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

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December 2013

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Executive Summary

DOI's Board of Elections IG Unit

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

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

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

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

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

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

Problematic Employment Practices

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

- **Hiring Practices.** DOI interviewed Executive Office staff, several Borough Managers, and BOE employees who described a hiring system where the county political committees do have a significant role in the hiring of individuals for employment throughout BOE, notwithstanding the absence of any statutory provision for the committees' involvement in hiring BOE staff. The degree to which BOE is controlled by the county committees was confirmed by a report to DOI that one of the Commissioners, when discussing hiring decisions, said that he had to "have a talk with my Garcias," meaning the county committee. Vacant positions at BOE generally are not disseminated through public postings. Instead, according to numerous BOE managers and employees, the county committees typically recommend people active with the committees for employment at BOE. While several Borough Managers reported requesting resumes and conducting interviews of candidates the committees recommend for employment, the various BOE managers and employees described processes that varied from borough to borough, indicating that BOE has no standard recruitment and screening process. Further, BOE does not conduct background investigations of prospective employees.

- **Nepotism.** Nepotism is prohibited under New York City's Conflicts of Interest Law. The BOE IG Unit investigated several complaints about nepotism in the hiring, promotion, and supervision of the family members of BOE personnel. DOI substantiated four cases of nepotism, including two cases involving BOE Commissioners, and will refer these matters to the Conflicts of Interest Board.

- **Political Activities.** The New York City Charter and Election Law prohibit making political activities a condition for public employment and place a number of restrictions on political activities by public servants and supervisors. Yet

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

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

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

Election Administration and Efficiency Concerns

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

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

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

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

- **Poll Worker Training and Performance.** Various concerns were raised about the hiring of poll workers, including how they were selected and trained. Thus, last summer 15 investigators applied for the job of poll worker with the BOE.[3] Six of the 15 were not hired for reasons that are unclear and will now be analyzed following the publication of this Report. Nine of the 15 investigators were hired, attended the BOE training, and worked as poll workers during the elections.[4] During poll worker training, 4 of the 9 investigators observed instances of trainees cheating on the test provided to prospective poll workers, and trainers effectively providing answers to the trainees. While working on Election Day, the investigators made and documented observations about poll site operations including:

    - **Lack of Voter Privacy.** DOI found more than a dozen violations of voter privacy rules by poll workers during the 2013 general election, including poll inspectors at scanners taking ballots from voters, looking at the votes they cast, and, in some instances, commenting on those votes. Additionally, during the primary election, DOI observed instances of people entering the voting booth with voters, including a woman at a Manhattan poll site who entered the voting booth with three successive voters.

    - **Incorrect Voting Instructions by Poll Workers.** DOI found more than 15 instances during the 2013 general election where poll workers instructed voters to "vote down the line" on the ballot for candidates on a particular party line, including at a Manhattan poll site where the poll site coordinator directed workers to give this instruction to voters.

- **Ballot Design: Issues Not Resolved in Advance of Elections.**

    - **Small Font-Size.** The ballot for the 2013 general election was printed in 6-point font, a small size font that was difficult to read. Indeed, 145 of the 698 voters surveyed by DOI during that election complained that the ballot text was too small or difficult to read. More than a year earlier, BOE was aware of the font size issue and considered various options for addressing it but did not resolve it.

    - **Voters Unaware of Ballot Proposals.** A number of voters also complained that they were unaware of the proposals on the back of the ballot and therefore did not vote on the proposals. BOE was asked by good government groups well in advance of the 2013 general election to include instructions on the front of the ballot directing voters to turn over the ballot for such proposals. However, the front of the ballot did not include such instructions.

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

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

- **Voter Cards.** BOE poll workers fill out and provide voters with Voter Cards containing the election date, voter's name, and ballot stub number, despite the State BOE's repeated requests that BOE discontinue their use because they create delays at the polls and unnecessary expense. BOE is the *only* remaining board in New York State that uses the cards. Before the 2013 general election, BOE management decided not to use Voter Cards, but the BOE Commissioners reversed this decision, citing a desire to limit the number of changes in poll site operations. BOE printed nearly 3 million Voter Cards for the election at an approximate cost of $40,000.[5]

- **Delays in Repairing Broken Voting Machines.** DOI confirmed a number of instances where broken voting machines during the 2013 primary and general elections created voting delays at poll sites, including one poll site in Queens that had no operational lever machine for seven hours and 21 poll sites in Brooklyn with no operable scanners for five hours.

- **Failure to Secure and Count Affidavit Ballots in Manhattan BOE Office.** After the September 10, 2013 primary election, the Manhattan BOE office continued to have issues following BOE procedures for counting and tracking paper affidavit ballots. Some issues were recurring in the Manhattan BOE office, according to witnesses, who said that, previously, the BOE twice had to recertify the results for the 2012 presidential election.

