



New York City Campaign Finance Board
100 Church Street, 12th Floor, New York, NY 10007
212.409.1800 | www.nyccfb.info

**Testimony of Eric Friedman
Assistant Executive Director for Public Affairs
New York City Campaign Finance Board**

**City Council Committee on Governmental Operations
April 30, 2019**

Good morning Chair Cabrera and members of the Committee on Governmental Operations. My name is Eric Friedman and I am the Assistant Executive Director for Public Affairs at the New York City Campaign Finance Board (CFB).

Thank you for the opportunity to provide testimony on the implementation of early voting and Int. No. 1282, sponsored by Councilmember Mark Treyger, which would require the CFB and its Voter Assistance Advisory Committee (VAAC) to provide interpreters at poll sites in designated citywide languages.

In 2010, a Charter amendment approved by New York City voters reconstituted the Voter Assistance Commission, a 16-member body with a small staff located within the Mayor's Office, as the VAAC, situated within the CFB.

The VAAC is a nine-member advisory board, with appointees from the mayor and the Council speaker (two each), along with the comptroller (one), and the borough presidents (who jointly have one appointment). The public advocate and executive director of the New York City Board of Elections serve as ex-officio members.

The City Charter directs the CFB "with the advice and assistance of the VAAC" to increase registration and voting, particularly among underrepresented populations and eligible voters of limited English proficiency (LEP).

The CFB's dedicated staff engages New Yorkers through nonpartisan voter registration drives, get-out-the-vote efforts, and voter education programs. VAAC meets every other month and holds two public hearings a year, in which we hear from New Yorkers about their voting experiences.

As required by the Charter, the CFB publishes a report each year taking a close look at voter participation throughout New York City. Our 2018-2019 report, which was released today, includes an in-depth analysis of voter turnout along with several recommendations aimed at increasing voter participation.

Again, we would like to thank you for providing the opportunity today to discuss two important ways to increase voter participation and make city elections more accessible and inclusive.

Early Voting

The CFB and VAAC have long supported early voting, and we applaud the State Legislature for passing—and the Governor for signing—legislation to provide an early voting period for elections in New York State. Allowing New Yorkers to cast a ballot on a schedule that works for them is not only logical; it is also good policy. Enacting early voting legislation is an important step forward, but it is only the first step. The decisions we make about implementation will be key to ensuring that this important reform will increase access to voting for all New Yorkers.

At our April 3rd VAAC meeting, we heard ideas from voters and advocates about how to best implement early voting. We'd like to share some of those thoughts and suggestions before the committee today, which we have also highlighted in a letter to the Board of Elections.

We heard from numerous groups about using a vote center model at the citywide level, which would allow voters to cast a ballot at any one of several convenient, easily accessible locations across the city. States like Texas and Nevada currently have early voting locations in grocery stores, libraries, and shopping malls. In addition to being an efficient use of space, placing early voting sites in heavily-trafficked locations also serves as a reminder for voters to cast a ballot.

The Board of Elections may want to consider using spaces like borough offices, major transit terminals, libraries, or other public locations that many New Yorkers already frequent.

Vote centers will require ballot-on-demand technology to ensure each voter gets the options on their ballot that correspond to their home address. We heard suggestions that any ballot-on-demand technology we adopt should be able to be integrated with the BOE's existing optical scanner machines. A ballot-on-demand system integrated with the existing scanners would help voters access their individual ballot with ease, while enabling voters and poll workers alike to continue using an interface with which they are already familiar.

Many questions remain regarding how to recruit and train poll workers within an early voting system, including the length of shifts, cost, and additional training needs. What is clear is that poll workers will need hands-on, comprehensive training well in advance of the early voting period.

Finally, we heard from voters about the need to educate New Yorkers about early voting. To this end, the CFB plans to publish comprehensive information about early voting, including dates, times, and locations in the official Voter Guide. We urge the Board of Elections to conduct a robust public outreach program to help New Yorkers navigate the polls smoothly and efficiently during the early voting period, and we urge the Council to ensure that these implementation efforts are sufficiently funded.

Poll Site Interpreter Program

We must do more as a city to make sure that all eligible citizens can cast a vote. Our analysis of voter turnout data shows that this is particularly true for our immigrant population. The CFB has taken several steps to better reach our immigrant communities. We offer voter registration forms in 16 different languages, and we have been increasing our outreach efforts in immigrant communities across the city. We believe the Voting Rights Act should act as a floor, not a ceiling, for helping all New Yorkers cast a ballot with ease.

In our public hearings, we have heard stories from voters in the LEP community who were turned away from a poll site or forced to fill out an affidavit ballot because of a language barrier. Last summer, we testified before the 2018 Charter Revision Commission about the need for more poll site interpreters and increased language assistance.

The data presented in our Voter Analysis Report highlights the need for a poll site interpreter program and better language access. Our analysis shows that turnout is especially low in neighborhoods with high populations of naturalized citizens. It's clear we need to do more to meet the needs of our LEP New Yorkers.

As you know, one of the Charter amendments approved by voters in November 2018 created a Civic Engagement Commission. One of that Commission's key tasks is to develop a citywide poll site interpreter program. Int. No. 1282 will strengthen this requirement in the Charter by creating a clear methodology to get interpreters to the polls on Election Day.

Our initial analysis shows that over 3,700 election districts have at least 50 voting age residents of limited English proficiency who speak one of the non-VRA designated citywide languages, which would require new interpreters in more than half of the poll sites throughout the city. Ideally, a program of this magnitude would be managed by the Board of Elections. However, given the clear mandate in the Charter amendment approved by the voters last November, we believe strongly that the Civic Engagement Commission should administer this important program.

Many cities across the country, such as Los Angeles and Boston, go above and beyond what is required in federal law to reach voters in languages other than English. A city as diverse as New York has a responsibility to do more than just the bare minimum to guarantee that every American citizen, no matter where they were born, has an equal ability to participate in our democratic process. We are happy to continue working with the Council to reach eligible voters throughout the city. The CFB is supportive of any program that engages more New Yorkers, and we stand ready to assist the Council, the Civic Engagement Commission, and all interested parties in achieving this important objective.

Thank you for the opportunity to provide testimony today. I'm happy to answer any questions you may have.

Testimony of thebigword

Avi Rosman, Language Services Lead NYC

April 30, 2019

City Council Committee on Governmental Operations: Interpretation services at poll sites.

Thank you, Committee Chair Cabrera, Members of the committee, for taking the time to address this important issue.

My name is Avi Rosman and I am native New Yorker. I grew up in Flushing, Queens and currently reside in Nassau County. I am a New Yorker through and through and love raising my family in the “great mosaic” of New York City. For over 10 years I have worked in the language service industry, and I currently serve as the Language Services Lead for NYC at thebigword.

Thebigword, an international interpretation and translation company, has been a pioneer in the language services field for almost 40 years, providing translation and interpretation services and breaking down language barriers worldwide. My job involves helping students enrolled in New York City Schools gain access to important interpretation services that furthers their education. Interpretation services play a vital role in our education system whereby nearly fifty percent of the New York City public school students speak a language other than English at home, and more than 180 languages are represented including the 10 city-wide languages Spanish, Chinese, Korean, Bengali, Russian, Haitian Creole, Polish, French, Urdu, and Arabic.

I am honored to be able to testify to the committee today and bring to life some first-hand experience in working with interpreters across many areas of everyday life. I’d like to share with you some of the ways interpreters are accessed, including how interpretation and translation services play a vital role for a significant section of the community to be able to go about their day-to-day lives and be active participants in society.



Working for thebigword, I have provided interpretation and translation services within schools while students sit exams, and in emergencies and life-threatening situations when a patient is in the hospital. Our interpreters have supported local law enforcement agencies and have helped doctors deliver babies. Often interpreters operate in challenging, fast-paced environments and sometimes in dangerous situations. I often reflect on how interpreters support the local community and the role they play.

Interpretation and translation services can be accessed in many ways, either pre-planned or on-demand. These services can be accessed either in person, over the phone, or through video call streaming.

The need for interpretation services city-wide is an underrepresented hot-button issue across the nation and is especially relevant in a city as diverse as New York. I encourage the committee not only to embrace the positive impact of social inclusion that having access to an interpreter brings to people's lives, but also embrace how these services are delivered internationally as the world is quickly becoming a much 'smaller' place.

At thebigword, I have drawn on our vast international experience and expertise, specifically across the United Kingdom and other European countries, such as Ireland and the Netherlands, to bring innovation to the New York Department of Education, which has created greater community access, social engagement, and has driven academic results.

An example of this is the recent introduction of WordSynk, a smartphone app. The app gives social workers, teachers, and other support staff access to an interpreter over the phone in less than 30 seconds, across 180 different languages, on-demand and in real time. The WordSynk smartphone app is designed to be adaptable and cross-functional across different agencies and organizations. This is an example of the type of cost-efficient interpretation services individuals could use at polling stations across New York City and whenever translation needs arise, in addition to in-person interpretation services.

Thank you very much for affording me the opportunity to address you today. I would be happy to answer any questions, and we look forward to engaging in this important conversation.

Avi Rosman.

Kevin Skoglund, Citizens for Better Elections
New York City Council Committee on Governmental Operations
April 30, 2019

Thank you to the New York City Council and the Committee on Governmental Operations for the opportunity to offer testimony on election integrity and the technology choices for implementing early voting for elections in New York City.

I work as a cybersecurity consultant and own a software development company. I am the co-founder and Chief Technologist of Citizens for Better Elections, a nonpartisan grassroots organization advocating for secure and verifiable elections. I am a member of the Election Verification Network and the NIST VVSG 2.0 Cybersecurity Working Group, an Election Assistance Commission advisory group tasked with setting standards for the next generation of voting machines.

I am here today to offer my knowledge about voting systems, election integrity, and cybersecurity. In this testimony, I will offer three recommendations:

- Hand-marked paper ballots should remain New York's preferred voting method due to its familiarity to voters, lower costs, shorter lines, greater transparency, resilience to technical problems, universal accessibility, and auditability.
- New York should utilize the voting hardware it currently owns for early voting rather than purchase additional voting machines. Optical scanners can be configured to scan ballots for multiple precincts.
- New York should develop a ballot inventory plan for early voting which includes both the preprinting of paper ballots and the purchase of ballot-on-demand printers which are capable of printing ballots for multiple precincts and in a variety of languages.

Evidence-Based Elections

Elections are a tool for democracy, but *trust* in elections is what makes democracy work. The legitimacy of office and the peaceful transfer of power requires public trust that elections are fair and the results are correct. Trust is earned through *evidence-based* elections. Other elections may count votes correctly and return decisive outcomes, but only evidence-based elections also provide *proof* that outcomes are correct. This proof allows the public to trust that elections are fair, bestows legitimacy on office holders, and reassures any candidate who loses an election that it was rightly decided.

Experts Recommend Hand-Marked Paper Ballots

Experts agree that the gold standard for resilient, evidence-based elections is hand-marked paper ballots for most voters, counted by an optical scanner inside the polling place. While we may refer to them as “hand-marked” systems, there is always a ballot-marking device (BMD) in every polling place for any voter who needs or wants assistance with marking a ballot. It is required by federal and state law and is essential for ensuring that all citizens can vote privately and independently. Risk-limiting audits of the results should be performed after every election, prior to certification, to provide assurance that the outcome is correct.

A hand-marked paper ballot system produces durable, reliable evidence of voter intent which can be recounted and audited.

A hand-marked paper ballot system costs less. The hardware costs are half the price of other methods and, over its lifetime, it has lower costs for maintenance, repair, storage, delivery, setup, and staffing.

A hand-marked paper ballot system has shorter lines. Many voters can fill out ballots by hand at the same time in simple privacy booths, and slow voters do not hold up the line. It is easy and inexpensive to set up additional privacy booths if needed.

A hand-marked paper ballot system is more secure and more resilient to problems. The voting system is less dependent on computers which may malfunction or be manipulated by insiders or foreign adversaries. Voting can continue even if there is a loss of power or hardware malfunction.

Hand-marked paper ballots are intuitive and easy to use. There is little technology to interfere with a voter marking their vote. There is less opportunity for confusion about computer interfaces or screen calibration issues which may “flip” votes and cause voters to mistrust the system. The voter does not have to trust a machine to mark their ballot or need to verify that it was done correctly.

A hand-marked paper ballot system is more universally accessible. Universal accessibility means allowing voters to choose the method that is most accessible for them. A ballot-marking device provides access to voters with disabilities such as vision and mobility impairments. Hand-marking is more accessible for voters who are less comfortable with technology or who have screen sensitivities, and it is more private and accessible for voters in wheelchairs. Shorter voting lines are better for voters with physical limitations.

Early Voting in New York City

New York already owns and uses a hand-marked paper ballot voting system of the type recommended by experts. Around 2010, the City purchased ES&S DS200 optical scanners and ES&S AutoMark ballot-marking devices. Over the last eight years, the voting procedure has become familiar to New Yorkers. A voter is given a paper ballot upon check-in. The voter marks the ballot either at a privacy booth or with the assistance of the AutoMark. The voter inserts the ballot into the DS200 optical scanner. The optical scanner will alert the voter to any ballot problems such as over-votes before tabulating the marks on the ballot and dropping it into a secure ballot box.

New York City will soon introduce early voting which presents new challenges. Those challenges do not change the fundamentals I have described. Hand-marked paper ballots are still the preferred voting method. It costs less, has shorter lines, is more secure and resilient, increases voter trust and is universally accessible. It is also familiar to voters and to poll workers.

The good news is that it is not necessary to spend a lot of money to make your current systems suitable for early voting. The optical scanners being used currently can be configured to scan ballots for multiple precincts and for multiple "ballot styles." Multiple languages are also well-supported. Ballots printed in two different languages seem very different to a human, but to an optical scanner they are similar. The optical scanner observes the position (the column and row on a grid) of a marked oval and translates the coordinates into a vote for a candidate. It does not matter what text or language is printed next to the oval. The optical scanner does not read it.

Because early voting will combine several precincts into one polling place, I recommend developing a ballot inventory plan with two primary components. The first component is to preprint paper ballots for an anticipated number of voters from each precinct. Print multiple ballot styles and in multiple languages using evidence and experience from the previous eight years as guidance. The second component is to purchase a ballot-on-demand printer for each early voting location. A ballot-on-demand printer is essentially a computer with a printer attached and they cost as much. Each ballot-on-demand printer would be capable of printing ballots for multiple precincts and in a variety of languages. It reduces waste and provides flexibility and resilience. It can replenish ballots if inventory runs low. It can print ballots in infrequently-requested languages to accommodate all voters. A ballot inventory plan should include well-designed procedures to ensure that voters are given the correct ballot for their precinct.

Other major cities around the country are already offering hand-marked paper ballots during an early voting period using similar strategies. To my knowledge, these cities include Albuquerque, Boston, Baltimore, Cleveland, Denver, Los Angeles, Phoenix, Raleigh, San Diego, and San Francisco. Boston is noteworthy because they use the same ES&S DS200 and AutoMark and recently added early voting for the 2018 general election. Boston preprints ballots in the most commonly requested languages and offers support for other languages on the AutoMark. The entire state of Colorado offers early voting through vote centers, and they manage the complexity well. Smaller counties preprint a complete inventory of paper ballots, while larger counties which may have 25-35 vote centers and over 400 different ballot styles use ballot-on-demand printers.

BMDs for All Voters Is Not Recommended

News reports indicate that New York City may consider other options, such as purchasing a new voting system to use for early voting. It was reported that the New York City Board of Elections requested special approval from the state to purchase the ES&S ExpressVote XL before it is state certified, and that the request was rejected.

Instead of hand-marking, every voter would use a touchscreen ballot-marking device to mark a ballot. It may seem appealing because it eliminates the need for ballot preprinting and management. The screen is, in essence, a ballot-on-demand printer. However, it diminishes the integrity of the election which in turn diminishes the trust voters have in the results. There are fundamental problems with using touchscreen ballot marking devices (BMDs) for most voters and additional issues with the ExpressVote XL model voting machine in particular.

Costs

The expense of outfitting an early voting polling site with a large number of touchscreen BMDs will be considerably more than the cost of supplementing the existing system with a ballot-on-demand printer. It will also add significant costs for storage, set up, maintenance, and delivery. The ExpressVote XL is a fiscally irresponsible choice. Each ExpressVote XL costs over \$8,000 when most voting machines cost half as much. ES&S sells the smaller version of the ExpressVote for around \$4,000. It runs the same software, has the same features, but does not have a 32" 1080p high-definition monitor. It is also a fraction of the size and weight. It includes a built-in optical scanner which duplicates the functions and features of the optical scanners New York already owns.

Problems with BMDs for All Voters

The number of voters who may vote at one time is limited by the number of BMDs purchased and provided in each polling place. Five BMDs allow five voters in the booth at a time. A slow voter holds up the line for everyone else. An audio-ballot voting session can occupy a machine for 30 minutes or longer. Long lines frustrate voters, cause voters to feel rushed when voting, and depress turnout.

All computers are vulnerable to hardware malfunction, power outages, and hacking. Requiring all voters to use BMDs puts vulnerable technology between voters and their ballots. If machines fail, all ballot marking stops, lines get long, and voters leave. Touchscreens commonly suffer from screen calibration issues which cause “vote flipping,” where touches for one candidate trigger a vote for a different candidate. Hacking is a significant threat, not just by foreign nation states but also by local adversaries and insiders, and it may not be detectable on a BMD.

