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**Citizens Union Calls on City Board of Elections
to Modernize Reporting of Unofficial Results on Election Night**

**Good Government Group Provides Legal Justification
for Implementing Changes Administratively without Amending State Law**

[Citizens Union](#) today called on the Board of Elections in the City of New York (the Board) to vote in favor of a resolution at its weekly Commissioners' meeting to modernize its reporting of unofficial election results- the unofficial winners and losers of races- on election night. The good government group issued a [legal analysis](#) that showed how the Board could act administratively without the need for state legislation.

Dick Dadey, executive director of Citizens Union said, "In adopting new administrative procedures, the board would end the current outdated and inefficient process of 'cut and add' and permit election night results reporting to use portable memory devices to tally quickly unofficial results the night of an election. If New Yorkers can bank online using computers, the Board should be able to use the modern technology at its disposal to report initial voting results. Failure to create a more accurate process would subject the Board to further scrutiny and public head scratching for not implementing a new and efficient way to conduct elections and tabulate unofficial results using available 21st century technology."

Alex Camarda, director of public policy and advocacy, further stated "The unofficial results report errors that produced confusion in the 13th congressional district contest between the incumbent Charles Rangel and challenger Adriano Espaillat makes the case like no other that the Board needs to change the way such vote counts are tabulated. Having in place a quicker and more accurate process would allow the media to report accurately the preliminary election results made by New York voters earlier in the day."

At question is the Board's authority to automate its reporting without a change to the law. In a legal analysis issued today, Citizens Union believes that the Board can proceed administratively without a change to statute because:

1. Section 9-126(3) of New York State Election Law gives the Board the authority. It states, "*The*

board of elections of counties in which voting machines which have removable electronic or computerized devices which record the total of the votes cast on such machines are used, may establish procedures by which such devices may be used after the close of the polls to provide the unofficial tally of results required by this section.”

2. Notwithstanding the Board’s counsel’s belief that section 9-126(1) of the Election Law (which underpins the Board’s current process for reporting unofficial results) supersedes 9-126(3), section 9-126(3) was enacted more recently meaning the modern automated approach it lays out trumps the conflicting provision providing for the traditional method for reporting election results.
3. Section 9-126(3) must allow for all counties including New York City’s to report unofficial results using portable memory devices because if the specific references to counties in sections 9-126(1) and 9-126(2) were paramount (as argued by the Board’s counsel), section 9-126(3) would be inapplicable to any county in New York, rendering it meaningless. This could not have been the intent of the lawmakers in enacting it and is in contrast to statutory construction that presumes a law is meaningful rather than superfluous.
4. The Board has already run a pilot program in Queens implementing the modern automated approach for reporting election results provided for in section 9-126(3). This program presumably was done under the legal authority granted in 9-126(3).
5. The Board’s 2012 [Recommended Revisions in the New York State Election Law](#) does not make recommendations to amend section 9-126(3) to clarify that it is applicable to New York City but does suggest the section of law should explicitly retain the role of the police. This recommendation by the Board’s own legal office implies section 3 is applicable to the City.

Citizens Union’s [analysis](#) comes to a similar conclusion as that provided by the State Board of Elections. At the City Board’s meeting on July 10, Citizens Union formally requested the City Board ask for a legal opinion of the State Board. The State Board, in a letter from its Co-Executive Directors on Friday, stated that the City Board could move forward administratively without a change to state law.

An affirmative vote at today’s meeting by the Board’s Commissioners would enable unofficial results reported on election night to be provided more quickly and accurately ensuring the public has complete confidence in the conduct of our elections and practice of our democracy.


The portable memory device (PMD) in the scanners that records the votes of ballots cast would be removed when the polls close and transported to central locations for the uploading of results. The winners of each race would then be reported to the press and, by extension, the public.

The Board’s current process involves printing the tabulated results tape from the scanner; cutting up the tape by election district; compiling the pieces by election district for each race; adding up the results on a calculator; writing the results on return of canvass forms; providing the forms to police officers stationed at poll sites; transporting the return of canvass forms to precinct stations in which the poll site resides; manually entering the results in police precinct computers; and transmitting the results to the Associated Press.

This process has proven to be inaccurate and unnecessarily laborious. The race for the 13th congressional district was the most recent and glaring example of the shortcomings of the current process. Congressman Charles Rangel was initially reported to have won by as much as 20 percent the night of the election only to see his lead shrink the next day to 6 percent with all precincts reporting and, eventually, to 1.96 percent.

While the Rangel- Espaillat race is the most visible and recent example of the shortcoming of the current election night tally system, the 2010 general election unofficial results also differed greatly from those that were ultimately certified. In December of 2010, 195,055 more votes were part of the certified results than the unofficial reporting on election night, or 17 percent more than the total votes initially reported in all contests. That differential was exclusive of uncounted paper ballots and only measured the variance caused by inaccurate reporting due to the manual process of tallying election night results.

While unofficial results are preliminary, as they do not include paper ballots and have not been fully vetted, a more accurate count could help to ensure the public's belief in the integrity of the results and the Board's competency. The Board should follow the example of Nassau County, acting under the same subdivision in law as New York City, and proceed administratively to report more accurately and timely unofficial results.



[Citizens Union](#) is a nonpartisan good government group dedicated to making democracy work for all New Yorkers. Citizens Union serves as a civic watchdog, combating corruption and fighting for political reform. We work to ensure fair and open elections, honest and efficient government, and a civically-engaged public.

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