CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

        of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

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                    June 11, 2012
                    Start: 1:11 pm
                    Recess: 2:05 pm

HELD AT: 16th Floor
                    Committee Room
                    City Hall

B E F O R E:

                    GALE A. BREWER
                    Chairperson

        COMMITTEE MEMBERS:

                    Domenic M. Recchia, Jr.
                    Peter F. Vallone, Jr.

A P P E A R A N C E S

Valerie Vasquez
Board of Elections

Art Chang
Chair
Voter Assistance Advisory Committee

Amy Loprest
Executive Director
New York City Campaign Finance Board

Patrick McCullen
On behalf of Assembly Member Brian Kavanagh

Alex Camarda
Director for Policy and Advocacy
Citizens Union of the City of New York

Adrienne Kivelson
League of Women Voters

Leonard Cohen
Secretary
New York Democratic Lawyers Council

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2   CHAIRPERSON BREWER: Good afternoon.

3   My name is Gale Brewer and I am City

4   Council Member for the West Side of Manhattan and

5   Chair Governmental Operations and I appreciate the

6   great work of Seth Grossman who is Counsel to the

7   Committee and Tym Matusov who is the Policy

8   Analyst to the Committee and Will Colegrove from

9   our office who is the Legislative Director. And I

10   think we know that today we are holding a hearing

11   on Resolution 1343 which calls upon the State

12   Legislature to pass legislation to modernize and

13   streamline the procedures for the election night

14   canvass and the reporting of unofficial election

15   results. Anybody who has been part of this

16   process knows why we're having this resolution.

17   Assembly Member, Brian Kavanagh, who

18   is Chair - - Subcommittee on this topic in Albany,

19   has introduced a bill in the State Assembly that

20   would do just that, it would figure out how to

21   improve the reporting of unofficial election

22   results in the State of New York. This bill,

23   Assembly Member Kavanagh's bill, A10175, would

24   change the way in which the election night canvass

25   is conducted and the way in which unofficial

results are tabulated bringing our City's election

night procedures into the 21st century. The

process that is currently employed by the New York

City Board of Elections is time consuming, error

prone and outdated as anybody who has ever used it

under the new machines notes. Right now poll

workers are instructed to print out election

results tapes for each ballot scanner, cut those

tapes with a scissors up by election district and

manually add up and record the results for each

office. If the poll workers are lucky, they're

provided a calculator to do this but we have heard

that this is not always the case. These results

must then be manually inputted into a database for

distribution to the press. This process takes a

great deal of time and has led to significant

delays in posting unofficial election results. It

also increases the likelihood that the results

could be inaccurate since it requires poll workers

to manually add up the results and then for those

results to be manually transcribed into a

database. Having done this myself or watched it,

I know all of the above is true.

                   With the new electronic voting

2   machines, none of this should be necessary. It's

3   not necessary. The ballot scanners can

4   automatically tabulate the results which can then

5   be uploaded to a portable flash drive and

6   electronically downloaded into the database. It's

7   clear that this would save a huge amount of time

8   and reduce a lot of human error. Neighboring

9   counties, notably Nassau County, have already

10 instituted this process successfully and the New

11 York City Board of Elections recently ran a test

12 pilot during the last election in Queens which

13 showed the New York City could do the same. This

14 Committee has repeatedly, repeatedly call on the

15 Board of Elections to end its practice of cutting

16 and pasting--that's a very nice way of calling it-

17 -and to adapt the technology afforded by the new

18 electronic voting machines. I am grateful that

19 Assembly Member Kavanagh has taken up this cause

20 and is aggressively pursuing this legislation. I

21 look forward to hearing from today's witnesses

22 regarding whether the City Council should weigh in

23 on this important matter and lend its voice to

24 support the Assembly Member's efforts.

25   Unfortunately today we will not be

hearing from the people most impacted by this

proposed legislation, mainly the Board of

Elections. I am disappointed that the Board of

Elections declined the Committee's invitation to

testify today. Nevertheless, I have been informed

that the Board of Elections Executive Management

has been working closely with Assembly Member

Kavanagh--this is very important--in order to

craft the best possible legislation for fixing

this problem and that the Board is committed to

improving its processes for conducting the

election night canvass and reporting unofficial

election results. As we are fast approaching the

end of the legislative session in Albany, I expect

the Board of Elections to weigh in on this

important discussion with an official position in

the very, very near future. And I'm delighted, I

understand that Valerie Vasquez from the Board of

Elections, is in the audience today. I'm sure

she'll bring back the information as it is

discussed today from this Committee hearing.

Thank you for being here and I'd

like to hear from Art Chang, who will be our first

witness. He is the Chair of the Voter Assistance

2   Advisory Committee. Mr. Chang, thank you very

3   much.

4   [Pause]

5   CHAIRPERSON BREWER: I'm also

6   delighted that Council Member Peter Vallone, a

7   member of this Committee is here today.

8   [Pause]

9   MR. CHANG: Thank you. Good

10   afternoon, Chair Brewer and members of the

11   Committee. I am Art Chang, Chair of the Campaign

12   Finance Board's Voter Assistance Advisory

13   Committee and I am very pleased to be joined today

14   by Amy Loprest, who is the Executive Director of

15   the New York City Campaign Finance Board. I'm

16   pleased to be here today to testify in support of

17   Resolution 1343 which will put forth the voice of

18   the New York City Council to support the common

19   sense use of technology to improve the way that we

20   conduct our elections. I'm happy to lend our

21   voice in support as well. New York was one of the

22   very last states to respond to the Federal mandate

23   requiring all jurisdictions to adopt electronic

24   voting. Our state and city expend considerable

25   resources to purchase and deploy the electronic

ballot scanners New Yorkers use on Election Day.