Machine-marking a ballot requires an additional step where the voter must verify their ballot to ensure that the machine marked it correctly. This task is not required with hand-marked paper ballots. Studies have shown that voters do not verify machine-marked ballots, do not detect problems when they occur, and do not report problems if they detect them. Problems are difficult to prove, so they may not be believed or escalated. Recently, three distinguished professors, Prof. Andrew Appel from Princeton, Prof. Richard DeMillo from Georgia Tech, and Prof. Philip Stark from Berkeley, wrote a joint paper which describes the many problems with voting on BMDs and concludes that the issues are so severe that the ballots are unreliable evidence and the outcome of the election cannot be validated using risk-limiting audits.¹

Most of the current touchscreen BMDs are not like the AutoMark which marks the ovals on a regular paper ballot. BMDs like the ExpressVote print barcodes and ballot summaries. The barcodes are the votes counted by the system, but voters cannot read or verify that they are correct. Barcodes are not even transparent if you have a barcode reader handy. They decode to six-digit numbers which are meaningless to the voter. Voters complain they do not like the lack of transparency and do not trust barcodes.

A human-readable summary of a voter’s selections is printed below the barcodes and voters will need to trust that they match. Summaries can be difficult for a voter to verify. “President: George Washington” may be clear but “Proposition 28: Yes; Proposition 29: No” is not. Cognitively challenging tasks can disproportionately affect

¹ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3375755

voters with less education or with disabilities. The National Academies of Sciences, Engineering, and Medicine published a comprehensive report on elections which recommends against using ballot summaries.

“Unless a voter takes notes while voting, BMDs that print only selections with abbreviated names/descriptions of the contests are virtually unusable for verifying voter intent.”²

Additional Problems with the ExpressVote XL

The ExpressVote XL is a new voting system with no track record. It has been used only once in a primary or general election. In November 2018, it was piloted in a single borough of Gloucester County, New Jersey where only 1,010 votes were cast.³

The ExpressVote XL offers poor accessibility for voters with disabilities. During Pennsylvania certification⁴, a test group of voters with disabilities gave it harsh reviews. Most significantly: none of the participants were able to verify their paper ballot.

Security researchers have discovered several concerning flaws in the ExpressVote. One feature, called AutoCast, offers the voter the option to skip the ballot verification step. More concerning, it does not print the ballot until *after* the machine knows if it will be seen by a voter or not. This design flaw has earned the nickname “permission to cheat.”⁵ A compromised voting machine can print any votes it wants once a voter has indicated that the ballot will not be reviewed.

A second design flaw is that the ExpressVote uses a single paper path for both marking a ballot and tabulating a ballot.⁶ After a paper ballot is verified and cast by the voter, the ballot travels past the internal printer before it is counted. Either through hacking or malfunction, a compromised system has the opportunity to print additional

² NASEM, “Securing the Vote,” Page 79: <https://www.nap.edu/read/25120/chapter/6#79>

³ <https://www.state.nj.us/state/elections/assets/pdf/election-results/2018/2018-general-election-ballotscast-results-gloucester.pdf>

⁴ <https://www.dos.pa.gov/VotingElections/Documents/Voting%20Systems/ESS%20EVS%206021/EVS%206021%20Secretary%27s%20Report%20Signed%20-%20Including%20Attachments.pdf>

⁵ <https://freedom-to-tinker.com/2018/09/14/serious-design-flaw-in-ess-expressvote-touchscreen-permission-to-cheat/>

⁶ <https://freedom-to-tinker.com/2018/10/22/an-unverifiability-principle-for-voting-machines>

marks on the ballot. I could potentially add votes, modify votes, or invalidate votes. It could print black over the entire ballot. It is common sense that a cast ballot should not be exposed to any marking device.

It does not matter if hacking or malfunction ever occurs, these design flaws reduce public trust that the evidence produced by them is reliable.

In Conclusion

Early voting is an exciting step forward for New York City. It will make voting more accessible to all residents and make government better reflect their voices. It is essential that New York not take a step backwards at the same. Expanding election access while damaging trust in those elections would be a great loss.

My hope is that you will build on the progress of the past decade and continue to insist on hand-marked paper ballots in every polling place. The difference matters. Trust in our elections is on the line. I recommend making the financially prudent choice to supplement your existing voting system with ballot-on-demand printers which can print ballots for multiple precincts and in a variety of languages.

DEMOCRACYNYC

YOUR VOICE, YOUR POWER

TESTIMONY

presented by

**Ayirini Fonseca-Sabune, Chief Democracy Officer
Office of the Deputy Mayor for Strategic Policy Initiatives
New York City**

before the

New York City Council

Committee on Governmental Operations

on the subject of Oversight - Early Voting Implementation and Poll Site Interpretation in NYC,
on **Tuesday, April 30, 2019 at 10:00am**

Good morning Chair Cabrera and members of the Committee on Governmental Operations.

My name is Ayirini Fonseca-Sabune, and I am the Chief Democracy Officer for the City of New York, where I work on the DemocracyNYC initiative in the Office of the Deputy Mayor for Strategic Policy Initiatives. I'd like to thank you for holding this hearing and for the opportunity to testify before you today on early voting and the proposed poll site interpreter bill.

The DemocracyNYC initiative is aimed at increasing voter registration, participation and civic engagement in New York City. DemocracyNYC was first announced by Mayor Bill de Blasio in his 2018 State of the City address, detailing a robust 10-Point Plan to make New York City the fairest, most civically engaged big city in America.

Early Voting

DemocracyNYC was founded with the guiding principle of increasing public engagement in the democratic process. We have to make elections more fair and accessible to all New York City residents. Early voting is a major, critical step toward achieving this goal, and one that the Mayor has long-championed, including in both his 2018 and 2019 State of the City addresses. The administration is extremely pleased that this past January, the New York Legislature passed legislation enacting early voting, and then followed up by allocating funds for its implementation in the state budget earlier this spring. In time for the November 2019 general election, early voting will be a reality for New Yorkers. By joining 37 other states and the District of Columbia, which already provide some form of early voting, New York is finally catching up.

We anticipate that if it is well-implemented, early voting can and will help in alleviating some of the election day issues that have historically arisen in New York City, particularly in major federal election years. Nationally, in 2016, roughly 1/3 of all votes in the presidential election were cast before Election Day – even though not all states have early voting. In some states, more than half of voters vote early. In several states, early voter turnout in 2018 surpassed total

voter turnout in 2014. Youth voters – a traditionally low-participating group – are particularly engaged by early voting.

If a significant percentage of New York City voters vote during the early voting period before Election Day, we may be able to reduce the strain on our system that has led to breakdowns at polling places. Lines will be shorter, poll sites will be less crowded, voters will have the privacy they deserve (and which the law requires), the impact of machine malfunctions will be ameliorated since voters will have more flexibility about when they vote, and poll workers will be better able to provide the assistance requested by voters in a timely fashion.

Further, there is evidence that early voting is correlated with an increase in voter participation, one of the key aims of DemocracyNYC. In last November's midterm elections, the 13 highest voting states had some form of early voting or are exclusively vote by mail jurisdictions. Allowing people to vote on their own time will hopefully result in more New York City voters casting ballots.

DemocracyNYC believes that New York City should have a robust early voting program from its inception. At minimum, this means guaranteeing that there are enough sites in each borough, located in a logical way to serve as broad and diverse an array of New York City voters as possible. Early voting poll sites must be located as close as possible to accessible public transportation, keeping commuter traffic patterns in mind. And of course, the early voting poll sites must comply with legal requirements for accessibility and privacy for all eligible voters, and must be staffed with well-trained election inspectors and poll clerks. Consistent with the mission of DemocracyNYC, we are pleased that the guiding principles of the new state law appear to be equity and accessibility.

The City Board of Elections is due to announce the locations of its 2019 early voting poll sites by May 1, tomorrow. The administration has made itself available as a partner to work as closely as possible with the BOE to help ensure the success of early voting in New York City, and just last week the Mayor announced an allocation of \$75 million for early voting for the FY2020 election cycle in his Executive Budget Plan. This would support a robust city-wide early voting program for FY2020. We believe the minimum of 7 per county is insufficient to accommodate the needs of voters in New York City. For example, under this formulation, Kings County could have the same number of poll sites as Onondaga County, although it has over five times as many registered voters.

Regardless of the initial number of poll sites selected for early voting, we hope that, as specifically contemplated in the new state law, the BOE will consider expanding the program in future election cycles – by adding more early voting poll sites, expanding voting hours, or taking other appropriate steps to ensure that the program can best meet New York City voters' needs. The administration looks forward to the release of a thorough and ambitious communications plan from the BOE to ensure public awareness of early voting, and to maximize voter participation in the program and alleviate the long lines and broken machines that have become all too common on election day in New York City.

Early voting will ensure access to the ballot by allowing the flexibility to vote that our busy lives necessitate. We expect that many New Yorkers will be eager to take advantage of this new opportunity and hope that the number of poll sites will be sufficient to accommodate a high volume of voters. DemocracyNYC applauds the state government for finally making early voting a reality, and we pledge to work closely with partners in government, nonprofit and community based groups to make the program a success in our city.

Int 1282-2018: A Local Law to amend the New York city charter, in relation to the voter assistance advisory committee providing poll site interpreters in all designated citywide languages

The administration is deeply committed to supporting voters with Limited English Proficiency, and as MOIA will describe in greater detail, has established a poll site interpreter project to provide interpreters at poll sites throughout the city beyond the languages currently provided for by the Voting Rights Act. DemocracyNYC and MOIA have worked closely with our government partners on this project, including the Campaign Finance Board, with whom we regularly collaborate on voter registration and voter access initiatives. We are very pleased that the Civic Engagement Commission – established pursuant to the Charter Revision Commission reforms passed last year by an overwhelming majority of voters – will work on expanding the interpreter program, and we look forward to working with the CEC on this important initiative. The administration remains fully committed to language access for all Limited English Proficient voters, and to bringing the values of this bill to life.

Conclusion

Voting in New York City has been too hard for far too long. We look forward to partnering with the Council, the BOE and other partners to successfully implement much needed reform to voting in our city. I appreciate the Council's focus on these issues, which are critically important to the health of democracy in our city, and I look forward to answering your questions. Thank you.



The League of Women Voters of New York State
62 Grand Street, Albany, New York 12207
Phone: 518-465-4162 Fax: 518-465-0812
www.lwvny.org E-Mail: lwvny@lwvny.org

THE LEAGUE
OF WOMEN VOTERS
of New York State

RE: OVERSIGHT – EARLY VOTING IMPLEMENTATION

April 30, 2019

NEW YORK CITY COUNCIL, 250 BROADWAY, NY, NY

I am Kate Doran, Elections Specialist, here today representing the League of Women Voters of New York State. The League is a nonpartisan and political organization which working to promote civic responsibility through informed and active participation of citizens in government. In New York State, we have 48 local leagues across the state, actively engaged in their communities and working to help voters understand and participate in elections. The right of every citizen to vote has been a basic League of Women Voters principle since our founding in 1920.

The League is very pleased to be here, talking about “Implementation,” of Early Voting in the City of New York. We were among the lead organizations that worked for years,

to achieve voting reform in NY. So, thank you, City Council Members for inviting us to testify today.

Preparing for Early Voting might be compared to the change from the lever machines to the scanners that happened in 2010. In that case though, preparation happened over the span of years. October 26th is less than 6 months away, and whatever preparation is happening is invisible to the public. While we understand that Early Voting has many interconnecting parts, and that there are complexities in NYC that smaller counties in the state will not have to consider, we have many more questions than answers.

Early Voting Poll Sites

Many of NY State's 62 counties will need only one Early Voting polling site. This is certainly not the situation in NYC. The legislative finding underlying the Early Voting statute is that one early voting polling site should meet the needs of up to 50,000 people, but then it limits the maximum number mandated to just seven sites. If New York City and other counties with millions of voters have only the mandated minimum of seven early voting sites, the voters of those counties will be clearly underserved. The law provides that Boards of Election can provide more than seven sites, and it is obvious that to provide voters in those larger counties, "convenient" access to early voting, (another statutory criteria), more sites will be needed.

Will all counties in NYC have equitable access between them?

Several months ago we asked the NYC Board of Elections to involve the voting public in the site selection process. In response, one Commissioner said that the people who voted

on this didn't understand the ramifications and characterized the situation as a "Logistical Nightmare."

We understand that 2019 is likely to be a low turnout year, with only the most partisan, dedicated, or high information voters participating. We appreciate, that as some have suggested, the BOE may be thinking of 2019 as a test run, for 2020. Is that the case? If so, why not be transparent, and engage the voting public? The League believes that the number of voting sites should be commensurate with the number of voters. Thus, the League supports more than seven early voting sites in Brooklyn, the Bronx, Manhattan, and Queens.

We urge the BOE to designate the largest number of sites possible, given the constraints of ADA compliance, voting equipment and available poll workers.

Poll Worker Recruitment & Training

We have heard nothing at all on the topic. Does the BOE believe that they can't discuss it until after Early Voting site selections are made? Or is recruitment and training complicated by the statutory July to June certification period for poll site Inspectors?

We look forward to hearing the board's plans for recruiting, training, assigning, and compensating poll workers. Similarly we look forward to the board's plans for informing voters.

Communications Plan

The Early Voting statute says, “Each board of elections shall create a communications plan to inform eligible voters of the opportunity to vote early.” We have not seen any such plan. We are pleased however to see a graphic announcement of Early Voting, prominently placed on the Home Page of the Board’s website. While we have confidence that the board will comply with the statute, we urge the board to do more. The statute does not indicate when a communications plan shall be produced. We urge the board to quickly produce a draft plan, and to incorporate public input, in any final version.

Early Voting Machines & Systems

The League of Women Voters strongly supports full and equal voting rights for all eligible Americans, including persons with disabilities. However, we also believe that no one’s right to vote has meaning if the voter cannot be reasonably assured that their vote was counted as cast.

Maintaining the integrity of our electoral process is critical to America’s democratic institutions. But to be ultimately successful, a voting system must have the confidence of voters in its security and reliability. If voters choose not to vote because they do not trust the system by which they vote, we will have lost the battle for full participation by all of our citizens, which is the cornerstone of our democracy.

Back in 2005, the League of Women Voters of the United States and the League of Women Voters of New York State adopted the following statement of position on criteria

for voting systems. The Citizen's Right to Vote Resolution reads: "In order to ensure integrity and voter confidence in elections, the LWVUS supports the implementation of voting systems and procedures which are secure, accurate, recountable and accessible." Public confidence in the election process is directly linked to the transparency of the process and in 2010 we added transparency to our standards ("S.A.R.A.T.")

In 2005 the League of Women Voters of New York State endorsed precinct-based paper ballot optical scan voting with the addition of a ballot marker to provide accessibility. We believed that this mature technology best met the criteria because it provides an actual ballot for recount purposes if that is necessary. A perfect and completely error-proof system does not exist. However, a paper-based system, which has been rigorously tested by independent authorities and operates according to prescribed federal and state standards and procedures does provide the best guarantee for secure and accurate elections.

New technology is not the whole solution – voting machines are only one part of a voting system. Voting machines function within a larger legal and administrative structure. Many of the risks inherent in the use of particular voting systems can be substantially reduced by improving such management practices as personnel training and by instituting rigorous administrative and chain of custody procedures.

ACCOUNTABILITY, OPENNESS AND TRANSPARENCY

- Require bipartisan or third-party monitoring of sensitive election procedures

- Require tracking and documentation of all procedures from the testing of machines to the handling of ballots.
- Require transparency in the operation and management of voting systems.

TESTING

- Test every voting machine to ensure it is operating properly
- Perform uniform, public testing of voting systems.
- Verify that any machines used are the same as the systems that were certified.

PHYSICAL PROTECTING OF VOTING SYSTEMS

- Restrict physical access to all components of voting systems.
- Maintain and operate voting systems in isolation from networks and the Internet.

PREPARATION PRIOR TO EARLY VOTING DAYS

- Educate voters on the use of all voting equipment both in advance of the election and in the polling place.
- Provide adequate training for all Early Voting workers.

ON EARLY VOTING DAYS

- Ensure adequate technical support to poll workers.
- Provide a back-up plan in the event of machine failure.

AFTER EARLY VOTING DAYS & ELECTION DAY

- Design a routine process that checks for problems that may have occurred but have not been visible on Election Day.

Early Voting will ensure greater access to the franchise than New York Voters have ever had before. We expect many city voters will want to take advantage of this new opportunity. We hope the NYC Board of Elections will take advantage of the support we are eager to provide.



**ADVANCING OUR
COMMUNITY**

Chinese-American Planning Council, Inc. (CPC)

150 Elizabeth Street, New York, NY 10012

(212) 941-0920 fax (212) 966-8581

www.cpc-nyc.org

FOR THE RECORD

**Testimony to the New York City Council
Committee on Governmental Operations
Oversight: Early Voting Implementation and Poll Site
Interpretation in NYC
Honorable Fernando Cabrera, Chair
Members Kallos, Maisel, Perkins, Powers, Rodriguez and Yeger**

The Chinese-American Planning Council (CPC) thanks Honorable Chair Cabrera and Members Kallos, Maisel, Perkins, Powers, Rodriguez and Yeger for the opportunity to testify.