- **Buff Cards.** Under the Election Law, BOE is not required as a general practice to retain "buff cards," which are hard-copy voter registration applications, beyond two years, because they are maintained electronically in its computerized registration database. However, in two borough offices, DOI observed large groups of employees engaged in the unnecessary manual updating and filing of older hard-copy buff cards during the week before the 2013 general election when there were many other priorities. These cards also occupy an extensive amount of space in the borough offices.

- **Counting Write-In Votes.** Voters who want to vote for a candidate who is not on the ballot, may write that person's name on the paper ballot and insert it into the scanner. BOE has software, which has been available since 2012, capable of identifying the relatively small number of ballots containing write-in votes, but BOE is not using it. Instead, for the 2013 general election, BOE had its employees in every borough conduct a full-scale visual review of the scanned images of *all* ballots looking for and tallying write-in votes. There were approximately 1,800 write-in votes in the November 5, 2013 general election out of approximately 1.1 million ballots cast.

- **Runoff Elections.** The estimated cost of the October 2013 runoff election for Public Advocate was $13 million. Proposals to eliminate a separate runoff

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

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

Recommendations

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

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

I. Introduction and Background

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

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

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

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

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

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

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

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

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

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

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

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

II. BOE Employment Practices

A. Hiring

1. The Bipartisan Structure of the BOE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Nepotism

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Political Activities

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

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

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

D. Performance Evaluations

The BOE Personnel Guidelines require that managers and supervisors conduct employee performance evaluations on an annual basis. BOE Personnel Guidelines, at H-1.[19] However, several BOE managers and employees confirmed that performance evaluations have not been conducted in recent years. The BOE Personnel Director recalled that the BOE last conducted performance evaluations two years ago and had done evaluations only twice in the past five years. A current BOE employee stated that her most recent performance evaluation was five years ago. Two Borough Managers stated that they last conducted performance evaluations two years ago, while another Borough Manager said that he had not done performance evaluations since 2006.

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

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

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

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

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

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

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

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

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

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

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

III. Election Administration Issues

A. Voter Roll Deficiencies

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

DOI interviewed a former BOE employee who reported that the BOE maintains active voter registrations for people who are not eligible to vote, including deceased individuals, felons, and nonresidents of New York City, and duplicate registrations for some voters. The former employee also stated that people easily could vote as ineligible voters remaining on the rolls because those individuals would appear in the registration books[23] on Election Day and poll workers do not scrutinize the signatures of voters to determine that they that are similar to the pre-printed digitized signatures in the poll book. In light of these statements, DOI sought to test whether ineligible individuals are present on the voter rolls.

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

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

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

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

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

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

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

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

a. Deceased Persons

DOI identified 86 deceased individuals who at one time were registered voters. During DOI's Citywide Election Day investigative operations, DOI investigators went to poll sites where the deceased individuals would have voted based on their previous home addresses. DOI investigators found that 39 of the 86 deceased individuals were listed in the registration books. The majority of the 39 deceased individuals who were listed in the registration books died before January 2012.[26] In all 39 instances, DOI investigators were able to cast a vote as the deceased persons who were listed in the registration books. DOI investigators cast those 39 votes as deceased individuals in all five Boroughs including 11 votes in Manhattan, 7 votes in Brooklyn, 7 votes in Queens, 9 votes in the Bronx, and 5 votes in Staten Island. Table I lists the number of deceased persons identified by DOI, the number of deceased voters who were listed in the registration books, and the number of votes cast by investigators as those individuals during the primary, runoff, and general elections.

TABLE I – DECEASED PERSONS

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

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

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

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

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

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

- A 33 year-old male investigator cast a write-in vote for "John Test" at a Manhattan poll site during the general election as a deceased male who was born in 1919, died on May 3, 2012, and would have been 94 years old on the date of the general election. The same investigator also cast a vote at another Manhattan poll site for a deceased male who would have been 67 years old on the date of general election.

- A 42 year-old male investigator cast a write-in vote for "John Test" at a Manhattan poll site during the general election as a deceased male voter who was born in 1927, died on March 1, 2010, and would have been 85 years old on primary election day. The same investigator cast a vote at a Queens poll site during the general election as a deceased male who would have been 76 years old on the date of the general election.

- A 30 year-old male investigator cast a write-vote for "John Test" at a Bronx poll site during the general election as a deceased male who was born in 1930, died on April 4, 2011, and would have been 83 years old on the date of the general election. The same investigator cast votes at other Bronx poll sites for deceased males who would have been 72 years old and 54 years old on the date of the general election.