Despite a massive investment in technology to

improve the way we cast our votes, we somehow

neglected to improve the way we count our votes.

There is no logical reason we should be using

scissors, paper and pencil to compile and transmit

a tally of votes that are collected by electronic

devices. State Election Law should not prohibit

us from making the highest and best use of the

technology we already possess to count election

results with greater accuracy and efficiency. The

law needs to change. We simply don't have the

luxury of delaying. In November we will be

counting votes with the entire nation watching.

My VAAC colleagues and I spend much of our time

together talking about ways to encourage more New

Yorkers to participate in the democratic process.

Providing timely, accurate results in city

elections is a small but important way to give New

Yorkers confidence that the system works. As we

take this one small step, we should be considering

others. Technology has enabled a broad and public

conversation about every issue in every type of

political campaign. But to formally engage the

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2 democratic process, we still require citizens to

3 enter a process that lacks the accessibility and

4 responsiveness they are accustomed to in their

5 everyday lives. We will be holding a hearing

6 tonight to discuss our annual voter assistance

7 report which lays out an agenda to expand the use

8 of technology in the administration of our

9 elections. We hope the City Council will join us

10 to push this state to bring our democratic system

11 into the 21st century. We should push to amend

12 the law so that New Yorkers can register to vote

13 on line. Studies show that states with paperless

14 online voting registration have expanded their

15 population of registered voters, especially among

16 young adults. It's essential to engage young

17 people as soon as they reach voting age and online

18 registration is a great way to do it. If voters

19 can update their registration information on line,

20 the 12 per cent of voting age New Yorkers who move

21 to a new address each year can continue to receive

22 the information they need to stay engaged. We

23 should demand greater flexibility in the law to

24 allow election officials to design ballots that

25 voters can actually read and understand more

easily. We should be opening up new channels of

information for New Yorkers to receive official,

non-partisan information about the political

process. Too often, lawmakers believe legislation

can solve all of our problems. But in crafting

detailed solutions, new problems can arise and do.

State Election Law specifies the precise steps in

the process to close the polls. So we need new

legislation to streamline the vote counting

process. State Election Law specifies the font

size and layout of the ballots. So we need new

legislation to design a ballot that is readable.

My message to you as lawmakers is

this: If we are to encourage innovation and I

believe we must, the law must provide the

flexibility for good ideas to enter the public

sphere and it must provide the space for public

servants to implement. These are all positions

we've endorsed in our annual report. These

simple, common sense steps are long overdue. To

engage more New Yorkers constructively in our

communal civil life, our administration of

elections in New York State and New York City must

evolve. This starts but should not end with

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2 amending the law to provide a more accurate and

3 timely way to count our votes. Thank you for your

4 work and for the opportunity to testify here

5 today.

6 CHAIRPERSON BREWER: Thank you very

7 much, Mr. Chang. And I also thank you because you

8 have such a technology background and so for you

9 to be head of VAAC is very helpful on many levels.

10 I have a question because I've personally had to

11 cut and paste and watch people scotch tape the

12 information to the wall and it's really shocking.

13 You kind of can't believe it's all happening. I

14 would like to understand from your perspective,

15 obviously Nassau is doing this, are there any

16 technological constraints or challenges to using

17 the flash drive memory stick--it has other names

18 but what we consider the device for moving

19 information from the polling place to the larger

20 computer terminal at a Board of Elections or

21 perhaps at the police department, or is there some

22 other way that you think wirelessly or more

23 innovatively we should be proceeding in terms of

24 using technology to count the votes at the end of

25 the night. What would be the best scenario for

transmitting this information to the press, which

is the law, as well as to the public?

MR. CHANG: That's a great question.

There is a very healthy debate ongoing about

security of data transmission and there are many,

many points of view on that. I would like to

point out that there are essentially the samples

which generate the election night reports for the

media, versus the actual certified election

results. I personally don't understand why there

is any impediment to using contemporary technology

to make the samples available in as close to real

time as possible by the means that are available

using best practices. Wirelessly or wired,

employing the best data security practices that we

currently have. Again, there are many reasons why

we may not want to use that for the certified

election results but there's no reason why this

timely information can't be provided to New

Yorkers today.

CHAIRPERSON BREWER: And it's my

understanding, of course, the votes are still in

the machines so it's not as if we're losing them

when we use any kind of a device. Is that also--

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2   if you could just explain that for the public.

3   MS. CHANG: That is correct. The

4   information is recorded within each machine. The

5   machines are secured and there is--and that

6   remains the physical record of what actually

7   happened in the voting process. The biggest

8   impediment isn't really the technology. The

9   biggest impediment is really I think the will and

10   the understanding that folks have about what

11   technology can actually accomplish. And I think

12   there was a greater understanding then a lot of

13   the mistrust around technology would go away and

14   people would begin to allow these new, well, I

15   don't know that it's even called the new, but

16   these techniques to give us a better experience at

17   the voting booth.

