnel Guidelines that the City's Conflicts of Interest Law applies to its employees, and consistent with the recommendations made above,

the BOE should voluntarily adhere to the City's rules for personnel matters and contracting with vendors.

- **Political Activities.** BOE employees and an Executive Office manager stated to DOI that employees are sometimes expected to engage in political activities while employed at the BOE. The BOE's Personnel Guidelines recognize that the restrictions on political activities set forth in the Conflict of Interest Law apply to BOE employees. The BOE should reiterate the restrictions on political activities in memos to managers and their employees, including the requirements that no one may coerce another employee to engage in political activities and that no superior may request that a subordinate participate in a political campaign.
- **Conduct Performance Evaluations.** DOI spoke with BOE managers who stated that the BOE has not consistently done performance evaluations on an annual basis. The BOE should conduct annual performance evaluations in conformity with its policy.
- **Review Fairness of the Disciplinary Process.** DOI spoke with employees who claimed that disciplinary rules are not applied equally as to all employees. The BOE should conduct a review of disciplinary standards to ensure consistent application of those standards.
- **Provide Employees With Notice of Their Whistleblower Protection Rights.** The BOE currently does not advise BOE employees about their whistleblower protection rights. The BOE should include in its Personnel Guidelines notice to all employees of their rights under the City Whistleblower Law.
- **Modernize the BOE Time-Keeping System and Implement Safeguards Against Time Abuse.** The current system for monitoring time and attendance is inadequate. Rather than continue with the outdated use of punch-cards, the BOE should use an automated time-keeping system to track the time and leave of all BOE employees, including those who currently use written time-sheets. Auditing BOE time and attendance records is cumbersome and time-consuming task compared with records of most other City agencies. Nonetheless, DOI will conduct various audits of time and attendance at the BOE. Until such time as the BOE implements an automated system, it should discuss with its vendors retention of surveillance footage for a period longer than one month because such a short retention period hinders effective investigations of time abuse. The BOE should confirm that each camera in the Borough offices is on the appropriate setting to record only motion by the punch-clock areas. The BOE also should install a camera in the Manhattan office.

Election Administration

- **Voter Roll Deficiencies**

- **Conduct a Review of Cancellation Procedures.** DOI found during its Election Day investigative operations that 63 ineligible individuals, including deceased persons, felons, and nonresidents, remained on the voter rolls and in the registration books on Election Day.⁶⁵ DOI also found that investigators were able to sign the registration books and vote as those individuals without challenge by poll workers nearly 100% of the time. DOI's findings indicate that current procedures may not adequately remove ineligible voters from the rolls. The BOE should review existing cancellation procedures to determine whether any changes can be made to improve the system for removing ineligible voters from the rolls.
- **Coordinate With State BOE Regarding the Identification of Ineligible Individuals.** The BOE receives notices from the State BOE regarding the deaths, felony convictions, or duplicate registrations of voters and makes cancellation decisions based on these notices. Registration supervisors told DOI that the BOE might benefit from obtaining additional information from the State BOE. The BOE should coordinate with the State BOE regarding the flow of information between the two agencies in order to improve the BOE's identification of ineligible voters on the rolls.
- **Subscribe to the Social Security Death Master File Index.** Based on DOI's findings that some deceased individuals remain on the voter rolls despite existing cancellation procedures, DOI recommends that the BOE subscribe to the Social Security Death Master File Index. The BOE can design its own program to systematically interface with the SSA Death Master File to check for deceased voters.
- **Implement Procedures For Pro-Active Response to Cancellation Requests From Voters.** DOI spoke with the BOE's Voter Registration Coordinator and Borough office registration supervisors who stated that the BOE does not cancel voters in response to telephone inquiries from voters indicating that they or a family member are ineligible and should be removed from rolls. The BOE informs voters that it requires documentation verifying that a family member is dead or a voter has moved before the BOE will cancel the voter. Rather than place the onus on the voter to provide such verifying documentation, however, the BOE should implement a policy for proactive responses to communications regarding the removal of a voter from the rolls. Specifically, to the extent possible, after a person informs the agency that a family member has died or a person has moved out of the City, the BOE should seek the necessary

⁶⁵ As discussed above, these findings do not purport to be statistically significant, but provide anecdotal information from DOI's checks of voter roll deficiencies.

documentation when reasonably available. In addition to telephone inquiries from voters, the BOE should make a similar proactive response to information provided by voters on Election Day and noted in the registration books.

- **Consider Training Poll Workers to Check Dates of Birth in the Registration Books.** DOI investigators were able to sign the registration books as deceased persons, felons, and nonresidents and cast votes as those voters. Investigators reported that some poll workers did not check their signatures and none challenged those signatures. In addition to signatures, one piece of pedigree information contained in the registration lists is date of birth and it is not used by poll workers, or is not feasible to use, to address the voter roll deficiencies. However, several investigators were permitted to vote as ineligible individuals despite significant age disparities. To the extent that the BOE considers it feasible for poll workers to check dates of birth against the apparent age of voters at the polls for significant age differences, the BOE should consider training poll workers to check dates of birth in this manner.

- **Ballots**

- **Resolve Font Size and Ballot Design Issues Before the 2014 Elections.** Voters complained about the tiny six-point font on the 2013 general election ballot. While BOE Commissioners expressed concern about the font size before the election, and Executive Director Ryan acknowledged that the font size was a problem, the BOE knew well in advance about the number of languages that had to be on the ballot in some areas of Queens and had explored options for addressing the issue, including the proposal of bilingual or trilingual ballots. Yet the BOE did not take action before the 2013 general election. The BOE Commissioners voted at a recent meeting to explore ways to improve the ballot in 2014. The BOE should consider the use of bilingual or trilingual ballots, as well as other proposals to improve ballot design and readability, and take action to address these issues in advance of the 2014 elections. The BOE also should include an instruction on the front of the ballot to notify voters, when applicable, that ballot proposals are on the back of the ballot.
- **Print Ballots for Election Districts Based on Analysis of Historic Election District Turnout Data.** Despite having reviewed data showing that overall turnout in past Mayoral elections was below forty percent and that even the election districts with the highest turnout did not exceed approximately 60%, the BOE decided to order ballots based on a 90% voter turnout figure. With voter turnout in the 2013 Mayoral election of approximately 24%, the BOE printed a lot of unused ballots. Given recent Citywide voter turnout rates of approximately 30% in Mayoral elections, and even with consideration of the higher turnout of some election

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districts, it is plausible that the BOE could have printed fewer ballots and saved on printing costs. Thomas Sattie estimated that a reduction in the ballot order from a 90% turnout rate to an 80% turnout rate, for example, would have saved between \$150,000 to \$200,000 in printing costs. The BOE must ensure that it prints a sufficient number of ballots for voters who go to the polls on Election Day. At the same time, however, the BOE has historical election district turnout data that it can use to tailor its ballot orders by election district, rather than print ballots at the same overall turnout rate for each election district. The BOE should analyze this election district turnout data to help establish reasonable calculations of the number of ballots to print for election districts in future elections.

- **Poll Worker Training and Performance**

- **Professionalize the Poll Worker Training Program.** Numerous examples cited in this report reflect the inadequate training of poll workers, who were often uninformed, misinformed, or provided incorrect information to voters. The training of poll workers needs to be more intensive and effective. The BOE should examine the creation of a professional training program for poll workers involving, among other things, hiring qualified instructors with teaching experience, analyzing the methods for best instructing trainees to serve as poll workers on Election Day, and reevaluating the poll worker examination. The BOE also should study whether additional training and longer training periods would improve poll worker performance.
- **Increased Use of Role Play and Hands-On Instruction.** Investigators reported that some trainings included use of role-play to instruct trainees on common situations confronted by poll workers on Election Day, while other trainings did not involve role play. Similarly, investigators reported hands-on instruction in the use of voting machines at several trainings, while other trainings involved only a demonstration on the use of the machines. Given the findings about poll worker performance in this report, including that many poll workers have trouble locating voters' names in the registration books and have trouble addressing common situations on Election Day, the BOE should increase the use of role play at trainings to prepare poll workers for situations they likely will confront at poll sites and to evaluate poll worker competencies. Further, the BOE should ensure that its trainings uniformly involve hands-on instruction with the voting machines to improve poll workers' understanding of how to operate the machines on Election Day.
- **Enforce Rules Against Cheating and Trainers Providing Answers to the Poll Worker Exam.** Investigators attended poll worker trainings where trainees openly shared answers and discussed the poll worker exam. Further, in these instances, trainers did not intervene to stop cheating by

trainees. Investigators also heard trainers effectively provide the answers to trainees or identify the topics that would appear as questions on the exam. The BOE should enforce a rule against cheating on the exam. The BOE also should instruct trainers that they are not to provide answers to trainees. While trainers certainly may highlight important subjects for poll workers, they should not do so in a manner that reveals the subjects that will appear on the exam. Further, the BOE should provide trainees with multiple versions of the exam to discourage cheating.

- **Provide Additional Training on Voter Privacy.** Poll workers at scanners during the general election handled ballots, scanned them into the machines, and in some instances, even commented on voters' choices on those ballots. The BOE should emphasize in poll worker training that poll workers at the scanners are not to take ballots from voters to scan into the machines, look at voters' ballots, or comment on voters' choices.
- **Provide Training Regarding Improper Voting Instructions.** During the general election, poll workers at several poll sites improperly advised voters that they should "vote down the line" of the ballot for candidates from one political party. The BOE should ensure that poll site coordinators and poll workers are trained to understand not only that voters are not required to "vote down the line" when completing the ballot, but also, that they are not to instruct voters about how to vote.
- **Train Staff to Provide Accurate Information About Poll Worker Applications.** DOI investigators applying to work as poll workers were provided with inconsistent information regarding the process for hiring City employees as poll workers. The BOE should train staff receiving poll worker applications to provide accurate information regarding the application process.

- **Election Day Issues**

- **Improve Coordination to Open Poll Sites for Poll Workers on Time.** Several DOI investigators serving as poll workers reported that although workers were told to arrive at poll sites by 5:00 AM, their poll sites were not unlocked until nearly 6:00 AM when the polls were to open. As a result, those poll sites were not ready to receive voters at 6:00 AM. The BOE should coordinate with personnel at other institutions used as poll sites to improve communication regarding unlocking poll sites on time so that workers are able to prepare the site for voters before the polls open.
- **Post Poll Site Relocation Notices at Old Poll Sites.** Voters surveyed by DOI investigators complained that they went to the wrong poll site location. One reason that voters might have gone to the wrong poll site locations is that a number of poll site locations changed due to

redistricting and to provide accessibility to disabled voters. Although the BOE already provides information notices to voters to notify them about their poll site locations and has a Poll Site Locator on its website, the BOE also should consider posting notices at previous poll site locations to assist those voters who inadvertently go to those old locations with locating their assigned poll site.

- **Eliminate the Use of Voter Cards.** BOE poll workers fill out and provide Voter Cards to voters, despite the State BOE's repeated requests that the BOE discontinue their use because they create delays at the polls and unnecessary expense. Although BOE Executive Office staff resolved not to use the cards in the 2013 election, the BOE Commissioners reversed that decision. The BOE printed 3 million Voter Cards for the 2013 election at an approximate cost of \$40,000. The BOE is the *only* remaining board in New York State that uses the cards. The BOE should eliminate the use of Voter Cards.
- **Provide a Voter Privacy Screen at Scanners.** In addition to the recommendation discussed above about training poll workers on voter privacy, the BOE should use a privacy screen, partition, or some kind of demarcation around scanners to protect the voter privacy and curtail the handling of ballots by poll inspectors. The BOE also should post signs by the scanners or on the scanners notifying workers and voters about voter privacy rules.
- **Election Results**
 - **Use Filtering Technology to Count Write-In Votes.** The BOE has software, which has been available since 2012, capable of identifying the relatively small number of ballots containing write-in votes, but the BOE is not using it. Instead, employees currently review all scanned images of ballots for write-in votes. There were approximately 1,800 write-in votes for Mayor in the November 5, 2013 general election out of approximately 1.1 million ballots cast. The BOE should use the filtering technology to save time and employee resources in counting write-in votes.
 - **Review Ballot Security and Counting Procedures in Borough Offices.** In light of the problem experienced by the Manhattan BOE office with affidavit ballots having been misplaced and not properly accounted for, the BOE should conduct an internal review of that office's ballot security and counting procedures and proactively review those procedures in other Borough offices.
 - **Explore Options to Upload Unofficial Results at Poll Sites.** The results could be reported more quickly by uploading results from the PMDs at the poll sites rather than the police precincts. The BOE has explored the use

of poll site kiosks to transmit unofficial results from poll sites to its computer system. The development, storage, and delivery of poll site kiosks raise some cost concerns. Some BOE employees have indicated that the use of tablet computers raise another set of concerns about their ability to serve as many functions as the kiosks. The BOE should explore all practical and cost-efficient means of transmitting unofficial election results directly from the poll site to the BOE's computer system.

- **Eliminate the Indefinite Retention and Unnecessary Updating of Buff Cards.** The BOE engages in the unnecessary retention and updating of buff cards. The BOE does not have to retain the cards beyond two years. However, DOI observed large groups of employees engaged in the unnecessary manual updating and filing of buff cards one week before the 2013 general election when they could have assisted on election preparation. The claim that the BOE retains the buff cards for petition challenges in court must be viewed in light of the fact that the BOE has electronic copies of the buff cards for use in court and, based on the recollection of the Deputy General Counsel, has used a hard-copy buff card in court only once in the last two and a half years. The BOE should stop the indefinite retention of buff cards beyond two years, and cease alphabetizing and updating them.
- **Take a Position on Instant Runoff Voting and Other Runoff Election Proposals.** The BOE is the agency responsible for administering elections in New York City. Given its role, the BOE should take a position on the significant legislative proposals regarding runoff elections. Instead, in advance of the November 21, 2013 Committee hearing on IRV and other runoff election proposals, the BOE Commissioners unanimously voted to formally take "no position." Then, in its testimony, the BOE presented on the practical and logistical challenges to implementing IRV, while acknowledging that the cost savings from IRV outweigh the costs of implementing IRV. The BOE should take a position on the IRV and other proposals giving serious consideration to whether addressing any challenges involved in implementing IRV is worth the substantial savings of taxpayer money that IRV would provide.

BOE Anticorruption Program

- DOI collaborates with City agencies in developing procedures and systems to protect against corrupt and other criminal activity at those agencies, as well as to address conflicts of interest, mismanagement, waste. The BOE should work with DOI to establish for the agency an anticorruption program that aims to identify, evaluate, and eliminate corruption hazards at the agency and to identify other areas warranting investigation. The BOE also should make annual anticorruption reports.

B. DOI Recommends That the State Legislature Amend the State Constitution and Election Law to Eliminate Bipartisan Boards of Election and Provide for Nonpartisan Election Administration

DOI's findings about the BOE during this investigation also support the recommendations that have been made publicly and by good government groups, and could only be accomplished with amendments to the law: namely the elimination of the bipartisan composition of boards of elections, which requires equal representation of the two major political parties throughout BOE, replaced by professional boards designed to conduct election administration in a non-partisan manner. Many of the areas covered by DOI in this report reveal a systemic lack of accountability and transparency, dysfunctional operations, and inefficient use of resources and City funds at the BOE. A requirement of non-partisan election administration would not only curtail the influence of the county committees, but also, could facilitate the professional administration of elections by individuals selected based on merit.

The New York City Campaign Finance Board ("NYC CFB") is an example of a professional board designed to "conduct all their activities in a strictly non-partisan manner." City Charter § 1057. The NYC CFB consists of five members: two members appointed by the Mayor who shall not be members of the same political party, two members appointed by the Speaker of the City Council who shall not be members of the same political party, and a chairperson appointed by the Mayor after consultation with the Speaker. *Id.* § 1052. The NYC CFB reports to both the Mayor and the Speaker of the City Council. The staff of the CFB are hired on a nonpartisan basis.

To remedy the lack of accountability and transparency at the BOE, improve the efficiency of its management and operations, and promote the professional administration of elections, DOI therefore recommends amendments to the State Constitution and the Election Law eliminating the bipartisan composition of local boards of election and requiring that the BOE operate in a non-partisan manner.

Appendix - Background

I. The Responsibilities of the BOE

The BOE conducts all elections in the City of New York. The principal responsibilities of the BOE are to process, maintain, and update voter registration records; design and order Election Day ballots; conduct elections which involves the recruitment and training of poll workers, the maintenance, repair, and delivery of election voting equipment, and operating the poll sites on Election Day; and count the votes and certify the election results. *See* Election Law § 3-100 *et seq.* *See also* BOE, About NYC Board of Elections, <http://vote.nyc.ny.us/html/about/about.shtml>.

A. Registration and Cancellation

In order to vote, a person is required to register. Election Law § 5-100. To be eligible to register to vote in New York City, a person must be a United States citizen, over 18 years of age, and a City resident for at least thirty days. *See id.* § 5-102(1). The law prohibits registration of incarcerated felons and parolees, as well as individuals adjudged to be mentally incompetent. *See id.* § 5-106(2)–(4), (6).⁶⁶ Qualified citizens may register to vote by completing a one-page registration form and submitting it to any BOE office by mail or personal delivery. They also may register to vote through the New York State Department of Motor Vehicles when they apply for or renew a New York State driver's license or may register through a number of other state agencies. *See id.* §§ 5-211, 5-212.

The BOE is responsible for processing voter registrations and maintaining voter registration records. The BOE maintains a centralized list of registered voters from all five Boroughs in a computerized database called the Archival Voter Information Database ("AVID"). New York City voters also are included in the computerized statewide list of registered voters maintained by the State BOE, which is called NYSVoter. The statewide list "combin[es] the existing voter registration list maintained by each local board of elections into a single integrated list." *Id.* § 5-614(2). The BOE retains hard copies of voter registration forms called "buff cards" in the Borough offices.

The BOE is also responsible for updating voter registration records and removing ineligible voters from its voter rolls. A voter's registration should be cancelled when, among other reasons, the voter has moved residence outside of New York City, been convicted of a felony, or died. *See* Election Law § 5-400. Additionally, when a duplicate registration for a voter exists, the prior registration should be cancelled. *See id.* § 5-614(12)(b)(3); N.Y. Comp. Codes R. & Regs. Title 9 (hereinafter "State BOE Rules and

⁶⁶ A person who has been pardoned, completed a sentence, or been discharged from parole is permitted to register. Election Law § 5-106(2)-(4).

Regulations”) § 6217.10(a)(2)(iii). The BOE receives information regarding deaths, convictions, changes in address, and duplicate registrations of voters from a variety of sources.⁶⁷

On Election Day, the names of registered voters appear in voter registration lists that are generated from the BOE’s computerized registration records. Voter registration lists, also called registration books or poll books, are created for each election district within a poll site and identify the registered voters who reside within a particular election district. Registered voters appear on the list in alphabetical order by name. In addition to name, the voter registration list includes a voter’s address, date of birth, sex, voter registration number, political party enrollment, and a pre-printed copy of the voter’s signature. *See* Election Law § 5-506(3)(c).

B. Voting Equipment

The BOE maintains voting equipment for elections in the City of New York. In 2002, the federal government enacted the Help America Vote Act (“HAVA”) requiring a “permanent paper record” of a voter’s vote. 42 U.S.C. § 15481(a)(2)(B)(i). Additionally, HAVA required the use of accessible voting technology on which disabled voters could cast their votes. *See id.* § 15481(a)(3). To comply with the requirements of HAVA, New York State required the use of electronic voting systems that could read marked paper ballots and provide access to disabled voters. *See* Election Law § 7-202. In January 2010, the BOE Commissioners approved the use of the Election Systems & Software, Inc. (“ES&S”) DS200 Scanner (hereinafter “poll site scanner”). *See* Minutes, BOE Commissioners’ Meeting, at 5 (Jan. 5, 2010). John Naudus, Manager of the Electronic Voting System Department in the Executive Office, explained to DOI that the poll site scanners are digital scanners capable of identifying a vote based on the marks made on a paper ballot inserted into the machine and tallying the votes cast on the machine. The AutoMARK Ballot Marking Device (“BMD”) was previously approved for use in February 2008. *See* Minutes, BOE Commissioners’ Meeting, at 3 (Feb. 12, 2008). The BMD enlarges the font size of the text on the ballot, has an audio assistance feature, and allows voters to mark ballots using a touchscreen or a “sip-and-puff tube.” After a ballot is marked on the BMD, the ballot is scanned using a poll site scanner. In addition to the poll site voting systems, the BOE uses Pearson *NCS OpScan 6* central count scanners at its Borough offices to tabulate paper ballots that cannot be scanned at poll sites including affidavit, absentee, and military ballots.

C. Ballots

The BOE is responsible for providing the ballots at every election in New York City in which public or party officials are to be nominated or elected. *See* Election Law § 7-100. State law sets forth a number of requirements governing ballot design. New York

⁶⁷ As described previously, the State BOE transmits death notices, felony conviction notices, and potential duplicate registration notices electronically to the BOE for processing in AVID. The United States Postal Service provides the BOE with changes in address. In other instances, voters notify the BOE about a change in address or family members contact the BOE about the death of a voter.

requires a “full-face ballot,” which “[p]rovide[s] a full ballot display on a single surface, except that proposals may appear on the reverse side of any paper ballot.” State BOE Rules and Regulations § 6209.02(a)(1). Ballots may consist of two or more sheets. Election Law § 7-106(1). Voting instructions may be placed on a separate sheet or on the front or back of the ballot. *Id.* § 7-106(6). Ballots must “be printed and/or displayed in a format and arrangement, of such uniform size and style . . . and shall be in as plain and clear a type or display as the space will reasonably permit.” *Id.* § 7-104(3)(b). Boards of election have discretion to arrange the ballot layout in a portrait orientation or landscape orientation. *See id.* § 7-106(10).⁶⁸

In addition to the Election Law, the BOE is required to comply with Section 203 of the Voting Rights Act, which requires the production of certain election materials, including ballots, “in the language of the applicable minority group as well as in the English language” and the rate of English illiteracy in the subdivision exceeds that of the national rate of illiteracy for voting age citizens. 42 U.S.C. § 1973aa-1a(c). The language requirement applies to the printing of election materials when United States Census data establishes that the number of voting age citizens within a political subdivision who speak a single minority group language exceeds 5 percent of the total voting age population in that subdivision or 10,000 people. *See id.* § 1973aa-1a(b)(2). Currently, the BOE is required to print election materials and ballots for some election districts in Queens County in five languages, including English, Spanish, Chinese, Korean, and Bengali. Ballots, and election materials in New York, Brooklyn, and Bronx counties must be printed in English, Spanish, and Chinese.

D. Election Day Operations

The BOE designates poll sites for Election Day, delivers voting machines and election materials to the poll sites, and assigns poll workers to staff the poll sites. Poll workers are assigned different roles within the poll site. Coordinators oversee the election operation at their assigned poll sites, supervise the other poll workers, report problems to the BOE, and manage the closing of the polls. *See* BOE, Poll Worker’s Manual, at 15, 48-58 (2012). Inspectors are responsible for opening and closing the polls at their assigned election district. Some inspectors work at the election district tables where they locate voters’ names in the registration books and monitor the sign-in process, provide voters with ballots, and direct them to a privacy booth or voting machine to vote. They also address special situations such as when to offer an affidavit ballot to a voter, when to use emergency ballots, and when to challenge a voter’s qualification to vote. *See id.* at 16, 60-68, 72, 98, 128-29. Other inspectors and poll clerks are assigned to the privacy booths, scanners, lever machines, or BMD machines. *See id.* at 16. Information clerks direct voters to the proper election district table, door clerks monitor the poll site entrance, and interpreters provide language assistance to voters. *See id.* at 17-18.

⁶⁸ A ballot with a portrait orientation shows the parties and candidates across the top of the ballot with the offices down the left side of the ballot. Ballots with a landscape orientation show the offices across the top of the ballot with the parties and candidates down the left side of the ballot.

