



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the State Assembly Committee on Election Law
Regarding In-Person Voting in New York State
December 9, 2013

Good morning Chair Cusick and members of the Assembly's Election Law Subcommittee on Election Day Operations and Voter Disenfranchisement. My name is Rachael Fauss, and I am the Policy and Research Manager for Citizens Union of the City of New York. Citizens Union is a nonpartisan good government group dedicated to making democracy work for all New Yorkers.

We thank you for holding this hearing today, and appreciate that this committee has held hearings now three years in a row around this time to inform its work during the legislative session.

A few advances were made in the effort to improve voter accessibility during the 2013 legislative session. Most notably, the Assembly passed for the first time early voting legislation, and we appreciate that the Assembly considered our input and made a few amendments to the bill (see attached joint positions on early voting by the major good government groups).

New York State, however, is still far behind other states in modernizing its election practices and increasing access to the polls. Operational and administrative issues also persist, particularly in New York City. Arguably the most pressing matter effecting voter accessibility is the date on which elections are held so that military voters may exercise their right to vote, and so that boards of election – particularly New York City's – can more easily administer elections. **Beyond the date of the state and local primary elections, there are numerous other reforms needed to improve voter access. I will focus today on those changes that we believe are important and have a chance of moving forward in the state legislature next session.**

1. Moving the Primary Date to June

As you know, pursuant to a court order by Judge Gary L. Sharpe of Federal District Court in Albany, New York's federal primary is held in June while state and local contests remain in September. Citizens Union does not have a position on moving the state and local primaries to June, albeit we have had many discussions about the issue. A June primary has several advantages. It would save \$50 million to hold the state and federal primaries concurrently. New York City alone spent \$9.27 million to hold an extra election in 2012, a cost of \$3,290 per registered military and overseas voter. Holding state and federal elections on the same day, whether it be in June or at another time, would likely boost voter turnout because voters would not have to turn out for so many different elections, as was true in 2012 when four different elections were held. A June primary may also make it easier for college

students to vote in their home districts and allows for more time for litigation related to elections.

Citizens Union, however, also has concerns about a June primary. With elections every two years for all members of both houses of the legislature, lawmakers already have little time to focus exclusively on governance before campaign considerations become amplified in their decision-making. A June primary could potentially politicize governance further, because most votes on legislation currently occur in June and there could be a greater perception of – if not actual conflicts of interest – because campaign cash would be raised just before a June primary election while votes on bills are occurring. If a June primary is ultimately approved, the legislature should adjust its calendar to avoid the appearance of conflicts or consider lengthening and staggering terms of lawmakers. We also know of no data that conclusively shows that primaries held in June or August result in greater turnout. Citizens Union examined turnout in 2010 in other states in months including February, May, June, August and September. June's turnout in New Jersey, California and Virginia that year actually fared worse than August primaries in Michigan, Florida and Connecticut. However, there are numerous variables that account for these differing voter turnout outcomes, so we do not conclude anything definitive from this information. It may very well be that holding federal and state primaries concurrently *at any time* is better than the split primary we now have.

2. Instant Runoff Voting (IRV) for NYC Run-off Elections

Regardless of whether state and local primaries remain in September or move to another month, New York City's Board of Elections will still struggle to implement a runoff election a few weeks later, whether it be three weeks as was the case this year, or two weeks which is what the law reverts back to at the end of this month. As you know, the Board decided to use lever voting machines this year during the primary and runoff elections as permitted by legislation passed by the Assembly. Citizens Union believes the Board should not be allowed to go back and forth between lever and optical scan voting machines and confuse the public. The state legislature should pass Instant Runoff Voting for party primaries for, at minimum, citywide offices so a runoff election can be held instantly rather than separately at the polls (we also support IRV more broadly). IRV will save the city at least \$17 million. It will result in greater participation by effectively enabling voters to vote in the primary and runoff election at one time. In 2013, for example, 16.4 percent of registered Democrats voted in the primary election for public advocate. Only 5.7 percent turned out for the runoff election, a staggering decline of 345,089 voters, or 65 percent. IRV will also ensure the ultimate victor truly possesses majoritarian support, and a greater mandate to govern as a result.

Most relevant to the topic of this hearing, IRV will also provide military and absentee voters a greater opportunity to vote.

During the 2013 elections in New York City, turnout by military and absentee voters declined 14 percent between the primary and runoff elections, exceeding the overall decline in voter turnout of nearly 11 percent. This decline occurred even with military and absentee voters requesting their ballots, therefore indicating a stronger interest in voting. The proportion of military and absentee votes that did not count because they were

postmarked or received late also increased during the runoff election by 3.65 percent, including by 33.98 percent among military voters. The tables below demonstrate this information.