18   CHAIRPERSON BREWER: Do you think

19   that poll workers would have to be retrained in

20   order to change the way in which the election

21   results are tabulated or we have--I know that the

22   Board of Elections is working closely with the

23   police department but, and again this is maybe

24   more detail than what VAAC is charged with looking

25   at, but are there any other day to day suggestions

2   that you would make that would need to be done in

3   order to do as you suggested which is the

4   temporary counting that would be more efficient

5   using technology?

6   MR. CHANG: I think anyone trained

7   to be a poll worker would know about the types of

8   complexities required to become a poll worker

9   today. And I think anybody in this room who is

10   experienced using YouTube or Facebook or Google

11   knows exactly how much training is required to use

12   those tools. And so I think it's self evident

13   that a system properly designed should actually

14   make it far easier for poll workers to do their

15   job and technology should be used to allow people

16   to do their work more naturally and more

17   seamlessly, more intuitively, and allowing poll

18   workers to focus on what they were hired to do

19   which is to actually to help people to vote, not

20   stand in the way of actual voting.

21   CHAIRPERSON BREWER: Thank you.

22   Council Member Vallone?

23   [Pause]

24   COUNCIL MEMBER VALLONE: Just one

25   quick question. And thank you, Chair, for

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2   tackling issues which may not be exciting but

3   they're important and people don't realize how

4   important they are. And I have to run for

5   Environmental Protection so I have to leave very

6   shortly.

7   One quick question. Does electronic

8   voter registration help or hurt the battle against

9   voter fraud?

10   MR. CHANG: The data on voter fraud

11   is very interesting. There is, and I can't

12   remember, I don't have the exact numbers with me,

13   but the statistics on voter fraud are extremely

14   low. The question is really one of do we want to

15   spend our time defending against this very low

16   percentage of known voter fraud issues--

17   COUNCIL MEMBER VALLONE: Yes.

18   MR. CHANG: --or is it--

19   COUNCIL MEMBER VALLONE: I do. I

20   do.

21   MR. CHANG: Is that more important

22   than actually increasing the number of people who

23   have access to voting?

24   COUNCIL MEMBER VALLONE: Yes. First

25   of all, I think it's artificially low. It's only

because people aren't looking for it that it's
low. It's extremely high. I've seen it
personally in poll sites throughout Queens. I've
seen people being led in and pointing at different
names without any idea they can pick any name,
going through the book until they found a name
that nobody had signed in for and signing it in
and leaving. I've seen it personally so don't
tell me it doesn't happen, number one. So I'm
asking a simple question. If you do this online--
I don't need rationale. If you do this online, is
that going to increase the amount of voter fraud
or not? Does it make it easier to commit voter
fraud or not? Maybe it's helpful. I don't know.

MR. CHANG: Done correctly it should
decrease the amount of voter fraud.

COUNCIL MEMBER VALLONE: That's
great. Thank you.

CHAIRPERSON BREWER: - - I'm sort of
off topic - - resolution. I certainly agree with
you on the issue of registration online but the
question is do we need to look at this signature?
In other words, how do we deal with the fact that
somebody needs to have their original signature on

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2   any kind of a registration form or is that

3   something that VAAC has taken up or are you still

4   looking at that issue?

5   MS. AMY LOPREST: I mean, that--

6   CHAIRPERSON BREWER: Introduce

7   yourself again. I'm sorry.

8   MS. LEPREST: I'm Amy Loprest. I'm

9   the Executive Director of the Campaign Finance

10   Board. You know what, that is one of the issues

11   when designing electronic registration system,

12   that would have to be resolved is how to do, how

13   to deal with the signature. But, you know, many

14   technological improvements for all areas of your

15   life have overcome the need for a paper signature

16   and have an electronic signature that's as unique

17   and identifiable so I don't think that that's an

18   insurmountable--I think it would require some work

19   but I don't think it's an insurmountable burden.

20   CHAIRPERSON BREWER: Thank you.

21   We've been joined by Council Member Domenic M.

22   Recchia, Jr. Just so you know, I made sure I got

23   it right. Thank you both very much. I really

24   appreciate all the work that VAAC is doing and we

25   look forward to continuing to work with you.

2   Thank you.

3   The next representative of Council

4   Member Brian Kavanagh is here.

5   [Pause]

6   CHAIRPERSON BREWER: Oh, did I say

7   Council Member Kavanagh? Assembly Member

8   Kavanagh.

9   [Pause]

10   CHAIRPERSON BREWER: He tried for

11   the Council but he's a very good Assembly Member.

12   So why don't you introduce yourself and then

13   proceed with your testimony.   Thank you.

14   [Pause]

15   Good afternoon. My name is Patrick

16   - - .

17   CHAIRPERSON BREWER: You've got to

18   push the mic. Yeah. There you go. Thank you.

19   MR. PATRICK MC CULLEN: Good

20   afternoon. My name is Patrick McCullen. I'm here

21   on behalf of Assembly Member Brian Kavanagh and I

22   would like to read the testimony that he has

23   prepared.

24   Good afternoon, Chair Brewer and

25   members of the Committee on Governmental

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2 Operations. My name is Brian Kavanagh and I

3 represent the 74th Assembly District on the East

4 Side of Manhattan in the State Assembly. I'm the

5 Chair of the Assembly Subcommittee on Election Day

6 Operations and Voter Disenfranchisement and the

7 sponsor of A10175, the subject of the resolution

8 that you are considering today. Let me begin by

9 thanking the Chair, the members of the Committee

10 and the staff for bringing forth this resolution

11 and holding this hearing and for all the work

12 you've been doing to make our electoral system

13 more voter friendly.

