



New York City Board of Elections

Voting-Related Problems September 2010 Primary Election

Report 2010-N-6



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

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Division of State Government Accountability

October 19, 2010

Mr. George Gonzalez
Executive Director
New York City Board of Elections
42 Broadway, 7th Floor
New York, NY 10004

Dear Mr. Gonzalez:

A top priority of the Office of the State Comptroller is to promote efficient operation of State agencies, public authorities, and local government agencies. In view of the numerous problems reported at many New York City polling places during the recent primary election, the Comptroller examined the types of problems voters encountered and made recommendations to address them. The goal of this examination is to help City officials identify and correct these problems as quickly as possible and to minimize the occurrence of these and other problems in the November 2010 election.

Following is a report of our examination of *Voting-Related Problems September 2010 Primary Election* in New York City. This examination was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article III of the General Municipal Law.

This examination's results and recommendations are resources for New York City Board of Elections officials to use in improving their readiness for the November 2010 election to ensure all voters can exercise their right to vote.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

Introduction

Background

Counties throughout New York State must be prepared to accommodate almost 11.7 million registered voters on Election Day in November 2010. The State Board of Elections is responsible for overseeing the 58 Boards of Elections (Boards). The Boards were established and mandated by Section 3-200 of the New York State Election Law (Election Law). Each Board consists of two Commissioners representing each of the county's two major political parties.

The New York City Board of Elections (City Board) is an administrative body of ten Commissioners, two from each of New York City's five counties/boroughs (the Bronx, Kings, New York, Queens and Richmond) representing both major political parties. Commissioners are approved by the New York City Council. The Commissioners appoint a bipartisan staff to oversee the daily activities of its main and five borough offices. The City Board supports and oversees election operations for primary, general and special elections. The City Board is responsible for all aspects of the electoral process, from voter registration to the implementation of and compliance with the Election Law. City Board officials are dedicated to ensuring that all eligible residents have the opportunity to vote.

The Boards' responsibilities include, but are not limited to, the following:

- Appointing a sufficient number of election inspectors, poll clerks, election coordinators, voting machine technicians and custodians to adequately staff elections
- Providing training to election workers
- Testing and repairing voting machines
- Ensuring accessibility of polling places for disabled voters
- Monitoring and addressing voter complaints

The City Board reported 4.47 million registered voters in New York City's 5 boroughs as of April 1, 2010, and reported scheduling 34,800 poll workers to work in its 6,109 election districts at 1,358 polling sites during the September 2010 primary election.

In advance of the September 2010 primary election, optical scanning voting machines manufactured by Election Systems and Software were purchased for voting districts throughout the City. These machines

(model DS-200) replaced the traditional lever-operated voting machines that both voters and poll workers were accustomed to using.

The new voting machines require a scannable ballot form that is different from the traditional ballot forms that voters have seen in voting booths for many years. The ballot forms used in the September 2010 primary election are generally laid out in a grid design. The forms are in English and Spanish as well as other languages, depending upon the election district. The office to be filled is at the top of each column; the candidates' names appear in the rows underneath the title of the office, with an oval slightly down and to the right of each candidate's name. The last row provides space for a write-in candidate. A poll worker gives the voter a ballot form and a folder (privacy sleeve), and directs the voter to a privacy booth with a table where the voter uses a pen to fill in the oval near the name of the preferred candidate for each office. Privacy booths are intended to provide voters with assurance of confidentiality as they mark their ballot forms.

The voter is then directed by a poll worker to the scanner, where he or she inserts the ballot form, face-up or face-down. The paper ballot forms are secured inside each scanner.

Election inspectors administer the voter sign-in process; supervise the operation of polling places, including the proper functioning of voting machines; certify the vote count for each voting machine when the polls close; and have custody of the ballots until they are delivered to the individual who is entitled by law to receive them. Poll clerks and election coordinators are appointed, as needed, to work on Election Day and assist election inspectors in performing their duties. Voting machine technicians inspect voting machines to ensure they are in good working order, and can reject any machine that is not in suitable condition. City Board phone bank operators handle telephoned voter and poll worker complaints in a variety of languages, and enter all complaints in a computerized database.

Objective

The objective of our examination was to review voting operations at New York City polling sites during the September 2010 primary election to identify problems that could or did interfere with voters' ability to vote. Our examination addressed the following related question:

- What were the type and extent of the problems voters encountered in the September 2010 primary election?

Scope and Methodology

We examined voting operations during the September 2010 primary election in the five New York City boroughs.¹ To provide our results to the City Board in time for corrective action prior to the general election, we reviewed the voting problems, as reported by the City Board, borough offices, and the media, attended public hearings focused on the problems encountered in the September 2010 primary election, and examined selected records maintained by the City Board and borough offices. More information about the methodology used in performing this examination is included in Appendix A.

