



Testimony of
Neal Rosenstein
Government Reform Coordinator
of the
New York Public Interest Research Group
before the
Voter Assistance Advisory Committee
Annual Hearing on
Voter Engagement and the State of New York City Elections
December 12, 2011

Good evening. Thank you for the opportunity to testify at this important oversight hearing regarding the state of voter engagement and elections here in New York City. NYPIRG is a non-partisan group concerned with the electoral process. We register thousands of voters each year, run Election Day helplines, monitor the work of the New York City Board of Elections, helped draft and pass legislation like Local Law 29 and the Charter language for this Committee and organize for reforms to increase voter registration and participation at the local and state level.

We're especially pleased to be testifying at the first annual hearing of the Voter Assistance Advisory Committee's (VAAC) and look forward to the Committee and Campaign Finance Board (CFB) aggressively embracing its mission to help enfranchise New Yorkers. We look forward to VAAC:

- Playing an active and aggressive role in monitoring the performance of the Board of Elections (the Board) and conditions at the polls;
- Recommending and advocating for improvements to the city and state's policies and efforts to engage voters;
- Proposing and instituting new technological initiatives that lead to meaningful improvements in city election related procedures; and
- Educating and involving the public in the electoral process.

We also wish to commend the energy and commitment the chair, committee and CFB have shown towards VAAC, and welcome your three new appointees.

2011 and the past years' more contested elections have been a mixed bag for the voters of New York City and the Board of Elections. Our testimony today will focus on this mix of what we've been calling, The Good, The Bad and The Ugly.

The Good.

VAAC. First, I think it important to recognize the debut of this committee and your work through the CFB to begin to address the many challenges and obstacles to greater voter engagement in New York City. We're pleased that after some ill advised opposition, that VAAC and the CFB have embraced the tenets of the state's Open Meetings Law. As you move forward we urge that the same principles of transparency and openness be applied to all your work, including that of any sub-committees. We'd like to also commend VAAC's recent on-air forum with WNYC focusing on the problems of depressed voter turnout and exploring workable solutions for the future.

For many voters, the City Board of Elections is deserving of scorn and their wrath. We agree that the Board hit low-points during and after the 2008, 2009 and 2010 elections. However, we'd like to start by acknowledging what we believe to be progress and highpoints for the voters of New York originating at the Board.

Sample Ballots. We are particularly pleased that the Board, working along with the City, the Council and advocates, has debuted a simple sample ballot tool on its website. This common sense service to voters was a long time coming, and one that NYPIRG and many others have been advocating for years. The lack of an on-line sample ballot symbolized the worst of the Board - refusing to adopt a meaningful reform that was directly under its control. The Board deserves real credit for changing its position. We believe the sample ballot will become an indispensable voter education tool for the voters of New York, just like the CFB's popular voter guide, and lead to better informed voters and smoother running poll sites.

Postage Paid Forms and Affidavits. This year the Board also wisely continued a policy to provide postage-paid registration forms to New Yorkers. We believe that this decision has a real direct impact on potential registrants and we're thankful for this commitment. The Board also deserves credit for reversing its decision to invalidate perfectly good affidavit ballots in this year's one party primary contests that had been initially rejected for non-supported technical criticisms.

Better Communication. We'd also like to note our appreciation for what we view as an ongoing effort by the Board to improve its communication and relationship with the voters and voting rights community here in New York in the past two years.

Council Engagement. We're heartened at the Council's ongoing engagement on civic participation issues. From more meaningful oversight hearings that explore issues such as late poll site openings and the slow reporting of results, to involvement with the debut of sample ballots, to improving poll conditions, there has been sustained interest and pressure from the Council for better elections. Of course, more can always be done, but the Council is a welcome partner in efforts to improve the election experience for New Yorkers.

The Bad

Lack of Legislative Reform. Another year and another lack of action from Albany to pass meaningful reforms that would enfranchise voters of the city and state. We urge VAAC to embrace its mission by weighing in on how to modernize our election laws. It's time for Same Day Registration, a reform proven to significantly increase participation. It's time for Automatic Registration, where voter rolls automatically include and/or update information from citizens on state databases. This isn't only a state problem. We believe updating registration records through contacts by citizens with city agencies could also be implemented without action from the state, and perhaps initial registrations as well. It's also high time for city and state Motor Voter and Local Law 29 agencies to integrate voter registration applications into their computerized registration protocols and have registration information directly forwarded to the Board of Elections. Why should owners of drivers' licenses be the only ones to have such an advantage?