CPC's mission is to promote social and economic empowerment of Chinese American, immigrant, and low-income communities. CPC was founded in 1965 as a grassroots, community-based organization in response to the end of the Chinese Exclusion years and the passing of the Immigration Reform Act of 1965. CPC is the largest Asian American social service organization in the U.S., providing vital resources to more than 60,000 people per year at over 30 sites across Manhattan, Brooklyn, and Queens.

With over 50 years of history in the community, we are well-poised to deliver the following testimony and are grateful for the opportunity to submit comment.

CPC and the Asian American and Pacific Islander Vote

Asian American and Pacific Islanders (AAPIs) are the fastest growing racial group in the country and in New York State. AAPIs are eligible to naturalize and register to vote at higher rates than other immigrant groups, but voter turnout has historically been low. The barriers to civic participation for immigrant and AAPI families are high. For Limited English Proficient voters, ballot and registration form language is highly technical and difficult to understand, poll-site interpreters are limited, and accompanying family or friends who help with translation are often wrongfully told that they cannot join voters in the booth. For newly naturalized citizens, the first-time experience of long lines, broken machines, or sudden change in poll site location can be daunting, frustrating, and a deterrent to future participation. Added to these challenges is a misperception that AAPI voters are apolitical. In a post-2016 national survey, only 33% of AAPI voters said they were contacted by a partisan or non-partisan group about the upcoming election. High barriers to registration, negative experiences at the poll sites, and limited encouragement and engagement from politicians all contribute to diminished voter turnout.

In addition to citizenship and ESOL civic-instruction classes, CPC conducts non-partisan voter education, outreach, and registration each year. We are also a recruitment partner for Board of Election Mandarin/Cantonese interpreters. CPC was pleased to see the passage of several key voter reforms this session, namely the Voter Friendly Ballot Act and Early Voting. However, New York's Boards of Election have much to do to ensure that implementation fully realizes the intent and vision of these critical reforms.

Early Voting

This year, New York will join 38 other states who allow voters to cast their vote before Election Day. If implemented properly, Early Voting will ease Election Day congestion, provide additional time and opportunities for voters who are living with disabilities, working, caregivers, or aging, and encourage voters to cast their ballots in locations that are convenient and accessible to them.

In order to be properly implemented, NYC's Board of Elections (BOE) must go beyond the minimum number of sites mandated by the State. We understand that Early Voting funding is limited which is why we applaud the offer from the Mayor's Office to fill the gap to add additional sites. The number of sites must be robust, staffed at capacity, and include hours that allow the goals of Early Voting to be realized. Without these provisions, voter experience at Early Voting sites will be even more frustrating than the experiences we heard about during 2018's Election Day.

New York City has only one election cycle to test Early Voting implementation before the critically important April 2020 Primaries -- a little under 6 months between election days. The number of reforms passed this session were indeed ambitious, but the real work comes down to implementation. NYC's BOE cannot afford to skip the only dress rehearsal it has. Additional funds are needed to fully test and implement this new reform and we urge the BOE to take up Mayor de Blasio's offer to fill the gap.

Language Access, Poll Site Interpreters

CPC was thrilled to see the passage of the Voter Friendly Ballot Act, a reform that will dramatically improve the level of literacy needed to read ballots and cast a vote. However, New York has a long way to go toward removing the literacy barriers of other Board of Election documents like registration forms, change in address forms, or notification of poll site location change. There are also current poll site interpreter practices that are in need of dramatic improvement.

Currently, interpreters are provided in Spanish, Mandarin, Cantonese, Korean and Bangla at certain pollsites as required by the federal Voting Rights Act. However, more interpreters are needed, both in these current languages and in others. CPC has been a recruitment partner for Mandarin/Cantonese interpreters, yet our community members continue to report that interpreters are not available at their poll sites. BOE has long asked advocates to push for additional funding to recruit and retain quality interpreters. CPC agrees that this is a much-needed investment. That is why we were shocked when City-funded and provided interpreters were told to wait 101 feet away from polling locations in the 2018 mid-term elections and outraged when the BOE filed a restraining order against the City's interpreters for the 2019 Public Advocate special election.

CPC cannot in good faith advocate for increased BOE funds when viable solutions in our own city have repeatedly been spurned. We cannot put faith in an institution that, in a time of heightened distrust of government by immigrant communities, would sue the City under the guise of voter interference. If the BOE is truly concerned about the quality and training of City interpreters, now is the time to accept the City's offer and work in partnership to develop robust training tools that increase the number of languages and interpreters and open access to non-native English speaking voters. We encourage the City Council, the Administration, and the BOE to work with community-based providers in immigrant communities on best practices for recruitment, retention and training.

CPC thanks the City Council and the Governmental Operations Committee for the opportunity to testify. We look forward to continuing to be a partner and resource on this issue.

Further question or comment can be submitted to Amy Torres, Director of Policy and Advocacy at the Chinese-American Planning Council, at atorres@cpc-nyc.org.

**WRITTEN TESTIMONY
FROM COMMON CAUSE/NY TO
THE COMMITTEE ON GOVERNMENTAL OPERATIONS
RE EARLY VOTING IMPLEMENTATION AND INT. NO. 1282**

Thank you for the invitation to testify today. I am Susan Lerner, Executive Director of Common Cause/NY. Common Cause is a nonpartisan, nonprofit organization founded to serve as a vehicle for citizens to make their voices heard in the political process. We fight to strengthen public participation and faith in our institutions of self-government and lead the grassroots component of the nationwide Election Protection effort. Common Cause/NY is among the largest and most active state chapters and is a founder and leader of the statewide Let NY Vote coalition. Accordingly, the orderly administration of elections and ensuring that our elections are accessible and fair is part of our core mission to promote civic engagement and accountability in government. We worked for several years, along with our coalition partners, to bring Early Voting to New York State and we are dedicated to ensuring that it is successfully implemented in New York City and statewide.

**BEST PRACTICES FOR SUCCESSFUL
IMPLEMENTATION OF EARLY VOTING**

Common Cause/NY has been advocating for the adoption of early voting in New York State since at least 2010, when the experience of voters following Hurricane Irene made it clear that early voting helps mitigate weather emergencies that can take place immediately before or on election day. Because New York State is a late adopter of early voting, we have the experiences of 37 other states to draw on. Common Cause has done extensive research into how early voting is set up and run in other states. In May, 2013, Common Cause, Common Cause/NY and Columbia University's School of Public and International Affairs co-sponsored Running Elections Efficiently, A Best Practices Convening, which included an Early Elections Panel with election administrators from New Mexico, Maryland, and North Carolina discussing their experiences and best practices in setting up and running early voting. The entire panel can be viewed on Common Cause/NY's YouTube channel. In December, 2013, we issued a research report jointly with the Common Cause Election Protection project, entitled *People Love It: Experience with Early Voting in Selected U.S. Counties*, detailing the way in which counties in 6 states handled early voting and detailing best practices. The complete report can be found on the Common Cause/NY website, <https://www.commoncause.org/new-york/resource/people-love-it-experience-with-early-voting/>. Subsequently, Common Cause Massachusetts issued a report entitled *Early Voting: What Other States Can Teach Massachusetts* in 2015, as Massachusetts was adopting early voting. The report can be found on the Common Cause Massachusetts website,

<https://www.commoncause.org/massachusetts/resource/early-voting-what-other-states-can-teach-massachusetts/> . As that report states, “[s]uccess depend[s] largely on thoughtful consideration of the hours, locations, staffing, and advertising of early voting.

Building on the information gathered through our own research and those of our colleagues at Common Cause Massachusetts, In order to help our coalition partners throughout the state and in response to questions and requests that Let NY Vote has received from grassroots activists in New York City and throughout the state, we prepared a Guide to Implementation of Early Voting. The Guide, which accompanies this written testimony, summarizes the best practices which we at Common Cause/NY have identified through our research and on-going conversations with election administrators at counties throughout the country regarding their experiences in introducing and running early voting.

I will not repeat the recommended best practices in this written testimony, but will rather highlight the areas where we have the greatest concern regarding implementation by the New York City Board of Elections.

Number and Location of Early Voting Sites

Although we will not know with certainty until May 1, the number and location of the early voting sites, indications are that the Board of Elections is approaching this topic in a narrow and inappropriate way. It is important that there be sufficient early voting locations. Seven early voting sites per borough will not be sufficient. In large Colorado counties, with lower populations than New York City boroughs, there are 25-35 early voting centers per county. At a minimum, there should be at least one early voting site per Assembly District. We endorse the Mayor’s willingness to identify city-owned sites which would be appropriate for early voting. All sites must be ADA-compliant and convenient to public transportation or sited on or near major thoroughfares. As in other states, early voting sites located in what the Board of Elections might think of as unconventional sites, such as shopping centers, libraries, and transit hubs, such as the ferry terminals on Staten Island, must be included.

Voting Centers

It is essential that the New York City board of elections set up voting centers at which any voter registered in the borough may vote. Ultimately, New York City’s voters should be able to vote at any location anywhere in the city, as do Los Angeles voters. New York’s early voting law states a clear preference for allowing voters to vote early in any early voting poll site in their county. It would be completely unacceptable for the New York City board of elections to assign each voter to only one early polling location, based on the voter’s residence address. There are limited exceptions to the law’s preference which should not be applicable in New York City, if the Mayor and the Council follow through and allocate the funding which the Mayor has specified in his Executive Budget.

There is no reason, other than funding, why the city board could not purchase Ballot on Demand systems, which allow poll workers to quickly and economically print any ballot style at early voting



locations, as needed. Ballot on Demand systems do not require certification by the state board of elections and are available from many different vendors. The Legislature is on track to amend the Election Law to simplify the type of ballots which may be used, eliminating the city board's stubborn and mistaken insistence that ballot on demand systems can't handle New York style ballots. Los Angeles, Chicago, Baltimore, Phoenix, Albuquerque, Asheville, Boston, Cleveland and various locations in Texas are just some of the cities which use Ballot on Demand systems to facilitate voting at county-wide voting centers. The New York City board's assertion in a March letter to the state board that "The City Board has concluded that utilizing paper ballots is virtually impossible for early voting" is simply absurd and flies in the face of experience throughout the country. The fact that the board would reach such a conclusion shows that it is being ill-advised by its non-professional staff and the vendors who have an out-sized and questionable influence on that staff.

Early Voting Hours and Staffing

The early voting law sets minimum hours in which early voting locations must be open, including at least a minimum of 2 evenings until 8 pm and five hours for each day on the weekends. The law also specifies that wait times for voters must not exceed 30 minutes at any early voting site. We are concerned that the board will not adequately staff early voting sites, based on past unwillingness to utilize split shifts. Experience in other states shows that polling hours and staffing should anticipate likely surge times: lunch hours (12-2 pm), after work (5-7 pm) and all day on Saturdays. Not only must the early voting poll sites be open during those hours, there should be extra staff assigned to accommodate larger numbers of voters at those times. The city board has shown an unwillingness to utilize such sensible staffing arrangements on election days in the past, although state law has been expressly changed to allow such staffing. The city board must be required to use contemporary staffing practices, as perfected by private industry, for early voting.

Build on Experiences of Other States by Hiring Professional Election Administrators as Consultants to Help Design an Effective and Efficient Early Voting System

It is inexplicable why the New York City board approaches any new requirement as if it had to reinvent the wheel every single time. Relying solely on the advice of election technology vendors presents obvious conflicts of interest. Additionally, the board's executive director's objectivity is compromised because he was wined and dined on a special undisclosed advisory board for years by the vendor ES&S. The board should not be relying on his biased opinions and he should be required to recuse himself from any purchase decisions. Instead, the board should retain a professional election administrator with experience with early voting in other states and without any compromising ties to any vendors as a consultant to advise it.

AVOID EXPENSIVE AND INSECURE VOTING EQUIPMENT PUSHED BY VENDORS

The track record of the companies that dominate the voting technology field has been disappointing, to put it mildly. Currently, as they have in the past, those companies are pushing expensive, insecure and outmoded types of voting machines. Currently, New York City uses the most up-to-date and secure voting technology, which are paper ballots, marked by the voter, either by hand or with the assistance of a ballot marking device, and fed by the voter into an optical scanner. Adding electronic pollbooks and utilizing ballot on demand technology would be more than adequate for early voting in New York City.

It is significant that both the city and the state have made money available to purchase appropriate technology for early voting. The use of e-pollbooks has been authorized and certification of e-pollbooks is well on track to be accomplished by early June. Ballot on Demand systems do not require certification and could be purchased at any time. The city board mistakenly insists that there are special requirements in state law requiring ballot features which cannot be printed by the systems – a strange assertion, as the systems are currently in use to print absentee ballots at borough board offices. In any case, the section of Election Law which the board mistakenly relies is being amended.

The city board has expressed a desire to purchase ExpressVote XL machines, based on the flabbergasting assertion that “The City Board has concluded that utilizing traditional paper ballots is virtually impossible for early voting,” This would be news to cities such as Los Angeles, Cleveland, Albuquerque, Cleveland, Baltimore, Raleigh and Asheville, among others, all of whom use paper ballots, as we mentioned earlier. Larger counties in Colorado have 400-600 ballot styles, yet they manage to use paper ballots by utilizing ballot on demand printing systems. The experience of Denon County, Texas is instructive. After a disastrous election in 2016 using touchscreen machines, the county switched to paper ballots¹ using ballot on demand and conducted the election in 2018 without a hitch. The expensive, hard to transport ExpressVote XL has numerous flaws, in addition to being very expensive. It uses the widely discredited touchscreen technology. The “summary ballot” it produces is very difficult to read, being small and behind glass. It is guaranteed to produce long waiting lines, as only 1 person can use it at a time. If any part of the machine breaks down, then it is completely out of commission and there is no work-around, as it only reads special ballots printed by ES&S, the ExpressVote XL vendor, not regular hand-marked or emergency ballots. This is only the barest beginning of a description of the things that are objectionable with this machine. It poses unique opportunities to be hacked. Common Cause/NY cites to, and incorporates by reference, the testimony offered by Kevin Skoglund, a cybersecurity expert from Pennsylvania who has studied the ExpressVote XL. It is essential that the City Council use its budget power to ensure that the city board does not purchase or use these unacceptable machines.

¹ Cbs11, Denton County Going Back To Paper Ballots, June 21, 2017, <https://dfw.cbslocal.com/2017/06/21/denton-county-paper-ballots/>



INT. 1282 SHOULD BE WITHDRAWN OR AMENDED

Council Member Treyger is to be commended for his forward thinking and devotion to providing adequate voting assistance to non-English speakers. However, Int. 1282, which was drafted and introduced before the passage of the recent Charter Revisions, contradicts portions of current law. The current charter, in section 3202(a) (3) newly adopted by the voters in November, provides that language assistance will be designed and implemented by the new Civic Engagement Commission. The Commission is required to post on its website its methodology for identifying poll sites and languages covered by the program by January 1, 2020 and to have translators in place for the November 2020 election. The new law sets forth specific metrics by which poll sites and languages are to be identified. Int.1282 would set up a competing translation requirement, directing the Voter Assistance Advisory Committee, now under the Campaign Finance Board, to provide translators in any election district with 50 or more voting age residents with limited English proficiency, an unusually low threshold. Unless signed into law within the next week, Int.1282 would not go into effect until after this year's general election. Int. 1282 was very forward thinking when it was introduced. However, there is no reason for a collision course between the recently enacted language provisions and Int.1282. Int. 1282 should be amended to establish the requirement that city provided translators should be stationed within polling places or it should be withdrawn.





A GUIDE TO EARLY VOTING IMPLEMENTATION IN YOUR COUNTY

Let NY Vote fought hard to make New York the 38th state to implement [early voting](#). Now we must work with our local Boards of Elections to ensure it's properly implemented in November. Let NY Vote has developed a guide for our on-the-ground activists that aligns state law with national best practices for early voting periods.

In this guide you will find information and best practices for: Early voting polling hours, early voting polling locations, early voting advertising, early voting technology, and post-November questions.

EARLY VOTING POLLING HOURS

NYS Law: New York's early voting polling hours must be open for at least 8 hours for each weekday and five hours for each day on the weekend.

- **On weekdays**, polls must be open for at least 8 hours between 7am and 8pm.
 - At least one polling place must be open until 8pm on at least two weekdays during each calendar week of early voting.
 - If polling places have specific districts assigned to them and only one remains open until 8pm on two weekdays, this polling place must accept voters from all districts.
- **On weekends and legal holidays**, polls must be open for at least five hours between 9am and 6pm.

Best Practices for Polling Hours:

- Prepare for likely surge times: lunch hours (12-2pm), after work (5-7pm), and all day Saturdays.
 - Ensure that polling locations are open during these hours.
 - Have extra staff during these hours or shifts to accommodate large amounts of people.
- Focus on having open hours that do not coincide with work hours: prioritize before work hours, lunch hours, and after work hours.

Questions to ask your local Board:

- How is the BOE ensuring that there be at least one poll site open until at least 8 pm on two weeknights each week of the early voting period?