The BOE deploys Assembly District Monitors ("AD Monitors") to monitor poll sites within an assembly district. AD Monitors identify any problems at poll sites and bring those problems to the attention of the Borough offices. In addition, personnel from the Executive Office ("General Office Monitors") monitor assigned poll sites and report problems at the sites. The General Office Monitors and AD Monitors also submit written reports to the BOE regarding problems at the poll sites. Employees at the BOE field complaints from poll sites and from the public throughout Election Day. The BOE also has teams of technicians that travel to poll sites on Election Day to repair voting machine equipment.

E. Canvass, Re-Canvass, and Reporting of Results

The "canvass" refers to the process of counting the votes from an election. *See* Election Law §§ 9-100, 10-200 *et seq.* As explained further below, the canvass is performed in two stages: (1) votes are canvassed at the poll sites after the close of the polls on Election Day; and (2) paper ballots not canvassed at the poll sites including affidavit, absentee, and military ballots are canvassed after Election Day at the BOE Borough offices. After an election, the BOE also conducts a "re-canvass" to verify the accuracy of the vote count. *See id.* § 9-208. Unofficial election results are reported to the public at the conclusion of Election Day. The official results are certified by the BOE Commissioners. *See id.* § 9-210.⁶⁹

More specifically, when the polls close on Election Day, poll inspectors for each election district at a poll site canvass the votes cast on the voting machines and write those results onto a return of canvass form. *Id.* § 9-102. In an electronic scanner election like the 2013 general election, the inspectors print from the scanners a results tape containing the results for each candidate and ballot proposal, and announce the results to be entered onto the return of canvass forms. *See id.* In the 2013 primary and runoff elections, where the BOE used lever voting machines, the canvass involved inspectors reading numbers listed on the machines and writing the results onto the return of canvass forms. *See* BOE, Procedures Required for the Effective Utilization of Lever Voting Machines and the Conduct of the Canvass and Recanvass of Votes Cast in the September 2013 Primary and Runoff Primary § 301 (adopted July 16, 2013) (hereinafter "2013 Lever Machine Procedures").

Unofficial results are a tally of the votes cast on voting machines during Election Day, and do not include the votes cast by affidavit, absentee, military, or other ballot that are canvassed on Election Day. The BOE's procedure for reporting unofficial Election Day returns has undergone several changes. In recent years, portable memory devices ("PMDs"), which contain a tally of votes cast on scanner machines, and return of canvass forms were sent to police precincts. At the police precincts, poll workers uploaded the data from the PMDs onto a laptop to transmit results to the BOE. At the same time,

⁶⁹ The Election Law provides that the Board of Canvassers certifies election results, and that the commissioners for local boards of elections comprise the Board of Canvassers. Election Law §§ 9-204, 9-210.

NYPD employees at the precincts entered results from the return of canvass forms into the NYPD computer system for transmission to the Associated Press, which would disseminate the unofficial results to the public. BOE Executive Office staff explained to DOI that when a vote tally for a particular candidate or proposal on a return of canvass form was illegible or left blank, NYPD employees entered the tally as a zero, despite that the tally usually was not zero. Beginning with the November 5, 2013 general election, the BOE's procedure for reporting unofficial results changed. *See Minutes, BOE Commissioners Meeting, at 5 (October 22, 2013).*⁷⁰ The NYPD no longer enters vote tallies from the return of canvass forms into its computer system. Instead, the data from the PMDs entered by poll workers at the precincts onto laptops is transmitted to the BOE, which makes the unofficial results available to the Associated Press for reporting to the public. *See BOE, Press Release, Statement on the Unofficial Nature of Election Night Returns (undated).*⁷¹

Following an election, the BOE canvasses paper ballots not counted at the polls on Election Day, including affidavit ballots. Affidavit ballots are offered to people who do not appear in the registration books when they go to vote at a poll site on Election Day. A person inserts an affidavit ballot into an affidavit ballot envelope, which on its face requires that the person provide identifying information and sign an oath attesting to their eligibility to vote. *See Election Law § 8-302(3)(e)(ii).* Affidavit ballots for an election district are placed in a larger envelope with an "A" on the envelope, and those ballots are sent to the BOE Borough offices for the post-election canvass. BOE procedures provide that employees at the BOE Borough offices then track the affidavit ballots by entering information into the BOE's election management database, and sort the ballots by election and assembly district ("ED/AD") for determinations of validity. Employees check the information on an individual's affidavit ballot envelope against information on the AVID system to determine whether the individual has submitted a valid affidavit ballot. Employees then canvass the affidavit ballots, along with other paper ballots not scanned on Election Day, by bringing the valid affidavit ballots into a "batching area," opening the valid affidavit ballots, and scanning valid ballots to cast them as votes. *See Policies and Procedures of the BOE, Section 4 – Canvass Procedures, at 13-22, 24-29, 38-46.*

The BOE also conducts a recanvass of the vote tally after an election. In an electronic scanner election, the recanvass involves verifying that the results recorded on back-up PMDs from the scanners correspond to the results recorded on the original PMDs, and resolving any discrepancies by consulting the results tape printed from the scanners on Election Day. *See BOE, 2010 Procedures for New Poll Site Voting System § 11.1 (revised Aug. 1, 2012).* In a lever machine election, the recanvass involves confirming that the vote numbers displayed on the lever machines are consistent with the

⁷⁰ The changes were made to comply with amendments by the State Legislature to the Election Law streamlining the procedures for the election night canvass. Those amendments took effect on November 4, 2013. *See S. 3536C, 2013 Leg., 2013-2014 Sess. (N.Y. 2013).*

⁷¹ All references in this report to BOE press releases, which are undated, are to press releases that appear on the BOE website, <http://vote.nyc.ny.us/html/home/home.shtml>.

original canvass results and, if the numbers do not match, resolving discrepancies. See The BOE, Re-Canvass of Mechanical Lever Voting Machines (Aug. 6, 2013).

II. The BOE's Administration of Recent Elections

A. The November 6, 2012 General Election

On the evening of October 29, 2012, just over a week before the November 6, 2012 general election, Hurricane Sandy hit New York City. In anticipation of the storm, the BOE implemented a contingency plan, which included rescheduling deliveries of voting equipment to poll sites, making copies of documents necessary for Election Day operations in the event the storm caused a loss of access to computer files, and removing voting equipment from the Staten Island voting machine facility. As a result of the storm, the BOE relocated 61 poll sites. See Sandow City Council Testimony, at 11-12.

In addition, on November 5, 2012, Governor Cuomo issued an Executive Order suspending the requirement that affidavit ballots be cast only at the poll site containing the election district in which the voter is registered and allowing voters in New York City to vote by affidavit ballot at any poll site in the State of New York in order to facilitate the ability to vote for the many people displaced by the storm. See Exec. Order No. 62, *Temporary Suspension of Provisions Relating to the Election Law* (Nov. 5, 2012), available at www.governor.ny.gov/press/11052012Facilitating-Voting. More than 300,000 affidavit ballots were cast during the 2012 general election.⁷² In testimony before the City Council regarding the 2012 general election, Deputy Executive Director Dawn Sandow reported that the BOE printed 60,000 extra affidavit ballots following the Governor's Executive Order, and received and fulfilled over 120 requests from poll sites for additional affidavit ballots. Sandow City Council Testimony, at 12-13.

During the November 6, 2012 presidential election, 2.46 million people voted in New York City, a much higher turnout than the approximately 1.15 million people who voted in the 2009 mayoral election, and the approximately 1.37 million people who voted in the 2010 gubernatorial and federal election.⁷³ See BOE, Statement and Return Report for Certification (Nov. 6, 2012; Nov. 2, 2010; Nov. 3, 2009).⁷⁴ Long lines at the polls were widely reported, and many people waited hours to cast a vote. See, e.g., Jen Carlson, *Happy Election Day: How Was Your Voting Experience?*, Gothamist, Nov. 6, 2012, http://gothamist.com/2012/11/06/happy_election_day_how_was_your_vot.php.

⁷² In the 2008 presidential election, by contrast, approximately 190,000 affidavit ballots were cast. See Sandow City Council Testimony, at 12-13.

⁷³ There were approximately 4.5 million voters registered in New York City at the time of these three elections. See NYSVoter, Enrollment by County, Party Affiliation and Status (Nov. 1, 2012; Nov. 1, 2010; Nov. 1, 2009), <http://www.elections.ny.gov/EnrollmentCounty.html>.

⁷⁴ The Statement and Return Reports for Certification cited in this report are available on the BOE website, <http://vote.nyc.ny.us/html/results/results.shtml>.

On December 4, 2012, the 2012 presidential election results were provisionally certified. See Minutes, Meeting of the Board of Canvassers and the Meeting of the Commissioners of the Board of Elections in the City of New York (hereinafter "BOE Canvassers' and Commissioners' Meeting"), at 10 (Dec. 4, 2012). On December 18, 2012, the 2012 presidential election results for Bronx, Richmond, and Queens counties were certified. See Minutes, BOE Canvassers' and Commissioners' Meeting, at 4-6 (Dec. 18, 2012).⁷⁵ On December 28, 2012, the election results for Kings County were certified and the results for New York County again were provisionally certified. See Minutes, BOE Canvassers' and Commissioners' Meeting, at 3-5 (Dec. 28, 2012). On January 15, 2013, the results for New York County were certified. See Minutes, BOE Canvassers' and Commissioners' Meeting, at 6 (Jan. 15, 2013). On two occasions thereafter, the election results for New York County had to be recertified to account for previously uncounted affidavit ballots: 1) on March 19, 2013 to account for 426 previously uncounted affidavit ballots (see BOE Canvassers' and Commissioners' Meeting, at 6 (Mar. 19, 2013); and 2) on August 27, 2013 to account for 58 previously uncounted affidavit ballots. See Minutes, BOE Canvassers' and Commissioners' Meeting, at 5 (Aug. 27, 2013). See also Opinion, *Don't count on them*, Daily News, Aug. 26, 2013, available at <http://www.nydailynews.com/opinion/don-count-article-1.1435538>.⁷⁶

B. The 2013 Primary, Runoff, and General Elections

In advance of the 2013 primary, runoff, and general elections, the BOE announced that it did not expect to be able to use the optical scanner voting machines in the primary election and in any subsequent runoff election, stating in sum that the two weeks between the two elections was insufficient time to recalibrate the machines for any runoff election. The BOE stated that preparing the scanner machines for use in a runoff would require 60 to 70 days after the primary election. See Thomas Kaplan, *New York City Wants to Revive Old Voting Machines*, N.Y. Times, May 29, 2013, available at <http://www.nytimes.com/2013/05/30/nyregion/new-york-city-wants-to-revive-old-voting-machines.html>. More specifically, the BOE Executive Director Michael Ryan stated that the BOE could not have "retriev[ed] the machines from the poll sites, reprogram[med] them, test[ed] them and return[ed] them to the poll places across five boroughs" in the short time frame between the primary and any runoff. Deepti Hajela, *Lever Voting Machines To Be Used In NYC Elections Due To 'Timing' Issues*, Huffington Post, Aug.

⁷⁵ On January 22, 2013, results for Bronx, Richmond, and Queens counties were recertified because those counties received additional affidavit ballots transferred from other counties. See Minutes, BOE Canvassers' and Commissioners' Meeting, at 3-6 (Jan. 22, 2013).

⁷⁶ The results for Kings County also had to be recertified on July 2, 2013, after the discovery that 1,579 votes previously were not counted because the data from the PMDs for two scanners at two poll sites had not been uploaded onto the BOE's election management system. See Minutes, BOE Canvassers' and Commissioners' Meeting, at 5 (July 2, 2013); Celeste Katz, *NYC Board Of Elections Finds Nearly 1,600 Brooklyn Ballots Never Counted In Nov. 2012*, Daily News, July 3, 2013, <http://www.nydailynews.com/blogs/dailypolitics/2013/07/nyc-board-of-elections-finds-nearly-1600-brooklyn-ballots-never-counted-in-nov>.

30, 2013, http://www.huffingtonpost.com/2013/08/30/voting-machines-nyc-elections_n_3844644.html.

At the request of the BOE, the New York State Legislature passed legislation allowing the BOE to use the lever voting machines in the 2013 primary and any runoff election, provided that the BOE determined that the use of the lever machines in the primary elections was “necessary to ensure the timely and orderly administration of” the primary election and that the use of the optical scanning machines in the runoff would be “impracticable, given the costs and statutory time constraints associated with the preparation, deployment and utilization of” the optical machines. Assem. 07832B, 2013 Leg., 2013-2014 Sess. (N.Y. 2013). The BOE Commissioners made these determinations by unanimous resolution on July 16, 2013. *See* BOE, 2013 Lever Machine Procedures. The legislation also moved the runoff election from two weeks to three weeks after the primary election. *See* Assem. 07832B.

1. The September 10, 2013 Primary Election

On September 10, 2013, the BOE held the primary election for the Citywide offices of Mayor, Comptroller, and Public Advocate, as well as primary contests for Brooklyn District Attorney, City Council, and other offices, using the lever voting machines. The media reported that lever voting machines at a number of poll sites were broken or inoperable during the election. *See, e.g.,* Thomas Kaplan, *At Polls, Return of Levers Brings Problems and Praise*, N.Y. Times Sept. 11, 2013, available at <http://www.nytimes.com/2013/09/11/nyregion/a-mix-of-hiccups-and-satisfaction-as-old-voting-machines-make-a-return.html> (stating that “lever voting machines were blamed for a smattering of problems at polling places on Tuesday”).

2. The October 1, 2013 Runoff Election

Under the Election Law, when a candidate for the position of Mayor, Public Advocate, or Comptroller fails to capture a minimum of 40 percent of votes cast in a primary election, requires the BOE must conduct a runoff election between the two candidates who received the most votes in the primary. *See* Election Law § 6-162(1). On October 1, 2013, because no candidate in the September 10, 2013 Democratic primary election for Public Advocate captured at least 40 percent of the votes, the BOE was required to conduct a runoff election for Public Advocate. Before the scheduled runoff, the New York Times published an article noting that voter turnout in the runoff was expected to be “startlingly low,” and that the estimated cost of the runoff election was \$13 million. *See* Kate Taylor, *High-Cost Runoff for Public Advocate’s Post Prompts Calls for Reform*, N.Y. Times, Sept. 29, 2013, available at <http://www.nytimes.com/2013/09/30/nyregion/high-cost-runoff-for-public-advocates-post-prompts-calls-for-reform.html>. A total of 202,647 registered Democrats cast a vote for Public Advocate during the runoff, a significantly lower turnout than the 530,089 registered Democrats who cast a vote for Public Advocate during the primary for Public

Advocate.⁷⁷ See BOE, Statement and Return Report for Certification (Oct. 1, 2013; Sept. 10, 2013).

3. The November 5, 2013 General Election

On November 5, 2013, using the electronic scanner machines, the BOE held the general election for Mayor, Comptroller, and Public Advocate, as well as for local races. The back of the 2013 general election ballot also included six proposals to amend the State Constitution. The media reported that electronic scanner machines at a number of poll sites experienced malfunctions, and that voters complained about the 6-point font size on the ballot. See Greg Smith, Opinion, *As usual, bad machines plague elect*, Daily News, Nov. 6, 2013; Gotham Gazette, *Voters Squint As They Choose Their Mayor* (Nov. 5, 2013), available at <http://www.gothamgazette.com/index.php/gotham-votes/4703-voters-squint-as-they-choose-new-mayor>.

⁷⁷ As of April 1, 2013, New York City had a total of 3,222,468 registered Democrats who could vote in the Democratic primary and runoff elections for Democratic candidates. See NYSVoter Enrollment by County, Party Affiliation and Status (Apr. 1, 2013), http://www.elections.ny.gov/NYSBOE/enrollment/county/county_apr13.pdf.

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**Testimony of
Michael J. Ryan
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before the
Committee on Governmental Operations
and
Committee on Oversight and Investigations
Council of the City of New York
on the
Department of Investigation's Report on the
Board of Elections in the City of New York**

February 28, 2014

In accordance with the request of the New York City Council's Committee on Governmental Operations and Committee on Oversight and Investigations, the Board of Elections in the City of New York (Board) has prepared the following itemized response to the specific "recommendations" made by the New York City Department of Investigations (DOI) in its December 30, 2013 Report on the Board. The DOI "recommendations" appear in **bold and underlined**; the Board's response follows each "recommendation."

BOE Employment Practices

Cease the Practice of Hiring Individuals Based Primarily on County Committee Recommendations and Open BOE Employment to the Public

Article 2, Section 8 of The New York State Constitution mandates that all laws governing Boards of Elections secure equal representation of the two major political parties. It further provides that all such Boards and officers shall be appointed upon the nomination of representatives of said parties. The Board of Elections in the City of New York is established by Title 2 of Article 3 of the New York State Election Law. Section 3-300 confers upon the Commissioners the authority to appoint, and at their pleasure, remove all employees of the Board, and that they shall secure equal representation of the two major political parties in the appointment of the employees of the Board. The Board, consistent with the foregoing constitutional and statutory mandates, exercises its proper powers with respect to the hiring of all employees. As such, this recommendation does not comport with either the New York State Constitution or the duly enacted Election Law of the State of New York. Same is acknowledged by Section B on page 55 of the DOI Report wherein certain changes to the New York State Constitution and Election Law are recommended.

Create a Standardized Hiring and Screening Process

The Commissioners of Elections make all personnel determinations pursuant to the authority vested in them by Section 3-300 of the Election Law. In addition, it is necessary to maintain a staff that is equally represented by the two major political parties. As such, a completely "open" hiring process would be incompatible with the constitutional and statutory mandates.

Conducting Background Checks

The Commissioners of Elections make all personnel determinations pursuant to the authority vested in them by Section 3-300 of the Election Law. The application for employment completed by prospective employees is the standard employment application for employees in the City of New York. The appointment of all managerial employees and all full time employees assigned to the Executive Office are made by the full Board of Commissioners upon careful consideration and deliberation. The

appointment of full time employees assigned to Borough facilities are made by the appropriate Borough Commissioners Committee (consisting of the two Commissioners for that Borough), which has been duly designated by the full Board of Commissioners to make such appointments.

Implement an Anti-Nepotism Policy and Require Employees to Disclose Family Members Working for City Government

Part F, Section III of the Board's Policies and Procedures provides in pertinent part:

"A. The provisions of Section 2604 of the City Charter 'Prohibited Interests and Conduct' apply to all Board employees except for subdivisions 12 (solicitation of campaign funds) and 15 (holding of political party positions) and the Rules and Advisory Opinions of the Conflicts of Interest Board, promulgated pursuant to Section 2603 (a) of the City Charter to implement Section 2604, except as heretofore noted. ... All employees are given copies of the Conflicts of Interest Rules upon their employment by the Board."

The foregoing provisions of the Board's Policies and Procedures were adopted by the Commissioners on April 10, 2001.

The DOI Report recommends that the Board require prospective and current employees to disclose family members who are employed in city government. Based on the vague nature of the recommendation, the Board cannot determine the relevance and/or applicability of this recommendation.

Adhere to City Personnel and Contracting Rules

Election Law Section 4-136 (3), mandates that all procurements for use by the Board have to be made by the designated City agency [the Department of Citywide Administrative Services (DCAS) or the Department of Information Technology & Telecommunication (DOITT)] or by the Board, provided that the Board complies with the rules and regulations of the New York City Procurement Policy Board (PPB) and applicable State Law.

It should be noted that the Board complies with the rules promulgated by the PPB. The Board is periodically audited by the City Comptroller's Office with satisfactory results. In addition, the purchase of the Electronic Voting System was jointly audited by New York State Board of Elections (State Board) and the United States Election Assistance Commission Help America Vote Act Audit Unit in 2010 with satisfactory results.

Except in those circumstances that conflict with the authority vested in the Commissioners by Election Law Section 3-300, the Board adheres to the personnel rules promulgated by the City of New York.

In accordance with the applicable provisions of the New York City Charter, every two years the Conflicts of Interest Board (COIB) conducts training in all Board facilities. The Board requires all temporary and permanent employees to attend. In addition, as required, various categories of employees must file annual financial disclosure statements with the COIB.

Political Activities

In 2001, the Board adopted Policies and Standards on Political Activities by Board Employees, which are consistent with the New York State Constitution, the New York State Election Law, and the New York City Charter's Conflicts of Interest Provisions. The New York City Corporation Counsel has addressed this issue in Opinion 2-96 finding that certain provisions of the charter do not apply to the Board, since they conflict with the State Constitution and Election Law. The Board's adopted policies and procedures clearly instruct staff not to conduct political activity on city time or use city resources for any political purpose. Additionally, all employees are reminded of this during the periodic training provided by both the COIB and DOI.

Conduct Performance Evaluations

The Board's current policy is to conduct annual performance evaluations. The Commissioners have instructed the new Personnel Director to ensure this policy is complied with.

Review Fairness of the Disciplinary Process

The Board clearly defines the rules of the Disciplinary Process in its Policies and Procedures for all union employees consistent with the provisions of the Collective Bargaining Agreement (CBA) between the Board and Local 1183 of the Communications Workers of America, AFL-CIO. Accordingly, those covered employees are entitled to and receive a hearing regarding allegations of misconduct. Hearings are conducted before a bi-partisan committee consisting of two Commissioners and each employee is afforded the opportunity to be represented by counsel of their choosing. Under circumstances where the committee determines that disciplinary charges are sustained, the matter is referred to the full Board of Commissioners to take appropriate action. Any action taken by the full Board of Commissioners initially occurs in executive session and then reported at a public meeting of the Commissioners. An adverse finding may be appealed by the employee in accordance with the CBA. The Board has

a separate set of clearly defined rules for disciplinary proceedings for managerial employees.

Provide Employees with Notices of Their Whistleblower Protection Rights

All staff members receive bi-annual COIB training. An element of that training covers employees' Whistleblower Protection Rights. In addition, during the course of the past year, each employee received DOI training, which included being advised of their Whistleblower Protection Rights.

Modernize the BOE Time-Keeping System and Implement Safeguards Against Time Abuse

The Board staff is currently evaluating various options to transition from a paper-based / time card system to an electronic time keeping system. The Board has recently expanded an employee time tracking system that was previously in use only in the executive office, to all five boroughs. This system allows for effective managerial oversight of employees' time and leave.

Election Administration

Voter Roll Deficiencies

The DOI Report refers to "176 individuals," who either died, were convicted of a felony, or moved outside New York City. To date, DOI has not shared with either the Board or the State Board the methodology of how this list was created; however, the names of the individuals and their dates of birth have been provided to both the Board and the State Board. Attached hereto as Appendix One are the State Board's findings dated February 24, 2014, with respect to the referenced individuals. (For the purposes of clarification, on page iii of the DOI Report, there is an indication of "approximately 175 individuals" that is later clarified in the report to be 176 individuals. Our review and the review by the State Board indicate that the correct number is in fact 176.)

The following is a summary of the State Board's findings:

Deceased Voters

Eighty-six (86) individuals were identified as deceased by DOI. Thirty-nine (39) of which appeared in poll books and 47 had been cancelled. Of the 39 voters in the poll books, the State Board has no record of receiving a death notice from the

New York State Department of Health for 26 of those voters; as such those names were not transmitted to the Board for cancellation. Of the remaining 13 voters, 10 were not flagged by the State Board to the Board due to a mismatched middle name provided by the State Department of Health; as such, it would have been improper for the State Board to transmit those names for potential cancellation. That leaves a grand total of three (3) names. Of those three (3), two (2) names were provided to the Board on October 28, 2013, and one was provided on October 21, 2013. All three (3) of those names were received after the October 16, 2013 cutoff date for the production, printing and distribution of poll list books for the November 5, 2013 General Election. Those three (3) voters were cancelled in the first week of December 2013.