There's a host of legislative reforms on the state and city level that would lead to greater voter participation. There are also proposals that would actually decrease turnout being seriously weighed in Albany, such as moving our primary elections to the dead of August instead of June to comply with the federal MOVE Act. We suggest that VAAC establish an ongoing protocol to investigate election legislation on the city and state level and to endorse and press for worthwhile proposals. We suggest VAAC start this process with a regular legislative report from your Coordinator or CFB staff.

Here in the city, new technology should mean an improvement to old problems. It shouldn't mean unnecessary procedures on election night that can both lead to the same long lines, and more mistakes and delays in reporting preliminary results.

Meaningless Lines. One of the main promises of Optical Scan voting systems was the promise that it would be able to decrease lines on Election Day. After all, multiple voters can review and fill out their ballots at the same time, rather than waiting in line for a single machine. While this new technology has the promise to keep the line moving, the Board has decided to maintain old procedures that require each voter to wait to have that small voter receipt filled out by hand for each voter. With lever machines, that voter card was a guarantee that no-one would slip on line for a voting machine and illegally vote. But now that Election Inspectors hand each voter their actual ballot, that need no longer exists. But we still ask poll workers to undertake the procedure. Arguments that voters will somehow enter with forged ballots that will be able to be accepted by the scanners just don't hold up, especially given the experience around the state and country that such voter cards are not necessary.

Reporting Election Results. The New York City Board deserves continuing criticism for maintaining a Rube Goldberg system of printing and cutting and calculating and entering and reporting results. Our understanding is that the city is alone in the state for complicating reporting to such a degree, and has resisted repeated State Board of Elections concerns about election night procedures.

To its credit, the Board initiated a pilot program this past election to test out more efficient and common sense reporting procedures. The Board itself should be holding public hearings with representatives of the state, other counties and jurisdictions to come up with procedures that reduce the time to produce, and the chance for mistakes, in reporting preliminary results as well as drafting any necessary legislation to allow needed improvements. We renew our call for such public hearings and new procedures to be publicly vetted and put in place before next year's Presidential Election.

NYPIRG is not a fan of speed over accuracy however, and have concerns over merely transporting flash drives to a terminal for downloading results – especially without improved audit requirements at the state level.

Meaningful Audits. Also on the state level, new and improved auditing provisions for optical scan ballots are needed to maintain public confidence in election results and ensure that tampering or software glitches and malfunctions do not jeopardize the integrity of election tallies. We've heard from statisticians who seriously question the state's current audit requirements as insufficient. We urge VAAC to investigate the different approaches to more meaningful and statistically accurate audits and to support relevant legislation this coming session.

NYPIRG supported the introduction of optical scan voting systems rather than ATM computerized machines. Across the country, they've been shown to be accessible, verifiable and to improve the voting experience. Unfortunately, implementation of this new technology has been lacking at times here in New York. We remain convinced that this new technology can and should result in a secure and improved Election Day experience for the voter.

Mayoral Inaction on Poll Workers. Many of the problems voters face on Election Day arise as a result of insufficiently trained poll workers. Comprehensive change in the Board's bi-partisan structure can only be made in Albany. But with such a shortage of poll workers provided by the party organizations here in the City, there's a good deal we could and should be doing to improve conditions at the polls (district leaders typically 'provide' about half of the ~30,000 needed poll workers in any particular election year.) Unfortunately, for years, the Mayor has opposed any serious efforts to enlist eligible city employees to work at the polls. Providing Comp Time to city employees is a common sense approach to the ongoing problem of providing competent and technology savvy poll workers. Working with our colleagues at Citizen Union, the Council has finally begun serious consideration of a Comp Time proposal for the General Election. Intro 721 would be a good first step, but Mayor Bloomberg has the opportunity to make this a more meaningful proposal that will improve conditions at the polls for city voters. We hope his administration becomes supportive of the bill and works to strengthen it. If he fails to do so, we hope that the media and voters will remember it was his intransigence that contributed to problems on Election Day.