¹ The State Comptroller's Office also performed an examination of voting operations during the September 2010 primary election in voting districts outside New York City. The report was issued on October 7, 2010.

Voting-Related Problems September 2010 Primary Election

Election Law assigns Boards the responsibility of ensuring that citizens can exercise their right to vote in elections. To carry out this responsibility, Boards must make sure that voters' privacy is protected at all times during the voting process, that ballots are easy to read and understand, that voting machines or reliable alternative methods are available to record votes cast, and that polling stations are open at the scheduled time and staffed by fully-trained poll workers.

We found that City Board, borough officials, the media, and the public, reported that voters encountered numerous problems in voting districts throughout the City during the primary election. For example, some voters complained of delays due to late opening of poll sites, lack of confidentiality during the voting or scanning process, malfunctioning voting machines, and difficulty reading ballots because the font size used was too small.

Voting-related complaints are directed to centralized staff at City Board where the complaints are recorded into a database. Officials told us that their general process is to review the complaints in the database and to refer them to the individual boroughs as appropriate. We met with City Board officials on September 24, 2010 to obtain information regarding the nature and extent of complaints received for the September 2010 primary election as well as to identify the City Board's assessment of the risks posed by the problem and its time frames for corrective actions. However, we found that City Board was still in the process of classifying the complaints by type so that relative risks could be assessed and action plans could be formulated. Officials stated that they expected to complete this process on or about October 8, 2010. (Some borough officials that we contacted did provide us with a log of complaints for their borough.)

City Board officials further explained that certain problems experienced were resolved on the day of the primary election and certain other problems were the result of unique issues including equipment delivery prior to primary election day. Officials added that lack of sufficient funding has been a long-standing problem even though they have repeatedly identified the need for and have requested such funding.

Since the City Board's summary, risk assessment and corrective action plans for primary day voting problems were not completed at the time of our examination, we undertook a number of steps to identify the problems experienced on primary election day. For example, we interviewed City

Board officials and election officials at each of the five boroughs to obtain an understanding of the nature and extent of voting problems. We also attended various hearings covering the primary election, reviewed media reports of voter complaints and examined selected records pertaining to the primary election that were maintained by City Board and borough offices. In addition we examined whether poll workers received training to prepare them for the primary election. As a result, we concluded that there were significant problems with primary day voting including late poll site openings, privacy concerns, machine malfunctions, problems with the ballot and insufficient poll worker training.

Given the significant changes that have occurred in the election process - in the form of new ballots and new machines that neither voters nor all poll workers are familiar with – and the urgent need to ensure that voters can cast their ballots properly on Election Day in November 2010, the City Board should take immediate steps to enhance coordination so that polling sites open on time, to instruct poll workers to safeguard voter privacy throughout the voting process, to ensure that voting machines are in good working order with additional back up machines available, to make clear that a ballot marking device is available to those who require one and to provide additional training to poll workers. In addition, we recommend that a uniform citywide passing score for poll worker examinations should be established and that such examinations should be correctly graded.

Late Poll Site Openings

Voters reported that poll sites were not open on time. Delays of up to two and a half hours were reported by the media. For example:

- According to Manhattan borough officials, approximately 60 of the borough's 349 polling sites (17 percent) opened late.
- Records from Queens borough officials reflect that 8 of the borough's 315 polling sites (2.5 percent) were opened late.
- At a New York City Council Committee meeting held on October 4, 2010, the New York City Board of Elections Executive Director stated that phone call records indicated the possibility that at least 80 polling sites opened late.

We discussed the late poll site openings with City Board officials. Officials offered a number of reasons for the late opening. For example:

- Many polling sites are in New York City public schools, which were closed for a religious holiday on the Thursday and Friday prior to the primary election. Officials stated that they had made arrangements

with the New York City Department of Education to have school custodians available on those days to receive the voting machines. However some custodians were not present when the machines were delivered. Searching for the custodians and bringing the undeliverable machines back to the borough voting machine warehouse caused havoc with the delivery schedule. This, in turn, contributed to untimely poll site openings.

- Technicians had not completed the testing of some machines at City Board warehouses, causing delivery problems.
- In New York City, police are responsible for delivering the keys for the voting machines. Some police were not able to deliver the keys in a sufficiently timely manner.