Felons

Forty-two (42) individuals were identified as convicted felons by DOI. Of these names, 15 appeared in the poll books and 27 had been cancelled. Of the 15 voters in the poll book, the State Board has no record of receiving a conviction/incarceration notice from the Office of Court Administration (OCA) for four (4) of those voters; as such, they were not transmitted to the Board for cancellation. Of the remaining 11 voters, eight (8) were not flagged by the State Board to the Board due to a mismatched middle name provided by OCA. Of the remaining three (3) voters, one (1) voter was not flagged by the State Board to the Board due to a mismatched date of birth provided by OCA. Of the two (2) remaining voters, the State Board forwarded two (2) separate records for the same voter; the first record was provided to the Board in February 2013 and marked as a non-match in March 2013, the second was received by the Board in June 2013 and marked as a non-match in September 2013. Both non-matches were entered into the system after a review by a bi-partisan team. For the remaining voter, there was a discrepancy with respect to the data involving the gender of the voter, as such the voter remained active.

Non-Residents [Voters Who Allegedly Moved Outside of New York City]

Forty-eight (48) individuals were identified by DOI as non-residents. Nine (9) of which appeared in the poll books and 39 had been cancelled. The State Board conducted a search of its records and located a single voter registration record for each of these voters, all within the five boroughs of the City of New York. As such, based upon the information available to the Board and the State Board, all nine (9) voters remained on the voter list and were properly contained in the poll list books for the November 5, 2013 General Election.

To date DOI has not revealed to either the Board or the State Board the manner in which they came to identify these voters as "problematic" or as to why DOI concluded that the Board acted improperly by listing the referenced individuals in the poll books. Unless information is presented to the contrary, based on the foregoing, the only logical conclusion is that the Board acted lawfully, properly and responsibly with respect to the contents of the poll books in each and every instance cited by DOI (with the exception of a single voter indicated as having a felony conviction as it is not possible based on our records to determine where the gender discrepancy occurred).

Indeed, DOI acknowledges on page 13 of their report in footnote 25, that "[s]everal studies have concluded that voter fraud is 'rare'." Moreover, in that same reference, DOI cites a United States Election Assistance Commission study that found in-person voter fraud "is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election."

The January 2014 Report of the Presidential Commission on Election Administration titled "The American Voting Experience" (Presidential Report) acknowledges the challenges associated with keeping and maintaining accurate voter lists. It is worth noting that the Presidential Report advises 12% of the United States population changes its residence annually, this does not include information with respect to people who are deceased or convicted of a felony for which a term of imprisonment results. The foregoing causes an estimated 8% of all registration records nationally, representing 16 million people to be invalid or significantly inaccurate. The Presidential Report further indicates that there is no "one size fits all" solution to any of the problems set forth therein; however it is clear that increased interstate cooperation with respect to the sharing of information is essential to the keeping and maintaining of accurate voter lists. This cannot be accomplished in a vacuum solely by the implementation of "new and improved" policies of the Board. These problems are larger than the Board's purview and will only be solved when all states fully cooperate with respect to the exchange of data.

The Presidential Report states:

"The country's elections officials find themselves second-guessed and heavily criticized when elections run into problems, and praise is not forthcoming in comparable volume - or at all - when the process runs smoothly. At the same time, these officials are all too

often given inadequate resources with which to carry out this critical function. Over the months of its preparation of this Report, the Commission arrived at a renewed appreciation of how hard, diligently and effectively the vast majority of the country's elected officials work to provide well-run elections for voters – and how difficult the job is.”

It remains the fervent hope of the Board that all those who have responsibilities with respect to the Election Process either directly or indirectly will heed the sentiments set forth in the Presidential Report and begin a new dialogue with a renewed spirit of cooperation and work together with the Board so that we may collectively serve the voters of the City of New York as effectively as possible.

Conduct a Review of Cancellation Procedures

The Board fully complies with the provisions of Election Law Article 5. The State of New York enacted permanent voter registration more than 50 years ago, the law carefully prescribed both the circumstances when a voter's registration can be cancelled as well as detailed procedures to afford the voter with sufficient due process to protect his or her right to vote. In accordance with the law, the Board cannot cancel a voter based merely on informal documentation from unofficial sources (voters, poll workers, etc.) Although the Election Law allows the Commissioners to authorize an investigation of any voter's registration the Board does not have sufficient resources to conduct such investigations based on informal documentation. In addition, it would be overly burdensome, given the number of registered voters in the City of New York to expect the New York City Police Department to use its limited resources to conduct checks authorized by Section 5-702(2) of the Election Law, not to mention the chilling effect on voter participation and the negative impact that such an aggressive tactic would have on the overall safety and security of the City.

Coordinate with State BOE Regarding the Identification of Ineligible Individuals

The Board is in regular contact with the State Board regarding the exchange of information between the two agencies. The process of improving the accuracy and timeliness of the data exchanged is ongoing and in a perpetual state of review.

Election Law Section 5-614 provides, in pertinent part:

“[t]here shall be one official record of the registration of each voter. Such records shall be maintained in an interactive, statewide, computerized voter registration list. Such statewide voter registration list shall constitute the official list of voters for the State of New York. Such list shall be in the custody of the State Board of Elections and administered and maintained by the State Board of Elections...”

Accordingly, the Board receives data daily from the State Board and utilizes such data to conduct regular and routine maintenance of the voter list for the City of New York.

Such data includes reportedly deceased individuals, persons convicted of felonies who are sentenced to a period of incarceration, and persons potentially registered in more than one jurisdiction in the State of New York. While it is the responsibility of the State Board to keep, maintain and transmit such data, the City Board and the State Board work closely and collaboratively to ensure the timeliness and accuracy of these data transmissions.

This recommendation is based on a faulty premise that there is not sufficient and/or effective communication between the Board and State Board. The Board assures this Committee that both the Board and the State Board are deeply committed to maintaining accurate voter lists to effectively serve the voters of the State of New York, in accordance with the statutory mandate.

Subscribe to the Social Security Death Master File Index

The Board has been proactively addressing the issue of properly cancelling voters who are deceased. New York voters who are deceased outside the State of New York present particular difficulty with respect to removing them from the voter list in the City of New York. Presently, in the State of New York, there exists no formal mechanism for the interstate sharing of death records. As such, the State Board receives death records for individuals who die in the State of New York and disseminates same to the appropriate jurisdictions throughout the State.

The Presidential Report confirms that this problem exists nationwide. There presently exist various tools to aid in the removal of deceased individuals from the voter lists. Two such tools are the Interstate Voter Registration Crosscheck Program (IVRC) and the Electronic Registration Information Center (ERIC); both require participation on a statewide level. Presently, New York State does not participate in either of these datasharing efforts. It is worth noting, however, that neither datasharing program provides an absolute, fool-proof method that will dispositively and/or automatically cancel deceased voters upon receipt of death information. Further, the Social Security Death Master File does not provide sufficient information that will permit the automatic cancellation of voter records for individuals who are reported deceased. The Board has been advised by the United States Department of Commerce that over the past several years numerous fields of data have been removed from the file, resulting in it now containing approximately sixty percent of the information previously on record. The significance of that is the data fields for comparison have been reduced which limits the Board's ability to assure this Committee that every record received will result in a sufficient data match so as to warrant removal from the voter list.

In any event, the Board is procuring the Social Security Death Master File along with a weekly subscription for updates. This file will be used by the Board as a supplement to the information contained in the Statewide Voter Registration List. This will enable the Board to receive information that may not have otherwise been available to the State Board, as an additional tool to help the Board identify deceased voters as residents outside of the State of New York, or away from their New York home at the time of death. The Presidential Report advises that jurisdictions should utilize all available data to confirm the identity of deceased voters. There is no single data base in existence that will contain all of the records necessary to permit one hundred percent cancellation of all deceased voters. The Board will continue to work closely with the State Board to improve the quality of the data exchanged by and between the various concerned agencies.

Implement Procedures For Pro-Active Response to Cancellation Requests From Voters

This recommendation represents a fundamental misunderstanding with respect to the complexities of administering elections, particularly in one of the largest and most diverse election jurisdictions in the country. No agency or entity is more acutely aware of the need to maintain accurate voter lists than the Board. Moreover, no agency or entity is more acutely aware of the inadequacy of available data with respect to the cancellation process than the Board. The Board has been historically underfunded and, due to the lack of sufficient resources, often struggles to provide its core functions throughout the election cycle. The suggestion that the Board should now engage in "pro-active" investigations as to the whereabouts of individuals based on telephone calls that may be placed by persons for nefarious purposes, is naïve at best and irresponsible at worst.

The right to vote is one of our most precious and valued as Americans. To accept unverified and often undocumented information is not an appropriate or lawful manner to cancel someone from the voter list. Further, it is unrealistic to assume that the Board should implement a policy or policies that are wholly devoid of any form of personal responsibility on the part of the voter or the voter's family. While the Board has been working diligently to improve the quality of available data, the task of cancellation cannot be completed solely in this manner and necessarily relies on the cooperation of the citizenry.

Consider Training Poll Workers to Check Dates of Birth in Registration Books

The Board has long considered the use of a voter's date of birth by the poll workers as an added measure of security. However, it presents many concerns including increased wait times, potential discrimination/harassment issues and privacy violations.

Ballots

Resolve Font Size and Ballot Design Issues Before the 2014 Elections

This "recommendation" represents an unnecessary circumstance of agency oversight. No agency or group of individuals is more keenly aware of the need to improve the voter experience than the Board. Any suggestion by any outside entity that the Board is insensitive to the needs of the voters or is somehow desirous of creating a circumstance to make the voting experience as difficult as possible, is severely misguided.

The Board would be remiss if it does not remind those interested with this process that the replacement of the lever machines with the Electronic Voting System was not the brainchild of the Board. This replacement was mandated by an Act of Congress. The Board would be further remiss if it did not remind those interested with this process that the utilization of the Electronic Voting System has been in place in New York City for four years, less than five percent (5%) of the time that lever machines were used by the City of New York to conduct elections.

The Board faces challenges with respect to the utilization of the Electronic Voting System including but not limited to, the full face ballot requirement of the State of New York, the complexity of the ballot in New York City, the number of contests required on the ballot in various elections, the number of candidates, the number of parties and independent bodies on each ballot, the number of languages in which the ballots must be printed and the physical limitation of the size of the paper ballot that can be used with the Electronic Voting System. There is a limited amount of space on a given ballot and the foregoing presents the Board with a difficult task to produce a ballot of maximum readability. While the Board remains keenly aware of these challenges and requirements and works to overcome them, some outside entities remain largely uneducated to the challenges faced and the remedies necessary to address them.

While it has been suggested that the Board should have utilized a multiple page ballot for the 2013 General Election, the Electronic Voting System as presently certified, does not properly account for ballots of more than one page. The system would count pages individually, not complete ballots. As such, serious ballot accountability issues would arise, in contravention of the Election Law, should the Board use a two page ballot prior to vendor modification of the Electronic Voting System and certification by the State Board.

These Committees have the assurances of the Board that it has been conducting extensive post-election reviews and analyses to ensure that the process is improved with each election cycle. It is not an overstatement, nor should it be unexpected, that the Board learns from each and every election and works diligently thereafter to make necessary refinements.

Since 2012, in an effort to address concerns of the public regarding font size and ballot readability, the Board has conducted meetings with readability experts and advocacy groups to discuss ways to improve ballot layout.

At the Commissioners' meeting on October 8, 2013, the proposed 2013 General Election ballot layout was considered. During the consideration process, it was proposed to use different font sizes depending on the needs of each borough. A concern was raised that utilizing ballots with different font sizes for the same contests may violate the Equal Protection clause of the Constitution. The Commissioners requested an opinion from the New York City Law Department. It was the considered opinion of the New York City Law Department that varying font sizes would present an unnecessary risk of a successful Equal Protection claim. Based upon this advice, the Board concluded that it would be in the greater public interest to avoid litigation, even if unsuccessful, that would call into question the validity of the Election. On October 15, 2013, the Commissioners voted to utilize a uniform font city-wide. At that same meeting, the Board directed staff to prepare sample ballots for the 2014 Election Cycle as soon as practicable following certification of the 2013 General Election.

Board Staff worked to prepare various options and they were presented to the Commissioners' Ballot Review Committee. The Ballot Committee meetings were open to the public and included participation by at least one advocacy group. At the meeting of February 4, 2014, the Commissioners unanimously approved the utilization of ballots with no more than three languages per ballot. This will be effective for the 2014 General Election, consistent with the provisions of the federal Voting Rights Act with respect to language assistance. While the specific font size will be determined by the number of contests and candidates appearing on the ballot, utilizing tri-lingual ballots will increase font size and overall readability.

Since utilization of the Electronic Voting System commenced, each year the Board has made recommendations to improve ballot design and readability to the Governor and the State Legislature. To date, consensus legislation has not been enacted. The Board will continue to work closely with all governmental partners and concerned groups to improve the voting experience for the citizens of New York.

Print Ballots for Election Districts Based on Analysis of Historic Election District Turnout Data

It is worth noting that this "recommendation" is neither original nor novel. These are the types of decisions that professional election administrators are confronted with as they prepare for every election. At the Commissioners' meeting on October 15, 2013, there was public discussion regarding the manner in which ballots are procured. The Commissioners directed board staff to review the formula for ordering Election Day Ballots. The Board staff is currently conducting this review. To detail all of the concerns

that the Board faces when making ballot ordering decisions would require this testimony to be more voluminous than is presently constituted. It is necessary, however, to underscore that an election cannot be conducted if ballots are not available to the voters. As such any ballot ordering decision requires a balancing of the tension between the cost of ballot production and the rights of all voters to have a sufficient number of ballots available to be cast on Election Day.

Poll Worker Training and Performance

Professionalize the Poll Worker Training Program

The Board is in the process of exploring a negotiated acquisition with a professional firm experienced with the election process to assist with implementing the best practices from election administrators throughout the country. To accomplish this goal in time for the 2014 Election Poll Worker Training Process and with a view toward overall system improvement, the Board will necessarily seek additional resources from the City.

Increased Use of Role Play and Hands-On Instruction

During the 2013 Election Cycle, it was necessary to train poll workers on the use of two different voting systems simultaneously. Given the complexity of the training and the limited time resulting therefrom, less hands-on training for each system was provided. For the 2014 cycle, the Board will reinstitute its full hands-on training program for Electronic Voting System.

As part of the Board's continuing efforts to improve its poll worker training process, a comprehensive review is underway. A mock poll site was created for the purpose of conducting various election scenarios. This process has been commenced and will continue throughout the year. It is anticipated that at each training class poll workers will experience a myriad of circumstances that may occur on Election Day. It is expected that this training will improve poll workers' ability to respond appropriately at the poll sites on Election Day.

Enforce Rules Against Cheating and Trainers Providing Answers to Poll Worker Exam

For the first time during the 2013 election cycle, the Board used four individual versions of the exam in an effort to maintain the integrity of the testing process. The Board remains committed to ensuring that all assigned poll workers meet the standards necessary to serve on Election Day. The Board stresses during each Train the Trainer Program that the goal of the poll worker training program is to effectively educate the poll workers, not to "teach to the test." The Board continues to evaluate methods to achieve these goals and improve the process.

Provide Additional Training on Voter Privacy

The Board's poll worker training program emphasizes voter privacy. Unlike the lever machines, the Electronic Voting System requires more intervention by the poll worker in the event of an issue with the scanners, necessarily resulting in increased voter/poll worker interaction. To further complicate the situation, poll workers were trained on two separate voting systems in 2013. This likely led to confusion and to some voter misunderstanding of the poll workers' attempts at assistance. It should be noted that such complaints are not isolated to the City of New York. At a recent New York State Assembly hearing, Assemblymembers from Nassau and Westchester Counties reported personally experiencing circumstances where poll workers, in an effort to be helpful, gave the appearance of infringing on voter privacy. Nonetheless, the Board remains committed to the sanctity of the election process and the protection of voter rights.

Provide Training Regarding Improper Voting Instructions

This "recommendation" is another example of unnecessary oversight advice. To accept the premise of this recommendation would be to accept the assertion that the Board sanctions improper poll worker behavior. The Board has been successfully conducting elections in the City of New York in a lawful manner for over a century. The Board employs approximately 36,000 per diem poll workers to administer elections in the largest election jurisdiction in the country. It is acknowledged that from time to time workers in any work place may engage in unauthorized behavior. The Board wholly rejects the notion that the issue raised herein is a widespread systemic problem.

Notwithstanding that fact, issues such as these and many others not considered by the DOI Report are addressed in the training process. Any instance of poll worker misconduct that is reported to the Board on Election Day may result in the summary removal of the poll worker by a Commissioner. If a poll worker is removed for cause on Election Day, Election Law provides that the day's compensation is forfeited and may result in a Commissioners' decision to bar the poll worker from future service. Instances

of poll worker misconduct that are reported and verified after Election Day may result in a Commissioners' decision to bar the poll worker from future service.

Train Staff to Provide Accurate Information About Poll Worker Applications

While the list of recommendations set forth in the DOI Report includes an objection to the consistency of the information provided by Board Staff at various offices regarding the hiring of city workers as poll workers, the report lacks sufficient specificity to permit the Board to take appropriate corrective action. In any event, the Board regularly reviews the information provided to staff to ensure that accurate information is conveyed to the public.

Election Day Issues

Improved Coordination to Open Poll Sites for Poll Workers on Time.

The Board operates approximately 1,300 poll sites for each citywide election. The Board assures these committees that effective coordination procedures are in place for each of the sites utilized. The Department of Education (DOE) sites comprise the vast majority of the poll sites used by the Board. The Board and DOE have designated liaisons that communicate throughout the year and specifically in the weeks leading up to and including Election Day. In addition, the Board has liaisons with other governmental agencies that provide poll sites, such as the New York City Housing Authority, the Department of Parks, DCAS, the State's Office of General Service, and the Mayor's Office to assist in resolving any problems that may arise. Despite the best efforts of all concerned agencies, there will inevitably arise isolated instances of individual non-performance. No "enhanced communication," will prevent a custodian from sleeping through their alarm, getting a flat tire on their way to work or any other personal emergency that may arise and prevent their timely arrival at a poll site. As such, the suggestion made by this recommendation belies the extensive efforts of a myriad of government agencies, including the Board.

Poll Site Relocation Notices at Old Poll Sites

As mandated by Election Law Section 4-104, a notice is mailed to every voter affected by a poll site change. The Board's practice when a poll site change occurs within three weeks of Election Day is to post signs at the old poll site directing voters to the new site. In addition, poll workers are assigned to the closed poll site to redirect voters to the new site. There is a Poll Site Locator on the Board's website, www.vote.nyc.ny.us, wherein a voter may enter their address and be directed to their assigned poll site. A voter may also print a Google map directing them to the poll site for their convenience. Voters who

do not have computer access may call any Board office or our toll-free hot-line 1-866-VOTE-NYC or 311.

Eliminate the Use of Voter Cards

The specter of eliminating voter cards for use at poll sites was again raised shortly before the 2013 General Election. The Commissioners decided that eliminating voter cards in such close proximity to Election Day, without sufficient training of the poll workers, would create more confusion than problems solved. The Commissioners simultaneously directed Voter Cards and the manner in which it would be incorporated into the poll worker training. It is expected that this issue will again be addressed by the Commissioners prior to the commencement of the 2014 training cycle.

While considering the elimination of voter cards is certainly an important issue for Commissioners' review, the Board has been dutifully addressing numerous issues since the certification of the General Election in December 2013, which are discussed elsewhere in this testimony.

Provide a Voter Privacy Screen at Scanners

The Board is researching additional measures to provide greater voter privacy around the scanners. The Board is considering a custom made privacy sleeve that will enclose the entire ballot. In addition, the Board welcomes any suggestions from these Committees or any interested voter or group to enhance the voting experience.

Election Results

Use Filtering Technology to Count Write-In Votes

The Board is currently conducting tests to determine if this functionality works in accordance with the Board's Policies and Procedures, the Election Law and State Board regulations.

Review Ballot Security and Counting Procedures in Borough Offices

The internal review of the procedures has been completed and strict adherence to the adopted Policies and Procedures have been stressed to each borough office.

Explore Options to Upload Unofficial Results at Poll Sites

The Board has been in contact with the State Board to collaborate on developing a policy and process for the uploading of unofficial results directly from the poll sites. As stated, the Board utilizes approximately 1,300 poll sites throughout the city. Each poll site must be evaluated for connectivity. Such an evaluation must include an assessment of the transmission capabilities of each site. The Election Law prohibits directly transmitting election results from the Electronic Voting System. As such, capital funding for additional hardware capable of transmitting the results from each poll site would be required to accomplish this goal. The Board presented a prototype kiosk to the Council in 2013. The Board remains committed to exploring every potential method of improving Election Night reporting.

After the 2013 General Election, the Board conducted a post-election review process with representatives from the Electronic Voting System vendor. Subsequently, the Board requested that the vendor develop a firmware change to copy the election results from the primary Portable Memory Device (PMD) to the back-up PMD prior to the printing of the results tapes. This firmware change will allow the earlier removal of the primary PMD without compromising the integrity of the election results. The primary PMDs will now be in the custody and control of the NYPD substantially earlier than in previous elections, as it will no longer be required to wait until the printing of the results tapes are completed. The State Board is currently engaged in the certification process and it is anticipated that this change will be in effect for the 2014 General Election.

Eliminate the Indefinite Retention and Unnecessary Updating of Buff Cards

Executive Management advised DOI that it was conducting a comprehensive review of the Board's retention of voter registration forms. As such, the Board rejects the premise that this qualifies as a "recommendation." Executive Management further advised that it is necessary to conduct an analysis as to the cost of maintaining the voter registration forms and the impact of eliminating retention thereof. Accordingly, Executive Management directed staff to determine the square footage occupied by the voter registration forms throughout the Board's facilities. This analysis determined that approximately 10,200 square feet of space is used for these forms at an average price per square foot of \$23 resulting in an expenditure of approximately \$235,000 annually. The foregoing was reported at the public meeting of the Commissioners held on February 25, 2014. The Commissioners directed Executive Management to draft a plan to ensure the Board is in compliance with Election Law Sections 3-220 and 5-504 as well as State Board Rules Section 6207.1. Executive Management has been in contact with the State Board as any plan requires State Board authorization prior to implementation. It is anticipated that this process will be completed in the near future.

and ultimately allow for the disposition of approximately 5 million voter registration forms.

Take a Position on Instant Runoff Voting and Other Runoff Election Proposals

As these Committees are aware, legislation involving instant run-off voting is within the province of either the City Council or the New York State Legislature. The Board has testified with respect to this matter before committees of both the City Council and the State Assembly in accordance with the direction of the Commissioners. In any event, this recommendation is beyond the appropriate scope of a DOI Report.

BOE Anticorruption Program

As stated above, the Board participates and will continue to request DOI to provide periodic training in accordance with this recommendation.

DOI Recommends That the State Legislature Amend the State Constitution and Election Law to Eliminate Bipartisan Boards of Election and Provide for Nonpartisan Election Administration.

This recommendation is beyond the appropriate scope of a DOI Report.

Appendix 1

James A. Walsh
Co-Chair

Gregory P. Peterson
Commissioner

Todd D. Valentine
Co-Executive Director



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Co-Executive Director

February 24, 2014

Honorable Michael Ryan
Honorable Dawn Sandow
Honorable Pamela Perkins
New York City Board of Elections
32 Broadway
7th Floor
New York, New York 10004

RE: State Board Preliminary Findings with Regard to NYC DOI Report as Discussed at
February 20th NYCBOE/State Board Meeting

Dear Michael, Dawn and Pam:

This letter serves to review and summarize the information shared during our meeting at your Executive Offices last Thursday regarding the New York City Department of Investigation (NYC DOI) report and the subsequent research done by the State Board on the voters mentioned in such report.

Deceased Voters

NYC DOI had originally identified 86 deceased individuals in their report. Of those 86, it was stated that 39 of those voters were found to be listed in poll books. The State Board searched its records to determine the following:

- Was a death notice ever received by the State Board from the New York State Department of Health (NYSDOH) for the given voter?
 - If so, was this information provided to the NYCBOE for processing?
 - If it was, what action did NYCBOE take?
 - If it was not, what was the reason for not providing it?