PRIMARY ELECTION	Absentee	Military	Total
Ballot Applications	47,400	1,905	49,305
Ballots Cast	22,057	276	22,333
Ballots Cast of Ballot Applications	46.53%	14.49%	45.30%
Ballots Counted	21,507	215	21,722
Ballots Not Counted- Late (Postmarked or Received)	550	61	611
Postmarked Late	431	34	465
Received Late	119	27	146
Proportion Not Counted (of ballots cast)	2.49%	22.10%	2.74%

DEMOCRATIC RUN-OFF ELECTION	Absentee	Military	Total
Ballot Applications	40,347	1,481	41,828
Ballots Cast	12,926	148	13,074
Ballots Cast of Ballot Applications	32.04%	9.99%	31.26%
Ballots Counted	12,235	65	12,300
Ballots Not Counted- Late (Postmarked or Received)	756	83	839
Postmarked Late	599	49	648
Received Late	157	34	191
Proportion Not Counted (of ballots cast)	5.85%	56.08%	6.42%

PRIMARY VS DEMOCRATIC RUN-OFF ELECTION	Absentee	Military	Total
Decrease from Primary Election in Proportion of Ballots Cast	14.49%	4.50%	14.04%
Increase from Primary Election in Proportion of Ballots Not Counted	3.36%	33.98%	3.65%

In order to address this decline in turnout, the Assembly should act next session to pass A.7013 (Kavanagh). By passing Assemblymember Kavanagh’s bill, the state will avoid facing a lawsuit claiming that military voters are disenfranchised in state and local elections and come into compliance with its own laws that read, “A military voter of this state shall be entitled to vote as fully as if he were present at his polling place and to register and vote in the manner hereinafter provided...”¹ and “ballots of military voters shall be mailed or otherwise distributed by the board of election...as soon as is practicable but in any event not later than thirty-two days before a primary or general election.”²

¹ See Article 10, section 104 of NYS Election Law.

² See Article 10, section 108 of New York State Election Law. Election Law 8-100 refers to the runoff election as a primary election, stating, “In the event a run-off primary election is required in the city of New York, it shall be held on the third Tuesday next succeeding the date on which the initial primary election was held.”

Citizens Union has been actively working with the City Council and the Mayor's Office to advance IRV legislation, which we believe they have the authority to enact under the Municipal Home Rule Law and section 1-102 of Election Law.

3. Ballot Design

Step one in making voting accessible is creating a ballot that all voters can read. But in New York City this past election, the font size for candidates' names for the general election ballot was six-point font, miniscule in size yet larger than the 2010 ballot that had an even smaller five-point font (in 2012, the City Board used a 9 point font for the general election and a 7.5 font for the primary election). The 6 point font on the ballot this past election could have been avoided had the Senate passed A.204 (Kavanagh)/ S.5350 (Golden). The Voter Friendly Ballot Act (the Act) sets a minimum 12 point font or 1/6 of an inch for candidate names as a benchmark, which would also be in case sensitive type, thereby making them more readable than the current practice that every letter of each candidate's name be capitalized. The Act makes a larger font possible by removing unnecessary clutter in the ballot. It allows for the use of shading too distinguish between sections of the ballot to improve readability. It provides simpler and clearer directions to voters for marking their ballot, including visuals that demonstrate how the ballots should be marked.

While the Assembly is to be commended for passing the legislation, it should do so again as soon as the legislation session convenes in 2014 so there is adequate time for the Senate to know the bill is serious, and address any concerns they may have. This bill came very close to passing last session, and numerous election advocates, including Citizens Union, would gladly work with the Assembly towards its passage this session.

While passage of the Act would be helpful to improving ballot design, the Board of Elections in the City of New York (City Board) also must utilize its own powers to create trilingual ballots rather than creating a ballot for all voters that is based on a template from the most cluttered ballot for the poll site with the most required languages. The Board has said it will convene a subcommittee to do just that in January 2014. We are cautiously optimistic this will help address the ballot design issue; however, executive staff at the City Board held similar meeting in August 2012, and January and June of 2013, yet only small improvements were made to ballot design that fell short of avoiding a 6-point font for candidate's names this past November. Members of the Assembly on this committee or their staffs could attend this subcommittee's work to ensure it is completed. County party chairs should convey the importance of completing ballot design administratively to the Commissioners that nominated them.