14   As you know, the current procedure

15 for the reporting of unofficial election results

16 on election night in New York City involves

17 printing out paper tapes that count the votes cast

18 on each ballot scanner, cutting the printed tapes

19 into strips corresponding to election districts

20 and manually adding vote totals on a return of

21 canvass form. These returns of canvass are then

22 turned over to the New York Police Department

23 whose officers transport them to nearby policy

24 precincts and manually enter the results into a

25 computer where the results are then finally made

available to the Associated Press. This process

is time consuming with preliminary unofficial

results often not reported until early in the

morning and there is significant room for human

error. In the general election in 2010 the number

of ballots cast was undercounted by 195,055 on

election night. As you also know, the problem has

not escaped notice from the press or the general

public. The current procedures have been the

subject of a steady stream of critical editorials

from the New York Times and The Daily News since

the introduction of the new ballot scanners in

2010. And I'm sure you hear the same concerns I

do from candidates and party officials, voters and

even poll workers who are left to tabulate and

rewrite results into the wee hours of the night at

poll sites across the city at the end of a 16-hour

day.

In short, the procedure for

reporting unofficial election night

results with all its delay and inaccuracy is

undermining everyone's confidence in our ability

to run fair, efficient elections. New York City

is the only jurisdiction in the state and perhaps

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2 in the country that follows this procedure. This

3 stems in part from the City Board's particular

4 interpretation of certain provisions of the

5 current state law and from some valid concerns

6 that the Board has regarding some provisions of

7 the law that were originally written to

8 accommodate the old, mechanical lever machines and

9 were poorly adapted to the ballot scanners that

10 have replaced them. These concerns will be

11 addressed through the legislation that is being

12 discussed today.

13   First, this legislation expressly

14 authorizes one of the two portable memory devices

15 in each ballot scanner to be removed as soon as

16 the ballot scanner is closed, transported

17 separately from the other poll site materials and

18 used to report the unofficial tally. Second, it

19 allows the results tape from each ballot scanner

20 to be attached to the return of canvass without

21 cutting, tallying and transcribing the tape.

22 Third, it mandates that the Board make the

23 unofficial tally available to the media and to the

24 general public via the internet as soon as the

25 Board itself receives this information. We have

crafted this legislation with input from both the

state and city Boards of Election and - - groups

that have expressed concern about the inadequacy

of current election night procedures in previous

elections. We are working diligently with the

City Board to finalize the language and expect

that we will resolve the outstanding issues in a

way that will be acceptable to the Board without

substantially changing the terms or objectives of

the bill. With your support, we hope to pass this

important legislation in both houses of the

Legislature before the conclusion of the current

session which we feel is vital to restore some

trust in the system, especially in advance of the

general election in the Fall when the key federal

and state races will be on the ballot. Thank you

again for the opportunity to submit testimony

today for considering this resolution and for all

the work you do on these fundamental issues.

CHAIRPERSON BREWER: Thank you for

representing the Assembly Member very well. Do

you have any sense, given the time frames in

Albany as to the status of 10175, and I know

you're working with the Board of Elections

hopefully to make changes that they support. Do

you know if the Senate prospects are also positive

and is there a companion bill being introduced?

So I guess I'm sort of asking if there's some

movement in Albany. And if you don't know, that's

fine also.

MR. MC CULLEN: Currently there is

not a same as in the Senate. I know that there

have been--there's been movement to find a Senate

sponsor although I can't speak to the success of

that. But we do think that the prospects for the

bill are good even though there isn't a Senate

sponsor right now and we're hopeful that it can be

accomplished in this legislative session. We have

been meeting with the city Board of Elections and

we believe that any remaining issues are

relatively small and can be addressed without

spending significantly more time on it and without

changing the fundamental nature of the bill.

[Pause]

CHAIRPERSON BREWER: When do you

expect to have an amended version of the bill?

Obviously I know you've been working with the

Board so I assume there will be some changes even

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2   if they're minor or major, do you have some sense

3   when there will be another version of it?

4   [Pause]

5   MR. MC. CULLEN: I can't speak to

6   that directly. Our legislative director and the

7   Assembly Member are in Albany and I know that

8   they're working on it. We had a long meeting with

9   the Board of Elections on Friday afternoon so I

10   would expect any changes to be introduced this

11   week.

12   CHAIRPERSON BREWER: Thank you very

13   much. I appreciate it. Our next panel, Alex

14   Camarda from The Citizens Union, Adrienne Kivelson

15   from the League of Women Voters [pause], Leonard

16   Cohen, please.

17   [Pause]

18   CHAIRPERSON BREWER: Alex, do you

19   want to start?

20   MR. ALEX CAMARDA: Sure.

21   CHAIRPERSON BREWER: Thank you.

22   MR. CAMARDA: Good afternoon, Chair

23   Brewer and members of the Council on Governmental

24   Operations Committee. My name is Alex Camarda and

25   I'm the Director for Policy and Advocacy for

Citizens Union of the City of New York. Citizens

Union is a nonpartisan good government group

dedicated to making democracy work for all New

Yorkers.