- A 40 year-old female investigator cast a vote at a Queens poll site during the primary election as a deceased female who was born in 1947, died on January 13, 2011, and would have been 65 years old on primary election day. The investigator entered the voting booth and attempted to cast a write-in vote, but no paper or pencil was available in the voting booth. When the investigator requested assistance to cast a write-in ballot, a poll worker who the investigator believed to be the poll site coordinator told the investigator that she could not cast a write-in vote and should vote for one of the candidates listed on the ballot or vote for none of them. The investigator exited the poll site. The same investigator voted at another Queens poll site as a deceased female who would have been 66 years old on the date of the general election.

- A 25 year-old male investigator cast a write-in vote for "John Test" at a Brooklyn poll site during the primary election as a deceased male who was born in 1955, died on January 8, 2012, and would have been 57 years old on primary election day. The information clerk at the poll site incorrectly directed the investigator to a different poll site that did not serve the deceased person's election district.

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

- A 52 year-old female investigator cast a write-in vote for "John Test" at a Brooklyn poll site during the general election as a deceased female who was born in 1968, died on October 30, 2010, and would have been 45 years old on the date of the general election. When the investigator provided the name of the deceased female, one of the poll inspectors said, "you do not look like a Gonzales." The investigator responded that she assumed her husband's name when she got married. The investigator signed the book and was given a ballot to cast a vote. The same investigator also cast a vote at another Brooklyn poll site as a deceased female who would have been 73 years old on the date of the general election.

- A 26 year-old male investigator cast a write-in vote for "John Test" at a Staten Island poll site during the primary election as a deceased male who was born in 1970, died on January 4, 2011, and would have been 43 years old on primary election day. Before signing the registration book, the investigator told the inspector that his signature might not match the one printed in the registration list, to which the inspector replied, "I am not going to challenge you."

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

b. Felons

DOI also identified 42 felons from New York City who at one time were registered voters and are currently incarcerated in state prison facilities. DOI determined the assigned poll sites of these individuals based on their previous home addresses. During the runoff and general elections, DOI investigators went to the assigned poll sites posing as these incarcerated felons. DOI investigators found that 15 of the 42 felons were listed in the poll books. The majority of the 15 felon voters listed in the registration books were incarcerated following conviction before 2012.[27] DOI investigators were able to vote for 14 of the 15 felons who were listed in the registration books. DOI investigators cast votes as felons in all five Boroughs including 3 votes in Manhattan, 2 votes in Brooklyn, 4 votes in Queens, 2 votes in Bronx, and 3 votes in Staten Island. Table II provides additional data regarding the number of felons identified by DOI, the

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

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

TABLE II – INCARCERATED FELONS

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

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

- A 57 year-old male investigator cast a write-in vote for "John Test" at a Staten Island poll site as a 36 year-old male felon who has been incarcerated following conviction since November 2012.

- A 51 year-old male investigator cast a write-in vote for "John Test" at a Queens poll site as a 60 year-old male felon who has been incarcerated following conviction since January 2009.

- A 30 year-old male investigator cast a write-in vote for "John Test" at a Bronx poll site as a 32 year-old male felon who has been incarcerated following conviction since August 2010.

- A 41 year-old male investigator cast a write-in vote for "John Test" at a Manhattan poll site as a 44 year-old male felon who has been incarcerated following conviction since April 2011.

- A 42 year-old male investigator cast a write-in vote for "John Test" at a Brooklyn poll site as a 50 year-old male felon who has been incarcerated following conviction since May 2012.

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

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

c. Nonresidents

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

TABLE III – NONRESIDENTS

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

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

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

- A 26 year-old female investigator cast a write-in vote for "John Test" at a Manhattan poll site during the general election as a female who moved outside New York City and was 76 years old as of the date of the general election.

- A 43 year-old male investigator cast a write-in vote for "John Test" at a Bronx poll site during the general election as a 48 year-old male who moved outside of New York City to Florida in or around April 2011. After the poll inspectors located the name of the nonresident, the investigator informed the inspectors that he had recently moved to Florida. In response, one of the poll inspectors replied that so long as the name was in the registration book, the investigator was permitted to vote in the election.

- A 40 year-old female investigator cast a write-in vote as "John Test" at a Queens poll site during the general election as a 66 year-old female who moved outside of New York City in or around October 2012. The investigator signed the registration book, and then told the poll inspectors that she was thankful to be able to vote because she had recently moved. The poll inspectors ignored the investigator's comment and gave her a ballot.

- A 48 year-old male investigator cast a write-in vote for "John Test" at a Brooklyn poll site during the runoff election as a 50 year-old male who moved outside of New York City. The investigator told the poll workers, "I want to make sure that [a particular candidate] gets my vote." After the investigator exited the lever machine, two poll workers who signed him in at the election district table told the investigator "to bring back friends," indicating to him that they favored the same candidate for Public Advocate and that he should encourage others to vote for that candidate.