EARLY VOTING POLLING LOCATIONS

NYS Law: At least one early voting polling place for every full increment of fifty thousand registered voters in each county. A county cannot be required to have more than seven polling places, and must have at least one regardless of population.

- *Decisions up to County BOE's:*
 - Additional polling places can be created
 - Specific locations should take into consideration all factors the BOE deems appropriate, including:
 - adequate and equitable access
 - population density
 - travel time to the polling place
 - proximity to other early voting poll sites
 - public transportation routes
 - commuter traffic patterns
 - Voters should be able to vote at any early polling site in their county, but BOE's can designate specific sites for districts if deemed necessary.

Best Practice for Polling Locations:

- Additional early voting sites are necessary in urban and densely populated areas.
- Allow voters to vote at any voting site, and do not designate districts to specific sites.
- Ensure that early voting sites are accessible for voters who are elderly and/or disabled, especially in rural areas.
- Allow non-traditional locations to be utilized as voting sites.

Questions to ask your local Board:

- How will the BOE determine the number and locations of poll sites? Will the Board consult with community members, experts or groups? What, if any, data will be used to make these decisions? Have you consulted with transportation authorities and experts regarding locations most easily reached by the largest number of potential voters? Will all early voting sites be ADA compliant?

EARLY VOTING ADVERTISING

NYS Law: Each board of elections shall create a communication plan to inform eligible voters of the opportunity to vote early.

- Such plan may utilize any and all media outlets, including social media.
- The plan must publicize:
 - The location, dates and hours of operation of all polling places for early voting.
 - An indication of whether each polling place is accessible to voters with physical disabilities.
 - A clear and unambiguous notice to voters that if they cast a ballot during the early voting period they will not be allowed to vote Election Day.
 - If polling places for early voting are limited to voters from certain areas.
 - The location of the polling places for early voting serving the voters of each particular city, town or other political subdivision.

Best Practices for Advertising:

- Announce hours and locations of early voting in local newspapers and voting guides.
- Other advertising options include using radio public service announcements, promoting sample ballots to voters by mail, newspaper, or the internet, or using TV advertising.
- Encourage election officials to speak at local meetings and notify local groups of early voting details.
- Focus advertising on low turnout areas, including lower income areas.

Questions to ask your local Board:

- What is the plan to inform voters about early voting - that it's happening - and specifics such as early voting poll site locations and hours of operation? When and how will voters be informed?

EARLY VOTING TECHNOLOGY

NYS Law: The form of paper ballots used in early voting shall comply with the provisions that are applicable to voting by paper ballot on election day and such ballot shall be cast in the same manner.

There is no law regarding technology or voter databases in regards to early voting, this is left up to individual counties.

Best Practices for Technology:

- Ensure uniformity in voting equipment throughout counties.
- Utilize software that includes a voter database (such as electronic poll-books) so staff can check the voter's registration, ensure that they have not voted yet, and provide them with the correct ballot.
- Ballot-On-Demand: allows poll workers to print a voter's precinct ballot when they arrive at the voting center. Provide a sufficient number of Ballot-On-Demand printers at each voting center. Print the standard countywide ballots in advance, and only print precinct-specific ballots using the On-Demand system to make the process more efficient. This reduces paper waste and ensures that locations will not run out of precinct specific ballots.
- Create an online wait-time tracker to allow voters to decide which location and time would be most convenient for them.

Questions to ask your local Board:

- What is your plan to check voter registration and ensure that they are only voting once? Will you be utilizing electronic poll books?
- What is your plan for varying district ballots? Will you be printing out all districts beforehand or using on-demand printing?

POST-NOVEMBER QUESTIONS

- Were there any problems with early voting? Any general areas where things could have been smoother?
- What were the times of day / week that you experienced 'rushes' of people? Were you adequately prepared for this? How can you solve any issues that arose?
- Were your polling locations accessible?
- What was the early voting turnout vs Election Day turnout?
- How did total turnout compare to previous elections?
- How can you work to get higher turnout?
- How were historically low turnout areas advertised to / notified of early voting?
- Did your county allow people to vote at any early polling site? If not, would you consider changing this for the 2020 primaries?
- Did you utilize electronic poll books? If not, why?
- Did you have enough staff at polling locations to accommodate the voters?
- Was your country able to adequately fund early elections? Would your county benefit from greater state funding?

SOURCES

http://www.brennancenter.org/sites/default/files/publications/VotingReport_Web.pdf

<http://www.commoncause.org/new-york/wp-content/uploads/sites/20/2018/05/The-People-Like-It-FINAL.pdf>

<https://www.commoncause.org/massachusetts/resource/early-voting-what-other-states-can-teach-massachusetts/>

<https://legislation.nysenate.gov/pdf/bills/2019/S1102>

Kevin Skoglund, Citizens for Better Elections
New York City Council Committee on Governmental Operations
April 30, 2019

Thank you to the New York City Council and the Committee on Governmental Operations for the opportunity to offer testimony on election integrity and the technology choices for implementing early voting for elections in New York City.

I work as a cybersecurity consultant and own a software development company. I am the co-founder and Chief Technologist of Citizens for Better Elections, a nonpartisan grassroots organization advocating for secure and verifiable elections. I am a member of the Election Verification Network and the NIST VVSG 2.0 Cybersecurity Working Group, an Election Assistance Commission advisory group tasked with setting standards for the next generation of voting machines.

I am here today to offer my knowledge about voting systems, election integrity, and cybersecurity. In this testimony, I will offer three recommendations:

- Hand-marked paper ballots should remain New York's preferred voting method due to its familiarity to voters, lower costs, shorter lines, greater transparency, resilience to technical problems, universal accessibility, and auditability.
- New York should utilize the voting hardware it currently owns for early voting rather than purchase additional voting machines. Optical scanners can be configured to scan ballots for multiple precincts.
- New York should develop a ballot inventory plan for early voting which includes both the preprinting of paper ballots and the purchase of ballot-on-demand printers which are capable of printing ballots for multiple precincts and in a variety of languages.

Evidence-Based Elections

Elections are a tool for democracy, but *trust* in elections is what makes democracy work. The legitimacy of office and the peaceful transfer of power requires public trust that elections are fair and the results are correct. Trust is earned through *evidence-based* elections. Other elections may count votes correctly and return decisive outcomes, but only evidence-based elections also provide *proof* that outcomes are correct. This proof allows the public to trust that elections are fair, bestows legitimacy on office holders, and reassures any candidate who loses an election that it was rightly decided.

Experts Recommend Hand-Marked Paper Ballots

Experts agree that the gold standard for resilient, evidence-based elections is hand-marked paper ballots for most voters, counted by an optical scanner inside the polling place. While we may refer to them as “hand-marked” systems, there is always a ballot-marking device (BMD) in every polling place for any voter who needs or wants assistance with marking a ballot. It is required by federal and state law and is essential for ensuring that all citizens can vote privately and independently. Risk-limiting audits of the results should be performed after every election, prior to certification, to provide assurance that the outcome is correct.

A hand-marked paper ballot system produces durable, reliable evidence of voter intent which can be recounted and audited.

A hand-marked paper ballot system costs less. The hardware costs are half the price of other methods and, over its lifetime, it has lower costs for maintenance, repair, storage, delivery, setup, and staffing.

A hand-marked paper ballot system has shorter lines. Many voters can fill out ballots by hand at the same time in simple privacy booths, and slow voters do not hold up the line. It is easy and inexpensive to set up additional privacy booths if needed.

A hand-marked paper ballot system is more secure and more resilient to problems. The voting system is less dependent on computers which may malfunction or be manipulated by insiders or foreign adversaries. Voting can continue even if there is a loss of power or hardware malfunction.

Hand-marked paper ballots are intuitive and easy to use. There is little technology to interfere with a voter marking their vote. There is less opportunity for confusion about computer interfaces or screen calibration issues which may “flip” votes and cause voters to mistrust the system. The voter does not have to trust a machine to mark their ballot or need to verify that it was done correctly.

A hand-marked paper ballot system is more universally accessible. Universal accessibility means allowing voters to choose the method that is most accessible for them. A ballot-marking device provides access to voters with disabilities such as vision and mobility impairments. Hand-marking is more accessible for voters who are less comfortable with technology or who have screen sensitivities, and it is more private and accessible for voters in wheelchairs. Shorter voting lines are better for voters with physical limitations.

Early Voting in New York City

New York already owns and uses a hand-marked paper ballot voting system of the type recommended by experts. Around 2010, the City purchased ES&S DS200 optical scanners and ES&S AutoMark ballot-marking devices. Over the last eight years, the voting procedure has become familiar to New Yorkers. A voter is given a paper ballot upon check-in. The voter marks the ballot either at a privacy booth or with the assistance of the AutoMark. The voter inserts the ballot into the DS200 optical scanner. The optical scanner will alert the voter to any ballot problems such as over-votes before tabulating the marks on the ballot and dropping it into a secure ballot box.

New York City will soon introduce early voting which presents new challenges. Those challenges do not change the fundamentals I have described. Hand-marked paper ballots are still the preferred voting method. It costs less, has shorter lines, is more secure and resilient, increases voter trust and is universally accessible. It is also familiar to voters and to poll workers.

The good news is that it is not necessary to spend a lot of money to make your current systems suitable for early voting. The optical scanners being used currently can be configured to scan ballots for multiple precincts and for multiple “ballot styles.” Multiple languages are also well-supported. Ballots printed in two different languages seem very different to a human, but to an optical scanner they are similar. The optical scanner observes the position (the column and row on a grid) of a marked oval and translates the coordinates into a vote for a candidate. It does not matter what text or language is printed next to the oval. The optical scanner does not read it.

Because early voting will combine several precincts into one polling place, I recommend developing a ballot inventory plan with two primary components. The first component is to preprint paper ballots for an anticipated number of voters from each precinct. Print multiple ballot styles and in multiple languages using evidence and experience from the previous eight years as guidance. The second component is to purchase a ballot-on-demand printer for each early voting location. A ballot-on-demand printer is essentially a computer with a printer attached and they cost as much. Each ballot-on-demand printer would be capable of printing ballots for multiple precincts and in a variety of languages. It reduces waste and provides flexibility and resilience. It can replenish ballots if inventory runs low. It can print ballots in infrequently-requested languages to accommodate all voters. A ballot inventory plan should include well-designed procedures to ensure that voters are given the correct ballot for their precinct.

Other major cities around the country are already offering hand-marked paper ballots during an early voting period using similar strategies. To my knowledge, these cities include Albuquerque, Boston, Baltimore, Cleveland, Denver, Los Angeles, Phoenix, Raleigh, San Diego, and San Francisco. Boston is noteworthy because they use the same ES&S DS200 and AutoMark and recently added early voting for the 2018 general election. Boston preprints ballots in the most commonly requested languages and offers support for other languages on the AutoMark. The entire state of Colorado offers early voting through vote centers, and they manage the complexity well. Smaller counties preprint a complete inventory of paper ballots, while larger counties which may have 25-35 vote centers and over 400 different ballot styles use ballot-on-demand printers.

BMDs for All Voters Is Not Recommended

News reports indicate that New York City may consider other options, such as purchasing a new voting system to use for early voting. It was reported that the New York City Board of Elections requested special approval from the state to purchase the ES&S ExpressVote XL before it is state certified, and that the request was rejected.

Instead of hand-marking, every voter would use a touchscreen ballot-marking device to mark a ballot. It may seem appealing because it eliminates the need for ballot preprinting and management. The screen is, in essence, a ballot-on-demand printer. However, it diminishes the integrity of the election which in turn diminishes the trust voters have in the results. There are fundamental problems with using touchscreen ballot marking devices (BMDs) for most voters and additional issues with the ExpressVote XL model voting machine in particular.

Costs

The expense of outfitting an early voting polling site with a large number of touchscreen BMDs will be considerably more than the cost of supplementing the existing system with a ballot-on-demand printer. It will also add significant costs for storage, set up, maintenance, and delivery. The ExpressVote XL is a fiscally irresponsible choice. Each ExpressVote XL costs over \$8,000 when most voting machines cost half as much. ES&S sells the smaller version of the ExpressVote for around \$4,000. It runs the same software, has the same features, but does not have a 32" 1080p high-definition monitor. It is also a fraction of the size and weight. It includes a built-in optical scanner which duplicates the functions and features of the optical scanners New York already owns.

Problems with BMDs for All Voters

The number of voters who may vote at one time is limited by the number of BMDs purchased and provided in each polling place. Five BMDs allow five voters in the booth at a time. A slow voter holds up the line for everyone else. An audio-ballot voting session can occupy a machine for 30 minutes or longer. Long lines frustrate voters, cause voters to feel rushed when voting, and depress turnout.

All computers are vulnerable to hardware malfunction, power outages, and hacking. Requiring all voters to use BMDs puts vulnerable technology between voters and their ballots. If machines fail, all ballot marking stops, lines get long, and voters leave. Touchscreens commonly suffer from screen calibration issues which cause “vote flipping,” where touches for one candidate trigger a vote for a different candidate. Hacking is a significant threat, not just by foreign nation states but also by local adversaries and insiders, and it may not be detectable on a BMD.

Machine-marking a ballot requires an additional step where the voter must verify their ballot to ensure that the machine marked it correctly. This task is not required with hand-marked paper ballots. Studies have shown that voters do not verify machine-marked ballots, do not detect problems when they occur, and do not report problems if they detect them. Problems are difficult to prove, so they may not be believed or escalated. Recently, three distinguished professors, Prof. Andrew Appel from Princeton, Prof. Richard DeMillo from Georgia Tech, and Prof. Philip Stark from Berkeley, wrote a joint paper which describes the many problems with voting on BMDs and concludes that the issues are so severe that the ballots are unreliable evidence and the outcome of the election cannot be validated using risk-limiting audits.¹

Most of the current touchscreen BMDs are not like the AutoMark which marks the ovals on a regular paper ballot. BMDs like the ExpressVote print barcodes and ballot summaries. The barcodes are the votes counted by the system, but voters cannot read or verify that they are correct. Barcodes are not even transparent if you have a barcode reader handy. They decode to six-digit numbers which are meaningless to the voter. Voters complain they do not like the lack of transparency and do not trust barcodes.

A human-readable summary of a voter’s selections is printed below the barcodes and voters will need to trust that they match. Summaries can be difficult for a voter to verify. “President: George Washington” may be clear but “Proposition 28: Yes; Proposition 29: No” is not. Cognitively challenging tasks can disproportionately affect

¹ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3375755

voters with less education or with disabilities. The National Academies of Sciences, Engineering, and Medicine published a comprehensive report on elections which recommends against using ballot summaries.

“Unless a voter takes notes while voting, BMDs that print only selections with abbreviated names/descriptions of the contests are virtually unusable for verifying voter intent.”²

Additional Problems with the ExpressVote XL

The ExpressVote XL is a new voting system with no track record. It has been used only once in a primary or general election. In November 2018, it was piloted in a single borough of Gloucester County, New Jersey where only 1,010 votes were cast.³

The ExpressVote XL offers poor accessibility for voters with disabilities. During Pennsylvania certification⁴, a test group of voters with disabilities gave it harsh reviews. Most significantly: none of the participants were able to verify their paper ballot.

Security researchers have discovered several concerning flaws in the ExpressVote. One feature, called AutoCast, offers the voter the option to skip the ballot verification step. More concerning, it does not print the ballot until *after* the machine knows if it will be seen by a voter or not. This design flaw has earned the nickname “permission to cheat.”⁵ A compromised voting machine can print any votes it wants once a voter has indicated that the ballot will not be reviewed.

A second design flaw is that the ExpressVote uses a single paper path for both marking a ballot and tabulating a ballot.⁶ After a paper ballot is verified and cast by the voter, the ballot travels past the internal printer before it is counted. Either through hacking or malfunction, a compromised system has the opportunity to print additional

² NASEM, “Securing the Vote,” Page 79: <https://www.nap.edu/read/25120/chapter/6#79>

³ <https://www.state.nj.us/state/elections/assets/pdf/election-results/2018/2018-general-election-ballotscast-results-gloucester.pdf>

⁴ <https://www.dos.pa.gov/VotingElections/Documents/Voting%20Systems/ESS%20EVS%206021/EVS%206021%20Secretary%27s%20Report%20Signed%20-%20Including%20Attachments.pdf>

⁵ <https://freedom-to-tinker.com/2018/09/14/serious-design-flaw-in-ess-expressvote-touchscreen-permission-to-cheat/>

⁶ <https://freedom-to-tinker.com/2018/10/22/an-unverifiability-principle-for-voting-machines>

marks on the ballot. I could potentially add votes, modify votes, or invalidate votes. It could print black over the entire ballot. It is common sense that a cast ballot should not be exposed to any marking device.

It does not matter if hacking or malfunction ever occurs, these design flaws reduce public trust that the evidence produced by them is reliable.

In Conclusion

Early voting is an exciting step forward for New York City. It will make voting more accessible to all residents and make government better reflect their voices. It is essential that New York not take a step backwards at the same. Expanding election access while damaging trust in those elections would be a great loss.

My hope is that you will build on the progress of the past decade and continue to insist on hand-marked paper ballots in every polling place. The difference matters. Trust in our elections is on the line. I recommend making the financially prudent choice to supplement your existing voting system with ballot-on-demand printers which can print ballots for multiple precincts and in a variety of languages.