The findings of the State Board's research are given below:

- Of the 39 voters reported by the NYC DOI as having been found in poll books, the State Board has no record of ever receiving a death notice from the NYSDOH for 26, or two-thirds, of those voters.
- Of the remaining 13 voters for whom the State Board did receive a death notice:
 - Ten voters were not flagged as potential matches due to a mismatch in the data provided for the voter's middle name.
 - Three voters were flagged as potential matches for a NYC voter, and that information was provided to the NYCBOE for processing.
 - This information was provided to the NYCBOE in late October of 2013 (10/28/13 for two of the voters, 10/21/13 for the third),
 - All three voters were subsequently purged by the NYCBOE (two on 12/5/13 and the third on 12/6/13).

Incarcerated Felons

NYC DOI identified 42 incarcerated felons in their report, of which 15 were found to be listed in poll books. The State Board searched its records in a similar manner to the research conducted for the deceased voters in order to determine if that information had been received from the New York State Office of Court Administration (OCA). The findings of the State Board's research are given below:

- Of the 15 voters reported by the NYC DOI as having been found in registration books, the State Board has no record of ever receiving information from the OCA for 4 of those voters.
- Of the remaining 11 voters for whom the State Board did receive information from the OCA:
 - Eight voters were not flagged as potential matches due to a mismatch in the data provided for the voter's middle name.
 - One voter was not flagged as a potential match due to a mismatch in the data provided for the voter's date of birth.

- Two voters were flagged as potential matches for a NYC voter, and that information was provided to the NYCBOE for processing.
 - In June of 2011, prior to NYCBOE's systems receiving information directly from the State Board's NYSVoter system, a monthly data file containing potential felon matches was provided to the NYCBOE for manual import and processing. That month's file contained 7 records for Douglas Burwell (County Voter ID 304652450). Since this information was provided before the NYCBOE/NYSBOE data connection was enabled, we have no way of determining when or how these records were processed, but have no record of this voter being purged.
 - Two separate records were received from the OCA for Eion Klass (County Voter ID 303277762). The first record was provided to the NYCBOE on 2/11/13 and was marked as a non-match on 3/13/13. The second record was provided to the NYCBOE on 6/10/13 and marked as a non-match on 9/8/13.
 - It would be helpful to our continuing research if the NYCBOE were to furnish the State Board with any information relating to the processing of the information provided, and any actions taken, regarding the above-mentioned voters.

Nonresidents

NYC DOI originally identified 48 nonresidents in their report, of which 9 were found to be listed in poll books. The State Board searched its records to see if there was an instance where any of the nine voters were found to have been registered in another New York State county. Using the information provided in the NYC DOI report, the State Board was only able to find a single voter registration record for each voter, and all within the five boroughs of NYC.


The State Board processes the statewide voter file on an annual basis through the National Change of Address System, and provides information to counties on any voters, previously registered in their county, who may have moved. The State Board is in the process of examining the information that was provided to the NYCBOE from 2012 and 2013 to determine if information on any of the 9 above-mentioned voters was contained therein.

Data Sources for NYC DOI Report

The NYC DOI report does not identify the data sources used as the basis for determining a voter's ineligibility. As stated above, the State Board has no record of receiving information from its statutorily designated sources for some of the ineligible voters listed in the NYC DOI report. As such, the State Board has reached out to the NYC DOI in the hopes of learning what sources were used in the determination of ineligibility for those voters listed in their report.

We will continue to share with you any additional findings with regard to the voters identified in the NYC DOI report. Should you have any questions, please contact us.

Regards,



Robert A. Brehm



Todd D. Valentine

RAB/TDV/tec



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

City Council Committees on Governmental Operations and Oversight and Investigations February 28, 2014

Good afternoon, Chairs Kallos and Gentile and members of the Governmental Operations and Oversight and Investigations Committees. My name is Amy Loprest, and I am Executive Director of the New York City Campaign Finance Board (CFB). Thank you for the opportunity to testify here. Elections provide opportunities for New Yorkers to express their collective will on the direction of our city, state, and nation. It is important that each New Yorker feels he or she can participate easily and be heard clearly, so we thank you for this hearing.

The Department of Investigation (DOI) issued two reports in 2013 that took a close look at the New York City Board of Elections.¹ Together, these reports raise serious and troubling concerns. Many of us who care about democracy in New York City are familiar with the troubles we've had with our elections. We have heard many of these stories from the public, or we've witnessed them ourselves over the years. The DOI's work helps make them concrete, and brings them into the spotlight for public discussions like today's hearing. This is a valuable service to voters and to anyone who cares about the democratic process in New York City.

The crucial next step is to identify and implement concrete solutions. Making better use of existing tools and adopting widely available technologies to modernize our election system will resolve many of them. We need to work together now to build a reliable and

¹ New York City Department of Investigation. "Report on the Board of Elections' Staffing Levels and Costs for the November 8, 2011 "Off-Year" General Election." Rose Gill Hearn, Commissioner, April, 2013. http://www.nyc.gov/html/doi/downloads/pdf/2013/apr13/pr12boerpt_40113.pdf; New York City Department of Investigation. "Report on the New York city Board of elections' Employment Practices, Operations, and Election Administration." Rose Gill Hearn, Commissioner. December, 2013. <http://www.nyc.gov/html/doi/downloads/pdf/2013/dec%202013/BOE%20Unit%20Report12-30-2013.pdf>

accessible voting system that offers New Yorkers many of the conveniences they are accustomed to in their everyday lives.

One area where progress can and should be made is improving the accuracy of the voter rolls. The CFB has some insight into the serious challenges of this task. We work with the same voter rolls to mail our print Voter Guide to millions of households before each citywide municipal election. Other parts of our work involve seeking matches between disparate sources of data. Over the several past months, Executive Director Mike Ryan has briefed CFB staff on the BOE's efforts to improve the accuracy of the voter list. While the BOE should take every precaution to avoid mistakenly removing eligible voters from the rolls, the BOE should utilize existing databases to improve its list of registered voters. Doing so can help to shorten the lines at polling places on Election Day and make our elections more secure.

In the past 20 years, new technologies have revolutionized almost every aspect of the way New Yorkers navigate daily life. Unfortunately, the revolution has failed to improve the way that New Yorkers vote.

To provide New Yorkers with a better voting experience, we should better incorporate modern technology into the administration of poll sites as well. This was a key recommendation of the Presidential Commission on Election Administration, which released its report last month.² Using tablets instead of paper poll books to check in voters would alleviate long lines, help quickly resolve questions about voters' registration status, and give voters more confidence in the electoral process.

Taking real steps to expand the poll worker pool would help address other issues raised in the DOI's December 2013 report. Legislation proposed in the last session of City Council would give city workers an incentive to serve on Election Day; a proposal like this is a concrete step this Council can take to create a broad and able pool of potential poll workers and translators.

We also urge lawmakers and election administrators to take concrete steps to improve poll worker training. The Presidential Commission's report calls on states to adopt poll worker training standards, and highlights jurisdictions that have implemented successful online training programs.³ We believe that both of these steps would address concerns highlighted in the DOI report.

² The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration. January, 2014. pp. 44-5 <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>

³ The American Voting Experience, p. 49 <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>

Our response must include a renewed effort to push our state legislators to make the changes in state Election Law that will ensure New York City has the voting system it deserves. CFB and our NYC Votes campaign will continue to make the case for these simple, common-sense proposals to bring election law into the 21st century.

- We should adopt early voting. Among other benefits, early voting would give voters time to resolve issues that arise at the polls, and practically eliminate the frustration of casting provisional ballots. Expanding opportunities to vote before Election Day was another key recommendation of the Presidential Commission.⁴
- We should have better-designed ballots. As noted in the DOI report, many voters had difficulty reading the small font of the 2013 ballot and others were not aware of the ballot proposals on the back of the ballot. The BOE is making important strides in this direction; adopting Assemblymember Brian Kavanagh's Voter Friendly Ballot Act would allow them to accomplish even more.
- We should modernize voter registration. New York should become the 20th state to adopt universally accessible online voter registration. This would absolutely improve the accuracy of our voter rolls, and make it easier for voters who change their address to stay connected.

Finally, we believe that New York should adopt a non-partisan, independent model for its statewide election administration.⁵ This model is a proven way to avoid the gridlock that can be a result of the current bipartisan structure. We believe the CFB's strong tradition of non-partisan, independent administration has enabled a robust campaign finance program that is effective, fair, and accountable to the public.

Together, we believe that these recommendations can put New York City on the path to providing a reliable, efficient voting process that New Yorkers can approach with confidence.

Thank you very much for the opportunity to discuss these important issues today. I am happy to answer any questions you may have.

⁴ The American Voting Experience, p. 56 <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>

⁵ New York City Campaign Finance Board. "Voter Assistance 2012-2013 Annual Report." April 2013. http://www.nycffb.info/PDF/var/2012-2013_VoterAssistanceAnnualReport.pdf

New York

Democratic Lawyers Council

Testimony of
New York Democratic Lawyers Council
(NYDLC)

Hearing on Election Administration and Voting in
New York City

Presented to the New York City Council Committee
on Government Operations

February 28th, 2014

Contact:

Alex Voetsch, Executive Director, New York Democratic Lawyers Council
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Thank you Chairman Kallos and the members of the Government Operations Committee for holding this important hearing to investigate ways to improve elections in New York City. My name is Jarret Berg and I was the New York Democratic Lawyers Council's Voter Protection Coordinator in 2013. I am joined by our Executive Director Alex Voetsch. In this testimony we will offer specific solutions for making New York City elections easier and more approachable for voters.

The organizational mission of the NYDLC is to foster participation and trust in elections by ensuring that:

- **All eligible persons can register to vote easily,**
- **All registered voters are able to vote simply, fairly, and without intimidation,**
- **All votes are counted and all voting systems are open and reliable.**

The New York Democratic Lawyers Council has spent the last nine years monitoring elections and recording empirical data about the voting process. In 2013, we recorded data points from monitors at more than 200 poll sites across New York. We also conducted exit surveys of 150 voters in New York City. Many of our findings related closely to the issues addressed in the recent Department of Investigations report. Today, we will discuss those issues by sharing our observations and offering solutions to problems that arise before, on, and after Election Day.

I. Poll Worker Recruitment and Training

Poll worker training and recruitment are at the core of many Election Day problems. We agree with the DOI report that standardizing and improving poll worker training would make poll workers more effective. Expanding poll worker recruitment would allow the Board of Elections to be more selective with hiring and thus add capable new workers to their pool. Specific suggestions for improved training and recruitment are described below.

A. Poll Worker Training Solutions

- (1) **Hands On Machine Training:** All poll workers should have "hands on" training on the scanner machines so that they can expertly assist voters, fix jams, and open and close the machines. This does not always happen in current training sessions.
- (2) **Raise Testing Standards:** The test for poll workers should be more rigorous. If the BOE recruits more applicants, (we provide suggestions for this below) it would enable them to raise their testing standards and still fill their positions. Voters deserve a minimum level of competence from those administering the Election.

(3) **Focus on and Clarify Affidavit Ballot Use:** NYDLC's Election Day incident reporting system provided us with data that leads us to the conclusion that poll workers either willfully ignored, or more likely, were not properly trained, on the distinction between affidavit ballots and emergency ballot procedure when scanners break down.

- To be clear, when there is a scanner malfunction, emergency ballots are to be used because the "issue" does not call into question the registration or legitimacy of the voter. Once fixed, these emergency ballots are scanned as though the malfunction did not occur, and the vote is counted just like any regular vote. Affidavit ballots are not counted in the same initial category as the general paper ballot but instead are examined with heightened scrutiny.

As part of worker training, a "bright line rule" should control:

- If there is an alleged problem with the voter's registration (name not in book; refusal to take challenge oath), voter must be given *affidavit* ballot;
- If there is a problem with the scanner (jam, broken down, never operative), voter must be given an *emergency* ballot.

(4) **Poll Workers Must Understand all Aspects of the Voting Process:** Common issues that were observed are listed below with solutions.

- It is our observation that telling a voter to "leave and come back later," still occurs at times. This, for any reason is unacceptable. This is a major cause of inadvertent voter suppression. Once a voter is sent away from a polling place, the chance that they do not cast a ballot in the election is greatly increased. While training does make note of this, the message needs to be reinforced.
- Failing to offer an affidavit ballot to a voter whose registration status is unclear is another recurring issue.
- Poll workers should wear visible nametags designating their roles and coordinators should intervene in any voter issues.
- When poll sites are changed between elections, increased attention must be placed on training how to properly utilize the StreetFinder and efficiently ensure that voters are at the correct voting location. NYDLC has observed that confusion surrounding a voter's proper poll site can lead to longer lines, unnecessary commotion, and inadvertent voter suppression.

B. Poll Worker Recruitment Solutions

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

- (1) **Attorneys as Poll Workers:** In 2013 the Board of Election implemented a program to recruit attorneys to work as poll workers. Attorneys were given CLE credit for training in lieu of payment, saving the BOE money. Attorneys who completed this program proved to be excellent poll workers, with the ability to understand all aspect of Election Administration and comprehend the poll worker manuals. We recommend that this program be expanded and continued.
- (2) **College and Law Students as Poll Workers:** We recommend that the BOE make a concerted effort to partner with higher education institutes, specifically CUNY, to establish a program where students can receive credit for training and working as poll workers. Additionally, a *pro bono* requirement has been instituted for graduating law students seeking admission to the New York Bar. We recommend that the BOE explore the prospect of having Election Day poll work qualify for this requirement.
- (3) **High School Students as Poll Workers:** Current law allows 16 and 17 year olds to be poll workers. We recommend that the BOE take advantage of this (they are not currently doing so) to engage NYC high school students in this important civic participation. By working with the Department of Education, the BOE could recruit many students to participate.
- (4) **Half Day Shifts.** For all of the groups above, and for all current poll workers, a full shift of 16 hours is a major deterrent to participation. 16 hour days also serve to wear out poll workers, such that they become more prone to errors later in the day during the after-work rush. New York State Law allows for half-day shifts, however the BOE in NYC has yet to utilize these half shifts. Although we understand that there are many logistical and administrative challenges to this, we recommend that the BOE do everything in their power to implement half day shifts that will increase recruitment and poll worker quality.

We understand that poll worker recruitment and assigning requires the efforts of BOE staff. **We urge the City to consider funding for the BOE that is specifically geared towards increased poll worker recruitment and the implementation of half-day shifts.**

II. Machine Breakdowns and Administrative Obstacles

NYDLC has consistently observed poll sites with machines that were not functioning, particularly at the opening of poll sites. This problem is not specific to one area, but common across the City. Machine breakdowns lead to a host of issues, including: 1) longer lines; 2) more voters leaving without voting due to increased wait times; 3) voters being incorrectly told to “come back later”; 4) the misuse of affidavit ballots; and 5) an overall increased distrust in the voting process by voters.

Solutions:**(1) Technology**

- a. Software issues: Pre-Election Day scanner testing procedures should be continuously evaluated so that there are less surprises at 5:30 AM on Election Day, when the BOE staff is already subject to increased stress of opening polls across the City. Additionally, technicians schedules should be refined to reflect the increased need for technical assistance at times where there are most likely to be problems, such as at the opening of polls.

Hardware issues: Hardware issues should be included in a “troubleshooting guide” to be provided with each scanner or, easily accessible at each poll site. Additionally, more emphasis should be given to such issues in poll site coordinator training. With increased training, one worker in each poll site should be trained and designated to fix the majority of scanner problems. While this designation may currently exist in theory, in NYDLC’s observation, it is not happening in practice.

(2) BOE accessibility to workers and observers on Election Day:

BoE phone lines should be more heavily staffed between 5:30-9:30 AM. A less robust team is required to staff the BoE phones at other times of the day. During a “high turnout election”, a robust shift should also be placed in anticipation of an “evening rush” (5-7:30 PM).

- (3) Early Voting** : The State Legislature must enact some form of early vote and no fault absentee balloting. Systemic scanner breakdowns are just one problem that highlights the most straightforward and often ignored reason why Election Day should be reframed as the last day to vote, and not the first and only. Currently, small errors, like machine breakdowns, can cascade into larger problems, such as calls to BoE that do not get answered or worse, hundreds of “lost votes.”

By squeezing the election into one day, we are inviting these small issues to have outsized negative influence on the process, and ultimately, the outcome. NYDLC has observed that many problems are exacerbated by the increased pressure on BOE resources during peak voting times, particularly during high-turnout elections. If voters were afforded more time to vote, not only would voting be more convenient for New Yorkers, but voting would become more evenly dispersed, reducing the problem-causing peaks in pressure on the BOE.

III. Voter Privacy

NYDLC has noted a marked decrease in voter privacy complaints from the first few elections that used the optical scan machines to the election in 2013. Poll site layouts have improved to ensure privacy. Poll workers are more aware of their duty to protect the privacy of a voter's ballot, even when attempting to assist the voter. This is not to say that these issues do not still exist. We recommend that the Board of Elections continue to stress the privacy problems that were identified in the DOI report when they train poll workers. In particular, the BOE should include a section in their training that warns against electioneering inside the poll site and stresses the penalties for purposely instructing voters how to cast their ballot.

IV. Ballot Readability

NYDLC applauds the Board of Elections efforts to improve the ballot in ways that enhance readability for voters across New York City. However, we stress that there is more than can be done in the area. We support the use of only bi- or tri- lingual ballots and the method of "rotating ballots" to ensure larger font. We also believe that it should be stressed in training that poll workers should notify voters when ballot initiatives are on the back of the ballot.

NYDLC also believes that the State Legislature should pass the Voter Friendly Ballot Act to update and modernize the rules that restrict ballot design in New York. The current laws regarding ballot design were drafted with the old lever machines in mind. The law would help ensure a more readable ballot, while also providing some flexibility to Boards of Election to design an appropriate ballot for any particular election.

V. Voter Rolls

NYDLC believes that maintaining the integrity of the voter rolls should be a high priority of the NYC Board of Election, in conjunction of the NYS Board of Election. However, we stress that the voter rolls must be maintained in a manner that ensures that voters are not removed erroneously. While there are always improvements that can be made to the process of removing ineligible voter from the rolls, a system of checks and balances must continue to exist in order to protect eligible voters from being disenfranchised. Under no circumstance should a qualified voter be turned away from exercising the right to vote. Instances of voter impersonation occurring continue to be rare to non-existent in New York City and across the country. Simply, evidence does not exist that voter impersonation has been used to influence the outcomes of Elections.

VI. Conclusion

It cannot be overstated that fair, credible and straightforward elections are the building block of democracy and ultimately the legitimacy of all government. The New York Democratic Lawyers Council thanks the City Council for addressing the important issues of Election Administration and appreciates all of the hard work that the Board of Elections has put into identifying and addressing ways to improve elections for all voters. The members of NYDLC are committed to not only proposing improvements, but to do anything that we can to assist the Board of Elections in implementing these solutions.

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Chairmen Kallos and Gentile,

Thank you for the opportunity to testify at this hearing. My name is Barbara Zucker, and I represent the Women's City Club of New York, a nonprofit nonpartisan multi-issue organization founded in 1915. Our mission is to improve the lives of New Yorkers by helping to shape public policy and promoting responsible government.

A great many of the points made in the DOI report reflect what we, in the community of good government groups, have been saying for years, that the experience of voting in New York City is unnecessarily difficult and time consuming. Conversion from the Shoup lever machines is one small step into the 21st century, but many more are needed. A more efficient process can only improve the dismal voter turnout in this city.

The DOI report attributes many of the problems at the Board of Elections to the legal requirement that the two major political parties receive equal representation at the Board. As outsiders, we cannot speak to the Problematic Employment Practices noted in the report. However, we see that bipartisanship does not guarantee efficiency. Rather it can lead to paralysis. Witness the three year period when there was no Executive Director of the Board of Elections because the five Democratic Commissioners and the five Republican Commissioners failed to agree on a candidate.

The Women's City Club and other good government groups have observed and testified about many of the problems noted under Election Administration and Efficiency Concerns. Voter rolls are a continuing problem with input errors or lack of updates remaining unresolved from one election cycle to the next. Interaction with poll workers is a frequent source of frustration to voters. We recommend several changes involving poll workers:

1. Recruitment: We would like to see a pilot program to hire inspectors, interpreters and door clerks for half-day shifts. The current work day is far too long and drastically limits the pool of potential workers. On Election Day, poll workers must report at 5 am, and the work day ends some time after polls close at 9 pm. Even with two hours off for meals, that shift runs more than 15 hours. Many highly qualified college students, retired

workers and good citizens of all ages would welcome working at the polls for a so-called “half day” of eight hours. Another limiting factor in recruiting poll workers is their restriction to Democrats and Republicans. Enlarge the pool of candidates by opening the positions to members of minor parties or even to voters not affiliated with any party.

2. Training: The report details many problems observed at polling places. This suggests a need for better worker training and better management of the polling place. I served as a poll inspector for ten years. The training classes I attended were boring and ineffective. Many instructors were not skilled teachers, and the acoustics were usually bad. I saw steady improvement in the manuals over the years, but unfortunately that wasn’t true of the teaching.

A large part of training is learning how to operate the voting machines. Most people cannot learn these skills by watching a demonstration or observing a fellow student selected as a model. Hands-on training is imperative. If it takes too long for an entire class to practice on machines, reduce the class size. Alternatively, designate workers to be trained on either the Ballot Marking Device or Scanners and create separate categories of poll inspectors. Poorly trained poll workers slow the entire voting process and frustrate the voters.

Management: We cannot overemphasize the importance of poll site coordinators in the efficient operation of a voting place. I have worked under both extremes, and the difference is enormous. A good coordinator assigns tasks, oversees work flow, keeps problems from escalating and maintains a high morale. Coordinators play a critical role in the overall voting experience. We don’t know how the BOE oversees the work of coordinators, but we hope they have a robust method of recognizing excellent performance, including the debriefing of poll workers.

Other Issues: The introduction of paper ballots and scanners has brought a great many new issues involving format and legibility of the ballots. We are encouraged that the Board of Elections has announced that 2014 ballots will be printed in no more than three languages. The 10 point font will greatly improve readability. Next we must address the education of poll workers and the public about the content and location of ballot proposals.

ELECTION PROTECTION **YOU HAVE THE RIGHT TO VOTE**

1-866-OUR-VOTE ■ www.866OurVote.org

Statement of Matthew Rowland of Election Protection Before the New York City Council Committee on Governmental Operations and the Committee on Oversight and Investigation on February 28, 2014

Chairs Kallos and Gentile and Members of the Committee on Governmental Operations and the Committee on Oversight and Investigation, thank you for allowing me, on behalf of Election Protection and the Lawyers' Committee for Civil Rights Under Law, to submit testimony for this important hearing on New York City elections.

As we believe you know, Election Protection is the nation's largest non-partisan voter protection coalition, and is led by the Lawyers' Committee for Civil Rights Under Law. Election Protection is supported by a diverse network of local and national coalition partners and volunteers across the country with the sole mission to work to ensure that every citizen who is eligible to vote is able to participate in our democracy. The program has two major components—a nationwide hotline, 1-866-OUR-VOTE, and a field program in which trained volunteers assist voters at targeted polling locations. During the last election cycle in 2013, at the New York City call center that I managed, we had phone lines staffed during the primaries and the general election, and we deployed mobile legal volunteers during those elections at polling places throughout the City. We also partnered with the NALEO Educational Fund, who provided bilingual voter assistance through the 1-888-VE-Y-VOTA hotline.

As we have testified at prior hearings, Election Protection has built a productive working relationship with the City Board of Elections over the past decade. We have been very pleased with the cooperation we have received from the Board in our work, including through open lines of communication on Election Day. Although that is the case, we support a number of the enhancements recommended by DOI in its report: improved ballot design; further improvements in the reliability of voting machines; and enhanced funding for improved poll worker recruitment, training, and performance. The DOI also made recommendations regarding voter rolls, and we recommend that the BOE comply with the federal list maintenance procedures under Section 8 of the National Voter Registration Act of 1993. Note that we are confining our recommendations to matters as to which we have direct experience over the past decade of elections.