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

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

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

d. Voting on Behalf of Relatives and Significant Others

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

e. Alleged Voter Fraud at IS 71 in Brooklyn

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

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

2. Analysis of the BOE's Cancellation Procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Ballots

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

The ballot for the November 5, 2013 general election was printed in a 6-point font. At the BOE Commissioners meeting on October 8, 2013, the BOE Commissioners reviewed a sample ballot. *See* Minutes, BOE Commissioners' Meeting, at 9 (Oct. 8, 2013). BOE Executive Office staff explained that use of a 6-point font on the one-page ballot was necessary because the Voting Rights Act required the BOE to include five languages on some ballots in Queens.[37] The BOE Commissioners directed staff to work on creating a ballot that would be easier to read. They also asked that staff inquire of the New York City Law Department whether providing ballots with varying font sizes in different Boroughs would give rise to an Equal Protection challenge under the Fourteenth Amendment to the United States Constitution. *See id.* at 13.[38] At the BOE Commissioners meeting on October 15, 2013, the BOE reported that it consulted with the Law Department, and decided to use a 6-point font on ballots in all five Boroughs. *See* Minutes, BOE Commissioners' Meeting, at 8-9 (Oct. 15, 2013). Commissioners and Executive Director Ryan acknowledged the small font size. Ryan stated that voters should be encouraged to use the Ballot Marking Devices ("BMDs"), which enlarge

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

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

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

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

- DOI investigators conducted quality assurance surveys of voters at poll sites. DOI found that 145 of the 698 voters surveyed by DOI during the general election made complaints that the print on the ballot was too small or difficult to read. Another 36 surveyed voters complained that the ballot format was confusing or made the ballot difficult to read. DOI investigators serving as poll workers similarly reported that voters complained that they had trouble reading the small print on the ballots.

- While DOI staff working at poll sites and investigators entering sites to vote generally found that large sample ballots were posted at the ED/AD tables in poll sites, they also reported that poll workers often did not offer voters use of the BMDs and that some BMDs were not clearly indicated by signage. Of the 42 investigators who entered poll sites to cast votes as ineligible individuals during the general election, only 10 were offered the use of a BMD machine. Fourteen surveyed voters also complained that they were not told about the BMDs or offered the opportunity to use the machine. An investigator casting a vote at a Manhattan poll site asked to use the BMD machine, but was discouraged by poll workers who told him that voting by paper ballot was the quicker option.

- A number of voters complained that they were unaware that proposals to amend the New York State Constitution were on the back of the ballot and they therefore did not vote on the proposals. Fourteen surveyed voters made this complaint to DOI, and investigators serving as poll workers also heard several voters make this complaint. The 2013 general election ballot did not have any instruction on the front of the ballot directing voters to turn over the ballot for the proposals on the back of the ballot. DOI investigators reported that poll workers at some poll sites were reminding voters to turn over the ballot for the proposals, but this was not a uniform practice of poll workers on Election Day.

While discussing the font size issue during public meetings prior to the 2013 general election, BOE Commissioners noted the existence of possible alternatives to address the font size issue, including the use of bilingual ballots[39] or a 2-page ballot.[40]

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

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

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

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

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

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

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

2. Printing the Ballots

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

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

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

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

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

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

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

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

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

C. Poll Worker Recruitment, Training, and Performance

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

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

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

1. Application Process

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

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

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

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

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

2. Training Classes

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

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

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

- Similar to the Brooklyn training session discussed above, an investigator attended a training session in Staten Island where the trainer repeated information twice to highlight subjects to be covered on the exam.

- At a training session in Manhattan attended by an investigator, the trainer told trainees prior to the exam that the trainers "can't give you the answers, but can help make you right." During the exam, the investigator heard the trainer tell a trainee, "I can't tell you what the right answer is, but that one is wrong."

- An investigator who attended a Queens training session observed trainees openly discussing the questions on the exam and providing answers to one another. The investigator found that the cheating was visible to the trainers, but they did not intervene.

3. Voter Privacy

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

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

- When an investigator went to scan a ballot at a Brooklyn poll site, the poll inspector looked at the investigator's ballot and asked the investigator whether he voted "Yes" on the proposal regarding civil service credit for veterans. The investigator responded that his vote was private, and the poll inspector apologized for her question.

- A poll inspector assigned to the scanners at a Bronx poll site took an investigator's ballot out of his hand, looked at the ballot, and asked, "Who is John Test?" The investigator replied, "John Test is my candidate." The poll inspector proceeded to scan the ballot herself.

- A poll inspector in Brooklyn told an investigator that he left the ballot proposals blank. The investigator responded that he was only voting for Mayor.