May 11, 2015

Bianka Perez, Commissioner
Michael A. Rendino, Commissioner
Marricka Scott-McFadden, Deputy Chief Clerk
Anthony J. Ribustello, Deputy Chief Clerk
Bronx County Board of Elections
1780 Grand Concourse, 5th Floor
Bronx, NY 10457

Re: Bengali Language Assistance for Poll Sites in Bronx County

Dear Ms. Perez, Mr. Rendino, Ms. Scott-McFadden, and Mr. Ribustello:

We are writing to inform you of several poll sites in Bronx County that serve an increasingly large South Asian voting community with a need for Asian language assistance. The 2010-2012 U.S. American Community Survey 3-year Estimates reported an estimated 25,170 South Asians living in the Bronx. The 2012 American Community Survey 1-year Estimates reported that an estimated 9,863 people speaking Indic languages were limited English proficient.¹

Mazeda Uddin had written your office on January 18, 2014 requesting Bengali interpreters at 18 Metropolitan Oval, 1595 Unionport Road, 2059 Mcgraw Avenue, and 1920 Mcgraw Avenue (letter attached). After not receiving a response, the Asian American Legal Defense and Education Fund (“AALDEF”) sent Ms. Uddin’s letter to Ms. Rachel Knipel, on March 10, 2014, renewing the request for Bengali interpreters. AALDEF again renewed the request via email on May 7, 2014. The Board denied our request. We are again renewing our request for voluntary language assistance in the form of Bengali interpreters at the four (4) targeted poll sites with demonstrated need. The following Bronx poll sites serve large South Asian communities and should be staffed with Bengali-speaking interpreters.

Targeted Poll Sites with a Need for Bengali Interpreters

Poll Site	Language
18 Metropolitan Oval	Bengali
1595 Unionport Rd	Bengali
2059 Mcgraw Ave	Bengali
1920 Mcgraw Ave	Bengali

Mayor Bloomberg’s Executive Order 120 sets basic standards for language assistance for constituents served by New York City agencies. Section 2(b) of the Executive Order outlines a four factor test for determining languages for which assistance should be provided, including the

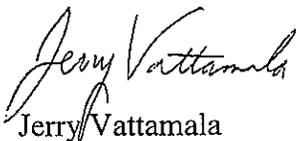
¹ Defined as people who speak or read English less than “very well”.

“number and proportion of LEP persons in the eligible service population.” In accordance with this policy, AALDEF urges the Bronx County Board of Elections to accommodate the growing Bangladeshi population of limited English proficient voters by providing Bengali interpreters at the targeted poll sites.

Conclusion

AALDEF recognizes that Bronx County is not covered under Section 203 of the Voting Rights Act for mandatory language assistance in Bengali, but given the rapidly growing language assistance need among the population, assistance is necessary in order to safeguard the fundamental right to vote meaningfully for the County’s LEP Bengali-speaking voters. As such, in order to accommodate voters in need of Bengali language assistance, we strongly urge the Board of Elections to provide voluntary language assistance at the aforementioned poll sites.

Sincerely,



Jerry Vattamala
Staff Attorney, Democracy Program



ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

99 HUDSON STREET, 12 FL • NEW YORK, NY 10013 • TEL 212.966.5932 • FAX 212.966.4303 • INFO@AALDEF.ORG

December 3, 2014

John Flateau, Ph.D., Commissioner, Kings County
Simon Shamoun, Commissioner, Kings County
Diane Haslett Rudiano, Chief Clerk, Kings County
BettyAnn Canizio, Deputy Chief Clerk, Kings County
Kings County Board of Elections
345 Adams Street – 4th Floor
Brooklyn, NY 11201

Re: Bengali language accessibility at poll sites in Kings County

Dear Dr. Flateau, Mr. Shamoun, Ms. Rudiano and Ms. Canizio:

We are writing to inform you of several poll sites in Kings County that have a demonstrated need for Asian language assistance, particularly Bengali. We have compiled the following list of recommended poll sites for language assistance based upon our observations during the recent November 4, 2014 General Elections, as well as upon our observations from past elections including the 2012 General Elections. Although we have previously reported all incidents and observations regarding language assistance in past elections, they are included below in a comprehensive request for expanded language assistance coverage.

Mazeda Uddin had written your office on January 23, 2014 requesting Bengali interpreters at P.S. 179, P.S. 230, and P.S. 130 (letter attached). After not receiving a response, the Asian American Legal Defense and Education Fund (“AALDEF”) sent Ms. Uddin’s letter to Ms. Rachel Knipel at the Board of Elections in the City of New York (“the Board”), on March 10, 2014, renewing the request for Bengali interpreters. AALDEF again renewed the request via email on May 7, 2014. The Board denied our request. We are again renewing our request for voluntary language assistance in the form of Bengali interpreters at the four (4) targeted poll sites with demonstrated need.

Targeted Poll Sites with a Demonstrated Need for Bengali Interpreters

Poll Site	Language
P.S. 230, 1 Albemarle Road, Kensington, Brooklyn, NY 11218	Bengali
P.S. 217, 1100 Newkirk Avenue, Midwood, Brooklyn, NY 11230	Bengali
P.S. 179, 202 Avenue C, Kensington, Brooklyn, NY 11218	Bengali
P.S. 130, 70 Ocean Parkway, Kensington, Brooklyn NY 11218	Bengali

After the 2012 General Elections, AALDEF noted that voters at the following sites required Bengali language assistance: **P.S. 230** at 1 Albemarle Road, Kensington, Brooklyn, NY 11218; and **P.S. 217** at 1100 Newkirk Avenue, Midwood, Brooklyn, NY 11230.

As our 2012 exit poll data revealed, Brooklyn has growing South Asian populations that are limited English proficient¹ (“LEP”) and that there is a particular need for language assistance for these communities at poll sites in Kings County.² In Brooklyn, 39% of Bangladeshi American voters surveyed were LEP, and 17% preferred language assistance to vote.

Our exit polls in the most recent November 4, 2014 General Election confirm the same patterns. Out of all South Asian voters surveyed in Brooklyn:

- 37% identified as LEP.
- 17% indicated a preference for voting with the help of interpreters or translated materials.
- 39% of Bangladeshi American voters identified as LEP.

	Bengali-speaking voters identifying as LEP	Preferred voting with language assistance
P.S. 217	47%	21%
P.S. 230	42%	19%

There is a pressing need for Bengali language assistance at these two poll sites, as well as P.S. 179 and P.S. 130, in order to ensure that LEP Bengali-speaking voters are able to effectively exercise their right to vote.

Mayor Bloomberg’s Executive Order 120 sets basic standards for language assistance for constituents served by New York City agencies. Section 2(b) of the Executive Order outlines a four factor test for determining languages for which assistance should be provided, including the “number and proportion of LEP persons in the eligible service population.” In accordance with this policy, AALDEF urges the Kings County Board of Elections to accommodate the growing Bangladeshi population of limited English proficient voters by providing Bengali interpreters at the suggested targeted poll sites.

Conclusion

AALDEF recognizes that Kings County is not covered under Section 203 of the Voting Rights Act for Bengali, but given the demonstrated high level of need among the population, language assistance is necessary in order to safeguard the fundamental right to vote meaningfully for the County’s LEP Bengali-speaking voters. As such, we strongly urge the Board of Elections to provide voluntary language assistance at the aforementioned poll sites.

¹ Defined as respondents who speak or read English less than “very well”.

² According to the Department of City Planning’s 2013 *The Newest New Yorkers* report, Bangladeshis constituted 20% of all immigrants in Kensington-Ocean Parkway, Brooklyn.

Sincerely,

A handwritten signature in black ink that reads "Jerry Vattamala". The signature is written in a cursive style with a large, prominent initial "J".

Jerry Vattamala
Staff Attorney, Democracy Program
AALDEF

cc: Dawn Sandow – Deputy Executive Director
Rachel Knipel – Coordinator of Language Assistance Programs

Jerry Vattamala

From: Rachel Knipel <RKnipel@boe.nyc.ny.us>
Sent: Wednesday, May 7, 2014 4:47 PM
To: Jerry Vattamala
Cc: Dawn Sandow; Pamela Perkins; gmagpantay aaldef.org; *Legal Department; *ExecutiveManagement
Subject: RE: Bengali interpreters in BK and BX [WARNING: SPF validation unavailable]

Hey Jerry,

There was no attachment, but the Board only covers what is Federally funded. As you know, Asian Indian is only covered for Queens County.

Thank you,

Rachel Knipel
Coordinator, Language Assistance Programs
Board of Elections in the City of New York
42 Broadway, New York NY 10004
(212) 487-5710

This message is intended for the exclusive use of the recipient(s) named above and may contain information that is privileged and confidential. If you are not an intended recipient, you are hereby notified that any disclosure, dissemination, distribution or copying of this communication or its contents is strictly prohibited. If you have received this communication in error, please delete this message and any attachments and notify me immediately by replying to this message. Thank you.

This message is intended for the exclusive use of the recipient(s) named above and may contain information that is privileged and confidential. If you are not an intended recipient, you are hereby notified that any disclosure, dissemination, distribution or copying of this communication or its contents is strictly prohibited. If you have received this communication in error, please delete this message and any attachments and notify me immediately by replying to this message. Thank you.

From: Jerry Vattamala [mailto:jvattamala@aaldef.org]
Sent: Wednesday, May 07, 2014 4:42 PM
To: Jerry Vattamala; Rachel Knipel
Cc: Dawn Sandow; Pamela Perkins; gmagpantay aaldef.org
Subject: RE: Bengali interpreters in BK and BX [WARNING: SPF validation unavailable]

Rachel,

Please see the below and attached. Has any action been taken or a decision been made re staffing these poll sites with Bengali interpreters? Please let me know. Thank you.

Regards,

Jerry

Jerry G. Vattamala
Staff Attorney
AALDEF
jvattamala@aaldef.org
tel: 212.966.5932 x 209
fax: 212.966.4303 www.aaldef.org

From: Jerry Vattamala
Sent: Monday, March 10, 2014 3:58 PM
To: 'Rachel Knipel'
Cc: 'Dawn Sandow'; 'Pamela Perkins'; gmagpantay aaldef.org
Subject: Bengali interpreters in BK and BX

Rachel,

Please see the attached letters from Mazedza Uddin, requesting Bengali interpreters in select Brooklyn and Bronx poll sites. Mazedza is requesting Bengali interpreters at the following locations:

Brooklyn

P.S 179
P.S 230
P.S 130

Bronx

18 Metropolitan Oval
1595 Unionport Rd
2059 Mcgraw Ave
1920 Mcgraw Ave

Please let me know if you have any questions or require more information. I look forward to your response. Thank you.

Regards,
Jerry

Jerry G. Vattamala
Staff Attorney
AALDEF
jvattamala@aaldef.org
tel: 212.966.5932 x 209
fax: 212.966.4303 www.aaldef.org

*****SAVE THE DATE*****
40th Anniversary Gala – March 25, 2014
PIER SIXTY, Chelsea Piers, NYC
Justice in Action Award Recipients
John G. Chou - AmerisourceBergen Corporation
Mari J. Matsuda - University of Hawai'i at Mānoa
William S. Richardson School of Law



ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
99 HUDSON STREET, 12 FL • NEW YORK, NY 10013 • TEL 212.966.5932 • FAX 212.966.4303 • INFO@AALDEF.ORG

**Statement of Jasmine Jin, Legal Fellow
Asian American Legal Defense and Education Fund
to the Voter Assistance Advisory Commission**

**Annual Meeting
Brooklyn Public Library
10 Grand Army Plaza, Brooklyn, NY**

December 16, 2014

The Asian American Legal Defense and Education Fund (“AALDEF”) is a nonpartisan organization that protects and promotes the voting rights and political participation of Asian Americans. On November 4, 2014, we monitored 241 election districts at 43 poll sites and conducted exit polls at 19 poll sites in New York City for compliance with the federal Voting Rights Act and the Help America Vote Act, and to document other voting barriers encountered by Asian Americans.

In total, AALDEF polled 2,027 Asian American voters in New York City.

We welcome this opportunity to share some of our findings with the Voter Assistance Advisory Commission. We have sent follow-up observation letters detailing our findings to the Board of Elections (“the Board”), which are attached, and hereby incorporate these letters by reference into my testimony.

At one poll site,¹ the site coordinator informed our observers that the interpreters were “not allowed” to actively approach voters and that they were to remain at their table until voters approached them. Interpreters are, in fact, encouraged to actively approach voters who may require their assistance and the refusal to allow them to do so impaired their ability to fully assist limited English proficient (“LEP”) Asian American voters at that poll site.

At another poll site,² an Asian American voter reported that poll workers instructed an interpreter to follow him around the poll site even after he informed them that he spoke English fluently and did not require language assistance, at which point a poll worker remarked to him: “You don’t look like you speak English.”

In Manhattan,³ an elderly LEP Chinese American voter was receiving assistance from an interpreter when a poll worker approached her and demanded that she leave the poll site. The voter was compelled to leave without voting.

¹ Queen of Angels Parish in Sunnyside, Queens.

² P.S. 12 in Woodside, Queens.

³ Tweed Court in Manhattan.

One of the most persistent problems we observed was that poll workers were not well-trained in why certain candidates, such as Governor Cuomo, appeared multiple times on the ballot. They were not able to explain the ballot and how to mark it correctly to confused voters. As a result, many voters spoiled their ballots because they attempted to bubble in all of Governor Cuomo's bubbles.

Poll workers also handed Korean ballots to Chinese American voters without asking their language preference, leading many LEP Chinese American voters to become confused. Korean voters were likewise handed Chinese ballots resulting in similar problems. AALDEF renews its recommendation to the Board to provide English-Korean-Chinese ballots in order to alleviate this problem of confusion regarding Asian language ballots and Asian American voters.

There were also problems we observed with language assistance. Out of the Asian American voters AALDEF surveyed in New York, 53% were LEP and 34% preferred to vote with the help of interpreters or translated materials.

In addition to missing multilingual signs observed and incidents such as multilingual "Vote Here" signs being posted on the interior of poll locations, there were also missing interpreters. Across the Asian language groups covered, around 20% of all interpreters were missing, with Korean interpreters missing at the highest rate – 22%.

Another issue we noticed was that interpreters were taking breaks at the same time, leaving sites short-staffed. At one poll site⁴ that had been assigned 7 Chinese interpreters, 2 were missing and 4 left for lunch at the same time, leaving only 1 interpreter out of an assigned 7 to handle high volumes of LEP voters at lunch time.

Some poll sites also had interpreters performing duties other than language assistance, such as signing voter in and looking up voters' election districts. Sometimes they would not be identified as an interpreter by table tents. This is problematic because it distracts them from the task for which the city retains them and LEP voters may not be able to find them without identifying signage.

Finally, AALDEF and our partners have been requesting for years that the Board provide Bengali language assistance in Brooklyn and the Bronx where there is a high level of demonstrated need.

We again renew our recommendations to the Board and the Commission. Thank you for this opportunity to share our findings.

⁴ Our Lady of Perpetual Help in Sunset Park, Brooklyn.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHINATOWN VOTER EDUCATION ALLIANCE,)
 YOUNG KOREAN AMERICAN SERVICE AND)
 EDUCATION CENTER, INC., KOREAN AMERICAN)
 VOTERS' COUNCIL, CHINESE AMERICAN)
 VOTERS ASSOCIATION, and BYUNG SOO PARK,)
 FUN MAE CHIN ENG, SHINY LIU, KIT FONG YEUNG)
 and YOUNG SOOK NA,)

Plaintiffs,)

v.)

JOHN RAVITZ, in his official capacity as)
 Executive Director of the Board of Elections in the)
 City of New York; TERRENCE C. O'CONNOR,)
 JOSEPH SAVINO, ANTHONY COMO,)
 JEANNETTE GADSON, NERO GRAHAM, JR.,)
 NANCY MOTTOLA-SCHACHER, JAMES J. SAMPEL,)
 GREGORY SOUMAS, and FREDERIC M. UMANE,)
 and MARYANN YENNELLA, in their officials)
 capacities as Commissioners of Election,)

Defendants.)

CIVIL ACTION NO.

COMPLAINT

()

COMPLAINT

Plaintiffs, by their undersigned attorneys, Kenneth Kimerling and Glenn D. Magpantay of the Asian American Legal Defense and Education Fund ("AALDEF") and Steven Alan Reiss and Ryan P. Poscablo of Weil, Gotshal & Manges LLP, as and for the Complaint, allege:

1. Plaintiffs file this action seeking injunctive and declaratory relief pursuant to the Voting Rights Act of 1965, in its provisions requiring bilingual language assistance ("Section 203") and entitling voters to receive assistance by persons of their choice ("Section 208"), as amended, 42 U.S.C. §§ 1973aa-1a, 1973aa-6 and 42 U.S.C. § 1983.

JURISDICTION

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1343.

VENUE

3. Venue in this district is proper pursuant to 28 U.S.C. § 1391.

PARTIES

4. Plaintiff Chinatown Voter Education Alliance (“CVEA”) is a not-for-profit organization, founded in 1983, whose community activities include promoting Chinese American involvement in electoral processes. It desires to protect the rights of its constituents under the Voting Rights Act of 1965.