Citizens Union supports the

resolution under consideration by the Council

today that calls on the State Legislature to

modernize and streamline the procedures for the

election night canvass and the reporting of

unofficial election results and the accompanying

legislation, A10175 sponsored by Assembly Member

Brian Kavanagh. The Board of Elections as a

result of its own unique interpretation of the

law, has employed a Rube Goldberg as the method of

tabulating unofficial election results that is

less accurate, delays delivering election outcomes

to the public and unnecessarily extends the

already long day of poll workers. The current

system is unnecessary and illogical and appears to

exist only to preserve the special interests of a

few officials in our patronage run elections to

deliver the election results in advance to party

bosses, candidates and their staffs rather than

having everyone learn of the winners and losers of

election contests at the same time. As detailed

in numerous Daily News editorials, here's how the

labyrinthine cut and add process currently works.

First, when the polls close, each individual

scanner at a poll site prints out the tabulated

results tape showing the total number of votes for

each candidate by election district on that

scanner. Because most scanners receive ballots

from more than one election district, the total

votes for candidates at the poll site by election

district is not known. Two. Poll workers in

their 16th hour of work, begin the tedious process

of cutting up the printouts from all ballot

scanners by election district and putting into

piles the pieces for each election district.

Third. Poll workers add up on a calculator the

number of votes each candidate receives in each

election district. Fourth. Poll workers enter

the information on return of canvass sheets.

Fifth. Canvass results are transported to police

stations. And finally, canvass results are

manually entered into the database for eventual

release to the Associated Press and made known to

the public.

There is a much simpler, easier and accurate way to do this process. Portable memory devices, so called PMDs, in the scanner that electronically hold the results of all races can simply be withdrawn, transported to a central location, data can be uploaded and released to the Associated Press. Every other county in New York State operating under the same language and state law, has used this more accurate and simple method after the transition to electronic voting machines. These counties realize what we all know. The public overwhelmingly does not immediately care about exactly how many votes each candidate received in each election district, a political subdivision used solely for administrative purposes that is unfamiliar to most voters. Rather, they care about the total votes that show which candidates won and lost. But because of the Board's interpretation of current law, these totals are not provided until votes are first tallied for each candidate by election district.

The Kavanagh bill will change the law so the Board can no longer fall back on their

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2   unique interpretation of state law. The Board

3   will be explicitly permitted to transport the PMDs

4   separately from the tallies by election district

5   which will result in the outcomes of the election

6   being known sooner to the public--at least the

7   unofficial outcomes. The Kavanagh bill will also

8   simplify tallying results by election district by

9   allowing workers to attach the tabulated results

10   taped to the return of canvass shift after the

11   PMDs have delivered to release the unofficial

12   results. Results will be more accurate because

13   poll workers won't have to do tedious cutting and

14   adding at the end of a long day which leads to

15   errors and discrepancies between unofficial and

16   official results--which we say most vividly in

17   2010. The Kavanagh bill and the Council's

18   resolution in support of it because it elevates

19   the public's right to know above political

20   insiders efforts to preserve their special perks

21   of knowing election results hours before everyone

22   else does.

23   While we appreciate the Council's

24   backing of this important proposal

25   to facilitate public transparency, we also

2   respectfully request that Council hold its own

3   hearing on other bills sponsored in the Council

4   that will amend city law to improve voter

5   registration and election administration so the

6   Fall elections go smoothly and participation is

7   maximized. I'm happy to answer any questions you

8   may have.

9   CHAIRPERSON BREWER: Thank you. Who

10   would like to go next?

11   MS. ADRIENNE KIVELSON: Hi. I'm

12   Adrienne Kivelson and I'm actually here today

13   speaking--

14   CHAIRPERSON BREWER: It's not on.

15   So push--there you go.

16   MS. KIVELSON: Okay. I'm Adrienne

17   Kivelson and I'm here today speaking for Kate

18   Doran who is our Election Specialist and City

19   Affairs Chair and a delegate to our national

20   convention in Washington today. So Kate couldn't

21   be with us but this is an issue that's of great

22   concern to us and to Kate who doubles as a City

23   Affairs Chair and also works as a coordinator at

24   the polls. So she's had a great deal of

25   experience with this process as we all have

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2 unfortunately.

3   The League was very supportive of

4 adopting the paper ballot optical scan system

5 because we supported it as a secure, transparent

6 and auditable system. So now we need a law which

7 brings our procedures into the 21st century and

8 acknowledges the capabilities of machines that can

9 do a better job than exhausted human beings. We

10 sincerely appreciate this opportunity to comment

11 on the proposal to modernize the election night

12 closing procedures of the Board of Elections. We

13 thank Assemblyman Kavanagh for attempting to

14 improve the current tortuous and time consuming

15 procedure and we thank your Committee for

16 supporting those efforts.

17   As much as we recognize the urgency

18   to address this issue as two

19 primaries and the election of the president and

20 all of our elected federal and state legislators

21 will take place in the next five months, we cannot

22 support this particular bill. We find nothing in

23 the bill that's going to speed up the process for

24 poll workers who have already put in a 15-hour

25 day. Basically the bill is very permissive and

may is used very often in the bill. Many of us

contended that the Board of Elections never had to

implement this process to begin with and they did.

So to say you may authorize them to do something

else doesn't give us great confidence in the

procedure changing. There's nothing in the bill

that would prevent the poll workers from cutting

up the scanner tapes, adding the votes for each

ED, and they don't have calculators in most

places, and transcribing them by hand, the votes

already counted on the scanners, onto individual

paper ballots. This is the process that leads to

errors and discourages potential poll workers.

