

New York Democratic Lawyers Council (NYDLC)

September, 14th 2010 Primary Day Report: Observations, analysis, and recommendations

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Robert Donovan, NYDLC Co-Chair
Matthew Morningstar, NYDLC Co-Chair
John Nonna, NYDLC Co-Chair
Cindy Warner, NYDLC Co-Chair

Contact:

Alex Voetsch, Executive Director, New York Democratic Lawyers Council
Alex.voetsch@nydlc.org, 212-725-8825 ext.288

On Primary Day, September, 14 2010, New York City introduced to its voters thousands of new optical scanner voting machines and a paper ballot system to replace the mechanical lever system machines which had been used for over 50 years. NYDLC trained, supported, and solicited observation and trouble reports from 100 attorneys and other election monitors to gather information on the quality of election administration around the implementation of the paper ballot optical scan voting systems on Primary Day.

Overall, our reporting established that voters accepted the new optical scanners and no widespread distrust of the new system or the results were reported from voters, candidates or the parties. In sum, the initial use of the new voting system was successful.

However, notable and sometimes disquieting reports were received and raised issues which need to be addressed prior to the November 2nd General Election. The General Election will pose a more rigorous test on the system because of party-candidate contests and a substantially larger number of voters. Below is an analysis, drawn from NYDLC's observation and incident reports, that identifies systemic Primary Day issues and recommendations for how these issues can be addressed and remedied before the General Election.

Our observers monitored the following areas:

- The opening of the polling location and printing of the Zero Report Tape.
- Traffic Flow within the polling location, specifically, gathering poll site flow metrics: Voter time at check in, time to cast ballot, time to scan ballot.
- Technical difficulties in operating the scanner and the training and knowledge of the Scanner Inspectors.
- Privacy and ballot secrecy.
- Proper closing of the polling location and the closing down of the scanners and printing of Results Report Tape.

We deployed observers to and gathered information from large and representative poll sites across all five Boroughs of New York City, Nassau, Suffolk, Westchester, Erie and Albany Counties. We gathered extensive feedback through incident reports and observation forms that were completed by the poll watchers as well as post-election interviews with observers. Our analysis of these reports yields the following:

1. Voter acceptance

Overall, voters accepted the "new way of voting." Observers frequently reported that initial voter apprehension was met with relief and surprise at the ease of the process as voting was completed. While a minority of voters expressed concern over "machine counting" of their votes, observers generally reported that voters were satisfied with the ease of marking and casting of ballots. One concern, however is ballot design and small print, inevitably an increasingly high profile issue as ballots necessarily cover a higher number of races and ballot questions. Overall, the high number of contested primaries and low number of post-election proceedings point to candidates' broad acceptance of results. When scanners did break, the voters' ability to scan ballots from any ED at any scanner proved beneficial and helped keep poll site traffic flowing.

2. Late opening

In New York City, we received frequent reports from poll sites that not all scanners were up and running at 6AM, when the polls were intended to open. Our results indicated that late police delivery of materials and poor understanding of opening procedures by poll workers were the primary source for late openings. We found that these two distinct issues were especially problematic when combined.

Late arrival of materials via police courier - Where our observers reported late openings, this was usually tied in part to the late arrival of scanner keys brought by police officers. Police officers typically arrived significantly later than the 5AM prescribed by the Board of Elections regulations, in some cases between 545 and 6AM, 6AM being the prescribed hour for poll opening. This resulted in poll workers being rushed to open on time. In some instances, scanners had to be moved and poll sites partially re-arranged because power outlets were not close enough to the initial scanner placement and this was realized only once the keys arrived, late. To be clear, we found that across the board the individual police officers were well trained, professional, and aware of their duties. In years past they were instructed to arrive at 5:30am, and it is not clear if the department placed any emphasis on, or reminded individual officers of the new time of 5:00, as specified on page 160 of the NYC Board of Elections 2010 poll workers manual.

Poor poll worker understanding of opening procedures - Many poll workers lacked adequate understanding of scanner setup procedures. In some cases, they failed to notice or consult the simple, step-by-step color set-up guides accompanying the scanners. This was compounded by a lack of clear delineation of poll worker responsibility in some cases. BoE guidelines call for certain poll workers to be designated as "scanner inspectors" and carry the primary responsibility for the opening and operation of the scanners. Often, this failed to materialize. When coupled with the late arrival of materials, poll worker confusion became a pivotal issue as poll workers rushed to open the polls on time.