5. Plaintiff Young Korean American Service and Education Center, Inc. (“YKASEC”) is a not-for-profit organization that has been serving the Korean American community of New York since 1984. It emphasizes meeting the needs of limited English proficient Korean Americans and encouraging Korean American civic participation. It desires to protect the rights of its constituents under the Voting Rights Act of 1965.

6. Plaintiff Korean American Voters’ Council (“KAVC”) is a not-for-profit organization that has been serving the Korean American community of New York since 1996. It educates and registers qualified voters in the Korean American community of the New York metropolitan area. It desires to protect the rights of its constituents under the Voting Rights Act of 1965.

7. Plaintiff Chinese American Voters Association (“CAVA”) is a not-for-profit organization, founded in 1982, to advance the political awareness, voter registration, and voter education of Chinese Americans. It desires to protect the rights of its constituents under the Voting Rights Act of 1965.

8. CVEA, YKASEC, KAVC, and CAVA (“Organizational Plaintiffs”) are “organizations representing members of the applicable language minority groups.” See 28 C.F.R. § 55.16.

9. Plaintiff Byung Soo Park (“Park”) is a Korean American, limited English proficient, registered voter who resides in Queens County. He desires to participate in the electoral process equally with other citizens. He desires to preserve his rights under the Voting Rights Act of 1965.

10. Plaintiff Fun Mae Chin Eng (“Eng”) is a Chinese American, limited English proficient, registered voter who resides in New York County. She desires to participate in the electoral process equally with other citizens. She desires to preserve her rights under the Voting Rights Act of 1965.

11. Plaintiff Shiny Liu (“Liu”) is a Chinese American, limited English proficient, registered voter who resides in Queens County. She desires to participate in the electoral process equally with other citizens. She desires to preserve her rights under the Voting Rights Act of 1965.

12. Plaintiff Kit Fong Yeung (“Yeung”) is a Chinese American, limited English proficient, registered voter who resides in New York County. She desires to participate in the electoral process equally with other citizens. She desires to preserve her rights under the Voting Rights Act of 1965.

13. Plaintiff Young Sook Na (“Na”) is a Korean American, limited English proficient, registered voter who resides in Queens County. She desires to participate in the electoral process equally with other citizens. She desires to preserve her rights under the Voting Rights Act of 1965.

14. Defendant John Ravitz is Executive Director of the Board of Elections in the City New York. Defendant Ravitz is sued in his official capacity.

15. Defendant Terrence C. O'Connor is Board President and a Commissioner of Elections on the Board of Elections in the City of New York. Defendant O'Connor is sued in his official capacity.

16. Defendant Joseph Savino is Board Secretary and a Commissioner of Elections on the Board of Elections in the City of New York. Defendant Savino is sued in his official capacity.

17. Defendant Anthony Como is a Commissioner of Elections on the Board of Elections in the City of New York. Defendant Como is sued in his official capacity.

18. Defendant Jeannette Gadson is a Commissioner of Elections on the Board of Elections in the City of New York. Defendant Gadson is sued in her official capacity.

19. Defendant Nero Graham, Jr. is a Commissioner of Elections on the Board of Elections in the City of New York. Defendant Graham is sued in his official capacity.

20. Defendant Nancy Mottola-Schacher is a Commissioner of Elections on the Board of Elections in the City of New York. Defendant Mottola-Schacher is sued in her official capacity.

21. Defendant James J. Sampel is a Commissioner of Elections on the Board of Elections in the City of New York. Defendant Sampel is sued in his official capacity.

22. Defendant Greg Soumas is a Commissioner of Elections on the Board of Elections in the City of New York. Defendant Soumas is sued in his official capacity.

23. Defendant Frederic M. Umane is a Commissioner of Elections on the Board of Elections in the City of New York. Defendant Umane is sued in his official capacity.

24. Defendant Maryann Yennella is a Commissioner of Elections on the Board of Elections in the City of New York. Defendant Yennella is sued in her official capacity.

ALLEGATIONS

25. New York, Kings, and Queens Counties are covered under Section 203 of the Voting Rights Act of 1965, as amended, for Chinese language assistance, and Queens County is covered under Section 203 for Korean language assistance, as designated by the Director of the Census (the “Director”). The Director determined, based on the 2000 Census, that more than 10,000 voting-age citizens in these counties are members of a single language minority group (Chinese or Korean) who do not speak or understand English well enough to participate in the English-language election process and, as a group, have an illiteracy rate that is higher than the national illiteracy rate. See 42 U.S.C. § 1973aa-1a(b)(2); see also 67 Fed. Reg. 48,871 (July 26, 2002). The determination of the Census Bureau that New York, Kings, and Queens Counties are covered by Section 203 for Chinese, and that Queens County is covered by Section 203 for Korean, is final and is “not subject to review in any court.” See 42 U.S.C. § 1973aa-1a(b)(4).

26. New York, Kings, and Queens Counties have been continuously covered under Section 203 to provide bilingual elections in Chinese since September 18, 1992. See 57 Fed. Reg. 43,213 (Sept. 18, 1992); 67 Fed. Reg. 48,871 (July 26, 2002). Queens County has been continuously covered under Section 203 to provide bilingual elections in Korean since July 26, 2002. See 67 Fed. Reg. 48,871 (July 26, 2002).

27. Because New York, Kings, and Queens Counties are subject to the requirements of Section 203, “any registration or voting notice, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots” that Defendants provide in English must also be furnished in Chinese in New York, Kings, and Queens Counties

so that Chinese American voters can be effectively informed of and participate in all voting-related activities. See 42 U.S.C. § 1973aa-1a

28. Because Queens County is subject to the requirements of Section 203, “any registration or voting notice, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots” that Defendants provide in English must also be furnished in Korean in Queens County so that Korean American voters can be effectively informed of and participate in all voting-related activities. See 42 U.S.C. § 1973aa-1a.

29. Under Section 203, translated “materials and assistance should be provided in a way designed to allow members of applicable minority groups to be effectively informed of and participate effectively in voting-connected activities,” See 28 C.F.R. § 55.2 (1).

30. A jurisdiction is likely to achieve compliance under Section 203 “if it has worked with the cooperation of and to the satisfaction of organizations representing members of the applicable language minority groups.” See 28 C.F.R. § 55.16.

31. On October 19, 1993, the Board of Elections in the City of New York devised and adopted a Section 203 compliance plan for Chinese language assistance. That plan, with certain changes made on December 14 and 16, 1993 and August 29, 1994, was precleared by the U.S. Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. 42 U.S.C. § 1973c. The plan, with the changes, remains in effect to this day.

32. Beginning on January 1, 1984, all of New York City became subject to the requirements of Section 208 of the Voting Rights Act of 1965, as amended. Under Section 208, “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice.” 42 U.S.C. § 1973aa-6. Voters who cannot read or write English have the right to such assistance.

33. Since at least 1998, the U.S. Attorney General has appointed federal observers pursuant to Section 5 to monitor many elections in New York and Kings Counties for compliance with Section 203 for Chinese language assistance. Observers have found a number of violations of Section 203. Upon information and belief, attorneys from the U.S. Department of Justice (“DOJ”) have provided these findings to Defendants soon after each election.

34. Since 1998, the U.S. Attorney General has repeatedly appointed federal observers pursuant to Section 5 to monitor elections in New York and Kings Counties for compliance with Section 203 for Chinese language assistance and Section 208. Observers have found a number of violations of Sections 203 and 208. Upon information and belief, DOJ attorneys have provided these findings to Defendants soon after each election. Further, upon information and belief, DOJ Attorneys often conducted follow-up meetings with Defendants to review Defendants’ efforts to remedy violations and to ensure compliance. Such follow up was conducted a few months prior to each election cycle.

35. Since 2001, the U.S. Attorney General has repeatedly authorized attorneys to monitor elections in Queens County for compliance with Section 203 for Chinese and Korean language assistance and Section 208. Attorneys have found a number of violations of Sections 203 and 208. Upon information and belief, DOJ attorneys have provided these findings to Defendants soon after each election. Further, upon information and belief, DOJ Attorneys often conducted follow-up meetings with Defendants to review Defendants’ efforts to remedy violations and to ensure compliance. Such follow up was conducted a few months prior to each election cycle.

36. In every major election since 1994, Organizational Plaintiffs and other community groups have monitored elections in New York, Kings, and Queens Counties for

compliance with Sections 203 and 208. Plaintiffs' monitors have found a number of violations of Sections 203 and 208. Defendants were made aware of these violations shared through complaint letters that highlighted specific violations of Sections 203 and 208 at specific poll sites and/or election districts. Letters were sent reviewing observations during the Primary and General elections for each year in 2005, 2004, 2003, 2002, 2001, 2000, 1998, and other years.

37. In every year since at least 1998, the New York City Voter Assistance Commission had held an official hearing for the public to report voting barriers and other election problems. Defendant Executive Director of the Board of Elections and Defendants' counsel, the Corporation Counsel of the City of New York, are ex-officio members of the Commission. Organizational Plaintiffs, community groups, and other voters have reported on violations of Sections 203 and 208 at the Commission's hearings, and through the hearings, have brought them to the direct attention of Defendants and Defendants' counsel.

38. Because of Defendants' failure to provide voting information in the voters' languages and/or dialects, limited English proficient Chinese and Korean Americans, like Park, Eng, Liu, Yeung, and Na (collectively, "Voter Plaintiffs"), encountered difficulties in exercising their right to vote, were unaware of legally-required language assistance, and faced difficulty in effectively voting in their languages and/or dialects. Their complaints were provided to Defendants through letters from Plaintiff's Attorney, AALDEF, and Organizational Plaintiffs.

39. All of the complaints given to Defendants by Organizational Plaintiffs and Voter Plaintiffs detailed how Defendants have not provided effective election-related materials, information, and/or assistance in Chinese or Korean to limited English proficient Chinese and Korean Americans as required by Section 203, including, but not limited to, the following:

- (a) failing to adequately train poll workers about legally-required language assistance

- options and procedures and voters' rights to language assistance resulting in missing translated materials and signs, translated materials being hidden from voters, and signs posted in obscure locations, if at all;
- (b) failing to train and provide adequate numbers of interpreters and bilingual poll inspectors to assist limited English proficient Chinese and Korean Americans at poll sites resulting in Asian Americans being turned away from voting for the lack of anyone to assist them;
 - (c) failing to make telephone assistance available in Chinese (both in Cantonese and Mandarin dialects) and Korean;
 - (d) failing to translate into Chinese and Korean the Board of Elections website;
 - (e) failing to provide adequately translated and effective notices to voters, confirming their registrations and informing them of their poll sites, election districts, and legislative districts resulting in confusion and the inability of Chinese and Korean Americans to vote or inability to ensure that their votes will be counted;
 - (f) failing to provide adequately translated, effective, and conspicuous notices to voters, informing them about changes to their poll sites and election districts resulting in confusion and the inability of Chinese and Korean Americans to vote or inability to ensure that their votes will be counted;
 - (g) failing to effectively disseminate election-related publicity, notices, and announcements in the Chinese and Korean language media;
 - (h) failing to adequately publicize the availability of language assistance at poll sites through posted translated signs;
 - (i) failing to provide readable and correctly translated ballots in Chinese and Korean,

including the proper transliterations of candidates' names; and

- (j) failing to effectively develop an effective election district and poll site targeting plan and methodology for translated materials, interpreters, and bilingual poll inspectors so that language minority group members may receive and access all election-day materials and information in Chinese and Korean.

40. Moreover, in conducting elections in the City of New York, Defendants have deviated from their Section 203 compliance plan established in 1993, which was approved under Section 5 by the U.S. Attorney General. That plan includes many of the remedies that Plaintiffs seek in this action.

41. All of the complaints given to Defendants through individual complaint letters from Plaintiff's Counsel, AALDEF, in the years 2005, 2004, 2003, 2002, 2001, 2000, 1998, and other years detailed how Defendants have not ensured that Asian Americans who required assistance to vote by reason of their inability to read or write English are permitted to receive assistance by persons of their choice as required by Section 208, including, but not limited to, the following:

- (a) failing to adequately train poll officials on voters' right to assistance;
- (b) failing to allow Asian Americans who are unable to read the ballot and who need voting assistance to have persons of their choice assist them inside voting booths;
- (c) failing to allow Asian Americans who receive assistance to vote privately; and
- (d) failing to allow Asian Americans to receive assistance without interference.

42. All of the complaints shared with Defendants detailed other barriers that culminated in the inability of Asian Americans to effectively participate in the electoral process, including:

- (a) racist remarks and gestures against Asian Americans by poll workers;
- (b) unequal, disrespectful, or hostile treatment of Asian Americans by poll workers;
- (c) requiring Asian Americans to provide unnecessary identification, and sometimes even requiring naturalization certificates, in order to vote;
- (d) changing the poll sites and election districts of Asian Americans without adequately notifying them of changes; and
- (e) redirecting Asian Americans to improper poll sites and election districts.

43. Organizational Plaintiffs, voters, and community groups, along with attorneys from the DOJ, have experienced many years of frustration in seeking to remedy Defendants' failure to meet the requirements of Sections 203 and 208. They complained to Defendants about the failure to provide effective language assistance to Chinese and Korean Americans and the failure to allow Asian Americans to be assisted by persons of their choice. Complaints were given to Defendants after almost every major election since 1998. These complaints have, for the most part, gone unanswered. Out of several complaint letters from AALDEF to the Defendants regarding complaints and violations that occurred during the Primary and General Elections for each year in 2005, 2004, 2003, 2002, 2001, 2000, 1998, and other years, Defendants have responded only once.

FIRST CAUSE OF ACTION

44. Plaintiffs hereby reallege and incorporate by paragraphs 1 through 43.

45. Defendants have not provided effective election-related materials, information, and/or assistance in Chinese or Korean to limited English proficient Chinese and Korean Americans as required by Section 203.

46. Defendants have deviated from their Section 203 compliance plan established in

1993, which was approved under Section 5 by the U.S. Attorney General.

47. Defendants' failure to provide limited English proficient Chinese and Korean Americans in the City of New York with Chinese and Korean language election-related information constitutes a violation of Section 203 and 42 U.S.C. § 1983.

48. Unless enjoined by this Court, Defendants will continue to violate Section 203 by failing to provide the City of New York's limited English proficient Chinese and Korean Americans with Chinese and Korean language election information and assistance.

SECOND CAUSE OF ACTION

49. Plaintiffs hereby reallege and incorporate by paragraphs 1 through 48.

50. Defendants have not ensured that Asian Americans who required assistance to vote by reason of their inability to read or write English are permitted to receive assistance by persons of their choice as required by Section 208.

51. Defendants' failure to ensure that Asian Americans who need assistance to vote are permitted to receive assistance, constitutes a violation of Section 208 and 42 U.S.C. § 1983.

52. Unless enjoined by this Court, Defendants will continue to violate Section 208 by failing to ensure that Asian Americans are permitted to receive assistance from the person of their choice.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter an order:

- (1) With respect to Plaintiffs' First Cause of Action:
 - (a) Declaring that Defendants have failed to provide Chinese and Korean language election information and assistance to limited English proficient Chinese

and Korean Americans in violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;

(b) Enjoining Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from failing to provide Chinese and Korean language election information and assistance to limited English proficient Chinese and Korean Americans as required by Section 203, 42 U.S.C. § 1973aa-1a;

(c) Requiring Defendants to take such actions as will ensure that limited English proficient Chinese and Korean Americans are effectively informed of and able to participate effectively in all phases of the electoral process, in compliance with Section 203, 42 U.S.C. § 1973aa-1a;

(d) Requiring Defendants to devise, publicize, and implement a remedial plan to ensure that limited English proficient Chinese and Korean Americans are able to participate in all phases of the electoral process as required by Section 203, 42 U.S.C. § 1973aa-1a; and

(2) With respect to Plaintiffs' Second Cause of Action:

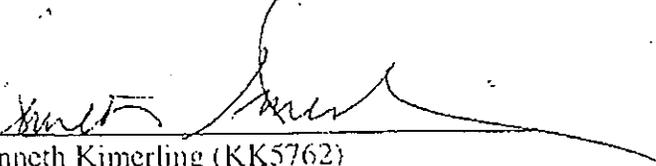
(a) Declaring that Defendants have failed to ensure that Asian Americans who need voting assistance are permitted to receive assistance from persons of their choice in violation of Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6;

(b) Enjoining Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from failing to allow Asian Americans to have the persons of their choice assist them at the polls as required by Section 208, 42 U.S.C. § 1973aa-6; and

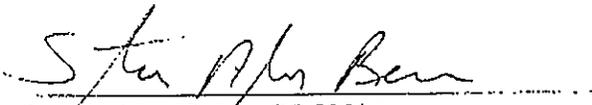
- (c) Requiring Defendants to devise, publicize, and implement voter assistance procedures and practices that will ensure that Asian Americans, who require assistance to vote are permitted to have the persons of their choice assist them at the polls as required by Section 208, 42 U.S.C. § 1973aa-6.
- (6) With respect to both of Plaintiffs' Causes of Action, declaring that any remedial plan to provide language assistance, and all voting changes, policies, procedures and practices implemented pursuant to this Court's order satisfy Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.
- (7) Awarding Plaintiffs the costs and disbursements associated with the filing and maintenance of this action together with their reasonable attorneys' fees, pursuant to 42 U.S.C. § 1973(e) and 1988; and
- (8) Granting Plaintiffs any other equitable and further relief as this Court deems just and proper.