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

- An investigator at a Queens poll site stated that a scanner inspector at his site was scanning ballots for each voter who came to the scanner.

- An investigator at a Brooklyn poll site observed approximately six instances where a scanner inspector scanned ballots for voters.

- An investigator at another Brooklyn poll site stated that scanner inspectors were scanning ballots for voters. The investigator noticed that some instances where the inspectors scanned ballots were at the request of voters.

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

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

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

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

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

4. Incorrect Voting Instructions by Poll Workers

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

5. Incorrect Action and Competency Concerns

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

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

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

Following the 2013 primary election, DOI investigated an allegation that the mother of a candidate in the 86th Assembly District of the Bronx was a poll worker in the 86th AD during the primary.[50] The Election Law forbids a person from being "certified [to] act as an election inspector or poll clerk . . . who is . . . the spouse, parent or child of . . . a candidate [for any public office to be voted for by the voters of the district in which the candidate is to serve]." Election Law § 3-400(6). DOI interviewed a poll site coordinator at PS 33 who confirmed that Luisa Duran, the mother of candidate Victor Pichardo, worked as a poll inspector at the 22nd election district table in the 86th Assembly District ("ED 22/AD 86"). After poll watchers made her aware that Duran was the mother of a candidate in the 86th Assembly District, the coordinator stated that she spoke with the Bronx Borough office, which told her to move Duran from an election district table in AD 86 to an election district table for AD 78.[51] DOI spoke with Marricka Scott-McFadden, a Bronx Deputy Chief Clerk, who said that she went to PS 33 and instructed the coordinator to move Duran to an AD 78 election district table and that Duran was moved. DOI then interviewed Duran who confirmed her assignment to an AD 86 election district table, but stated contrary to Scott-McFadden and the coordinator that she did not serve voters at the AD 86 election district table during the primary.[52]

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

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

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

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

D. Election Day Issues

1. Poll Sites

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

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

[53] Additionally, DOI obtained data from 311 showing that the majority of election-related calls to the 311 system – 72.3% (3,550) on primary day and 78.8% (3,215) on general election day – concerned requests for information about the voter's poll site location.

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

2. Voter Waiting Time and the Use of Voter Cards

New York State regulations provide that "[c]ounty boards shall deploy sufficient voting equipment, election workers, and other resources so that voter waiting time at a poll site does not exceed thirty minutes." State BOE Rules and Regulations § 6210.19(c)(1). Noncompliance with this requirement was a concern during the 2012 presidential election as long lines at the polls and people waiting hours to cast a vote was widely reported. *See, e.g.*, Jen Carlson, *Happy Election Day: How Was Your Voting Experience?,* Gothamist, Nov. 6, 2012, http://gothamist.com/2012/11/06/happy_election_day_how_was_your_vot.php. [54] DOI surveyed voters during the 2013 primary and general elections about their wait-times to vote. While a number of voters complained about waiting to vote at the polls, the majority of those voters reported waiting less than thirty minutes to vote. Ten surveyed voters reported wait-times exceeding thirty minutes.[55]

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

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

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

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

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

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

3. Voting Machines

a. Lever Machines

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

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

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

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

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

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

b. Electronic Scanner Machines

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

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

E. Election Results

1. Write-in Votes

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

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

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

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

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

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

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

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

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

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

3. The BOE's Reporting of Unofficial Results

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

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

F. Buff Cards

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

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

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

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

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

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

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

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

G. Runoff Elections

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

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

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

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

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

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

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

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

IV. Conclusions and Recommendations

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

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

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

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

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

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

BOE Employment Practices

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

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

- **Create a Standardized Hiring and Screening Process.** DOI learned from interviews with BOE managers and employees that the hiring and screening process at the BOE varies from Borough to Borough and even within Borough offices as between the two major political parties. DOI recommends that the BOE establish a standardized hiring and screening process to ensure that the Executive Office and Borough Offices uniformly follow a set of steps when considering applicants for job vacancies. These standards should include, at a minimum, that an applicant submit a resume, that BOE staff conduct an interview of all applicants under consideration, and that the interviewer(s) complete a written evaluation form following the interview.

- **Conduct Background Checks.** DOI found that the BOE does not conduct background checks on prospective employees. The BOE should arrange to have DOI conduct background investigations on prospective BOE employees. DOI performs background investigations of new City employees and those promoted to management positions at City agencies, including several non-Mayoral agencies. Background investigations are conducted for individuals who will fill managerial positions, earn more than $80,000 annually, be directly involved with City contracts, or work on the City's sensitive computer programs. Many BOE employees meet DOI's criteria for individuals requiring a background investigation, including those employees who have access to computer databases containing personal information about registered voters in New York City or otherwise work with City computer programs.