The bill seems to outline a procedure that was

tested in two pilot projects in Queens by the New

York City Board. Poll workers will aggregate the

scanner tapes and attach them to one return of

canvass which, along with the portable memory

devices, may or may not be collected by police

officers. They may or may not speed up the

process.

In our testimony before the New York

State Election Law Committee in December 2011, we

pointed out the that New York City Police

2   Department is so exasperated if not angry with

3   their new responsibilities that they want to get

4   out of the election night business. It's no

5   wonder what used to take minutes now takes hours.

6   Assembly Bill 10175 suggests a new role for the

7   police in transporting the PMDs but does not

8   mandate their participation. We view may rather

9   than shall in the language of the bill as

10   unacceptable. For as long as any of us can

11   remember, the police have taken custody of the

12   canvass of results on election night and released

13   the unofficial results to the press. The police

14   presence in the process ensured voter confidence

15   and should be mandated in any law prescribing

16   closing procedures. We need closing procedures

17   which get us back to the speed, efficiency and

18   transparency of the pre-scanner days with respect

19   to closing the polls and reporting unofficial

20   results.

21   We believe it's easy to get back to

22   simple. First, use the scanners and

23   only the scanners to count, add and sort votes on

24   election night. Two. Hand the portable memory

25   devices from the scanners off to the officers in

1

2 the New York City Police Department on election

3 night. Allow officers at the precinct to receive

4 the PMDs in a way that is analogous to the way

5 they used to receive the paper return of canvass.

6 We at the League refer to this solution as the

7 Jerry - - Solution since it was he who first

8 suggested it back in 2010 after the initial roll

9 out of the paper ballot optical scan voting

10 system. There is no reason that the news crawl on

11 election night can't report results by scanner.

12 We understand there may be some upfront costs

13 associated with upgrades of hardware and/or

14 software at the police precinct but the value is

15 immeasurable inasmuch as it is solution that will

16 get us back to simple and will preserve the

17 confidence of the voter by keeping the New York

18 Police Department on the job.

19 We hope that Assemblyman Kavanagh

20 will adapt this bill to reduce the burden on

21 election day poll workers and ensure closing

22 system that preserves voter confidence and we urge

23 the Council to continue to support this issue.

24 We're ready to be of assistance in any way

25 possible.

2   CHAIRPERSON BREWER: Thank you very

3   much.   Next speaker?

4   MR. LEONARD COHEN: Thank you.

5   Well, I want to begin by thanking Council Member

6   and Chairperson Gale Brewer and the Committee on

7   Government Operations for holding this hearing

8   today on the very important issue of closing the

9   polls on election day.

10   My name is Leonard Cohen and I am

11   here to testify today on behalf of the New York

12   Democratic Lawyers Council. I serve as an officer

13   in the organization in the capacity of Secretary

14   and I'm one of its founding members. Apart from

15   the organization, I practice as an attorney with

16   Election Law as one of my areas of specialty. The

17   New York Democratic Lawyers Council is the voting

18   rights project of the New York State Democratic

19   Committee and the Democratic National Committee.

20   Founded in 2005, we now comprise more than 4,000

21   members across New York State. Our membership is

22   open to any and all lawyers, law students and

23   other activists who share our commitment to

24   protecting individuals' right to vote. Over the

25   past number of years, NYDLC has established an

2   active statewide election monitoring program.

3   I'll highlight briefly my own experience in poll

4   watching. I led or participated in at least 10

5   poll watching operations going back to 2004. I've

6   worked in poll watching operations for local, town

7   and district elections, local special elections,

8   New York City and state elections and two

9   presidential elections. I want to say

10   specifically in 2008 I was in Florida for two

11   weeks of early voting where I had the opportunity

12   to comprehensively get to know the paper ballot

13   optical scanning system voting process from start

14   to finish that or akin to what we have now. My

15   role in the NYDLC is as Co-Chair of a legislative

16   agenda committee whose functions include

17   identifying model legislation and best practices

18   based on data driven resources including our own

19   experiences on the ground and in election

20   monitoring operations for purposes of advocating

21   improvements in the election process and law.

22   My colleague to my right, Alex, did

23   a very good job of outlining specific steps of

24   what has become real laborious and long winded

25   closing process and a lot of many extraneous

2   steps. I'm going to focus on a couple of more

3   concentrated points. In the first place, the

4   NYDLC supports Council Resolution 1343-2012. I

5   want to join the many Council sponsors of the

6   resolution to emphasize the need to modernize and

7   streamline the procedures for election night

8   canvass and the reporting of unofficial election

9   results. We echo the resolution of the Council by

10   calling upon the Legislature to enact the Election

11   Night Poll Site Procedures Act of 2012 and I also

12   echo the comments of my colleagues to the left and

13   right of me in terms of--and the other prior

14   speakers for the need for this important

15   legislation.