(Signatures on following page.)

Date: 1st day of February, 2006.



Kenneth Kimerling (KK5762)
Glenn D. Magpantay (GM9120)
Attorneys for Plaintiffs
Asian American Legal Defense and Education Fund
99 Hudson Street, 12th floor
New York, New York 10013-2815
(212) 966-5932



Steven Alan Reiss (SR5889)
Ryan P. Poscablo (RP8496)
Attorneys for Plaintiffs
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

ALLIANCE OF SOUTH ASIAN AMERICAN LABOR,)
CHHAYA COMMUNITY DEVELOPMENT)
CORPORATION, and NADIRA KHANAM,)

Plaintiffs,)

v.)

THE BOARD OF ELECTIONS IN THE CITY OF NEW)
YORK,)

Defendant.)

CIVIL ACTION NO.

COMPLAINT

COMPLAINT

Plaintiffs, the Alliance of South Asian American Labor (“ASAAL”), Chhaya Community Development Corporation (“Chhaya CDC”) and Nadira Khanam (collectively, “Plaintiffs”), by their undersigned attorneys, allege for their Complaint against the Defendant named herein, as follows:

1. Plaintiffs file this action seeking injunctive and declaratory relief pursuant to the Voting Rights Act of 1965’s provisions requiring bilingual language assistance (“Section 203”), as amended, 42 U.S.C. § 1973aa-1a and 42 U.S.C. § 1983. Section 203 requires a covered jurisdiction to provide election information and assistance to limited English proficient voters so that those voters can effectively and fully participate in the electoral process.

2. Queens County has been covered under Section 203 for Asian Indian language assistance since October 13, 2011 and is therefore required, among other things, to provide ballots in Bengali, an Asian Indian language. However, the Board of Elections in the City of New York (the “Board”), which is responsible for conducting elections in New York City, has,

in violation of its legal obligations, failed and refused to provide ballots translated into Bengali since that time and has further failed and refused: (a) to make an official public announcement or otherwise adequately confirm that ballots in Bengali will be available for the upcoming New York City mayoral elections, including the Mayoral and City Council Primary scheduled for September 10, 2013 (the “Mayoral Primary”), or any other future elections, despite having numerous opportunities to do so; (b) to establish a comprehensive compliance plan for the provision of election information and assistance to Asian Indian voters in Queens County, that would, among other things, provide meaningful confirmation that Bengali ballots will be available, despite having a compliance plan for other minority languages for which the Board is required to provide assistance; and (c) to allow community groups to assist in the effective provision of Asian Indian language assistance, which is something the Board does for other minority languages for which the Board is required to provide assistance. Further, the Board has failed to comply with past representations it made concerning ballots translated into Bengali and the provision of other Asian Indian language assistance in Queens County.

JURISDICTION

3. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1343.
4. Venue in this district is proper pursuant to 28 U.S.C. § 1391. A substantial part of the events or omissions giving rise to this claim occurred in this District. The Board is subject to personal jurisdiction in this District.

PARTIES

5. Plaintiff Nadira Khanam is an Asian Indian American who resides and is domiciled in Queens County and is registered to vote in Queens County. Ms. Khanam’s proficiency in English is limited, so she is unable to vote without Bengali language assistance.

Ms. Khanam desires to participate in the electoral process, including in the upcoming Mayoral Primary and in subsequent elections held thereafter. She is proficient in Bengali. The Board's failure to provide ballots translated into Bengali has caused, and will continue to cause if not corrected, injury to Ms. Khanam.

6. Plaintiff ASAAL is a not-for-profit membership organization, founded in 2008 to assist Asian Indian and other South Asian workers in the trade union movement and to improve the economic and social well-being of Asian Indian and other South Asian workers. As part of its mission, ASAAL promotes civic participation among Asian Indian and other South Asian Americans, including by advocating voter registration and educating its members about the voting process. ASAAL has approximately 60 or 70 members in its Queens County chapter. All of ASAAL's Queens County chapter members are Asian Indian or South Asian.

7. The Board's failure to comply with its legal obligations under Section 203 has caused, and will continue to cause unless remedied, ASAAL to suffer legally cognizable injury. Many of ASAAL's Queens County chapter members will not be able to effectively or fully participate in the election process without ballots being translated into Bengali. Furthermore, the absence of ballots translated into Bengali in Queens County has already required and will require ASAAL to expend its limited funds and other resources to educate its members and other Asian Indian American voters in Queens County on how to vote—including instructions on what the ballot will look like and how to identify on the ballot important information such as a candidate's name, office sought and political party affiliation—as well as provide other assistance in connection with upcoming elections. These efforts would be unnecessary, and the expenses not incurred, if the Board were to comply with its legal obligations to provide election information and assistance in Queens County.

8. Plaintiff Chhaya CDC is a community-based not-for-profit membership organization, focused on improving access to housing opportunities, resources, and information for Asian Indian and other South Asian Americans throughout New York City and the metropolitan area. As part of its mission, Chhaya CDC creates more stable and sustainable communities by increasing civic participation and addressing the housing and community development needs of New York's Asian Indians and other South Asians, new immigrants, and their neighbors, and by advocating voter registration and educating its members about the voting process, including through voter registration drives. All of Chhaya CDC's services are offered in Bengali, English, Hindi, and Urdu. Most of Chhaya CDC's Queens County constituents are Asian Indian or South Asian. Chhaya CDC is headquartered in Queens County.

9. The Board's failure to comply with its legal obligations under Section 203 has caused, and will continue to cause unless remedied, Chhaya CDC to suffer legally cognizable injury. Many of Chhaya CDC's Queens County chapter members will not be able to effectively or fully participate in the election process without ballots being translated into Bengali. Furthermore, the absence of ballots translated into Bengali in Queens County has already required and will require Chhaya CDC to expend its limited funds and other resources to educate its members and other Asian Indian American voters in Queens County on how to vote—including instructions on what the ballot will look like and how to identify on the ballot important information such as a candidate's name, office sought and political party affiliation—as well as provide other assistance in connection with upcoming elections. These efforts would be unnecessary, and the expenses not incurred, if the Board were to comply with its legal obligation to provide election information and assistance in Queens County.

10. Defendant Board of Elections in the City of New York (the “Board”) is an administrative body organized pursuant to New York State Election Law § 3-200. The Board consists of ten Commissioners, two from each of the five boroughs of New York City, appointed by the New York City Council upon recommendation by both political parties. The Board has an office in this District located in Queens County at 126-06 Queens Boulevard, Kew Gardens, New York 11415.

11. The Board is responsible for conducting elections from the local to federal levels in New York City, including in Queens County. This responsibility includes, among other things: voter registration, outreach and processing; voter education, notification and dissemination of election information; ensuring each voter their right to vote at the polls or by absentee ballot; preparing ballots and other election-related materials; operating poll site locations; and canvassing and certifying the vote.

FACTUAL ALLEGATIONS

The Requirements of the Voting Rights Act

12. Section 203 of the Voting Rights Act of 1965, as amended, sets forth the bilingual language assistance requirements for covered jurisdictions. A jurisdiction is covered under Section 203 if the Director of the Census Bureau (the “Director”) determines that: (a) more than 5 percent or 10,000 or more of the citizens of voting age of the jurisdiction are members of a single language minority and are limited-English proficient, and (b) the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate. *See* 42 U.S.C.A. § 1973aa-1a(b)(2)(A).

13. On October 13, 2011, the Director designated Queens County as a covered jurisdiction for Asian Indian language assistance based on the 2010 Census. *See* 76 Fed. Reg.

63602, 63605 (Oct. 13, 2011). The bilingual language assistance requirements of Section 203 became effective on Queens County on that day. *See* 42 U.S.C. § 1973aa-1a(b)(4); 28 C.F.R. § 55.4(a)(2). The Director's determination that Queens County is covered by Section 203 is final and "not subject to review in any court." *See* 42 U.S.C. § 1973aa-1a(b)(4).

14. Because Queens County is subject to the requirements of Section 203, "any registration or voting notice, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" that the Board provides in English must also be provided in an Asian Indian language. *See* 42 U.S.C. § 1973aa-1a. On April 10, 2012, the Board selected Bengali as the Asian Indian language in which it would provide translated written materials, including ballots, in Queens County, pursuant to 28 C.F.R. 55.12(b). Under the mandates of Section 203, the Board is therefore required to provide ballots translated into Bengali for elections in Queens County.

15. According to the regulations interpreting Section 203, translated "materials and assistance should be provided in a way designed to allow members of applicable minority groups to be effectively informed of and participate effectively in voting-connected activities." *See* 28 C.F.R. § 55.2(1). The regulations also state: "Compliance with the requirements of section 4(f)(4) and section 203(c) is best measured by results. A jurisdiction is more likely to achieve compliance with these requirements if it has worked with the cooperation of and to the satisfaction of organizations representing members of the applicable language minority group." *See* 28 C.F.R. § 55.16.

The Board Is in Violation of Section 203

16. The Board, however, has not provided ballots translated into Bengali as required by Section 203 for any of the four elections it has administered since Bengali was selected as the

Asian Indian language for written materials on April 10, 2012. Ballots in Bengali were not provided in Queens County for the April 24, 2012 Presidential Primary Election (the “Presidential Primary”), the June 26, 2012 Federal Primary Election (the “Congressional Primary”), the September 13, 2012 Primary for Local State Offices (the “Local Primary”), or the November 6, 2012 General Election (the “General Election”).

17. Furthermore, although counsel for the Board has indicated to counsel for Plaintiffs that the Board intends to provide ballots translated into Bengali available for the Mayoral Primary and for future elections, the Board has failed and refused to make any official public announcement about or otherwise adequately confirm its plans, despite having numerous opportunities to do so. The Board previously gave verbal assurances to community groups that Bengali ballots would be provided for the November 2012 General Election, but they were not in fact provided.

18. In lieu of providing Bengali ballots, the Board has, for at least the last three elections it has administered (the June 2012 Congressional Primary, the September 2012 Local Primary, and the November 2012 General Election), attempted to provide language assistance in other forms. But this additional language assistance has not on its own adequately provided election information and assistance to Asian Indian voters in Queens County and does not comply with the Board’s obligations under Section 203. And the Board has not provided all the assistance it said it would.

19. Meanwhile, the status of this additional language assistance for future elections is in jeopardy because the Board has failed and refused to adopt a comprehensive compliance plan for Asian Indian language assistance. A comprehensive compliance plan would detail all of the measures committed to by the Board for future elections in order to ensure that Asian Indian

American voters in Queens County are effectively informed of and participate effectively in voting-connected activities. The Board, which is also required under Section 203 to provide Chinese and Korean language election information and assistance in Queens County, has adopted a comprehensive compliance for those languages.

The Board Did Not Provide Adequate Language Assistance for 2012 Elections

20. For the June 2012 Congressional Primary, the language assistance offered by the Board was detailed in an interim compliance plan adopted by the Board on April 17, 2012. For the September 2012 Local Primary, the language assistance offered by the Board was detailed in an interim compliance plan adopted by the Board on August 21, 2012. Neither plan called for ballots translated into Bengali. In both plans, the Board committed that, among other things, Bengali and Hindi interpreters would be stationed at targeted poll sites in Queens County and signage translated into Bengali, including “Interpreter Available” signs and “Interpreter Available” tent cards would be displayed at targeted poll sites in Queens County.

21. The Board was promptly made aware that, for both elections, it failed to provide even these forms of assistance to all Asian Indian American voters in Queens County who required them. Yet the problems persisted.

22. The Asian American Legal Defense and Education Fund (“AALDEF”)—whose attorneys are co-counsel for Plaintiffs in this matter—monitored both the June 2012 Congressional Primary and the September 2012 Local Primary. AALDEF volunteers observed that, in addition to the fact that ballots translated into Bengali were not provided for either election, the translated signage, including “Interpreter Available” signs outside of the poll site and interpreter tent cards inside the poll site, was missing or not properly displayed at certain targeted poll sites, and that interpreters were not available at certain targeted poll sites. Many

Asian Indian American voters in Queens County were thus unable to receive the language assistance they needed during those elections. AALDEF detailed these observations in separate letters to the Board dated July 25, 2012 and September 19, 2012.

23. During the time before and leading up to the June 2012 Congressional Primary and the September 2012 Local Primary, the Board convened a working group as a means to discuss and receive input about Asian Indian language assistance from concerned community groups. The working group was comprised of several representatives from Asian Indian language minority groups that developed recommendations for the Board's Asian Indian language assistance program, along with staff officials from the Board. Community representatives included Plaintiffs Chhaya CDC and ASAAL as well as AALDEF. Six working group meetings were held between March 16 and August 22, 2012.

24. During the working group meetings, the Board gave verbal assurances that Bengali ballots would be ready for the November 2012 General Election.

25. However, during the final, August 22, 2012 working group meeting, the Board announced that Bengali ballots would not be provided for the November 2012 General Election.

26. On September 25, 2012, counsel for Plaintiffs wrote a letter to the Board demanding that Bengali ballots be available for the November 2012 General Election. The Board responded via letter on September 28, 2012, claiming that it was not technologically possible to have Bengali ballots available for the November 2012 General Election.

27. On October 3, 2012, counsel for Plaintiffs met with Board staff and counsel. The Board claimed that Bengali ballots for its electronic voting system could not be prepared and tested in time for the November 2012 General Election because of software delays. Counsel for Plaintiffs suggested that ballots could be manually translated and tested in advance of the

General Election. The Board claimed that such ballots might fail to scan properly; however, the Board acknowledged that it never even tested a ballot translated into Bengali to determine whether it would scan properly. The Board refused to even consider that option.

28. Instead, the Board proposed a number of language assistance measures it planned to take for the November 2012 General Election, short of full compliance with Section 203, including the provision of Bengali sample ballots, which voters can use as a reference but cannot use to cast their actual votes. The Board adopted an updated interim compliance plan on October 23, 2012 outlining these measures.

29. As with the June 2012 Congressional Primary and the September 2012 Local Primary, the Board did not fully and successfully implement these measures. Instead, the various measures provided by the Board proved to be confusing to Bengali-speaking voters with limited English proficiency.

The Board Has Refused to Announce Its Plans for Asian Indian Language Assistance for Future Election

30. On April 9, 2013, the New York State Board of Elections certified upgrades to the Board's election software allowing for Bengali capability.

31. Since April 9, 2013, the Board has held at least nine Commissioners' Meetings. At none of those nine meetings was the issue of Bengali ballots or Asian Indian language assistance so much as discussed—much less that the Board offered any public indication of its intention to provide ballots in Bengali for upcoming elections.

32. Nor has the Board adopted a comprehensive compliance plan for Asian Indian language assistance, a failing which suggests that the Board has not committed to comply with its obligations under Section 203.

33. Instead, the last official, public word on the matter from the Board is an Interim Plan for Provision of Language Assistance to Designated Asian Indian Languages for State Primary & General Elections, 2012, adopted as revised by the Board on October 23, 2012. That document, which applied only to the November 2012 General Election, is silent on the question of ballots in Bengali, and ballots in Bengali were not provided for that election. As counsel for the Board has reiterated in communications with counsel for Plaintiffs, even as to the other forms of assistance committed to in that interim plan, the document has no binding effect on future elections.

34. Counsel for Plaintiffs spoke via telephone with counsel for the Board on April 24 and May 30, 2013. Counsel for the Board stated that the Board intended to provide Bengali ballots for the September 2013 Mayoral primary and elections thereafter. But counsel for the Board refused to commit that those intentions would be announced publicly or that the Board would adopt a comprehensive compliance plan.

35. Counsel for Plaintiffs subsequently corresponded via letter and email with counsel for the Board on June 17 and 18, 2013, seeking written assurance—in the form of a comprehensive compliance plan—that Bengali ballots would be available for the September 2013 Mayoral Primary. Counsel for Plaintiffs requested that a compliance plan similar to the Board’s compliance plan for Chinese and Korean language assistance be adopted for Asian Indian language assistance.

36. Counsel for the Board informed counsel for Plaintiffs that the Board intends to provide Bengali ballots for the September 2013 Mayoral Primary and for future elections. In an email, counsel for the Board wrote that “Bengali WILL be on the ballots in the Primary Election,

the Primary Run-off Election, and the General Election this year (and in subsequent elections at targeted poll sites) regardless of the equipment utilized at each such election.”

37. However, in subsequent emails, counsel for the Board maintained the Board’s refusal to make its intentions public; refused to commit to issuing a comprehensive compliance plan for Asian Indian language assistance, like the plan the Board has issued for Chinese and Korean language assistance; and refused to answer questions about the scope of the Board’s intentions for Section 203 compliance for upcoming elections, including whether various elements of assistance committed to in the October 23, 2012 interim compliance plan—hiring Bengali and Hindi translators for targeted poll sites, training or re-training poll site coordinators in the provision of language assistance to Asian Indian voters, and election-day monitoring of Asian Indian language assistance provision—would be continued.