- **Implement an Anti-Nepotism Policy and Require Employees to Disclose Family Members Working for City Government.** The New York City Conflicts of Interest Law prohibits nepotism. The BOE recognizes in its Personnel Guidelines that its employees are subject to the Conflicts of Interest Law. DOI confirmed four cases where Commissioners and Borough Managers engaged in nepotism with respect to the hiring, promotion, or supervision of a relative. As stated above, these four cases will be referred to the COIB. DOI recommends that the BOE adopt an anti-nepotism policy consistent with the Conflicts of Interest Law that will (1) prohibit a BOE employee from any involvement in the hiring or promotion of a family member and (2) require recusal of BOE employees from employment decisions, supervision, or discussions about the work of family members. DOI also recommends that the BOE require prospective employees to disclose any relatives working for the City of New York and current employees to update this disclosure on a regular basis.

- **Adhere to City Personnel and Contracting Rules.** Akin to the BOE's recognition in its Personnel Guidelines that the City's Conflicts of Interest Law applies to its employees, and consistent with the recommendations made above,

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

- **Political Activities.** BOE employees and an Executive Office manager stated to DOI that employees are sometimes expected to engage in political activities while employed at the BOE. The BOE's Personnel Guidelines recognize that the restrictions on political activities set forth in the Conflict of Interest Law apply to BOE employees. The BOE should reiterate the restrictions on political activities in memos to managers and their employees, including the requirements that no one may coerce another employee to engage in political activities and that no superior may request that a subordinate participate in a political campaign.

- **Conduct Performance Evaluations**. DOI spoke with BOE managers who stated that the BOE has not consistently done performance evaluations on an annual basis. The BOE should conduct annual performance evaluations in conformity with its policy.

- **Review Fairness of the Disciplinary Process.** DOI spoke with employees who claimed that disciplinary rules are not applied equally as to all employees. The BOE should conduct a review of disciplinary standards to ensure consistent application of those standards.

- **Provide Employees With Notice of Their Whistleblower Protection Rights.** The BOE currently does not advise BOE employees about their whistleblower protection rights. The BOE should include in its Personnel Guidelines notice to all employees of their rights under the City Whistleblower Law.

- **Modernize the BOE Time-Keeping System and Implement Safeguards Against Time Abuse.** The current system for monitoring time and attendance is inadequate. Rather than continue with the outdated use of punch-cards, the BOE should use an automated time-keeping system to track the time and leave of all BOE employees, including those who currently use written time-sheets. Auditing BOE time and attendance records is cumbersome and time-consuming task compared with records of most other City agencies. Nonetheless, DOI will conduct various audits of time and attendance at the BOE. Until such time as the BOE implements an automated system, it should discuss with its vendors retention of surveillance footage for a period longer than one month because such a short retention period hinders effective investigations of time abuse. The BOE should confirm that each camera in the Borough offices is on the appropriate setting to record only motion by the punch-clock areas. The BOE also should install a camera in the Manhattan office.

Election Administration

- **Voter Roll Deficiencies**

  - **Conduct a Review of Cancellation Procedures.** DOI found during its Election Day investigative operations that 63 ineligible individuals, including deceased persons, felons, and nonresidents, remained on the voter rolls and in the registration books on Election Day.[65] DOI also found that investigators were able to sign the registration books and vote as those individuals without challenge by poll workers nearly 100% of the time. DOI's findings indicate that current procedures may not adequately remove ineligible voters from the rolls. The BOE should review existing cancellation procedures to determine whether any changes can be made to improve the system for removing ineligible voters from the rolls.

  - **Coordinate With State BOE Regarding the Identification of Ineligible Individuals.** The BOE receives notices from the State BOE regarding the deaths, felony convictions, or duplicate registrations of voters and makes cancellation decisions based on these notices. Registration supervisors told DOI that the BOE might benefit from obtaining additional information from the State BOE. The BOE should coordinate with the State BOE regarding the flow of information between the two agencies in order to improve the BOE's identification of ineligible voters on the rolls.

  - **Subscribe to the Social Security Death Master File Index.** Based on DOI's findings that some deceased individuals remain on the voter rolls despite existing cancellation procedures, DOI recommends that the BOE subscribe to the Social Security Death Master File Index. The BOE can design its own program to systematically interface with the SSA Death Master File to check for deceased voters.