First, with respect to improved ballot design, we have the same concerns identified by DOI, among many others, regarding the need to increase the font size used for paper ballots, and also the need to improve the clarity of instructions to voters regarding the ballots, including the need to review the back side of the ballot for ballot proposals. Poor ballot design makes the ballot difficult to read, and can lead to voter error and loss of the franchise, as well as delays in the voting process, all of which,



**LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W**

ultimately, could discourage voting. Many of the issues with ballot design arise from provisions in the Election Law that were originally fashioned in a different era for different voting machines. These outdated requirements should be updated for the new technology to allow ballots to be made more user friendly. Among many other changes, we would join the many who favor adoption of a larger minimum font size and flexibility in the design of ballots to allow for simplification and ease of use. We also join in calls for further changes in the way that different languages are treated on the ballot, moving to different versions of bilingual-only ballots rather than using one, more complicated ballot containing multiple languages.

Second, while our experience this year showed that fewer systemic voting machine problems were reported, we did continue to see issues with both the operation of lever machines and the optical scanning machines. We strongly support continuing efforts to improve machine reliability. Specifically, during the primary, we reported that a number of lever machines had malfunctioned, and during the general election, that scanners at polling places in Brooklyn were malfunctioning. One key issue that we identified (and on which we have previously testified), is that it became clear that many of the operational problems could most efficiently be resolved by the Board with a phone call to the polling site. However, the Board does not appear to have a systemic way to call its poll-workers directly on Election Day. For that reason, the Board must deploy its staff to polling sites across the City, when a brief phone call could have resolved the issue just as effectively. We have regularly worked to address this problem by suggesting that voters who had called into our hotline ask for a poll-worker's personal cell phone number, so that we could provide it to the Board. We believe those efforts helped to resolve particular issues more quickly, but Election Protection strongly recommends that funds be allocated so that each polling site can be provided with a cell phone to use during election day. This modest proposal will undoubtedly save more time and expense for the Board and the voting public than it will cost.

Third, and finally, we strongly support the DOI's recommendations regarding poll worker recruitment and training. Although the majority of poll workers are effective, pleasant, well-versed, and professional, our experience has shown that many are not—and that these outliers can make the voting experience unduly prolonged, inconvenient, and unpleasant for many, and can discourage voters from exercising their right to vote. Many of the problems our volunteers encounter on Election Day stem from failures of poll workers and are problems that likely could be ameliorated with enhanced recruitment and training. Common issues we have seen include poll workers who are unaware of the procedure to follow when the voter's name does not appear in the registration book, using affidavit ballots when there is a machine malfunction rather than emergency ballots, and not opening polling places on time. Also, we have seen that poll workers may become fatigued or discouraged over the course of the very long Election Day. Poll workers who do not communicate well with voters cause voters to become frustrated with delays, leave the poll site, and not vote in future elections.

We recognize that it is a massive task to recruit and train poll workers, and we, therefore, support efforts to devote additional resources to this important effort. Providing more funding for training and recruitment to increase the professionalism and

performance of poll workers will have synergistic effects to also mitigate some of the other issues described above, as a well-trained and committed poll worker can identify and resolve many problems on the spot, or escalate them promptly for resolution by others. Accordingly, we support efforts to systematize and professionalize poll worker training by: hiring a consultant to assist in designing and updating training materials, using existing technology to standardize trainings, and incentivizing poll workers to attend trainings (and preventing their assignment as poll workers if they have not). We also support an increase in poll worker compensation, and the institution of programs and incentives to municipal workers and students to encourage them to serve as poll workers. Finally, we support a pilot project to test the use of split shifts for poll workers, which we believe will both increase the number of qualified poll worker candidates as well as relieving issues of fatigue or "burn-out" on Election Day.

In addition to the testimony just offered, I would also like to refer you to several reports that we believe provide additional relevant and useful input on the functioning of the Board and election administration generally. First, Election Protection and the Lawyers' Committee for Civil Rights Under Law published last year a report on emergency preparedness based on our experiences in the last Presidential election following Superstorm Sandy. We were impressed with the performance of the Board and the State and City government in the wake of that disaster, but also identified certain issues that were exacerbated both by the storm and the response to it, and regarding which we recommended specific steps. Second, we refer you to the report "Better Design, Better Elections" by the Brennan Center for Justice, which addresses how ballot design and voter instruction issues can increase the risk of lost or misrecorded votes. Third, we bring your attention to the Report and Recommendations issued by the Presidential Commission on Election Administration in January, which includes many helpful recommendations and identifies best practices that can be implemented here in New York City. Finally, we support many of the recommendations made by the New York State Bar's Special Committee on Voter Participation, which issued its final report on January 25, 2013.

In closing, we would once again like to thank you, Chairs Kallos and Gentile and Members of the Committees, for holding this hearing today and affording Election Protection the opportunity to share our experiences with the electoral process and our thoughts on how it can be improved. We remain committed to working with state and city governments, and will continue to offer any support that we can provide. Thank you.

TESTIMONY OF
THE CENTER FOR LAW AND SOCIAL JUSTICE
BEFORE
THE NEW YORK CITY COUNCIL
Committee on Government Operations
and
Committee on Oversight and Investigations

February 28, 2014

Prepared by:

Esmeralda Simmons, Esq.
Executive Director

Joan P. Gibbs, Esq.
General Counsel

Don't Lose Your Vote Project



My name is Esmeralda Simmons and I am the Executive Director of the Center for Law and Social Justice, a unit of Medgar Evers College of The City University of New York. The Center for Law and Social Justice (CLSJ) achieves its mission of promoting racial justice, and protecting civil and human rights by conducting research, public policy advocacy and litigation on behalf of community groups of people of African descent and the disenfranchised. Because of its unique combination of advocacy services from a community-based perspective, CLSJ is a focal point for progressive activity.

Today, the Center urges the New York City Council to speak clearly in calling for prompt remedial action to make the Board of Elections in the City of New York function at the high degree of efficiency befitting the administrator of the electoral franchise, the foundation of democracy in our city.

From its initial days, CLSJ has worked to defend the voting rights of Black New Yorkers and other New Yorkers of color who are protected by the federal Voting Rights Act. To this end, CLSJ has led or co-led the following historic voting rights advocacy initiatives in New York City: the New Majority for Charter Change (1987-1989) which successfully advocated for voting rights provisions and other equitable initiatives to be included in the new NYC Charter; the Majority Coalition for Fair Redistricting (1991-1992) which worked to ensure fair redistricting for people of color in NYC. CLSJ is also a founding member of the New York Voting Rights Consortium (1993-present) a coalition of leading local and national voting rights organizations advocating for the protection of voters of color in the New York metropolitan area. The voting rights litigation that CLSJ has been involved in include: *Ashe v. Board of Elections*; *Chin v. Bd. of Election*; *Reid v. Bruno*; *Rodriquez v. Pataki*; *Hayden v. Pataki*. Recently, CLSJ successfully

represented petitioners-interveners in the *Little v. LATFOR and the NYS Dept. of Corrections* case; and, currently, we represent petitioners-interveners in the *Favors v. Cuomo* case -- the ongoing federal litigation challenging the 2012 New York State Senate plan.

Through our current "Don't Lose Your Vote Project," CLSJ conducts community trainings on avoiding common voting pitfalls during the elections. To this end, members of the staff of the "Don't Lose Your Vote Project" have been speaking to community and faith-based groups about the, hopefully soon to be held special elections to fill the eleven seats in the Assembly and the Senate, the upcoming June congressional primaries, September primaries and November general election. In addition, we have authored and are distributing two pamphlets: "*Don't Lose Your Vote! Follow These Steps to Safeguard your Vote*", and "*Protect Your Vote.*" Copies of these pamphlets are attached to our testimony today.

The "*New York City Department of Investigation's Report on the New York City Board of Elections' Employment Practices, Operations, and Election Administration*," confirms many of the failings of the New York Board. It is explicit and detailed in its criticisms of the New York City Board of Elections (BOE). There were no surprises to us in either its findings or recommendations. Civil rights advocates and good government groups have been complaining about and litigating against these failings for decades. Failings charged in the report include: the failure to comply with state and federal laws governing elections in NY; poor hiring practices and nepotism in staff hires; inadequate training of poll workers; the role that the political parties and political involvement play in BOE staffing; improper inspector behavior and practices at the polls; failure to properly maintain voter rolls; and, ignoring complaints.

During the most recent general election, in November 2013, there were two ballot design problems, both of which were brought to the attention of the Board prior to the election. In

particular, the ballot was printed in a 6-point font, which was difficult to read. Although asked to do so, the Board failed to include instructions on the first page of the ballot informing voters of the proposed state constitutional amendments on the back. Consequently, a number of voters were unaware of them and casted no vote on these measures.

CLSJ joins in the call for a major overhaul of the BOE. First, the Board needs to be adequately funded through the City Budget. Second, the Board must be staffed entirely by professionals, not a collage of appointees beholden to the city's Democratic and Republican parties. As required by court order in *Ashe v. the Board of Elections*, 1988 WL 95427 (E.D.N.Y. 1988), an election practices reform case brought by CLSJ in 1988, the inspectors are required to be adequately trained and pass a test before being hiring. During elections, a large minority of inspectors is unaware of proper election procedures, and they appear to be unable to perform basic polling work. The hiring and bi-partisan structure of the Board staffing lends to its office and decisions being extreme politicalized and to the obvious duplication of staff roles and employees. Third, the Board must advance into the 21st Century by employing best practices and the latest technology. Too many of its systems are antiquated and dependent on lethargic policies and practices. For example, why can't inspectors check a voter's registration status or polling site electronically at the polls? The information is available online. The technology is simple. Yet, it is not used.

Some obvious changes, that had been resisted, but, were recently implemented after the release of the subject report, include the increased font size to be used on future printed ballots, and the elimination of voter cards. That voter card practice had consumed much of the poll inspectors' time during elections and dramatically slowed down the voting process. It had required the tracking of every voter by having poll inspectors fill in a colored card for each and

every voter when the ballot was cast. The other changes recommended by the Department of Investigation that can be affected immediately, should be implemented now, e.g., the printing of sufficient paper ballots based on a history of turnout at an election district, eliminating nepotism and the eliminating of cheating on inspector exams.

Another change recommended by CLSJ is for the Board to publicize broadly any change in voting practice *prior to and on elections days*. Until June 2013, the Board was required to pre-clear any voting practice or procedure change through the US Dept. of Justice and the proposed change was publicized in the process. The United States Supreme Court's 2013 decision in *Shelby County v. Holder*, 570 U.S. __ (2013) in striking down Section 4 of the Voting Rights of 1965, effectively eliminated Section 5 pre-clearance. In the aftermath of the *Shelby* case, Board must strive to ensure that voters are notified of all changes in voting policies and practices, such as posting poll sites relocations at the old polling sites and the new polling sites, *prior to and on elections days*.

Finally, since NYC's DOE's structure is codified in state law, state action also is urgently needed. Further, the agency, although funded locally, is an appendage of a state agency, the NYS Board of Election. At this point in New York's history, the political muscle of governor and the state legislature should be flexed through legislation to affect the major structural change needed to create a functional 21st century Board of Elections. The time for change is now!

DON'T LOSE YOUR VOTE!

Follow these steps to safeguard your VOTE

by Esmeralda Simmons, Esq., Executive Director,
Center for Law and Social Justice, Medgar Evers College, City University of New York

How can you prevent your vote from being lost? The Center for Law and Social Justice has developed some dos and don'ts through helping voters on election days for twenty-eight years. These rules for wise voting can serve as a guide to protecting your ballot. Make your vote count.

First Rule of Voting: *Make sure that you are registered to vote.*

Every citizen should know whether the Board of Elections considers him/her to be a registered voter. It is not advisable to rely on the fact that you actually completed a voter registration form at some time in the past, or even that you have voted in the past. Confirming your registration is not difficult.

You can definitively confirm your registration either by:

- *checking online* to see if you are registered <http://www.elections.ny.gov>
- *calling* the Board of Elections Toll Free: 1.866.VOTE-NYC (1.866.868.3692), TDD: 1.212.487.5496; or
- *visiting* the Board of Elections' office in your borough and asking them to look you up in their voter databank. (You may be asked for picture ID).

In addition, your registration should be valid *if you voted on a voting machine at any public election last year; or, if you received a mailing this year at your current residence from the Board of Elections (BOE) that announced your polling site and the dates for the primary election and the general election.*

If you cannot confirm your registration, don't take chances, RE-REGISTER by filling out and signing another Voter Registration Form. You can only register online if you have a NYS DMV issued ID. Otherwise, because the law requires that you actually sign the form, you can download the application at www.elections.ny.gov, register, then complete it, sign it and then hand deliver or mail it in.

In New York City, a very Democratic town, voting in the local primary elections is pivotal -- the candidate that wins the Democratic Party primary election usually goes on to win the general election. To vote in a primary election, you must be enrolled in the political party having the primary contest, in addition to being registered to vote. It's easy to enroll in a political party. You simply complete a new Voter Registration Form and complete Section 13 "Political Party" section on the form by checking the box next to political party in whose primary election you wish to vote.

Second Rule of Voting: *Be at the right polling booth.*

If you vote at the wrong polling site, your vote will not count even if you are registered! In NYC, most polling sites have more than one polling booth. Make sure that you know your correct ED/AD [Election District/ Assembly District] so you can correctly identify the correct polling booth assigned to your ED/AD within that polling site. The BOE says "You can vote **ONLY** at your designated polling place. Make sure you are at the correct polling site and Election District/Assembly District (ED/AD) for your address." The price of going to the wrong polling site or polling booth (ED/AD) is very high. Your name will not be on the list and your vote may be put in jeopardy. Technically, your vote is supposed to count if you vote within the correct AD.

But, you will only be able to vote on the machine, if you are at the correct polling booth for your ED.

DO: Far in advance of election day, find out your ED/AD and polling site. According to the BOE's website, you can **find you poll site location** by:

- Search with the **Online Poll Site Address Locator**
- **Call** the Voter Helpline at 1.866.VOTE.NYC
- **E-mail** your complete home address to vote@boe.nyc.ny.us and BOE will e-mail your polling place location back to you. (Please put in the subject line the borough in which you reside.)

Third Rule of Voting: *Vote Early on Election Day*

Go to the polls as early as possible to vote, especially this year when heavy voter turnout has been predicted. The polls are supposed to be open from 6am to 9pm. The later you vote, the more likely it will be that you run into long lines or broken voting machines. Also, the poll workers work an 18 hour day on Election Day, so they are generally not as fresh or attentive in the evening hours, as they were in the morning. If you run into problems when voting, for example, finding you proper polling site or booth, or getting a court order, you can correct it if it's not the end of the day. Employers, with few exceptions, are legally required to give their employees two hours during the workday to go and vote.

If your poll is not open on time or appears to be inactive, report it! Call the BOE at 1866 Vote NYC. If your poll is not ready for business at 6am, wait for the time it takes, rather than come back in the evening when it's sure to be crowded. If you can, assist others in getting to the polls.

Fourth Rule of Voting: *No Candidate Gear at the Polls*

The BOE has clearly stated that anyone wearing clothing or carrying signage for a candidate will not be allowed to enter or remain at the polls. This is considered electioneering and is illegal in New York. Please remove or cover your clothing sporting the name or likeness of any candidate, before you enter the poll or you may be escorted out. Definitely do not bring any signage into the polls. However, you can carry in written materials for your personal use, such as palm cards, into the polling site and even into the voting machine booth with you.

Fifth Rule of Voting: *Handle voting problems wisely.*

Problem: If the voting machine breaks --

DO NOT: Never leave the poll booth area without voting.

DO NOT: Vote with a red and white Affidavit Ballot envelope

DO: (1) Request to vote on the BMD machine; the machine will generate a paper ballot which the poll workers will place in a cardboard ballot box. Your vote will definitely count.

OR (2) After the *machine has been broken for 15 minutes*, demand to vote on an Emergency Ballot, which is a paper ballot without the Affidavit envelope. Follow the instructions for completing the ballot. If you need help understanding the ballot or completing the paper ballot, ask a poll worker for assistance. Your vote will definitely count.

Problem: If Your Name Is Not Found in Any of the Books of Registered Voters –

DO: (1) Double check to make sure that you are at the correct ED/AD. Your name will only be in the book of voters for your correct ED/AD. (See Second Rule of Voting above on how to find your correct ED/AD.)

(2) There will be two sets of books: the regular books (A-L & M-Z), and the supplemental list. Make sure that the poll worker carefully looks for your name in both sets of alphabetized books. Spell your last name slowly and repeat it, if necessary; even better, write it down and show him/her. Look, without touching the book, to make sure that s/he is looking for your name at the right location within the books.

(3) If you are at the correct ED/AD, and your name still cannot be found, (make sure that they looked in the supplemental list/book.)

- Ask for and accept a **paper ballot and Affidavit ("A") envelope**. Carefully follow the instructions for completing the ballot and the Affidavit envelope. Complete it at the poll. Take your time; mistakes can cost you your vote. If you need help understanding or completing the paper ballot or the envelope, ask a poll worker for assistance. The Affidavit ballot is a provisional vote. *Your vote will count only if the BOE can verify that you are a registered voter on their database.*

OR

- Try to get a court order to vote on the machine, if you have the time. (See Lost your Vote by Mistake on the Voting Machine below.)

Explanation: A voter's name may not be in the book of registered voters because the voter moved and did not re-register, and was legally removed from the book, or the voter had not voted for a "several" years and the BOE "purged" her/him from the book even though they are legally registered. In the latter case, BOE says if the voter is found in the database, the "A" ballot will be counted as valid.

Problem: If You Lost Your Vote by Mistake on the Voting Machine

DO: Try to Get a Court Order

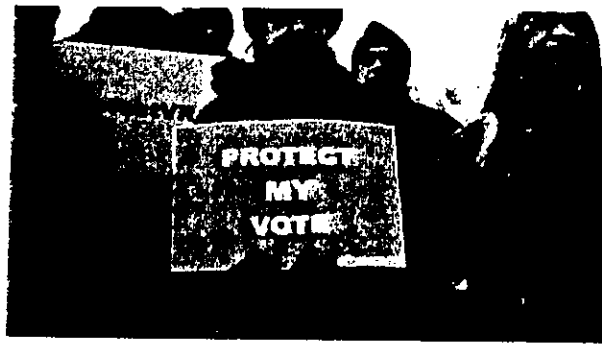
The poll worker cannot let you vote twice on a voting machine, even if you lost your vote by mistake. But, you can go to the BOE office in your borough (or in Harlem at the State Office Building) during voting hours and speak to a NYS judge about the problem you had voting. This is a very informal process, neither a lawyer nor knowledge of the law is necessary. Just tell the judge what happened. If the judge feels it is justified, he/she may issue you a court order which will allow you to vote on the machine back at your polling site. *However, you must make it back to your polling site and be in line to vote by 9pm.*

Technically, you can go to the judge for any voting problem, including not being in the books of registered voters at your polling booth. For problem other than mistakes in voting on the machines, however, you may have to show some evidence that you should be able to vote. During this important election, all citizens should be able to exercise their right to vote -- every vote should count. Be a wise voter. Don't lose your vote!

If you experience a problem during the election, call the VOTER PROBLEM HOTLINE:

Board of Elections -- 1 866 VOTE NYC (1 866 868 3692)

PROTECT YOUR VOTE!



Center for Law and Social Justice

Medgar Evers College, CUNY
1150 Carroll Street
Brooklyn, NY 11225
(718) 804-8893

ME
MEDGAR EVERS
COLLEGE

WHEN TO VOTE

Primary Election: Tuesday, September 10, 2013

Run-Off Primary, if necessary: Tuesday, October 1, 2013

General Election: Tuesday, November 5, 2013

In New York City the polls are open from 6:00a.m. to 9:00p.m.

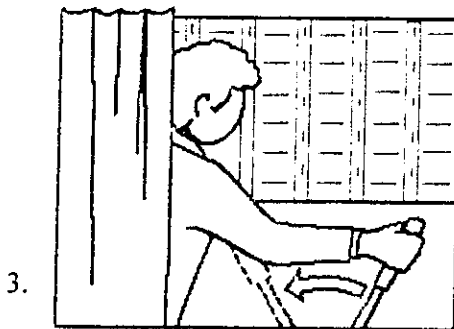
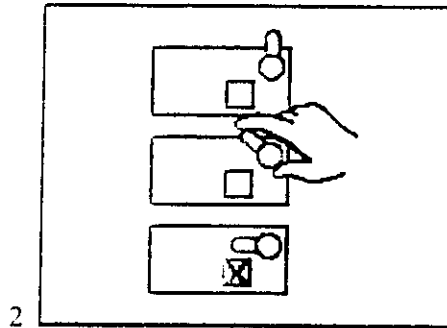
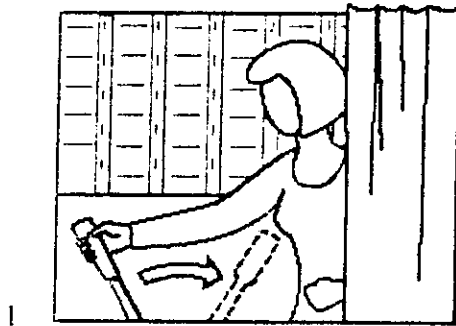
WHERE TO VOTE

Your voting place, "poll site," and/or City Council district may have changed since the 2012 elections. You can check your poll site location:

- online by using the poll site locator at nyc.pollsiteregulator.com; or
- emailing the New York City Board of Elections at vote@boe.nyc.ny.us (You must put the borough that you reside in the subject line of your email); or
- calling the Board of Elections at (866) 863-3692.

HOW TO VOTE

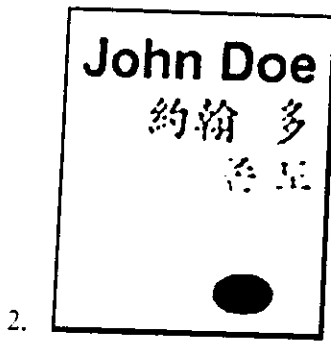
For the 2013 Primary Election (September 10, 2013) and potential Run-Off Primary (October 1, 2013), voters will use the old lever voting machines.



3

1. Once you have entered the lever machine voting booth, pull the red voting handle from left to right. ***Do not move the red lever again until after you have completed your voting selections!!!***
2. Make each of your selections by flipping the small black lever so that you see the [X] next to your candidate's name.
3. Once you have made all of your choices, cast your vote by pulling the red handle from right to left.

For the **General Election** (November 5, 2013), voters will use the poll site **Optical Voting Scanner**.



1. After you have signed in at your polling place, a poll worker will give you a paper ballot. Go to the privacy booth. A privacy sleeve will be provided to shield your ballot from after you have marked it.
2. Mark your ballot by completing filling in the oval next your choice using the pen provided. If you desire, accessible ballot marking devices (BMDs) are available.
3. **DO NOT FOLD YOUR BALLOT.** Insert the marked ballot into the scanner to cast your vote.

BMDs (accessible ballot marking devices) will be available to voters, especially those with disabilities.

REMEMBER, YOU MUST BE A REGISTERED VOTER TO VOTE

TO CONFIRM THAT YOU ARE A REGISTERED VOTER

The New York State Board of Elections has a database of all registered voters in NYS, including in New York City. To find out if you are registered to vote, by visiting the New York State Board of Elections website at <http://voterlookup.elections.state.ny.us> or calling the New York City Board of Elections at (866) 863-3692.

HOW TO REGISTER TO VOTE

To register to vote in the City of New York, you must:

1. Be a citizen of the United States (includes those persons born in Puerto Rico, Guam and the U.S. Virgin Islands).
2. Be a New York City resident for at least 30 days.
3. Be 18 years of age before the next election.
4. Not be serving a prison sentence or be on parole for a felony conviction.
5. Not be adjudged mentally incompetent by a court.
6. Not claim the right to vote elsewhere (outside the City of New York).