16   In terms of procedures for closing

17   polling places under the new systems of optical

18   scan voting machines, we have conducted four

19   election monitoring operations starting with a

20   limited pilot program involving those machines in

21   2009 and continuing with the primary and general

22   elections in 2010. After the primary in 2010, we

23   reported that the use of voter cards under the new

24   system of optical scan voting machines was

25   confusing and gave poll workers difficulties

reconciling cards to scanners per ED, especially

since it is common for EDs at the same polling

place to share one or fewer than the number of ED

scanners for a number of EDs. The process to

close the scanners and report the vote counts

involved hand ties or votes from each ED and other

complicated steps, particularly under the

processes used by the Board of Elections in New

York City. We reported continued confusion and

lack of training to carry out the tremendously

complicated closing processes following the

general elections. I would like to add, looking

ahead to 2012, the perfect storm that can result

from this coming election day in a nationally high

profile, hotly contested election where high

turnout and long lines overwhelm election workers

and confusion swells over counting the votes and

closing polls. It's scary even or maybe

especially for a blue, so called blue state as New

York. Our key, specific--and this could lead to

some bad national publicity among other

disincentives of course, but our key, specific

recommendation was to examine the practice of most

other municipalities that use the same machines

where results were printed combined with removal

of flash drives from the scanner machines that

were delivered to Boards of Elections for counting

as a way to simplify the process and reduce the

possibility for human error. Of course, we as an

organization as others have always been keenly

aware of closing procedures of polling places is

an obviously critical and potentially vulnerable

point in the administration of elections and

voting, not just for accuracy of reporting vote

tallies but also for public confidence purposes.

I can't underscore the importance of public

confidence in procedures enough in addition to

what is actually happening.

One of the most important aspects of

this is chain of custody and the reporting of

votes which is an issue we had previously

addressed even with lever machines. The vote

reporting under the new system is supported by

paper ballots for each vote in contrast to the

recording of votes on level machines consequently

warranting still tighter controls. Under the new

legislation, a new subsection is added to the law

governing election returns to modernize a canvass

procedures for the City of New York by allowing a

portable memory device. We've been hearing that

earlier in the afternoon, PMDs, meaning flash

drives, to be used for unofficial tally. This

should immediately reduce the openings for human

error. The portable memory device is transported

with a corresponding results tape. Other

provisions rationalize and streamline the tasks

upon closing. Many of the tasks we had heard

previously as specified. This maintains integrity

in the process while it should also add the

enormously valuable benefit of enhancing public

confidence in vote counting. Also, for enhanced

chain of custody security, a new subsection is

added to mandate that the person receiving the

return of canvass in the Board of Elections shall

provide the name of the person accepting the

delivery, the time of delivery and the name of the

person making the delivery to be filled in the

office of the Board of Elections. The specific

provisions would greatly improve the still new

process all the more importantly with the coming

presidential election. It is always a good idea

to follow best practices of other comparable

1

2 jurisdictions to inform a process whereas here,

3 especially it is so new. The provisions are

4 common sense good governance measures. We welcome

5 the broad support in this Council for Resolution

6 1343 and hope that it helps to translate into

7 passage in our Legislature of the Election Night

8 Poll Site Procedures Act of 2012. This is Bill

9 Number A10175 in the Assembly. We note at this

10 time, as was also noted previously, that there is

11 no corresponding Senate bill. The Senate should

12 adopt a same as bill for passage before the close

13 of session. This would help ensure implementation

14 for this year's election. And I also would like

15 to add one more thing which is to thank Brian

16 Kavanagh for introducing A10175. Brian Kavanagh

17 is a tireless advocate of voter rights and has

18 been in a short time in the Assembly and we look

19 forward to working with him again hopefully on the

20 passage of this through the Senate. Thank you.

21   CHAIRPERSON BREWER: I want to thank

22 all three of you for your tireless efforts on this

23 issue and I know Assembly Member Kavanagh, I

24 concur, is a tireless advocate. I do want to

25 bring a question for the League of Women Voters.

2   I'm hoping that the meeting on Friday that was

3   mentioned earlier between the Board of Elections,

4   Assembly Member Kavanagh, staff here and others

5   might deal with the may and the shalls and might

6   have a different outlook in the A version.

7   Obviously you would need to look at the A version

8   to see. But do you think that once you look at it

9   that you might be satisfied that some of your

10   issues will be addressed? Do you think that's

11   something that you would look at and then see if

12   there's some--

13   MS. KIVELSON: Certainly. Our major

14   concern in reading this bill was the permissive

15   nature of the bill and that troubled us. So in

16   one sense we agreed, the PMDs should go to, we

17   think the police, but we'll--should go immediately

18   and you attach tapes. But then when it comes down

19   to the return of canvass, there's no mention of

20   PMDs. And again, they say it's printed on a form

21   and they talk about the aggregating of votes and

22   maybe the aggregating of tapes but that could be

23   exactly the same process that they're using now.

24   So the bill seemed to--I know how difficult--I've

25   been doing this many, many years so if you're

trying to get everybody to agree, I'm not sure

that's ever going to happen. We're concerned

because for a number of years we've been arguing

this and the Board has insisted on a procedure

that no other county in the state seems to feel is

necessary. And we just don't see, except for the

change of allowing the PMDs only to go for the

unofficial count, not for the return of canvass,

that's a major change but even that is permissive

to what's going to happen with them. We would

love to support this bill. We think Brian

Kavanagh is a hero for carrying all this

legislation and we're delighted to see the Council

supportive of understanding the need for improving

election night procedures. We just don't know

that this has gotten here yet and we would love to

support it if we could see some changes.

CHAIRPERSON BREWER: Okay. I'm - -

as soon as the A version is available that you

will be one of the first to see it and then you

could make some evaluation. Because I know

they're trying to address some of the issues that

you brought up.

MS. KIVELSON: Thank you.