Enhanced coordination between the City Board and the New York City Department of Education is needed to ensure that custodians are available to open schools and receive the voting machines. Election Law requires that poll workers be at the site, and have the keys for the voting machines, at least one-half-hour prior to the site opening. Given the change in voting equipment, the City Board should determine whether the one-half-hour preparation time is sufficient, or whether they should advocate for legislation providing for an earlier time for poll workers to be on-site and for the voting machine keys to be delivered. City Board officials indicated that for the primary election they had requested New York City Police Department and school staff to be available at poll sites by 5:00 a.m. (one hour prior to poll site opening). In addition, for the upcoming General Election, they have requested the New York City Police Department have police officers report to poll sites with keys no later than 5:00 a.m.

To better ensure that, in the future, poll sites open on time to the public, City Board should consider requesting legislation that would require poll workers to be on site earlier and would require earlier delivery of voting machine keys.

Privacy Concerns

Voters had concerns about a lack of privacy during the voting process. Generally, complaints about lack of privacy included poll workers being too close to voters while they were voting, or offering unnecessary help. Additionally, some voters raised concerns about ballots being exposed to the view of poll workers or other voters when the ballots were inserted into the voting machine. Voters also complained about the absence of privacy sleeves. For example:

- Brooklyn records indicate that voters complained that privacy booths were not available for use, poll workers insisted on scanning the completed ballots, and privacy sleeves were not provided.
- Borough officials in Queens told us that voters complained that privacy booths were not placed in a manner that would prevent others from viewing their voting selections.
- Staten Island officials told us that voters complained of a lack of privacy because poll workers stood too close to the scanners.
- At a City Board voter outreach session in Queens, a voter complained that she had not been given a privacy sleeve on primary day. She also stated that a poll worker had taken her completed ballot, held it up openly in public view, and then inserted it into the scanner.
- At a City Council Committee Meeting held on October 4, 2010, representatives from advocacy groups stated that privacy sleeves did not provide sufficient privacy.

City Board officials told us that they are very concerned with voter privacy and have taken steps to address voter concerns for the upcoming General Election. These steps include providing additional privacy sleeves in the booth and at sign-in tables.

The confidentiality of a voter's choice is fundamental to the election process and is provided for in Election Law. Boards must be able to rely on poll workers to help voters navigate the new voting process without diminishing their right to privacy. Instructing poll workers in how to provide assistance, as needed, without "crowding" voters, and providing privacy sleeves will improve the privacy afforded voters. Voters' assurance of confidentiality when they mark their ballots and insert their ballots into the voting machines is essential to preserving the integrity of election results.

Machine Malfunctions

Voters and City Board officials reported that over 700 polling sites experienced problems with voting machines malfunctions. The problems included the need to repair broken machines or swap them out with backup machines and machines that became jammed with ballots. For example:

- Borough records in Brooklyn reported 466 incidents of scanner problems.
- In Manhattan borough records reported 328 incidents of scanner problems.
- Queens borough records reported 219 incidents of scanner problems.

- Borough records in the Bronx reported 213 incidents of scanner problems.
- Staten Island borough records reported 78 incidents of scanner problems.

We discussed machine malfunctions with City Board officials who explained that some of the problems were remedied during the primary election. For example, they explained that they observed that the location of the voting machine power cord caused the ballots stored in some machines to jam. Officials told us that they have provided guidance to poll workers to avoid this problem.

However, we believe that many of the machine malfunctions occurring during the primary election were due to the inexperience and lack of training of the poll workers. Board officials need to ensure that all poll workers are adequately trained to use the new voting machines.

Borough officials also stated that the voting machine testing process for the primary election was extremely time-consuming because technicians needed to use a test-deck for each type of ballot. They added that some voting machines took hours to process the test-decks. City Board officials explained that the State Board of Elections approved a modification of the testing on City Board machines. Had this testing modification not been approved, many voting machines would not have been ready for use during the primary election. This reduced amount of testing needed to be done while still providing verification of the integrity of the voting machines. City Board officials reported that they also have approval to modify testing for the November General Election.

Ballot Issues

Voters commented that they had problems with the ballots. Some voters reported that the ballot form was difficult to read. For example:

- At a City Council Committee Meeting held on October 4, 2010, speakers from several public advocacy groups stated that the font size used on the ballots was too small.
- Records provided by the Brooklyn borough office indicate that a voter complained that the font size was too small and no magnifying glass was provided.

We examined sample ballots and found that the size of the font is quite small. City Board officials told us that magnifying devices were available to help voters better see the ballots and explained that voters could vote using a Ballot Marking Device (BMD), which is available to assist in handicapped-accessible voting. A BMD allows the voter to choose a

candidate, and then print the ballot with the voter's choice marked. The City Board needs to make it clear to poll workers and voters that a BMD is available for any voter who requests it.