Although you can register any time during the year, your form must be delivered or mailed *at least 25 days before the next election for it to be effective for that election*. The registration deadline for the Primary Election passed; it was August 16th, 2013. **The registration deadline for the General Election is October 11th, 2013.**

You can register to vote in person at one of the Board of Elections listed below, by mail or online if you have a valid license or ID from the New York State Department of Motor Vehicles. Voter registration forms can be obtained by telephoning the New York City Board of Election at (866) VOTE-NYC, at public libraries, most New York City government agencies, and online. Fill out a Voter Registration Application using only a pen with *blue* or *black* ink. Be sure to sign the form. **Mail (DO NOT FAX) the completed Voter Registration Form to: Board of Elections in the City of New York, 32 Broadway, 7 Fl., New York, NY 10004-1609**

VOTING IN PRIMARY ELECTIONS

In Primary Elections, only voters enrolled with one of the political parties, that qualified to hold a primary in New York City, may vote to nominate their party's candidate to run in the General Election. The following parties are recognized in New York State: Democratic, Republican, Green, Conservative, Working Families, and Independence.

NEW YORK CITY BOARD OF ELECTIONS OFFICES

GENERAL OFFICE

32 Broadway, 7th Floor
New York, New York 10004-1609
Tel: (212) 487-5300

Bronx Office

1780 Grand Concourse, 5th Floor
Bronx, New York 10457
Tel: (718) 299-9017

Brooklyn Office

345 Adams Street, 4th Floor
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Staten Island Office

1 Edgewater Plaza, 4th Floor
Staten Island, New York 10305
Tel: (718) 876-0079

Web Page: www.vote.nyc.ny.us

New York City Voters Assistance Advisory Committee

The **New York City Voters Assistance Advisory Committee** also has information about voting, including a candidates guides and a **mobile app for smartphones and tablets** that can be accessed at www.nyvote.org.

New York City Voters Assistance Advisory Committee

40 Rector Street, 7th Floor
New York, New York 10006

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VoterAssistance@nyccfb.info

Testimony before the Governmental Operations Committee

Center for Independence of the Disabled, NY (CIDNY)

Monica Bartley, Voting Rights Coordinator

February 28, 2014

We hear at each election that poll workers consistently tell voters that the BMDs are only for people with disabilities. This is not true. Anyone who requests the BMD is able to use it. Also, since poll workers by law cannot ask someone if they have a disability, they may be turning away people with invisible disabilities who can benefit from the use of the BMD.

In some cases, voters using the BMD were told that they needed to fill in an affidavit ballot if there was a problem with the machine. Voters should have been told to fill in an emergency ballot. It's unclear therefore, whether those voters ballots were counted.

At one poll site the poll worker assigned to the BMD said she did not get enough training and if someone needed to use the accessories, she would have to read the instructions to set them up.

We recognize there is a gap in the training of poll workers who need to be allowed to have hands-on practice on the BMD similar to training received using the scanners.

Voter Privacy (See DOI Report page 31)

Our survey findings show voter privacy being compromised by the placement of the BMD and privacy booth. Some equipment had been placed facing outward where the information can be easily read by passersby. Also poll workers sometimes stand close by behind the voter to watch what he/she is doing.

Some people with disabilities, in particular those who are blind, may require assistance with scanning their ballot. However, it is unknown poll workers take steps to ensure privacy of the vote in the process of assisting someone with a disability with scanning their ballot.

Recommendations

To ensure that poll workers are knowledgeable and capable of assisting voters who choose to use the BMD, or could benefit from using it, CIDNY recommends the following:

- Every poll worker should be required to practice on the Ballot Marking Device using each accessibility function (ear phones, paddles, sip and puff, etc). Poll workers should pass a test demonstrating their ability to assist voters.
- Public education and poll worker training by the NYC Board of Elections should promote the use of the Ballot Marking Device for any voter, including for those who have difficulty reading the small print and/or filling in the small ovals.
- Disability literacy training should be included in poll worker training.
- NYCBOE should prepare a report and accounting of HAVA funds spent on poll site accessibility that will be publicly available.

We support the Department of Investigation recommendations and hope these will be acted on to improve the operations of the New York City Board of Elections so that all voters in New York City including people with disabilities can exercise their vote without barriers.

CIDNY would like to thank the Governmental Operations Committee for continuing to monitor voting rights and for listening to the community.

Testimony before the Governmental Operations Committee

Center for Independence of the Disabled, NY (CIDNY)

Monica Bartley, Voting Rights Coordinator

February 28, 2014

Hearing on Oversight: The Recent Report of the Department of Investigation on the New York City Board of Elections

Good afternoon Chairman Kallos and members of the Committee on Governmental Operations. My name is Monica Bartley; I am the Voting Rights Coordinator for the Center for Independence of the Disabled, NY

The findings of the Department of Investigation (DOI) mirror some of the results from CIDNY's poll site accessibility surveys. Each year CIDNY performs accessibility surveys on election days and we have observed some of the situations mentioned in the DOI report which pose barriers to people with disabilities. These relate to the Ballot Marking Device (BMD), ballot readability and inadequate training of poll workers.

Ballot Marking Device (See DOI Report page 25)

During the November 5, 2013 elections, CIDNY surveyed 80 polling sites and found that 25 had issues relating to the BMD including poor positioning of the machine limiting access for people using wheelchairs or scooters. There were 4 sites identified where the BMD was not working, in two cases this was as a result of a paper jam. At one site the poll workers did not know how to operate the BMD and sought help from CIDNY surveyors.

While numbers of poll workers able to operate the machines have increased somewhat and surveyors observed that some poll workers were able to assist voters, it seems that not enough voters are aware that they can use the BMD whether they have a disability or not. In fact, we still hear poll workers say that the machine is only for people with disabilities. In some cases, surveyors heard poll workers refer to the BMD as the "handicapped machine".

In a few cases, the BMD was segregated from the rest of the voting area, making it difficult for voters to identify and use it. This was as a result, in part, of sites that were too small to accommodate all voting booths, scanners and BMDs; however, by moving the BMD outside the voting area, voters who needed the BMD could feel that they had an unequal voting experience or that they were being segregated because of their disability.

Ballot readability was a problem due to the font used. In light of the issue with ballot readability the BMD would have been a viable option but due to the lack of awareness of poll workers this was not offered to voters.

These kinds of incidences would point to the need for more education on the machine for poll workers and a better public education campaign.

Training (See DOI Report page 30).

Along with our poll site surveys we also ask consumers to tell us about their voting experiences. They tell us when they go in to vote, the BMD isn't set up, and poll workers can't help them if there's a problem with the BMD, or can't instruct a new voter how to use the machine.



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FOR THE RECORD

Center for Independence of the Disabled, NY

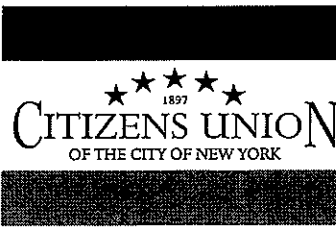
February 28, 2014

Public Hearing on the New York City Department of Investigation Report on the New York City Board of Elections before the Committee on Governmental Operations

By Monica Bartley
Voting Rights Coordinator



A United Way Agency



CITIZENS UNION OF THE CITY OF NEW YORK

Testimony to the New York City Council On the NYC Department of Investigation's 2013 Report On the Board of Elections in the City of New York

February 28, 2014

Good afternoon Chair Kallos and members of the Governmental Operations Committee. My name is Alex Camarda. I am the Director of Public Policy and Advocacy at Citizens Union. Citizens Union is a nonpartisan good government group dedicated to making democracy work for all New Yorkers. Citizens Union serves as a civic watchdog, combating corruption and fighting for political reform. Thank you for the opportunity to testify today on the New York City Department of Investigation's (DOI) report on the New York City Board of Elections ("the Board") released on December 30, 2013.

DOI's Increased Engagement in Monitoring the Board

Citizens Union commends the DOI for issuing a comprehensive report this past December that provides a blueprint for improving election administration and voter participation in New York City. We also appreciate the collaborative manner in which the DOI has gone about identifying issues at the Board. Citizens Union met and spoke with then Commissioner Rose Gill Hearn and the DOI staff on multiple occasions while it conducted research and investigations related to issues in the December report. The report therefore includes many issues we and other good government and advocacy groups have long worked on, and have been highlighted by the news media, in particular by the New York Daily News.

More generally, Citizens Union supports the DOI's increased monitoring of the Board that began in earnest in 2013. The DOI established on April 24, 2013 an Inspector General office devoted to monitoring the Board of Elections in the City of New York and rooting out any waste, fraud or unethical conduct.¹ The office was created by the Bloomberg Administration and was also advocated for by then Councilmember James Oddo, and Councilmember Eric Ulrich. The establishment of the IG office specifically related to the Board came three weeks after the release of DOI's first report on the Board, which found that it could have saved \$2.4 million by consolidating election districts and reducing needed poll workers by 50 percent.²

¹ DOI ESTABLISHES INVESTIGATIVE UNIT TO EXPAND OVERSIGHT OF THE CITY BOARD OF ELECTIONS ON FRAUD, WASTE AND CORRUPTION ISSUES, April 24, 2013. Available at:

http://www.nyc.gov/html/doi/downloads/pdf/2013/apr13/pr18boe_42413.pdf

² DOI ISSUES REPORT FINDING CITY BOARD OF ELECTIONS COULD HAVE SAVED TAXPAYERS \$2.4 MILLION BY CONSOLIDATING STAFFING FOR NOVEMBER 2011 OFF-YEAR GENERAL ELECTION, April 1, 2013. Available at:

http://www.nyc.gov/html/doi/downloads/pdf/2013/apr13/pr12boerpt_40113.pdf

Citizens Union believes the DOI's establishment of an IG office and its publication of two reports in 2013 has helped to advance issues Citizens Union and other good government organizations have long worked on.

The DOI Report's Recommendations

The DOI's report includes 32 recommendations which the Board has the authority to do on its own to improve administration and voter participation. To the Board's credit, they have already made several reforms since the report was issued, most notably redesigning the ballot to include no more than three required languages on any single ballot thereby increasing the font size for the 2014 general election by 67 percent, from 6 to 10 point. The Board also ended its practice of manually counting write-in votes, is getting rid of buff cards that record voter registration information after two years, and is poised to webcast its weekly Commissioner meetings. While the Board's performance in recent years is in need of improvement, the Board has also made reforms since 2010 advocated for by Citizens Union, the Council and other stakeholders but not in the DOI report. Those reforms include providing online sample ballots, establishing electronic transmission of election results after the polls close, creating an online poll worker recruitment platform, offering poll site locator mobile applications, providing unprecedented operational transparency in the NYC Board of Elections' annual report, and reducing contracting costs for printing ballots and car services.

Even with these improvements, the Board can make further changes that will improve election administration and the Council can assist the Board in doing so. Citizens Union supports many of the DOI's 32 recommendations and believes the Board should prioritize the following reforms:

1. Implement Hiring Reforms to Reward Merit and Diminish Patronage

As noted in the DOI report, the state constitutional requirement that the boards of election be bipartisan does not extend down the line to every last Board position. Therefore, the Board can reform its employee hiring practices by:

- a. not using referrals from county commissioners as the sole source of potential employees;
- b. opening up the hiring process by posting applications online on the nyc.gov jobs website;
- c. requiring the submission of resumes; and
- d. conducting interviews to evaluate prospective candidates.

This should be done at the central Board offices as well as borough board offices. The Council can do its part to encourage this practice because it confirms the nominations of Board commissioners by county party chairs. The Council's Rules, Privileges and Elections committee can therefore query newly nominated commissioners or commissioners seeking reappointment

about whether they will open up the hiring process for positions within the Board, or whether nominees will continue the current patronage-based approach. Continuing with the status quo should give the Council pause in confirming a nominee as Commissioner.

Citizens Union has long advocated for a merit-based approach, noting in its 2009 report *New York Needs Election Reform Now: Industrial Age Patronage to Information Age Accountability* and before this committee on September 29, 2010 that the Board should, “end patronage hiring and implement merit-based hiring for most administrative and poll worker positions.”³ There is no greater example of the need for hiring reform than the Executive Director position, which was vacant for nearly 3 years (October 2010 to August 2013) because of partisan gridlock, and for which the Commissioners during the period of vacancy failed to second a motion put forth by former Commissioner J.C. Polanco to simply post the Executive Director vacancy on *Monster.com*. While we are pleased thus far with the performance of new Executive Director Michael Ryan and felt Dawn Sandow made some improvements as Acting Executive Director, their performance does not negate the structural flaws in the system.

Citizens Union in past testimonies before this committee has called for the Board to provide or the Council to request a Board listing of each and every full-time position and its responsibilities at its central and borough offices to determine both what the position entails and whether the number of positions are inflated because – unnecessarily in our view – a Democrat and Republican are both hired for the same position, as former Executive Director George Gonzalez conveyed to this committee in 2010. According to the *Departmental Estimates* document in the *February 2014 Financial Plan* (the most recent available budget documents), the Board has 360 positions, not including poll workers (see attached document for a full listing of every position and the number of employees occupying those positions).⁴ The Board should indicate, or the Council should request, for each and every one of these positions whether there is Democrat and Republican duplication and, if so, whether the number of positions can be reduced through merit-based hiring rather than applying the bipartisan constitutional mandate beyond what is required.

Along with these reforms, the Board should also implement an anti-nepotism policy for hiring and refrain from encouraging its employees to engage in political activity as is required by the city’s ethics laws.

³ Citizens Union, “*New York Needs Election Reform Now: Industrial Age Patronage to Information Age Accountability*,” May 2009, Page 8. Available at: http://www.citizensunion.org/www/cu/site/hosting/Reports/CUF_Election_ReformExSummaryandRecommendation_s0509.pdf

⁴ NYC Office of Management and Budget. 2014 Financial Plan. Departmental Estimates. Board of Elections, pages 104-106. Available at: http://www.nyc.gov/html/omb/html/publications/finplan02_14.shtml

2. Modernize the Voter Rolls

The DOI report has many useful recommendations the Board should implement to ensure the voter rolls are kept up to date, including better coordination with the State Board of Elections, subscribing to the Social Security Death Master Index, and pro-actively communicating with voters to remove voters from the rolls rather than putting the burden on voters or voters' family members to communicate their current status to the Board.

The City should also do its part to assist the Board to clean up the rolls. As Citizens Union indicated to this committee in its August 8, 2012 testimony, the Council or the Mayor can require agencies implement automatic voter registration modeled on the State Department of Motor Vehicle's efforts to streamline the receipt and transmission of voter registration data put in effect by Governor Andrew Cuomo. Signature requirement issues surrounding the electronic transmission of voter registration data can be overcome through a variety of means. Agencies, many of which are already responsible for voter registration and updating voter registration information, could digitally notify the Board if a constituent's address or other information changes on the voter registration form. This ought to be a top election-related priority of the de Blasio administration and this Council, as it a proven method of making voting easier for residents, particularly low-income and minority voters, and makes administration easier and less error-prone for the Board.

Citizens Union appreciates the DOI's engagement in election issues. The casting of votes by undercover investigators as felons and out-of-state residents is a tactic should be employed with great care and restraint. While noted in a footnote in the DOI report that voter fraud is extremely rare, the DOI's tactics have already been cited by some who wish to raise the specter of voter fraud for political purposes. The DOI may have wanted to prove a point about the lack of updated voter rolls and hold the board accountable for its lack of due diligence in ensuring accurate voter rolls, but its actions have prompted a discussion by those who want to add hurdles to voter participation under the guise of rooting out fraud that could further suppress turnout.

3. Reform Poll Worker Training

Citizens Union agrees with the DOI's recommendations to professionalize poll worker training by increasing hands-on instruction through the use of the voting machines to make instruction more engaging. Citizens Union prescribed some of these approaches ourselves in our February 2013 testimony to the Council. We noted then "the courses for poll worker training rely on an instructor largely reading for six straight hours from an overly lengthy 200-page manual. The City Board should hire education professionals, create an interactive online course that enables prospective poll workers to go at their own pace through the manual with intermittent testing to ensure comprehension before proceeding to the next chapter. This will ensure students are engaged and better comprehension occurs." Citizens Union has also called for enforcement of existing state law that bans poll workers from serving at the polls that year if they fail the poll worker exam after training.

Citizens Union, however, acknowledges that even the best poll worker training can't overcome the dearth of quality poll workers. The Board must recruit for a general election about 36,000 workers willing to work a 16-hour day. It is a great challenge to even reach the target number, let alone obtain quality workers for what is effectively a temporary job. The Board's own records show that even with recruitment programs in place vacancy rates for inspector positions for all elections in 2012 were 10.95 percent. We have therefore recommended three measures to improve poll worker recruitment:

- 1) The Council should pass Int. No. 721 of 2012 that establishes a program to recruit municipal workers as poll workers, and expand it to the primary election in addition to the general election for which city workers are already have a vacation day;
- 2) The Board should track and release for every district leader the number and names of poll workers they referred so we can learn which district leaders are recruiting the most and least poll workers, and identify best practices so all district leaders can employ effective techniques for recruiting poll workers;
- 3) Poll site coordinators should be provided accurate lists of poll workers and their contact numbers at their poll sites the weekend before Election Day so they can reach out and ensure their attendance in advance of Election Day; and
- 4) The Board should implement split shifts to attract more poll workers who may not want to work a 16-hour day.

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

DEPARTMENTAL ESTIMATES - FY15
POSITION SCHEDULE
AGENCY: 003 BOARD OF ELECTIONS
UNIT OF APPROPRIATION: 001 PERSONAL SERVICES

DEPARTMENTAL ESTI FY15

LINE	DESCRIPTION	PAY BANK/#	TITLE CODE	MIN-MAX RATE	# POS	ANNUAL RATE
OBJECT: 001 FULL YEAR POSITIONS						
1100	EXECUTIVE DIRECTOR (BOARD D	003	94223	49,492-212,614	1	172,753
1101	COORDINER ELECTION DAY OP D	003	94409	68,528- 78,733	1	92,190
1102	DIRECTOR, PUBLIC AFFAIRS D	003	94408	49,492-212,614	1	97,893
1103	ASSOCIATE STAFF ANALYST (D	003	94414	69,711- 90,257	11	789,646
1105	DEPUTY EXECUTIVE DIRECTOR D	003	94224	49,492-212,614	1	155,478
1106	ADMINISTRATIVE MANAGER (B D	003	94372	49,492-212,614	1	152,899
1108	VOTER REGISTRATION ACTIVI D	003	94407	68,528- 78,733	1	84,842
1110	COMPUTER SYSTEMS MANAGER D	003	94225	49,492-212,614	2	239,655
1111	COMPUTER SPECIALIST (SOFT D	003	94526	99,086-116,617	4	448,937
1112	COMPUTER OPERATOR (BOARD D	003	94389	40,500- 56,606	2	81,000
1114	PROJECT COORDINATOR OF EL D	003	94412	81,396- 81,396	6	537,979
1115	SENIOR ADMINISTRATOR (BOA D	003	94201	75,243- 81,239	1	100,464
1116	SENIOR SYSTEMS ANALYSTS (D	003	94388	91,734- 91,734	1	98,652
1117	SENIOR COMPUTER PROGRAMME D	003	94229	59,052- 71,947	9	631,041
1121	CHIEF CLERK (BOARD OF EL D	003	94203	49,492-212,614	1	113,433
1122	CHIEF CLERK (BOARD OF EL D	003	94203	49,492-212,614	1	101,988
1123	CHIEF CLERK (BOARD OF EL D	003	94203	49,492-212,614	1	110,354
1124	CHIEF CLERK (BOARD OF EL D	003	94203	49,492-212,614	1	108,055
1130	FINANCE OFFICER D	003	94214	55,871- 55,871	1	94,630
1135	ADMINISTRATIVE ASSOCIATE D	003	94206	50,703- 50,703	24	1,285,960
1136	ADMINISTRATIVE ASSOCIATE D	003	94206	50,703- 50,703	17	903,844
1140	DEPUTY CHIEF CLERK (BOARD D	003	94204	49,492-212,614	1	108,294
1141	DEPUTY CHIEF CLERK (BOARD D	003	94204	49,492-212,614	1	92,101
1142	DEPUTY CHIEF CLERK (BOARD D	003	94204	49,492-212,614	2	182,430
1143	DEPUTY CHIEF CLERK (BOARD D	003	94204	49,492-212,614	1	107,735
1144	DEPUTY CHIEF CLERK (BOARD D	003	94204	49,492-212,614	1	101,588
1150	ASSISTANT FINANCE OFFICER D	003	94215	50,703- 50,703	2	111,916
1160	ADMINISTRATIVE ASSISTANT D	003	94207	42,659- 42,659	48	2,157,924
1161	ADMINISTRATIVE ASSISTANT D	003	94207	42,659- 42,659	20	880,370
1164	ADMINISTRATIVE ASSISTANT D	003	94207	42,659- 42,659	8	348,959
1170	DIRECTOR OF EQUIPMENT D	003	94208	55,871- 55,871	3	199,250
1174	COORDINATOR COUNSEL (BOARD D	003	94406	49,492-212,614	2	263,364
1175	COUNSEL TO THE BOARD (BOA D	003	94200	48,799- 48,799	2	99,402
1180	CLERK TO THE BOARD D	003	94216	29,323- 29,323	7	244,326
1182	CLERK TO THE BOARD D	003	94216	29,323- 29,323	3	96,786
1183	CLERK TO THE BOARD (BOARD D	003	94216	29,323- 29,323	3	114,443
1184	CLERK TO THE BOARD D	003	94216	29,323- 29,323	6	181,019
1186	CLERK TO THE BOARD D	003	94216	29,323- 29,323	1	32,740
1187	CLERK TO THE BOARD D	003	94216	29,323- 29,323	1	29,323
1188	CLERK TO THE BOARD D	003	94216	29,323- 29,323	2	61,985
1189	CLERK TO THE BOARD D	003	94216	29,323- 29,323	7	209,052

DEPARTMENTAL ESTIMATES - FY15
POSITION SCHEDULE
AGENCY: 003 BOARD OF ELECTIONS
UNIT OF APPROPRIATION: 001 PERSONAL SERVICES

DEPARTMENTAL ESTI FY15

LINE	DESCRIPTION	PAY BANK/#	TITLE CODE	MIN-MAX RATE	# POS	ANNUAL RATE
OBJECT: 001 FULL YEAR POSITIONS						
1190	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	1	27,927
1191	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	2	57,750
1192	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	2	63,537
1193	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	8	242,197
1194	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	2	63,526
1195	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	4	126,926
1198	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	4	122,368
1201	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	9	265,889
1202	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	3	108,497
1203	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	3	90,019
1205	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	11	341,072
1206	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	1	29,922
1211	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	5	152,454
1212	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	3	96,469
1214	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	1	32,607
1215	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	2	64,563
1217	CLERK TO THE BOARD	D 003	94216	29,323- 29,323	11	344,797
1236	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	20	605,126
1237	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	4	131,455
1238	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	10	316,176
1239	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	3	94,219
1240	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	2	68,548
1242	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	1	33,306
1243	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	2	69,511
1244	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	1	35,566
1245	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	2	71,003
1246	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	2	68,558
1247	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	2	64,694
1248	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	3	90,264
1249	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	2	73,203
1250	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	4	132,680
1251	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	5	169,445
1253	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	1	28,655
1254	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	7	216,830
1255	VOTING MACHINE TECHNICIAN	D 003	94210	30,088- 30,088	7	228,136
1302	STENOGRAPHER/SECRETARIAL	D 003	94374	37,017- 37,017	1	45,820
SUBTOTAL FOR OBJECT 001					360	16,798,415



Testimony of
Neal Rosenstein, Government Reform Coordinator
Of the
New York Public Interest Research Group, NYPIRG
Before the
**New York City Council Committee on Governmental Operations &
New York City Council Committee on Oversight and Investigations**
On
The Department of Investigations Recent Report on the Board of Elections
February 28, 2014

Good afternoon. My name is Neal Rosenstein. I am the Government Reform Coordinator for the New York Public Interest Research Group (NYPIRG). NYPIRG is a statewide, student directed, research and advocacy organization that is involved on a wide range of issues, including government accountability and election reform. It's a pleasure to be speaking before you this morning on a subject so vital to our democracy. We commend both Chairs and the members of the Committees for their efforts and look forward to working with you to help win improvements to the performance of the New York City Board of Elections, and for the voters of the city.