38. Further, in communications with counsel for Plaintiffs, the Board has refused to re-convene the Asian Indian language assistance working group despite the Board’s inability to effectively provide election information and assistance for past elections.

39. The Board’s failure to provide Asian Indian language election information and assistance to limited English proficient Asian Indian Americans in Queens County is in violation of Section 203 and has caused and will cause injury to each of the Plaintiffs as detailed above, unless remedied.

FIRST CAUSE OF ACTION

40. Plaintiffs hereby reallege and incorporate paragraphs 1 through 39, as if fully set forth herein.

41. This is a claim for a declaratory judgment pursuant to 28 U.S.C. § 2201 et seq. for the purpose of determining a question of actual controversy between the parties and to declare the legal rights between them.

42. Defendant has failed to provide Asian Indian language election information and assistance to limited English proficient Asian Indian Americans in Queens County. Defendant's failure constitutes a violation of 42 U.S.C. § 1973aa-1a and 42 U.S.C. § 1983.

43. An actual, present, and justiciable controversy exists between the parties concerning Defendant's obligation under 42 U.S.C. § 1973aa-1a and 42 U.S.C. § 1983 to: (a) provide ballots translated into Bengali, including for the last four elections administered by the Board; (b) make an official public announcement or otherwise adequately confirm that ballots in Bengali will be available; (c) implement a compliance plan for Asian Indian language assistance; and (d) allow community groups to assist in the effective provision of Asian Indian language assistance.

44. Plaintiffs are entitled to a declaratory judgment from this Court pursuant to 28 U.S.C. § 2201 that Defendant is in violation of 42 U.S.C. § 1973aa-1a and 42 U.S.C. § 1983 because it has failed and refused to provide Asian Indian language election information and assistance to limited English proficient Asian Indian Americans in Queens County and that the Board is obligated to do so for all future elections.

SECOND CAUSE OF ACTION

45. Plaintiffs hereby reallege and incorporate paragraphs 1 through 44, as if fully set forth herein.

46. Defendant's failure to provide Asian Indian language election information and assistance to limited English proficient Asian Indian Americans in Queens County constitutes a violation of 42 U.S.C. § 1973aa-1a and 42 U.S.C. § 1983.

47. By violating Section 203 of the Voting Rights Act as set forth above, Defendant has injured each of the Plaintiffs and threatens continued or future injury of each of the Plaintiffs.

48. Plaintiffs are entitled to a permanent injunction requiring Defendant to provide Asian Indian language election information and assistance to limited English proficient Asian Indian Americans in Queens County for all future elections by, among other things: (a) requiring Defendant to provide ballots translated into Bengali; (b) requiring Defendant to make an official public announcement or otherwise adequately confirm that ballots in Bengali will be available; (c) requiring Defendant to implement a compliance plan for Asian Indian language assistance; and (d) requiring Defendant to allow community groups to assist in the effective provision of Asian Indian language assistance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter an order:

- 1) Declaring that Defendant has failed to provide Asian Indian language election information and assistance to limited English proficient Asian Indian Americans in Queens County in violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;

- 2) Declaring that Defendant is required to provide Asian Indian language election information and assistance to limited English proficient Asian Indian Americans in Queens County as required by Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a, including that
 - a. Defendant is required to provide ballots translated into Bengali;
 - b. Defendant is required to make an official public announcement or otherwise adequately confirm that ballots in Bengali will be available;
 - c. Defendant is required to implement a compliance plan for Asian Indian language assistance; and
 - d. Defendant is required to allow community groups to assist in the effective provision of Asian Indian language assistance.

- 3) Requiring Defendant to provide Asian Indian language election information and assistance to limited English proficient Asian Indian Americans in Queens County as required by Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a, including:
 - a. Requiring Defendant to provide ballots translated into Bengali;
 - b. Requiring Defendant to make an official public announcement or otherwise adequately confirm that ballots in Bengali will be available;
 - c. Requiring Defendant to implement a compliance plan for Asian Indian language assistance; and
 - d. Requiring Defendant to allow community groups to assist in the effective provision of Asian Indian language assistance;

- 4) Requiring Defendant to take all such actions as will ensure that limited English proficient Asian Indian Americans in Queens County are effectively informed of and able to participate effectively in all phases of the electoral process in compliance with Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;
- 5) Awarding Plaintiffs the costs and disbursements associated with the filing and maintenance of this action together with their reasonable attorneys' fees, pursuant to 42 U.S.C. §§ 1973(e) and 1988; and
- 6) Granting Plaintiffs such other equitable and further relief as this Court deems just and proper.

Dated: July 2, 2013
New York, New York

WEIL, GOTSHAL & MANGES LLP

By: 
Seth Goodchild
Devin M. Cain
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

and

ASIAN AMERICAN LEGAL DEFENSE AND
EDUCATION FUND
Kenneth Kimerling
Glenn D. Magpantay
Jerry G. Vattamala
99 Hudson Street, 12th floor
New York, New York 10013-2815
(212) 966-5932

Attorneys for Plaintiffs

New York City Council Committee on Government Operations Hearing on Early Voting, April 30, 2019

To Chair Cabrera and the members of the Committee on Government Operations:

My name is Amanda Ritchie and I am a Co-founder of the Brooklyn Voters Alliance, an all-volunteer organization that works to protect and expand voting rights and voter access. We are a founding member of the Let NY Vote coalition, which was instrumental in achieving historic voting reform this year including online voter registration, pre-registration of 16 and 17 year-olds and Early Voting.

As I'm sure you are aware, Brooklyn has the highest number of registered voters in New York State and a history of voting problems including illegal voter purges, denial of translation services and significant voting equipment failures. Given this history and the substantial changes in New York's voting laws this year, Brooklyn voters have concerns about how the NYC Board of Elections will implement Early Voting in NYC and Brooklyn, in particular. As Brooklyn voters and voting rights advocates, we have questions and concerns about the NYC BOE's plan to implement Early Voting such as how they will select Early Voting poll sites, train poll workers, secure voting equipment, and inform voters about Early Voting.

EARLY VOTING POLL SITE LOCATIONS

New York's Early Voting (EV) law stipulates county Boards of Election designate 1 EV site for every 50,000 registered voters, up to a maximum of 7 EV poll sites per county, with additional sites designated at the discretion of the county Boards. If each NYC county were to implement 1 poll site per 50k voters, there would be 6 for Staten Island, 15 for the Bronx, 21 for Manhattan, 24 for Queens, and 30 for Brooklyn.¹ However, one site for 50,000 voters is higher than the average number of Early Voting polling locations -- 1 for every 35,000 people -- according to a survey of six states implementing Early Voting.² And according to a new analysis conducted by City Limits on NYC poll site locations used during the 2018 general election, compared to other cities NYC already has a relatively low number of polling places serving a higher number of voters -- an average of 4,173 voters per poll site in NYC compared to more than 1300 in Los Angeles and 725 in Chicago.³ Furthermore, this report shows that poll sites are scattered unevenly throughout NYC and that areas with fewer poll sites had lower turnout.

- **How many EV poll sites is the NYC BOE is planning for each borough and where they will be located?**
- **What hours will EV poll sites operate, and will they be uniform across NYC? Will poll sites be open during early morning and evening hours on weekdays, and at least 5 hrs on weekends during the EV period?**

¹ Staten Island has 293,348 registered active voters, the Bronx has 721,734, Manhattan has 1,016,771, Queens has 1,180,052, and Brooklyn has 1,460,396. NYS Board of Elections. February 2019. "NYS Voter Enrollment by County, Party Affiliation and Status. Voters Registered as of February 1, 2019."

https://www.elections.ny.gov/NYSBOE/enrollment/county/county_feb19.pdf

² Common Cause Massachusetts. 2015. "Early Voting: What Other States Can Teach Massachusetts."

<https://www.commoncause.org/massachusetts/resource/early-voting-what-other-states-can-teach-massachusetts/>

³ City Limits. April 24, 2019. "In New York, Where You Live Can Determine How Hard it is to Vote."

<https://citylimits.org/2019/04/25/nyc-polling-place-shortage-inequality/>

The report by Common Cause Massachusetts notes the importance of facilitating voting during early morning, evening hours and other peak times to accommodate voters who work and make voting more convenient. The report also discusses the value of using voting centers (non-election district poll sites that allow voters to choose where to vote, either city-wide or county-wide).

- **Will the NYC BOE consider voting centers for Early Voting?**

The City Limits article cites research and interviews with experts on the impact that siting polling locations can have on reducing the “costs of voting” and affecting voter turnout. The article notes that “(t)here is no published information on the exact process by which the BOE determines the location of polling places in the city.” Members of BVA have attended NYC BOE Commissioners meetings for the past 7 weeks and asked this (and other) questions at nearly every meeting, and all they tell us is they’re working on it.

- **What criteria and data sources will the NYC BOE use to make the determination regarding selection of EV poll site locations (e.g., proximity to public transportation, WiFi, ADA compliance, and security of equipment during off hours)?**
- **Will the Board consult with experts or voters about selecting EV poll sites?**

Early Voting will require the Board to develop new staffing plans.

- **How will the Board determine the number of poll workers to staff EV poll sites? Will the staffing plan take into account voting “peak times” such as morning and evening hours?**
- **How will poll worker hiring and training change under the implementation of Early Voting? If ePollbooks are to be used during EV, will poll workers get hands-on training on the use of ePollbooks (as well as any ballot-on-demand system) prior to the EV period? What is the plan to develop and deliver such training curriculum?**

PUBLIC INFORMATION ABOUT EARLY VOTING

Advertising Early Voting in NYC is a critical part of ensuring its success. Voters need to know when the EV period begins and ends, EV poll site locations and hours of operation of all polling places for early voting, accessibility of poll sites, and a clear notice to voters that if they cast a ballot during the EV period they will not be allowed to vote Election Day.

- **What is the plan to officially inform voters about their EV poll site locations and hours of operation? Will the NYC BOE mail informational brochures on EV to voters in the Fall prior to the EV period?**
- **Will the Board carry out public information campaigns about EV? What media outlets will be utilized (e.g., radio, TV, newspaper, social media)?**
- **Will public information campaigns target low-turnout areas and populations?**
- **In what languages will public information materials be produced?**

EARLY VOTING TECHNOLOGY

Administering Early Voting in NYC will require new technology to make the process of voting more efficient. Selecting and certifying new voting technology will require thorough review of technical and security aspects of different voting systems. For instance, the NYC BOE received a demonstration on touchscreen voting systems, but these systems have been found to have serious design flaws and inadequate security protections.^{4,5}

- **Once a voting system is certified by the NYS Board of Elections, does the NYC BOE have protocols for reviewing and selecting voting systems? Will the Board consult with voting technology experts prior to finalizing the selection process?**
- **Does the NYC BOE intend to use electronic poll books and ballot-on-demand machines at EV poll sites this November?**
- **How will the Board ensure that voting equipment and ballots are secure over the 9-day EV period at all poll sites? Is the Board developing security protocols/reviewing protocols in use in other states offering EV?**

Brooklyn voters are hopeful that the recent and historic changes to New York's voting laws will help more New Yorkers exercise their fundamental right to vote. Early Voting is a well-established voting practice that, when implemented properly, has been shown to increase voter access, improve the voting experience and make voting more convenient. The NYC Board of Elections has a real opportunity to make voting easier and more accessible for NYC voters. The Board must designate a sufficient number of accessible and convenient Early Voting polling locations to serve Brooklyn's nearly 1.5 million voters; ensure voters receive clear information about Early Voting dates, polling locations and hours of operation; and employ suitable, secure technology staffed by well-trained poll workers to realize the promise of this important voting reform. We urge the NYC Board of Elections to use the resources at its disposal and make sure Brooklyn and all NYC voters get better and more equitable access to voting that well-implemented Early Voting provides.

⁴ "Serious design flaw in ESS ExpressVote touchscreen: "permission to cheat". September 14, 2018. <https://freedom-to-tinker.com/2018/09/14/serious-design-flaw-in-ess-expressvote-touchscreen-permission-to-cheat/>

⁵ Verified Voting. ES&S ExpressVote. <https://www.verifiedvoting.org/resources/voting-equipment/ess/expressvote/>



**Testimony to Governmental Operations Committee
On Implementation of Early Voting**

April 30, 2019

Good morning Chairman Cabrera and members of the Governmental Operations Committee. My name is Rachel Bloom, and I am the Director of Public Policy and Programs at Citizens Union (CU). Citizens Union is an independent and nonpartisan democratic reform organization that brings New Yorkers together to strengthen our democracy and improve our city. Nonpartisan and independent, we seek to build a political system that is fair and open to all – one that values each voice and engages every voter. We thank you for the opportunity to speak today about the implementation of early voting in New York City.

Background

After years of advocacy, Citizens Union is delighted that early voting and electronic pollbooks have both been passed, and signed into law statewide. We are similarly heartened by the Mayor's financial commitment of \$75 million for robust early voting and \$21 million for electronic pollbooks. Early voting is the most substantive change to the way New York City votes in years, and proper and well thought out implementation is integral to its success.

Citizens Union recommend the following principles for implementing early voting in New York City:

1. **Expanded Polling Locations.** The legally allowed minimum number of poll sites as dictated by law, is simply not enough to facilitate robust early voting. For early voting to be a success, there must be more than seven early voting poll sites per borough. Citizens Union recommends that the Board of Elections place one early voting poll site per Assembly District. In addition, poll sites should be adequately staffed and prepared for surge times; such as lunch hours, evening hours, and on the weekends when more New Yorkers will turn out to vote early. Early voting poll sites must be centrally located and close to public transit.
2. **Pace Yourself.** Citizens Union recommends that the Board of Elections not introduce new voting machines during the same election that early voting begins. Citizens Union has strong reservations about procuring and training poll workers on how to use an entirely new system of voting machines, while at the same time training poll workers on how to run early voting and use electronic pollbooks for the first time. New machines would also require a substantial amount of public education for the voters at large about how to cast their ballot, in addition to public education around early voting.
3. **Early Voting Machines.** Citizens Union recommends a system of ballot on demand, in which individual ballots can be electronically produced at any poll site, as the most appropriate and efficient approach to producing ballots. This would also ensure that there is a paper record of all votes cast, a long standing position of Citizens Union.
4. **Comprehensive Public Education.** New Yorkers have been clamoring for early voting for years, but for it to be successful there must be comprehensive public education about how it will run. As soon as the details of early voting are finalized, a well-publicized public education campaign highlighting key information; such as poll hours, locations, and accessibility must be launched to ensure New Yorkers are aware that early voting is available and how it can be accessed.

5. **Poll Worker Recruitment and Training.** New York has long struggled to adequately staff voting sites with enough poll workers. Early voting and the need for poll workers over multiple, consecutive days will compound this problem. In addition, poll workers will need to be trained on how to use electronic pollbooks for the first time, as well as whatever additional technology is used to facilitate early voting. This signifies a significant shift in the responsibilities of poll workers, will require a substantial amount of new training of established poll workers, and will require that there be technologically savvy poll workers at each poll site. The Board of Elections must engage in poll worker outreach and recruitment immediately to ensure that they have the requisite staffing for early voting to run well.

Early voting is an exciting reform that will allow more New Yorkers to access the polls. Citizens Union looks forward to partnering with both the Board of Elections, as well as other city agencies and elected officials to ensure its success.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: JERRY VATTAMALA

Address: _____

I represent: AALDEF

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 4/30/19

(PLEASE PRINT)

Name: Jarvet Berg

Address: 330 E 38th St NY NY 10016

I represent: UNITE EARLY NY

Address: 205 East 42nd NY NY 10017

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 4/30

(PLEASE PRINT)

Name: Eric Friedman

Address: 100 Church Street

I represent: Campaign Finance Board

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 4/30/19

(PLEASE PRINT)

Name: Rachel Bloom

Address: _____

I represent: Citizens Union

Address: 299 Broadway

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 4/30/19

(PLEASE PRINT)

Name: Lulu Friedsat

Address: Flatbush

I represent: Smart Elections, Communications Div

Address: Flatbush BK

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 4/30/19

(PLEASE PRINT)

Name: Kate Doran

Address: _____

I represent: LWV New York State

Address: Grand St. Albany, NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 4/30/19

(PLEASE PRINT)

Name: Kevin Skoglund

Address: _____

I represent: Citizens for Better Elections

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: AYRINI FONSECA-SABUNE

Address: CITY HALL

I represent: DEMOCRACY NYC

Address: CITY HALL

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Bita Mostafi

Address: 253 Broadway, 14th fl.

I represent: Mayor's office of Transient Affairs

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1282 Res. No. _____

in favor in opposition

Date: 4/30/19

(PLEASE PRINT)

Name: SUSAN LEENER

Address: 80 Broad St, #2705, NY, NY

I represent: Common Cause/NY

Address: 80 Broad St.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 4/30/19

(PLEASE PRINT)

Name: Avi Rosman

Address: _____

I represent: thebigword

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 4/30/19

(PLEASE PRINT)

Name: Dawn Sandow

Address: 42 Broadway

I represent: Bd of Elections

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Amy Torres CPC Chinese American Planning Council

Address: 150 Elizabeth Street

I represent: CPC

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Michael Ryan

Address: 42 Bdwy

I represent: NYC BOE

Address: _____

Please complete this card and return to the Sergeant-at-Arms