2   CHAIRPERSON BREWER: Okay. Alex, I

3 have a question about the other counties. Do you

4 have any sense if there are any technology issues

5 in other counties that have implemented what we

6 would like to see more streamlined here in the

7 City of New York?

8   MR. CAMARDA: My understanding as

9 with regard to many of the other counties upstate

10 and particularly the smaller ones, they don't

11 necessarily have this issue because you have fewer

12 scanners per poll site and so you don't have votes

13 being cast on the scanner that are from multiple

14 election districts. But you referenced earlier,

15 obviously Nassau County has done this. We haven't

16 heard of any hiccups there on their part. I mean,

17 as far as the technology issues go, I mean, we all

18 use technology to transport money electronically,

19 huge sums of it across the world, so it seems to

20 me we ought to be able to do that for votes as

21 well. And, you know, even the process that's in

22 this bill, there's still physical transportation

23 going on and, I mean, ideally and I think

24 eventually, it would probably be wireless to the

25 extent that that's secure.

1

2   CHAIRPERSON BREWER: Mr. Cohen, in

3   other parts of the country where you've done

4   monitoring, did you see a more efficient system?

5   Again, you were talking I think in Florida and

6   some other places that are quite large in terms of

7   the geographics so they're not small counties.

8   Did you see any problems in terms of following

9   some of these more streamlined procedures?

10   MR. COHEN: Yes, I did. And I

11   didn't have the chance to, when I was in Florida,

12   to look at the framework of the statute, you know,

13   in comparison to what we have now in New York but

14   I think the reason is that New York, the law was

15   developed to kind of adjust what was already

16   existing with respect to the lever machines and,

17   you know, working from what we already had.

18   Whereas there, I have to assume that it was, you

19   know, that the framework was structured

20   differently and more tied closely to what they had

21   already there.

22   [Pause]

23   CHAIRPERSON BREWER: For Alex I have

24   a question about how do you think the new

25   legislation will change the cutting and pasting

1

2   and the scissors and the scotch tape if at all? I

3   mean, I really, the first time I experienced this

4   I really couldn't believe it. I'm still in shock;

5   I have to tell you. So the question--and also

6   what you did mention is you could hardly read the

7   paper because it's a very thin type of

8   transmission paper. So even just reading it it's

9   hard. So how do you think this would change all

10   of that?

11   MR. CAMARDA: I think in the spirit

12   of the legislation that if the latter is followed,

13   what will happen is the returns of canvass will be

14   consolidated, the tape will be attached to those

15   and that will be provided separately from the PMDs

16   which have the results on them and will be sent in

17   advance and we'll get the unofficial results

18   sooner.

19   CHAIRPERSON BREWER: Does anybody

20   want to add to that about what you think will

21   happen election night so to speak?

22   MS. KIVELSON: Well, if you can get

23   the unofficial results out quickly and you could

24   really adopt the same process which I think you

25   were suggesting, Alex, where they could upload the

2   PMDs at the poll site, then you would really make

3   a change because it's not just the Associated

4   Press or the press that wants results, it's the

5   candidates and their supporters at the poll site

6   who also want results and the tapes are there but

7   they have to go through the same process. So if

8   you translated this all to using PMDs, then you

9   really could see both at the poll site and for the

10   unofficial results, you would not keep poll

11   workers there 'til midnight and you would not--and

12   I want to point out, the police are a very

13   important issue. The police are in the poll site

14   from six o'clock in the morning and they're there

15   because they connote public confidence that this

16   is a public election that is being conducted

17   fairly. Under the system we've had since 2010,

18   they have to be there until midnight, 12:30. That

19   means a whole other shift because I believe the

20   shift ends at ten o'clock. So we're bringing

21   another shift in. And they, the police didn't

22   want to do it and the police personnel who were on

23   site didn't want to do it. And this bill sort of

24   said well, maybe they don't have to do it anymore.

25   But if you got out at 9:15 as they did, then you'd

 1

 2   still be in the same shift, the same police who

 3   had been there forever, and I didn't know the year

 4   the police started. I don't know the year, the

 5   police, but I'm as old as anyone in this room and

 6   they've been there since I've been here. If you--

 7   it would just be part of the same. There were no

 8   complaints when we were dealing with this before

 9   because everybody was out of that polling place

10   unless the lines were around the block. So if you

11   could do something which would just speed up the

12   process, and I think the PMDs do, and then give

13   the police the results in whatever form and get

14   out of there by 9:30, it would make a big

15   difference in the election to everyone.

16   CHAIRPERSON BREWER: Okay. I want

17   to thank all three of you and we will certainly

18   try to get you - - I'm sure Assembly Member

19   Kavanagh will do the same, we'll get you the A

20   version as soon as possible. Thank you very much.

21   Mr. Britton, please?

22   [Pause]

23   MR. BRITTON: --going to pass on

24   this.

25   [Pause]

2   CHAIRPERSON BREWER: You're going to

3   pass? Well, then this hearing will conclude. I

4   want to thank everyone who participated here

5   today. There's no question that we're all trying

6   to achieve the same goal which is to have a

7   streamlined but always accurate, always secure

8   process for the vote in the City of New York and

9   certainly we're particularly concerned because we

10   have very major elections coming up this year and

11   next year. Thank you all very much. This hearing

12   is concluded.

C E R T I F I C A T E

I, Doreen Angermayr, certify that the foregoing

transcript is a true and accurate record of the

proceedings. I further certify that I am not related

to any of the parties to this action by blood or

marriage, and that I am in no way interested in the

outcome of this matter.

Signature

Date   June 27, 2012