Along with our advocacy efforts, NYPIRG has a long history of monitoring conditions at the polls. We've issued reports on Election Day conditions in New York City that highlighted poorly trained poll workers and chaotic conditions at poll sites. Each year, the staff from our 9 campus-based offices across the five boroughs is trained to identify trouble spots and assist students and other voters with any problems they might encounter.

NYPIRG also runs an Election Day voter helpline with our colleagues from Common Cause/NY. During last year's Primary and General Election, we logged hundreds of calls from voters searching for accurate information and complaining about conditions at the polls. NYPIRG also conducted site visits and surveys at more than two dozen poll sites across the city by our trained students and staff and uncovered many of the same problems identified in DOI's report. We will send comprehensive spreadsheets detailing the complaints we received from both these efforts to the Committee.

The Department of Investigation's Report on the New York City Board of Elections' Employment Practices, Operations, and Election Administration is a damning indictment of the practices of the Board.

This excellent report highlights an appalling list of shortcomings in the administration of elections in New York City. It also looks forward by urging consideration of more than 30 specific reforms to Board procedures. The Department should be commended for focusing on specific reforms that can be achieved by the Board that do not rely on action from the state legislature. It is both refreshing and vitally important to have the city officially recognize and confirm many of the problems that advocates and officials have been calling attention to for years.

NYPIRG supports implementation of almost all of the recommendations in the report. In some cases we believe the Department did not 'go far enough', in others we prefer a different approach, and some require modifications to ensure that voter's rights are not violated. NYPIRG also opposes the recommendation regarding election night reporting. More importantly, the DOI report and their recommendations cannot be taken in a vacuum. The Council and Mayor must also play an assertive and aggressive role in reforming the administration of elections in the city. There are a wealth of reforms needed at the Board but there are also actions that should be taken by the Council and the Mayor. Our most important observations about the DOI's report follow.

Ten Specific Recommendations Concerning the Department of Investigation's Report on the NYC Board of Elections:

I) The Board of Elections should move swiftly to implement many of the common sense reforms highlighted in DOI's report. Instead of attacking DOI on its methods, the Board should address the substance of the report. While the Commissioners and their County Leader patrons may balk at suggested reforms that challenge the current patronage structure at the Board, they should move quickly to embrace the others. These include "no-brainers" like: reviewing ballot security and counting procedures at borough offices; eliminating the indefinite retention and unnecessary updating of buff cards; providing privacy screens at scanners; posting notices at recently closed/changed poll sites; and conducting a review of the Board's cancellation procedures. Any changes should be made via an open and public process, engaging the public and the civic community.

II) The City Council should use its power of confirmation to only approve Commissioners to the Board of Elections who will institute a non-patronage, civil service style, merit system for hiring employees and who will act on the DOI's many recommendations for employee reforms. The root cause for many of the problems and deficiencies uncovered by the Department of Investigation can be traced to the patronage system. While the bipartisan structure of Election Boards in New York State was intended to have the two main parties police each

other, the system no longer works. Instead of serving as a system of checks and balances, the board serves as a patronage fief for party leaders. The report tells of favoritism and nepotism in hiring and requiring employees to 'volunteer' their efforts and contributions in what could be called a kickback scheme.

While we support the reports' call for changes to the State Constitution and Election Law to replace bipartisan boards with nonpartisan election administration, that effort will be a difficult one. New York City should not hold its breath waiting for Albany to act. Nor should the Council await or expect that the Board will institute the many suggested reforms to their employment practices, like performance reviews, that are recommended in the report. The Council should take steps on its own.

The Council should not approve any Commissioner to the Board who does not indicate they would institute major reforms to its operations. For example, as the report states, the Commissioner's currently decide on hiring decisions at the Board – often with the blessing or under the direction of their county leaders. But the Commissioners have also created merit positions at the Central Board for some technical positions. The Council should demand that nominees for Commissioner commit to expanding that approach and institute merit hiring for positions across the Board. While the Board may not be able to legally institute a full civil service system, they do have the authority to approximate it and incorporate many of the DOI's recommendations.

The Council should also use the power of the budget to help persuade sitting Commissioners to institute such a system, including targeted *Terms and Conditions* to the budget that would only release money for certain initiatives crafted by the Council. For example, if the Board sought resources for new positions, the Council should only approve them as a condition of adopting new hiring and employee review practices.

III) The Board should eliminate the Voter Cards now presented to each voter after they sign in at their ED table. The BOE's administrative refusal to eliminate Voter Cards at sign in tables meant (& means) unnecessarily long lines and wait times for every voter. The archaic system of filling out a Voter Card for each voter is completely irrelevant now that we've moved to optical scan voting. The cards used to serve as an informal audit of vote totals at an ED, a function now basically obsolete with optical scan ballots that have numbered stubs to record how many ballots were distributed. Neither do the cards serve any real anti-fraud purpose. There is no county outside of New York City still uses the Voter Card system in New York State. NYPIRG continues to urge the elimination of the Cards.

Last year's low turnout elections didn't translate into long lines because of the Voter Cards, but even this year the cards were needlessly filled out. I timed my own poll worker, who took more than thirty seconds to complete the task. Multiply

that times the 800 voters who might cast a ballot at an ED in a Presidential year and you have more than six hours of extra work to be divided between the two inspectors at the table, for a useless, absurd task that creates long lines. We note that this needless task undeniably contributes to repeated violations of the state's 30-minute wait rule for voters in heavy turnout elections.

IV) Voters shouldn't get better service at a Starbucks than a poll site. It's time to professionalize training at the Board. Poorly trained poll workers cause too many problems on Election Day. The Board is simply not up to the job of providing enough well qualified poll workers and well run sites across the city on Election Day. DOI uncovered lax training of poll workers, cheating on poll worker exams that was facilitated by trainers, and unqualified poll workers at the polls on Election Day. Given the reports findings on trainings, it's no wonder some sites literally break down or are poorly run on Election Day. Year after year NYPIRG hears of well run sites, while just blocks away, other sites are the scene of long lines and chaotic conditions. While the DOI urges a number of needed reforms, the suggestions don't get to the core of the problem. We need a dramatic new approach to poll worker training and recruitment.

It's time to professionalize training at the Board with outside consultants who will be held accountable for their performance instead of using in-house and patronage appointees. The Council should use their Terms and Conditions power over the budget of the Board to direct training resources only to professional trainers with overhauled training classes and demand performance reviews. NYPIRG also agrees with the League of Women Voters' suggestion that poll worker training should closely resemble applying for a drivers' license. We believe the Board should conduct a trial run in several ADs where the first phase of training occurs on-line or with distributed printing materials, followed up with in-person classes run by professional trainers focusing on the most important tasks.

V) The patronage system can no longer provide adequate numbers of capable poll workers. The Council should improve and expand the poll worker pool by offering time off for city employees working the polls. Clearly, many of our poll workers are hard working, dedicated and we owe them our thanks. But the old system of relying on political parties to provide poll workers simply doesn't work anymore. A significant number are now recruited through other means, but it's clear that the city can still use more and better trained poll workers. For example, the Board has been unable to recruit the legally required number of translators for years despite repeated efforts and outreach.

So many of the problems voters face on Election Day and those identified by the DOI report could be avoided with an influx of new, qualified poll workers. By working with the city's public sector unions to ensure a system that they would be able to support, granting time off would provide a steady and talented pool of poll workers and improve voters experience at the polls.

Intro 721 would have begun to comprehensively address this problem by institutionalizing a recruitment program in city agencies, but it fell far short by failing to create a comp time system for eligible workers. We believe new legislation should be introduced that expands on this bill and clearly provides time off for non-essential city employees on Primary Days in exchange for working at the polls (most city workers already get General Election Day off.) In addition, NYPIRG would support action by the Mayor to increase the overall stipend for poll workers to attract a greater pool of applicants.

VI) The Board needs to do more than subscribe to the Social Security Death Master File Index or coordinate more efficiently with the State Board regarding the identification of ineligible individuals as the DOI suggests.

The report makes good suggestions, but it's time for the Mayor to direct City agencies to forward information in their databases about deaths and changes of address to the Board of Elections to run against their master file of registrants. The Board has the authority to act on information provided to it regarding registrations that may no longer be valid. This process will not only have the benefit of cleaning the rolls, but will also greatly reduce the number of affidavit ballots cast by voters on Election Day. The Mayor should direct DOITT to assist city agencies or the Board in these efforts.

VII) There has been no finding of fraud by ineligible voters in city elections.

While numerous media outlets from WNYC to the National Review trumpeted the potential for fraud here in the city, there is no evidence or indication any such fraud has occurred. The report correctly identifies however deficiencies in poll worker training and board procedures, which must be addressed to prevent such fraud from easily occurring. We believe our suggestions for professional outside trainers and comp time for city workers will go a long way to improving poll worker performance and reducing any opportunity for fraud to occur.

VIII) The Board of Elections has taken some positive steps in the last few months that should be acknowledged.

These include finally addressing the issue of small font size for ballots raised in the report through the printing of bilingual and trilingual ballots. Civic groups have been pressing for this change since the similarly disastrously designed ballot in 2010. The Board deserves credit for finally addressing this problem. We have also appreciated the actions by the Board's executive staff to work with the civic community before last year's elections. NYPIRG also recognizes that there are an abundance of Board employees who are dedicated public servants, with the goal of enfranchising the electorate and running good elections.

IX) NYPIRG urges caution in creating a system where the number of ballots printed by the Board is determined by past voting practices in an ED.

While we agree that the Board's decision to print ballots for a 90% turnout rate city wide in the past election was excessive, we disagree that different neighborhoods of the city should receive different numbers of ballots on Election Day. Besides the

obvious appearance of fairness, each election is unique. Contested races, well known local candidates, open seats and changing demographics the city's neighborhoods make it impossible to

accurately predict turnout and the Board should err on the side of ensuring adequate ballots at the polls. While adjustments in the number of ballots should be made for special elections, NYPIRG does not believe that the Board should engage in such calculations for citywide elections at the ED level.

X) NYPIRG would likely oppose any efforts to upload unofficial results at poll sites. While DOI recommends studying this option, NYPIRG believes that public confidence in election night results is crucial. New York State does not allow for its voting machines to have wireless capabilities out of concern for the possibility of hacking and the integrity of results. Nor should we open the door to wireless transmission of results in election night reporting. One must look no further than the debacle of the 2000 election count in Florida to understand that even unofficial results carry great weight. The Board has recently instituted new and faster poll site reporting and closing procedures. NYPIRG supports the continued transportation of scanner PMD sticks to police precincts for data entry of unofficial election night results.

In closing, it is important to recognize that this excellent report focuses on the performance of, and recommendations for, the Board of Elections itself. While the problems uncovered are real and severe, they pale in comparison to the greater flaws in our election system that lead to depressed levels of participation. In addition to our previous suggestions for Council action, we hope this body will also take up the issue of providing verbal assistance to New Yorkers who are provided registration applications in city agencies under Local Law 29 to increase and diversify the city's voter rolls. If workers at DMV offices provide such assistance under Motor Voter, shouldn't city workers assisting clients in city agencies do so as well? We also hope the Council will weigh in on proven measures being proposed in Albany to increase voter participation and election day administration such as same day registration and early voting.

Thank you once again for the opportunity to testify today. NYPIRG appreciates the opportunity to testify today and looks forward to working with the Council, Mayor and Board to improve the administration of elections in New York City.



**Testimony to the New York City Council Committee on
Governmental Operations on the recent report from the
Department of Investigation (DOI) concerning the New York
City Board of Elections (NYC BOE)**

Friday, February 28, 2014

Good Afternoon. My name is Kate Doran. I am the Election Specialist on the Board of the League of Women Voters of the City of New York. As a multi-issue, non-partisan political organization we encourage informed and active citizen participation in government, work to increase understanding of major policy issues, and influence public policy through advocacy and education.

For over 90 years, voter service, and election administration have been priorities for the League of Women Voters in New York. We appreciate this opportunity to comment today.

Since the introduction of Optical Scan Voting Technology, and the launch of "Vote the New Way," in 2010 the NYC Board of Elections has faced many challenges. Some successful responses to these challenges include the Poll Site Locator and Sample Ballot features on the Board's website, which are of continuing value. Now the Board is preparing to web cast the public meetings of the Commissioners, and to build ballots with larger fonts, and no more than 3 languages. All of us in the advocacy and good government community applaud these changes as improvements to voter service. The BOE must continue to do more, and be better, and we are confident that it is on the right track.

Michael J. Ryan was appointed Executive Director of the NYC BOE in August 2013, setting to work even before his official start date – 08/26/13. He held two meetings with Good Government groups before the elections in 2013 where he invited our input, and listened to our suggestions. On September 24, 2013 Mr. Ryan joined the LWVNYC at our National Voter Registration Day event in Bryant Park. While there, he spoke about creating accurate lists of Registered Voters in the City of NY, and improving the poll site voting experience.

We consider today's subject, the December 2013 report from the Department of Investigation, a significant service to voters, and in many respects a "To Do List," for the NYC BOE. We welcome the report as a ratification of the observations and recommendations that the League of Women Voters has been communicating to the BOE, the City Council and the NY State Election Law Committee for many years.

The report is a 72-page document that addresses BOE employment practices and election administration issues. We will focus on election administration issues and what the DOI calls "Voter Roll Deficiencies."

New York State has "Permanent" registration, meaning that a voter's registration remains in place unless he or she moves, changes his or her name, or has been convicted of a felony and has not completed the full term of his or her sentence. We support strict standards for removing a voter's name from the rolls, but recognize the absolute value of creating and maintaining accurate registration lists. Accordingly we endorse the DOI report recommendations regarding Voter Roll Deficiencies. (See pages 49 -50) Note worthy is the DOI recommendation that the BOE "Subscribe to the Social Security Death Master File Index."

The League of Women Voters encourages every eligible citizen to register, and come out to vote on Election Day. We believe that poorly trained poll workers, and confusion at poll sites are disincentives to voting. Poor voter service translates into lower voter turnout. The DOI report (see pages 31-34) cites numerous instances of "Incorrect Voting Instructions by Poll Workers," and "Violations of Voter Privacy Rules that closely resemble Election Survey comments we have received over the years.

For the most dramatic and far reaching impact on the administration of elections the Board must revamp its system for recruiting and training poll workers; write rules to implement split shifts on Election Day; and demonstrate creative flexibility in staffing poll sites by function.

Specific Constructive Suggestions

(Except for references to the DOI, these suggestions are much the same as those presented in our testimony of 12/5/12.)

1. a) Create a training procedure modeled after the Department of Motor Vehicles (DMV) procedure for testing applicants for driver's licenses in New York State. The Board of Elections would supply the Poll Worker's Manual first, which prospective Poll Workers could pick up from NYC BOE borough offices, or down load from the Board's website. After studying the manual, the prospective Inspector would go to a Board office and take a written test. The test would be "Open Book," which is as it should be, because test takers are practicing what will be required of them at the poll site: being asked questions, and researching answers. Test takers at the Board/Borough offices would be monitored to prevent the "cheating," described in the DOI report. When the prospective Inspector completes and passes the written test, he/she moves to **Hands-On & Simulated Training** on the scanner and BMD, analogous to the would be driver being given a permit to practice driving a car after passing a written test. Just one virtue of the DMV model is that individuals thinking about being poll workers will self select. The person who cannot, or does not want to read a manual, will not apply. This training model

will cost less than the current training because the actual classes could be much shorter.

b) Design the Hands-On, Role Playing segment of the training so that it actually simulates the work of a Poll Site Inspector.

Q. What is the most important job of a New York Poll Site Inspector on Election Day?

A. To compare the voter's signature to the signature reproduced in the poll book, and to look at the voter and quickly estimate the voter's age, so as to compare the apparent age to the birth date recorded in the poll book.

Q. Is this essential task emphasized, or even consistently taught in training classes?

A. No.

The DOI report cites great variation in the training provided to Poll Workers. This has been our experience, and we concur with the DOI's recommendation that training be professionalized. With little expense, and without much difficulty the BOE could create a Mock- Up of an ED table in a classroom where some students take on the role of voter, while others that of Inspector. Trainers would prepare and set up situations that typically occur on Election Day, from the ordinary and common, to the more unusual and challenging. If Inspectors had been trained in this way in 2013, they would have practiced looking at voters and comparing their apparent ages to their dates of birth in the Registration Book. If Inspectors had been trained to check voters' ages and signatures, would Investigators from the DOI have been able to successfully pose as ineligible voters nearly 100% of the time? We think not.

2. Overhaul the Standby Pool System – We recommend that the BOE have dispatchers available on the day and evening before an election event to take calls from Poll Site Coordinators, and to assign Standby workers to go to particular sites at 5:00 AM on the morning of the election. (By Monday evening, and usually days before, Coordinators know the number of vacancies to expect. Coordinators know this because they receive a "Site Coverage Report," listing the names of workers assigned. Coordinators are expected to telephone those assigned to confirm that they plan to work.) Knowing that there will be vacancies, and not being able to do anything about it until 5:30 or 6:00 on the morning of an election is profoundly discouraging. It is also illogical, inefficient, and expensive to send workers to a Standby location when they could go directly to a poll site.

3. Collect and Use E-mail Addresses for Poll Workers –

The Board has been collecting e-mail addresses for some time now. I have seen a field for them in the "Forms Booklet" (the place where poll workers sign in) but never have I, as a Poll Site Coordinator in Brooklyn, received an e-mail communication from the Poll Worker Department.

The "Site Coverage Report" has a field for telephone number. Nearly 50% of the time however the telephone number is no good or the field is blank. E-mail addresses would make contact with poll workers vastly easier and more efficient. Commissioners at their regular meeting on November 27th 2012 noted that if they had had e-mail addresses for poll workers prior to November 6, 2012 they might have been able to send a blast e-mail regarding the Governor's Executive Order.

4. Eliminate Voter Cards – Voter Cards are a relic of the lever machine voting system, where they served the important function of being the voter's "ticket" to go inside the curtain of the lever (aka Shoup) machine, and served as a check on the machine's Public Counter Number. In a crowded poll site during a high turnout election it would have been quite easy for a voter to stand on line to use the machine without signing the poll book. The poll clerk sitting beside the machine needed to collect a voter card or send the voter back to the table to sign in. Now that the voter signs in and receives a paper ballot, the Voter Card is redundant and a waste of time; not to mention a source of confusion for poll workers, most of whom do NOT understand the difference between a Voter Number and a Ballot Stub Number. Voter card numbers have no relevance in poll sites in NYC because we do not use one scanner per ED. Here's what the Board can do instead of using Voter Cards, a solution that addresses issues of potential voter fraud, and the voters' continuing desire for more privacy.

5. Design and create a Privacy Sleeve that is specifically labeled and color coded for each Poll Site. This privacy sleeve will not be an "off the shelf" manila folder like the ones we now use. It should be long enough to cover the entire ballot, and it will identify the bearer to the Scanner Inspector, as a voter who belongs at that poll site. In essence the Privacy Sleeve will be the voter's "ticket" to use the Scanner, and it will be given only to voters who have been identified by Inspectors and signed a poll book. Affidavit ballot voters will not be given a Privacy Sleeve because their ballots can be folded and are meant to be put into an envelope, not scanned. We believe that this is a simple response to the Voter Card problem. It is intuitive, straight forward, and would require next to no training. Ballot stub numbers would be recorded in the poll book. If a voter returns to an ED table with a spoiled ballot, the Inspector simply looks up the name, and records the 2nd or 3rd stub number in the poll book.

We believe that these procedures honestly and fairly implemented are the necessary safeguards against In Person Voter Fraud. These procedures not only protect the vote, they preserve the rights of the voter.

Poll Worker training need not be long and complex. Workers must be recruited for appropriate common sense skills, and trained in legal and essential procedures that emphasize customer service. The vitally necessary task of comparing a voter's real time signature, to that printed in the poll book, should not be difficult to teach, but it has perhaps been underemphasized as other time consuming procedures have been added.

There is general agreement that recruiting, and retaining competent poll workers is an important goal. And we believe that the BOE is particularly vulnerable to criticism the longer it fails to transparently and comprehensively address the systemic failures of its poll worker program.

In 2012 The League of Women Voters of the City of New York conducted a Survey of Democratic and Republican District Leaders to learn about their role in recruiting poll workers. (We had long been aware that the BOE relies first and foremost on County Political Committees to supply poll workers.) We mailed or e-mailed surveys to more than 400 District Leaders. We heard back from an equal number of Democrats and Republicans from all boroughs except Staten Island. 75% of the survey respondents said that they find it difficult to recruit poll workers. The top suggestions from the District Leaders for improving election administration were poll worker related: better training, and implementation of ½ day shifts. We strongly urge the City Council to ask the BOE to do its own study of the reasons for the shrinking pool of prospective poll workers, and to share the results with the City Council and the voters. Given the Bipartisan composition of the BOE we would like to see the Board focus on an open transparent survey of County Committees and District Leaders.

Finally, because Election Law is State Law, we urge the Commissioners of the NYC Board of Elections to direct their legal staff to draft amendments to **Title IV – ELECTION INSPECTORS AND POLL CLERKS**, and include such draft amendments and recommendations in the Board's annual State Legislative Request Package. The statutory language of **Title IV** is anachronistic now that we vote on paper ballots and use optical scanners. The NYC BOE could take the lead in an initiative that would well serve Election Administrators and voters throughout the State.

We appreciate the challenges that the Board of Elections faces at all times and on all fronts. We thank the City Council and Governmental Operations Chair Benjamin Kallos for continuing the oversight, modeled by the previous Chair, Gale Brewer. We look forward, with you, to continuing to serve the voters of New York.

**Testimony of Cathy Gray, LWVNYC Vice-President to the New York City
Council Committee on Governmental Operations
on the recent report from the Department of Investigation (DOI) concerning the New York
City Board of Elections (NYC BOE) February 28. 2014**

My name is Catherine Gray, I serve as Vice-President of the League of Women Voters of the City of New York. (LWVNYC) The League of Women Voters is a multi-issue, non-partisan political organization. We encourage informed and active participation in government, work to increase understanding of major policy issues, and influence public policy through advocacy and education.

I am also the LWVNYC's representative to the New York Transparency Working Group, (TWG) which supports efforts to use Information Technology to make New York City government more open and accountable, and to get the greatest public value from the city's wealth of digital information.

Thank you for holding this hearing and for inviting us to testify.

The LWVNYC has strongly supported the work of TWG and their early and continual support of the Open Data laws of NYC (Local Law 11 of 2012) with the goal of promoting more transparency in government so as to create a better informed citizenry.

With respect to the December 2013 report from the Department of Investigation, (DOI) the LWVNYC believes that there is a chance to move forward by addressing issues in the report. We commend the new Executive Director of the NYC BOE, Michael J. Ryan, and the Board for their pro-active, problem solving approach. Since his appointment in August 2013 the Board has taken on:

*Ballot design and font size
Election Night Reporting
Web casting of Commissioners meetings
Voter Rolls updating, and maintaining
Buff card storage and handling*

The BOE publishes an annual report. Financial reporting appears in a one page summary with no real explanation of short falls, other than, "...unprecedented fiscal challenges." (page 53 Annual Report 2012) There is also a pie chart that does not explain if the adopted budget or final budget was used, nor does it explain the 1% returned to the city. (page 53 Annual Report 2012). Nor does the chart explain the \$23,474,935 difference.

The LWWNYC would like to see information/data sets on the following basic operations;

- *Voting: how and where: military, absentee, affidavit, election day etc by Borough and Election District (ED)(although ED information can be found on the NYS Election Board but not the NYC BOE's web page, as per the Director, MIS)*
- *Training cost: materials, trainers , space rental, transportation, recruitment, etc*
- *Overtime costs: broken down by job title and task performed*
- *Cost of consultants: that are not reported as BOE employees and task performed (some have worked ten years)*

Smart use of digital information for planning and budgeting by many City Agencies has already saved money for tax payers. The BOE can, and should, do the same. If costs and spending were displayed money, time and staff saving opportunities might appear obvious.