More Transparency at the BOE. We're hopeful that the Board will reverse its ill-advised position and start web-casting and archiving its meetings on-line. We believe the minimal cost is small to pay for a more open and transparent government and commend VAAC for web casting its proceedings. To help push the Board along, we believe the Council should eliminate any red-herring excuse that this is a cost issue by creating a modest \$5,000 appropriation in next year's budget with a Term and Condition specifying its use for web-casting. An open and transparent government is critical for any democracy.

Accountability and Leadership From the BOE and Mayor. The Board's last Executive Director, George Gonzalez was fired October 26, 2010 - more than one year ago. With a Presidential Election on the way, now is no time for such a lack of official leadership. While we acknowledge that the Board has made some progress this past year, this model is neither sustainable or accountable. While the leaders of the city's Democratic and Republican parties are obviously content with the current situation, the rest of us should not be. The Board should conduct a national search for a qualified leader with detailed and published job qualifications. The Mayor, rather than simply criticizing the Board, should publicly offer the modest city funds needed for such a search and use his bully pulpit and influence with the County Leaders to make it happen.

The Ugly

Ballot and Scanner Design. Let's face it. New York State's optical scan ballots are ugly. They're meaninglessly complex and lack good design. This isn't an issue for the City Board alone, their ability to modify the ballot is limited, and primary responsibility lies with the State Legislature. Further compounding the printed problems voters face with our paper ballots are ill-conceived scanner interfaces that needlessly disenfranchise voters.

Ballot Design. Thousands upon thousands of voters are disenfranchised because of poor ballot design. If a voter doesn't understand his or her ballot, can't distinguish the races or candidates, doesn't know to turn the ballot over for propositions & referenda or can't access easy simple instructions, civic participation suffers.

The number one complaint that NYIRG has heard since the introduction of optical scan is the small font size and poor design of the ballot. New York's ballot design is inexcusable, especially when simple remedies are available. We've seen a sample mock-up designed by the Brennan Center of what an improved ballot could look like and it is a tremendous improvement. We also appreciate the limited steps the city Board has taken on its end. We hope that VAAC will review any usability studies made by that State Board of Elections and officially urge the State Legislature to pass meaningful and immediate ballot redesign. We believe a good model was last session's A.7492 introduced by Brian Kavanaugh. Ultimately, a more comprehensive overhaul that eliminates the state's outdated full face ballot requirement is also called for, but given

opposition in the Legislature, we urge moving forward with other meaningful modifications in the interim.

Overvotes. For more than 18 months the State Board of Elections dismissed concerns about confusing messages shown to voters on the scanner's display who mistakenly overvoted for a particular contest. They seemed more concerned with inconveniencing vendors than enfranchising voters. The result was tens of thousands of lost votes according to The Brennan Center's recent study *Design Deficiencies and Lost Votes*. Fortunately, changes are in the works for the 2012 elections regarding overvote notification to voters. NYPIRG endorses the reports recommendations to make sure instances of overvotes can be properly identified and will be investigated in the future.

Undervotes. NYPIRG believes one of the State Board of Elections worst decisions regarding Optical Scan was their decision to eliminate undervote notification for voters. Undervotes happen frequently, when voters consciously or mistakenly fail to mark their ballots for certain races. Optical scan systems marketed in New York promoted the fact that they would alert voters if they had missed voting on a particular race. But the State Board pulled a 'bait and switch.' After the contracts were signed and regulations approved, they moved to block and then eliminated provisions that would have required voters to be notified they missed a race. They even refused to allow local boards like New York City to activate this feature on ballot scanners.

Lower rates of undervotes were the primary reason many advocates like NYPIRG preferred optical scan over ATM style machines. If we can institute an efficient way to notify voters about undervotes through notifications on scanners that further reduce these rates, then we should be exploring this option. If a voter failed to cast a vote for President or a charter proposal on the reverse of a poorly designed ballot, technology should alert them to that fact. NYPIRG believes that unintentional undervotes account for more lost votes than overvotes and that this decision will mean hundreds of thousands of cases where citizens' voices and votes are lost. The Board's decision was a bad one and we hope entities like VAAC will examine its impact on elections and propose solutions for the future. A good start would be to compare undervote rates in the city on ballots cast on ballot marking devices that alert voters to undervotes to those on hand filled ballots. We believe that would clearly show the extent of problem. We believe this would make an excellent research study utilizing the technical expertise and strengths of VAAC and the CFB and further establish VAAC's credentials.

Thank you once again for the opportunity to testify this evening.