  - **Implement Procedures For Pro-Active Response to Cancellation Requests From Voters.** DOI spoke with the BOE's Voter Registration Coordinator and Borough office registration supervisors who stated that the BOE does not cancel voters in response to telephone inquiries from voters indicating that they or a family member are ineligible and should be removed from rolls. The BOE informs voters that it requires documentation verifying that a family member is dead or a voter has moved before the BOE will cancel the voter. Rather than place the onus on the voter to provide such verifying documentation, however, the BOE should implement a policy for proactive responses to communications regarding the removal of a voter from the rolls. Specifically, to the extent possible, after a person informs the agency that a family member has died or a person has moved out of the City, the BOE should seek the necessary

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

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

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

- **Ballots**

  - **Resolve Font Size and Ballot Design Issues Before the 2014 Elections.** Voters complained about the tiny six-point font on the 2013 general election ballot. While BOE Commissioners expressed concern about the font size before the election, and Executive Director Ryan acknowledged that the font size was a problem, the BOE knew well in advance about the number of languages that had to be on the ballot in some areas of Queens and had explored options for addressing the issue, including the proposal of bilingual or trilingual ballots. Yet the BOE did not take action before the 2013 general election. The BOE Commissioners voted at a recent meeting to explore ways to improve the ballot in 2014. The BOE should consider the use of bilingual or trilingual ballots, as well as other proposals to improve ballot design and readability, and take action to address these issues in advance of the 2014 elections. The BOE also should include an instruction on the front of the ballot to notify voters, when applicable, that ballot proposals are on the back of the ballot.

  - **Print Ballots for Election Districts Based on Analysis of Historic Election District Turnout Data.** Despite having reviewed data showing that overall turnout in past Mayoral elections was below forty percent and that even the election districts with the highest turnout did not exceed approximately 60%, the BOE decided to order ballots based on a 90% voter turnout figure. With voter turnout in the 2013 Mayoral election of approximately 24%, the BOE printed a lot of unused ballots. Given recent Citywide voter turnout rates of approximately 30% in Mayoral elections, and even with consideration of the higher turnout of some election

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

- **Poll Worker Training and Performance**

  - **Professionalize the Poll Worker Training Program.** Numerous examples cited in this report reflect the inadequate training of poll workers, who were often uninformed, misinformed, or provided incorrect information to voters. The training of poll workers needs to be more intensive and effective. The BOE should examine the creation of a professional training program for poll workers involving, among other things, hiring qualified instructors with teaching experience, analyzing the methods for best instructing trainees to serve as poll workers on Election Day, and reevaluating the poll worker examination. The BOE also should study whether additional training and longer training periods would improve poll worker performance.

  - **Increased Use of Role Play and Hands-On Instruction.** Investigators reported that some trainings included use of role-play to instruct trainees on common situations confronted by poll workers on Election Day, while other trainings did not involve role play. Similarly, investigators reported hands-on instruction in the use of voting machines at several trainings, while other trainings involved only a demonstration on the use of the machines. Given the findings about poll worker performance in this report, including that many poll workers have trouble locating voters' names in the registration books and have trouble addressing common situations on Election Day, the BOE should increase the use of role play at trainings to prepare poll workers for situations they likely will confront at poll sites and to evaluate poll worker competencies. Further, the BOE should ensure that its trainings uniformly involve hands-on instruction with the voting machines to improve poll workers' understanding of how to operate the machines on Election Day.

  - **Enforce Rules Against Cheating and Trainers Providing Answers to the Poll Worker Exam.** Investigators attended poll worker trainings where trainees openly shared answers and discussed the poll worker exam. Further, in these instances, trainers did not intervene to stop cheating by

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

- **Provide Additional Training on Voter Privacy**. Poll workers at scanners during the general election handled ballots, scanned them into the machines, and in some instances, even commented on voters' choices on those ballots. The BOE should emphasize in poll worker training that poll workers at the scanners are not to take ballots from voters to scan into the machines, look at voters' ballots, or comment on voters' choices.

- **Provide Training Regarding Improper Voting Instructions.** During the general election, poll workers at several poll sites improperly advised voters that they should "vote down the line" of the ballot for candidates from one political party. The BOE should ensure that poll site coordinators and poll workers are trained to understand not only that voters are not required to "vote down the line" when completing the ballot, but also, that they are not to instruct voters about how to vote.

- **Train Staff to Provide Accurate Information About Poll Worker Applications**. DOI investigators applying to work as poll workers were provided with inconsistent information regarding the process for hiring City employees as poll workers. The BOE should train staff receiving poll worker applications to provide accurate information regarding the application process.

- **Election Day Issues**

  - **Improve Coordination to Open Poll Sites for Poll Workers on Time.** Several DOI investigators serving as poll workers reported that although workers were told to arrive at poll sites by 5:00 AM, their poll sites were not unlocked until nearly 6:00 AM when the polls were to open. As a result, those poll sites were not ready to receive voters at 6:00 AM. The BOE should coordinate with personnel at other institutions used as poll sites to improve communication regarding unlocking poll sites on time so that workers are able to prepare the site for voters before the polls open.