3. Polling station layout and signs

Frequently, the polling stations were not laid out to easily facilitate traffic and, most importantly, protect the privacy of voters. Privacy booths and scanners often were easily visible to others in the poll site. In some sites, outlets were not in expected or optimal positions and no extension cords were provided. We found that some poll site coordinators did not follow the BOE provided poll site schematic, and also that many of the BOE poll site schematics were poorly conceived themselves. While the polling station layout was not a major issue on Primary Day because of a low to moderate voter turnout, it could become a major issue if not fixed before the general election. Observers found that some poll sites were not properly labeled from the outside and did not properly identify handicapped entrances when the station required one.

4. Privacy

In all areas in which NYDLC observed the polls, various safeguards meant to maintain ballot secrecy were frequently not observed. To be clear, our observers reported this was a function of poll workers' desire to ensure that voters properly understood how to vote and to cast their ballots at the scanner. However this can still be accomplished without sacrificing the ballot secrecy by following designated privacy procedures.

Privacy sleeves While privacy sleeves were largely present in the polling locations, they were often not presented to voters at the registration tables or made available in privacy booths, or their use was inadequately explained. Often, voters failed to make use of the privacy sleeves from the registration tables and or from the privacy booths.

Privacy booths Often, privacy booths were arranged such that poll site traffic would have passed behind voters voting, hindering ballot secrecy. Upon inspection of poll site schematics, we found that poll workers generally followed the set up that was prescribed to them; it was the set up that should have been different from the start.

Poll site traffic and flow The physical relationship between privacy booths, scanners, and registration tables was not optimized to facilitate traffic flow. Turnout was low, so this did not

prove disruptive. However, with higher turnout expected at the general election, this may prove problematic.

Ballot handling at the scanners Often, scanner inspectors would ask voters for their ballots and handle them as they were being scanned in. In many cases, the partitions that attach to the sides of the scanner to shield the voter were not installed by the poll workers. Scanner inspectors also often stood within eyesight of the voters' ballots when the ballots were being inserted into the machine and at times instructed voters not to put the ballots in face down, which is allowable. According to Boards of Elections training manuals, poll workers should not handle a voter's ballot and should stand to the side of the machine where the ballot would not be visible to them. To be clear, in the vast majority of cases the poll workers were acting in a polite and helpful manner, and in no way were intentionally sacrificing privacy. Poll worker training should reemphasize respect for voters' privacy.

5. Poll worker training

We understand that the Boards of Elections had the difficult task of retraining their entire body of poll workers, a challenge in any county but especially in New York City with its approximately 3,600 poll workers. Given the new procedures and technology, it is understood that there would be some degree of confusion the first time the new machines and process were put into action. However, we found the widespread confusion on Primary Day over basic procedural matters to be troubling.

Standby Ballots and Emergency Procedure Most importantly, we found many instances in which poll workers did not understand the proper procedures for using Standby Ballots and for allowing voters to cast regular paper ballots through Emergency Procedures in case of scanner failure. This lack of understanding led directly to the disenfranchisement of voters who were turned away from poll sites and told to come back later. Voters should always be allowed to cast a Standby Ballot, commonly referred to as an affidavit ballot. In fact, some poll workers did not understand that the ballots labeled Standby were indeed "affidavit" ballots, which again points to a lack of training.

Voter Cards and Record Keeping On a more technical level, poll workers were often confused about the use of the green voting cards, entering stub numbers and voter numbers, attaching seals to their proper places, and recording seal numbers in the book to ensure security. Poll workers also did not understand procedures for ensuring voter privacy and ballot secrecy, as addressed in the section on privacy above.

Staffing Several observers reported understaffed conditions. The situation was manageable because of low voter turnout, but could become a serious issue for the general election. Also, several polling stations did not have a Coordinator on duty, causing confusion and delays until a replacement could be found.

6. Scanner breakdown

While scanner breakdown appears to be the most commonly reported issue on Primary Day 2010, machine breakdown was typically the single most common reported issue on Election Day when the old lever machines were in use. We draw this conclusion from a historical analysis of incident logs compiled by the NYDLC over the past 5 years. As such, the instance of machine failure at first glance appears to constitute continuity rather than change vis-à-vis prior elections. A significant change this cycle, however, is the fact that the emergency ballot procedures allowed for continuity in voting. We found that in many cases, when one machine was down, the poll sites were easily able to accommodate all voters on the other scanners without long lines. This is partially due to a low to moderate voter turnout, but is also due to the Board of Elections foresight in providing enough scanners to each location.