*Furthermore we urge the BOE to continue to embrace new technologies in its operations. (Mr. Ryan has already demonstrated his interest in doing so.) **The LWWNYC asks that all data be in Machine Readable Format and follow best practices for privacy.** We believe that transparent data and information sharing is good for voters, and will make it easier for the BOE to achieve its own stated goals.**

1. To conduct fair and honest elections, from local to federal levels;
2. To enfranchise all eligible New Yorkers to register to vote and to practice those rights;
3. To conduct elections, certify the canvass and to retain the official records;
4. Voter outreach and education.

I would like to end with a quote from Governor Andrew M. Cuomo. in respect to transparency/open data it will result in *“Bringing the people back into government...”***

Thank you for this opportunity to testify and we look forward to future collaboration.

Catherine Gray

- BOE Annual Report 2012
- *<https://data.ny.gov/dataset/NYS-Transparency-Sites/323m-qw7a?>)

Corey B. Bearak, Esq.
Government & Public Affairs Counsel

“Prospective and existing community board members should certify involvement in a community group to gain appointment or reappointment. This change will ensure community boards include not just people with knowledge and expertise but ongoing communal involvement that ensures each community in the district a seat at the table.”

Commission must check board appointments

*Prospective and existing community board members should certify involvement in a community group to gain appointment or reappointment. This change will ensure community boards include not just people with knowledge and expertise but ongoing communal involvement that ensures each community in the district a seat at the table. [City Charter; City Charter Revision; Community Boards; Government Reform]
(July 29, 2004)*

Oversight: Best Practices for Recruitment and Appointments to Community Boards

March 3rd, 2014

Jill Eisner

Resident of Community Board 8

A community board should represent the entire scope of the community and not just the largest institutions and financial powers but shop owners, teachers and residents.

A community board should not allow members of a family to have multiple seats on the board.

Community Board Chairs should be independent and should not serve on the subcommittees and task forces of their own community board.

The public should be aware of who is making the appointments to their community board, which officials have pointed what percentage of each community board.

The borough President and the local councilmen should appoint the board members not citywide or state wide officials.

Conflicts of interest of community board chairs and members needs to be closely monitored by the Borough President, especially with regard to large projects that can redefine a neighborhood or destroy its character.

Review process: the members of some boards have served for decades, some doing a wonderful job but others are either dead weight or have acted in their own best interests and not in that of their local district. There needs to be an avenue for other board members and residents to file complaints and ask that membership be reviewed and the board member replaced.

I asked some board members what they would like to see improved about the Community Board process and consensus appeared to be: 1) that their recommendations are given more weight by the local politicians, 2) that they are consulted before decisions are made that dramatically impact their community and 3) that their elected representatives follow the wishes of the Community Board and the residents in that community despite it conflicting with said elected representatives agenda.

Moreland Commission to Investigate Public Corruption
Written Testimony for New York City Council Committees on Government Operations and Oversight and
Investigations
Hearing: "Oversight: The Recent Report of the Department of Investigation on the Board of Elections"
February 28, 2014

The Moreland Commission thanks the Council, and particularly Chairmen Kallos and Gentile, for the invitation to provide testimony for today's hearing.

By Executive Order 106, issued on July 2, 2013, Governor Cuomo established the Commission to investigate public corruption in the State of New York.¹ To strengthen and expand the Commission's investigative authority, the Commissioners and senior investigative attorneys were, in accordance with the terms of Executive Order 106, deputized by Attorney General Schneiderman and thereby invested with broad powers to issue subpoenas and compel testimony.² The Governor tasked us not only with ferreting out illegal activity involving public officials in the State,³ but also with analyzing the effectiveness of current laws, regulations, and procedures related to lobbying, public corruption, conflicts of interest, and public ethics, and with making recommendations for how these laws and regulations can be improved.⁴ Executive Order 106 also specifically tasked us with investigating the "management and affairs" of the New York State Board of Elections ("State BOE").⁵ On December 2, 2013, we released a Preliminary Report detailing certain investigative findings and making recommendations for improving laws, regulations, and procedures related to public corruption in our State.⁶

Of course, today's hearing was organized to discuss the December 2013 report on the New York City Board of Elections ("City BOE") issued by the Department of Investigation ("DOI").⁷ We have not investigated the City BOE. We have, however, undertaken a thorough investigation of the State BOE, as mandated by Executive Order 106. In conducting this investigation, we held a public hearing,⁸ issued subpoenas, conducted numerous witness interviews, deposed a former State BOE investigator, conducted an in-depth audit of every complaint received by the State BOE since 2008, and analyzed hundreds of thousands of documents, including thousands of emails and internal memoranda. Our Preliminary Report included both detailed findings related to this investigation and a recommendation for how to fix problems we found with the State BOE.⁹ Just as DOI's report identifies myriad examples of ineffectiveness and inefficiency in the City BOE's work, our Preliminary Report identified such problems with the State BOE. Though DOI's report focuses more on issues of election administration where our Preliminary Report focused more on the State BOE's failure to enforce the Election Law, the two reports come together in identifying an underlying structural problem: the bipartisan staffing of our boards of elections, which, to at least some extent, is mandated by the New York State Constitution.¹⁰

¹ See Executive Order No. 106 (July 2, 2013). The Commission was established pursuant to Sections 6 and 63(8) of the Executive Law. Executive Order No. 106.

² See Executive Order 106, pt. IV.

³ See Executive Order 106, pt. VI.

⁴ See Executive Order 106, pt. II(b)-(c).

⁵ Executive Order No. 106, pt. II(a).

⁶ The Commission to Investigate Public Corruption, Preliminary Report (Dec. 2, 2013) [hereinafter "Preliminary Report"], *available at* http://publiccorruption.moreland.ny.gov/sites/default/files/moreland_report_final.pdf.

⁷ New York City Department of Investigation, Report on the New York City Board of Elections' Employment Practices, Operations, and Election Administration (Dec. 2013) [hereinafter "DOI Report"], *available at* <http://www.nyc.gov/html/doi/downloads/pdf/2013/dec%202013/BOE%20Unit%20Report12-30-2013.pdf>.

⁸ Moreland Public Hearing, Oct. 28, 2013, *available at* <http://www.youtube.com/watch?v=GUSPXRXYdyY>.

⁹ See Preliminary Report at 59-86.

¹⁰ See N.Y. Const. art. II, § 8 ("All laws creating, regulating or affecting boards or officers charged with the duty of qualifying voters, or of distributing ballots to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards

Under section 8 of article 2 of the New York State Constitution, “boards” and “officers” charged with administering elections must be bipartisan in nature.¹¹ The Constitution contemplates legislation to codify this constitutional mandate,¹² and the Election Law does indeed provide for bipartisan structures for both the City BOE and the State BOE.¹³ With regard to both the City BOE and the State BOE, the Election Law mandates that the commissioners of the boards equally represent the two major political parties.¹⁴ The City BOE always has five Republican-appointed commissioners and five Democrat-appointed commissioners, and the State BOE always has two Republican-appointed commissioners and two Democrat-appointed commissioners.¹⁵ Below the commissioner level, however, the statutory mandates diverge. As DOI’s report notes, the Election Law requires equal representation of the two parties across all employees of the City BOE.¹⁶ This is not true for the State BOE. Below the commissioner level, the only statutory requirement for equal party representation in the State BOE is that the commissioners of each party get to appoint one of the two co-executive directors.¹⁷

In spite of this limited statutory mandate, the State BOE has chosen to divide all non-civil-service positions between the two parties.¹⁸ As of the publication of our Preliminary Report, there were 30 non-civil-service positions at the State BOE, and they were evenly split between Republican appointees and Democrat appointees.¹⁹ The State BOE has a practice of “pairing” significant positions, so that an individual who holds a top position is appointed by one party while their deputy or assistant is appointed by the other party.²⁰ The practice of dividing positions between the two parties has been in place for many years.²¹

Under the statutory mandate that all positions in the City BOE be divided between the two parties, DOI found that positions are filled largely through reliance on recommendations from county political committees.²² Positions are generally not filled through the public posting of jobs, and there is no uniform process for screening applicants.²³ In light of the lack of transparency in this hiring process, it is not surprising that DOI uncovered significant evidence of nepotism, among other problems.²⁴ The numbers are worth repeating: DOI found that the City BOE had 891 employees as of 2013,²⁵ and that, conservatively, at least 69 of these employees appeared to be related to another City BOE employee.²⁶ Employment decisions not based on family relations were often based on political activity.²⁷

and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of said parties respectively, as the legislature may direct. Existing laws on this subject shall continue until the legislature shall otherwise provide. This section shall not apply to town, or village elections.”).

¹¹ N.Y. Const. art. II, § 8.

¹² N.Y. Const. art. II, § 8.

¹³ See, e.g., Election Law §§ 3-100(3), 3-200(2)-(4), 3-202, 3-300.

¹⁴ See Election Law §§ 3-100(1)-(2), 3-200(2)-(3).

¹⁵ Election Law §§ 3-100(1)-(2), 3-200(2)-(3).

¹⁶ Election Law § 3-300; see DOI Report at 3.

¹⁷ Election Law § 3-100(3) (requiring the State BOE to “appoint two co-executive directors, counsel and such other staff members as are necessary in the exercise of its functions,” but only specifying that “the commissioners . . . of each of the major political parties shall appoint one co-executive director”).

¹⁸ Preliminary Report at 60.

¹⁹ Preliminary Report at 60.

²⁰ Preliminary Report at 60.

²¹ Preliminary Report at 60.

²² DOI Report at 4-5.

²³ DOI Report at 4-5.

²⁴ DOI Report at 6-8.

²⁵ DOI Report at 3.

²⁶ DOI Report at 7.

²⁷ See DOI Report at 9-10.

We found a similar hiring process for State BOE jobs. The non-civil-service positions that are divided between the two parties are filled by word of mouth, with job openings never advertised.²⁸ When asked at our public hearing, neither of the State BOE's co-executive directors provided a clear answer about how this word-of-mouth hiring process works – or about who outside of the State BOE influences it.²⁹

Our Preliminary Report described all of the problems we uncovered with the State BOE in great detail,³⁰ but we would like to describe for you a sample of our findings, beginning with those problems that are a clear and direct result of the State BOE's bipartisan structure.

First, the bipartisan division among commissioners plays a role in ensuring that the State BOE engages in little or no enforcement action.

Three commissioner votes are required for any official State BOE action.³¹ This is an obvious recipe for stalemate on controversial matters where there are two Republican-appointed commissioners and two Democrat-appointed commissioners. When our staff asked State BOE Commissioner Douglas Kellner whether the bipartisan structure negatively affected the enforcement of Election Law violations, he said "absolutely."³² Commissioner Kellner explained that when the commissioners cannot agree on how to vote on a complaint before them, they sometimes simply "table" the decision, delaying the resolution of that complaint.³³ Agreement among three or more commissioners to open an investigation is rare – between 2008 and April 2013, the period we analyzed for our Preliminary Report, the State BOE received 409 complaints but only opened five investigations based on those complaints, with only one of those investigations originating with a complaint received since 2009.³⁴

Consistent with its practice of pairing significant positions and dividing each pair between the parties, in recent years the State BOE has employed a Democrat-appointed enforcement counsel and a Republican-appointed deputy enforcement counsel.³⁵ The State BOE's practice has been for the enforcement counsel to assign each complaint to either herself or to the deputy enforcement counsel.³⁶ Although the deputy enforcement counsel stated at our public hearing that, at least to his knowledge, the assignment of complaints was not based on party affiliation,³⁷ our analysis of the assignment of complaints revealed that in at least some instances the political affiliation of the counsels may have impacted the assignment of complaints.³⁸ For example, during the period analyzed, there were several complaints involving Rensselaer County and City elections, committees, and candidates.³⁹ Analysis of those complaints revealed that when the complaints were made against Republican candidates or committees, the Republican-appointed deputy enforcement counsel was assigned to the complaints.⁴⁰ Likewise, when complaints were filed against Democrats, the complaints were mostly handled by the Democrat-appointed enforcement counsel.⁴¹ The former State BOE investigator deposed by Commission staff said that it had been his practice to speak with local election commissioners, but toward the end of his career – during the time period in question – he was admonished not to approach a Republican commissioner in Rensselaer

²⁸ Preliminary Report at 60.

²⁹ Preliminary Report at 60-61.

³⁰ Preliminary Report at 59-86.

³¹ Election Law § 3-100(4).

³² Preliminary Report at 62.

³³ Preliminary Report at 62.

³⁴ Preliminary Report at 70.

³⁵ See Preliminary Report at 61.

³⁶ Preliminary Report at 64.

³⁷ Preliminary Report at 66.

³⁸ Preliminary Report at 67.

³⁹ Preliminary Report at 67.

⁴⁰ Preliminary Report at 67.

⁴¹ Preliminary Report at 67.

County during an investigation.⁴² He was told that he could not talk to the Republican commissioner unless he went through the Republican-appointed deputy enforcement counsel.⁴³ All of the complaints involving Rensselaer County were eventually closed without any formal investigations being opened.⁴⁴

Beyond the impact of partisanship on decisions regarding possible enforcement actions, our investigation revealed a broad limiting of the flow of information within the State BOE due to the partisan divide. During the period analyzed, the State BOE employed a Republican-appointed special counsel and a Democrat-appointed deputy special counsel.⁴⁵ The Republican-appointed co-executive director consistently sent emails to the Republican-appointed special counsel or copied the Republican-appointed special counsel on emails without copying the Democrat-appointed deputy special counsel.⁴⁶ Along the same lines, in an interview with our staff, the Democrat-appointed co-executive director acknowledged that he would take enforcement issues to the Democrat-appointed enforcement counsel, but not to the Republican-appointed deputy enforcement counsel.⁴⁷ Emails showed the Republican co-executive director emailing a group of Republican-appointed State BOE employees about an “R-team meeting,” and the Republican-appointed co-executive director confirmed at our public hearing that he would frequently have meetings where only Republican-appointed employees were invited.⁴⁸ At our public hearing, he attempted to defend this practice by asserting that the meetings were not about agency business, but rather were just a chance to “vent [],” talk about “personal issues,” or discuss “movie reviews,” despite the fact that these meetings seemingly occurred during the work day.⁴⁹

The party divide not only limits the flow of information at the agency, but also breeds hostility and undermines cooperation. In an email chain titled “DO NOT BE AGREEABLE WITH THEM,” a Republican-appointed counsel expressed her frustration with the Democrats at the agency, and the Republican-appointed co-executive director responded by setting forth his view on working with the Democrats:

It can be very frustrating. . . . I[']ve found it’s best not to ask the Dems to write anything but rather, give it to them as take it or leave it, avoid the negotiating because none of them here has any authority to do anything, and that includes [Democrat-appointed commissioner Douglas] Kellner.⁵⁰

At our public hearing, the Republican-appointed co-executive director tried to characterize this partisan infighting as normal office friction.⁵¹

These are just a few problems our investigation uncovered that are clearly and directly related to the State BOE’s bipartisan structure. But, as DOI concluded with respect to the City BOE,⁵² the Commission concluded

⁴² Preliminary Report at 67.

⁴³ Preliminary Report at 67.

⁴⁴ Preliminary Report at 67.

⁴⁵ Preliminary Report at 61.

⁴⁶ Preliminary Report at 61.

⁴⁷ Preliminary Report at 61.

⁴⁸ Preliminary Report at 61 n.145.

⁴⁹ Preliminary Report at 61 n.145.

⁵⁰ Preliminary Report at 61.

⁵¹ Preliminary Report at 62.

⁵² DOI Report at 55 (“Many of the areas covered by DOI in this report reveal a systemic lack of accountability and transparency, dysfunctional operations, and inefficient use of resources and City funds at BOE. A requirement of non-partisan election administration would not only curtail the influence of the county committees, but also, could facilitate the professional administration of elections by individuals selected based on merit.”).

that the broader range of problems we identified with the State BOE are also related to the bipartisan structure.⁵³ When jobs at an agency tasked with enforcing election laws against political actors are handed out as political favors rather than based on merit, it is not surprising that the result is inaction, inefficiency, and ineffectiveness.

The broader range of problems we found is almost difficult to believe.

Our investigation revealed that the State BOE had a blanket policy of refusing to accept anonymous complaints, regardless of the severity of the allegations involved or the quality of the information provided by the anonymous complainant.⁵⁴ Similarly, the State BOE had a policy prohibiting the investigation of allegations of election misconduct during the period leading up to the subject election – that is, during the period when a successful investigation could actually make a positive difference in the election.⁵⁵ These policies are so obviously unreasonable that, mere days after we exposed these policies at our public hearing, the commissioners of the State BOE unanimously voted to change the policy on anonymous complaints and also agreed to formulate a new policy on complaints raised near the time of an election.⁵⁶

Despite the State BOE's persistent complaints that inadequate resources are the source of its problems, our investigation revealed a number of ways in which resources at the agency's disposal were grossly underutilized or not utilized at all.⁵⁷ The State BOE left funded positions unfilled for extended periods of time until it was eventually stripped of the positions.⁵⁸ Evidence suggests that these positions may have gone unfilled because the State BOE higher-ups were concerned with keeping the number of Republican-appointed and Democrat-appointed employees equal at all times.⁵⁹ The former State BOE investigator we deposed asked for substantive work repeatedly – he earnestly wanted to do a good job – but he was ignored and spent much of the years 2007 through 2012 playing computer solitaire and studying the Bible online during work hours.⁶⁰ We found that the State BOE does not meaningfully prioritize complaints to facilitate timely investigation and enforcement action.⁶¹ The agency is similarly slow in responding to all kinds of complaints, taking an average of 240-320 days to close various types of complaints,⁶² even though investigations are almost never opened during that wait time.⁶³

The State BOE has statutory authority to demand and receive assistance from the New York State Police,⁶⁴ to appoint special investigators,⁶⁵ and to issue subpoenas,⁶⁶ but during the period analyzed the agency almost never called on the State Police or issued subpoenas, and the State BOE readily admits that it has never appointed a special investigator.⁶⁷

⁵³ Preliminary Report at 62 (“The [State BOE]’s bipartisan structure . . . pervades all significant aspects of its work, and exacerbates typical workplace tensions. It also undermines [the State BOE]’s efficacy as an enforcement agency.”).

⁵⁴ See Preliminary Report at 71-72.

⁵⁵ See Preliminary Report at 72-73.

⁵⁶ Jessica Alaimo, “Elections Board makes changes after Moreland’s public flogging,” Capital New York (Nov. 1, 2013), available at <http://www.capitalnewyork.com/article/politics/2013/11/8535399/elections-board-makes-changes-after-morelands-public-flogging> (last visited Feb. 21, 2014).

⁵⁷ See Preliminary Report at 79-85.

⁵⁸ Preliminary Report at 80-81.

⁵⁹ See Preliminary Report at 80-81 & n.284.

⁶⁰ See Preliminary Report at 82.

⁶¹ See Preliminary Report at 65.

⁶² See Preliminary Report at 65 n.169.

⁶³ See Preliminary Report at 70.

⁶⁴ Election Law §3-105(2).

⁶⁵ Election Law § 3-107.

⁶⁶ Election Law § 3-102(5)-(6).

⁶⁷ Preliminary Report at 82-85.

As we stated in our Preliminary Report, in spite of its significant authority, the State BOE has failed to satisfy its mandate, particularly with regard to enforcement of the Election Law.⁶⁸ As we have outlined, sometimes this failure is clearly and directly tied to the agency's bipartisan structure, but even where it is not, we concluded that the problems identified are "rooted in the [State BOE]'s party-driven structure."⁶⁹ In our Preliminary Report, we said:

The word "bipartisan" usually has positive connotations – cooperation, and broad public support. For the [State BOE], bipartisanship means a tacit agreement among the parties to do nothing to enforce our laws. It means all-encompassing political gridlock that infects every decision, and does little to ensure anyone's compliance with the Election Law.⁷⁰

We recommended the creation of a new enforcement agency, independent of the State BOE.⁷¹ The new agency would be headed by a director appointed to a five-year term by the Governor, with Senate confirmation, and would be removable only for cause.⁷² The agency would be structured to promote political independence and professionalism.⁷³ Like DOI,⁷⁴ we held up New York City's Campaign Finance Board as an example of what a working agency might look like.⁷⁵ As we said in our Preliminary Report, with enforcement handled by an independent agency, the State BOE would be able to focus on its constitutional duty as an elections administrator.⁷⁶

DOI has recommended constitutional and statutory amendments to eliminate the bipartisan composition of boards of elections and replace these bipartisan entities with professional non-partisan boards to administer elections.⁷⁷ We have not taken a position on that exact recommendation, as our investigation of the State BOE only led us to conclude in our preliminary report that an independent enforcement agency was needed at the state level. But we will say this: DOI's findings and conclusions are dispiriting, to be sure, but unsurprising in light of the findings and conclusions of our investigation of the State BOE.

Thank you again for inviting the Commission to provide testimony for today's hearing.

⁶⁸ See Preliminary Report at 59.

⁶⁹ Preliminary Report at 85.

⁷⁰ Preliminary Report at 85.

⁷¹ Preliminary Report at 85. Independent of our investigation of the State BOE, we recommended a system for the public financing of elections. Preliminary Report at 41-50. The new independent enforcement agency would also be tasked with administering that public financing system. Preliminary Report at 85.

⁷² Preliminary Report at 85.

⁷³ Preliminary Report at 85. The Governor adopted a modified version of this recommendation in proposing the Public Trust Act for inclusion in the 2014-2015 Executive Budget. Under that proposed legislation, the Governor would appoint a chief enforcement counsel for the State BOE for a four-year term, removable only for cause and only by the Governor, and the chief enforcement counsel would have sole authority over personnel decision within the State BOE enforcement unit, with all personnel decisions made without regard to political affiliation. See 2014-2015 New York State Executive Budget, Public Protection and General Government Article VII Legislation, Pt. H, Subpt. A, § 2, *available at* <http://publications.budget.ny.gov/eBudget1415/fy1415artVIIbills/PPGGArticleVII.pdf>.

⁷⁴ DOI Report at 55.

⁷⁵ Preliminary Report at 85.

⁷⁶ Preliminary Report at 86.

⁷⁷ DOI Report at 55.

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I represent: NYC BOE

Address: _____

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Name: Michael Ryan

Address: 12 Bdwy

I represent: NYC BOE

Address: _____

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Name: Mark G. Peters, Commissioner

Address: NYC Dept. of Investigation

I represent: _____

Address: 80 Maiden Lane, NY NY 10038

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Name: Neal Rosenstein (PLEASE PRINT)

Address: 9 Murray St

I represent: NYPIRG: NY Public Interest Research Group

Address: 9 Murray St

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GOV ops hearing Date: 2/28/14

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Name: BARBARA ZUCKER

Address: 222 PARK AVE 50 #9E NYC 10003

I represent: WOMENS CITY CLUB

Address: 110 W 40 ST, #1002 NYC 10018

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Name: STEVEN H. RICHMAN (PLEASE PRINT)

Address: General Counsel

I represent: NYC BOARD OF ELECTIONS

Address: 32 Bdway, 7th Fl. NY NY 10004

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Name: Jarret Berg
Address: 251 East 32nd St. DC NY, NY 10016
I represent: New York Democratic Lawyers
Address: Council

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Name: Matthew Rowland
Address: Davis Polk & Wardwell LLP, 450 Lexington Ave, NY, NY
I represent: Election Protection/Lawyers' Committee for
Address: Civil Rights Under Law

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Name: SUSAN LERNER
Address: 80 Broad St. Ste 2702, NY
I represent: Common Cause/NY
Address: SAME

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Name: Esmeralda Simmons

Address: 1150 Carroll St Brooklyn

I represent: Center for Law + Social Justice

Address: 1150 Carroll St Brooklyn 11228

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Name: Kate Doran

Address: 11 Polkmanus Place, Bklyn 11215

I represent: L. W. Voters

Address: 4 West 43rd St NY NY 10036

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Name: Alex Camacho

Address: _____

I represent: Citizens Union

Address: _____

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Name: Andrew Brunson, IG - NYC Dept.
Address: of Investigation

I represent: _____

Address: _____

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Date: 2/28/14

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Name: Amy Loprest
Address: 40 Rector Street

I represent: NYC Campaign Finance Board

Address: 40 Rector Street

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