  - **Post Poll Site Relocation Notices at Old Poll Sites.** Voters surveyed by DOI investigators complained that they went to the wrong poll site location. One reason that voters might have gone to the wrong poll site locations is that a number of poll site locations changed due to

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

- **Eliminate the Use of Voter Cards.** BOE poll workers fill out and provide Voter Cards to voters, despite the State BOE's repeated requests that the BOE discontinue their use because they create delays at the polls and unnecessary expense. Although BOE Executive Office staff resolved not to use the cards in the 2013 election, the BOE Commissioners reversed that decision. The BOE printed 3 million Voter Cards for the 2013 election at an approximate cost of $40,000. The BOE is the *only* remaining board in New York State that uses the cards. The BOE should eliminate the use of Voter Cards.

- **Provide a Voter Privacy Screen at Scanners.** In addition to the recommendation discussed above about training poll workers on voter privacy, the BOE should use a privacy screen, partition, or some kind of demarcation around scanners to protect the voter privacy and curtail the handling of ballots by poll inspectors. The BOE also should post signs by the scanners or on the scanners notifying workers and voters about voter privacy rules.

- **Election Results**

  - **Use Filtering Technology to Count Write-In Votes.** The BOE has software, which has been available since 2012, capable of identifying the relatively small number of ballots containing write-in votes, but the BOE is not using it. Instead, employees currently review all scanned images of ballots for write-in votes. There were approximately 1,800 write-in votes for Mayor in the November 5, 2013 general election out of approximately 1.1 million ballots cast. The BOE should use the filtering technology to save time and employee resources in counting write-in votes.

  - **Review Ballot Security and Counting Procedures in Borough Offices.** In light of the problem experienced by the Manhattan BOE office with affidavit ballots having been misplaced and not properly accounted for, the BOE should conduct an internal review of that office's ballot security and counting procedures and proactively review those procedures in other Borough offices.

  - **Explore Options to Upload Unofficial Results at Poll Sites.** The results could be reported more quickly by uploading results from the PMDs at the poll sites rather than the police precincts. The BOE has explored the use

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

- **Eliminate the Indefinite Retention and Unnecessary Updating of Buff Cards.** The BOE engages in the unnecessary retention and updating of buff cards. The BOE does not have to retain the cards beyond two years. However, DOI observed large groups of employees engaged in the unnecessary manual updating and filing of buff cards one week before the 2013 general election when they could have assisted on election preparation. The claim that the BOE retains the buff cards for petition challenges in court must be viewed in light of the fact that the BOE has electronic copies of the buff cards for use in court and, based on the recollection of the Deputy General Counsel, has used a hard-copy buff card in court only once in the last two and a half years. The BOE should stop the indefinite retention of buff cards beyond two years, and cease alphabetizing and updating them.

- **Take a Position on Instant Runoff Voting and Other Runoff Election Proposals.** The BOE is the agency responsible for administering elections in New York City. Given its role, the BOE should take a position on the significant legislative proposals regarding runoff elections. Instead, in advance of the November 21, 2013 Committee hearing on IRV and other runoff election proposals, the BOE Commissioners unanimously voted to formally take "no position." Then, in its testimony, the BOE presented on the practical and logistical challenges to implementing IRV, while acknowledging that the cost savings from IRV outweigh the costs of implementing IRV. The BOE should take a position on the IRV and other proposals giving serious consideration to whether addressing any challenges involved in implementing IRV is worth the substantial savings of taxpayer money that IRV would provide.

<u>BOE Anticorruption Program</u>

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

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

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

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

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

Appendix - Background

I. The Responsibilities of the BOE

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

A. Registration and Cancellation

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

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

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

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

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

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

B. Voting Equipment

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

C. Ballots

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

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

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

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

D. Election Day Operations

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

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

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

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

The "canvass" refers to the process of counting the votes from an election. *See* Election Law §§ 9-100, 10-200 *et seq*. As explained further below, the canvass is performed in two stages: (1) votes are canvassed at the poll sites after the close of the polls on Election Day; and (2) paper ballots not canvassed at the poll sites including affidavit, absentee, and military ballots are canvassed after Election Day at the BOE Borough offices. After an election, the BOE also conducts a "re-canvass" to verify the accuracy of the vote count. *See id.* § 9-208. Unofficial election results are reported to the public at the conclusion of Election Day. The official results are certified by the BOE Commissioners. *See id.* § 9-210.[69]

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

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

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

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

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

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

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

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

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

II. The BOE's Administration of Recent Elections

A. The November 6, 2012 General Election

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

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

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

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

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

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

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

B. The 2013 Primary, Runoff, and General Elections

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

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

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

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

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

1. The September 10, 2013 Primary Election

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

2. The October 1, 2013 Runoff Election

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

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

3. The November 5, 2013 General Election

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

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