In many cases, “scanner breakdown” was not the result of the technology actually being broken beyond the capability of the poll worker to repair, but instead was a small issue with the set up or operation of the machines that could be easily remedied by a knowledgeable poll worker. In some instances, a scanner was down due to a lack of material, such as a paper roll. It is clear that in terms of actual scanner failure, the new optical scanners were no more likely to break down than the old lever machines.

7. Inventory control and management

Inventory control is always a logistical challenge. With additional and different components to the election process, this presented difficulties. Observers reported frequent instances of missing seals, broken seals, mis-delivered scanners, and missing poll books. Additionally, we found a significant number of ballots were torn and thus voided because of the placement of staples on the ballots. We expect that the issues of inventory and management will be addressed and fixed by the Board of Elections for the General Election.

8. Ballot accounting and canvass recording The system of accounting for ballots and recording the results of the election appear to make less than full use of the potential to simplify the process for paper ballots. Continued use of voter cards was confusing and presented challenges both during the day and at close, as poll workers had difficulty executing the reconciliation of cards to scanners to EDs. Poll workers had great difficulty successfully completing the end of day overall ballot reconciliation and canvass report execution.

Immediate Recommendations for Implementation by November 2nd

1. Enforce the on-time delivery of materials. The Board of Elections and City Administration should work with the NYPD to ensure the understanding of poll opening procedures and particularly the timeline for opening. This is a simple change that would solve many problems.
2. Poll site coordinators should understand and be experts on all Election Day procedures including set up, opening, voter privacy, voting process, and closing. Since this is clearly not the case, poll site coordinators should be required to attend an additional training session to ensure that they can adequately perform their jobs on Election Day.
3. Additionally, at least one poll worker per site should be a subject matter expert on the opening, closing and operating of the scanners. This may require additional training of these individuals, but would ensure fewer scanner breakdowns, the on time opening of poll sites, and a secure and timely closing process.
4. The Boards of Elections should reemphasize the implementation of privacy procedures to all poll workers. This could be done through additional training or by a comprehensive memo to all workers or by instructing poll site coordinators to emphasize this to the workers before the opening of polls. Signage should be placed in the poll site instructing voters and poll workers alike of proper privacy procedures.
5. The Boards of Elections should work with stakeholders (county committees, elected officials, district leaders and candidates) to improve understanding of new technology.

Recommendations to Consider Post November 2nd for future elections

1. Most counties in NYS do not use the system of green voter cards that is in use in New York City. This system seems to confuse poll workers and voters alike. We would like

the BOE and other stakeholders to examine the simpler and more efficient processes that other counties use for possible implementation in NYC.

2. Currently in New York City, the process to close the scanners and report the vote counts involves the printing of paper from the scanner, the cutting of this paper by Election District with scissors, the hand tallying of votes from each election district, and other complicated steps. In most municipalities that use the same machines, results are printed and the flash drives are removed from the machine and delivered to the BOE for counting. We recommend examining this process and using the flash drives as a way to simplify the process and reducing the possibility of human error.
3. We must take steps to ensure that poll workers who are hired are willing and equipped to perform their jobs to a satisfactory level. Recommendations include: more comprehensive training of poll workers and a better test to ensure their comprehension, an emphasis on hiring 17 and 18 year old poll workers, which is allowable by NYS law, working with local colleges to hire poll workers who can be instructed through their institutions and gain credit for civic study and participation.

CONCLUSION

Our reporting showed that the implementation of the new voting system in New York City on Primary Day was for the most part successful. Voter acceptance and the assent of candidates and parties has been reassuring. Nonetheless, as described above, there are many fixes necessary before the next roll out of the new machines at the upcoming General Election November 2nd.

Appendix: Incident Distribution for 2010 Primary Compared to Two Most Recent Previous General Elections:

Incident Type as % Total	Election	2010	2009	2008
		Primary	General	General
Electioneering		2%	21%	5%
Machine		47%	37%	36%
Materials		19%	2%	5%
Other		12%	10%	11%
Poll site not open		15%	5%	11%
Registration		2%	1%	21%
Intimidation		0%	19%	4%
Language		1%	1%	1%
Affidavit		1%	4%	6%
Grand Total		100%	100%	100%