Unless voters can clearly distinguish the information contained on the ballot form, there is a risk that they will not be able to vote for the candidate of their choice.

**Poll Workers Had
Not Been Properly
Trained**

It is important that poll workers have the necessary skills to perform their responsibilities in an efficient manner that assures the voting public that their votes will be secret and that they will be counted. Election Law section 3-412 requires mandatory training for most poll workers. Training was particularly important for workers participating in the primary election because the City Board had instituted a new voting process.

We found that not all poll workers scheduled to work during the primary election were trained to handle their responsibilities. It is likely that insufficient training was a major factor in many of the problems voters experienced during the primary election.

To determine whether poll workers received training, we examined the training records for a sample of 25 poll workers (inspectors, polling site coordinators, and assembly district monitors) from each of the 5 boroughs, who were scheduled to work in the primary election.

- Of the 125 sampled workers scheduled to work, we found 54 of them had not been trained or had not completed training, or failed the training test.
- Borough officials told us that the passing score for the written test varied in the five boroughs. In the Bronx, Manhattan and Queens poll workers (inspectors and coordinators) needed to correctly answer 15 of 25 questions to pass. In Staten Island, all poll workers needed to answer 20 questions correctly. While in Brooklyn, inspectors needed to answer 16 questions correctly and coordinators needed to answer 20 questions correctly to pass. However, City Board officials told us there is one passing score - 16 out of 25 questions must be answered correctly. The City Board should formally establish this requirement.
- The answer key used for the Manhattan tests was incorrect – wrong answers were listed as correct.

Election officials stated that all poll site coordinators and assembly district monitors will be required to attend additional training before

the upcoming November election. Also, the City Board has notified poll workers who have not been trained, or who have not passed the examination, that they will not be scheduled to work during the General Election. In addition, we observed in October, that voting machine technicians were receiving additional training from the optical scanning machine vendor.

Using workers who are not trained is not efficient or effective and undermines faith in the voting process. Inadequate poll worker training may have generated both the privacy issues and the machine malfunctions experienced during the primary election. Given the challenges that poll workers must meet on Election Day, when millions of voters will be casting ballots on new voting machines, it is critically important that the workers receive adequate training to prevent delays in opening, operating, and closing voting machines. Adequate training and refresher courses, as necessary, could help minimize delays and provide for a more-efficient voting process.

- Recommendations**
1. Enhance coordination with the New York City Department of Education to ensure that custodians are available to open schools to receive voting machines.
 2. Consider requesting legislation that, in the future, would require poll workers to be on-site earlier and would require earlier delivery of voting machine keys.
 3. Instruct poll workers how they can help voters and still respect voters' privacy. Ensure that the placement of privacy booths prevents others from viewing voting selections. Ensure a privacy sleeve is available for every voter.
 4. Ensure that voting machine scanners are in good working order, backup machines are available as replacements and that machines are properly tested.
 5. The City Board should make it clear to poll workers and voters that a Ballot Marking Device is available for any voter who requests it.
 6. Ensure that all scheduled workers are properly trained.
 7. Formally establish a uniform citywide passing score for poll worker examinations, and ensure that examinations are graded correctly.

APPENDIX A

EXAMINATION METHODOLOGY AND STANDARDS

To accomplish our examination objective and to obtain relevant evidence, our procedures included the following:

- On September 24, 2010, we interviewed officials from the New York City Board of Elections. From September 29, 2010 to October 6, 2010, we also interviewed officials from the five borough offices. We inquired about problems voters encountered during the September 2010 primary elections. We asked City Board and borough officials if they had an action plan to address the primary election problems.
- We compiled a list of voting problems as reported by various media outlets for the September 2010 primary elections. We also attended the September 21, 2010, September 28, 2010 and October 5, 2010 Meetings of the Commissioners of Elections in the City of New York, the New York State Senate Board of Election Hearing on September 29, 2010 and the meeting of the New York City Council Committee on Government Operations held October 4, 2010.
- The City Board provided us with list of election workers scheduled to work during the primary election for the Bronx, Brooklyn, Manhattan, Queens and Staten Island. We selected a sample of 25 election workers in each of the five boroughs and reviewed their training records. We also observed election worker training sessions as well as City Board outreach sessions held to instruct voters about the new voting process.
- We reviewed sample ballots in each of the five boroughs and asked borough officials about the style and size of the font they used on their ballots.

APPENDIX B

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Office of the State Comptroller
Public Information Office
110 State Street, 15th Floor
Albany, New York 12236
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<http://www.osc.state.ny.us>