The City Board has also failed to even entertain the idea of multi-page ballots which is allowed for already under state law. In November, the City Board did not even discuss the option of putting only the ballot questions on a separate page so they could be split across front and back and be made more readable. That proposal would not have affected the placement of candidate's races at all.

The legislature should include in any ballot design bill a provision that would require multi-page ballots if the font size for candidate's names, office names, or propositions was below a readable threshold.

In their defense, the City Board does have legitimate concerns about multi-page ballots and trilingual ballots because the additional complexity of administration may create problems for its 35,000 poll workers. However, there are numerous steps they can take administratively to improve poll worker recruitment, training and performance.

4. Pre-registration of Young Voters

The Assembly also passed last year A.2042-A (Kavanagh)/S.1992-A (Carlucci) which would enable 16- and 17-year olds to pre-register to vote with the county board of elections in which they reside. Pre-registered voters turning 18 retaining their eligibility to vote and upon review of their county board would automatically be registered without having to submit any additional paperwork. The Senate moved this bill out of their Elections committee and the principle of pre-registration is also supported by Governor Andrew Cuomo, who included pre-registration in his Program Bill #3.

Citizens Union supports this legislation because it importantly makes it easier for young people to register to vote and ultimately participate in our democracy. Young people have long had lower rates of registration and voting across the country; New York State is no different, with only 46.6 percent of eligible voters between 16 and 24 years old registered to vote.

Essential provisions in the bill also mandate that local boards of education adopt policies to promote voter pre-registration and registration. This is critically important as high schools have lengthy and in-depth relationships with young people and are uniquely positioned to offer them the opportunity to pre-register to vote. Once young people leave high school and have obtained their driver's licenses, contacts with government entities diminishes, and with it the likelihood of being involved in the political process.

Citizens Union suggests that local boards of election should be charged in this bill with integrating in their existing voter registration action plans pursuant to Election Law 3-212(4)(b)(1-3) pre-registration of 16- and 17-year olds. Under current law, 17-year olds turning 18 by the end of the calendar year may pre-register. Yet the City Board of Elections, according to its 2012 and 2011 annual reports, pre-registered just five 17-year olds in all of New York City in 2012 and only eleven 17-year olds in 2011. This data indicates the need to mandate that local boards of election establish policies and programs to facilitate pre-registration consistent with existing law that requires they create voter registration action plans.

Thank you again for providing the opportunity for Citizens Union to testify. I am happy to answer any questions you might have.

APPENDIX

**Brennan Center for Justice
Citizens Union
Common Cause New York
League of Women Voters New York State
New York Public Interest Research Group**

Joint Positions on Early Voting

Early voting should be a similar experience for voters across the state with, at minimum, the following common characteristics:

1. Early voting should occur for two weeks inclusive of two weekends.
2. Early voting should be held on weekends and weekdays, with at least some weekdays offering early voting before and after typical business hours.
3. Early voting should conclude at the end of the day the Sunday before Election Day.
4. In advance of the first day of the early voting period, each county should provide public notice of the days, hours and locations for early voting in that county.
5. Modifications should be made to ensure voters who timely register before registration deadlines are included in the poll books for early voting and to update poll books (including through the option of secure electronic poll books) during and at the end of the early voting period.
6. Early voting should be held at boards of election offices, existing poll sites, government offices and/or private locations as needed to ensure meaningful public access. Supersites should be used as needed to accommodate the larger number of voters and election/assembly districts that will be served in any one location during early voting.
7. A uniform statewide standard incorporating the variables below should be used to determine the minimum number of locations for early voting in each county (the standard should objectively and quantitatively determine the number of poll sites and should be binding on counties). Counties should have flexibility to determine additional sites beyond the minimum established by the statewide standard but should be required to consider the factors used below in creating any additional sites:
 - The type of election (primary, general and special as well as the year in which the election is taking place)
 - The voting population or the number of active voters

- The number of assembly districts, in part or whole, in a county
 - Population density, geography, and the methods and distance of travel for voters to reach potential locations
8. Revisions of election procedures should be considered to limit costs associated with early voting. For example, the number of required inspectors per election district could be reduced from four to two. In addition, a comprehensive review of poll site staffing could be done to create more flexibility with regard to assignments and save money.
9. Any early voting legislation should include a requirement that a report be produced after each gubernatorial election to evaluate how well early voting has been implemented, looking at turnout, diversity of voters, administrative issues, and recommending reforms to improve early voting as needed; this review would be similar to that which will be conducted in 2015 as a result of the 2011 Public Integrity Reform Act which created the Joint Commission on Public Ethics to monitor implementation of the law.